

# ELIZABETH LHOST'S EVERYDAY ISLAMIC LAW AND THE MAKING OF MODERN SOUTH ASIA

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In 1948, in Princely Hyderabad, the widow Ruqaiya B found herself in a desperate situation: her daughter was stuck in an unhappy marriage to a distant relative, one characterized by neglect and abuse. Ruqaiya had already tried petitioning the British colonial courts for a divorce, but her male relatives had opposed and their advantage in resources had rendered the attempt futile. Unable to rely on the courts for justice, she turned instead to the dar-ul-iftaa for help. The dar-ul-ifta was an institution that issued Islamic fatwas (rulings) on a case-by-case basis and was a distinct entity from the secular courts. Upon investigating the marriage contract, the dar-ul-ifta discovered that Ruqaiya had been excluded from her daughter's wedding ceremony and had not consented to the wedding. This, they concluded, was a procedural error and thus nullified the marriage altogether. Ruqaiya's daughter was now free to escape her unhappy marriage.

Highlighting the robustness and continued resilience of everyday Islamic law under British rule in South Asia, Elizabeth Lhost weaves stories like the one above throughout her *Everyday Islamic Law and the Making of Modern South Asia*. Her narrative rejects the idea that Islamic law suffocated and stagnated under colonial law. Instead, Lhost draws on a rich and largely unexplored collection of fatwa files, official documents, and notebook entries to sketch a vibrant image of how muftis (Islamic legal scholars), qazis (Islamic legal practitioners), and ordinary Muslims like Ruqaiya worked together to challenge the encroachment of secular law. Through the eyes of these individuals, Lhost contests the claim<sup>1</sup> that the British government successfully limited Islamic law to the worlds of family and religion and demonstrates how religious everyday law continued to play a role in other fields of law and life. This endurance is a product of the many South Asian Muslims who, knowingly or not, contributed to keeping it alive: the qazis who fought to preserve their roles and often subverted colonial expectations on legal domains in the process; the muftis and dar-ul-iftas who provided their communities with Islamic legal guidance, both in navigating personal issues and the colonial courts at large; and the ordinary people, who sent requests for fatwas and advice through postcards,

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1. For example, as presented in *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* by Iza R. Hussin.

letters, and telegrams, and in doing so sustained and shaped everyday Islamic law in South Asia.

When the British East India Company (EIC) conquered South Asia in the 19th century, it attempted to retain pre-colonial personnel (including qazis), while re-engineering various systems to meet its needs. Qazis were Islamic judges who ruled on legal issues according to Islamic texts and guidelines. However, this early on, there was no formal definition or appointment guidelines for the qazi position; as a result, some qazis were more competent, while others were less so; some inherited their positions, while others were Company darlings. Over time, arguments for a more systemized, merit-based appointment system emerged and were implemented. At the same time, the Muslim public was developing growing interest in these appointments and began to play a greater role in their selection. They saw the office as necessary for the British government, who understood little of Islamic law, to properly govern its Muslim citizens.

In 1864, however, Act XI abolished the position of Qazi, citing it as unnecessary. This led to such a major disruption in Muslim legal practices that the position was re-established a decade later, but with legal power so curtailed that their new roles were primarily to register marriages. All other legal matters would be dealt with in British courts of law. Over time however, by dint of the fact that marriage bleeds into so many other spheres of life, Qazis were able to expand their influence to domains that technically fell under the jurisdiction of the colonial state.

Regardless, the actions of the colonial state made it clear that it was attempting to limit Islamic law to the worlds of family and religion. However, this distinction was essentially meaningless to lay Muslims who saw law and religion as deeply intertwined. To them, there was no separation between ‘church’ and ‘state’, or Islamic law and everyday life. Their continued demand for Islamic legal guidance in the face of rising colonial secularism forced Islamic law to become a community driven legal system rather than one controlled by a governing authority. This was where muftis and dar-ul-iftas came into play. Muftis were Muslim scholars who gave fatwas (legal rulings). They were not government appointees and their rulings were unenforceable and legally non-binding; however, many Muslims acted upon them out of religious devotion. Dar-ul-iftas were organizations that employed muftis to provide fatwas to the general public.

This commenced a fascinating back and forth between scholars and regular folks: through postcards, telegrams, and letters, these individuals reached out with their questions on everything from the permissibility of photography to trademark disputes to divorce settlements. In turn, muftis researched their questions and responded with a suggested recourse under the guidance of Islamic

law. Some of their most common concerns and questions were then codified into manuals for other muftis to reference. This process helped give ordinary Muslims a better understanding of how Islamic law applied to them in a constantly shifting landscape, while also allowing them to contribute to the formation of everyday Islamic law. In other words, this process was a bottom up vehicle for legal change.

Dar-ul-iftas were particularly important for disadvantaged individuals, like the widow Ruqaiya, whom British courts disfavored because of their lack of money, status, or power. For people like these, dar-ul-iftas represented accessibility and another chance for justice: they could be appealed to in plain language, did not require representatives, and cost much less.

Over time, maneuverability and tension between secular courts and Islamic law grew, spurred in part by the lack of codification of what types of cases belonged under which jurisdiction. While in the first half of the 19th century, muftis had focused on advising Muslims primarily on substance rather than procedure, they now also began to advise them on how to pursue their legal cases and settle disputes, often outside the courtroom but also within it. For instance, when two individuals found themselves in a dispute over a broken land purchase contract, they chose to write to the renowned Mufti Kifayatullah asking for help, rather than appealing to the more expensive and unpredictable court system. He accordingly walked them through Islamic law-compliant ways to settle their dispute outside of the court. Informal guidance, like in this case, that spanned various legal realms was a clear rejection of the neat line that colonial powers had drawn to limit Islamic law to family and religion.

Lhost's work is a fascinating exploration of what everyday Islamic law looked like for a Muslim community living in a non-Muslim country and prompts a number of fascinating questions. Foremost among them: what can Muslim diasporas living in the west learn from their 19th century, South Asian counterparts? Lhost briefly acknowledges this inquiry, writing that understanding Muslim life in the west first requires an understanding of how Islamic law fared under British rule in South Asia. However, readers might benefit from an extended discussion on contemporary applications of the varied and unique strategies employed by 19th century Indian-Muslims Muslims to keep everyday Islamic law alive and thriving. Perhaps, just as Muslims in South Asia found that dar-ul-iftas helped them apply Islamic law to their everyday lives, Muslims in the west might see similar benefits in having a centralized body to address their uniquely western questions and concerns. Furthermore, they might draw on the precedence of dar-ul-iftas replacing secular courts to consider establishing faith-based arbitration systems in the west that might potentially provide more accessible and more equitable mediation alternatives.

Overall, *Everyday Islamic Law and the Making of Modern South Asia* is a thoroughly researched, well-written and important examination of how qazis, muftis and ordinary individuals shaped everyday Islamic law in 19th century South Asia, and how their concerted efforts helped maintain a robust presence of Islamic law in various legal fields. Lhost's work is a valuable resource to anyone hoping to learn more about the history of Islamic law under colonial rule.