

MUSLIM WOMEN  
OF THE  
BRITISH PUNJAB

FROM SECLUSION TO POLITICS

*Dushka Saiyid*

Foreword by Ainslie T. Embree



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*Also by Dushka Saiyid*

**EXPORTING COMMUNISM TO INDIA: Why Moscow Failed**

# Muslim Women of the British Punjab

**From Seclusion to Politics**

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**To my mother, Humyra Saiyid, for me  
the first symbol of an emancipated woman**

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# Foreword

Dushka Hyder Saiyid in this important study has entered into one of the great controversies of modern historiography: what was the effect of Western imperialism on conquered peoples and civilizations? As soon as the question is asked, however, one knows that there cannot possibly be one answer that will serve the historical experience of the hundreds of millions of people in Asia and Africa, who in the first half of the twentieth century were still under the control of one of the European powers. Many have argued with force and passion that the fruit of imperialism was the destruction of ancient civilizations and the enslavement and impoverishment of their peoples to enrich the West. With equal ardour, other authors – mainly representatives of the imperialist nations, to be sure – have called as witnesses what they see as the beneficent effects of Western rule: everything from the steamship to modern medicine and the liberation of women from degrading customs. Recently, some authors have begun to argue that such assessments overestimate, for both good and ill, the impact of imperialism. Thus the German historian H. L. Wesseling has made in great detail the argument that the Western powers did not effect any fundamental or damaging change in Africa, the area often cited as having suffered most grievously from Western imperialism. As regards the Indian subcontinent, in a volume in *The New Cambridge History of India*, C. A. Bayly suggests, more plausibly and with surer knowledge, that many of the changes attributed to the British were already taking place within Indian society, quite apart from the Western influence, and what colonialism did was to speed up and transform these changes. David Ludden, an American historian, after a careful analysis of peasant society in South India, concluded that the closer one looks at India during British rule, what one sees are indigenous economic systems, neither stagnant nor transformed by foreign rule, but moving along lines ‘consistent with developments that predate the founding of British rule’. This ‘revisionist’ history, of course, has not found approval from all scholars, one of whom charges that it is an attempt to take the sting out of the violent intrusion of colonialism by making ‘its features the innate property of indigenous history’. While recognizing the possible distortions in this line of inquiry, it seems, however, far more likely to produce an understanding of modern South Asia than one that demonizes or glorifies British imperialism. Saiyid’s work is an attempt to look at the issues through the relationship between existing structures of society – what the British called ‘customary law’ – and the innovations attendant upon foreign rule.



Saiyid has recognized that questions about the impact of imperialism in the Indian subcontinent have to be answered very carefully in terms of the culture of a particular time and region, not by generalizations covering the Indian Empire, with its multitude of regional cultures and histories. Furthermore, she has concentrated on one issue, the position of women in Punjab as the British solidified their control. Punjab was an excellent choice for her study, for, perhaps more than any other area of the subcontinent, it is what the geographer O. H. K. Spate called a 'nuclear region', one which has been of perennial significance in the history of the subcontinent. Brought under the control of a succession of empires, the Achaemenians from Iran, the Mauryas from the Gangetic Plain, the Ghorids from the Afghan plateau, the Mughals, and finally the British in the middle of the nineteenth century, the territory retained its identity. It is central to Saiyid's analysis that the British did not introduce into Punjab the system of government they had established elsewhere in the subcontinent but made it into what they called a 'Non-Regulation Province', which meant that power was concentrated in the hands of the Deputy Commissioner. In the eyes of romantic imperialists like Philip Mason, this 'was the way India liked to be ruled', by putting into the hands of one 'guardian' the power of judge, tax-collector and policeman. Saiyid puts it more succinctly: it made the Punjab administration more despotic than the areas that had been first brought under British control. It was not a matter of what the Indians liked, it was what worked best for the rulers. As the American historian David Gilmartin has wryly pointed out, the famous choice that John Lawrence offered the people of Punjab, as recorded on the pedestal of his statue in Lahore, 'Will you be governed by the sword or the pen?' was no choice at all. They would be governed, as Saiyid shows, by the rulers trying to avoid disjunctions with the old ways, or at least what they thought were the old ways, by fitting into existing patterns that would win them the collaborative support of the old élites.

Saiyid shows how fateful, as far as women were concerned, was the decision of the British rulers of the Punjab to base personal law – that is, rules affecting marriage, divorce, inheritance, ownership of property, and adoption – not on what they believed to be the dictates of religion, as they had elsewhere in India, but on local customs. She traces the extraordinary influence of the work of Sir Denzil Ibbetson and C. L. Tupper on the nature of Punjab society in defining personal law, especially as it affected women. The Punjab Laws Act of 1872, which made customary law, rather than religious law, the personal law of Punjab, worsened, she argues convincingly, the condition of women with regard to divorce and inheritance. The *Shariat* was more generous toward women than customary law, but the British followed this course, she suggests, because it was popular with the landed

élites. It was many years before such legislation as the Child Marriage Act of 1929 and the Shariat Act of 1937 improved the legal position of women.

Saiyid's chapter on women's education is especially interesting, as she traces the opposition of Sir Syed Ahmed Khan and others to girls receiving the new Western forms of education on the grounds that it was likely to undermine the family. She does not mention it, but Sir Syed had argued that one of the causes of the rebellions against the British in 1857 had been their introduction of what he called 'female education'. 'Men believed it to be the wish of the Government that girls should attend and be taught at these schools, and leave off the habit of being veiled.' But if men opposed educating women, it was also men, as Saiyid shows, who led the struggle to remove barriers, including purdah. Her use of Hali's poetry shows how complex were the intellectual currents stirring in Punjab. Saiyid notes that some of the sentiments of his poem, 'Chup ki Dad', such as characterizing women as companions of husbands and comforters of sons, might not please modern feminists, but argues that it shows an unusual sensitivity to the restricted life imposed on women.

The national struggle opened new doors for Muslim women in Punjab, although to a much lesser extent than elsewhere in India. The Khilafat movement, however, made it possible for women to become actively involved. Saiyid traces the career of women such as Jahan Ara Shahnawaz, who spoke at the Round Table Conference in London in 1930 on the need to improve the status of women, but active participation in the Muslim League remained minimal.

Reading Saiyid's thoughtful book, one can see how superficial, on one level, were the effects of British rule in Punjab. At the beginning of the twentieth century, Sir Alfred Lyall, who had served many years in India, said that the differences between Indian and European civilization were so great that no traces of European civilization would long remain after the British withdrew. What the book shows on another level, however, is that the changes taking place in Punjab – and they were very great – were due to the interaction, not so much of the West with Punjab, but with the ferment within the society itself. Saiyid's book is an important contribution to the groundwork of a history of Pakistan that will look inward to the regional societies themselves.

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# Preface

No social history has been written of the Muslim women of Punjab during the British rule of the province. This study, which covers the period 1872 to 1947, attempts to fill this gap. It was in 1872 that the British in Punjab passed the Punjab Laws Act, which made customary law the personal law of the province, and in 1947 the British left India, and the province of Punjab was divided between the two newly independent countries of India and Pakistan. The neglect of this topic is all the more surprising as this was a period of rapid transformation in women's role and status in society.

It became increasingly apparent in the course of my research that the change in Muslim women's status and role was a result of a move that mainly came from two directions, from the government and from the indigenous Muslims themselves. The government documents and legislation, and the debates preceding them, were available at the Punjab Archives in Lahore, and at the Law Ministry Library respectively. What I found to be an invaluable primary source on Punjabi Muslim women's social history were the women's journals which started to come out from Lahore in the 1890s. These were difficult to come by, as no library in Pakistan has a complete set of them, and where they were available in significant numbers, as in the Lahore Museum Library, they were not catalogued. Since these journals were the focal point of discourse on Muslim women, and gave coverage to Muslim women's organizations and conferences in Punjab and elsewhere in India, the need to get a complete record of them and house them in one library is very great. Punjabi and Urdu literature is a valuable source for any study of Punjabi Muslim women. I have selected only two of the more prominent writers in Urdu who were concerned with issues affecting Muslim women, Hali and Nazir Ahmed, but further research could discover others, especially in the Punjabi language.

A handicap of conducting research in Pakistan is the difficulty of finding secondary material. Important libraries, which could be of great use to researchers, are not properly catalogued. The Punjab Public Library, the Lahore Museum Library (where most issues of women's journals are housed), the library of the Research Society of Pakistan, are the more glaring examples of this deficiency. A six-week trip to London, and the use of the India Office Library, the British Library and the School of Oriental and African Studies Library, made it possible to consult recent work not available in Pakistan.

Changes in the status of Muslim women of Punjab in the period 1872 to 1947 was due to two agencies, government legislation and the activity of the

indigenous opinion-makers. This study begins with the decision of the government to adopt customary rather than religious law as the personal law in Punjab. This decision was detrimental to the rights of Muslim women, who would have fared much better had the Shariat been adopted instead of customary law. The second chapter discusses the implications for Muslim women of the adoption of customary law, and how and why this decision was taken. It was not a wholly retrograde decision as far as Muslim women in Punjab were concerned, however, because the British government kept passing legislation at regular intervals which affected Muslim women throughout India, and such legislation did a great deal to improve their marriage, divorce and inheritance rights. The third chapter discusses the nature of each piece of this legislation, and the issues debated in the Legislative Council preceding their passage.

From governmental decisions and actions which affected Muslim women's legal position and rights, I go on to study the indigenous influences which made a difference to their position in society. The emergence from seclusion would not have been possible without a change in the nature of education given to shurafa, that is middle class and upper class, Muslim women in the nineteenth century, and so the fourth chapter is on education. Some knowledge of Persian and Arabic, and basic arithmetic was all that they were exposed to as part of traditional Muslim education, and that too within the security of their homes. The introduction of western education and the opening of schools for girls meant that they had to venture out of their homes, which led to a diminution of purdah and also exposed them to awareness of western culture in which women were much more emancipated. Various Muslim thinkers and writers, discussed in this study, readily advocated the need to educate women, but were not so keen to criticize the institution of purdah. While the need to educate Muslim women was under discussion from the second half of the nineteenth century among Muslim reformers and writers, purdah, as practised by Muslims, was not questioned till the second decade of the twentieth century.

The concept of purdah is central to any understanding of the changes that Muslim women in Punjab were undergoing, and is the theme of the fifth chapter. The emancipation of Muslim women was in direct correlation to the decrease in the strictness of purdah observed by them. Since purdah or seclusion, in the Indian context, also meant confinement and segregation from males, the more emancipated the woman was, the fewer were the barriers placed against her participation in any kind of activity in a desegregated milieu. This variety of purdah or seclusion, is very different from the hijab worn by Muslim women in other parts of the Muslim world, for hijab is a code of dress and does not place limits on interaction with the opposite

gender, or restrict the physical movement of women. The fifth chapter discusses the controversy surrounding purdah and how and why its severity was progressively reduced over time.

The last chapter is on political activism of Muslim women in Punjab, because the process started as late as the 1930s, and by the 1940s it had reached its fruition. This new generation of Muslim women had received western education in government schools, and was caught up in the movement for Pakistan. Their participation in the Pakistan movement meant that they were involved in organization, touring the countryside, addressing public meetings, and participating in street agitations and demonstrations, which in turn meant the destruction of the restrictions that had been placed on their movement. The fact that Punjabi Muslim women were able to make a major contribution to the Pakistan movement symbolized their emergence as partners of men in the new country that the Muslims were trying to create for themselves.

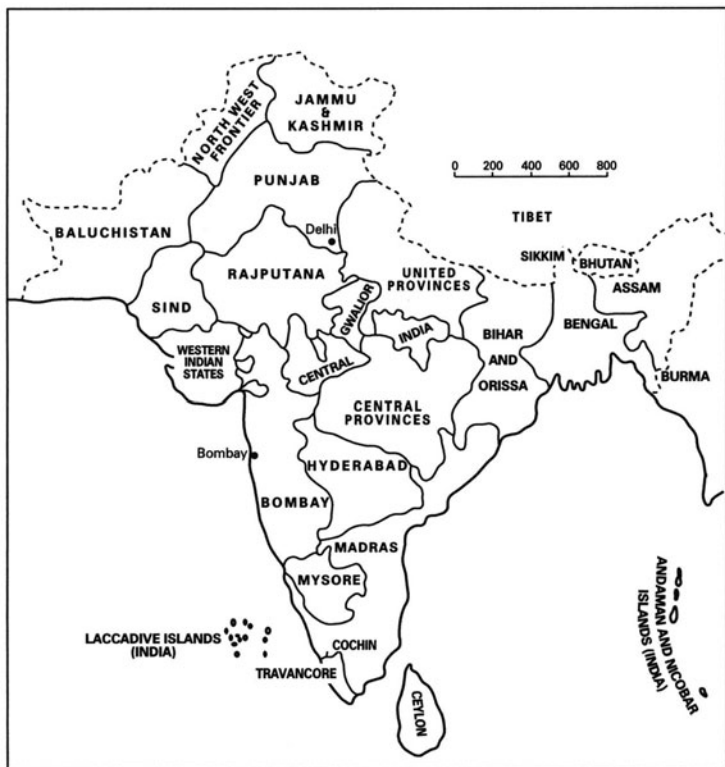
The study is organized according to the apparent sequence of events in the slow but steady emancipation of Punjabi Muslim women from the last quarter of the nineteenth century to the time of independence. The legal system that the Muslim women were placed in, western education which created an intellectual climate critical of purdah, along with the public participation of Muslim women in politics, brought many of them out of seclusion.

DUSHKA H. SAIYID

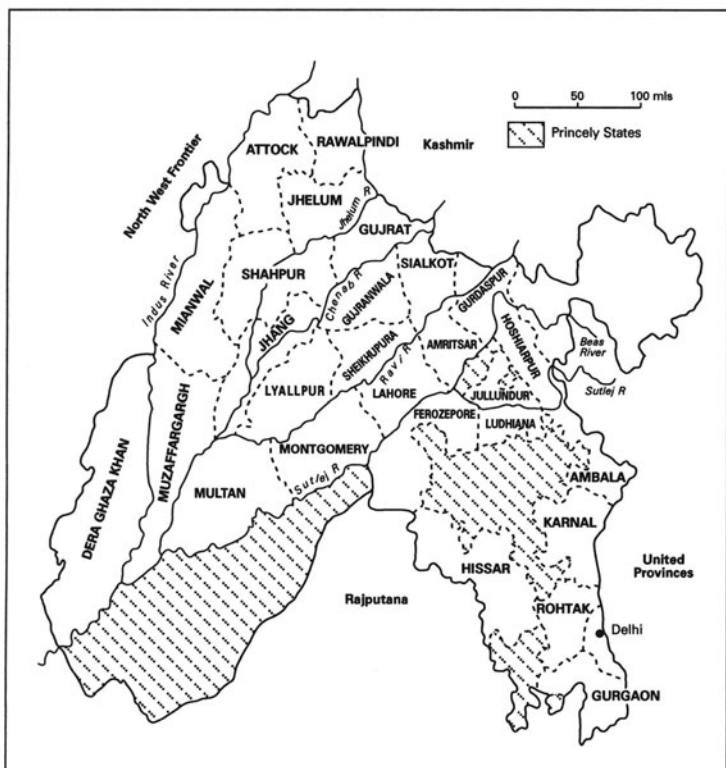
# Acknowledgements

My father was very keen for me to go abroad for my doctorate, although his health was failing, and two months after my departure for Columbia University, he passed away. My debt to him is the greatest, since it was he who taught us to put a high premium on education, and made great financial sacrifices to educate me in London. My husband Mushahid has shown infinite patience and support as I plugged away at what seemed to be unending research. My mother Humyra Saiyid, and brothers and sisters, Omar, Amer, Nazli and Durdana, have all been pillars of strength and encouragement when I faltered and found it difficult to cope with a baby, doctoral research and teaching. My nephews and nieces, Fahd, Hammad, Gulden and Tayyaba have helped me greatly in getting the manuscript ready for publication. My son, Mustapha, by his cheerful presence and repeated expression of pride at his mother having written a book, has spurred me on. My sister-in-law, Nancy, looked after me all three years of my stay at Columbia. My cousin Zeba's hospitality in New York made my thesis defence a great deal of fun. My parents-in-law, Colonel and Begum Amjad Hussain Sayed, gave me the warmth and comfort of a home from which to pursue my research in Lahore.

My supervisor and *ustad* in the real sense, Professor Ainslie T. Embree, guided my research from a distance of thousands of miles and over a period of years that I've lost count of; it is due to his enduring support and confidence in me that this study has arrived at publication. My friend Dr Rasul Baksh Rais played a critical role in facilitating the re-establishment of links with Columbia University, and pushed me to get it done. My senior colleague and friend, Dr Rafique Afzal, gave me the support in the Department which made it easier for me to concentrate on my research. He has also helped to edit and proof-read the manuscript. Mr Sarfraz Hussain Mirza gave me invaluable access to his own primary source material, and useful tips on the sources available in Lahore. Mr Abbas Chughtai and Mr Rafique of the Punjab Archives were a great help in digging up archival material. Mr and Mrs Naeem Tahir provided me with some issues of *Tehzib-e-Niswan*. Professor Z. H. Zaidi arranged and organized my trip to London to use the India Office Library. He made a great effort to make my stay in London comfortable and productive. Mr Nasir Amjad of the Area Study Centre has given me invaluable computer aid in order to prepare the manuscript for publication. Last but not least, Nawab Jan has looked after Mustapha since he was less than two, and without her help and prayers the research might never have been completed.



Map 1 British India (twentieth century)



Map 2 Districts of British Punjab (1931)



# Glossary

<b>anjuman</b>	society, committee, association
<b>bua</b>	maid, female servant
<b>burqa</b>	gown from head to toe, which also covers the face
<b>chaddar</b>	sheet, women wrap themselves in it when venturing out of their homes
<b>dopatta</b>	veil
<b>durbar</b>	court of a king
<b>fiqh</b>	science of Islamic jurisprudence
<b>hadis</b>	a record of the action/sayings of the Prophet Muhammad
<b>hajj</b>	pilgrimage to Mecca
<b>hartal</b>	strike
<b>hijab</b>	Islamic concept, to observe modesty in dress, literally meaning 'curtain'
<b>izzat</b>	honour
<b>jalsa</b>	public meeting
<b>jihad</b>	Islamic war
<b>kazi</b>	a Muslim judge according to the religious law
<b>khaddar</b>	coarse cotton cloth, hand-spun and hand-woven
<b>khula</b>	Muslim women's right to initiate divorce
<b>khuddi</b>	ego
<b>lakh</b>	one hundred thousand
<b>madrasah</b>	school of higher learning
<b>manazara</b>	theological disputation
<b>mohalla</b>	urban neighbourhood
<b>palki</b>	palanquin in which women travelled, sheltered by curtains so no one could see inside
<b>pir</b>	religious guide
<b>pardah</b>	literally meaning 'curtain', applied to women who remain segregated from men not of their immediate family
<b>rais</b>	urban notable, man of substance
<b>maulvi</b>	learned Muslim, man trained in religious sciences
<b>sati</b>	Hindu custom of burning the widow on her husband's pyre
<b>Shariat</b>	Islamic law, derived from the Qoran and hadis
<b>sharif</b>	respectable, decent
<b>shurafa</b>	those belonging to respectable classes, mainly middle and upper classes
<b>talak</b>	divorce

<b>taluqdar</b>	name given to large landlords in UP who collected revenue from their own and other estates for the State
<b>tehsil</b>	major administrative subdivision of a Punjabi district
<b>tonga</b>	horse-drawn carriage
<b>ulama</b>	class of Muslims learned in religious sciences
<b>waqf</b>	pious endowment
<b>zail</b>	administrative subdivision in the Punjab, each in the charge of a semi-official <b>zaildar</b>
<b>zamindar</b>	holder of land (term used in the Punjab for large and small landholders alike)
<b>zenana</b>	women, women's quarters

# 1 Introduction

The province of Punjab in 1872 was one of the eight major provinces of British India, created after the annexation of the former territories of the Sikh ruler in 1849. It consisted of all the territory from Delhi in the east to the Indus River in the west. The North-West Frontier Province was separated from Punjab to constitute a separate province in 1901, and Delhi was separated from it in 1911.<sup>1</sup> When I use the term Punjab province, I am referring to that area which constituted the province of Punjab from 1872 to the time it was redefined, after 1901 and 1911.

Punjab has been described as one of the 'nuclear regions or bases of power which are perennially significant' in India's history.<sup>2</sup> It was part of the Achaemenian empire of Darius I in the fifth century BC. When it was invaded by Alexander in 326 BC, it consisted of a number of petty states, and after his death it became a part of the Maurya empire. After the decline of the Maurya empire it was raided by waves of invaders, Graeco-Bactrian, Sakas, Kushans, Hunas, and then came the Muslims, Mahmud of Ghazni, followed by Mohammed Ghorī in 1186. It became a part of the Delhi sultanate and then the Mughal empire. With the decay of the Mughals, struggle ensued between the Afghans, Sikhs and Marhathas, and Sikhs seized power in Punjab.<sup>3</sup>

When Punjab was annexed by the British in 1849, they developed a paternalistic system of government which came to be known as 'the Punjab School'. What made the Punjab administration more despotic than that of the rest of India was the fact that the district officials combined in their persons both the judicial and the executive authority.<sup>4</sup> After the revolt of 1857, for which the corrupt and complex courts of the North- West Province were largely held responsible, Punjab's simple and summary judicial system was held up as an efficient example.<sup>5</sup> Civil procedure in the courts of the North-Western Province was complicated, costly and universally disliked. It was based on the Bengal Regulations, where the judiciary was clearly separated from the executive. This Regulation system never gained popularity outside Bengal. It was because of the dissatisfaction with the workability of the Bengal Regulations that Punjab administration was organized on totally different principles, and made into a non-regulation province.<sup>6</sup> The executive head of the District was called the Deputy Commissioner and not the Collector, and his subordinates on the Commission were called Assistant Commissioners. The non-regulation provinces did not have a Board of Revenue, but instead just a single officer called the Financial Commissioner. The District

administration was similar, but the District Magistrate and his subordinates exercised more extensive criminal jurisdiction in the non-regulation provinces than in the regulation provinces.<sup>7</sup>

The British built a complicated legal system in India, for while they based public law on the principles of a free market and the British concept of private property, they based personal law on the local customs and religion.<sup>8</sup> In the rest of India they made religion the basis of personal law but in the Punjab they based personal law on the local customs. This decision can be traced back to Governor-General Dalhousie's Annexation Despatch, in which he had called for upholding 'Native Institutions and practices as far as they are consistent with the distribution of justice'. By passing the Punjab Laws Act of 1872, customary law was adopted over religious law as the personal law of the province.<sup>9</sup>

In order to record and understand the local customs of Punjab, it was necessary to understand the principles of social organization from which the customs had evolved.<sup>10</sup> In trying to explain the foundations of customary law, C. L. Tupper, an administrator who drew up a compendium of 'customary law', found the institution of the 'tribe' to be central to understanding it. While the nature and constitution of the tribe varied in different parts of India, what they had in common was a belief in patrilineal descent from a common ancestor. The tribe was a 'race of origin' and influenced the customs practised on the basis of the memory of the common ancestor.<sup>11</sup> Sir Denzil Ibbetson, who carried out the Punjab Census of 1881, described the tribe as 'far more permanent and indestructible than the caste'.<sup>12</sup> His interpretation of the nature of Punjab society dominated British understanding of the area right up to 1947. He held the immense influence exercised by Muslims in Punjab to be responsible for the supersession of Brahminism and its caste restrictions.<sup>13</sup> Ibbetson declared that as a result, the restriction on marriage with another caste was neglected, and what became important was the tribe. When a family or a caste rose or sank in the social scale, it might change the name of its caste but retained its tribal name. He explained that it was difficult to make the distinction between tribe and clan, for when a clan moved to a different territory, it became a new tribe for all practical purposes. It was only when it was occupying the same territory and was subjected to a common tribal authority that it became a clan.<sup>14</sup> It was argued by Tupper that the basis of the Punjabi custom was the cohesion of the tribe, the family and the village, and not the sanction of religious law.<sup>15</sup> A prime example of the primacy given to custom in the Punjabi village was over the issue of inheritance of land. Since control of land continued to be the main source of authority and status, and daughters were married outside the clan but

within the tribe, they did not inherit land, as that would have meant land passing outside the close-knit clan.<sup>16</sup>

By adopting customary law the British had opted to protect the tribal structure of Punjabi society, and base their rule on a social organization that they considered to be central to it. The alternative would have been to base their legal system on religion, as the Mughals had done, but, Tupper argued, in that respect the British were at a disadvantage, since they did not belong to any of the religions practised by the Punjabis.<sup>17</sup> By basing British rule in Punjab on the protection and maintenance of 'tribal' structure, the British hoped to preserve the kind of stability that the province had shown in 1857. If the British had adopted religious law as personal law in Punjab, as they had done in the rest of India, they would have upset the *status quo* and the social cohesion of the 'tribes', a risk they were not willing to take after the experience of 1857. In that year, widespread uprising against British rule took place, often referred to as the sepoy mutiny by the British, especially in the area from Delhi through the Gangetic plain. Punjab was relatively unaffected, and the British succeeded in restoring their authority in 1858.

In drawing up administrative divisions in Punjab which they called *zails*, the British took great care to include in one such unit, which could consist of from five to forty villages, the tribal distribution of population.<sup>18</sup> The government appointed as *zaildar* a leading man from the tribe, who was often also a large landlord. Where no such natural leader existed, the British created one. *Zaildars* acted as mediators between the government and the villages they represented, providing aid to the administration, supervising village officials and representing the interest of the *zail* to the government.<sup>19</sup>

After the cataclysmic events of 1857, the British were aware that Punjab had not only remained loyal, but had also supplied troops to quell the uprising in northern India. By 1860, Canning had decided on a policy of conciliation of the landlord class, not only in Oudh, but also in the Bengal Presidency and in the Punjab. He pursued a policy of combining property with authority among the aristocracy, and felt that their separation was not desirable.<sup>20</sup> He reversed the policy which had been followed in the past ten years, of reducing the power of the large landed families. Robert Montgomery, the new Lieutenant-Governor of Punjab, regarded the aristocracy as 'a great bulwark for the state'.<sup>21</sup>

Muslims made up 56 per cent of the population, and were concentrated in the western part of the province.<sup>22</sup> The western part of the Punjab, unlike the eastern part, did not benefit from sufficient monsoonal rains for settled agriculture to flourish. Since the main source of income for the government was from agricultural revenue, they increased agricultural production by canal

colonization. The colonization, which began after 1885, was based on a network of canals which extended from the rivers and spread over the mostly uncultivated plains of western Punjab.<sup>23</sup> As a result of this, the canal irrigated area of Punjab increased from three to fourteen million acres in the period from 1885 to 1947.

British policy was to colonize the canal areas by castes which ranked high in economic position and social status in their home districts. The non-landed poor, who were either of the menial or service castes, did not get any land. Fifty acres or more were allotted to the large landlords or the rais. Large landlords were those who did not cultivate the land themselves but instead lived on rental earnings from tenants or labourers. Rais were those men who had the capital to invest in land, and were influential in their areas. These privileged sections of society were also given horse-breeding grants. In this way, the British not only reinforced the existing social hierarchy, but also provided for themselves an influential section of the society which owed its allegiance and loyalty to them. It is pertinent from the point of view of this study that most of these grants were awarded to men from western Punjab, where the large Muslim landlords were concentrated, and which now constitutes Pakistan.

Most of these landed gentry grants were made during and just after World War I, and were in direct proportion to the contribution these grantees had made to the war effort. If these estates fell into debt, they were brought under the protection of the Court of Wards, and the local deputy commissioner supervised their management until they became financially solvent. However, the extent of assistance from the government to the estates depended on the political importance of the family.<sup>24</sup>

The Muslim middle class, those involved in professions and small businesses, was small, since most Muslims lived in rural areas of western Punjab. The most powerful class amongst the Muslims of this area, as has been seen, was that of the large landlords. They increasingly came to dominate the politics of the province as supporters of the British rule in India. Culturally their influence was conservative, and did not favour any improvement in the rights and status of Muslim women.

This research is concerned with the study of the shurafa Muslim women only. Ashraf, or the sharif people, was an expression which came to be used in Mughal India for those people who had respectable family backgrounds, were cultured and educated.<sup>25</sup> It was used to distinguish the élite and the privileged from the rest of the people. It would be difficult, if not impossible, to study Muslim women of Punjab as a single category, so great were the cultural differences between the shurafa and the people at large. An example of this difference is the institution of purdah. It was the shurafa women who

observed purdah, while the peasant women carried on the struggle for survival without being encumbered by such customs. At most a woman might cover her head, but any kind of physical restriction of movement, or wearing of burqa (a garment that covers the whole body, including the face), was practically impossible. Purdah was a luxury which only the shurafa women could afford to observe.

## 2 Customary Law

Punjab was annexed to the British empire in India in 1849. It was a non-regulation province, where the rules and regulations of the older provinces of the British Indian empire did not apply. The Regulations and Laws of the Presidencies had become too complicated. They served only as guidelines, and the Punjab was administered by executive orders.<sup>1</sup> The executive and the judicial administration were concentrated in the hands of the district officials. In the beginning the province was governed by a three-member Board of Administration, with the Chief Commissioner, John Lawrence, as its president.

The British rule in Punjab very early on came to rest on the village proprietors.<sup>2</sup> The British colonial state tied its administration to tribal kinship, as it could not claim legitimacy on the basis of religion.<sup>3</sup> The local units of administration consisted of ten to forty villages which were held together by extended kinship, to which the British referred as 'tribes'. Denzil Ibbetson, an ICS officer, who published his Report on the Census in 1883, dealt with races, tribes and castes. The tribe based its identity on the belief in the patrilineal descent of a common ancestry.<sup>4</sup> Tupper, another official of the government of Punjab, had argued for the preservation of the tribe and the clan as they were held together by the 'bonds of consanguinity'.<sup>5</sup> It was therefore natural that the British should tie their legal system to tribal customs.<sup>6</sup> Since customs varied all over Punjab, the job of collecting and making a record of these was done by the Settlement Officers at the time of Settlement.<sup>7</sup>

As far back as 1849 the Governor-General in a dispatch had made an important policy statement, in which he said that he 'would wish to uphold native institutions and practices as far as they were consistent with the distribution of justice to all classes, and that popular institutions will be improved and consolidated by our own measures'.<sup>8</sup> The native institutions which the Punjab government was to uphold included the tribe, the clan, and the village community. The Lieutenant-Governor of Punjab, Sir Robert Egerton, reflected the opinion of the Punjab tradition when he voiced his views in 1878 and said that, 'the most fundamental basis for the division of the population of India is tribal rather than religious, and should rest not upon community of belief or ceremonial practice, but upon ancestral community of race'.<sup>9</sup>

The founders of the Punjab school, John and Henry Lawrence, regarded the role of the rural population, and in particular the aristocracy, as crucial



to the maintenance of order.<sup>10</sup> They were of the view that if the aristocrats were integrated into the administrative system, British rule in India would acquire firm foundations in the Indian soil. The revolt of 1857 had only strengthened the belief that the urban class could not be relied upon for support and therefore the rural aristocracy must be bolstered through their policies.<sup>11</sup> The Punjab system of administration had upheld a paternalist attitude to the peasantry, as it provided a stable and peaceful economic and social base for British rule in India.<sup>12</sup> S. S. Thorburn, an ICS officer who had close experience of the peasant problems in the Punjab, wrote: 'So long as the peasantry of these sentinel districts on the frontier province of India is contented, the Government of a handful of foreigners like we are will be strong and popular. With a discontented peasantry our position of rulers would be so critical'.<sup>13</sup>

C. L. Tupper, who had served in the government of Punjab and had made a compilation of the local customs with the help of the settlement and tribal records, said that the government was interested in maintaining the village community, and where it did not exist, the policy of the government was to construct it.<sup>14</sup> He argued that the government could have a strong hold over the people through the tribe and the clan, and that it was easier to deal with the people when they were part of an organization than when they were just independent individuals.

The British in Punjab sought legitimacy through propping up and reinforcing the power and position of the tribes and their kin groups. They could not appeal to a religion or a religious group for legitimacy, as the Sikh and the Mughal rulers before them had done. Tupper argues that, without a tribal organization, the government would have to institute a religion like Islam or Sikhism, which would hold the people together in a sort of brotherhood.<sup>15</sup> He advocated that the government should follow policies to retain the tribes and slow down, if not prevent, their dissolution. Tribal structures, he argued, had the advantage of encouraging joint agricultural ownership, which made the colonization of Punjab easier.<sup>16</sup>

## CUSTOMARY LAW

As the British government recognized the centrality of the tribal and kinship groups in Punjabi society, they therefore accepted customary law as being of foremost importance. In the days immediately after the establishment of the Board of Administration, customary law was shaped by the judicial decisions of the deputy commissioners and settlement officers.<sup>17</sup> What these officers considered right and expedient influenced their decision-making,

but they were advised by men from amongst the people whose opinions mattered.<sup>18</sup>

The attitude of the government in Punjab to the status of women in society was reflected in the very early days of the Board of Administration. The Board had a statement of tribal customs prepared by collecting representatives of all classes from different parts of Punjab. Where the Board was of the opinion that the customs were degrading to the female sex, especially concerning betrothal, marriage and divorce, they were modified according to the British concept of propriety. The Board issued these statements as guides to judges who, however, were given instructions to decide cases according to 'justice, equity and good conscience'.<sup>19</sup>

There was a great deal of divergence between the moral standards of the British rulers and the native citizens. This was apparent in their perception of criminal offences. One example of this is cattle stealing: a serious crime for the Board, but in Punjabi culture it was regarded as an expression of manhood. Adultery and seduction were regarded by the European rulers as acts not deserving anything more than a few months in jail, but for the native they were heinous crimes, justifying murder by the aggrieved husband or guardian.<sup>20</sup>

It was in 1854, under John Lawrence the Chief Commissioner, that the order to compile the Punjab Civil Code was given. Richard Temple was given the task, which he was to carry out under the supervision of Montgomery, the Judicial Commissioner and member of the Board. The rules prepared by the Board of Administration when John Lawrence was the Governor of Punjab were brought together in the form of a book called the *Principles of Law*, which later came to be known as the *Punjab Civil Code*.<sup>21</sup> It was decided to abandon the rough and ready method of justice which had been administered so far.<sup>22</sup> Before the writing of the Punjab Code, all issues of dispute concerning native law were referred back to the native law officers. The Code, however, attempted to prescribe the 'principal maxims' of Hindu and Muslim law.<sup>23</sup>

Doubt had arisen about the validity of the *Punjab Civil Code* (promulgated in 1854), about the administrative rules and orders, and the Bengal Regulations, which had been applied to Punjab.<sup>24</sup> The *Punjab Civil Code* was only meant to act as a manual and a guide for the magistrates, it was not the law.<sup>25</sup> This necessitated the passing of the Punjab Laws Act IV of 1872, which consolidated all previous legal provisions and re-enacted them.<sup>26</sup> Until 1 June 1872 and the passing of the Act, it was never very clear whether the religious personal law or the local custom of the parties was to decide a case. The Punjab Laws Act resolved this confusion.<sup>27</sup>

The Punjab Laws Act laid down that the Mohammadan or Hindu law, or the *lex locii*, or any other system of law might be followed, if it were not

opposed to morality, public policy or positive law.<sup>28</sup> The responsibility rested on those who claimed that they were governed by custom to prove it, and also to prove what was the custom that they were governed by. If they were unable to do so, then the religious personal law was to be applied to them.<sup>29</sup> The exact wording of this Act, which was to revolutionize the legal system of Punjab for a long time to come, was:

the rule of decision shall be –

- a) any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or in questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family-relations, wills, legacies, gifts, partitions, or any religious usage or abolished, and has not been declared to be void by any competent authority;
- b) the Mohammadan law, in cases where the parties are Mohammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.<sup>30</sup>

The Punjab Laws Act gave custom the force of law, but there was no certain knowledge of the nature of the custom.<sup>31</sup> The Punjab government suggested that the *Punjab Civil Code* and the circulars of the Chief Court of Punjab should be amended and updated and then used as an authoritative account of the customary law prevailing in Punjab.<sup>32</sup> The government of India, however, vetoed the idea on the ground that the Act of 1872 would recognize a custom which was ‘judicially proved to exist’, and that the *Punjab Civil Code* was on some issues contrary to the popular customs practised in Punjab.<sup>33</sup> The Government of India advised a compilation of customary law which would tap all the sources of customary law, in particular the record of tribal customs made during the settlements since 1864. This compilation would, like the *Punjab Civil Code*, have no force of law, but would only be a manual to guide the officers. The existence of a custom would still have to be established by independent evidence or precedent.<sup>34</sup> In 1873 the Punjab government employed Tupper to draw up questions for Settlement Officers dealing with the subjects mentioned in section 5 of the Punjab Laws Act. Tupper detailed these questions and the answers to them, and the decisions of the court, in the three volumes on Punjab Customary Law that he compiled.

It is interesting to see the legal and social status that Muslim women had in the customary law of Punjab according to C. L. Tupper. Under Mohammadan

law, Tupper said, a woman having attained puberty could enter a marriage contract with whomever she wanted to, and her guardian could not interfere. But he quoted the *Punjab Civil Code* as saying that only the guardians or parents could make a marriage contract for the woman.<sup>35</sup> Within Punjab there were variations of age at which marriage took place. According to P. N. Thappar, a Settlement Officer, in Jhelum tehsil there was no age restriction to marriage, while in the Chakwal tehsil the people were guided by the Shariat. G. C. Walker, another Settlement Officer, recorded that in the Lahore district, among the Arains and the Rajputs, the age of marriage varied anywhere between six and sixteen for the former, and six to twenty for the latter.<sup>36</sup>

The law pertaining to child marriage had changed for the worse. The *Punjab Civil Code* had stated that infant marriages which had not been consummated could be annulled, and the child could marry again. But the Code had made allowances for native custom, and declared that both the parents and the child could be sued for damages if the marriage vows were broken.<sup>37</sup> This modification of native custom in the Code was ignored, and child marriage came to be considered legal, even if it was unconsummated. Tupper had argued that child marriage must be discouraged, and the law modified accordingly. It seems that the Civil Code had liberalized the law concerning child marriage, easing the constraints on their remarriage on attaining adulthood. But the law had reverted to the orthodox native custom of infant marriage by the time that Tupper had begun to make a compendium of customary laws.

Tupper had discussed inter-caste marriage, advising the courts not to uphold the customs which discouraged it. The social penalty against such marriages, he argued, was enough, without needing the support of the courts.<sup>38</sup> The ruling of the court should be in favour of the custom allowing it, as doubt should not be cast on marriages which had been consummated.<sup>39</sup> Tupper upheld the comparatively liberal Mohamman law which allowed women having attained puberty to contract themselves in marriage without requiring the permission of a guardian or a parent if the match be equal.<sup>40</sup> On conjugal rights, the *Punjab Civil Code* had taken a very conservative position. If the courts were satisfied that the husband would treat the woman well if she returned to him, and if she persisted in refusing herself to him, the court could send her to jail in an effort to enforce its decree.<sup>41</sup> But this was a controversial position. In 1860 the Judicial Commissioner passed a circular which said that compulsion should only be used where it could be proved that the woman's refusal was due to the influence of her friends. This became law, but was annulled by the Punjab Laws Act IV of 1872, which gave the power of decision to the courts, and the latter were to rely on the local custom.<sup>42</sup>

Married women were subject to customary law, and that law disqualified them from entering into any kind of contract. It was only if the husband had given her the management of his affairs that she would have been a free enough agent to enter a contract.<sup>43</sup> On the subject of divorce, Tupper maintained the religious law, drawing on the authority of Baillie's *Digest* and Macnaghten on *Mohammadan Law*. Quoting Macnaghten on the two forms of Muslim divorce, talak, he writes, is the arbitrary act of the husband, while khula is where the wife 'gives the husband consideration to be released from the marriage tie'; as for maintenance, the divorced Muslim woman was only eligible for such dower as remained unpaid by her husband. Nor was the amount of dower recoverable to exceed the amount considered reasonable with reference to the husband's income. The amount stipulated in the contract could be ignored on this ground.<sup>44</sup> The custom of divorce recorded at the end of the nineteenth century in the Lahore district reflects the vulnerability and insecurity of women. Amongst the Hindus there was no custom of divorce, except in the urban areas, where the man could put away his wife if she was proved to be unchaste. Muslim women, according to this record, could seek divorce only in a case where there was a change of religion, but the husband could divorce his wife for disobedience or misbehaviour, and she would still only be entitled to dower and not maintenance.<sup>45</sup>

On the question of guardianship and minority, Tupper's customary law seems to reflect the conventional morality prevalent in the province, sometimes adopting the Mohammadan law as the norm, and at other times going by the non-religious custom. However, what stands out is the extent to which the *status quo* was maintained. He continued to discuss infant marriage as if it were the norm, declaring that the father rather than the husband would have custody of the married female infant. Muslim widows' rights to the custody of their children remained unaffected by Hindu custom. On remarriage, her rights to the custody of the children remained the same as if she had not remarried, that is, she had to give up the son to her husband's family when he turned seven, and the daughter when she reached puberty.<sup>46</sup>

Under Hindu law, according to Macnaghten, a female and her property remained in the guardianship of a male for ever. The guardian might change from father to husband on marriage, and from husband to sons or grandsons, if she became a widow. In point of fact, females were kept in a continual state of pupillage. This was confirmed by the record of customs in the Lahore district, where it was declared that an unmarried woman remained under the guardianship of her father or his heirs, while a married woman was under the guardianship of her husband, and if he deceased, of his heirs. But the Punjab Laws Act changed all that in 1872. The Court of Wards was to take charge of her property, but if the Court felt that she was mature and sensible, no person

was to be made her guardian. This was a significant step towards recognizing the female as an independent adult, rather than as a mere dependent of the male. Court judgements of both 1875 and 1879 show to what extent the British law-makers and administrators were willing to go along with the native customs and avoid encroaching on personal law, for fear of strong negative reaction. Thus court decisions of 1875 and 1879 went in favour of infant marriages arranged by the father or the grandfather. The judgement said that the infant on attaining maturity could not break the marriage contract.<sup>47</sup>

The legal status of women in Punjab was reflected in the fact that the concept of women's separate property rarely existed. She was totally dependent on the husband, and subject to his will, and after his death she became dependent on his male relatives.<sup>48</sup> According to Macnaghten, the husband had the power to use the woman's private property when he was in financial difficulties. She was under his control even in regard to her own property. The male-oriented nature of inheritance was reflected in the fact that if a woman had sons, she could not give the property she had earned by her own labour to someone else. However, this was the Rivaj-i-Am (customary law) and not the Muslim personal law.<sup>49</sup> According to Charles A. Roe, the Settlement Officer in the Multan district during the period 1873 to 1879, daughters amongst Hindus did not inherit property when there were sons, and that applied to most of the Muslims as well. However, he says, there was general agreement that a daughter could take whatever the father gave her at marriage.<sup>50</sup> It was the same in the Lahore district, that the daughters had no rights of inheritance of property, but the daughter or the sister could inherit property if there was no male collateral nearer than in the fifth generation among the Arains, Dogars or Rajputs.<sup>51</sup> The widow got only maintenance when her husband died leaving behind one or more sons, but where there were no male lineal descendants, she got her husband's property for life, and enjoyed the same rights over it that her husband enjoyed while he was alive.<sup>52</sup>

Customary law regarding the alienation of property did not follow either Hindu or Mohammadan law. Customary law itself varied from region to region. The underprivileged status of daughters is apparent from the fact that very often male collaterals had a right to object to alienation of ancestral landed property to daughters or their sons.<sup>53</sup> But there were instances when gifts to daughters and their sons were upheld. There was a qualification to this custom, however: if the daughters were married to a kinsman related through males to the father, then the property was not likely to go out of the family, and in that instance, there might not be an objection to the gifting of the property.<sup>54</sup> But if the daughters married outside of the got (tribe or clan), they and their children became outsiders, and hence vulnerable to objection

if their father gifted them any property. Lest any doubt be left pertaining to the position of the daughter in the family, she was to have no voice in her father's disposition of his property, which was 'entirely in accordance with the general position assigned to women by customary law'.<sup>55</sup>

It was the adoption of customary law as the law of the land for Punjab that had a very regressive effect on the legal and social status of women in Punjab. The Punjab Laws Act of 1872 had made it clear that the personal laws would be decided according to the customary law rather than the religious law. The customary law was influenced by Hindu law and customs, so the adoption of these customs meant that the losers were the Muslim women of Punjab. There is no evidence to show that the passing of the Punjab Laws Act met with any kind of resistance from the Muslim community or any other group. If anything, the British government in India had opted for the maintenance of the *status quo*, and in fact, if they had chosen to adopt the religious personal law instead, it might have provoked an adverse reaction.

## LANDED INTERESTS

Since British policy rested on shoring up the power and influence of the agricultural classes, in order to protect them the Alienation of Land Act of 1900 was passed. The passing of this Act reinforced the importance of the tribal identity, for land could not be passed from what the British defined as the agricultural tribes to non-agricultural tribes. This was a controversial bill, passed after a great deal of discussion within the government, and it had met with resistance from no less a personage than the Governor of Punjab, Mackworth Young.<sup>56</sup> It was a political measure, taken to safeguard and consolidate the group that had facilitated British rule over the province.

The British in Punjab, by passing legislation which prevented the transfer of land from what they categorized as agricultural tribes to non-agricultural tribes, went against their own basic doctrine of allowing market forces to function unhindered. The government was faced with peasant impoverishment, and one way out was to protect the peasant from the moneylender, by removing his right to alienate land.<sup>57</sup> What the British feared most was any kind of social upheaval and discontent, and that is precisely what the transfer of land was encouraging in the village communities. A Government of India note on the transfer of land said:

To secure the contentment of the masses is our first duty in India: in it lies our safety. As long as they are loyal to and contented with their rulers, the internal peace of the country is secure, and the professional agitator

powerless. And most of all is the loyalty and contentment of the sturdy yeomanry from whose ranks we draw our native soldiers, the safe foundations upon which our rule can rest secure.<sup>58</sup>

The passing of the Land Alienation Act reinforced the economic power of the landed classes, be it the peasant or the landlord, and rescued him from the power of the money-lending trading classes. Since the Act allowed alienation of land to agricultural classes only, the big landlord became the money-lender to the smaller peasants, and eventually ending up buying their land. It brought about a divide between the landed rural and the urban populations. When the Government of India Act of 1919 provided for elections and a legislative council in Punjab, and separate rural and urban electorates, it accentuated the divide. After the 1921 elections in Punjab, Sir Fazl-i Hussain formed a party from amongst the elected rural members, and called it the Rural Party. Two years later, the agriculturists under his leadership formed the Punjab National Unionist Party, with the aim of protecting rural interests. The government was accused of protecting landed and Muslim interests, the trading tribes being primarily Hindus.<sup>59</sup>

The Unionist Party cut across all religious barriers. By the 1930s, Muslims of the urban areas were practising Shariat as their personal law, but the rural leadership hung onto customary law because it protected their interests. In 1931, Sir Umar Hayat Khan Tiwana, one of the big landlords of Punjab, brought a bill before the Punjab Legislative Council which would make into law the custom of primogeniture in his family, and it triggered off intense debate and controversy. Many of the Muslim members of the Legislative Council did not want to be party to legislation which, they felt, went against the injunctions of the Shariat. However a majority of the Muslim members of the Council, under the influence of the government and the Unionist Party, passed the Bill. The debate on the issue of the impartiality of Umar Hayat Khan Tiwana's estate brought out in the open the extent to which customary law as practised in Punjab was being challenged by an increasing number of Muslims, especially those from the urban areas. At the heart of the challenge being posed to customary law was the question of the inheritance rights of Muslim women.

One of the main points of criticism was that the Bill would deprive women of their fair share. Shaikh Muhammad Sadiq, the Muslim representative from Amritsar city, declared in discussing the Bill, 'I thought that time had come when Hindus also should follow the Mohammadan law in this respect and give a share to women, to their daughters and their wives. But here in this House in the year 1932, we are taking away the right of a wife, the right of a daughter and of others to get a share in the property'.<sup>60</sup> Shaikh Muhammad



Sadiq was not the only one to focus on the effect of this legislation on Muslim women; Pir Akbar Ali, the Muslim representative from Ferozepore rural, also joined in. He said, 'The spirit of the times is towards democracy, but alas! in this Council, in this responsible House, we are passing measures which will not only deprive women of their due share, but throw them also on the whim and mercy of the eldest member of the House'.<sup>61</sup> Chaudri Muhammad Abdul Rahman Khan, the Muslim representative from Julundur rural, compared the 'deplorable condition' of women of India with that of western women. He said that, while in the west every effort was being made to emancipate them and to establish equality between men and women, in India they were being deprived of the rights that had already been granted to them by the Holy Prophet and God.<sup>62</sup>

It is interesting that during the discussion on the Bill, Mukand Lal Puri took to task those Muslim members of the Legislative Council who were critical of the Bill on the grounds that it went against the Shariat, but who had never complained against the Land Alienation Act of 1900, which prevented the sale of land by one Muslim to another. What Mukhand Lal Puri, representative on the Council of Punjab, might not have been aware of was that with increasing participation of the Indian members in the Legislative Council, especially since the Government of India Act of 1919, Muslims were becoming more aware of their religious identity, and were willing to assert it in such forums. The pro-establishment figures were quick to defend the traditional customary law, which ensured the preservation of the large estates and prevented their fragmentation, which would be the natural outcome if division according to the Shariat was followed.<sup>63</sup>

The Bill was passed because the Government supported it. The enactment of the Bill brought to the forefront the inherent conflict for the Muslim members of the Council between the edicts of Islam embodied in the Shariat, and the Rivaj-i-Am or customary law, which was followed by most Muslims in the rural areas. After the passage of Umar Hayat Khan Tiwana's bill in 1931, Malik Din Muhammad, member of the Punjab Legislative Council from Lahore, initiated a bill which called for the supersession of customary law by the Shariat.<sup>64</sup> The British circulated the Bill in the districts, only to discover that it met with a great deal of resistance from the rural Muslim Punjabis. They seemed to regard it as a threat to the entire system on which the society was functioning, and consequently they were hostile to any daughter inheriting any land. They argued that it was enough that she be given a dowry. They also said that the passing of such a bill was likely to undermine the Land Alienation Act, and lead to the ruination of the agriculturists.<sup>65</sup> The Unionists blocked the bill, and it never came before the Punjab Council for division.

The linchpin of the whole politico-economic system on which the British based their rule in Punjab was the rural élite and their landed estates. C. L. Tupper in his book, *Punjab Customary Law*, has discussed the very deliberate policy of the British in Punjab to consolidate and maintain the tribal system in the Punjab, and why it suited them to keep it intact.

To maintain the village community is already the policy of Government, and indeed it has been in some places constructed where it did not before exist. It is through the tribe and the clan that the Government can gain its firmest hold on the inclinations and motives of the people. . . . Native society will, I believe, be the happier, so long as it can be held together by the bonds of consanguinity.<sup>66</sup>

The preservation of the landed estates was guaranteed by the prevention of inheritance of land to the daughters. Since most of the marriages in the Punjab were exogamous in nature, that is, they married within the tribe but outside the clan, therefore they did not inherit any land or property. The daughters did get dowry, which might vary with the income and tradition of the family. This prevented an outsider from acquiring property ownership in the village, and preserved the close tribal system. C. L. Tupper explained the reasoning behind this custom:

[the villagers] would assign property, now much more in lands than in cattle, to the hands best able to hold it safely and to use it to advantage, that is, to those of the heirs determined by the system of agnatic kinship, or of relationship exclusively through males. This would be the more necessary as the daughters marrying outside the clan, their children would belong to another stock.<sup>67</sup>

He went on to explain that whenever a woman held land, she could only have limited interest, because otherwise the land was in danger of passing out of clan or village ownership.<sup>68</sup> Only the maintenance and marriage expenses of the daughters would be provided while they were with the clan or the village. Not only were the females excluded from inheritance of land, but also their descendants. The sons of sisters and daughters were excluded from inheritance because they were not clansmen.<sup>69</sup>

There was a feeling that the agnatic theory had been pushed too far by the Chief Court.<sup>70</sup> Sir Mohammed Shafi, an eminent lawyer from Lahore who was also nominated to the Viceroy's Council, had voiced the concern that the agnatic theory had been carried too far by Sir Meredyth Plowden and Sir Charles Roe, both judges of the Lahore Chief Court.<sup>71</sup> He was quick to point out that there was no word in the Punjabi language for an ancestor beyond the great-grandfather, so even the agnatic theory should have limits to its

application. It was argued that there was a growing feeling in favour of the rights of females, and codification would only stultify a custom which might be modified over time. Codification, it was argued, would stop progress.<sup>72</sup>

Codification was seen not only as ensuring the continuance of the village and the tribal system, but also as synonymous with the relegation of women to a very subservient status. The disintegration of the village community was attributed to the rise of individualism and the awarding of increasing rights to women.<sup>73</sup> The most devastating criticism of how the Chief Court of Punjab had distorted customary law came from Justice Rossignol who declared, 'the Privy Council has laid down that custom is whatever is proved to be the active custom. Unfortunately the Chief Court has not always acted upon this dictum, but have extended custom by logical process'.<sup>74</sup> Sir William Rattigan argued for the preservation of the village communities and the tribes, although he said 'we might not be able to prevent the eventual splitting up of the village communities as they still exist in the Punjab', but he argued for delaying this process as long as possible. In this, he pointed out, the preservation of land was critical.<sup>75</sup> It was this compulsion which made the British policy-makers in the Punjab very recalcitrant about giving females any significant inheritance rights to property. Customary law as it developed increasingly came to rest on the principle that daughters and their sons, and sisters and their sons, would be excluded from inheritance by their male collaterals. This came to be accepted by most British administrators and jurists of Punjab as an established custom. As one eminent historian of Punjab has written, 'In political terms, the enunciation of such an underlying rule of inheritance, in spite of its roots in kinship structure, helped to define the indigenous foundations of customary law as a rationalized system of law supported by the colonial state'.<sup>76</sup>

The edifice on which the British had built the structure of their administration in Punjab rested on the maintenance of a society held together by tribal cohesion. Towards this end the British had divided the villages into clusters of *zails*, and appointed a *zaildar* from amongst the natives to act as the leader and the intermediary between the rulers and the ruled. The *zaildar* was an influential local, but what was more important was that he should be loyal to the Government and an effective intermediary.<sup>77</sup>

The whole emphasis was on reinforcing the tribal nature of the society because, it was argued, it would be easier to manage and govern a Punjab that was tribally organized than a society in which individualism had crept in. It was with this in mind that the local customs of the various tribes were given the force of law, and customary law became the foundation of the legal

system which came to govern Punjab. With the passing of the Punjab Laws Act of 1872, it came to be laid down that even when it came to personal law, the various communities of Punjab were to be governed by their customary law rather than the religious personal law. This was unprecedented, for in all other provinces the religious law was the personal law of all the communities. The British, by adopting customary law in Punjab, had shown that they had decided to cement and reinforce the cohesion of the tribe, and strengthen the tribal rather than the religious identity of the people.

The proprietorship of land was a key element in the tribal system that the British sought to maintain in Punjab. Since in most of Punjab marriages were exogamous in nature, that is, daughters married within the tribe but outside the clan, they did not inherit any land because the outsider would have access to property within the village. The jurists of British Punjab made this into an all-pervasive law, and applied it universally, even where the custom was not the same or had been modified because of the endogamous marriages taking place within the village.

It became apparent at the Punjab Codification of the Customary Law Conference of 1915 that some of the jurists and administrators of Punjab were beginning to be critical of the operation and functioning of customary law in Punjab. One of the arguments they had against codification was that already the judgements of the Chief Court had relied on logic, rather than basing their decisions on the actual custom that was being practised. They gave as an example the decisions pertaining to inheritance by daughters and sisters, and declared that the logic of the agnatic theory had been carried too far. These participants of the Conference recognized that the customary law, if codified, would stop all progress of the local society. They also accepted that the customary law of Punjab was extremely regressive, especially when it pertained to women, and so argued against codifying laws which would result in pre-empting any progress in society.

The Muslim women of Punjab were adversely affected by the abandonment of the religious personal law in favour of customary law. Not only did they lose out in terms of the inheritance of property, but also in terms of divorce and marriage laws. The Islamic law, Shariat, was much more magnanimous towards women than customary law, which was basically Hindu in its content. As a result the Muslim women of Punjab were often deprived of rights that Muslim women in other parts of India were enjoying, like the right to divorce, to enter marriage at puberty on her own volition (as the Shariat treated marriage as merely a contract between two individuals), and finally the right to inherit property.

There were some areas and tribes which did practise Shariat as their personal law, as mentioned above, but by and large customary law prevailed. It

was from this position of disadvantage, which it suited the British rulers to maintain, that Muslim women struggled to emerge. It was an inevitable process and part of the modernization that India as a whole was undergoing, a result of the communications revolution, and the cultural influence of a ruling western power in which the role and status of women was very different from that of women in India. The Muslim renaissance, as epitomized by Sir Syed's educational movement (see below), also influenced the change that was beginning to creep into the lives of Muslim women in Punjab.

The Umar Hayat Khan Tiwana Bill, which established the principle of primogeniture on his estate, and then the Bill moved by Malik Mohammed Din for replacing customary law with the Shariat, are evidence of the fact that Punjab was undergoing a change. The debate which ensued when these bills were moved put the rights of Muslim women at the centre of the controversy. This was a radical change in the history of the social and cultural life of the province. It was this same transformation in the intellectual attitudes of Muslims which led to the passing of the Shariat Act of 1937, piloted by Muhammad Ali Jinnah. It would be erroneous to see this change as due to a women's liberation movement, for the issue of Muslim women's emancipation in Punjab had come to be closely intertwined with the rising consciousness of Islamic identity amongst Muslims. An obvious divide had also emerged between urban and rural Muslims, with the former wanting to adopt Shariat as their personal law, and the latter opposing it. The British policy of maintaining the *status quo* made them cast their dice in favour of keeping women subjugated, and deprived of their rights.

The conservative social policy of the British in Punjab, symbolized by the acceptance of customs as the law of the land, was modified over a period of time with the passing of legislation affecting the rights and position of women in society.

# 3 Legislation for Women

In 1829 Lord William Bentinck, freshly arrived from Britain as the new Governor-General, and filled with the zeal of the Utilitarians, decided that sati was too great a crime and took the calculated risk of banning it,<sup>1</sup> a step that his predecessors had avoided, fearing its political repercussions. He also launched a campaign against thuggee, the ritual murder of travellers by strangulation. During the early nineteenth century, the British in India carried out legislation to deal with social practices which they found too outrageous, and very often these concerned the plight of women. The matters dealt with, in chronological order, were sati, the ill-treatment of widows, the ban on widows remarrying, polygamy, child marriage and the denial of property rights to women.<sup>2</sup> After the events of 1857, the British in India, as a matter of policy, decided not to pass any legislation that would interfere with the religion and customs of its Indian subjects.<sup>3</sup> Many of the most inhuman customs practised in this region concerned women, and a government policy of non-interference left the status of native women unchanged.

The social reform movement of the nineteenth century took a different form in Punjab from that in Maharashtra and Bengal. While Maharashtra produced social reformers such as Ranade and Malabari (see below), who sought to improve the position of women through legislation and education, in Punjab the reform movement's thrust was primarily religious, with social overtones. The reason for this might be found in the network of Christian missions which had spread all over Punjab by the 1880s.<sup>4</sup> The Christian missionaries were highly successful in proselytizing, for the number of converts increased from almost 4000 in 1881 to almost 38 000 in 1901, and about 164 000 in 1911.<sup>5</sup> It was because of the spread of Christianity and its missions that other religious communities felt threatened and responded by starting religious reform movements of their own.

Religious reform movements in the Punjab were foreign in origin. The Brahma Samaj movement of the 1860s and 1870s was led by Bengalis, while Swami Dayananda, the founder of the Arya Samaj movement, which spread in the 1880s and 1890s, hailed from Maharashtra. Both these religious reform movements called for widow remarriage and an end to child marriage, and the Arya Samaj stressed education for all, especially women and the outcasts.<sup>6</sup> Arya Samaj, moreover, put down roots amongst the educated Punjabi Hindus the way Brahmos had been unable to do. In Punjab, it was within this larger religious reformist message that the social issues were discussed. Sayered

Mumtaz Ali's interest in the emancipation and education of Muslim women was also to a large extent a response to the manazaras he witnessed between the Christians and Muslims in Lahore of the 1890s.<sup>7</sup> Since one of the main objects of criticism of the Christian missionaries was the treatment meted out to women by both Hindus and Muslims, the religious reform movements also focused on the issues pertaining to women and called for a change in their conditions. If for Hindu reformers the issues were widow remarriage and child marriage, for Muslims it was the education of women, the nature of purdah and, as we discover later on, child marriage also.

## INFANTICIDE

Infanticide was one of the earliest social evils that the British tried to stamp out. Over a period of time the Settlement Officers became aware that there were whole villages where there were no daughters, or very few in number as compared to boys. This aroused their suspicion, and further investigation and research revealed to them the practice of this abominable crime. By the middle of the nineteenth century some of the literature being printed in Punjab was calling for an end to infanticide.<sup>8</sup>

The Female Infanticide Bill was introduced by Strachey in the Council of the Governor-General of India in 1870.<sup>9</sup> This was almost eighty years after the crime had first come to the notice of the British administrator in Benares. When introducing the Bill, Strachey said that infanticide had been practised for a long time in India, especially northern India, mostly by Rajput tribes but also by some Hindu tribes and even by some Muslims. A couple of regulations had been passed by the government in 1795 and 1804, but they had no lasting effect. When Punjab was annexed in 1849, John Lawrence found the crime being practised there, mostly amongst the Rajput tribes but also among the Bedis, a class of Sikhs. Strachey read to the Council from Raikes's book on the subject of infanticide. Raikes had been a Magistrate and Collector in Mainpuri, and he wrote about the factors that gave rise to such a custom:

At the very root of the evil stands this principle . . . a daughter arrived at puberty must, he thinks, be married or be disgraced. . . . He must, it is clear, seek a husband for them in a rank equal to his own, or in a higher rank . . . And this is why a Rajput mourns when a daughter is born to him and rejoices when he has a son.<sup>10</sup>

Marriage expenses of daughters were so high that they often proved ruinous to the family. The father considered himself disgraced if he gave less

than was the required amount, and in the Rajput code of conduct, it was better to kill the daughter at birth than undergo disgrace. Strachey's Bill sought to give more powers to the local government so that it could take preventive steps to stop infanticide. What was suggested by Strachey had proved to be a success in Oudh, North-Western Provinces and in the Punjab, under the guidance of the local British administrators, Robert Montgomery, Gubbins and Unwin. They had instituted an effective system of registration of births and deaths in suspected localities, and a system of periodical inspection and enumeration of children. Strachey disagreed strongly with those who advocated caution on the ground that such a step would be politically risky, as it interfered with the customs and religious practices of the people. He warned that when sati was banned, people had used the same argument.

It is interesting that the Bill when passed applied to the Punjab only, though other provincial governments could apply it within their domain after notification in the official Gazette. A provincial government which opted for the adoption of this Act could, after the notification, make its own rules concerning registration of births and deaths, and add to the police force, officers or servants, if required, for the prevention of female infanticide. The Act also gave power to the provincial governments to enforce a limit on the amount of money that the person could spend on marriage or any other custom.<sup>11</sup> The Act was backed by the Magistrate, who was empowered to punish those who infringed the law with a fine of a thousand rupees, or six months jail, or both. The cost of implementing this law was to be recovered from the district or persons to whom it was to apply. The government had taken time in passing legislation against infanticide but, like sati, it was a crime that they could not ignore for long.

## MARRIAGE

There was other legislation, too, which more indirectly changed the social environment in which men and women interacted. The Special Marriage Act of 1872 for the first time made secular marriage through registration possible. The couple could have a civil marriage as long as the man was eighteen years of age or older, and the woman fourteen years or older, but only after the consent of the father or guardian. However, if both were twenty-one years or older, then they would not need anybody's consent, provided that they did not profess the Christian, Buddhist, Parsi, Hindu, Sikh, Jaina or Muslim faith. The other provision was that 'no such law or custom as to consanguinity or affinity, shall prevent them from marrying'.<sup>12</sup>



The Special Marriage Act was passed at the behest of the Brahmo Samaj, whose adherents did not want to undergo a Hindu religious marriage ceremony.<sup>13</sup> The controversial nature of this Bill can be judged from the fact that when it was eventually passed eight voted for it, while five voted against it.<sup>14</sup> Most of the criticism and opposition came from Hindus rather than Muslims, for what they feared most was that it would give people a chance to break away from religious marriage rites and constraints, and marry at will a spouse from any caste or religious group. The Act did not leave any loophole for polygamy. The fear of the orthodox was that it would encourage breakaway groups from the traditional religions, who would otherwise be hard put to find a way of getting married unless and until they fully met the religious obligations and demands.

This kind of legislation undoubtedly led to the liberalization of the social climate in which women functioned. By declaring non-allegiance to any of the seven faiths, they could opt for a civil marriage if their religion or custom placed any obstacles in their way. What is important about the Act is its overall effect on the kind of atmosphere it created, rather than the specific alteration in the status or rights of Muslim women.

The awareness among the Indians of the need for social reform, particularly that pertaining to women, was beginning to spread. In this respect the formation of the National Social Conference by Ranade in 1887 was a landmark in the movement for social reform, and this organization placed special emphasis on issues concerning women.<sup>15</sup> But Ranade was a Chitpavin Brahmin who studied and worked in Bombay and whose reforms were concerned primarily with Hindu women, the plight of widows, their remarriage and denial of property rights.<sup>16</sup> Western India was far ahead of other regions of India in the movement for reform of customs and laws affecting women. In August 1884, Behramji Malabari, a journalist and a reformer from Bombay, had published 'Notes on infant marriage and enforced widowhood', which had discussed not only the negative effects of child marriage on girls, but also its deteriorating effect on the physical condition of successive generations.<sup>17</sup> When Malabari had failed to move the British government of India to raise the age of consent, he shifted his campaign to England. Through lobbying and letters to *The Times* (London), he won the support of British feminists. Eventually, the public opinion he was able to arouse persuaded the British government in India in 1891 to amend the Indian Penal Code, which changed the minimum age of consent for sexual intercourse from ten to twelve.<sup>18</sup>

What had a profound effect on women's consciousness was less Malabari's writing, and more the Rakhmabai-Dadaji case. This case, filed by Dadaji for the restitution of his conjugal rights, took four years and two suits

to resolve. Rakhmabai chose to go to prison rather than live with the man to whom she had been married off by her parents at the age of eleven, and who, she said, had not found a job, kept ill health, did not educate himself and led an immoral life. This case was well publicized, led to a sharp division in society, and radically raised the consciousness of women about their rights.<sup>19</sup>

The initiatives for the Age of Consent Bill came from Hindus, and it was seen primarily as a Hindu problem. But the problem of child marriage and its early consummation was not restricted to Hindus, Muslims also suffered from it. Muslims did not seem to have been aware of it, nor did they participate in the debate over the Age of Consent Bill. It was only with the initiation of the Child Marriage Bill in the 1920s that the Muslims became involved, and the Bill was converted from a Hindu Child Marriage Restraint Act into a Child Marriage Restraint Act so that it could be applied to all religious communities.

Such a bill was needed because the Age of Consent Bill had proved to be a failure. Since marriages could still be held in childhood, the Age of Consent Bill could not prevent consummation from taking place before the age limit of twelve between a couple who had already been married in law. Consequently, it was felt necessary to have an age limit placed on marriage also. The Child Marriage Restraint Act of 1929 generated a great deal of controversy and took two years to pass.<sup>20</sup> It was the culmination of a movement that had begun when Rai Bahadur Bakhshi Sohanlal had moved a bill in 1922 in the Legislative Assembly to raise the age of consent to fourteen, both inside and outside marriage.<sup>21</sup> For five years the bill kept getting introduced and then thrown out, as the government kept trying to moderate the bill and make it less controversial. Then in 1927, Gour introduced his Children's Protection Bill, which was to raise the age of consent to fourteen inside marriage, and to sixteen outside marriage. It was while this bill was being circulated that Rai Sahib Habirlas Sarda introduced the Hindu Child Marriage Bill. His contention was that the age of consent legislation, unlike his bill, did not touch the heart of the problem, which was child marriage. He emphasized the need to eradicate the social evil which left women unable to develop physically or mentally, and made them into child widows who could not marry again.<sup>22</sup>

This was a private member's bill, moved by Rai Sahib Habirlas Sarda in the Legislative Assembly in February 1927. Initially it was supposed to apply only to Hindus, but while it was being studied by the Select Committee, it was amended to apply to all the nationals of British India, and it was at this stage that it was converted from a civil to a penal bill.<sup>23</sup> The Bill was meant to impose an age limit on marriage of both boys and girls, the idea

being to prevent child marriages, common at that time both amongst Hindus and Muslims. Orthodox sections of the two communities opposed it, both within the Legislative Assembly, and outside it. The opposition to the Bill sought to delay the passing of the Bill, arguing for a postponement of the consideration of the Bill, or even reducing the age limit for marriage to twelve years, instead of fourteen as proposed. Pundit Madan Mohan Malaviya, the founder of Hindu Mahasabha, was one of those who argued both for delaying the consideration of the Bill and also that the age limit should be reduced from fourteen to twelve years. He said:

The Legislature, I expect, will be enlarged, and will be much more representative of the people than it is today when the further reforms come into effect a year hence or so . . . the cause of social reform stands to gain by public sympathy, by the sympathy of the largest number of people being secured in favour of this reform. That sympathy is much more likely to be secured if the age of twelve is substituted for the age of fourteen in the section we are discussing . . .<sup>24</sup>

Pundit Malaviya then went on to support Kumar Ganganand Sinha's amendment, which was overwhelmingly defeated.

When the Child Marriage Bill was introduced, it was argued very effectively that despite the age limit on consent in the Penal Code, since there was no limit to the age of marriage, it was very difficult to prevent rape by the husband of a child wife.<sup>25</sup> It was this legal lacuna which had made the Age of Consent Act quite ineffective, and the position of the child wives very vulnerable.

The resistance to the Bill was so great that it had been to the Select Committee twice since February 1927, when it was first moved, and then again in January 1929, when it was further delayed to await the Report of the Age of Consent Committee.<sup>26</sup> It was this Report which supplied the supporters of the Bill with material on which they built their case, but such opponents of the Bill as Malaviya and Acharya questioned the validity of the evidence on which the Report had been written, and moved an amendment that this evidence should be provided to the House for examination.<sup>27</sup> Mian Mohammad Shahnawaz, the Muslim member from West Central Punjab was on the Age of Consent Committee, and supported the Bill. Shahnawaz said that he had not been aware of how widespread was the custom of early marriage, early consummation and early maternity, but after having joined the Committee he saw for himself how prevalent these evils were.

Observations made by Shahnawaz show that the Age of Consent Committee had done important and fundamental work on the issue. Appointed by the government on 25 June 1928, the Committee consisted of a chairman

and nine members. Two members were Muslim, Yaqub and Shahnawaz, both of whom were members of the Legislative Assembly. Shahnawaz hailed from Lahore. There were two women members of the Committee, one a British physician and the other a Hindu lady. A questionnaire was sent out to about 2000 people and about 900 written statements were received by the Committee; women witnesses and purdah parties were organized, who gave evidence before the lady members. The Committee travelled to different parts of the country, including villages.<sup>28</sup> In its section on Punjab, the Committee Report said:

The Census of 1921 shows that in the age period 5–10, 70 Hindu, 26 Muslim and 25 Sikh girls out of every thousand were in a married state. In the age period 10–15, 367 Hindu, 187 Muslim and 223 Sikh girls were married . . . both from the Census figures and the evidence before us, it is clear that the tendency has been for Muslims to approximate to the Hindu custom in this regard . . .<sup>29</sup>

The Report declared that the vast majority of the Muslim witnesses examined were in favour of increasing both the age of consent and marriage to over fourteen or fifteen, and did not regard that as un-Islamic. The only two Muslim witnesses examined who were against legislation either for fixing the age of consent or the minimum age of marriage were Nawab Sir Umar Hayat Khan and Shaikh Din Mohammed.<sup>30</sup>

The Bill was criticized on many different grounds. It is interesting that one criticism often made by opponents of this Bill in the Assembly was that the government in its 150 years of rule had not been able to improve literacy beyond ten per cent.<sup>31</sup> This fact was used to argue that there was a wide gulf between the educated, English-speaking liberals who sat in the Assembly, and the mass of the illiterate populace, whom, it was argued, had not been consulted properly on the issue.<sup>32</sup> This attack on the government for neglecting education of the people came from both of the religious communities. Maulvi Shafi Daoodi followed in the footsteps of Belvi in highlighting this aspect of the problem. Pundit Mohan Malaviya had also emphasized the need to enlighten people through education rather than trying to legislate away social problems.<sup>33</sup>

One of the main criticisms of the Bill was that the government was interfering with the personal laws of Hindus and Muslims.<sup>34</sup> Members of the Legislative Assembly alleged that the government was reneging on the promise not to interfere in the personal laws of the communities living in India. Pundit Malaviya and others opposed to the Bill, or who wanted to delay its passing, pressured the government to remain neutral and not vote for the Bill.<sup>35</sup> Maulvi Shafi Daoodi moved a motion, with signatures from sixteen out of

thirty-two Muslim members of the Legislative Assembly, which said that only Muslims should vote on a bill affecting their personal law, and that the government should not vote on it unless it was sure that a majority of the Muslims of the Legislature were in favour of the bill.

There were others, like Rai Habirlas Sarda, the mover of the Bill, who argued that if the government did not vote for the Bill, it would not be carrying out its primary function which was, 'to protect an individual or a class of its subjects from the invasion of his or its rights by another'.<sup>36</sup> Shervani, a Muslim member of the Legislative Assembly, supported the Bill, saying that it enforced Islamic law.<sup>37</sup> He argued that neither the Koran nor the Hadis recommend pre-puberty marriage.<sup>38</sup>

Amongst the Muslims the strongest proponent of the Bill was Mian Mohammed Shahnawaz. He declared that as a member of the Age of Consent Committee he had discovered that, in a majority of the cases where the girl was of ten to thirteen years of age, she was married to a boy of eighteen or more, and consummation took place before the girl reached puberty. When the veracity of his statement was questioned, Shahnawaz quoted from the Report of the Consent Committee, which said:

it is admitted on all hands and the fundamental fact is undeniable that, early consummation almost inevitably follows early marriage, amongst both Hindus and Muslims. It is also established from the evidence that pre-puberty consummation is common and the violation of the Law of Consent occurs in many cases.<sup>39</sup>

When Mian Shahnawaz opined that 'on the whole Muslim opinion is in favour of the Bill', he indicated that Hindu orthodox opinion did not support it. He said that the members of the Committee had studied the marriage laws of Muslim countries such as Turkey and Egypt, and of other 'civilized' countries, and they had come to the conclusion that the Bill did not interfere with the religious laws of either of the two communities. He pointed out that in Egypt as far back as 1864, marriage of a boy below the age of eighteen, and of a girl below the age of fifteen had been prohibited by royal decree, and in Turkey the age limit for both the sexes had been fixed at fifteen. And replying to criticism of the government for interfering in the personal laws of the two communities, he argued that legislation had always been used by the government in every country for the purpose of social reform and to remove social injustice.<sup>40</sup>

In many of the speeches, for and against the Bill, the role of the government often formed the centrepiece of the discussion. Mian Shahnawaz pointed to the record of the government in social legislation, mentioning the laws banning sati, allowing widow remarriage, the removal of the ban on inheritance

of those who converted, and the law of civil marriage, as examples of social legislation that removed social evils and reprehensible customs.

At the religious level, Mian Shahnawaz maintained that amongst Hindu theologians there was a diversity of opinion regarding the interpretation of the Smritis (sacred Hindu texts), and the Committee, after a close study of the texts, was of the opinion that the Smritis 'are only recommendatory and not mandatory'. It is interesting that on such a controversial Bill a Muslim member of the legislature could voice his opinion on a theological aspect of Hindu law. He went on to discuss Muslim law or Shariat, saying that the Qoran does not prescribe any age for marriage, and as for the Hadis, or the Prophet's tradition, he favoured the marriage of girls at the age of discretion, or fifteen, that is at puberty.<sup>41</sup> Jinnah also argued along the same lines and said, 'Sir, I am convinced in my mind that there is nothing in the Qoran, there is nothing in Islam, which prevents us from destroying this evil.'

There were other supporters of the Bill like M. R. Jayakar, a Hindu, who argued on the need for the Legislature to give the lead in matters of social reform, and not wait for the majority of public opinion to come round in support of particular legislation.<sup>42</sup> Jinnah, too, was categorical that the Legislature must provide leadership and not be dictated to by public opinion. He observed,

But, Sir, I make bold to say that if my constituency is so backward as to disapprove of a measure like this, then I say, the clearest duty on my part would be to say to my constituency, 'You had better ask somebody else to represent you'. Because, after all, you must remember that public opinion is not so fully developed in this country, and if we are going to allow ourselves to be influenced by the public opinion that can be created in the name of religion when we know that religion has nothing whatever to do with the matter, I think we must have the courage to say, 'No, we are not going to be frightened by that'.

He reinforced the earlier argument that it was too late to talk of non-interference in the personal laws of the communities living in India, and he cited all the different legislation which had been passed for the purpose of social reform but which did interfere with the personal laws of the people. Jayakar reiterated what Shahnawaz had said about the Shastras, that they were open to interpretation.<sup>43</sup>

Jinnah was aware that this Bill signalled a change in the government's social policy, for only on very rare occasions did the government risk any kind of social legislation, and welcomed government support.

We have got the agitators who are making our lives miserable already. Why should we undertake a measure which will make our loyal subjects

who always support us, who look upon us as ma-baps, the orthodox who are quite content and satisfied . . . ? That was their attitude, but I am glad that that policy has been exploded, and I hope for ever, and I hope that Government will in future side with us in the matter at any rate concerning social reforms.

What is important about the Child Marriage Bill is that what started as a bill for Hindus had been converted into one for all communities. While there was a significant section of the Muslim representatives of the Legislative Assembly who opposed it on various grounds, the more progressive section, which included Jinnah and Shahnawaz, not only supported it but also argued in favour of social legislation to carry out social reforms. Shahnawaz played a key role in the Select Committee formed to study the problem, and it was obvious from the Report of the Select Committee that child marriage was quite common amongst the Muslims of Punjab. It was only now that the Muslims became aware of the need for social reforms within their own community, while the Hindus – not of the Punjab, but of Maharashtra – had been agitating for social reforms as far back as 1880s and 1890s, as evidenced in the Age of Consent Bill controversy.

## SHARIAT ACT

Jinnah was also active in the passing of the Shariat Act of 1937. This Act was demanded by the Muslims of Punjab, and by the Muslims of other parts of India where the personal law was the customary law and the Shariat did not apply. This desire to live in accordance with the Shariat reflected the increasing awareness of their identity amongst the Muslims of the Indian sub-continent. The extent of the support and sympathy for the Shariat found expression in the Punjab Legislative Council in 1931, when Sir Umar Hayat Khan Tiwana of Shahpur district moved a bill for the legal impartibility of his estate.<sup>44</sup> According to the customary law, rule of primogeniture applied to the distribution of the property, but Tiwana wanted the Legislative Council to give it official sanction. Eventually the Council passed the bill, but not before it had met a lot of resistance from the Muslim members of the Council who did not want to pass any legislation which went against the Shariat. As one member said, 'Why should the zamindars of this Council be forced to enact a measure contrary to the Shariat?'<sup>45</sup> The combined strength of the Unionist Party, which was formed by the landlords of Punjab to protect their class interests, and the government of Punjab, overcame the opposition.

The issue of the division of Sir Umar Hayat Khan Tiwana's estate had been debated in the Punjab Legislature. A bill had been brought before the Assembly to make his estate legally impartible. The reason that the Bill generated so much controversy was because although the members of the Legislature knew that the customary law of Shahpur, from where Tiwana hailed, was succession by primogeniture, it did not wish to give official sanction to a custom which went against the Shariat.<sup>46</sup> Despite the resistance of some members of the Council, the Bill was passed with the backing of the government and the Unionist Party.<sup>47</sup>

However, this tussle between the supporters of customary law and the Shariat continued, and in 1936 Malik Mohammed Din of Lahore city moved a bill that called for the sweeping away of customary law altogether in Punjab, and its replacement by the Shariat as the personal law of all Muslims. This bill, too, was defeated by the combined government and Unionist Party forces, but the circulation of the bill to the districts revealed that even in the countryside support of the Shariat was increasing.<sup>48</sup> One of the justifications given for the bill by Malik Mohammed Din was the improvement of inheritance rights for Muslim women.<sup>49</sup> The Statement of Objects and Reasons for moving the Bill in the Central Assembly (27 March 1935), authored by H. M. Abdullah, said:

For several years past it has been the cherished desire of the Muslims of British India that Customary Law should in no case take the place of Muslim Personal Law . . . The Jamiat-ul-Ulema-i-Hind the greatest Muslim religious body has supported the demand . . . All the Muslim Women's Organizations have therefore condemned the Customary Law as it adversely affected their rights.<sup>50</sup>

When Hafiz Mohammed Abdullah from West Central Punjab moved the Bill on 1 April 1937, he mentioned that the Muslims of the Central Provinces, Madras, Bombay, part of the United Provinces, Baluchistan and Ajmer were living under customary law. According to him, the agricultural classes were under customary law, while the non-agricultural classes residing in the cities were subject to the Shariat.<sup>51</sup>

There seems to have been a general agreement that the Shariat would improve the rights of women, and that under customary law their position was quite dismal. This seems to have been the opinion not only of the Muslim members of the Legislature, but also of the non-Muslims. Here it is interesting to quote a section of the speech by Deshmukh, a non-Muslim from Bombay, who sounds rather secular in his beliefs but who supported the Bill wholeheartedly because he felt that it would improve the conditions of Muslim women.



Therefore, I say, sir, that this Bill which in principle gives economical status to one half of the society has my wholehearted support. What I say is this that, if today the Mohammadan society progresses, in the future every society in India will follow the same example, not that in Hinduism the principle does not exist. On account of custom, and even more the British Courts' customs, the customs have crystallized into laws, and thus the chilling hand of customs has barred all progress of society of womenfolk so far as India is concerned.<sup>52</sup>

Customary law had come to be regarded as an obstacle to any kind of progress, but especially regarding women. The other criticism that was made against customary law was that it was vague and required a great deal of litigation to settle basic issues. One member of the Legislature declared: 'The position was so uncertain that people had to spend so much money on litigation that by the time litigation came to an end the property for which people were fighting would disappear.'<sup>53</sup>

Jinnah gave a very clear exposition on the effect of customary law on the women of India, and how the Shariat Bill sought to improve their legal position.

Now, Sir, as I said, the principle underlying this Bill is to secure to the female heirs their due share according to Mohammadan law. According to the customs and usages that have prevailed, the position of the female heirs has been a very precarious one. If a man dies, his widow is only entitled to maintenance. When the question arises as to what maintenance she is entitled to, it is always a very difficult question to decide, because when a son or a male heir succeeds to a large estate, he tells the widow that Rs. 100.00 is quite enough for her although it may be an estate of ten or twenty or thirty lakhs; and then invariably litigation arises.<sup>54</sup>

The Shariat gave Muslim women fixed shares in property and spelt out their rights clearly, and unlike under customary law, her ownership of property was absolute.

Hafiz Abdullah, who moved the Bill, declared that the Shariat would apply universally to all the Muslim subjects of the British Indian Empire, and would also resolve the claims of Muslim women to inheriting family property, something they were unable to do under customary law. Most of the reservations about the Bill related to the Law of Succession, under which the daughter inherited one half of the share of the brother in her father's property.

There was dissent by a minority in the Select Committee. Yamin Khan argued that he supported the Bill in so far as it improved the legal status of Muslim women, but that there were certain statutes which had been passed

with the full concurrence of Muslims, such as the Taluqdari Act (special property rights had been conferred on taluqdars – landholders of Oudh – in 1859), and these laws should not be repealed. He said that on this issue the Select Committee was ‘equally divided’. R. F. Mudie said that he differed from the majority of the Select Committee on two main points. The first was concerned with the repeal of statutes; the second one was in favour of letting those groups and provinces, like Punjab, which practised customary law, to take their own decision as to whether they wanted to abandon customary law in favour of the Shariat. Mudie argued that as the Bill was not going to affect agricultural property, the provincial legislature should be left to decide for itself what personal law it wanted to adopt, rather than the Central Legislature imposing its will on the provinces on this issue.<sup>55</sup> Mohammed Azhar Ali also voiced his dissent from the decision of the Select Committee over the issue of the Shariat overruling the statutes, and he cited the Taluqdari Law of Oudh and the Oudh Laws Act.

Agricultural land was eliminated from the provision of the Shariat Bill because agriculture had been made a provincial subject. That took away the muscle from the Bill, because, as one member pointed out, 90 per cent of the property in Punjab consisted of agricultural land. It is no coincidence that the Shariat Bill was brought in the day that the India Act of 1935 became effective, making agriculture a provincial subject. Hafiz Abdullah said as much when he moved the Bill in the Legislature on 1 April 1937:

I may mention here that on account of the introduction of provincial autonomy today, the succession to agricultural land has gone out of the purview of the Bill. I am really sorry that by the exclusion of agricultural land from the scope of the Bill its real object has been frustrated. This would not have happened if the Government had not adopted an obstructive attitude towards it during the last Simla Session . . .<sup>56</sup>

It appears from the statements of Hafiz Abdullah that the government was not willing to pass the Bill unless the clause covering agricultural property was annulled. The British administration in Punjab was not willing to abandon at this stage its policy of bolstering and upholding the position of the landholders, as evidenced in the passing of the Punjab Alienation of Land Act of 1900. In the same speech, Hafiz Abdullah, while dealing with the various criticisms of the Bill said, ‘By the exclusion of succession to agricultural land, the chief objection against the Bill, that it will lead to excessive fragmentation of holdings disappears. Nor, will it now affect the Punjab Land Alienation Act’.<sup>57</sup>

Sir Henry Craik, the Home Member, confirmed what had already been mentioned by other speakers on the Bill, that the government was opposed to

the Bill unless the clause on the succession to agricultural land was dropped. He was more specific as to the government bodies that had opposed the Bill, and the position of the provincial legislature on the issue.

If the House accepts that view . . . that it cannot make any change in regard to the succession to agricultural land, then as I said the main reason why I was cautious about this Bill disappears . . . as will be within the recollection of my Honourable friends from the Punjab, the main reason, why a similar Bill introduced in the Punjab Legislative Council was not proceeded against.<sup>58</sup>

It is obvious from the statement of the Home Member that the government was not going to upset the landed aristocracy of the Punjab, who had a strong presence in the provincial legislature, by passing this Bill. One historian of the Punjab has written that it could only be passed after a number of compromises, which left the Bill with merely symbolic importance.<sup>59</sup> This bill, he has argued, would have challenged the power of Punjab's feudal lords and the tribal structure on which British administration rested, and so it was modified to prevent that.<sup>60</sup>

In the whole discussion of the Bill, the Muslim participants showed a high degree of consciousness of the rights and status of women of India, both Hindu and Muslim. Repeatedly they referred to the fact that Islam was the first religion to give women equality with men, thirteen hundred years previously, and to take the revolutionary step of giving them absolute rights over their property, irrespective of their marital status. According to the Shariat, if the husband dies, the wife inherits one-fourth of the property, if there is no issue, and one-eighth, if there is issue.<sup>61</sup>

It became obvious in the discussions that there was a rising consciousness amongst the Muslim women of India of their rights in Islam. The fact that the Bill was to some extent a response to their demands was mentioned by more than one speaker. Sir Muhammad Yamin Khan, the representative from Agra Division, speaking on the day that the Bill was moved, said:

But here in the Punjab, under certain customary laws, it is the woman who has been deprived, and a distinction is made between younger sons and younger daughters. Therefore, this distinction should be removed by this Legislature, specially when the people whom it affects desire that the change must come. It would have been different if the Mohammadan women were not wanting to have any change. But when we find that the Mohammadan women are wanting that the change must come because a certain custom is depriving them of their rights, this Legislature must rise to the occasion.<sup>62</sup>

Abdul Qayum, who represented the North-West Frontier Province on the Legislature, also voiced his awareness of the pressure building up from Muslim women to give them their rights and replace customary law with the Shariat. After the Select Committee had approved the Bill with minor modifications, Abdul Qayum declared:

The feelings of the Muslim community have been expressed in public meetings throughout the length and breadth of this country. This feeling, I have great pleasure in stating, is not merely confined to males but it has spread to females also, and for the first time the Muslim women in India have given expression to their strong feelings against the dead hand of customary law which has reduced them to the position of chattels.<sup>63</sup>

During the second reading of the Bill on 9 September 1937, Sir Muhammad Yamin Khan in support of the Bill referred to the women's movement for the imposition of the Shariat in order to improve their legal position. He said, 'And in the Punjab the women have begun to protest and hold meetings and demand their just rights'.<sup>64</sup>

M. A. Jinnah piloted the Bill after it came back from the Select Committee, and moved all those amendments he felt were required in order to have the Bill passed. He explained what the Bill would be doing:

Now what we are striving by this Bill is to overrule a custom which has already been established, or has the force of law, or which may be established hereafter. We are not touching anything that has been done by codification or by an enactment of a Legislature because that is a statute.<sup>65</sup>

The object of this exemption was to prevent the abolition of such Acts as the United Provinces Zamindari Act, which prevented the property of the Taluqdars from being divided amongst their offspring, so that it could remain concentrated in the hands of the eldest son, according to the tradition of primogeniture. Another such exception to the Muslim personal law that the members of the Legislature wanted concerned the Wakfs, or religious trusts.

The other amendment which the Select Committee recommended was an amplification of the word 'divorce'. This empowered the District Judge to grant dissolution of marriage on the application of married Muslim women on certain grounds.<sup>66</sup> The rights of divorce of Muslim women under the Anglo-Mohammadan law in India were limited and it was very difficult for Muslim women to get divorce. Under the Shariat Act, divorce was going to be made much easier for women. Explaining this improvement in their rights, Khan Bahadur Sheikh Fazl-i-Haq Piracha, the representative on the Legislature from north-west Punjab said:

Sir, the present Anglo-Mohammadan law as practised in the British courts in matters of divorce, etc., has given rise to the dangerous and unhealthy practice of resorting to apostasy by women. In the original Mohammadan law the wife has restricted right of divorce known as *Khula* . . . With the passage of the Bill under discussion, the cruelly treated wife will be able to get the desired divorce on reasonable grounds and without abjuring her faith.<sup>67</sup>

The Shariat Bill was not only an expression of the movement to improve the lot of Muslim women, but also symbolized the movement for Islamic revival amongst the Indian Muslims. Any criticism, from any quarter, about the backwardness of Muslim women was answered with the response that this was a result of Muslims straying from the straight path of Islam, which had given Muslim women a status equal to that of men. Implicit in the whole debate was a perception, harboured by the reforming Muslims of the time, that it was the influence of Hindu customs and culture which had reduced their women to the status of chattels, for historically the contribution of Islam in the emancipation of women had been nothing short of revolutionary.

## DIVORCE

It is in this context that the Muslim Dissolution of Marriage Bill must be understood, as it followed soon on the heels of the Shariat Bill, in 1939. The Statement of Objects and Reasons explained why the bill was being moved.

There is no provision in the Hanafi Code of Muslim Law enabling a married Muslim woman to obtain a decree from the Courts dissolving her marriage in case the husband neglects to maintain her, makes her life miserable by deserting or persistently maltreating her or absconds leaving her unprovided for and under certain other circumstances . . .<sup>68</sup>

The Statement further explained that the tradition of the courts in India had been that the apostasy of a married Muslim women dissolved her marriage *ipso facto*. The ulama and the Muslim community of India had expressed their dissatisfaction with this interpretation of the Shariat, and so this bill sought to change this clause also. In future, apostasy would not automatically lead to the dissolution of marriage. Qazi Muhammad Ahmad Kazmi, the representative on the Legislature from Meerut, moved

That the Bill to consolidate the provisions of Muslim law relating to suits by married Muslim women for dissolution of marriage and to remove doubts

as to the effect of apostasy of a married Muslim woman on her marriage tie, as reported by the Select Committee, be taken into consideration.<sup>69</sup>

The Bill was backed by members of both the communities and the government, after the Select Committee had vetted it and carried out the requisite changes. The government, in fact, had declared that it would not be able to support the Bill unless certain changes in the Bill had been carried out; this was done at the level of the Select Committee, and then the government supported the Bill.<sup>70</sup>

Divorce of their husbands by Muslim women was extremely difficult under Anglo-Mohammadan law before the passing of the Bill. Sir Muhammad Zafrullah, the Member for Commerce and Labour, explained the merit of the Bill thus:

Sir, the outstanding merit of this Bill is that it puts down, in the space of one printed page, the various grounds on which divorce may be obtained by a woman married under the Muslim law . . . Whereas, in Muslim countries, the various grounds for khula are freely recognized and khula is freely granted, khula means divorce obtained at the instance of the wife, this doctrine was practically unknown in British India and was here confined to the narrowest possible limits.<sup>71</sup>

A woman could now seek divorce for some of the following reasons: the whereabouts of the husband had not been known for the last four years; the husband had failed to provide maintenance for more than two years; the husband had been insane for more than two years; and that if she was given in marriage by her guardian or father before the age of fifteen years, she could repudiate the marriage before the age of eighteen years. If the marriage had not been consummated, then the bases on which she could dissolve her marriage were even more liberal, and included such issues as habitual assault, association with women of ill repute, disposal of her property, obstructing her in her religious practice, and having more than one wife.<sup>72</sup>

There was a strong demand from the Muslim members of the Legislature that all cases involving the dissolution of Muslim marriages should be adjudicated by kazis, but this demand was shot down at the Select Committee level, and none of the non-Muslim members of the Legislature were willing to support this clause of the Bill.<sup>73</sup> There was a demand from the Hindu members of the Legislature that a clause on apostasy should be inserted which would lead to the automatic dissolution of a marriage if the Muslim wife changed her religion. Their argument was that this clause for dissolution of marriage existed prior to the introduction of this Bill, so it should be retained. Despite a great deal of discussion on this amendment, it was rejected.

Clause 4 of the Bill said the opposite, 'The renunciation of Islam by a married Muslim woman or conversion to a faith other than Islam shall not by itself operate to dissolve her marriage'.<sup>74</sup>

The only woman member of the legislature, Shrimati K. Radha Bai Subbarayan, supported the Bill very enthusiastically, although like the other Hindu members of the legislature she had doubts about the clause on apostasy. She declared that 'It definitely raises the status of women and recognizes their individuality'. She took this opportunity to draw attention of the House to some more legislation concerning women which was awaiting their attention.<sup>75</sup> This Bill, because it facilitated divorce initiated by Muslim women eased the climate of divorce for Hindu women as well, and it was to this that the Shrimati was referring.

Two acts in particular played a crucial role in changing Muslim women's status. They were the Shariat Act, which strengthened her position vis-à-vis inheritance of property, and the Muslim Dissolution of Marriage Act, which made it much easier for a Muslim woman to seek divorce. It is not surprising that a resolution was moved 'Regarding position of women under the existing laws', by Sri K. B. Jinaraja Hegde on 15 February 1939. The resolution said:

That this Assembly recommends to the Governor-General in Council that a committee be appointed, consisting of a chairman and eight other members, of whom not less than five shall be non-officials, who shall include women to examine and report on:

- (1) the present position of women under the existing laws, with special reference to,
  - (a) rights and disabilities in regard to ownership and disposal of property,
  - (b) rights of guardianship over children,
  - (c) rights to maintenance,
  - (d) rights in respect of joint family property,
  - (e) rights of inheritance and succession,
  - (f) marital rights,
- (2) the various other aspects in which the existing laws relating to these matters stand in need of reform;
- (3) the legislative measures that should be enacted to carry out the necessary reform.

Hegde had moved this resolution because, he said, 'women in India are treated more like chattels than human beings'. He also said that this resolution should have been moved by the lady member of the House, Mrs Subbarayan. It is obvious from all these statements that the movement for

the emancipation of the Indian women, both Hindu and Muslim, was gaining ground.

To begin with, the resolution was to apply to both Hindu and Muslim women. Hegde spelt out what he considered to be the most backward features of the laws and customs pertaining to women. Most of these customs had been practised by Muslims until the adoption of Islamic laws as personal laws of the people. His main criticism was that, 'Males under Hindu law succeeding to a male or female get absolute ownership, whereas a female succeeding to a male or a female mostly get a life estate, as a limited owner, except in a few cases in Bombay'.<sup>76</sup> Hegde had very obviously been inspired by the Shariat Bill to compare the weak legal position of Hindu women with Muslim women. He stated in his speech:

The Mohammadan Law, which is of a later origin, does not recognize a life estate as in Hindu Law. A gift to a Muslim woman for life, it has been held, operates as an absolute gift. Except under Wakf, nothing else can create a life estate. Though this is slightly modified later on by British Courts, it is clear that the original Muslim Law did not contemplate life estates. A female under Muslim Law is as competent as a male to hold properties absolutely.<sup>77</sup>

It was not long before Deshmukh moved an amendment on Hegde's resolution. While the latter had spoken in terms of the 'present position of women under the existing laws', the amendment said, 'to report on the reforms which are necessary for improving the right of Hindu women to residence and maintenance'. The amended resolution had ceased to deal with women in general and its terms of reference were going to be restricted to Hindu women only. Sir Nripendra Sircar said that he joined hands with Deshmukh to move the amendment, as the original resolution met with opposition from both the government and the Muslims.<sup>78</sup> The Muslims were categorical that they wanted to be governed by Qoranic Laws, as they were mandatory for them, and therefore the question of any Committee examining the laws relating to the rights of Muslim women did not arise.<sup>79</sup>

In the nineteenth century the government in India had moved very reluctantly and gingerly in social legislation which affected the personal laws of the people of India. A study of the legislation passed by the government from the time of the revolt of 1857 reveals a changing attitude towards social questions, and in particular towards women. Infanticide is a case in point, for by the early nineteenth century they had evidence from more than one source that it was being practised in certain parts of India, but it was not until



1870 that the Bill banning it was moved. The Child Marriage Bill was two years on the anvil before it was passed.

The change in the attitude of both the government and the legislators becomes obvious in the 1920s onwards, beginning with the passing of the Child Marriage Act in 1929, and followed by the Shariat Act in 1937, the Dissolution of Muslim Marriage Act in 1939, and the Resolution Regarding the Status of Women in the same year. The reformers who wanted to emancipate women were supported by the government, otherwise it would have been impossible to carry out legislation which gave women more rights, and destroyed customs and traditions which were centuries old.

The Child Marriage Act is a real watershed in the history of social legislation affecting the rights of women. It is clear that it could not have been passed without the support of the government, and when the government decided to give the Bill its blessing, it was heralded by Jinnah as a welcome change in the government's traditional social policy. This Act is more interesting than the other acts passed, including the Shariat Act, because it affected all the religious communities in India. To begin with the Bill was meant to apply to Hindus only, but at the Select Committee level its scope was extended to Muslims as well. In the two years that the Bill was under study a committee was formed including members of both the communities, Hindu and Muslim, and this committee travelled all over India studying and interviewing different sections of the society about the various aspects of the social problem of child marriage. The Legislature split into two, with the orthodox Hindus and Muslims banding together to oppose the Bill, and the more progressive members from both the communities, supported by the government, joining hands to have the Bill passed.

The debate on the Bill raised some very fundamental questions. A point raised with much concern by the conservative members of the Legislature was that the government was abandoning its policy of non-interference in the personal laws of the people, and by the promulgation of the Bill was interfering with their religious practices. This criticism of the change in policy was backed by the demand that the government should not vote on the Bill, and should let the issue be decided by the vote of the Indian members only. This was also the demand when the Shariat Bill came before the Legislature, that only the Muslim members should vote on the Bill, as they were the only ones affected by it. The opposition to the bills had to eventually accept that the government was not going to remain 'neutral' by not voting for them, and letting the communities concerned vote on them.

The debate on the Child Marriage Bill forced its proponents and opponents to study religious texts in order to support their arguments. This was instructive in so far as it became clear to those looking for easy answers that

tradition and custom often got passed off as religion, and it was possible to have more than one interpretation of an issue which concerned any of the religions. The reformists, or those who were concerned with making their communities more in tune with the demands of the modern society, felt their position strengthened by the passing of the Child Marriage Act, as all the evidence pointed towards the disastrous effects of early marriage on the health of young girls. In the case of the Child Marriage Bill, the die-hard opponents of the Bill such as Pundit Madan Mohan Malaviya and others asked for more time to study the report of the committee. All indications were that they were playing for time, confident that they would be able to mobilize public opinion against this bill. But that delay was not granted, despite the fact that signed petitions in thousands had been sent to the members of the Legislature opposing the Bill. It was a controversial bill, and its supporters were accused of imposing their own cultural values on the people by passing it. Jinnah, showing awareness of the fact that the Bill might not be particularly popular with his constituents, went so far as to declare that if the electorate of his constituency did not approve of his support then they should elect someone else in his place.

The Shariat Act was less controversial than the Child Marriage Act. The little opposition that it did meet was from those groups of Muslims who were concerned that the principle of primogeniture should not be abandoned, as that would divide their property amongst their children; or in the Punjab, where the feudal landholders did not want their property going to their daughters, as that would mean the property going out of the family. Once again the role of the government was decisive. It showed responsiveness to the feelings of the Muslims by supporting the Bill, but kept it pending until the India Act of 1935 became effective, for under that Act agriculture became a provincial subject and the inheritance of agricultural land would remain unaffected by the passing of the Bill. By doing this they kept the landed gentry of Punjab happy.

The consequences of the Shariat Act were revolutionary for the Muslim women of Punjab, despite the exclusion of the inheritance of agricultural land from its scope. In all aspects the Shariat gave them more rights than customary law did, and the great advantage that Shariat had over customary law was that the rights under it were clearly spelt out. This saved the Muslims of Punjab from prolonged litigation, which had become the *modus operandi* under customary law.

There was a change in climate of opinion concerning women's issues, as is obvious from the passing of these Acts. Repeatedly in the debates we hear the Legislators declare that in India women were treated as 'chattels', and no progress was possible unless and until their position in society was changed.

The Dissolution of Muslim Marriages Act of 1939 made divorce for Muslim women much easier by legalizing the concept of khula, which existed in Shariat, but had fallen into disuse. In what seems to be a direct response to the passing of the Shariat Act in 1937, and all the discussion of divorce around the Dissolution of Muslim Marriages Bill, Hegde moved a resolution demanding an overall examination of the legal rights of women in India. Initially this resolution was to apply to women of all religions, but later the Muslims were exempted. The comprehensive nature of the Resolution shows that the members of the Legislature were now interested in examining and changing the legal rights of women where they found them wanting.

It was the Muslim women of Punjab who experienced the most radical transformation in their legal rights. The Shariat Act was responsible for liberating them from the debilitating constraints of customary law. The taboo on women inheriting any kind of property was lifted, although in practice, until recently, it was not uncommon for the sisters to give up their property in favour of their brothers, mainly because of social pressure and age-old custom. The same applies to the right of divorce, first the passing of the Shariat Act and then the Muslim Dissolution of Muslim Marriage Act; although they gave the right of divorce or khula to the women, in practice, divorce for women continued to have social stigma, whether the husband gave the divorce or the woman sought it through khula. But over the decades, in the present-day Punjab, it has come to be viewed with less horror. For the Muslim women of Punjab, the spate of legislation concerning women that was passed in the decades preceding independence did not lead to an immediate social and cultural revolution, because cultural values take time to change. The legislation, however, provided a foundation on which further progress could be made.

# 4 Education in a Changing Environment

It was the campaign for the education of women which challenged and changed the traditional role of women in Muslim society of Punjab. Once the movement to educate women got under way, the limited role of women as a result of strict seclusion within the homes increasingly came to be questioned. Muslim women observed purdah and lived in seclusion from men. The observance of purdah restricted their movements, and their excursions outside their homes were few, something to be recorded as a rare occurrence.<sup>1</sup> Consequently, their education was also restricted to their homes. Their education was either religious, or concerned with teaching them basic skills for managing the household, like doing the accounts and being able to correspond with family members.<sup>2</sup> A report by the Punjab government said, 'In Muhammadan families little girls very generally learn to read the Qoran by rote, and sometimes easy books of instruction on morality and religious observances'.<sup>3</sup> The same report added that there was also a prejudice amongst the Muslims against teaching their daughters to write, as it was not considered proper for them.

There was a whole section of Indian society, particularly the Muslims, who were satisfied with the traditional form of education for women, and were vehemently against changing it in favour of education in government schools. The objection of Muslims to sending their daughters to government schools was principally on two counts. They objected to the curriculum, which was secular with no religious content, and secondly, the whole concept of the girls venturing out of the house every day to study elsewhere was unacceptable to them. In their opinion, the very act of leaving the protection of the house diminished the effectiveness of purdah as it had been practised in the Indian subcontinent for so many centuries.

Sir Syed Ahmed Khan, the most important Muslim reformer of late nineteenth-century India, whose influence on the attitude of Muslims towards education and the English language was far-reaching and profound, was a conservative when it came to female education. He toured India advocating that the male Muslims of India abandon traditional madrasah education in Persian and Arabic and receive secular education in English in government schools. In order to remove any objections that Muslims might have to such education, Sir Syed founded the MAO College at Aligarh in 1877, which was to combine English education with Islamic theology.<sup>4</sup>

Sir Syed's position, however, was that women's education should take place only after the Muslim men had been educated. Sir Syed argued that ladies of respectable Muslim families were educated to a 'moderate' degree at home. This domestic education involved a study of moral and religious books in Urdu, Persian and some Arabic.<sup>5</sup> Female tutors were employed, and they used to go to the homes of the women who wanted to be taught. He claimed that the women in his family could both write in Persian and compose poetry in Urdu. He admitted that although the shurafa women were educated, the education of Muslim women as a whole was wanting and far from satisfactory. But, he declared, the government could not take any practical measures which would encourage respectable Muslim families to send their women to government schools, for, in his opinion, all efforts of the government to provide education for Muslim girls had been a failure. And then Sir Syed spelt out his position on the issue:

The fact is that no satisfactory education can be provided for Mohammadan females until a large number of Mohammadan males receive a sound education. The present state of education among Mohammadan females is, in my opinion, enough for domestic happiness, considering the present social and economic conditions of the life of the Mohammadans in India. What the Government at present ought to do is to concentrate its efforts on adopting measures for the education and enlightenment of Mohammadan boys.<sup>6</sup>

On a visit to Punjab he expressed his concern at the movement among the Muslims themselves to open schools for Muslim girls, which was finding expression in the efforts of the Anjuman-e-Himayat-e-Islam. It was as a result of inspiration from Sir Syed's reform movement that the Anjuman-e-Himayat-e-Islam started opening neighbourhood schools for girls in Lahore in the mid-1880s. This was despite a great deal of opposition by the more conservative sections of Muslim society, who were opposed to purdah-observing girls going out of their homes to study. Sir Syed spoke at length in Lahore against trying to copy Europe in opening schools for girls. He declared that he had visited some of the schools for girls of the 'ashraf', the genteel and educated families, when he was in London. He said that these schools were of such quality that if they could be opened in the Indian sub-continent, he would be all for sending Muslim girls to them. However, it would take hundreds of years for such schools for girls to be opened in India.<sup>7</sup>

Sir Syed had undoubtedly given much thought to the problem of Muslim girls' education, and it seems that his objection was not only to the idea of girls studying in schools; he was also concerned with the curriculum that

was likely to be adopted. He said that the Muslim girls of India could not be taught what the girls in Europe and America were studying, because the economic and social conditions there were different. Education in those countries prepared girls for employment as post-masters or as members of parliament, whereas India was not likely to have those conditions for a long time to come.<sup>8</sup> Sir Syed argued for the continuation of the traditional subjects of study, which were mostly the Qoran and the Hadith, and occasionally a classic Persian poet such as Maulana Room or a historical work such as the *Tuzk-e-Jahangiri*. He saw Muslim women as the torch-bearers of the traditional culture of the Muslim ruling class of northern India (the ashraf), in which morality and religion carried a very high premium.<sup>9</sup>

In a written speech in response to the address of the women of Punjab in January 1884, he said that he was not against education for Muslim women, but against the new form of education, which was full of dangers. His advice to them was that they should continue with the traditional form of education, as that would be good for guiding them in religious matters, as well as on practical issues of this world.<sup>10</sup> Implicit in this statement was the opinion that traditional education was good for the morals of women. He went on to explain his position further, saying that men had to adopt the new learning and language because they had to go out in the world and earn a living, but women were under no such compulsion and so should stick to traditional education.<sup>11</sup> This was an extremely clear enunciation of the main thrust of his reform movement, that Muslim men must take to western learning, join the government educational institutions and abandon the learning of the madrasahs. While stressing that the education their grandmothers and great-grandmothers had been given was the kind most suitable for Muslim girls, he admitted that some of the rights that had been given to them by Islam had been denied to them by their husbands because of ignorance. Sir Syed, however, saw the solution to that predicament in educating the sons, who would restore the rights that Islam had given to Muslim women, but which had been eroded over time.<sup>12</sup>

It is remarkable that G. W. Leitner, an eminent educationalist of German origin, who lived in Punjab for many years and made an important contribution in establishing the Government College and Punjab University, should have views similar to Sir Syed's on women's education. In his observations about female education, from the time of annexation of Punjab in 1849 to 1882, he said that it needed revival rather than development. He said, 'the Panjabi woman has, however, not only been always more or less educated herself, but she has also been an educator of others'.<sup>13</sup>

He listed some of the indigenous female schools that existed in the Punjab and where female teachers taught: in Nawankot and Moharwal in the Lahore

district, Panipat (which had six schools), Wairowal and Fattahabad in the Amritsar district, Dhatrat and Assant in the Karnal district, among others. He also mentioned that the wives of 'respectable' Muslims could read and write, and some were good Persian scholars, and some good poets.<sup>14</sup> Not only did he argue that indigenous schools for women existed, but also that the opening of government schools had a negative effect on the indigenous education system and these schools had decreased in number. He was of the view that interference in the existing female education system by opening government schools was a failure, because the girls were just not willing to enrol. He advocated reviving the government schools at a later time, when there would be a demand for educated wives, till then, he said, the female schools should be 'abolished'.

Leitner was also critical of the government schools for boys. As the following quotation shows, he was of the opinion that government schooling was leading to the alienation of boys from their families and their cultural roots:

Indigenous female education in the Panjab requires less development than revival. The girl who was ever taught to read Nagri or Gurmukhi or Arabic in her home or in a friend's house, conveniently situated, where other girls could also assemble, now has a brother at a Government School reading Urdu and becoming daily more dissociated from her in language and feeling.<sup>15</sup>

The dismal failure of the government to provide even primary schooling for girls had only reinforced the position of those like Leitner and Sir Syed who were against all government efforts on this front. Sir Syed was right in declaring that female education had not made much progress over the years, and this was especially the case with Muslim female education in the Punjab. According to the Census of 1881, which compared the census figures with the Education Department figures, while about 157 000 males were under instruction (Census), 9 931 (Education Dept.) and 6 101 (Census) females were under instruction in the Punjab.<sup>16</sup> Muslim women had the lowest percentage of those receiving instruction, 5 per cent compared to 8.9 per cent of other religions. By 1895–6 things had not changed significantly. The Administrative Report of that year said that while about 15 per cent of the boys of school-going age were receiving education, the proportion of girls was only 1.58 per cent. The same report said that although there had been a slight increase in the number of girl students, the number of schools for girls had actually decreased over the previous year.<sup>17</sup>

This was a problem for Muslims in general and not just for their women; as a community, they were falling far behind the Hindus in education. They

were unable to compete with them for government jobs.<sup>18</sup> The resistance of the Muslims to the adoption of English education was due to a number of reasons, but as the Hunter Report said, 'a candid Mohammadan would probably admit that the most powerful factors are to be found in pride of race, a memory of bygone superiority, religious fears, and a not unnatural attachment to the learning of Islam'.<sup>19</sup> According to the statistics of 1871-2, although the Muslim population of the Punjab formed 51.6 per cent of the population, only 34.9 per cent were at school.<sup>20</sup> By 1881-2 this percentage had risen to 38.2 per cent, and most of this increase had been in the higher schools.<sup>21</sup>

It was the attitude of the Muslims to the English language and the new education system which hindered the students from taking examinations to the civil services, where the Muslims lost out to the Hindus. The Muslims refused to adjust to the new circumstance where Persian had been replaced by English as the official language.<sup>22</sup> Discussing the reasons why Muslims were not able to compete with the Hindus for government jobs, the Hunter Commission Report said, 'The years which the young Hindu gives to English and Mathematics in a public school, the young Mohammadan devotes in a Madrasa to Arabic and the Law and Theology of Islam.'<sup>23</sup>

It was this general conservatism of the Muslims which was fast converting the Muslims into a depressed community of India, and which was keeping their women cloistered within the four walls of their homes. Education for women was not seen as a means of earning livelihood. The custom of child marriage did not encourage the spread of education among women either. This had the effect of restricting the time girls spent at school. Their schooling was usually terminated at the age of nine, and at the latest by the age of eleven years.<sup>24</sup> After marriage the chances of girls continuing with education were very slim. Under these circumstances it was difficult to find and train female teachers, and the schools had to rely on male teachers.

As far back as 1854 there were only seventeen schools for girls in Punjab and strangely enough nearly all of the pupils were Muslims. In 1862, while addressing a durbar, the Lieutenant-Governor of Punjab, Sir Robert Montgomery, stressed the importance of education for women and asked for the co-operation of all those present.<sup>25</sup> He had made a great effort to extend female education. However, the number of schools aided by government grant and under the management of Indians had gone down from 187 in 1871 to 77 in 1882, because the government grant had been withdrawn, and schools which were considered unsatisfactory had been closed.<sup>26</sup> However, the number of missionary schools had increased from 36 in 1871 to 86 in 1882.

Around the time of annexation, there had been about 17 girls' schools; by 1865-6 there were 1 029 schools with 19 561 girls. According to the Hunter



Report, the number of Muslim and Hindu girls were about the same. Over half of these schools were functioning on government aid, which came to about Rs. 23 410. When the government decided that a large proportion of these schools were not providing quality education, that they had existed for a long time and were mainly concerned with providing religious education, the government cut their aid by almost half, as a result of which the number of schools kept going down steadily.<sup>27</sup> By 1881–2 there were only 311 girls' schools left in the province. The Census Report of 1881 showed 6 101 girls to be in schools, or one girl in a population of 1 416 females, a very low ratio. This was the condition of women's education after almost half a century of British rule of the Punjab Province.

Municipalities and local boards were an important source of funding, in addition to the provincial government, and they were not convinced about the importance of girls' schools. It would require a change in public opinion before they would be willing to allocate a significant sum to the education of females, although some municipalities were more generous with girls' schools, including those run by missionaries.<sup>28</sup> These missionaries were more effective than others in their efforts to educate Indian women outside school, drawing their funds primarily from missionary societies in Europe and America. They went into homes to educate the female members of the family, teaching secular subjects, which may have had a Christian basis.<sup>29</sup>

The system of grants-in-aid could not be pursued with the same effectiveness as with the boys' school, because there was not the same willingness to pay girls' fees. The discipline of the schools had to be lax because of the brief time that the girls spent at school, and also because they were not regular in their attendance. In some areas the school authorities had to organize not just the teaching facilities but also make arrangements for the girls to be escorted from their homes to the schools.<sup>30</sup> The difficulties of running girls' schools included finding female staff, and because of their scarcity they had to use superannuated schoolmasters. They were easier to come by in the southern provinces than in the northern ones, like Punjab.

The Hunter Commission Report recommended that government aid should be given to all those schools, even where the girls were receiving religious education. They also recommended that the conditions for aid to girls' schools should be much easier, and the rates higher, because of the more difficult circumstances that they had to operate under.<sup>31</sup> The Report gave a clear account of the primitive state of female education all over India, and also its condition in Punjab. It was an important document, and the first of its kind covering Punjab since its annexation. It also came out very strongly in favour of giving female education extra incentives and encouragement, in comparison with boys' education.

What was the reason for the failure of the government to make any significant headway in education for girls in Punjab? The government, in a statement on Indian Education Policy in 1913, attributed it to the social customs of the people.<sup>32</sup> It claimed that these had prevailed despite a liberal policy in respect of scholarships, fees and grants-in-aid to girls' schools.<sup>33</sup>

This was also the conclusion of Miss Mary Boyd, a zenana missionary, who had been working as the superintendent of schools for Muslim girls for almost thirteen years. In the evidence that she gave before the Hunter Commission she voiced her concern that the system of primary education had not been placed on a sound footing.<sup>34</sup> She said that these schools were filled with girls and women of poor and lower classes, and their motivation for attending the schools was the scholarship they got, an amount that they would not be able to earn if they tried to get a job. She had also taught in the zenana and was of the opinion that the education given there seldom went beyond the lower primary standard, because schooling was continually interrupted for family reasons and religious holidays.

Since the government had not met with significant success in spreading either literacy or primary education, it sought the solution in legislation. The Punjab Primary Education Act, otherwise known as the Punjab Compulsory Act, was passed in 1919. It made primary education for boys compulsory.<sup>35</sup> The male population of the Punjab province was calculated to be eleven million. There were about 1 100 000 boys between the ages of six and ten, roughly 10 per cent of the male population, but only 350 000 were getting primary education.<sup>36</sup> While the facilities for primary education of boys had improved over the last five years, the boys' attendance had not improved in the same proportion. The reason for this was the conservative nature of the people, especially in the rural areas. They did not see the need for education, particularly as it might mean losing the services of their sons in their work at home.

This Act did not make primary education compulsory for girls in the Punjab. Originally it had a clause which made it applicable to girls also, but that met with so much opposition in the Council that the clause had to be dropped. Compulsory education for boys had also met with some opposition, but it had supporters amongst the local members of the Legislative Council. All the Indian members of the Legislative Council, whether Hindu or Muslims, were unanimous in opposing compulsory education for girls.<sup>37</sup>

The arguments used were that 'religious prejudice and the social custom in the present state of the society are another great obstacle, far more formidable than the idea of compulsion'. Khan Bahadur Syed Mehdi Shah had argued further that the rural classes of the Punjab continued to be very conservative, and most of them were illiterate, and the idea of compulsion was

alien to them. They were uneasy about compulsory education for boys, but the idea of compulsory education of girls would lead to 'alarm and unrest' amongst them.<sup>38</sup> The institution of purdah was projected as being central to religion. Makhдум Rajan Shah in his speech claimed that 'the purdah system is considered especially by the Mohammadan element of the population as the soul of their society and they value it more than their lives in pursuance of their religious traditions'. To instil the fear of the consequences of promulgating the original bill, he said, 'At this juncture when Government has to face several unpleasant agitations, it will prove dangerous to create a novel and additional material for such meetings'. This sounded ominous, and having been through the experience of 1857, it was unlikely that the British in India were going to let their desire to educate and emancipate women lead them into any kind of situation which might lead to 'unrest'.

The primary school age was six to ten, and Syed Mehdi Shah argued that at the age of nine and ten girls in India reached puberty and had to observe purdah, so at this age people would not want their daughters going to school. The argument that the women of respectable families observed purdah, and that the men did not want them going outside the four walls of their homes but would rather that they were given religious education at home, as in ancient times, was used by other members of the Legislative Council also, like Pundit Sheo Narain.<sup>39</sup> Rajan Shah voiced his opinion that forcing people to send their daughters to school was a worse punishment for the parents than hanging them. He observed that if the idea behind the move was social reform and the removal of the purdah system, then reform by coercion had never been known to work. He went so far as to say, as had already been hinted by Syed Mehdi Shah, that millions of people would not comply with this law, and would consequently become criminals in the eyes of the law.<sup>40</sup>

The Bill would have given local authorities 'discriminatory powers' to decide whether their constituency was ready to have the imposition of compulsory education for girls or not. The danger was, Makhдум Rajan Shah had argued, that gentlemen of modern ideas who felt that they must launch a crusade against the purdah system would ignore public opinion and adopt measures for the compulsory education of girls.<sup>41</sup>

The Bill making primary education compulsory for boys was adopted, but the section that had included girls was rejected, because of the hostility to it of the Legislative Council members. Such was the gap between the education levels of girls and boys in the Indian sub-continent, and in particular in the Punjab, that as late as 1936 a move to make primary education for girls compulsory also met with failure. There was an unbridgeable abyss between the different roles allotted for boys and girls in Punjabi society. This seems to have been the perception of even the Legislative Council members, a

group who would be relatively more enlightened and educated than the rest of the people.

The Punjab Free Primary Compulsory Education for Girls Bill was moved by Shrimati Lekhwati Jain.<sup>42</sup> Representing the north-east towns, she had argued for compulsory primary education for girls on the ground that without making it compulsory no significant progress could be made in spreading education amongst the girls. She substantiated this point by quoting the figure of 1½–2 per cent as the percentage of educated girls in the total population. She went on to argue that the reason compulsory education for boys was not such a success, despite all the efforts of the Education Minister, was due to the fact that the women were not educated. She made a lot of sense when she said that, 'if a mother is educated she educates all the members of the family'.<sup>43</sup> There was nothing to be feared in the Bill, she had argued, for each local government had been given the latitude to enforce it in their area whenever they deemed the conditions to be ready for its application.<sup>44</sup> Her ultimate argument was that of a feminist, which she had repeated in her speech to the Council, that if compulsory primary education was good for boys then it was good for girls as well. She pushed for the acceptance of the Bill in principle, for she said that any modifications or changes could be sorted out in the Select Committee.

Opposition to the Bill had not diminished over time, however, for the views of members of the 1936 Council seemed uncannily similar to those of the 1919 Council. Most of the resistance was to the idea of compulsion for the education of girls.<sup>45</sup> What was also questioned by more than one member of the Council was the effectiveness of the Act which had made primary education compulsory for boys. Rao Bahadur Chaudhri Chotu Ram, a prominent member of the Legislative Council, had declared that compulsion had failed in the case of boys, and he was absolutely against using compulsion for girls.<sup>46</sup> He also drew attention to the fact that as they had not been able to apply, on a large scale, the principle of prosecution of parents of boys who did not go to school, then how could it be applied in the case of girls? Chotu Ram, like some other speakers, also raised the point that it was financially not a feasible proposition, for the district boards just did not have the money for it.<sup>47</sup> The motion for sending the Bill to the Select Committee was lost, but not before Shrimati Lekhwati Jain had reminded the Council that they had also opposed the Bill that she had moved earlier for allowing women to stand for elections to district boards and municipalities. She had pointed out the irony of allowing women to become members of the Legislative Assembly but not of district boards or committees.<sup>48</sup>

But Shrimati Lekhwati's voice was a voice in the wilderness, far ahead of her times. The conservatism of the Council members was apparent in that

they were not willing to send even a watered-down bill to the Select Committee. It was seventeen years after boys' primary education had been made compulsory, and the Bill left it to the district boards' discretion to impose it at the time of their own choosing, but despite all this, it was too revolutionary a step for the Indian élite who sat in the Legislative Council.

Three years later the Punjab Primary Education Bill, 1939, was passed. It superseded the Punjab Primary Education Act of 1919. What Shrimati Lekhwati had not been able to get passed in 1936, this Act now accomplished. It made primary education for girls compulsory.<sup>49</sup> Primary school age for boys was fixed at between six and twelve, and for girls between six and eleven. However, the decision to impose compulsory primary education in the whole or part of the district depended on the local authority passing the resolution by a majority of two-thirds.<sup>50</sup>

The Bill made the conditions for girls to attend school much easier than for boys. For example, if there was no school within half a mile of the girls' home, then it ceased being compulsory for girls to attend school.<sup>51</sup> The guardian who did not send the girl to school would be fined Rs 15, or if he kept the girl away from school by employing her, he would be fined Rs 25.<sup>52</sup>

## REFORM MOVEMENTS

Muslim interest in female education in the Punjab, as in the rest of India, was to a large extent a response to the attacks by Christian missionaries on the treatment and status of Muslim women in India. The more conscious and thinking Muslims were quick to realize that the position of Indian Muslim women was deplorable, and out of step with the progress that women had made in other societies, including other Muslim countries. It was the success of the Christian missionaries, and the perception that they had the support of the government, which made various religious communities feel threatened and resulted in religious reform movements in the 1880s and 1890s. Various American and British missionary societies in the late nineteenth century were the first to open schools for girls.<sup>53</sup> Their drive for female education in the Punjab was not restricted to opening schools for girls, but being cognizant of the situation where Muslims were reluctant to send their daughters outside their homes as it affected the practice of purdah, they initiated the practice of zenana teaching. This meant that the missionary ladies visited those women who were interested in education and learning, and gave them instruction within the confines of their homes. This system of teaching was found much more acceptable to the Muslims of the Punjab.<sup>54</sup>

Christian missionaries were making deep inroads through conversions, primarily of the lower castes, in the Punjab. In just over a period of ten years, the census of 1891 showed that the Christian population of the Punjab had increased fourfold.<sup>55</sup> The effect of the Christian missionaries on both the Hindu and the Muslim communities of the Punjab should not be underestimated. The first Christian mission in the Punjab had been established as early as 1839 in Ludhiana. In 1846 a mission was established in Jullundur, and in 1849, in Lahore. They introduced the first printing press in the Punjab, and with it they launched an onslaught of pamphlets, tracts and religious newspapers.<sup>56</sup> Their activities went beyond publishing and establishment of a network of schools, orphanages, medical missions and zenana missions. They started preaching in the bazaars and participated in the manazaras and shastrarths, forms of traditional religious debates.<sup>57</sup>

Whilst amongst the Hindus response to Christian initiatives led to the birth and spread of Arya Samaj, amongst the Muslims it helped create reform movements, and such anjumans as the Anjuman-e-Himayat-e-Islam and Anjuman-e-Punjab. Sayyid Mumtaz Ali, who became the foremost proponent of Muslim women's education and rights in the Punjab, was very much a product of this climate in which the debates and manazaras between the Christian missionaries and Hindus and Muslims were at their peak. Mumtaz Ali received his early education at the Deoband madrasah and then joined his father in Lahore, where he studied English privately at home and passed his middle exams, and by 1876 he had joined the Lahore Government High School.<sup>58</sup> Mumtaz Ali was caught up in the manazaras over religious issues, and felt that the Christian missionaries were not being adequately answered. He familiarized himself with works of leading Muslim thinkers, and this road eventually led him to meetings and discussions with Sir Syed. While Sir Syed was a conservative on the issue of women, and disapproved of Mumtaz Ali's attitude, the younger man was more sensitive to the situation of Muslim women and the criticism of the Christian missionaries. Mumtaz Ali's book *Huquq-un-Niswan*, on the rights of women in Islam, was written in the style of a manazara, and in its content showed the influence of the Deoband school, though it was much more radical. Soon after the death of Sir Syed in 1898, Mumtaz Ali published *Huquq-un-Niswan* and also brought out the weekly *Tehzib-e-Niswan*,<sup>59</sup> in which he strongly advocated women's emancipation.

In the 1880s, the Anjuman-e-Himayat-e-Islam started a few female schools in Lahore, but the idea was not well received, as there was still opposition to girls going to school. Nevertheless the number of these schools increased from five in 1885 to fifteen by 1894.<sup>60</sup> The syllabus consisted of elementary religious education and the teaching of the Holy Qoran. By

1936, one of these schools had been elevated to the level of a high school, and by 1939, one had become a degree college for women.<sup>61</sup> The number of girls enrolled in the Anjuman's schools had been 169 in 1885, and by 1939 it had risen to 1200. The contribution of the Anjuman to Muslim girls' education was qualitative: it successfully removed the taboo which was attached to the education of girls outside their homes, a taboo reflected in Sir Syed's statements. It was significant that the Anjuman had influential patrons not only in Punjab, but also amongst the Muslims of the rest of India. Sultan Jahan Begum of Bhopal, the Amir of Afghanistan, and the Nizam of Hyderabad were amongst some of the prominent personalities and rulers of the time who extended moral and financial support to the Anjuman.<sup>62</sup> Within Punjab it had patrons such as the Nawab of Mamdot, Sir Mian Mohammed Shafi, Nawab Muzaffar Ali Qizalbash and Faqir Iftikhar-ud-din.

## JOURNALS FOR WOMEN

Sir Syed's reform movement began to affect a sphere he had not sought to change, the role and status of Muslim women in society. Its manifestation was the spate of women's journals which began to appear from the 1880s. This process began with *Rafiq-e-Niswan*, a bi-monthly from Lucknow, which was first published in March 1884, followed in August by *Akhbar-un-Nisan* from Delhi, which came out every ten days. The next year *Taleem-un-Nisan*, a monthly from Delhi, began to appear. The lead given by Delhi and Lucknow was followed by the radical *Mualam-i-Niswan* from Hyderabad, Deccan, in 1892.<sup>63</sup> It was only in the 1890s that the Punjab responded to this new wave of women's journals, and in 1893 *Sharif Bibyan*, a monthly, began to be published, and in 1898 the famous *Tehzib-e-Niswan* became the second such journal to come out from Lahore. The latter continued its publication right up to 1949, and created an important niche for itself in the social and cultural history of the Muslim women of Punjab.

The main objective of women's journals was to promote the cause of female education. This was an uphill task, because first and foremost they had to come up with a convincing argument as to why women must be educated at all. For amongst Muslim women the struggle was to make education for women socially acceptable. The popular perception, even amongst the middle classes, seems to have been that educated women were bad housewives. The daughter-in-law who sat around reading was regarded with distaste.<sup>64</sup> Learning the English language was viewed with even more hostility, and was seen as a source of corruption of Muslim women.<sup>65</sup> Since a majority of the shurafa women still spent most of their lives within the four walls of their homes, an

argument had to be made for the necessity of educating them, for their role was perceived as consisting of bringing up children and running the house.

It was necessary to redefine the relationship of women to men, and to society in general, before any effort could be made to ameliorate their condition. Maulvi Mehboob Alam, the founder and editor of *Sharif Bibyan*, the first women's magazine to come out of Punjab, tried to do just that in its first issue of September 1893. In the lead article, 'What are our objectives?', he wrote that God sent mankind to this world in such a fashion that the continuity of the race depended on the relationship between men and women, and since neither gender could procreate without the other, harmony between them was necessary. His conclusion was that each constituent member of the society was not an individual man or woman, for they are then incomplete, but the combination of a man and a woman.<sup>66</sup> He drew from the age-old Qoranic and biblical tradition when he declared in the same article that 'since a woman was derived from the ribs of man she was created to be a companion and a comrade for him, not to be his subordinate or to rule over him'.<sup>67</sup> His repeated efforts to establish the equality of men and women found recourse in similes and analogies, for at another point he likened men and women to the wheels of a car; if one of the wheels was weak, it affected the performance of the vehicle, and that was why they were all important to the same extent. The major task for the editor of the first women's magazine coming out from Punjab was to rehabilitate women as equals of men, to argue for the need to educate them, and restore them to their rightful place in society. To strengthen his argument, Maulvi Mehboob Alam quoted Gladstone as having said that the cultural level and the evolution of any society could be ascertained from the status and role of women in that society. As if it was not enough to quote a British prime minister, Mehboob Alam also quoted Napoleon who, when asked as to the source of France's greatness, retorted that it was derived from capable and educated mothers.<sup>68</sup> While the accuracy of his quotations is uncertain, it is revealing that Mehboob Alam, who also happened to be the editor of *Paisa Akhbar*, a daily that came out from Lahore, thought that what Gladstone or Napoleon had to say on the subject of women would carry weight with the readers of his monthly. It also reinforces the impression that by the end of the nineteenth century the Muslim shurafa were much more open and receptive to new and western ideas, and familiar with the great men of modern western history. Mehboob Alam, however, clinched his argument with the famous quotation from the Holy Prophet, that 'heaven lies at the feet of your mother', a statement which basically exalts the status of the mother.

Mehboob Alam's arguments for the education of women were what we would hear more of, in time to come, that educating women would make



them more mature and induce in them a necessary measure of sobriety, making them better companions for their husbands, as they would be in a position to discuss with them their worldly preoccupations, and they would make much better mothers. The last point hearkens back to the quotation from Napoleon. He ends the first article of the first issue of *Sharif Bibyan* with the prayer that 'this magazine will educate the voiceless millions of women of India to become such good housewives that each home will become a heaven on earth. Moreover, it will help in the more enlightened bringing up of the future generations of this country'.<sup>69</sup>

Propagation of female education was the main focus of campaign of *Sharif Bibyan*. In an article published in the first issue of the magazine Mehboob Alam stated that if there were religious instructions for Muslim women to observe purdah, there were also instructions that they should be educated.<sup>70</sup> *Sharif Bibyan* was a moderate magazine using all arguments, including religious, for its crusade. What is interesting is that the editor used the argument of good wives and good mothers to convince a none too sympathetic readership of the benefits of educating women.

A lot of literature written for women during this period was devoted to outlining what should be the content of female education. The assumption throughout was that female education had to be tailored to suit their special needs, for no one held the view that men and women could have the same education. *Sharif Bibyan* also ran an article on the model education for women. The author, Maulvi Mehboob Alam, acknowledged that the government was making a special effort to open schools for girls in the villages, towns and cities. The article emphasized the need for girls to be given religious education in accordance with the religion they practised, in addition to the study of normal subjects such as mathematics, geography and history. It advised the establishment of middle-level schools for girls in rural areas, where purdah would also be observed. It was felt that the allegation against educated women, that they tended to become lax in their morals, could be countered by rigorous religious education.<sup>71</sup>

The magazine tried to stimulate intellectual discussion on women's issues by reproducing articles from other publications, even some from foreign journals, in order to bring to the notice of its readers the latest thinking. One such article was 'Are women's intellectual abilities equal to that of men?', taken from the *Allahabad Review*. In the introduction to this piece the editor wrote that at some later time the journal would print a detailed article on this very important subject.<sup>72</sup> The May 1895 issue of the *Sharif Bibyan* reproduced a translated version of an article from an English journal entitled 'The social status and legal rights of women in Islam'. The magazine focused on all aspects of the Muslim women's question in India, and

laid the foundation on which *Tehzib-e-Niswan* could build. It also provided a focal point around which the reformist Muslim élite could develop their as yet amorphous movement.

*The Sharif Bibyan*, as the first journal for women from Punjab, had done the ground work and prepared the environment for struggle for the women's cause. Most of the articles, at least in the issues of 1893 and 1895, were written by the editor himself. None of the issues raised or positions taken in the journal were controversial, and it was intellectually persuasive and moderate in tone.

The *Tehzib-e-Niswan*, a weekly, came out seven years later, and unlike the *Sharif Bibyan*, it was not a one-man show. The *Tehzib-e-Niswan* typified the new emerging feminist consciousness. The title of the weekly defines its objective: 'Culture of women'. The themes of the articles were very simple: women are not inferior to men, they can perform as well as their male counterparts.<sup>73</sup> They compared the emancipation of Muslim women of India not only with women of other religious communities in India, but also with women of other nationalities, particularly Muslim women of Turkey and Egypt, who had made considerable progress.<sup>74</sup> Sayyid Mumtaz Ali, who brought out the *Tehzib*, made his wife, Muhammadi Begum, its editor, and when she died, his daughter-in-law, Asif Jahan Begum, succeeded her. Muhammadi Begum had written a number of books on the need for women's education and on social reform.<sup>75</sup> Mumtaz Ali, however, remained the moving spirit behind the journal, and it seems that these ladies were just the front-women for him. The *Tehzib* managed to get a wide variety of people, both men and women, to contribute articles to it. Some of these people were closely involved with the women's organizations that were beginning to emerge, and the *Tehzib* gave these organizations extensive coverage, as well as advice and criticism. It soon began to perform the role of the unofficial organ of the feminist movement in the Punjab.

A major difference between the *Sharif Bibyan* and the *Tehzib* was that the latter often published articles and editorials which were much more radical in content than the former. This is evident not only from their defence of the resolution passed against polygamy at a women's conference in Lahore, but also from their publication of such articles as those by the writer Nazre Sajjad. In one of her articles she advocated that the institution of marriage should change from one that was arranged by parents, to the girl and the boy meeting to decide on their own whether they wanted to get married. It was a radical change to advocate in an age-old tradition, so deeply embedded in South Asian culture.

The struggle for the emancipation of women was beginning to bear fruit by the end of the nineteenth century, manifested in the mushroom growth of

women's journals all over India, and in Punjab, with the coming out of the *Sharif Bibyan*. Those concerned with women's emancipation realized that the heart of the problem was the education of women. Both the *Sharif Bibyan* and the *Tehzib-e-Niswan* stressed the need for education, as did the activists at the Muslim Women's Conference. At the Muslim Women's Conference they argued for an end to wasteful expenditure, so that the money thus saved could be devoted to educational and training institutes, the latter especially meant for widows. By 1918, when the Muslim Women's Conference was held, the demands had gone beyond education; the tone was strident, demanding an end to polygamy, and the right of young people to choose their spouses for themselves, and other similar assertions. The pleading tone of the *Sharif Bibyan* of the 1890s was gone. The radicalization that had taken place in just over two decades had been profound.

## MUSLIM WOMEN'S CONFERENCE

The interest in women's education gradually increased. What had begun as an advocacy of Muslim women's education within their homes had evolved into an interest in educating them in schools, where the curriculum would be much more secular than had been the case in the madrasahs. In a debate held at Aligarh in 1914, a resolution in favour of female education was voted down.<sup>76</sup> But with the passage of time this issue was to occupy Muslims increasingly. The Mohammadan Educational Conference passed a number of resolutions about female education at its meetings in the 1890s, and finally in 1896 established a women's education section. Sayyid Mumtaz Ali was appointed secretary of this section, but it accomplished very little. Mumtaz Ali went on to establish his weekly, as has been mentioned earlier, in 1898.

Shaikh Abdullah, a Kashmiri Brahmin convert to Islam, who had been educated at Aligarh and who was active in the Mohammadan Educational Conference, had developed an interest in Muslim female education. After getting married to an educated Muslim lady from a leading shurafa family of Delhi, he resolved to open a school for Muslim girls where strict purdah would be observed so that the families of the Muslim girls would not have any hesitation in sending their daughters to his school to study. In October 1906 he succeeded in opening the Aligarh Zenana Madrasah. Initially seventeen students enrolled. The girls would come in their tightly curtained palanquin, and leave in the same.<sup>77</sup>

Six months later, when the school inspector paid a visit to the school, she found 51 out of 56 students attending the school. She found the academic standard of the school more than satisfactory and recommended that the

school be given grant-in-aid. The school consequently became a recipient of Rs 15,000, in addition to Rs 250 of monthly grant. The school gradually expanded and the number of girls from shurafa Muslim families kept increasing; in 1915 it became a boarding school, with double walls, which made the observation of strict purdah possible, and commuting became unnecessary.

Aligarh was far from the heartland of Punjab, but it had come to symbolize the enlightened reformist tendencies among the Muslims of India. If Aligarh was to have a school for girls, despite many virulent attacks on the morality of the Abdullahs in the Urdu press, popularity of schooling for Muslim girls was likely to spread to other regions.

The Begum of Bhopal had given a monthly stipend to the Aligarh Girls' School, and she also gave substantial help towards the building of the hostel building.<sup>78</sup> The Begum was invited to perform the opening ceremony of the new building. Present on the occasion were a galaxy of women belonging to prominent Muslim families who were in the forefront of the reform movement. Some of those present were wives of men involved with the Aligarh movement. There were Begum Abdullah, Begum Aftab Ahmed Khan, Nafis Dulhan Sherwani (the husbands of the last two were trustees of the Aligarh College), Begum Syed Mahmud (widow of Sir Syed's son), Arzu Begum (the sister of Maulana Abul Kalam Azad, who was private secretary of the Begum of Bhopal), and Zohra and Atiya Fyzee from Bombay. Punjab was well-represented on the occasion; besides the ladies from the Mian family, Begum Mian Muhammad Shafi and Begum Shah Din, there was Begum Waheeda Yaqub, editor of *Tehzib-e-Niswan*, and Fatima Begum, editor of *Sharif Bibi*.<sup>79</sup>

The opening of the hall of residence was taken as an opportunity to found the Muslim Women's Conference or the Anjuman-e-Khawatin-e-Islam, the moving spirit behind which was also Shaikh Abdullah. After the opening ceremony, the women assembled once again to found the Anjuman, which was dedicated to the education of Muslim women. The Begum of Bhopal presided over the Conference.

In her address, the Begum of Bhopal emphasized the importance of female education, saying that the Muslims of India still failed to realize the importance of education, even though it might be available within the confines of their homes.<sup>80</sup> She went on to point out that, according to the Census Report, the literacy level of women was as low as 1 per cent, dipping to a mere 0.5 per cent in some provinces. She also felt the need to bring up the issue of teaching English. Commenting on the newspapers of Punjab, which had raised an alarm against the teaching of English to women, she questioned the wisdom of regarding that language as useful for boys but harmful

for girls. She said that with the advance and spread of education, the importance of the English language would be increasingly realized.<sup>81</sup>

It had become apparent to all those concerned with the spread of female education that the shortage of female teachers was one of the main obstacles to it. The Begum of Bhopal voiced her hope that the building of this 'boarding house' would make it easier for female teachers to get trained. Hostel accommodation in strict purdah conditions was regarded as a much more convenient and suitable proposition for purdah-observing females than a day institution. She also recommended that there should be no hesitation in hiring either European or Indian Christian teachers, as their services were needed at this initial stage to spread female schooling. She cited her experience in Bhopal in hiring them, where they had proved to be very useful, and, she said, 'till we produce our own teachers, we should use teachers of other national and religious backgrounds'.<sup>82</sup>

The Begum of Bhopal's message was for a more liberal attitude towards women's education. She can be taken as representative of the more liberal section of the shurafa Muslims, who were becoming increasingly aware of the urgent need to educate Muslim women. It is obvious that even in 1914, the proponents of female education were operating within the constraints of purdah, and at least at the inaugural session of the Muslim Women's Conference, nobody was willing to question the validity of this custom as practised in India.

At this meeting, a resolution was passed to form branches of the Conference in major cities and districts. It was resolved to promote the establishment of schools for girls, and girls from different parts of the country were to be encouraged to join the Aligarh Girls' School in order to give the school a more representative character. One resolution also proposed that the local branches of the Conference should give a scholarship to at least one girl from their area to study at the Aligarh Girls' School, as that would prepare girls to become teachers in their own areas when they had graduated from Aligarh. In fact, no concrete measure for opening more schools for girls was suggested, however, one of the resolutions did say that the girls' school at Aligarh should be helped and promoted.

While the resolutions of the Conference sound familiar, it was a clarion call to promote women's education. Since Aligarh was regarded as the centre of the reformist educational movement of the Muslims of India, what was said and done there influenced the thinking of the more progressive sections of the shurafa in other provinces. When the working committee of the Conference was formed, ten of its members were from Aligarh, while seven members came from outside. Of these seven, three were from Punjab: Begum Shah Din from Lahore, Saeda Ehsan-ul-Haque from Jullundur and Mrs Razaullah from

Bhawalpur. The most radical resolution of the Conference was that Muslim girls should not be married before the age of sixteen, as that had an adverse effect on their education. Given the constraint of purdah, the Begum of Bhopal was in favour of hostel accommodation, as that would make it easier for parents to send their daughters to study there, and it would also make working conditions more conducive to female teachers.

Six speeches were made by the participants at the Conference, besides the presidential address of the Begum of Bhopal. Two were made by Begum Shah Din and Fatima Begum, luminaries of the women's movement in Lahore. Fatima Begum was the editor of *Sharif Bibi*. Begum Shah Din stressed that no Muslim renaissance was possible without a revival of education; even Muslim men were lagging behind other communities in terms of education, and Muslim men could not make any forward leap in education if their wives and mothers were not educated.<sup>83</sup> Interestingly, the thrust of Fatima Begum's speech was also on the necessity of adopting the English educational system, for otherwise, in the field of employment, the Muslims would be left far behind by the Hindus. She argued that having mothers who were conversant with English would give the Hindu men an advantage over the Muslims. However, she was critical of the missionary education of Muslim girls, as it did not provide them with the right religious and cultural guidance.<sup>84</sup>

During successive annual meetings of the All-India Muslim Women's Conference in 1916 and 1917, in Meerut and Delhi respectively, attendance dropped. However local branches of the Conference were opened in Lahore, Delhi, Meerut, Jullundhur, Dehra Dun and a few other towns. It was in 1918 that the Conference received a new fillip, when the annual session was held at Lahore. It attracted a large number of participants, and has become famous for the resolution that was passed against polygamy. The crowd in Lahore shows what a fertile ground Lahore had become for the Muslim women's movement.

After the 1918 session, the Conference meetings petered out. There were divisions and conflicts at the meeting in Calcutta in 1919, while the meeting scheduled for Madras in 1920 could not be held, and then no annual conference was held until 1929 in Hyderabad, when only a handful of women attended the meeting. The demise of the Conference was indicated by the fact that the Begum of Bhopal, its most important patron since its inception, ceased her stipend to it in 1930.<sup>85</sup>

The education of Muslim women in Punjab had not made much headway in terms of figures of the Census and of the Education Department, and the

main block to the spread of their education seems to have been the shortage of female teachers and the difficulty of getting parents to send their daughters out of the home to attend school. Muslim women were lagging behind other communities in education, but that was not surprising since so were the Muslim men. However, a change of attitude towards the education of Muslim women was visible, in the founding of the Aligarh Girls' School and the efforts of the Anjuman-e-Himayat-e-Islam to found girls' schools in Lahore. The Muslim Educational Conference does not seem to have made a significant contribution in the field of education for women in Punjab, however, in so far as it provided a forum for the Muslim women of India, including Punjab, to get together and discuss the problems facing Muslim women, it gave a fillip to their movement for emancipation.

What was needed at the turn of the century was a complete change in attitude towards Muslim women's education. Sir Syed typified the traditional shurafa views on Muslim women's education: they should be educated at home and taught about Islam, and a little bit of classical Persian literature. The sending of girls to schools to study secular subjects was considered threatening to the religious and cultural identity of the Muslims. In bringing about a change in this attitude, the women's journals and some Urdu literature played an important role. Lahore was the home of two famous women's journals, both of which were promoting women's education. Sayyid Mumtaz Ali, the moving spirit behind *Tehzib*, and Maulvi Mehboob Alam, the editor of the daily *Paisa Akhbar*, who had started *Sharif Bibi*, were representative of the changed attitude to women's education that enlightened Muslim Punjabi opinion had adopted over a space of a few decades, since the turn of the century.

It was natural that, with the spread of education amongst the Muslim women of Punjab, such institutions as purdah should come under criticism, and that women should begin to organize themselves to discuss and determine the shape and form of other customs and institutions which affected their lives.

# 5 Purdah and Emancipation

Purdah, or the seclusion and segregation of women, was a cultural norm in the Indian sub-continent, amongst both Hindus and Muslims. Purdah, which begins at puberty, limits the interaction between males and females, although amongst the Muslims this taboo does not apply to males of the immediate family.<sup>1</sup> Purdah as practised on the Indian sub-continent is basically of two kinds, one which physically confines them within the house, and the other, which allows them to move about, but only after donning a cloak-like garb which covers the whole body and face, with a net over the eyes for visibility, known as the burqa. The form and severity of purdah practised all over northern India was the same, and Punjab was no exception to this.

Purdah, more than any other social institution, is an important indicator of the role women are expected to play in society. Since the form of purdah commonly observed in the nineteenth and early twentieth century confined women to the house, it is obvious that their role in society was perceived to be little more than one of procreation. The fact that it was felt necessary to keep them away from interaction with males who were outside the circle of immediate family meant that both sexes were not trusted to maintain the moral order of the society if allowed to mix freely. Since women were the more vulnerable, the females were kept sheltered at home in order to protect them from the chaos that would result from the free mixing of the two sexes.

Women of the shurafa family did not venture out of the house, unless some important visit had to be made to a relative or a friend, and then they went out in a palki (a wooden covered chair carried on the shoulders of men), which was covered by curtains so that the inmate could not be seen by an onlooker. But such forays into the outside world were rare. The women of the less privileged sections of the society in the cities wore burqas, like the servant women who went out and did the shopping and chores for the household.<sup>2</sup> The same applied to the rural areas. The women of the big landed families observed strict purdah while the peasant woman could ill afford to stay indoors or go around in a burqa, as she had to help in the field and take food for the husband there, or fetch water from the wells.

What has been referred to as 'purdah' in the Indian sub-continent is described as 'hijab' in the rest of the Muslim world. *Hijab* in Arabic means curtain, and is used in the Qoran both in a metaphoric sense and in a literal sense. The generally accepted textual location of the instructions for hijab is in sura 33 verse 59 of the Holy Qoran. The instructions are for the women of



the 'Believers' to distinguish themselves from the non-believers by observing hijab. Syed Ameer Ali quoted the Holy Qoran as saying:

O Prophet, speak to thy wives and to thy daughters, and to the wives of the faithful, that they let their wrappers fall low. Thus will they more easily be known, and they will not be affronted. God is indulgent and merciful. And speak to the believing women, that they refrain their looks and observe continence; and that they display not their ornaments except those which are external, and that they draw their kerchiefs over their bosoms.<sup>3</sup>

Syed Ameer Ali, on the basis of this, argues that 'the Qoran itself affords no warrant for holding that the seclusion of women is part of the new gospel'. His comment was very obviously directed at the strict segregation and confinement of Muslim women as practised in India, which was not in accordance with any specific instructions in the Qoran.

Fatima Mernissi, the Moroccan feminist scholar, has given the context of this sura and how and why it came about.<sup>4</sup> According to Mernissi, the descent of the hijab in the year five of hijra was a result of the Prophet's facing one setback after another. This chain of political and military setbacks started with the defeat of his army at the battle of Uhud, in the third year of hijra. In the fourth year of hijra the confrontation with the enemy at the Battle of Dhat al-Riqa came to nothing, as both parties to the conflict were afraid to fight, and after facing each other for three days the enemy withdrew and the Prophet's army followed suit.

The Battle of the Trench, in the fifth year of the hijra (at the same time as the instructions for the donning of the hijab), was a siege of Medina by the Meccan forces for over 27 days, from which eventually the Meccans withdrew. The trying conditions of the siege, in which tensions were running high, left Medina on the verge of a civil war. Mernissi quotes Ibn Sa'd, an eminent historian of his times, who described the conditions in Medina which led to the instructions about the hijab in the Holy Qoran.

In Medina slaves were being solicited by some foolish men (*sufaha*) who approached them in the public street and harassed them. At that time a free woman who went out into the street and whose clothing did not distinguish her from a slave was confused with the latter and subjected to the same treatment.<sup>5</sup>

Muslim women were being insulted in the streets when they ventured out, and the men who were doing it, when rebuked, answered that they could not distinguish the slave women from the Muslim women. It was in response to these conditions that the instructions came in sura 33, verse 59 that the Muslim women must observe hijab. Pickthall's translation of the verse is as follows:

O Prophet! Tell thy wives and daughters and the women of the believers to draw their cloaks close round them (when they go abroad). That will be better, so that they may be recognized and not annoyed. Allah is ever Forgiving, Merciful.<sup>6</sup>

In this verse the hijab is a reference to a slight modification in the mode of dress rather than a change in the way of conducting their lives. The naqab which covers the face entirely must have been a later evolution of the hijab, for the Qoran seems to give only a general instruction to be modestly clad.

It is important to note that the instructions for the observance of hijab did not obstruct the emancipation of Muslim women, nor did it cramp the style of at least some prominent Muslim women at the time of early Islam. Aisha went to war with Ali after the Prophet's death, and in the famous Battle of the Camel, she led her army on the battle front astride a camel. There does not seem to be any evidence in early Islam of the kind of segregation that is typical of the Indian sub-continent. Accounts have it that it was Khadija, the first wife of the Prophet Muhammed, who proposed marriage to him and not the other way round. When Prophet Muhammad eventually took Mecca, Hinda, the wife of Abu Sufyan, the leader of the Meccans, came to the Prophet and having accepted Islam, debated and argued the rights that the women of Mecca were to have under the new order. Sukayna, the daughter of Imam Hussein, is held up as the symbol of the liberated Muslim woman. She opposed the Ummayyads throughout her life, debated in mosques against the Ummayyads, changed husbands, and in her marriage contracts had it written that her husband would not have the right to polygyny. Her marriage contracts also contained the clause that she would not obey her husband if she did not wish to.<sup>7</sup>

The challenge to traditional Indian Muslim society and its cultural norms could only have come after the failure of the revolt of 1857, when demoralization was followed by self-questioning. Any illusions that the Muslims might have had that their traditional education in Urdu, Persian and the religious sciences would equip them for employment were destroyed.<sup>8</sup> If Sir Syed Ahmed Khan was the most prominent of the reformers, there were a host of others, many of them writers, who began to question the basic assumptions on which Muslim society rested. It was inevitable that the role and status of Muslim women should come under scrutiny, and that the peculiar institution of purdah, which kept women under almost lifelong house-arrest, would be questioned.

Sir Syed has been heralded as one of the foremost Muslim reformers in the post-1857 period, who called for a more receptive attitude towards western education, and advocated a more rational and scientific attitude to religion

and society. He sought to show that Islam is progressive and compatible with modern scientific education. His emphasis was on 'ijtihad', rational interpretation, rather than 'taqlid' or precedence, for he argued that for worldly success it was necessary to adapt to the changing social conditions.<sup>9</sup> His religious thought was considered so radical that when he founded the Aligarh College, he felt compelled to declare that traditional Islamiyat would be taught to the students, rather than his interpretation of it.

For a person of such awareness, who was grappling with the problem of Indian Muslims' backwardness and trying to bring home to them the need to change their outlook in order to be able to participate in the changed social and economic order, it was difficult to ignore the question of women in the sharif society of the day. His views on women were important, for after all he was acting as the guide to Muslims in all other spheres of their life. His writings show that he was conscious that the traditional position of Muslim women in society was under attack from many quarters, and not just the Christian missionaries.

The debate about the value of purdah as practised by Indian Muslim women had begun, and Sir Syed felt he must clarify his position on the issue for the benefit of those gentlemen who were advocating the elimination of this custom. When responding to the question as to whether purdah as practised in India was according to the Shariat, he skirted the issue, saying that since men did not live in accordance with the laws of the Shariat, why should the practice of Shariat become imperative only for women?<sup>10</sup> He dispelled any notions that Muslim men might have that they could improve their social interaction with the British by bringing their women out of purdah, for, he said, men should first prove themselves worthy of interaction with the British before trying to bring their women out of purdah.<sup>11</sup> In the same article he declared quite categorically, 'I regard the purdah being observed by Muslim women as a very good thing', and described himself as a conservative on this issue. The article is undated, but since Sir Syed died in 1898, it is likely that he wrote it sometime in the last quarter of the nineteenth century.

His position on the issue of women was quite contradictory; while upholding purdah, he gave a detailed exposition of women's rights in Islam which, he argued, the western women did not have. Sir Syed declared that in England a woman:

cannot enter into any contract on her own, but only with the consent of the husband, and all that she owns before marriage in terms of property or wealth, belongs to the husband. Once she is married, she cannot sue anybody, nor can anyone sue her, nor can she enter into any transaction with anybody without her husband's permission.<sup>12</sup>

He then compared their rights with the rights given by Islam to women, showing how favourable the latter are.

Like men, women have the independent decision-making authority whether to marry or not, she is the owner of her own property . . . and like men she can enter into any contract, and she is responsible for any transaction she enters into.<sup>13</sup>

It was obvious to a person like Sir Syed, who though a conservative on the question of purdah and the education of Muslim women of India, that the rights that Islam had accorded to Muslim women were not being practised in India. He was an Islamic scholar, well versed not only in the Qoran but also in Islamic history. The physical confinement in which the Muslim women of India were kept was as alien to the women of Prophet's time as it might be to any present-day western woman. There was a tradition in Islam of women accompanying the men to the battlefield and egging them on. In pre-Islamic Arabia, the women had almost no inheritance rights, in fact they were like a piece of property themselves, for the heir to their husband would inherit them also. If the heir did not happen to be her son, he had the first right to marry her. Islam gives women a right to inherit property from their fathers, although she receives a lesser share than her brother (in the Hanafi fiqh she gets one half of the brother's share); she is an absolute owner of her property, even after her marriage the husband has no claim over it; and she can have any conditions written into her marriage contract. Thus we have the example of the condition in Sukayna's marriage contract that her husband will not practise polygamy.

Sir Syed was not slow to concede that, despite the advantages that Muslim women had over western women because of their religious law, their status in society was much worse. Having accepted that there was a problem pertaining to women, he attributed it to the Muslims having deviated from religious injunctions. He wrote:

The civilized nations, despite having very regressive legislation pertaining to women, have improved the treatment meted out to women and given them a very high status. But the Indian Muslims, despite very progressive religious laws relating to women, have treated their women so badly that the whole world laughs at us . . .<sup>14</sup>

In an article for his journal *Scientific Society*, he came out with a blanket condemnation of the contemporary Indian Muslim woman. He wrote a diatribe against the ignorant and superstitious attitude of the Muslim women of India, without attempting to give any prescription for the malaise. He declared:

They have no knowledge of medicines, nutrition or apparel, and are tradition bound. This is a result of the ignorance which is widespread amongst the women of India, and because . . . of which the men of Hindustan have to spend their lives with savages . . .<sup>15</sup>

The tone of Sir Syed is unsympathetic, nor does he attempt to try to understand their condition in the context of the whole society. It is not surprising that he offers no suggestions in his articles on how to improve their condition, although implicit in all his discussions of women is the desperate need to educate them. Their education, he argued, must come later on, after the men had been educated.<sup>16</sup> He was an advocate of traditional education within the four walls of the house, in seclusion.<sup>17</sup>

The unsympathetic attitude of Sir Syed to the predicament of Muslim women as evident in his writings, was not shared by Hali, his contemporary, and this was a reflection of the changing times. Muslim intellectuals were becoming more sympathetic to the cause of women, and were willing to view them as victims of oppression, rather than, as Sir Syed had done, as if theirs was a self-created condition. Khwaja Altaf Hussain (Hali) was born in Panipat, in Eastern Punjab, and was essentially a poet, not a reformer or a social thinker. He had left home at the age of seventeen and spent about fifteen years in Delhi, in the circle of the famous poet Ghalib, and in the service of Nawab Shaifia. When both died, he moved to Lahore, and got a job with the Education Department revising translations of English into Urdu.<sup>18</sup> It was in the Punjab, while he was working in Lahore, that Hali wrote the *Majalis un Nisan* (Assemblies of Women) in 1874. The *Majalis* is about conversation amongst upper-middle-class ladies, using the language they spoke, and its focus is the need to educate women because they are at the centre of family life, and influence the formative years of children. The theme of the book was radical by the standards of the time, and it is not surprising that the Director of Public Instruction, Punjab, recommended it for a literary prize. Hali was given an award of Rs 400 for the book by the Viceroy, and even more important, it was adopted as a textbook in girls' schools in the Punjab and the United Provinces for many decades to come.

The *Majalis* was written in Lahore, long before Hali became acquainted with Sir Syed. It marks the beginning of his interest in the plight of women. What could have influenced him in this direction is difficult to guess, but maybe it was working with English texts, which made him aware of how different the role of western women was from their role and position in his own society. In 1905 he wrote the poem 'Chup ki Dad' for the reformist journal *Khatun*, which was published by Shaikh Abdullah from Aligarh. In this poem he voiced concern for the Indian Muslim women with such sensitivity

and eloquence that he makes Sir Syed look like a boor. It is likely that his attitude towards women was, to some extent, a reflection of changed times, for Hali was twenty years younger than Sir Syed. In 'Chup ki Dad' the poet shows an awareness of women's problems which is very modern, with little of the nineteenth century in it.

Hali, like many of his contemporaries, came under Sir Syed's influence, and he has been called the poet of the Aligarh movement.<sup>19</sup> It was only after he came to teach at the Anglo-Arabic College in Delhi, in 1875, that he came in contact with Sir Syed and developed as a thinker and soon became the poet of the Islamic Renaissance.<sup>20</sup> In his famous poem 'Musaddas-e-Hali', written in 1879, he invoked the memory of the glory of Islam when it was a world force.<sup>21</sup> After the 'Musaddas' he wrote 'Shikva-e-Hind' in 1887, and this was followed by two poems on the deplorable condition of women in India. He wrote 'Munajat-e-Beva' in 1886 and 'Chup ki Dad' in 1905. Some of his literary and social essays appeared in the *Tehzib-ul-Akhlaque* and the *Aligarh Institute Gazette*. He has been described as the 'foremost writer of the Aligarh School'.

'Chup ki Dad' was read out by Hali at a large meeting in Hyderabad, Deccan, in 1906, presided over by Sir Krishan Prasad, prime minister of Hyderabad State.<sup>22</sup> It reflected the mood of the times that Hali thought it fit to read the poem at such a large gathering. 'Chup ki Dad' or 'Homage to the Silent' is not just a poem eulogizing the nobleness of women who have to live in very oppressive conditions, but touches on many of the issues of the day confronting women. It is also a very good description of the nature of the role of women in the society at the time.

The first part of the poem describes the virtues of women, and how all that has been achieved by men has been derived from them.

Oh mothers, sisters, and daughters,  
The honor of the world  
Comes from you.  
Countries' populations,  
And the greatness of nations,  
Come from you.<sup>23</sup>

And their importance at the domestic level he describes thus:

Companions of your husbands,  
And comforters of your sons,  
Without you all homes are deserted;  
The blessings of the entire home  
Come from you.<sup>24</sup>

This is a glorification of women, though the modern-day feminist might not regard it as such. If this verse is compared to Sir Syed's reference to contemporary Muslim women as 'savages', then it is rather complimentary. Hali refers to women as 'companions', and not just as vehicles of procreation. There is social commentary also, when he says: 'When you arrive in the world, / You unwanted come'; as this strong preference for boys has not changed to this day, how bad the situation must have been at the turn of the century can only be guessed from current feelings. Sweets are distributed when a son is born, and people visit the parents of the new-born child to congratulate them, but neither of the two customs are observed if a baby girl is born. At best, it is regarded as a non-event, and at worst an unfortunate happening for the parents, deserving commiseration.<sup>25</sup> It is also very common for women to carry on bearing children till a boy is born. The woman is under tremendous pressure, and until she has a male child she is made to feel inadequate, especially by the husband and his family.

A section of the poem describes the role of the young girl in her parents' house first, and then after marriage, with her husband and his family. All households consisted of joint families at the time, which meant that the unmarried or single daughters and the sons, with their families if they were married, continued to live together under one roof in the parental home. Hali writes:

All day still, though a power  
 In your parents' home,  
 You remain a servant  
 From your childhood on.<sup>26</sup>  
 [ . . . ]  
 You're cooking, sewing, mending,  
 Every day.

Describing the girls of the family as a 'servant' might be a slight exaggeration, but given the fact that women were kept confined within the house and that education, even at home, was not widespread, how else could the girls be kept occupied except in doing the household chores? But the daughters might be indulged by the parents and not help out, like Akbari in Nazir Ahmed's novelette, *Mirat ul Uroos*. However, the common wisdom is that the girl must be trained in the parents' house to shoulder the responsibility of running her own house when she gets married. This training requires that she be made to do all the chores, including cooking and sewing.

He goes on to describe the life of the girl in the husband's house, and the need for her to ingratiate herself with her husband and his family at any cost. Hali captures the dilemma of a girl married off to a stranger, for, according

to the arranged marriages of the time, the question of the girl's seeing or meeting her prospective suitor did not arise, nor did she have any say in the matter.

Married before you knew  
 The meaning of the word.  
 Bound for a lifetime  
 By this straitening cord.  
 Married by your parents  
 Without any say,  
 Just as a criminal.

There could not have been a more scathing attack on the institution of arranged marriages. He describes the alienating and intimidating experience for a young girl, barely in her teens, of going to live with her in-laws, whom she hardly knew:

And when you reach your in-laws' house,  
 You find another situation;  
 As if, at a bound, you landed at another situation;  
 [ . . . ]  
 There you must endeavour  
 Lest others be distressed;  
 To never cause displeasure  
 You must always do your best.  
 Do not change your husband's views,  
 Nor disturb his father,  
 Lest his mother and his sister  
 Find you too great a bother.

Further on the author writes about the trials of child-bearing and child-rearing, which for the rest of the family is a matter of rejoicing:

After marriage, everyone  
 Wants children of you.  
 But once the Creator obliges,  
 What are you to do?  
 You're the one quarantined,  
 The one who endures pain.  
 You taste death, in order  
 That wealth to gain.

The writing of this poem coincided with the spread of the movement for the education of women, and one of its foremost promoters was the Begum



of Bhopal, Sultan Jahan. When Shaikh Abdullah and his wife started a girls' school in Aligarh in 1906, the Begum of Bhopal helped with some of its financing. She addressed the Muhammadan Educational Conference held in Delhi in 1911, clad in burqa and escorted by Sarojni Naidu and Surla Devi Chaudharani.<sup>27</sup> The courage of this action, at a time when shurafa women seldom stepped out, let alone address such a large gathering, where most of the audience consisted of men, cannot be minimized.

Hali shows how much he is in touch with the contemporary movement for educating women, for he says:

Even should a man of honour,  
 Love you your whole life through,  
 Still good or bad, men all agree  
 That this one thing is true:  
 As long as you are living,  
 Of knowledge you'll be deprived.  
 You'll quit this world as uninstructed,  
 As when you arrived.  
 In this way you'll stay passive,  
 And hidden out of sight.  
 [ . . . ]  
 That knowledge, which for men,  
 Holds the elixir of life,  
 Is considered, in your case,  
 As deadly as a knife.

It is a withering attack on the resistance of men to women's education, primarily because they are too insecure and prefer to see them illiterate and in a subordinate role. Implicit in the last stanza of the poem quoted above is the threat of rebellion, which the men fear would take place if the women were educated. But Hali encourages the women in their struggle saying that: 'The adventure of education / Is now within your reach'.

And then Hali begins to sound the note of rebellion, declaring:

Alas! The world repays  
 Your virtue by oppression.  
 Deprived of rights, in truth,  
 You endure untold transgression.  
 Often men were ready  
 For your assassination.

In the Indian context the concept of women's rights was new, and Hali's reference to it was a warning of what was yet to come. He warns that the days

of oppression for women are over, and the wrongs committed against women will be redressed soon. Hali conveys in the poem the feeling that a new era is dawning.

But the hour of justice approaches;  
The day of reckoning is near.  
The world must answer to the charges  
Of stealing your rights so dear.

Hali's powerful poem of 1905 is a far cry from *Majalis un Nisan* of 1874. While the former is an oblique criticism of lack of education amongst the shurafa Muslim women, the latter is militant, talking in terms of the usurpation of women's rights and the oppression of women, especially after marriage, when she goes to live with her in-laws. Hali very forcefully conveys the oppressive and stifling atmosphere in which she has to function when she goes to live with her husband's family. It would be difficult to find a more effective portrayal in Urdu literature of a young girl adjusting to living with an alien family and trying to ingratiate herself with her mother-in-law, sisters-in-law and the rest of the household. Hali shows a highly developed sensitivity to the plight of the shurafa women.

The focus of Urdu literature in the past had never been women. They might have featured as love-objects in relation to men, but nothing more. Deputy Nazir Ahmed's novels typified the Muslim culture of northern India. He was educated in Delhi, always considered the eastern frontier of the Punjab province, and in his novels, women emerged as the main subject matter. He was not calling attention to their plight as Hali had done, but lobbying for their education within the traditional set-up. His tone was moralistic, for he was a reformer who spun stories showing the benefits of education for women in her traditional role of mother and wife.

Nazir Ahmed (1836–1912) was born in the Bijnore district, and began work as a teacher in Punjab. Later on he rose to be a Deputy Collector of Settlements and a member of the Revenue Board.<sup>28</sup> He was very much a product of the new generation, who had been influenced by the British at the Delhi College, and consequently wrote in simple as opposed to flowery Urdu, mostly novelettes with a high moral content for women. He is considered the first Urdu novelist, and himself stated that the object of his novels was education. He said that when he looked for something that his daughters could read after they had finished the Holy Qoran, he could find nothing suitable. This was the inspiration for his novels such as *Miratul Uroos* and *Banat-un-Nash*.<sup>29</sup> Delhi College, where he was educated, was organized along traditional madrasah lines, although English was also taught there.<sup>30</sup> Since he spent the rest of his life in government service, he represents the

new generation of Muslims who were seeking some sort of compromise between the traditional sharif culture and the demands made on it by the British government in India. His novels are a good portrayal of what has been described by one author as the 'Kacahri milieu'.<sup>31</sup>

*Miratul Uroos*, and its sequel *Banat-un-Nash*, are basically the story of Asghari and how she conducts herself, first as a single woman, and then mostly after her marriage. Nazir Ahmed meant Asghari to be a role model for the women of his day. By contrast, Akbari, her elder sister, is held up as an ill-bred and untutored specimen of womanhood, who only brings discord and unhappiness wherever she goes. Describing Asghari while single and still living in her parents' home, Nazir Ahmed writes:

At a very young age she had read the Urdu translation of the Holy Qoran and had also studied various religious issues. She was also proficient in writing . . . She could sew all kinds of clothes and cook a wide variety of dishes. The whole neighbourhood was full of praise for her. The complete management of her parents' household was in her hands.<sup>32</sup>

When Asghari gets married and goes to live with her in-laws, she brings about changes for the better in the running of the household. Not only does the quality of the food improve, but she also discovers that the lady in charge of the kitchen has been siphoning off money while buying groceries for the household. However, for Nazir Ahmed, who was propagating the education of Indian Muslim women, it was not enough that Asghari should be an efficient housewife, she is portrayed as a crusader in the cause of education, for she starts giving lessons at home in order to educate the girls of the neighbourhood.

Nazir Ahmed's advocacy of the cause of women is subtle and gradual, but it is very much present. He reports one discussion that takes place between Asghari and one of her students that revolves around the fact that the crown of the empire rests on the head of a woman.

Safihan: Madam, is our ruler a woman?

Asghari: What is there to be surprised about?

Safihan: Why not? What can a woman do?

Asghari: She does what a king would do, administer the country.

Safihan: She must be just a nominal head, and the actual running of the country must be in the hands of men.

Asghari: They all serve the British Queen. Work and power is distributed amongst them, and they all carry out their tasks efficiently. It is the same under a king, he does not single-handedly administer the empire, he does it with the help of the same employees.

Safihan: I am unable to accept that a woman can be a ruler.

Asghari: Haven't you heard of the Begum of Bhopal?

Safihan: I have!

Asghari: It is the same. The Begum has a small sultanate, while Queen Victoria has a big sultanate. The way the Begum of Bhopal administers her little kingdom, Queen Victoria administers her large one.<sup>33</sup>

Asghari is shown as full of common sense, with a balanced and practical personality. She encourages her husband to find a job in order to alleviate some of the financial burden on his father. Interestingly enough, Nazir Ahmed portrays Asghari as much more dynamic than her husband, Mohammed Kamil. All the while that she is running a school at home, he is a gentleman at large, living off the income of his father, who is absent from home as he is employed in a distant province. There are subtle nuances in the way Nazir Ahmed makes Asghari relate to her husband. It does not matter for how long Asghari might have felt the need for her husband to find a job, she does not broach the subject, for she must not appear to be pushing him, or attempting to dominate him. It is only when he himself expresses an interest in working that she goes all out to encourage him.

Asghari was busy with her school, while Mohammed Kamil was getting fed-up with being unemployed. One day he said to Asghari, 'Now I am getting very restless, if you agree I will approach Tehsildar sahib [Asghari's father, who held what was then considered an influential post for Indians, in the government], and get a job through his influence.' After a thoughtful pause Asghari replied, 'It is very necessary for you to find work because as you can see, financially this household is being run with difficulty, your father is getting old, and it is appropriate that he should retire and that you should support him.'<sup>34</sup>

Asghari is also shown to possess more self-respect and awareness of societal norms than Mohammed Kamil, her husband. She dissuades him from using her father for procuring a job, saying:

I would not advise you to go to see my father. He will no doubt try to get you a job, and in all likelihood soon he will get you a well-paid job. But it is better to get a job on your own, rather than through somebody else, even though it might not pay so well . . . You would be obligated forever, and even though he might not say anything, relatives will talk, if not to our face, then certainly behind our backs, that Mohammed Kamil got his job through the influence of his father-in-law.<sup>35</sup>

She gives him very shrewd advice on exactly how to go about the task of finding a job, when, as he says, there are hundreds like him. When Mohammed Kamil gets a job and goes off to Sialkot, because his British boss gets transferred to Sialkot and offers to take him there with him on a promotion, he gets into bad company and starts to indulge in all the vices that a man from a sharif family is supposed to keep away from. When he stops writing home or sending money, Asghari is quick to realize that all is not well. She hands over the school to others and leaves Delhi to visit Kamil in Sialkot. Most probably this is her first experience of journey by train, and her first trip outside Delhi. When she informs an old lady, a relation, of her intention to travel, the lady responds, 'Nobody from our family has travelled abroad'. Asghari's reply is rational and modern in outlook: 'This tradition of not travelling such distances was there, because previously train travel did not exist, which made travelling for women very difficult. If, God willing, I get onto the train today, I will be in Sialkot the day after tomorrow. It is like going to Meerut.'<sup>36</sup>

Another dimension is added to Asghari's personality when she is portrayed as her husband's moral guide. Asghari stays on in Sialkot for two months, and weans Mohammed Kamil away from the bad company that he had been keeping. She persuades him against taking kickbacks, and lectures to him against the evils of corruption. Having brought Kamil back onto the straight path, she arranges for an older and unemployed cousin of Mohammed Kamil's to come and stay with him in Sialkot on a permanent basis. Her calculation is that the presence of an older, more mature and stable cousin would be likely to prevent a repeat of Mohammed Kamil's becoming wayward. Nazir Ahmed's famous heroine is a woman who basically runs the life of her husband, but does it with tact and discretion, rather than confrontation and aggression. She is shown to be wise and shrewd, practical in coping with mundane household matters. She is not content to remain just a housewife, and wanting to expand her sphere of activities, she opens a school at home. She is shown not to be tradition-bound in the conduct of her own life, which is reflected in her readiness to travel to what was considered, by standards of those times, as far-off lands. In her intellectual approach, too, as reflected in her discussion with her student about Queen Victoria, she comes across as someone who thinks that women are no less competent than men.

What is remarkable in this whole book, and its sequel, *Banat-un-Nash*, is Asghari's ability to accomplish all this while mainly confined within the four walls of her home. This heroine of Nazir Ahmed's novel is no passive wall-flower, seen only as a vehicle for reproduction and the continuation of the family line. She is a matriarch, a confidante of her father before marriage,

who after marriage takes charge of her new home. She administers the household with an eye for detail, takes under her wing her young sister-in-law, seeing to it that she gets the right kind of upbringing and education. Asghari comes across as a strong woman, resolute and bold, defying the prevalent stereotype of passive and sheltered women who lacked confidence and initiative because their whole lives were spent confined within their homes. Nazir Ahmed must have found the inspiration for such a character from such historical figures of Indian Muslim history as Nur Jehan or Razia Sultana.

The attitude of men towards women had been changing over time. Sir Syed had accepted that Indian Muslim women were backward; Hali wrote with utmost sensitivity about their predicament; and Nazir Ahmed in his novels propagated the idea of the new self-confident and emancipated woman, who could play a crucial role in the functioning of the family, if she had the right education and attitude. Neither Sir Syed nor Nazir Ahmed questioned the practice of purdah, and as for Hali, he talked of sati, the inhuman nature of marriage as it existed then, and the rights of women, but at no point did he touch the issue of purdah. Although it was not a major issue during Sir Syed's lifetime, as far back as the 1890s, he had argued against doing away with purdah and countered the anti-purdah lobby.

However, by the second decade of the twentieth century purdah had become a touchstone of the movement for the emancipation of women. Women were becoming activists in the movement for their own emancipation, and the battle-lines were being drawn for and against purdah, as practised in India. Sarojni Naidu's visit to Lahore in December 1917 is an example of this fast-spreading movement. Attending the session on women's education at the Islamic Education Conference, she gave a rousing speech on the need to liberate women from purdah. Such was the power of her oratory, and so effective her message, and that too coming from a lady who was not a Muslim herself, that the hall was packed out. It is interesting how powerfully she used the religious argument to move what must have been a primarily Muslim male audience.

Unlike Sir Syed, she put the responsibility for the Muslim women's condition squarely on the shoulders of the Muslim males of India. Her imagery of Muslim women as helpless captives and herself as their pleader was graphic and potent. By arguing that women had been deprived of rights that God had given them, she made the Muslim men appear as sinners:

I have come to speak from this platform as an advocate of my sisters who are imprisoned within the four walls of their homes and are helpless. The rights that I have come to demand for them, and which, in all probability,

my purdah observing Muslim sisters will support, are the rights that have been given to your mothers, sisters and daughters by God and his Prophet Mohammed, (peace be upon him), but which you have taken from them. I am asking for the return of these rights in the name of the Prophet.<sup>37</sup>

She then conjured up the memory of Muslim women's achievements in India in the past and in early Islamic history, and compared it to their present lowly condition. She drew attention to the fact that the women of other Muslim countries were not kept in such dire straits as the Indian Muslim women were, and therefore, religion could not be held responsible for their condition.

Recall the achievements of Muslim women in India, and at the time of early Islamic rule in the Middle East, and compare it with their present day condition. We can ignore history and just look at the present day condition of Muslim women in different Muslim countries like Turkey, Syria, Egypt, Morocco, Tunisia and compare it with that of Muslim women of India. Are they as ignorant, helpless and servile as you have made your women? Not in the least! . . . It is our contention that the rights that Islam has bestowed on women, no religion has given to this extent. Do you wish to deny them the rights that God has given them?<sup>38</sup>

She then took up the question of the education of women, and why men resisted it. She railed against their insecurities and criticized them for regarding women as only fit to be housewives, and not capable of doing anything higher. The criticism against education of women was that the girl who got a little education was unable to be a decent housewife, and no man would be willing to marry her, for she would not be willing to take care of her husband and children, nor would she be interested in sewing, cooking and other housework. Naidu questioned whether women had only been created to perform mundane activities, and spend their life in slavery:

Are the doors of education and knowledge, religion and politics closed to her? . . . Muslim brothers, you constantly bewail your fortune, and your past greatness and glory. It is not the fault of your fortune but it is due to the fact that you have forgotten the instructions of Islam, and it is the result of your oppression of your voiceless womenfolk. I have not come to recount the instances of your oppression of your women, but only to request you to give rights to your women that Islam has given them. Do you know what constitutes the wealth of a country? Not gold, silver nor precious stones, but the existence of well educated mothers. Our country is backward not because we do not have these precious stones and metals, but because we have become incapable of producing women of the caliber of Nur Jehan, Chand Bibi and Zeb-un-Nisa.<sup>39</sup>

Sarojini Naidu was exhorting the audience to do away with purdah as practised in the Indian sub-continent, and educate women, using the argument of religion and drawing on those periods of history, whether in India or in the Arab world, when women played a prominent role in the political and social life of their countries. Her arguments were powerful and far ahead of her times, for she questioned the perception of the traditional role of women, and that she was not considered fit to address the larger issues of existence, intellectual or political. Even by the present-day standards it would be considered a radical speech, and that too coming from a non-Muslim.

The fact that Sarojini Naidu had been invited all the way to Lahore to address a gathering at an Islamic Conference, when her views on the subject of education and purdah were well known, is revealing of the state of ferment and self-questioning on the part of the Muslims of the Punjab. A theme running throughout her speech, and in articles written during this period, is the reference to the backwardness of the Muslims in every sphere. Very often the intellectuals of this period used Islamic history and the injunctions of Islam to counter conservative and traditional views on social questions, especially those pertaining to women.

It is not surprising that the debate on purdah began to centre around the question as to what extent purdah was according to Shariat, the Muslim law, and what exactly were the Qoranic injunctions about it. It is obvious from Sir Syed's position on purdah that he felt the confinement of women within the home was not in accordance with any religious injunction, for he avoided invoking the authority of the Shariat on the issue. It was argued that the customary purdah, as opposed to the purdah according to the Shariat, was harmful to health and most uncomfortable. It is so impractical, it was argued, that the poor people could not observe it, for their women had to go out to work. Purdah, according to the Shariat, was moderate and therefore practical. It did not prevent women from going out of their houses, but only required men and women to keep their gaze lowered, and this applied to both men and women. If the faces of women were all covered up, why should there have been any instructions about the gaze being kept lowered?<sup>40</sup>

There was opposing argument also, proclaiming purdah to be a good thing. It was accepted that women in other Muslim countries were not confined to their homes, but the argument used for defending the practice in India was that since India was not an Islamic country, it was necessary to be extra careful in protecting Muslim women from the evils of the surrounding society. It was argued that granting of freedom to women was dangerous unless and until every member of the society followed the Shariat.<sup>41</sup>

However, the consensus developing among the more enlightened sections of the community was that women should be brought out of their



homes, though they must don the burqa.<sup>42</sup> It was pointed out that Hindu women went out for walks with their husbands or in a group, and there were no incidents. One author recommended that Muslim women should be liberated from confinement at home, but he also warned against the freedom of interaction with the opposite sex.<sup>43</sup> He opined that, once out of doors, the extent of the purdah observed should be a matter of each family's discretion, depending on what they were comfortable with.

The centrality of the debate on purdah in the women's emancipation movement can be seen from the fact that at the All-India Women's Conference held in March 1918 in Bhopal, which the Begum of Bhopal had organized, there was an extensive debate on purdah.<sup>44</sup> The resolution said that, 'this society is of the opinion, that for the education of women and the general welfare of society, the severity of the purdah observed should be modified, but not done away with. Muslim women, in particular, should only have to observe purdah to the extent required by their religion.' It is obvious from this resolution that the opinion was gaining ground that the kind of purdah observed by Muslim women in India far exceeded any demand that religion made on them.

Many of these articles on purdah tried to come to grips with the subtle meaning of the exact words used in the Qoran, while discussing what had come to be termed as purdah in India. It was pointed out that because Islam gave equality of the sexes, the instructions were for both the sexes, that they must not look at the other with lust.<sup>45</sup> This is rather an important point, constantly overlooked when purdah is under discussion, that these instructions were for males as well as for females. What the Qoran is discussing is cultural norms in male-female interaction, rather than describing the kind of apparel that should be donned by women, and whether the head should be covered or not. All this is really a question of interpretation. In an article by the owner/editor of *Tehzib*, the opinion was that strict observance of purdah was only compulsory on the prophets' wives, and even they went out of the house, but for the rest of the Muslim women only 'sattar', or some kind of covering for the sake of modesty, was compulsory.<sup>46</sup> Now 'sattar' is also required of men, especially while performing hajj, but what constitutes 'sattar' is again open to interpretation.

The degree of purdah varied from class to class, and from urban to rural areas of India. In contemporary rural Pakistan, it is the norm for the women not to venture out of the house without a chaddar (usually a white sheet which covers the head and wraps the upper part of the body), whilst in the cities the chaddar is an exception rather than the norm. Even this statement needs qualification, however, as single women of the lower middle class usually wear a chaddar when they venture out in the cities. The women of the

lower class do not bother with a chaddar either in the cities or the rural areas; a dopatta slightly covering the head serves the purpose.

The strictness with which purdah was observed has changed over time. In the Punjab it seems to have become more relaxed from about the second decade of this century. Jahanara Shahnawaz relates how on a trip to Calcutta with her family in December 1920, her father Mian Mohammed Shafi asked the womenfolk of his immediate family to discard the veil.<sup>47</sup> When the family returned to Lahore, the shedding of purdah created a big stir, and incurred public criticism. According to Shahnawaz, Muslim women slowly started to attend social gatherings with their husbands. The way that social customs were becoming more liberal and undergoing change from that time onwards becomes apparent in the interview that Begum Kishwar Abid Hussein gave to the author. Born in 1921 to a Lahore business magnate, Syed Maratab Ali, she married a large landowner of Jhang, in southern Punjab. She recalls that her mother did not observe purdah inside the house, either with male servants or with family friends. Purdah seems to have been considered essential if the women went to public places; then the burqa seems to have been the rule. There were no serious restrictions on the meeting of young girls and boys as long as they were related.<sup>48</sup> It would be rare, as is still the case in most households, for girls and boys to meet socially if there were no family links.

Begum Kishwar Abid Hussein recalls meeting her husband often, even before they got engaged. Syed Abid Hussein was studying at Aitchison College, and his first cousin Syed Mubarak Ali was married to Syed Maratab Ali's elder daughter, Soraya. Whenever the couple came to Lahore from Jhang, they would stay with Soraya's parents. Kishwar would go to visit her sister in Jhang, and there she would meet Abid. She recalls that once when she was twelve and visiting her sister in Jhang, she had a terrible cold and Abid advised her to come to see his mother who had a herbal cure. His mother gave her some warmed pods of gram to put on her nose, but unfortunately a pod went up one nostril and would not come out. She cannot recall whether it was Abid or his mother who helped her get the pod out with a tweezer. After the two got married, Syed Abid Hussein used to recall that it was then that he decided to get married to her. Here we have an example of a twelve-year-old girl meeting an eighteen-year-old quite freely (Syed Abid Hussein was six years older than Kishwar), and moving between the havelis of Syed Mubarak Ali and Syed Abid Hussein without much difficulty. Begum Abid Hussein recalls that purdah in Jhang was very strict, but it was not practised within the havelis of these first cousins, Mubarak Ali and Abid Hussein.

Begum Kishwar remembers the poet Allama Iqbal visiting her parents, and the children all sitting around whenever he came. Begum Syed Maratab

Ali was obviously not in strict seclusion, for she did not observe purdah in the presence of Iqbal. The burqa was certainly worn there, however, for Begum Kishwar Abid Hussein recalls visiting Calcutta with her husband in the 1940s, and when she got off the train, she was the only woman wearing a burqa; her husband told her to take it off immediately as she was so conspicuous in it.

By the second and third decade of this century the observance of purdah was relaxing in its severity, at least in the cities of Punjab. Girls of the shurafa were being sent to schools, and this trend would gradually increase. The concept of the women being educated within the confines of the home was beginning to die out with the generation of women like Kishwar Abid Hussein. Hers was the first generation that went to schools, not just in the Punjab, but I would venture to say even in the UP. If Kishwar Abid Hussein went to Sacred Heart School first, and then to Queen Mary's later, my mother, who is about the same age, also went to a convent school. The generation before that, my grandmother's and Kishwar Abid Hussain's mother's, did not set eyes on a school. Their education in Urdu and Persian was at home, as Sir Syed and Deputy Nazir Ahmed advocated. Going out of the home meant that the hold of the purdah was beginning to loosen up. It is important to realize that the first generation of élite shurafa women who were sent to school, went to English-medium schools, and thus became open to the influence of western culture. This led to diminishing the hold of purdah.

Dr Allama Iqbal, the great poet and philosopher, who wrote to rouse the Muslims from their slumber, and exhorted them to reclaim the heights of thought and action as in the early days of Islam, felt the need to address the question of women as well. He composed *Darb-i-Kalim* (The Rod of Moses) in 1934–5, and it was published in 1936.<sup>49</sup> It was the only collection of his poems devoted to topical social and political themes. They were short poems in Urdu, on various themes such as imperialism, socialism, art, and so on. Interestingly enough, there are nine nazms (short poems) on women.<sup>50</sup>

Nine short poems, when Iqbal has written so much, gives some indication of his lack of interest in the subject. What is pertinent is that he should feel the need to have a section in this anthology dealing with the issue of women. In these poems he discusses their education, emancipation and purdah, the last in extremely philosophical terms. It is because these issues were so much at the centre of all social questions then being hotly discussed that Iqbal must have felt it necessary to voice his opinions.

Two of the poems touch upon the issue of purdah. The first one is called 'Protection of Women'. In this short poem of exactly three verses, he argues

that only the men of the nation can act as protectors of their women, and that no education or coming out of purdah can safeguard the security of the women. Indirectly and subtly, Iqbal deals a blow to the cause of women's emancipation by declaring that unless the men undergo a change, there is no hope of their emancipation. The argument is that first men must find their 'khuddi' before the women can hope for any improvement in their status. He goes on to say that those nations that do not comprehend something as basic as this will soon see their decline. Right at the beginning of the section on women there is another poem entitled 'Purdah'. In this poem he says that he has seen the world undergo many a change, but no change in either husband or wife, both are in seclusion, and that 'the progeny of Adam' is still in purdah, as their ego (or khuddi as he calls it) has still not manifested itself. He equates Muslim men and women, so in other words there is no problem that is peculiar to women. These poems were written in the 1930s, when the Muslim women's question was at the forefront of the social issues being discussed, however marginal it might have been in the context of the Indian sub-continent's politics. The fact that Iqbal writes about it, but is dismissive, is ample proof that the women's question was topical. In this his position was similar to that of Sir Syed, who also said that once men were educated, women's education would follow, and that it had never been the other way round.

The Muslims of shurafa families of northern India had a highly developed culture. Since the shurafa Muslims of northern India were very much a part of the ruling class, no particular need was felt to question the cultural values on which the society was based. The strict seclusion in which the women were kept was considered to be at the heart of a shurafa family's izzat or honour. A basic distinction between a shurafa family and the not-so shurafa was that the latter's women were more accessible to men. The women of the 'kotha', literally meaning the roof, courtesans and dancing or 'nautch' girls (as the British referred to them), did not observe purdah except in public places. They were accessible to men who might be strangers, if only in performing songs, and sometimes the sons of the shurafa families were sent to them to learn social graces, including the art of reciting verses.

It is therefore not surprising that a man of Sir Syed Ahmed Khan's calibre, who was even willing to re-interpret Islam and earn the opprobrium of the mainstream Muslims, a man who was so radical and forward looking on so many issues, reacted violently when the institution of purdah was criticized. What Sir Syed and other intellectuals were quick to realize and accept was the lack of education among Muslim women. That they chose to separate the

issue of education from the strict seclusion of women is a reflection on how deeply they prized this cultural value.

Nazir Ahmed in his novels strongly advocates the idea of educating women, but only within the four walls of the house. He does not see any correlation at all between the lack of interest in education among women and their confinement at home. The awareness of the plight of women was increasing (there could not be a more eloquent depiction of their condition than in Hali's poem), and so was the opinion in favour of educating them. It was not till the second decade of the twentieth century that purdah itself came under fire. By then a feminist movement was developing, led by activists such as Sarojni Naidu and the Begum of Bhopal. Conferences were being organized just to discuss women's issues. Women's journals were instrumental in bringing about such activism. The nationalist movement, which was beginning to catch the hearts and minds of the people, was to give the feminist movement further impetus. This was not only because women came out to participate in the freedom struggle, but also because the men who were to become its leaders felt that, in order to be able to claim to be the future leaders of their country and community, they must be progressive in their views. They took pride in bringing the women of their families out of purdah, and so set the pace for the rest of the society to follow.

Punjab was changing, as was reflected in the élite's beginning to send their daughters to English-medium schools. This new generation of women who were being exposed to western education, culture and values were not willing to sit at home and procreate only. It is interesting that Kishwar Abid Hussein is conscious that she got married after sitting her matriculation at Queen Mary School, while some of her Hindu friends from the same school went onto study at Kinnaird College. Mian Mohammed Shafi, a leading lawyer and political leader of Lahore, also educated his daughter, Jahanara Shahnawaz, at the élite Queen Mary School. She went on to participate in national politics, and was one of the first women Muslim political leaders of the Punjab. It was this same first generation of women who went out to study in schools who later got involved in the nationalist struggle of India, and became political activists, shedding the remaining vestiges of purdah.

## 6 Political Activism

Political activism for Muslim women of the Punjab marked a new stage in their struggle for emancipation. From being passive spectators of national events from the seclusion of their homes, they emerged as major players in the events that shaped the future of their country. The Pakistan movement was critical in bringing about this transformation of the Muslim women of Punjab. The mullahs, who had traditionally placed obstacles in the advancement of Muslim women, found it difficult to object to the participation of women in a cause with strong religious overtones, a homeland for the Muslims of India. In Punjab, Muslim women's liberation from the traditional shackles of purdah came to be very closely linked to the struggle for Pakistan. The Quaid made a very deliberate effort to involve Muslim women and students in the movement for Pakistan, and this policy paid dividends in the major contribution that these two sections of society made in the achievement of Pakistan. However it was the women members of the Indian National Congress, most of whom were Christians or Hindus, who were the forerunners of women's participation in politics. They set the trend which the Muslim women followed.

Individual political activism of Indian women dates back to 1889, when ten women attended the fourth session of the Indian National Congress.<sup>1</sup> Many women participated in the popular movement against the partition of Bengal in 1905, although the movement was confined to Bengal and Hindus only. During the Home Rule agitation from 1914 to 1917, and with the entry of Annie Besant into Indian politics, women's participation in politics grew. Annie Besant was the first woman elected to be the President of the Indian National Congress in 1917. When she presided over the Congress session, she was flanked on the Congress platform by Sarojni Naidu and Bi Amman, the latter being the first Muslim woman to shed seclusion but not purdah, and participate in mass politics. The Non-Cooperation Movement launched by Gandhi in 1920 began to generate a following among the mass of women-folk and led to their increased political participation.

The first women's association was formed in 1917, and was called the Indian Women's Association.<sup>2</sup> Its aim was public service, and branches were formed in some of the major cities of India, but not Punjab. What might be termed political activity by Indian women occurred on the arrival of the Secretary of State for India, E. S. Montagu, although it was unplanned. The objective of the women's delegation in wanting to see Montagu was to lobby for education and social reforms, but the deputation was told that it could

only be received to discuss political subjects. It was only then that the Memorandum was expanded to include equal suffrage of women with men.<sup>3</sup> The deputation of women was led by Sarojni Naidu and had fourteen members, only one whom was Muslim, the wife of the poet from Aligarh, Hasrat Mohani. Next year the All-India Muslim League and the Congress both supported this demand. In 1919 when the Government of India Bill was introduced, women leaders, once again headed by Sarojni Naidu, presented their demand for franchise before the Joint Committee of both houses of parliament. The parliament decided to leave the matter of female franchise to provincial legislatures. By 1929 all the provinces, except Bihar and Orissa, had given women the right to vote, but with a property qualification.<sup>4</sup>

Shah Nawaz, a member of the Mian family of Lahore, who was elected to the Punjab Legislative Assembly in 1921, played an important role in securing franchise rights for women in Punjab. However the size of the electorate of women in Punjab remained almost negligible because of the property qualification, as most of the Punjabi women did not inherit property. Since the Muslims, especially from the rural areas, followed customary law, their women suffered from the handicap of not being able to inherit any property.<sup>5</sup>

The emergence of Muslim women from seclusion to participate in the rough and tumble of the politics of the Indian sub-continent dates back to the Khilafat movement. During the Balkan wars of 1911–24, the Muslims of India felt emotionally involved in the success of the Ottomans because their Caliph was the symbolic religious and political head of all the Muslims. The Khilafat movement was concerned with mobilizing Indian Muslims in order to persuade the British to retain the Caliphate, the temporal and spiritual power of the Caliph.<sup>6</sup> The movement acquired additional force by joining hands with Gandhi's first Non-Cooperation Movement, launched in August 1920. This broadened the scope of the movement, Hindus and Muslims struggling for independence side by side. New forms of organization and protest developed; students, lawyers and other civil groups came to boycott the government organizations that their professions required them to deal with.

It was in this environment of a mass popular movement that Muslim women stepped out of the seclusion of their homes. The Anjuman-e-Khuddam-e-Kaaba was founded in 1913 by the Ali brothers, Maulana Shaukat Ali and Maulana Mohammed Ali, and Maulana Abdul Bari of Firangi Mahal. The aim of this Anjuman was to collect funds for the defence of the holy places of Muslims from any kind of threat from Christian Europe, and in connection with this the first women's meetings were held in Delhi and Lucknow. These meetings were attended by the mother of the Ali brothers, her daughter-in-law, and wives of other Aligarh luminaries such as Hasrat Mohani, the poet,

Hakim Ajmal Khan and Dr M. A. Ansari. These were fund-raising meetings, supposedly for a strictly religious cause. This group of activists was also associated with the Aligarh University, and their activities were centered in UP.<sup>7</sup>

The formation of the Anjuman-e-Khuddam-e-Kaaba and the Kanpur Mosque incident in 1913 were landmarks in the history of Muslim women's emergence on the national political scene. The Muslims of Kanpur had opposed the municipality's plan to demolish the mosque's washing-place, and in the ensuing confrontation some Muslims were killed when the police fired. Eventually the Viceroy intervened and the Muslim demands were met. These were seen as religious causes, and it would have been impossible for the more conservative elements to oppose the involvement of women in movements which were led by ulama such as Maulana Abdul Bari of Firangi Mahal. Since it is the ulama who are regarded as the custodians of religious and social norms, there was no room for criticism. The meetings in which the women of the shurafa participated were strictly segregated, but such get-togethers for a political cause were unprecedented. They helped to liberate women from the confinement of their homes, and opened the windows of their minds to issues which were of concern to the Muslims of India. Whether it was through fund-raising, very often by donating their jewellery, or trying to reach out to a wider section of women, it gave them the confidence that they were influencing events and issues of national importance.

The Anjuman-e-Khawateen-e-Islam had branches all over the country, and the women of the Shafi family organized the one in Lahore. Three ladies of Lahore, Baji Rashida, Saeeda and Fatima Begum, daughter of Maulvi Mehboob Alam (the editor of the daily *Paisa Akhbar* and the women's fortnightly, *Sharif Bibi*), had approached Begum Shafi and asked her help in forming this organization, primarily concerned with the spread of education and social reform.<sup>8</sup> However, Punjab was not immune to the campaign for *svadeshi*, the use of only those goods that were made in India. In the weekly *Tehzib-e-Niswan* there were articles advocating that women should stop using anything imported, and should only use cloth made on a hand-loom, or *khaddi*. One author also asked the readers to collect funds for the *svadeshi* movement and contribute generously to it, for that and the boycott of all imported goods was the only way that women could contribute to the *svadeshi* movement.<sup>9</sup> She also pleaded in the article that women should launch a donation drive for the *svadeshi* movement. The same lady, writing seven months later, proudly proclaimed that women followed the instructions of their leaders and wore only *khaddar* on Eid day.<sup>10</sup> There was also a demonstration by the ladies of Lahore on 8 January 1922, which was led by the wife of Maulana Zafar Ali Khan.<sup>11</sup>



The chief catalyst in bringing Muslim women into politics was the Khilafat Movement. When the Ali brothers were arrested, their mother addressed the All-India Muslim League session of 1917 from behind purdah, and exhorted the people to carry on the mission of her sons.<sup>12</sup> She continued to address large gatherings from inside her burqa, an unprecedented step, for no Muslim woman before had addressed such mass gatherings attended by both men and women. While her sons languished in jail, Bi Amma was raising funds and organizing meetings and committees for the Khilafat movement. She was soon joined by other women, including her daughter-in-law Amjadi Bano.<sup>13</sup> Bi Amma died in 1924, but she had led the Muslim women of India out of their homes and into active participation in politics. Yet Punjab remained largely unaffected by it.

A Statutory Commission was formed in 1928 for the purpose of reviewing the reforms of 1919. It recommended that special qualifications be prescribed for women because too great a disparity existed between the voting strength of men and women.<sup>14</sup> The Government called a Round Table Conference in London in November 1930 to discuss constitutional reforms. Two women represented the women of India at this Conference, one was from Punjab, and the other from Madras. Jahanara Shahnawaz, who was the daughter of Mian Mohammed Shafi, a prominent Muslim leader from Lahore, made a well-received speech at the Round Table Conference about the need to improve the political status of women in India.<sup>15</sup> Only a few individual women, such as Jahanara Shahnawaz, had come to prominence in Indian politics as part of the wider movement for the emancipation and voting rights of women; the life of the majority of women remained unaffected. Most of the women's organizations and work continued to be restricted to social and educational issues, rather than the political field.

It was only through the Muslim League that the Muslim women of Punjab got involved in political activity on any significant scale. The political participation of Indian women, which had been going on since the second decade of the twentieth century, seemed to have bypassed Punjab. It was Madras, Bombay and Bengal which had provided the lead, and even UP had only followed later, during the Khilafat movement.

When the Quaid returned from his exile in London in 1934, and proceeded to organize the Muslim League, he must have been aware that the absence of women from the Muslim League – while they were present in the Congress – was a big handicap. During the Lucknow session of the Muslim League in October 1937, a women's section was formed with Begum Mohammed Ali as its President, but it remained dormant. Jahanara Shahnawaz pointed out at the meeting that a Punjab Provincial Women's League had existed since 1932.<sup>16</sup> It was at the Patna session in December 1938 that the Muslim League

gave serious recognition to the need to involve women in its political activity, and for this purpose formed an All-India Muslim Women's Sub-Committee. This Resolution was moved by Begum Habibullah and seconded by Begum Wasim.<sup>17</sup>

Whereas it is necessary to afford adequate opportunities to women for their development and growth in order to participate in the struggle for social, economic and political emancipation of the Muslim nation in India, this Session of the All India Muslim League resolves that an All India Muslim Women's Sub-Committee be formed of the following members, with powers to co-opt with the following objective in view:

- a) To organize provincial and district women's Sub-Committee under the Provincial and District Muslim Leagues.
- b) To enlist larger number of women to the membership of the Muslim League.
- c) To carry on intensive propaganda amongst the Muslim women throughout India in order to create in them a sense of greater political consciousness.
- d) To advise and guide them in all such matters as mainly rest on them for the uplift of the Muslim society.

Members were appointed from all provinces, and from the Punjab its members consisted of Begum Shahnawaz, Mrs Rashida Latif, Lady Jamal Khan and Lady Abdul Qadir. This Central Sub-Committee took on the task of organizing committees in the provinces. In Punjab, the women's wing of the Muslim League had existed since 1935. Lady Fazl-i-Hussain had been elected its President and Begum Qalandar Khan its General Secretary; later on Begum Shahnawaz took her place.<sup>18</sup> But it had confined its activities to social and educational work. After the Patna session of the Muslim League, this women's wing of the Punjab Muslim League decided to widen its activities. A drive to enlist more members was launched, and work was begun to form primary committees. However it was not until 1939 that this organization was affiliated to the Central Sub-Committee.<sup>19</sup> Gaiti Ara Bashir Ahmed said, in an interview, that it was at the Patna session that the resolution was passed for the formation of a women's committee, for which forty women were nominated from different provinces. She said that it was pointed out at Patna that women's participation in the Congress was very substantial, and that the Muslim League must follow suit.<sup>20</sup>

It was the first time that an Indian Muslim political leader had asked Muslim women to come and join in a political movement, and spread political

consciousness through each and every district, and recruit women as two-anna members. The result was that in a couple of years political consciousness spread to all classes and groups of women, and they joined the Pakistan movement.<sup>21</sup>

When the Unionist Party swept the elections in Punjab in 1937, Jahanara Shahnawaz was appointed Parliamentary Secretary in Sir Sikander Hayat's government to deal with the Education, Medical and Health Departments.<sup>22</sup> This was the first time that a woman had held such a high political office in the Punjab government, and it was a recognition of the increasing role that women were beginning to play in the politics of the province. A year earlier, in 1936, Sir Fazl-i Hussain had appointed five Secretaries to reorganize the Unionist Party in the five divisions of Punjab for the coming elections, and Jahanara Shahnawaz had been one of them.<sup>23</sup> It was, however, the Muslim League and its efforts to mobilize men and women for the cause of Pakistan, that led to their growing involvement in politics. The increasing activity of the women's wing of the Punjab Muslim League becomes apparent in the momentous year of the Pakistan Resolution. The women's section of the All-India Muslim League held its annual session at the Islamia College for Girls, Lahore, on 23 March 1940.<sup>24</sup> By this time the Islamia College for Girls had become a centre of political activity of the women's section of the Muslim League, under the dynamic and committed Muslim Leaguer, Fatima Begum, who was the Principal of Islamia College.<sup>25</sup>

At this annual session of the Women's Section of the Muslim League, Begum Hafeezuddin gave a militant keynote address. She called upon the nine million Muslims of the Indian sub-continent to unite under the flag of the Muslim League and show the opposition forces, like the Congress, that they were not afraid of anyone. She called for unity and the adoption of simple living, according to the tenets of Islam.<sup>26</sup> Two resolutions were passed at this session, one dealing with the Muslim League, and the other dealing with Muslim women's legal rights. The first resolution called upon Muslim women to rouse support for the Muslim League amongst all their women acquaintances, and to help organize sub-committees of the Party in both the towns and the rural areas. The second resolution called on the leaders of the Muslim League to help Muslim women acquire the rights that they had under the Shariat, and where necessary to legislate for that end.<sup>27</sup> Baji Rashida Latif, another Muslim woman who had emerged from Punjab and was a member of the Legislative Assembly, also spoke on the occasion and expressed the need for Muslim women to be given the rights which they had under Islamic law, but of which they had been deprived under the influence of the 'capitalists'.<sup>28</sup> In all probability, she was referring

to the large landlords who had managed to exclude the inheritance of property from the Shariat Act of 1937, as applied to the province of Punjab.

This was also a year of clashes between the police and the Khaksars, a party of Muslims organized along para-military lines, in which many a Khaksar was killed as a result of police firing. Demonstrations by the Khaksars followed and a dozen of them ended up in hospital.<sup>29</sup> The mounting hostility led to a demonstration by burqa-clad women in Bhatti Gate. The number was small, about ten, but it did create a sensation, for they shouted slogans, carried crow bars, and walked through the streets of the bazaars and then went into the Golden Mosque.<sup>30</sup> Most of these women were those whose close relatives had been killed in the clash with the police on 19 March 1940. A great crowd had assembled at Bhatti Gate to see these women, because a female demonstration was a novel experience. This, however, was not an isolated case of women's participation in the Khaksar movement. Sardar Akhter Begum had addressed an audience of twelve thousand on 20 February, at Rawalpindi, that included four hundred uniformed Khaksars. Akhter Begum had come all the way from Cawnpore, and the enormous jalsa, or public meeting, and the fact that a woman addressed a gathering in which a majority were men, testifies to the de-segregation of the sexes that the society was undergoing, and the confidence that women were acquiring through political activity.<sup>31</sup>

The Punjab Provincial Muslim Women's League had started to mobilize girls in schools and colleges by holding functions for the Party on their premises. One example of this was the organization of a function at the Jinnah Islamia High School at Mozang, Lahore, which Jinnah was invited to attend as the girls would present an address to him.<sup>32</sup> Again it was Fatima Begum who was behind the invitation to the Quaid by the Punjab Girl Students Federation to come to the Jinnah Islamia College.<sup>33</sup> Jinnah addressed the girls at the College and said:

It has now become crystal clear to the world that Indian Mussalmans are not a minority but are a nation and as a nation they want to set up their independent states in those territories where they are in an over whelming majority . . . I am glad to see that not only Muslim men but Muslim women and children also have understood the Pakistan scheme. No nation can make any progress without the co-operation of its women. If Muslim women support their men, as they did in the day of the Prophet of Islam, we should soon realize our goal.<sup>34</sup>

This speech by the Quaid seemed to sum up his attitude and policy, and hence that of the Muslim League under his leadership, towards women. He went on to say:

no nation is capable of remaining a strong nation, unless and until its men and women do not struggle together for the achievement of its goals.<sup>35</sup>

He maintained that there were two forces in the world, the pen and the sword, and that there was conflict between the two, but that there was a third force which was more potent than either of these, and that was women. 'It is women who guide men as to when it is suitable to use the pen or the sword.' Then he told the female audience he was addressing that they were faced by a great political movement, and asked them to participate in the struggle till it was crowned with success.<sup>36</sup> These were powerful and inspiring words from an important national leader to young college girls, who up to the time of the Pakistan Movement had been relegated to a secondary role in society. He went on to tell his audience that the Muslim League was very conscious of the need to have women participate in its struggle, and with that purpose in mind, it had formed an All-India Muslim Women's Central Committee at its annual conference in Patna. He declared that for the last fifteen months he had watched this Committee's progress, which had been considerable, despite the many obstacles it faced. He told his young audience that they were much luckier than their mothers' generation, because they would soon achieve freedom.

A few days later, at a function held in the Town Hall grounds in honour of the Quaid, a young student of the Lahore College for Women made a speech in which she exhorted the Muslim men of India to educate Muslim women so that they could take their rightful place alongside men for the achievement of Pakistan. This first-year student reminded the audience that Islamic history was replete with instances when Muslim women had fought the battles of Islam side by side with men, and said that the ideal of Pakistan would become a reality once the Muslim women were also involved in its struggle.<sup>37</sup>

The movement for Pakistan had spread to girls' schools and colleges, at least in the urban areas of Punjab, as the above examples show. Azra Khanum, the student who read the address at the reception in the Town Hall, was asking for the education of Muslim women and their rights. Her powerful oratory typified what the young girls and Muslim women were beginning to feel, that they were keen not only to be educated, but also to participate in the Pakistan movement as equal partners of men. Emancipation and liberation of women were seen as part and parcel of the Pakistan movement. *Mushairas*, or get-togethers, where poets read their poems, were organized by the women's branch of the Punjab Muslim League.

One such function in Lahore was attended by four hundred women. The theme of the *mushaira* was 'Pakistan and the Muslim League', and Lady

Shafi presided over it.<sup>38</sup> Once again, at the end of the meeting, the president of the mushaira moved a resolution expressing indignation at the usurpation by men of the rights that Islam had given to Muslim women, and it called for a movement to restore these rights.<sup>39</sup> The theme was the same as in Azra Khanum's speech. Small meetings were organized at the houses of different women members and activists of the Muslim League, where patriotic pro-Pakistan songs were sung, and general support whipped up for the cause of Pakistan.<sup>40</sup>

The branches of the women's section of the Punjab Muslim League were spreading throughout Punjab. In May 1943, a branch was opened in Lyallpur. Fatima Begum, the Principal of the Jinnah Islamia Girls' College, Lahore, was the moving spirit here also, and the premises used for this purpose were that of the school. Fatima Begum had been an inspector of schools in Bombay for the last ten years, but with the Pakistan movement gathering momentum, she had resigned her post and returned to Punjab. She had opened a college in her own house, and called it Jinnah College; the opening ceremony had been performed by the Quaid.<sup>41</sup> She was instrumental in opening a branch of the women's Muslim League in Murree in August 1944.<sup>42</sup>

By 1945 the Unionists had been considerably weakened and the Muslim League had accelerated its campaign, in which the women were playing a very prominent role in the Punjab. The political campaigning of the ladies had ceased to be restricted to Lahore and its drawing-rooms. The Punjab Provincial Muslim League's women's leadership had started to organize and campaign in the smaller cities of the Punjab. By the middle of March one group of ladies had completed the tour of Gujranwala, Gujrat, Jhelum, Rawalpindi, Amritsar and Lyallpur. Primary branches of the Muslim League were formed in these places, and the sub-committees consolidated.<sup>43</sup> This whirlwind tour ended with four or five meetings in various mohallas of Lahore. The aim of this exercise was to increase the membership of the League, in order to get them to attend the coming session of the All-India Muslim League in Lahore, at the end of March.<sup>44</sup>

A lady who emerged in the Muslim League politics of the Punjab at this time was Begum Tasadduque Hussain. She was nominated to the Working Committee of the Punjab Provincial Muslim League by the Nawab of Mamdot in 1944.<sup>45</sup> She had started out as a social worker, then played a prominent role in the Muslim League politics of Punjab in the 1940s, right up to the time of independence. With the formation of the Punjab Provincial Sub-Committee for women, she became its joint-secretary. She was active in opening primary schools for girls and setting up cottage industries in Lahore. In the provincial elections of 1946 she worked hard for the Party, and fought the election on the Muslim League ticket from inner Lahore.

It is interesting that the Muslim League membership and following in the province of Punjab, until October 1941, was poor. In ten districts of the province no organization existed at all. The total primary League membership for the province was only about 15 000. Ferozepore led with a membership of 3500, followed by Montgomery with 3200, and Lahore came third with 2000 members.<sup>46</sup> UP at this time had eight times the membership, while even Baluchistan had a thousand members more. It is much later, in 1944, that its membership drive and the expansion of its organization began to take root in the countryside, especially as the rural élite began to switch their allegiance from the Unionist Party to the Muslim League.<sup>47</sup> By 1945 the women's section of the Punjab Provincial Muslim League was making valiant efforts to establish primary Muslim Leagues in various towns of the Punjab, such as Amritsar, Rawalpindi, Jhelum, Gujranwala, Gujrat and Lyallpur.<sup>48</sup> Public meetings were held in Gujrat, Gujranwala and Jhelum by the women's section of the Punjab Muslim League. This particular drive was geared towards mobilizing the Muslim women supporters for the coming public meeting of the Muslim League in Lahore on 23 March, the anniversary of the Pakistan Resolution.<sup>49</sup>

Begum Shah Nawaz's sister, Begum Bashir Ahmed, had become the President of the Provincial Muslim League Women's Committee. As the Muslim League prepared for elections of 1946, divisional and district committees and convenors were appointed and placed under young women workers.<sup>50</sup> Such was the intensity of the work and mobilization of the Punjab Muslim League in preparation for the elections that, in the second week of January, seventy meetings of the Party (including the Women's Committee) were reported to have been held in the province. The students of Islamia College toured the districts, accompanied by local students and local Muslim Leaguers.<sup>51</sup> A student contingent had arrived from Aligarh to help in the election campaign, but they were not very effective because of the language problem.

As the campaigning for elections gathered momentum, maulvis and other religious elements were drawn in, and over a hundred meetings were held by the Muslim League before 12 February 1946.<sup>52</sup> Loyalty to Islam was invoked by the men and women who were involved in the electioneering campaign.<sup>53</sup> As polling day approached, Muslim League candidates were helped at public meetings and polling booths by students. Women's level of activity and participation can be gauged from the fact that in the last week before polling they held meetings in Simla, Amritsar, Gujranwala and Lahore. In Lahore, a women's meeting was held to assign women to various polling stations.<sup>54</sup>

The Muslim League celebrated 'Victory Day' on 11 January 1946, when they won all the Muslim seats to the Central Assembly. The Muslim League

flag was flown from houses, cars and tongas, and houses were illuminated. The Muslim League Students Federation organized a meeting of fifteen thousand at the Islamia College. While Mian Iftikharuddin and Raja Ghazanfar Ali toured Kasur and Jhelum respectively, Shaukat Hayat was in Ludhiana. A large women's meeting was held in Ludhiana, attended by women members from Lahore.<sup>55</sup> The Quaid seems to have realized the need to mobilize both the students and women for furthering the objectives of the Muslim League. According to one intelligence assessment, the zeal shown by the Muslim students from Islamia College and Aligarh far outshone any work done by Hindu or Sikh students in the Punjab.<sup>56</sup> The Quaid visited Lahore and left it on 18 January, after addressing large meetings organized by the MSF and the women's wing of the Muslim League. At the women's meeting he was escorted by two girls, who walked on either side of him with drawn swords.<sup>57</sup>

The Muslim League, Punjab, was jubilant at the election result, and it came as a surprise to everyone that it could win 75 seats. The Parliamentary Board of the Muslim League met, and negotiated on behalf of the Party with the Congress and the Akalis to form a coalition government. Of the ten members of the Parliamentary Board, one was a woman, Begum Shahnawaz. Meetings were held demanding the release of Captain Abdul Rashid of the RIN, and the women's section of the Muslim League also held meetings for this purpose in Gurgaon and Lahore.

Despite the Muslim League's having won a majority, the government was formed by a coalition of the Unionists, Congress and other smaller parties. The Muslim League responded militantly, which further raised the political temperature. At this juncture, the women's wing of the Punjab Muslim League took to organizing demonstrations. On 8 March, a meeting was held by the Party women at the house of Rashid Ali Khan that condemned the 'un-constitutional and unjust action of the Governor in attempting to impose a non-Muslim ministry on the Muslim majority province of Punjab'.<sup>58</sup> This meeting was followed by a peaceful demonstration of about 500 men and women on Queen's Road, in front of Malik Khizar Hayat's residence.<sup>59</sup>

The women all over Punjab were told to be prepared for the launching of a direct action programme. With this end in view, the organizers of the various districts and divisions held jalsas or public meetings. Baji Razia Sultana, organizing secretary Jullundur division, the general secretary city Muslim League, Jullundur, and secretary, Muslim National Guard, Jullundur, went to Ferozepore and addressed a public meeting, and told the women to be prepared for the direct action programme that the Muslim League was about to launch.<sup>60</sup> Before the elections could take place, in September 1946, the Quaid got an invitation from the *International Herald Tribune* to send a



representative of the Muslim League to the International Herald Tribune Forum to present the case of the Indian Muslims for a separate homeland.<sup>61</sup> The Quaid nominated M. A. H. Ispahani and Begum Shahnawaz to go to the USA and present the case for Pakistan there. Ispahani writes about the Quaid:

He told me that he had decided to appoint me as his representative, and would ask Begum Shahnawaz to accompany me to the U. S. A. to counteract the Hindu propaganda that the Muslims were reactionaries and their women were neither politically awake nor exercised any rights and, therefore, if Pakistan were founded, it would be an intolerant and theocratic State.<sup>62</sup>

Both the members of the delegation conducted the tour successfully, and according to Ispahani, 'the Begum, an experienced parliamentarian, made quite an impression on the audience with her fluent speeches.' At the Herald Tribune Forum, Ispahani's speech won great acclaim, and according to a newspaper report, the Americans claimed that it had given them a totally new perspective on the Indian situation.<sup>63</sup> They addressed public meetings in New York, and met the heads of the delegations to the UN from various countries, except from Russia.<sup>64</sup> At the Conference and during other public speaking engagements the two delegates of the Muslim League presented the case for two-nation theory to the American audience, stating that the only permanent solution to the problem was the division of India into Pakistan and Hindustan.<sup>65</sup> When Begum Shahnawaz returned to Lahore, she was given a rousing reception, and the high command of the Punjab Muslim League was there to receive her, armed with garlands.<sup>66</sup>

After the elections of 1946, the Punjab Assembly elected its quota of members to the Constituent Assembly. Begum Shahnawaz was elected from the Punjab, and Begum Shaista Ikramullah from Bengal. It seems that the women's section of the Muslim League had developed differences with other women's organizations, like the All-India Women's Conference and the Punjab Women's Conference. The Muslim women of the province were specially called upon in a resolution to stay 'aloof' from these organizations, until they changed their attitude towards Muslim women. In the same resolution they alleged that these organizations had crushed the rights of Muslim women.<sup>67</sup> At this particular meeting of the sub-committee of the Punjab Women's Muslim League, Lady Haroon presided. This meeting also passed a resolution in which it asked the government to pass the inheritance bill, which would result in the adoption of the Shariat as the supreme law of the land. And in case women should be appointed to the Lahore Corporation, the Muslim League women demanded that the Muslim League be represented.<sup>68</sup>

However, it was not till 1946 that the Muslim women of Punjab took to the streets, and began to participate in demonstrations and agitations. The Muslim League had very successfully mobilized support amongst the rural and urban Muslims of the Punjab in the elections of 1946, and even more importantly, had won over the large landlords and the pirs of Punjab.<sup>69</sup> The election results showed a resounding victory for the Muslim League, which won 75 of the 86 Muslim seats in an Assembly of 175. The Unionists were reduced to only 18 seats, although the Congress did well with 51 seats, all of which were Hindu. However, Glancy, the Governor, deprived the Muslim League of power by nailing together a coalition of the rest of the parties, with Khizr Hayat Tiwana as its Chief Minister. The Muslim League members and supporters felt cheated by the machinations of a government opposed to the Muslim League. This action led to the Muslim League joining the ranks of those involved in agitation. A procession consisting of men and women numbering almost five hundred, demonstrated outside Khizr's house. The demonstrators shouted anti-Khizr and anti-Glancy slogans for imposing a non-Muslim ministry over a Muslim majority province.<sup>70</sup> The girl students present were dressed in green dopattas. Before the demonstration, the ladies had held a meeting in which they had declared the formation of the Khizr government as unconstitutional.

A confrontation between the government and the Muslim League was triggered off when the Government declared the RSS and the Muslim League National Guard as unlawful. This was followed by simultaneous police raids on the offices of these organizations, and their leaders were arrested.<sup>71</sup> When the police party arrived at the office of the Muslim League National Guard, Mian Iftikharuddin, who was present there, offered passive resistance and did not let the police carry out a search of the premises. Soon he was joined by the rest of the leadership of the Punjab Muslim League, including Begum Shahnawaz, all offering passive resistance. Earlier, the police had raided the houses of salars of the Muslim League National Guard, Major Khurshid and Amir Hussain Shah. Some of the women leaders of the Punjab Muslim League had assembled at the residence of the Salar-i-Punjab, Syed Amir Hussain Shah, to offer passive resistance. They cast lots to decide which one of them would offer herself for arrest and Begum Kamaluddin of the Frontier won the opportunity.<sup>72</sup>

The political options of the Muslim League were very limited after being excluded from the government. It had little choice but to launch a civil disobedience movement. On 24 January 1947 there were two processions of Muslim women, one on Temple Road and another on Lawrence Road, the latter of about five hundred women. Both the processions were tear-gassed, and some of the girls from the Islamia College fainted in reaction to the tear-

gas, and had to be taken by ambulances to the hospital. The procession on Temple Road re-grouped after having been tear-gassed, and marched along the Mall to the Assembly Chambers, but the police stopped them from going to the main entrance. Fatima Begum, who had led the demonstration moving along the Lawrence Road, was slightly injured during the lathi charge on the Muslim women demonstrators.<sup>73</sup> Some girls who participated in the procession and defied the ban of the Punjab government, which had imposed the Public Safety Ordinance section 144, were arrested; among them were Nasira Siddiqui, Qamar Parveen, Begum Karim Dad and Mumtaz Shahnawaz, the daughter of Jahanara Shahnawaz. Sixteen members of the Legislative Assembly offered themselves for arrest, the first batch at the Assembly Chambers and the second batch at Mochi Gate. The agitation spread to other districts, where Muslim shopkeepers carried out hartals, processions and meetings to court arrest.<sup>74</sup>

The whole episode further embittered the Muslim supporters of the Muslim League, and editorials were written condemning the violence committed against a peaceful demonstration of Muslim women. It was considered appalling that women, who had newly emerged from seclusion, should become victims of lathi charges and tear-gas.<sup>75</sup> Despite the arrests and the editorials, the demonstrations and processions by League supporters continued. The women Leaguers' role in the agitation was unprecedented, not only for the Muslim women of Punjab, but also for the Muslim women of India. On 28 January 1947 a procession of veiled Muslim women was led by Lady Noon, the English wife of Sir Feroze Khan Noon, and Miss Zahida Hayat, the sister of Sardar Shaukat Hayat, and the daughter of the late Sir Sikander Hayat. Both these ladies were arrested near the Assembly Chambers, and so were the seven members of the Muslim League National Guard volunteers who had accompanied the procession.<sup>76</sup>

As a result of the violent reaction from the Muslims of Lahore and the adjoining districts to the arrest of their leaders, the government withdrew the notification under which the Muslim League National Guard and the RSS had been declared illegal on 28 January. The Muslim League raised its demand for the withdrawal of section 12 of the Punjab Public Safety Ordinance. The government refused to accede to this demand, and when the agitation continued, followed a policy of arresting the leaders of the movement but leaving the masses alone.<sup>77</sup> The Government had released on 27 January the eight leaders initially arrested in the raid on the Muslim League National Guard offices. But the behaviour of these leaders remained unchanged, and they were re-arrested on 31 January 1947. A government intelligence report acknowledged that, 'Women in some places have played a not inconsiderable part'.<sup>78</sup> The government, showing its vulnerability in the

face of mounting agitation, sent instructions to the press not to publish any news item which was critical of the Punjab Public Safety Ordinance. It even banned the daily *Dawn* from being sold or bought in Punjab.

By 15 February 1947, after three weeks, the agitation had increased, and the agitators began to interfere in the running of trains.<sup>79</sup> The rural areas began to be affected by it, and villagers were reported to be coming to towns to participate in the processions. There were incidents when processions tried to enter the Butchery area, and attempted hoisting the Muslim League flags from district courts and post offices. They successfully removed the Union Jack from the High Court building and put the Muslim League flag in its place temporarily.<sup>80</sup> It is obvious from these reports that the Muslim League had managed to mobilize street agitation as had never been seen before in the Punjab, at least not by Muslims.

The role of Muslim women in this civil disobedience movement was also unprecedented. Not only had they shed the seclusion of their homes, but they also were courting arrest. On 26 February the government and the Muslim League announced a compromise in order to bring the thirty-four days of agitation to an end.<sup>81</sup> But two days before the compromise was reached, the Muslim League celebrated the completion of a month of successful agitation. In Lahore, demonstrations and processions took place at the district courts and the Secretariat, and one evening procession numbered 100 000.<sup>82</sup> There were similar demonstrations in other parts of Punjab, Rohtak, Ambala, Gujrat, Gujranwala, Rawalpindi and Ludhiana. There was violence at Amritsar, and at Ludhiana the Bombay express was held up at a level crossing, and the crowd had to be dispersed with tear-gas.<sup>83</sup> Under the compromise reached between the Muslim League and the government, the ban on public meetings was removed, although that on processions was maintained. The disliked Public Safety Ordinance was removed, to be replaced by legislation that would be more acceptable to the opposition. The government also agreed to release all political prisoners, except those who had committed an offence under the Indian Penal Code.<sup>84</sup> As an immediate gesture of goodwill, the government issued orders for the release of the 1500 civil disobedience prisoners the same day.<sup>85</sup>

The League supporters regarded the compromise as their victory. In recognition of the success of the movement, Liaquat Ali Khan, the Secretary General of the Party, sent a telegram of congratulations to the President of the Punjab Muslim League, Nawab Iftikhar Hussain Mamdot, on the 'successful struggle for the restoration of civil liberties'. What is noteworthy is the recognition he gave to the contribution of Punjabi Muslim women to the agitation. He wrote, 'Muslim India is proud of the heroic and noble part which Muslim women have played in the struggle'.<sup>86</sup> When the Committee

of Action of the Punjab Muslim League met after the release of its members, it too congratulated the Muslims of Punjab on the successful conclusion of the civil disobedience struggle, but gave special recognition to the women's contribution to the whole campaign.

Above all we are proud of Muslim womanhood of the Punjab who have led the vanguard of our movement and whose heroism and courage will remain an abiding inspiration to all Muslims of India. Cowardice cannot breed in, and defeat cannot darken the hearths over which such heroines preside.<sup>87</sup>

Punjabi Muslim women had shown remarkable militancy and organizational abilities in the last couple of years of the Pakistan movement, prior to independence. They were also instrumental in mobilizing the women of the Frontier, the bastion of social conservatism, where segregation of the sexes and purdah is the norm to this day. As far back as October 1945, Lady Abdullah Haroon, the President of the All-India Zenana Muslim League, led a delegation of the Muslim ladies to the Frontier province. Six ladies accompanied her, including Fatima Begum of Lahore; Salma Tassaduq Hussain, Secretary, Punjab Zenana Muslim League and Begum Hakem, President, Bengal Muslim League.<sup>88</sup> When a meeting was organized in Peshawar under the auspices of the Zenana Muslim League, as many as a thousand women attended it. With Lady Haroon in the chair, Begum Fatima from Lahore presided over the function, while Salma Tassaduq, also from Lahore, was the main speaker. Salma Tassaduq criticized the Congress, extolled the Muslim League and the Quaid, and explained the cause for Pakistan to the audience, who contributed Rs 800 to the Muslim League fund.<sup>89</sup>

By early 1947 the Pakistan movement had gained popularity at the mass level. An intelligence report, quoting the *Dawn* newspaper, said that a thousand women clad in burqa attended the annual session of the Frontier women's Provincial Muslim League held in Peshawar on 2 February 1947. Begum Aslam, who spoke on the occasion, appealed to the Frontier women to take a lesson from the 'brave women of the Punjab'.<sup>90</sup> She said that the events in Punjab had opened their eyes and shown that the League and its supporters were capable of making sacrifices, and thousands had gone to jail for the cause. In April, parties of women Leaguers from Punjab were going in groups to the Frontier. The Frontier women's Sub-Committee had asked for assistance from the Punjab Provincial Women's Muslim League Sub-Committee.<sup>91</sup> Mrs Kamaluddin was one of the two Punjabi women who toured Kohat and delivered a speech 'to the local female agitators' from a loudspeaker at the Muslim League office in May 1947.<sup>92</sup> According to one report, she had been removed from the Frontier province on more than one occasion in the past.<sup>93</sup>

As the date of the referendum approached, parties of women were formed to tour the districts of Mardan, Hazara and Kohat.<sup>94</sup> Muslim League women from Punjab and Peshawar were reported to have addressed meetings of women in Kohat city, Jangal Khel, Ustarzai and Hangu, in the month of June. Mumtaz Shahnawaz, the daughter of Jahanara Shahnawaz, addressed a meeting in Mardan in May. Young and radical, she is reported to have reprimanded the men of Mardan for not allowing the women of Mardan to start agitation.<sup>95</sup> Amongst the prominent Punjabi women who were part of the groups formed to tour the Frontier Province from village to village for propaganda purposes, were Salma Tassaduq, Jahanara Shahnawaz, and Begum Ghulam Fatima.<sup>96</sup> When a large public meeting was held in Mohammed Ali Park in June, three women spoke from behind a curtain in favour of Pakistan.<sup>97</sup>

Muslim women had lagged behind Hindu women in abandoning seclusion and purdah to participate in politics. Hindu women from Madras, Bombay and Bengal had taken the lead. Sarojni Naidu was but one prominent example of the newly emerging Hindu womanhood, but there were many others, some of whom were Parsi. Swarnakumari Devi, sister of Rabindranath Tagore, started a Ladies Association as far back as 1886, and was one of the ten ladies who attended the fourth session of the Congress in 1889. Another lady who accompanied her to the session was Kadambini Ganguli, a Calcutta University graduate and the first woman doctor in India.

Muslim women of UP became active during the Balkan wars, and their political activity reached its climax during the Khilafat movement. By then the Hindu women were out on a mass scale in Gandhi's non-cooperation movement. Bi Amman toured Punjab during the Khilafat movement, and although by then social and educational work had started amongst the Punjabi Muslim women, they did not emerge in any significant numbers on the political scene till the end of the 1930s. It was the decision taken at the Patna Muslim League annual session to form a women's section of the Muslim League that was a turning point in the history of Punjabi women's political participation. The Quaid stated, on more than one occasion, that without the education and participation of women, the Muslim nation would not be able to progress. With that as his fundamental belief, he involved women and mobilized them for the Pakistan Movement, and they eventually came out in thousands.

The Pakistan Movement had the same advantage as the Khilafat Movement: it was being fought in the name of Islam and Muslims, so for the conservative elements to object to women participating in the 'jihad' for

Pakistan could itself be dubbed as an anti-Islamic move. The small band of Punjabi women, such as those from the Mian family of Baghbanpura (Jahanara Shahnawaz, Mrs Gaiti Ara Bashir Ahmed, Mrs Shafi), who had shed purdah and emerged on the social, cultural and eventually political scene in the 1920s, were joined by an increasing number of girl students two decades later. Newspaper reports testify to the participation of girl students of schools and colleges from the different cities of Punjab in meetings and demonstrations. The educational institutions, especially the Islamia Colleges in various cities, had become the hotbed of young Muslim League supporters and activists.

A generation of young Punjabi Muslim women had been catapulted into a political movement which was to give birth to a new country called Pakistan. Participation in street demonstrations and agitations, and the experience of being arrested and taken to jail, had torn asunder the barriers of seclusion and purdah behind which they had been confined for centuries. The heroine of the day was the girl who climbed the Punjab Secretariat building and hoisted the Pakistani flag, not the woman who stayed indoors, a passive spectator of the events shaping the future of the country. The penultimate expression of the confidence and liberation that the Punjabi Muslim women were acquiring during the movement were the trips they made to the Frontier Province to mobilize women there in support of the Pakistan Movement. In the home of extreme orthodoxy and conservatism vis-à-vis women, even to this day, tremendous courage was required to tour and address gatherings, mostly of women, but sometimes even non-segregated. As the referendum approached, Muslim League women from all over, but especially Punjab, held meetings the length and breadth of the Frontier Province. Even the young Mumtaz Shahnawaz is reported in the CID files to have toured the province and exhorted the women to support the cause of Pakistan.

The role of the Quaid was critical in the emergence of Muslim women from strict seclusion during the Pakistan Movement. His encouragement to women by going to their colleges and attending their functions, extolling the role of women in Islamic history, and repeating again and again that no progress for the Muslim nation was possible without its women becoming equal partners of men in achieving the goal of nationhood, was what made the difference. When he sent Jahanara Shahnawaz with M. A. H. Ispahani to the USA to present the Muslim League point of view before the International Herald Tribune Forum, it was an expression of how concerned he was that the image of the country he was struggling for, should be that of a progressive and not an obscurantist state. That individual leaders can make all the difference in a country and society in a formative phase is amply born out

by the experience of all Pakistani women under the Zia rule, when women's social and legal status regressed a few decades. What might have been a gradual process of emancipation of Muslim women – and even that is not an inexorable process – was accelerated by the Pakistan Movement, acting as a catalyst.



# Conclusion

The shurafa Muslim women of Punjab underwent a rapid change in their status over three-quarters of a century, from 1872 to 1947. When the British in Punjab took the decision, in 1872, to adopt customary law as the personal law of the province, the rights of the Muslim women were frozen in time. One objection to adopting customs as law was that customs were not able to evolve, once they were made into law. For Muslim women this decision did not bode well, for under Muslim religious law, the Shariat, they had incomparably greater rights than the customs of Punjab allowed, including the right to inherit property and the right of divorce. Since Shariat was the personal law of Muslims in the rest of India, Muslim women in Punjab had fewer rights than those in other provinces. Over more than a century later, it is still quite common amongst Punjabi Muslims for daughters not to inherit property, and for the sons to inherit it all.

The second half of the nineteenth century was a period of reform movements in the Punjab. Christian missionaries were successfully converting people of the more oppressed classes, and Muslims and Hindus both responded to what they considered to be a new threat. One of the main objects of missionary criticism was the treatment and position of women. It was from this milieu that writers such as Nazir Ahmed (1836–1912), Hali (1837–1914) and Sayyid Mumtaz Ali emerged. Nazir Ahmed called for Muslim women's education; Hali wrote about their oppression; while Mumtaz Ali and Mehboob Alam brought out women's journals from Lahore in the 1890s, and these became a focus for all discourse on the emancipation of Muslim women. This new generation of Muslim thinkers symbolized a break from Sir Syed Ahmed Khan, who had categorically declared that the issue of Muslim women's education was secondary to that of Muslim men, and would follow once that of the Muslim men had been improved.

These writers created an intellectual climate which made Muslim women's emancipation central to the contemporary debate and discussion on social issues. Male writers were the instruments of change at the time, as there was no significant presence of Muslim women writers in late nineteenth-century Punjab. It was well into the twentieth century before Muslim women writers began to emerge, and the women's journals provided a useful platform.

Education and the institution of purdah were the two issues around which all discourse on the emancipation of Muslim women in Punjab was centred. The more conservative reformers, such as the novelist Nazir Ahmed,

although they wrote about the need to educate Muslim women, did not touch the issue of purdah. It was too sensitive an issue, and too deeply embedded in the notion of sharafat, which distinguished respectable Muslim women from those of easy virtue. Hali had obliquely criticized the nature of purdah practised by Muslim women by likening their condition to that of caged birds, in his poem 'Chup ki Dad'. It is not surprising that his poem was read at a big meeting in Hyderabad. It was much later, in the second decade of the twentieth century, that there were more open discussions on purdah, mainly by women, in the pages of the weekly *Tehzib-e-Niswan*. It was around this time that meetings were organized by Muslim women's groups, and at one such meeting in Lahore a resolution was passed against polygamy, triggering a chorus of attacks in the press against the resolution and the women who had moved it. The Punjabi Muslim women who were active in Muslim women's organizations were a new generation who had been to government schools, and had been exposed to western education. The women from the Mian family of Baghbanpura were the most active in all these organizations. Mian Shafi, the prominent political leader, made the women of his family shed purdah in 1920, and was criticized for it. Begum Shahnawaz, the daughter of Mian Shafi, represented the Muslim women's cause at the Round Table Conference in 1930. It was this generation of women who set the pace for the emancipation of Punjabi Muslim women.

In this process of change, Punjabi Muslim women were helped by the legislation of the British government in India. The Child Marriage Act of 1929 had originally been intended for Hindus, but soon it had become obvious that Muslims were also the victims of child marriage, and so people like Mian Shahnawaz became active in getting it passed. The Shariat Act was passed as late as 1937, and it was intended to give Muslim women the right to inherit property, but since the landlord class of Punjab was opposed to it, the Act was passed after agriculture had been made into a provincial subject, so that it would not apply to inheritance of land by daughters.

There were two instances in modern Indian history when Muslim women came out of their homes to participate in a political movement, and on both occasions their emergence on the political scene could not be opposed or criticized by the orthodox religious elements, because on both occasions they were working for what were considered to be Islamic causes. The first such occasion was in northern India, during the Khilafat Movement of the 1920s. Bi Amman, the mother of Maulana Shaukat Ali and Maulana Mohammed Ali, began to participate in the Khilafat Movement and even addressed public meetings from behind the purdah of a sheet, after her sons had been put in jail. Following her example, other Muslim women got involved in the movement, although they did not address public meetings.

Bi Amman toured Punjab and addressed women's meetings, and so broke the taboo on politics as the preserve of Muslim men. In the 1940s, Quaid-i-Azam followed a deliberate policy of getting Muslim women to participate in the Pakistan Movement and created a women's wing of the Muslim League. He visited girls' schools and colleges, and addressed them. This policy paid dividends, as school and college girls from Punjab played a major role in popularizing the movement, and they showed a militancy unheard of from the Muslim women of Punjab. The papers of the period give rousing accounts of Muslim women's processions being tear-gassed, women climbing the Secretariat building to hoist the Pakistan flag, and touring such remote and conservative parts of the region as the North-West Frontier Province, to organize the Party or to mobilize people in support of the Muslim League. Some of them carried out all these activities while wearing the burqa, and some with their heads covered with a dopatta, but what mattered was that Muslim women were out of the confinement of their homes and were participating in shaping the future of their country, as partners of Muslim men. Since the cry of the Movement was often, 'Islam in danger', it became very difficult for the orthodox to oppose Muslim women's emergence on the city streets of Punjab.

The change in Muslim women's rights and status in Punjab had received a major set-back as a result of the adoption of customary law, but occasional legislation by the British government of India, introduction of western education through schools and colleges for girls, and participation in political movements, all helped Punjabi Muslim women to emerge from their homes as partners of men in shaping the future of their newly emerging country. It was the Muslim reformers, writers and poets at the turn of the century, however, who created an intellectual climate in which the emancipation of Muslim women was made central to any regeneration of the Muslim nation as a whole.

# Appendix A

## MUSLIM PERSONAL LAW SHARIAT APPLICATION ACT, 1937<sup>1</sup>

### **Statement of Objects and Reasons**

For several years past it has been the cherished desire of the Muslims of British India that Customary Law should in no case take the place of Muslim Personal Law. The matter has been repeatedly agitated in the press as well as on the platform. The *Jamiat-ul-Ulema-i-Hind*, the greatest Moslem religious body has supported the demand and invited the attention of all concerned to the urgent necessity of introducing a measure to this effect. Customary Law is a misnomer inasmuch as it has not any sound basis to stand upon and is very much liable to frequent changes and cannot be expected to attain at any time in the future that certainty and definiteness which must be the characteristic of all laws. The status of Muslim women under the so-called Customary Law is simply disgraceful. All the Muslim Women Organizations have therefore condemned the Customary Law as it adversely affects their rights. They demand that the Muslim Personal Law (*Shariat*) should be made applicable to them. The introduction of Muslim Personal Law will automatically raise them to the position to which they are naturally entitled. In addition to this the present measure, if enacted, would have very salutary effect on society because it would ensure certainty and definiteness in the mutual rights and obligations of the public. Muslim Personal Law (*Shariat*) exists in the form of a veritable code and is too well known to admit of any doubt or to entail any great labor in the shape of research, which is the chief feature of Customary Law.

H. M. ABDULLAH.  
New Delhi;  
*The 27th March, 1935.*

# Appendix B

LEGISLATIVE ASSEMBLY PROCEEDINGS,  
9TH SEPTEMBER, 1937<sup>2</sup>

**Mr H. M. Abdullah** (West Central Punjab: Muhammadan): Sir, I beg to move:

“That the Bill to make provision for the application of the Moslem Personal Law (Shariat) to Moslems in British India, as reported by the Select Committee, be taken into consideration.”

The object of the Bill, as the House is already aware, is to replace the customary law by the Shariat law in certain matters where the parties to a dispute are Muslims. By doing so, it also helps the weaker sex as it enables women to succeed to the ancestral property and to claim dissolution of marriage on certain grounds. After explaining the object of the Bill briefly, it gives me great pleasure to say that the Bill has met with a unanimous support from the Select Committee except in one or two points. Objection has been taken to the words “or Law” in clause 2 of the Bill by Messrs Mudie, Muhammad Azhar Ali and Sir Muhammad Yamin Khan in their minutes of dissent. As there is an amendment on the agenda for the omission of these words, I shall deal with it when it is moved. Meanwhile, I would confine my remarks to the modifications suggested by the Select Committee. The main changes made by it are two, one relating to the exclusion of the agricultural land from the purview of the Bill, and the other concerning the amplification of the word “divorce”. As succession to agricultural land is an exclusively provincial subject under the Government of India Act, 1935, it had, much against my wish, to be excluded from the Bill. Having regard to the different forms of dissolution of marriage recognised by the Shariat, it was considered necessary to provide for all of them. In order to implement the provisions in this respect, a new clause 3 has been inserted in the Bill empowering the District Judge to grant dissolution of marriage on petition of a married Muslim woman on certain grounds. These changes have been introduced in the interest of the females who, in such matters, are at present at the mercy of their husbands.

I am sure that these wholesome changes will be supported by the House. In addition to the above, the Select Committee have made a few other amendments which are fully explained in the report, and I need not take the time of the House in dilating upon them. I hope that the Bill in its present form will meet with the approval of the whole House.

Sir, I move.

**Mr Deputy President** (Mr Akhil Chandra Dattas): Motion moved:

“That the Bill to make provision for the application of the Moslem Personal Law (Shariat) to Moslems in British India, as reported by the Select Committee, be taken into consideration.”

**Mr Abdul Qaiyum** (North-West Frontier Province: General): Sir, I am in sympathy with the objects which this very useful Bill aims at. There is a great awakening among the Muslim masses, and they are terribly conscious of their wretched condition socially, politically and economically. There is a desire in the

community for an advance in all these directions. The feelings of the Muslim community have been expressed in public meetings throughout the length and breadth of this country. This feeling, I have great pleasure in stating, is not merely confined to males but it has spread to the females also, and for the first time the Muslim women in India have given expression to their strong feelings against the dead hand of customary law which has reduced them into the position of chattels. Sir, these feelings have been expressed by various organisations of Muslim women throughout India. A representative body of Muslim Ulema like the Jamait-ul-Ulemai-Hind has also expressed its sympathy with the objects of this Bill. Sir, there is something in the word *Shariat*, – may be it is Arabic, – which gives a sort of fright to some of my Honourable friends, but I think if they try to read the Muhammadan Law on the point, especially on the point of succession, they will realise that this Bill was long overdue and that it is a step in the right direction. People have no idea of what terrible conditions the Muslim women have had to endure in my own Province: I can say that whenever a Muslim died, at least before the Frontier Shariat Law was enacted in the North-West Frontier Province, his daughter, his sister and his wife all used to be thrown into the street, and the reversioner in the tenth degree would come round and collar all his property. I think that the conscience of all those who believe in progress, social, political and economic will revolt against such practice and once people realise that this Bill is primarily intended to improve the status of women and to confer upon them benefits which are lawfully their due under the Muhammadan law, then they will gladly support this measure.

‘Custom’ is a very indefinite term. I know it as a lawyer that in my Province whenever a question of custom used to crop up it used to involve any amount of research work, lawyers used to indulge in research work to find out cases, look up small books on customary law and it was found that the custom varied from tribe to tribe, from village to village and it has been held, by the High Court in our Province before the Shariat Act came into force, that custom varied from one part of the village to the other. The position was so uncertain that people had to spend so much money on litigation that by the time litigation came to an end the property for which people were fighting would disappear. It was with a view to put an end to this uncertainty that people in the Frontier Province pressed for an Act which was subsequently passed into law.

I have only one thing to say. Personally I want the Muslims in India in matters affecting them to follow the personal law of the Muslims as far as they can. I want them to move in this direction because it is a thing which is going to help the Muslims and because the Muslims form a very important minority community in this country – they are 80 millions – all well-wishers of this country will agree with me that if it enhances the states of Muslims, if it brings the much needed relief to the Muslim women, it will be a good thing for the cause of the Indian nation. Therefore, in our Province an Act was passed which goes much further than this particular Bill which is now under discussion before this House. It is a very well-known fact that under the new Government of India Act, agricultural land and waqfs and religious trusts are provincial subjects and that this Honourable House cannot legislate about matters which are now on the provincial legislative list. The Act which we have in the Frontier Province, Act VI of 1935, goes much further than this Bill because it includes agricultural land and religious trusts. Therefore, I have tabled an amendment that this particular Bill – though I heartily agree with the principles of

the Bill – when enacted into law, should not be extended to our Province. If it is so extended, it would mean that the people of the Frontier Province would be taking a step backward and not forwards. It is well-known fact and it is laid down in the Government of India Act, Section 107, that where a Federal Law comes into conflict with a Provincial Law and even if the Federal Law has been passed after the Provincial Law, then to that extent it over-rides the Provincial law and the Provincial Law becomes null and void. Therefore, my submission is that the intention with which I tabled my amendment was not with any idea of opposing the object of this Bill, but my reason for moving this amendment is that this Bill does not go as far as we wish to go – at least in one Province, namely, the North-West Frontier Province. I submit this is a measure which has been long overdue. I have known cases where a widow who was enjoying life estate – and whose reversioners were waiting for her death – did not die but happened to have a very long life. There have been cases in the North-West Frontier Province where people have taken the law into their own hands and in order to get the property they have murdered the widow. I can cite other cases before this Honourable House. There have been cases which I have come across in my legal and professional career where, when a man dies leaving a wife who by customary law has to enjoy the property till her death or remarriage, certain reversioners come forward and bring a suit to declare that the widow had married one of the reversioners with a view to proving that she was no longer a widow and with a view to terminate her life estate. There have been numerous cases where families have been ruined, murderers and stabbings have taken place because the dead hand of customary law stood in the way of the reversioners who were anxious to get what they could not get and in order to deprive the poor widow, false cases have been trumped up that she had remarried. There have been many other illegal tricks resorted to by people with a view to get hold of the property. I submit, Sir, that the dead hand of customary law must be removed. We are living in an age in which very important changes are taking place. After all this customary law is a thing of the past. When many other things are going the way of all flesh, when even systems of Government have to change, when even mighty Empires have disappeared, when we see signs of softening even in the hearts of the Government of India, when we have got popular Congress Governments in seven Provinces – a thing which nobody would have believed six months ago or one year ago. I submit that it is high time that we got rid of this dead hand of custom. After all custom is a horrible thing as far as this particular matter is concerned, and by endorsing the principles of this Bill we would be doing justice to millions of Indian women who profess Muslim faith. I hope, Sir, the day is not far off when other communities will also bring similar measures and when in India women and men will be treated equally in the eyes of law in the matter of property, political rights, social rights and in all other respects. I have, therefore, great pleasure in supporting the principles of this Bill.

**Sir Muhammad Yamin Khan** (Agra Division: Muhammadan Rural): Sir, fortunately in my province we have got no customary law, and, in my province, the Muslims are guided by the Muslim personal law: Therefore, I do not stand in the position in which the people coming from the Punjab or the N.W.F.P. do.

**An Honourable Member:** What about special Magistrates in your province?

**Sir Muhammad Yamin Khan:** We have got special magistrates. I do not want to go into the question as to what they are for. That is not the point. That is the happy position in which the Muslims of my province are. Here, as a Mussalman, I am not going to be affected by the enactment of this law, but the people to be

affected are the people of the Punjab and Bombay and some portions of Madras. The particular point involved in this Bill is about inheritance. More than 1350 years ago the law was given by the Prophet of Islam by which Muslim women enjoyed rights denied to women of any other country then. It was a great revolution in the existing law and justice was done to a sex which had not much voice at the time. That law gave the women a free hand to possess and transfer property and deal with it in any manner they liked. Even married women became full owners of the property. This law was not enjoyed by women in Europe even so late as 1870. And now in spite of this law, woman is being deprived under custom of her legitimate rights which she would otherwise enjoy. Once a man accepts Islam he cannot say that he is not going to allow a woman of his family to enjoy the privileges given to her. Customary law is the outcome of a custom made by men who looked to their own self-interest and they were not safeguarding the rights of women. Therefore, the party really affected had no voice up till now and the women in the Punjab have been suffering, because the men who owned certain kind of property did not like that the property should pass from their family through the women to the other family. But that is against the Muslim idea. The Muslim idea is not that a woman of the family becomes a different person on her marriage because Islam does not recognise different families in this manner. And in the Punjab the women have begun to protest and hold meetings and demand their just rights. If women can adorn the benches in the legislatures and preside over municipalities and district boards and become Presidents and Vice-Presidents of Councils, there is no reason why they should be ignored by this House and their just and legitimate rights be denied to them. This Bill does not seek to give woman anything which is not her due; it only seeks to do away with the injustice done to her for a long time by people who do not want to part with their property. And in that view I hope the whole House will support her case.

Then, we find that there have been different rulings in the different High Courts, and I think this House should now make clear what law should in future in cases of marriage, inheritance, etc. be applied to women and to parties when they are Mussalmans. This will really do justice to the people who have been suffering for a long time.

Sir, my Honourable friend, Mr. Qaiyum, referred to the fact that the word *Shariat* frightens some people. I may be included in them also because as a Sunni, Hanafi Mussalman, I understand *Shariat* in a different sense from my Shia friends who enjoy other laws. Doctors of law interpret certain laws in different ways, and according to the *Shariat* of the Hanafi law the only daughter of a man who dies gets half the property, whereas according to the Shia law she gets the full property. Therefore the word *Shariat* in this Bill frightens me as we do not know in what sense it has been used. How can we have a common law enacted for all the Muslims of India?

**Qazi Muhammad Ahmad Kazmi** (Meerut Division: Muhammadan Rural): The word *Shariat* is not in the Bill.

**Sir Muhammad Yamin Khan:** It is used in brackets after the words "personal law" in clause 2, and I object to that word being there. "Personal law" is quite clear but *Shariat* has different meanings for different people, and if the word is introduced here, it may be misunderstood by the Courts later on. When Mussalman doctors of law have different even with regard to the Koranic law, what can you expect of the High Courts? I do not want these difficulties to occur later on one



High Court deciding a thing in one way and another High Court deciding in another way.

**Syed Ghulam Bhik Nairang** (East Punjab: Muhammadan): What is happening in your province?

**Sir Muhammad Yamin Khan:** The word used is not *Shariat*. There is no such word ever used in any law book which says that you are governed by the *Shariat*, and I do not want to involve Muslims into any difficulties which may be created by lawyers in the Courts. Therefore, Sir, I object to the word *Shariat* being used in the Bill . . .

**Mr M. Asaf Ali** (Delhi: General): What is your concrete suggestion?

**Sir Muhammad Yamin Khan:** I suggest that the words in the brackets should be dropped.

**Qazi Muhammad Ahmad Kazmi:** You ought to move an amendment to that effect.

**Sir Muhammad Yamin Khan:** If the Honourable Member has no patience to hear me, then the best thing for him to do is to go in to the lobby and smoke there if he likes.

**Mr Sri Prakasa** (Allahabad and Jhansi Divisions: Non-Muhammadan Rural): Will the Honourable Member be satisfied if the word is spelt "backward"?

**Sir Muhammad Yamin Khan:** The Honourable Member has never been taken seriously in the House, and what is the use of his interruptions? Again, Sir, we considered this in the Select Committee, and the Committee was equally divided on the use of the words "or law". My friends should have a little patience, because if they come here to enact a law for the entire Muslim community of about 80 million people they must be patient. If you don't show enough patience, then you show that you are not responsible to the people who have elected you here., and when serious matters are discussed, why are you so impatient! If you go on interrupting me, you will get something more unpleasant.

**Qazi Muhammad Ahmad Kazmi:** On a point of order, Sir; he cannot address me direct: he should address the Chair.

**Mr Deputy President** (Mr Akhil Chandra Datta): Let us now come back to the subject matter before the House.

**Sir Muhammad Yamin Khan:** I am sorry that the words "or law" have been used in the second clause, and those words mean the laws which have been enacted in the Legislature. As far as custom or usage was concerned, I fully agreed that they should be there, but the words "or law" go against certain laws which have been made with the full concurrence and common consent of the Mussalmans for protection of certain interests which are not peculiar to Muslims alone but to a particular class in which the Mussalman happens to be one. Like the United Provinces Zemindari Act which gives protection to the zemindars so that the property cannot be divided, it is not the woman who is deprived of the property. If the Act had been seeking to deprive the daughters only. I would have been the first person to oppose those Bills; but it gives a right to a particular person to enjoy for his life time an interest in the property, and not to dispose it off. So far as the Agra Zemindari Act is concerned, it was brought forward on the request, I believe, of the late Nawab Mumtaz-ud-Daulah Fayyaz Ali Khan, and at that time many Muslim members of the Legislature supported the Bill. So protection is given to a particular class of people who came under the United Provinces Zemindari Act to see that the property is not divided whether it belongs to a Muslim or Hindu Talukdar or Zemindar. That property then remains intact accord-

ing to the sanads and grants given by the Government under certain conditions. Now, if we have the words "or laws", it shall affect all Zemindars alike.

As far as the Waqfs are concerned, I dare say, many Honourable Members will have gone through the deeds relating to Waqf-ulul-Aulad, and the opinion held even at the time of passing that Act was, if a wakf-ulul-Aulad was or was not a wakf under the *Shariat*. That may be a debatable point, because Wakf-ulul-Aulad is made by a special law . . . .

**Qazi Muhammad Ahmad Kazmi:** Not by *Shariat*.

**Sir Muhammad Yamin Khan:** The law which empowers to make Wakf-ulul-Aulad is an Act, and a Muslim is given a right under that Act.

**Qazi Muhammad Ahmad Kazmi:** It is a validating Act.

**Sir Muhammad Yamin Khan:** It is an Act which gives special powers. Again, I say that according to *Shariat* you cannot restrict the free transfer of the property; that is the Muslim law. Anything which stops the free transaction of the property is repugnant to the Muslim law according to *Shariat*, and if my friend will read the law on pre-emption, he will find many rulings there, and pre-emption has been interpreted in many ways. Although it has been called the Islamic law and it has been adopted by Hindus as customary law, yet you will find that many learned Muslim doctors have shown that the whole spirit of pre-emption is against the Muslim law because the Muslim law presumes that every Muslim is sensible man and he must have a free hand to transfer or to dispose of his property in any way he thinks proper. Therefore, the *Shariat* law is against any restriction to the transfer of properties. Then when you do away with those laws, you come to Wakf-ulul-Aulad and as far as this is concerned, that is at one nullified. But the point is that since you are having the words "and wakfs" and also the words "and charities and trusts", anything relating to them in the shape of enacted law will be done away with. Then the only thing left to be decided is how to interpret the law, and various High Courts will give different interpretations, the Privy Council will give a ruling in a different way, and thus the Muslims will be involved in serious trouble if the words 'or law' are related, because they will do more injustice to the people for whose benefit this Bill is introduced. I, therefore, cannot agree to the words "or law" being retained in this clause. . . .

**An Honourable Member:** He has withdrawn those words.

**Sir Muhammad Yamin Khan:** If he does that, then I will have nothing to say: but he merely said that he will have his say when the amendment is moved to drop those words. I did not hear him say that he agreed to the dropping of those words. I found in the Select Committee that he was not willing to omit those words and he was supported by two or three others. When I find that the Committee was equally divided, I think I must place it before this House. This was carried by one vote. . . .

**Mr M. Ghiasuddin** (Punjab: Landholders): On a point of order, Sir, are the proceedings of Selection Committee not confidential and can they be disclosed on the floor of the House?

**Mr Deputy President** (Mr Akhil Chandra Datta): The Honourable Member knows fully well that in theory, they are confidential: but very often it is observed more in the breach. What happened in the Select Committee should not be disclosed on the floor of the House. If objection is taken, I think the Honourable Member had better not refer to what happened in the Selection Committee.

**Sir Muhammad Yamin Khan:** I am not referring to what happened in the Select Committee, but this is given in my note of dissent and it is before the House that the Committee was nearly equally divided on the question.

**Mr M. S. Aney** (Berar: Non-Muhammadan): May I just ask, Sir, when there is a Select Committee Report and there are Minutes of Dissent, are not the Members of this House entitled to make use of the opinions mentioned in those documents? Can it be objected that these dissenting minutes also refer to some conversations in the Select Committee and therefore they cannot be made use of? It is one thing to refer to arguments and conversations and talks that take place while the Committee was meeting. It is another thing to refer to matters which are embodied in the documents which are presented to this House. The opinions expressed there are the property of the House, and the House has a legitimate right to make use of them in discussing them in such manner as it thinks proper.

**Mr Deputy President** (Mr Akhil Chandra Datta): As I understand it, the position is this: if a member of the Select Committee mentions anything in his minute of dissent as to what had happened in the Select Committee and which under the rules or the practice should not be discussed in the House, I am not aware of any procedure by which he can be prevented from doing so. I do not think that this is a very profitable discussion as it is very difficult to draw the line of demarcation between what is confidential in the Select Committee and what is not. As a matter of fact, very often things are discussed here which strictly speaking ought not to be discussed. On the present occasion, I do not think anything material has been disclosed except the fact that the members were equally divided on a certain matter. Nothing more has been disclosed by the Honourable Member.

**Sir Muhammad Yamin Khan:** That was what I was saying: I am not disclosing any other secret: the point I have to place before the House is one on which the Committee was divided. If the report had been unanimous, probably the House would take into considerations the fact that the weight of opinion was all on one side: but when the question is decided by one vote and the other votes are equally divided, then the House has a right to form its own judgement. I say that these words "or law" are not really in accordance with the Statement of Objection and Reasons of the Bill. What the Mover of the Bill really aims at is to do away with custom and that is what is said in the Statement of Objects and Reasons: he has not put in a single word that there was any law which he thinks has been wrongly enacted which would adversely affect the Muslims and the Muslim law. Coming as he does from the Punjab I can quite understand that he aimed at removing the customary law which he thought was doing injustice to the women of the Punjab, not knowing what the law was in other provinces: probably he did not care to go into those laws.

I have explained my objection fully to the House and I hope I will be supported by the whole House and even the Members who did not agree with me in the Select Committee will now agree to dropping out the words 'or law' on the grounds I have mentioned. My concern is not only to save the talukdars and zemindars of the United Provinces but also the Acts which might create some kind of difficulty in the High Courts and might give rise to different rulings involving Muslims unnecessarily by these words being embodied in the Bill. I also want that the word *Shariat* in brackets should be dropped. [Interruptions]. These words "Moslem personal law" are quite explicit. . . .

**Maulana Zafar Ali Khan** (East Central Punjab: Muhammadan): How will you translate personal in Urdu, Persian or Arabic? What is the synonym of *Shariat*?

**Sir Muhammad Yamin Khan:** This Bill is not brought in the language of Arabia nor in the language of Persia or in Urdu. This Bill is introduced in the English language and therefore we must try to understand it as such. [Interruptions.] Personal law is understood now as administered by the Courts. If a Muhammadan belongs to the Sunni Jamat, Sunni law applied to him: if a Muhammadan belongs to the Hanafi Jamat, then Hanafi law applies to him.

**An Honourable Member:** We are talking of Muslims, and not of Shias or Sunnis.

**Sir Muhammad Yamin Khan:** There is no one law as far as the Muslims are concerned. There is a difference unfortunately between Shia Law and Sunni Law, however much my friend may ignore it. I will give one example. According to Shia law, if there is a single daughter and no other issue then she inherits the whole property of her father but according to Hanafi law she does not get the whole but only half. There is no one law: there is a difference in law, and each is differently interpreted.

**Mr M. Asaf Ali:** Will the Honourable member kindly throw a little more light on the subject. How were such cases decided before the Anglo-Muhammad law came into India? Is not Shariat law?

**Sir Muhammad Yamin Khan:** Yes, I must suppose that my Honourable friends knows it. He is a barrister of 25 years standing.

**Mr M. Asaf Ali:** 27 years, if I may correct.

**Sir Muhammad Yamin Khan:** I stand corrected. He puts up a question like this. Is it Anglo-Muslim law or is it anything different? The difference between the Shia and Sunni law is more than 1,200 years old. Why do you say: "It is Shia Law, it is Sunni Law? What are the rulings given by Imam Abu Hanifa, Imam Yusuf and other Jurists"?

**Mr M. S. Aney:** Suppose I am converted tomorrow to Islam. May I know if I shall be told at the time of my conversion that I am a Shia or a Sunni or a Hanafi? Shall I have all the knowledge of the law by which I shall be governed? That is what I want to know.

**Sir Muhammad Yamin Khan:** If the Honourable Member is so fortunate as to embrace Islam tomorrow, the first thing I will do is to embrace him. Then I will tell him the law he will have to choose and abide by.

**An Honourable Member:** Will he be a Shia or a Sunni?

**Sir Muhammad Yamin Khan:** If you want a judgement, you will have to go into a law court. We are going to make a law for a big community, and it is not going to be achieved by emotion and by interruptions of that kind without giving proper thought to the difficulties which may come in your way. Here we claim to be representatives of the people. We must speak on behalf of the people whom we want to represent in this House truly and properly. Here you may not want to conceal what is really happening in the country. If my friends over there will get up and say that the Sunni Law and Shia Law are the same as far as succession is concerned, I shall bow down. If the Honourable the Commerce Member, who is an eminent lawyer himself, will get up and say that the Sunni law and Shia law are one and the same in regard to succession I will bow down at once.

**Major Nawab Sir Ahmad Nawaz Khan** (Nominated Non-Official): When he says that Shia law and Sunni law are one and the same and only the proportion of shares is different, as a lawyer, it gives me horror. A difference in the proportion means a difference in succession. When you say that a woman is going to inherit 50 per cent or 100 per cent my friend does not seem to make any difference. When we

make a law for the Muslim community we have to take into consideration all the pros and cons and not make a law which we shall repent for another day. I do not want that the fate of this Bill should be the same as that of the Child Marriage Act which was passed hurriedly and which was later on denounced on the floor of this very House by the very persons who hurried it through.

**Mr M. A. Jinnah** (Bombay City: Muhammadan Urban): May I ask the Honourable Member – I want to understand whether he means to say that under these words as they are now embodied in the Bill, in cases where the parties are Muslims, the law shall be the Muslim Personal Law (Shariat)? Does he wish to convey that every Mussalman will be governed by Hanafi Law if this Bill is allowed to stand as it is?

[At this stage, Mr President (The Honourable Sir Abdur Rahim) resumed the Chair.]

**Sir Muhammad Yamin Khan:** It may be argued in a court of law that the Muslim Shariat Law must be the law as is embodied in the Shariat.

**Mr M. A. Jinnah:** I am talking of this Bill.

**Sir Muhammad Yamin Khan:** If the word *Shariat* is there I can argue in a court of law that the succession should be according to the Shariat and not the personal law of the deceased.

**Mr M. A. Jinnah:** Personal Law (Shariat)?

**Sir Muhammad Yamin Khan:** There is the Personal Law which we all understand, but when you come to the word *Shariat* there can be so many interpretations. There are the *fatwas* of Alimgarh, certain *fatwas* which have been made in Baghdad. We can say so many different things, and the law, which is now laid down, will have to be re-opened afresh and we shall be arguing what is the Shariat law and what is not. According to the Shariat a man can say I do not understand this to be Shariat. I think there is a great deal of difficulty, and I would not be a party, Sir, to the inclusion of the words which will involve the community in a lot of difficulties in Courts and unnecessary litigation in future. Therefore, I would like that these words “or law” and the word at the end *Shariat* should be dropped. We understand what Muslim Personal Law is.

**Mr Muhammad Anwar-ul-Azim** (Chittagong Division: Muhammadan Rural): Mr President, the only purpose for which I intervene in this debate is to say a few words as to how far the various clauses of this Bill affect the Presidency that I come from. Generally speaking, it will not have any retrograde effect so far as the first two clauses are concerned, but with regard to the third clause, those Honourable Members who happen to be in any way connected with the High Court of Calcutta will have noticed from personal experience that in order to claim either a divorce or a maintenance or any status by a Moslem woman under the jurisdiction of the Calcutta High Court, she need not go to the District and Sessions Judge. If the clause is kept as it is, the purpose for which you would be giving this facility will not be realised. Mr President, you must have known yourself the distance of the villages in a Bengal district. Sometimes it is 200 miles away from the place where the District and Sessions Judge sits. If Government are interested in making this matter straight and fair, they should see that so far as clause 3 is concerned, it does not affect us so far as the jurisdiction of the civil Court in my presidency is concerned. These are courts of first instance. Coming to the principle of the Bill itself. Mr President, I think it is high time, nay, it is a pity, it is a singular pity that the Government of India, who profess to know everything, who profess sympathetic

consideration for the people of this country, who profess to be just and impartial in all matters concerning the affairs of the people of this country, should have sat still for such a long time, and I am really surprised that it should have been left to my esteemed friend from the Punjab, the Hafiz Sahib, to introduce this Bill and by mere accident it got a ballot for discussion here in the Assembly. The leaders of my people – no doubt have done a lot of good things – it is a singular pity that it has escaped their notice for such a long time. If the Government and their officers had been in a humane frame of mind, here at the Centre, this piece of legislation would not have been so long delayed. A controversy has been raised by my Honourable friend, the Knight from Meerut, whether *Shariat* should be bracketed after Personal Law. Erudite as he is, experienced as he is in worldly affairs, I should have thought that he could have surely translated Personal Law by no other word than by *Shariat* because this is the only word which is understood by the people at large, so far as the Muslims are concerned. I think that the insertion of this word *Shariat*, far from doing any harm has made the thing more clear and expressive. Coming to the real principle of the Bill, Mr President, this is a vast continent which has come under the British and the East India Company from time to time, but they had not codified the law so far as the Muslims were concerned. The hardship felt by the province of the Punjab and the sister province of the North-West Frontier must have been great; otherwise a quiet gentleman of the position of the Hafiz Sahib would not have taken the trouble to bring forward this measure. May I ask what harm would be done by this piece of right given to Muslim women under this Bill? What is after all a Custom? If it removes that disability I think that it will have done a great service. I do not know whether this Bill will have a smooth passage in this House, composed as it is of various elements, but if a broader view is taken and if the condition of our women, especially of our Muslim women who are so helpless, is ameliorated to a certain extent, this House will be doing a great justice and a great service in the cause of uplift of women in this country. I need not go into the merits of the various amendments which have been given notice of by my esteemed Leader, the Leader of the Independent Party, but I should like to say something with regard to the amendment given notice of by the Government. That amendment wants the laws which have been passed on these various subjects of customs, and usage, to be kept intact. If Government feel that this is necessary, perhaps it might be done, but at the same time, they must take this into consideration. If you are going to give to Muslim women and Muslims certain status which has been denied to them unjustly for the last 150 years, – to take shelter under the laws which have been passed by the various Legislatures in India where they had no hand would not be a good thing. But if a choice were given to the various provincial councils, with that grace and with what favour they would receive it I cannot say. That being the suspicion even in the case of a layman like myself, I dare say that this might appeal to the sense of justice of the Government. I do not think I have got anything more to say except that this is a very good piece of legislation and I commend it to the acceptance of the House.

**Khan Bahadur Shaikh Fazl-i-Haq Piracha** (North-West Punjab: Muhammadan): Sir, I feel it my pleasant duty to give my wholehearted support to the Shariat Bill, the necessity of which is so much being felt by the Muslim community of the country, especially the Punjab. I am glad that almost all the members of the Select Committee were unanimously in favour of the Bill, with the exception of a few minor objections which would well be covered by the proposed amendments of the Honourable the Leader of the Independent Party.

Sir, the Bill is a most harmless one. It affects only those who profess Islam as their religion and that even in matters of their personal property and their marital laws. Under the circumstances, I think, there should be no objection at all on the part of any other section of this House. The Bill has the unanimous support of the Muslim community in the country and the Muslim Members in this House. I think everybody in the House would sympathise with the women folk of the Muslim community who, without any reason or justification, are at present being deprived of inheriting the property of their parents, simply because they belong to the weaker sex. This House, in passing this Bill into law, will be doing nothing but removing, though partially, a great injustice which is being done to the female sex of the Muslim community, who are at present ill treated, in many parts of the country like the Punjab, a part of which I represent. The proposed amendments by Mr Jinnah, if accepted by the House, will not doubt render the Bill absolutely optional, which is against our wishes. Owing to the differences of views on certain points and the opposition of Government, Mr Jinnah had to intervene to facilitate the passing of the Bill without any opposition. The Bill, if passed in the proposed amended form, will give a right to every Mussalman, who may so desire, to follow the Islamic law in matters of succession, which at present is impossible on account of the customary laws existing in many parts of the country. In supporting the Bill, the Government will be simply doing their duty in removing a long standing grievance of the Muslims by removing obstacles from the way of right minded Muslims who desire to follow Islamic law in matters of succession and other objects mentioned in the Bill. If the Bill is passed into law, the responsibility will lie on the individual Mussalmans to follow or not to follow the Islamic Law.

There is one point which I would like to mention, and it is this. Under Islamic Law, the decision regarding the dissolution of marriages ought necessarily to be given by a Muslim judge, for which, though no provision is made in the Bill, the Provincial Governments will, I hope, feel it convenient to make arrangements. I think in every province there must be many Muslim judges in service. They can very well be invested with powers to hear such cases, without any extra expense. By suggesting this, I do not mean that special separate judges should be appointed for this purpose. Sir, I hope that in case the Bill is passed, Government will keep this point in view. Sir, I support the Bill.

**Maulvi Muhammad Abdul Ghani** (Tirhut Division: Muhammadan): Sir, the speech of my esteemed friend, Sir Muhammad Yamin Khan, has compelled me particularly to make a speech. So long as he was confined to that part of his speech which was more or less an advocacy for the rights of women, I was led to think that he perhaps belonged to the weaker sex [loud laughter]; but when he turned particularly to oppose the rights of the weaker sex, I realised my mistake. Everybody in the world very easily offers to prescribe principles, but it is altogether a different story when time comes for putting them into practice. This exactly is the case with my Honourable friend. He laid down very emphatically the dictum that, so far as the question of rights is concerned, there is no difference between men and women, particularly when women are seen working side by side with men in every walk of life; but women should not get any property rights in the constituency of my Honourable friend, because the existing law of the land is against such move. Possibly my Honourable friend has something to do with the *ta'luk-dari*, and that appears to me to be the chief reason for his opposing the Shariat Bill.

**Sir Muhammad Yamin Khan:** On a point of explanation, Sir. The Honourable Member is making a wrong aspersion on me. He says he did not understand my speech, but he is doing me great injustice by saying that I have a personal motive or I am personally concerned in this matter.

**Mr President** (The Honourable Sir Abdur Rahim): The Honourable Member must not impute any personal motive to another Honourable Member, especially if he has not been able to understand his speech.

**Maulvi Muhammad Abdul Ghani:** Sir, I am aware that the procedure in the House does not permit me to make any personal attacks against any Member. I have, therefore, always avoided this and shall continue doing so in obedience to your orders. However, I would submit that it is rather easy for everybody to lay down principles, which are so very difficult to translate into action. Hence it pained me to notice that there are people in this world who feel a conscientious objection to the use of the word *Shariat*. My Honourable friend has repeatedly declared that by the deletion of the word *Shariat* the Bill would become practicable. In this connection, I am rather inclined to say that time is fast approaching when a Muslim would consider it derogatory to use the words "Muhammad" or "Ahmad" along with his name.

Sir, so far as I have understood the Bill, I take it to mean that according to this, all that custom, usage and anti-Islamic practice, that have passed into law to the detriment of the Islamic law of inheritance would disappear. Then, there is the controversy of bracketing the word *Shariat* after the words *Personal Law*. But what is "Personal Law" after all? I almost rose from my seat to ask my Honourable friend for a translation of the words *Personal Law*, but he would not give me a chance for doing so. Nor did he offer any translation of that term even though it was demanded by other Honourable Members. I very much doubt if my Honourable friend knows the meaning of the words *Personal Law* and for that reason I am sorry for him.

My Honourable friend has been harping against and again on the theme that Sunni law is different from Shia'ite law, although there is no mention whatsoever in the Bill itself as to how it will stand in the way of those who follow the Hanafi, the Shafi'i, the Maliki, the Hambali, the Shia'ite or the Khariji school. What it aims at is only this that in this respect every section of the Islamic faith will be bound to abide by its own traditions, practice and internal law, and that he will be bound to disregard all such customs and usages that have passed into law in spite of the Islamic law. So, if my Honourable friend, the gallant Knight from Meerut, has formed his opinion against it, he would do well to revise it.

Sir, I would also take this opportunity of saying that I stand for the Bill, provided it is carried without an amendment; but I am not in favour of it in an amended form. I am raising this voice on behalf of the Muslims of Bihar. Let it not be said at any stage in the future that the Muslim representative from Bihar supported the amended Bill. In the province of Bihar, the Courts, even to this day, settle cases of inheritance, etc., according to the Islamic law. The Muslims of Bihar would stand to lose if the present Bill is in any way amended. With these words, Sir, I support the principles of this Bill and congratulate the Honourable Member who has moved it.

**Qazi Muhammad Ahmad Kazmi:** Mr President, my own belief is that, to take part in the discussions of this House, unless something very important comes, is not proper for any member of this House. I do not want to make it a



general rule, but this rule must be observed especially on non-official days. Personally I always refrain from taking part in the debate, unless it is absolutely necessary for me to do so, for the simple reason that we have got a limited number of days for the non-official Bills and the non-official Resolutions, and we must be very careful to utilise that time. Still, as my learned friend, Sir Muhammad Yamin Khan, has tried to dissect this Bill clause-wise, I wish to say something on it. As a matter of fact, many of the points raised could have been easily dealt with at the time when the clauses would be discussed. But, as he has referred to those clauses on the basis of the principle itself, I will try to meet his objections as briefly as possible. Probably, the learned Knight has not seen the real necessity for which this Bill has been brought before this House. Probably he is not aware that there are the Punjab Laws Act, the Oudh Laws Act and other Acts which make the custom of the country override the personal law of the Muslims.

**Sir Muhammad Yamin Khan:** I may inform the Honourable Member that I have seen all those laws.

**Qazi Muhammad Ahmad Kazmi:** Had he only seen those laws, probably he would not have objected to the words "or law". The Bill says: "Notwithstanding any custom, usage or law to the contrary". By the words "or law to the contrary" is meant that all such laws, which provide that custom or usage should override the Muslim personal law, ought to be repealed. If we take out the words 'or law' from this clause, then it would mean that "notwithstanding any custom, usage to the contrary, the Muslim law will prevail". Now, the Muslim personal law will prevail in spite of the custom or usage, but if any custom or usage has been recognised by law and the law lays down that that custom and usage shall have preference over the Muslim personal law, then it cannot be repealed by this Bill. If my Honourable friend only knew that the necessity for this Bill is due to the fact that in the Punjab, the North-West Frontier Province and all other places there are enactments to the effect that custom and usage shall have preference over the Muslim personal law, then he would not have talked in the strain in which he did. For the information of my learned friend, I will read section 5 (b) of the Punjab Laws Act, which says:

In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be –

- (b) the Muhammad law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.

According to this section of the Punjab Laws Act, if there is any conflict between the Muslim personal law and the usage and custom, the usage and custom shall prevail as against the Muslim personal law.

**Sir Muhammad Yamin Khan:** Has that been enacted by a Legislature?

**Qazi Muhammad Ahmad Kazmi:** Of course, it has been enacted by a Legislature. That is why I said in the beginning that the learned Knight had not had the occasion of reading these laws. I am referring to the Punjab Laws Act (Act IV) of

1872 passed by the Government of India. It is the Legislature which has passed it, enacted it, and it is a law which is today regulating the whole of the Punjab. It is to meet this particular law, which makes custom and usage superior to Muslim personal law, that this Bill has been brought. Therefore, unless some other remedy had been suggested by the Knight from Meerut to meet this particular difficulty, the words "or law" should not be deleted, otherwise the Bill would be absolutely useless. In other words, if we have this law without the words "or law", the result will be that as soon as a case under it goes before the Courts of the Punjab, they will say: "As against the custom and usage you can have your Muslim personal law, but when that custom and usage has been recognised by an enactment of the Punjab, then precedence will be given to the custom and usage over your personal law." Probably, I have not yet succeeded in making the point clear to the learned Knight, but, in the darkness of the night, it is very difficult to throw light. Therefore, I will stop at this point.

Now I take the next point on which my Honourable friend Sir Muhammad Yamin Khan, waxed very eloquent, the word *Shariat*. He said that the word *Shariat* could not mean anything.

**Sir Muhammad Yamin Khan:** I never said that.

**Qazi Muhammad Ahmad Kazmi:** The word *Shariat*, according to him, means something which he does not understand. I can see that according to him Muslim personal law has got some particular meaning, but the word *Shariat* has got none. According to him, Muslim personal law means the personal law of the Hanafis, the personal law of the Shias, the personal law of the Sunnis, but the word *Shariat*, according to my Honourable friend, means only the personal law of one particular sect of the Muslim community.

**Sir Muhammad Yamin Khan:** Only one law of all the Muslims and not of different sects.

**Qazi Muhammad Ahmad Kazmi:** Whatever he says has to be accepted. Now, Sir, just as has been explained by Sir Muhammad Yamin Khan, if by *Shariat* he means one law, he must remember that all Mussalmans, who say that they are following the Shariat, are the believers in one Koran and are believers in one Prophet and one God, and, therefore, Shariat for Muslims means one Shariat, and he takes very serious objection to that. If Muslims say they have one Shariat, that is very objectionable to my Honourable friend.

**Sir Muhammad Yamin Khan:** Sir, I rise to a point of personal explanation. The Honourable Member has no right to misinterpret what I said. He may say whatever he likes, he may ventilate his own views, but he has no right to say that I mean this. I do not mean a bit of what he is talking about.

**Qazi Muhammad Ahmad Kazmi:** The only objection that was raised about the word *Shariat* was that Shariat is one, and there are different sects and different communities amongst the Muslims. . . .

**Sir Muhammad Yamin Khan:** What I mean is that Shariat can only be one and the personal laws of Muslims can be different according to the sect to which they belong. Shias may have their own personal law, the Hanafis may have their own personal law, and, so far as Shariat is concerned, you cannot divide it into two different things – one Shariat for the Sunni, another Shariat for the Hanafis, and so on. You cannot do that.

**Qazi Muhammad Ahmad Kazmi:** Till now I have failed to get from the Honourable Member the translation of the words *Muslim personal law*. He as well

as I, belong to this country and learned English at a very late stage and had learned Urdu or Persian phrases long before learning English, and yet I have been seeing that the Honourable Member had been insisting on the words *Muslim personal law* and has not been successful in giving a translation of it up till now. To me the word *Shariat* means Muslim personal law and nothing else, and if he thinks it means anything else, then he is mistaken. That is the reason why this word *Shariat* is the most appropriate word. These were the two main objections that have been taken so far as this Bill is concerned. If really the Honourable Member is serious, he could have very easily moved an antecedent to that effect.

**Mr M. S. Aney:** Is Shariat different from the law of Koran?

**Qazi Muhammad Ahmad Kazmi:** The question has arisen as to what is Muslim personal law. You will find even in elementary text books that the law of Koran is the Muhammadan law. My Honourable friend must be aware that the sources of Muhammadan law are the Koran, the Hadiz, i.e. the traditions. "Q'yas" and "Ijma".

**Sir Muhammad Yamin Khan:** The Shias have never accepted that.

**Qazi Muhammad Ahmad Kazmi:** Have they accepted the first one, or the second one, or the third one?

**Sir Muhammad Yamin Khan:** No.

**Qazi Muhammad Ahmad Kazmi:** Then, the Shias have never accepted either the Koran or the traditions or the "Q'yas". If that is the allegation that has been made by the Honourable Member about Shias, then, I am afraid. . . .

**Sir Muhammad Yamin Khan:** I said they have not accepted the first Khalifa, or the second Khalifa or the third Khalifa. I thought he meant them after using words "ijma-ul-immat". I am sorry if I misunderstood.

**Qazi Muhammad Ahmad Kazmi:** When I was talking of the sources of law of Islam, my Honourable friend understood me to mean the Khalifas. The Khalifas were never the sources of the law of Islam as far as I know, and the mistake is probably on account of some misunderstanding that the sources of Islam mean the Khalifas. That was never my contention. The law of Islam is Shariat.

Now, Sir, taking the Bill as it is, we are sorry that, on account of the enactment of the Government of India Act, it is not possible for the Central Legislature to make any law for the whole Muslim personal law and for all the property of Muslims. We are excluded from making any such enactment on account of the provisions of the Government of India Act for "agricultural land", and, therefore, agricultural lands had to be excluded from the provisions of this Bill. Then, again, there was some misunderstanding about waqfs. It was suggested that as waqfs in favour of one's family and children had been enacted by a particular Act, so if we keep the words "or law", then that Act will also be repealed. I would only remind my Honourable friend that the Act of 1913 is not an Act in the sense that it gives new rights. The Waqf Validating Act of 1913 only validates particular waqfs which were considered by their Lordships of the Privy Council to be invalid in the light of Muhammadan law, and therefore, there can be no question that this Bill can ever affect the Waqf Validating Act of 1913.

Sir, I was submitting that when this Bill was introduced in the Assembly, it was meant to cover a very large field, but, unfortunately, on account of the limitations imposed upon us by the Government of India Act, it has been considerably restricted in its scope because "agricultural lands" had to be excluded from the operation of this Bill. As we know, agricultural lands mean probably 99.5 per cent of all the property that is available in India, so it is only 5 per cent about which we can

legislate and for which we are coming before this House. But it is not so much with the idea of getting sanction to this small property, but the idea in seeking the sanction of the House is that in addition to giving some little relief to the females of the country, we may get this principle accepted by this House, this being a representative House for the whole of India; the principle being that Muslim personal law should be applied to Muslims, and the difficulties and troubles that have come upon the women of India on account of the customary law should be removed. So, Sir, it is in this spirit that this Bill is being proceeded with in this House. It was only for the reason that the words "save as regards agricultural land" were inserted by the Select Committee without any hesitation. The same thing about waqfs – the words "other than charities and charitable institutions and charitable and religious endowments" were inserted, because they are the subjects which relate to Provincial Legislatures.

There are various amendments on the list, and I appeal to the House to consider this Bill from the point of view which has been placed before this House. So far as the Muslim Members are concerned, they are amenable to reason and are prepared to accede to every reasonable change in the Bill so as to accommodate the Government and even to accommodate my Honourable friend, Sir Muhammad Yamin Khan, if really he has got any serious objections. But what we want is that the principle of the Bill should be accepted by this House as soon as possible, because we hope that it will give a lead to all the Provincial Legislatures to follow this particular principle and legislate in that light. Above all, we have got to realise that the principle is a sound one. Muslim personal law, so far as marriages, divorces and other things are concerned, is more or less already in force in all the provinces. It is the succession which is the chief matter in which Muslim women are being deprived of their proper rights. Daughters and widows of very rich persons, when they die intestate, are being deprived of their proper right in the property of their fathers and husbands, and people of the seventh and eighth degree come forward and take away the property. The principle of customary law might have been good at some stages in the development of the history of India, but now is the time when even the principle of joint family system of Hindus is being retained only to a greater extent in name only. Even in the Hindu joint family, you find that there is more or less complete disruption. A friend of mine, who belongs to the Vaish caste, told me that it is ridiculous to say that there can be any joint family system in the Vaish community; because, if you take up their account books, you will find that if four annas are spent for the son of one brother, an equal sum of four annas is to be spent for the son of another brother. So it is all right to say that they have got a joint family, but when you look into the inner conditions of that family, you will find that it is family which is separate, and they are only labouring under that old name and are suffering from the handicaps of it. So, in short, I would submit that the principle of the Bill should be accepted by the House. It is a simple principle that we want to enforce that custom should be over-ridden by Muslim personal law, and, for these reasons, I give my support to this Bill.

**Mr M. A. Jinnah:** Sir, I thought I would wait until I heard the Government view on this Bill but evidently Government have no views at all. The principle of this Bill, as I understand it, and its object is that, hitherto, amongst certain classes who are the followers of Islam there prevails a custom or usage by which they are governed in matters of succession and inheritance. These customs are age-long old and they have been pursuing them for centuries. Some customs have been established

in Courts of law and have in fact the force of law. Some customs are nebulous and some are put up as they may suit the parties concerned. But as we grow and as India has developed, the customs which are still not established are sought to be established at the cost of a great amount of expense and prolonged litigation. Now, Sir, as I said, the principle underlying this Bill is to secure to the female heirs their due share according to Muhammadan law. According to the customs and usages that have prevailed, the position of the female heirs has been a very precarious one. If a man dies his widow is only entitled to maintenance. When the question arises as to what maintenance she is entitled to, it is always a very difficult question to decide, because when a son or male heir succeeds to a large estate, he tells the widow that Rs 100 is quite enough for her although it may be an estate of ten or twenty or thirty lakhs; and then invariably litigation arises. Then, as some Honourable Members know, the result of that litigation is that the widow claims maintenance according to the position in which her husband lived, according to the estate he has left, and that leads to very lengthy litigation and complicated inquiry, as to what estates were left and what is to be awarded, and so on. Similar is the position of daughters and female heirs. I will not dilate on it any more, but I think that the House will agree that the state of the things is not very satisfactory, and I submit that the Islamic code of law is most just because the shares are defined there, namely, the daughter gets half the share of the son., and similar is the position of female heirs. If she gets half in her own right she is the sole mistress and master of that share of hers; and in these days and even in earlier days and even today the economic position of woman is the foundation of her being recognised as equal of man and share the life of man to the fullest extent. Therefore, that being the principle, namely, to avoid this uncertainty and to avoid the costly litigation that occurs for any of these customs not being defined or ascertained, it is desirable that at any rate we should secure to the female heirs their proper share according to the Muslim law.

Then, with regard to the other matters which are enumerated in the Bill, it seems that there is no difficulty. I do not think we are introducing or enacting a law which is in anyway going back, but it is a more progressive and more advanced system of law than the customs and usages that are at present governing these various matters. You have got other matters enumerated there and, therefore, that really is the principle of the Bill. I, therefore, whole-heartedly support the principle of the Bill.

Having said that, there are certain very serious difficulties which we have to face, and things have been acted upon and laws have been enacted in this country; and, therefore, the question whether the word "law" should remain in that Bill or to what extent we should meet that difficulty will be a question that we will consider when these various amendments come before us. There is one point which I should like to mention and I did try to follow my Honourable friend, Sir Yamin Khan, with regard to his point. I find that as the language of this Bill goes, of course anything is possible for one to argue in a court of law. You can always raise a dispute, the doors of the court are always open and I can always concede to Sir Yamin Khan that whatever Bill you may pass, there will be some people who will go to a court of law for a construction of some clause or some word. But that is no reason why we should not take the utmost care and caution and see that there is absolutely no doubt left as far as we humanly can help. Now, "Muslim personal law" is mentioned there, and Sir Muhammad Yamin Khan admits that if it is stopped there, there will be no difficulty, and it is quite obvious to any one who knows anything about the Muslim law that there are different schools of law, that there are certain variations

and certain differences which have come about by means of interpretation of great jurists on Muslim law. It is interpretation, but the fountain source of that law is Shariat. . . .

**Sir Muhammad Yamin Khan:** The foundation is the Quran.

**Mr M. A. Jinnah:** May I point out to my friend what Mr Wilson says in his book.

**Sir Muhammad Yamin Khan:** He may not be correct.

**Mr M. A. Jinnah:** Then, there is nothing in this world which can be correct and the only correct thing is what the Honourable Member says. There is no use of asserting that everything is incorrect and the only thing that you say is correct. I am trying to persuade my friend to examine it carefully, and I assure him that we don't want to tie ourselves up into knots. If there is the slightest ground for it, at least I am prepared to consider it, but I was trying *prima facie* to persuade my friend to see that there is no substantial point in this. This is what Wilson say at page 6:

“The Muslim Sacred Law (Shariat) . . .”

I think my friend is thinking perhaps of that meaning of *Shariat* Muslim sacred law. Now, Muslim sacred law in English, in brackets, is Shariat. What do we say? Muslim personal law (Shariat). It makes all the difference in the world, and when Wilson defines what is Muslim sacred law or Shariat, he says:

“Muslim sacred law stands on a different basis. It professedly centres more round the personality and the sayings and doings of the Prophet than did even the Canon Law of the Trinitarian Christians round the personality of the deified Jesus. And its scope is infinitely wider. It centres into the minutest details of the daily lives of men, women and children, private and public, religious and secular.”

Therefore, when you talk of Shariat in that sense, it embraces the whole system of your life, secular and otherwise. When we are putting in the Bill “Muslim personal law” (Shariat), I ask Honourable Members to say whether any Judge would have any difficulty in interpreting this clause and would go to the extent of saying that “no matter whether you are a Sunni, Hanifa, Shia or Shafi or you belong to any other school by which you are governed as to your personal Muslim law, I will only hold you by the rule of Hanifa school of law” according to this clause. Surely, I leave it to the House to judge. I don't wish to take up any more time of the House, but I once more say this. This is really a very progressive and advanced measure, and it is certainly intended to secure a distinct benefit to female heirs who have suffered, and it is high time that they were relieved of their suffering, and I hope the House will accept the main principle of this Bill subject to such modification as may be necessary having regard to other difficulties that are facing us.

**Mr M. Asaf Ali :** Sir, may I continue today or would you like me to start another day?

**Mr President** (The Honourable Sir Abdur Rahim): There are only five minutes left, and I think you can start on another day.

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