

## **Making Muslim Marriage and the Decline of Muslim Authority over the Interpretation of Islamic law in Colonial South Asia**

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In colonial India, dependency on Muslim legal professionals and authoritative texts on Islamic law frustrated the colonial project of what many a scholar termed “structural secularism” to a great extent. However, the increasing control of the colonizer over the legal infrastructure (law, courts, texts) resulted in, firstly, removing Muslim law officers from colonial courts and, secondly, the gradual decline of the authority of authoritative Muslim scholars including Sayeed Amir Ali— his reformist approach to Islamic law was not only criticized but also found dangerous to colonial administration of Islamic law in India. Moreover, the Privy Council’s strong bias towards the legal texts produced under the auspices of British colonizers, and its preference of opinion of European legal scholars over the Muslim legal professionals accelerated the decline of the latter’s authority over the interpretation of Islamic law. This article explores the way the implications of their unequal power and authority resulted in the decline of the authority of the Muslim legal professionals over the interpretation of Islamic law in colonial South Asia. Examining leading cases of the Privy Council concerning Muslim marriage from 1833-1925, this paper seeks to argue that the disguise administration of Islamic law heightened the authority of the British judges and, thereby, limited the power and authority of the Muslim jurists.

## **Expansion and Restriction: A Comparative Study of Modernization of Family Laws in Japan and China**

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Before their encounters with the Western powers in the 19th century, both Japan and China were deeply rooted in traditional family systems that constituted their basic social formations. However, as legal modernization dawned, these two countries took antithetical paths to reform their customary family laws. In general, Japanese legal elites of the Meiji regime expanded the power of the family and emphasized its political function, whereas Chinese legal elites of the late Qing and Republican era restricted the power of the family and downplayed its significance. Although much literature has tackled the problem of modernization of family laws in Japan and China respectively, the difference between the two countries and the underlying reasons for such have not been fully explored. This study seeks to fill the gap.

By engaging the comparative study of intellectual and legislative history, I argue the reason for this divergence originating from different cultural and political roles that family systems played in the eyes of legal elites. In Japan, the family system was “*culturally disembedded*” and “*politically obedient*” within the *Bakuhau* system and thus created space for Meiji legal elites to invent cultural meanings for the family system and to integrate people into the new Emperor regime by leveraging political obedience of the family. On the contrary, the Chinese family system was “*culturally embedded*” and “*politically disobedient*,” especially with its tendency to grow into large kinship groups that competed with the state. Therefore, in the eyes of Chinese legal elites, the family system was believed to hinder the centralization of power and the modern state-building process. Beyond the case of Japan and China, this study also contributes to the scholarship of legal transplantation and comparative law.

## **The Role of Judiciary in the Development of Muslim Family Laws in Pakistan**

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The majority of the population in Pakistan is Muslim and Muslim family law applies to them. A significant portion of the Muslim family law is not codified in Pakistan. Some of the portion of Muslim family law which is codified is also inherited from the colonial period of Pakistan when it was part of the sub-continent. There exist many problems in the Muslim family law since the colonial period and Pakistan inherited those problems from the colonial period in the same way she inherited the laws. The judiciary in Pakistan holds the responsibility to develop Muslim family law through case laws. Under the Constitution of Pakistan and also following the common law tradition, the precedents are binding on the lower courts. These precedents help in establishing the law. On the one hand, the judgments pronounced sometimes become contradictory to Islamic law, and on the other hand, they bear the contradiction among themselves, and in this way, one precedent overrides the other. This paper intends to analyze the fact that how the judiciary in Pakistan has developed Muslim family law through pronounced judgments when the significant portion of Muslim family law is not codified. Moreover, it will also be analyzed what problems were created through the interpretation of Muslim family laws by the courts, where at some instances courts also pronounced contradictory decisions which created many problems. The author intends to give conclusions and recommendations in light of the analysis made in the paper.