The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State: A Book Review

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Iza R. Hussin is a lecturer at the Department of Politics and International Studies (POLIS), the University of Cambridge. Her areas of research include religion, Islamic law, comparative politics, and society. Her book, *The Politics of Islamic Law* investigates the process of transformation of Islamic law by the British colonial administrators in India, Egypt, and Malaysia.[1] The main argument of the book is about the process by which Islamic law was made, unmade and remade in colonized states as a result of interactions and negotiations between the British colonizers and the local political elites. She argues that the remaking and transformation of Islamic law produced a new version of Islamic law which was more state-centered and patriarchal than pre-colonial Islamic law, which was diverse, instance-based and judge-centric.[2] She observes that Islamic law was marginalized through this process of transformation and confined to the limited domain of personal law and religious endowments (*awqaf*).

Chapter I of the book focuses on the methodology and overall contour of the book. Subsequently, Chapter II discusses the radical transformation of Islamic law in terms of lawmaking and state-building processes in the colonial India, Egypt, and Malaysia. Chapter III of the book analyses the issue of the jurisdiction. The colonial administration assumed the jurisdiction over the matters of the religion through treaties like the Allahabad treaty, the Victorian Proclamation, the Hastings Plan, and the Pangkor Treaty. Chapter IV deals with the application of Islamic law in the trials. It discusses the four important trials namely the trial of Warren Hastings, the trial of Bahadur Shah, the trial of *Perak* chiefs of Malaysia, and the trial of Ahmed 'Urabi of Egypt. After analysis of the trials in the colonized states, Chapter V addresses how colonizers remade the Muslim states through the institutionalization of Islamic law by the local elites. The central theme of this chapter is the struggle of the Muslim intellectuals and religious scholars to counter the marginalization of

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[1] Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (University of Chicago Press 2016).

[2] Ibid, 10.

Islamic law. It also discusses how the state incorporated new discourses and institutions into Islamic law. The last two chapters of the book analyses postcolonial consequences of privatization, secularization and marginalization of Islamic law. Chapter VI discusses the colonial politics of Islamic law by focusing on secularism, Islamic law and the Muslim modernity. It also discusses legal formalism, legal pluralism and legal realism in the modern context. The last chapter addresses the contemporary politics of Islamic law. This chapter analyses the postcolonial problematics of centralization of Islamic law by referring to two Malaysian court cases (*Lina Joy*[3] and *Nyonya Tahir*[4]) on the issue of apostasy.

Hussin's book is based on original archival research in Malay and English. Other sources include interviews, conversations, travellers' accounts, letters, parliamentary proceedings, minutes of meetings, and correspondences. She consulted original archives in Malaysia, Singapore, and the UK on Malaysia and consulted mostly secondary sources on India and Egypt.[5] The book is mainly inspired by the excellent contributions of Talal Asad on the secularisation, religion, politics and the power of the State. In her book, Hussin notes that "this study owes a great analytic and substantive debt to the questions Asad asks and the pathways he has indicated for answering them."[6]

The language of the book is a bit challenging owing to the usage of the socio-political, anthropological, and legal jargons. Hussin has adopted the postcolonial and pluralistic legal analysis of law. Her succinct presentation of the arguments indicates that there is unity of thought and coherence in the arguments. The structure of the book is fascinating. The book analyses treaties, trials, and jurisdictional issues before analyzing the role of Muslim lawyers, judges, *ulema,* and institutions in great depth. Subsequently, it broadens its horizons to reflect on the postcolonial problematics of marginalization and centralization of Islam.

[3] *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan & Another*, 4 M.L.J. 585 (2007)
[4] *Dalam Perkara Nyonya Tahir, Exp Majlis Agama Islam Negeri Sembilan & Yang Lain* [2006] 1 MLRS 25.
[5] (n 1) 268.
[6] Ibid, 231.

This is the first detailed comparative work of this kind which brilliantly analyses the transformation and marginalisation of Islamic law and Muslim life in the colonised state. Hussin has an excellent command on the history of the three states mentioned above. Her analysis of legal and constitutional developments in all these three states is remarkable. This book is a valuable contribution to understanding the 'Muslim Personal Law' in the subcontinent. Hussin argues that not only the colonial regime altered Islamic law but it renamed and transformed it by changing its language and terminologies. The term 'Muslim Personal Law' was a product of collusion between the British colonisers and the local elite. She refutes the popular idea that the British colonial administration left religious and family matters in the hands of Muslims keeping in view the emotional attachment of Muslims with these two institutions. She endorses Talal Asad's view that it was a secular agenda of the British administration to privatise religion. This was a deliberate attempt to secularise Islamic law.[7]

Another remarkable feature of the book is its analysis of the making of Anglo-Muhammadan law. Anglo-Muhammadan law was an amalgamation of the British common law principles with a small portion of Islamic law and jurisprudence that emerged in the mid-eighteenth century. In Anglo-Muhammadan legal system, *ulema* acted as the law officers who used to provide a legal opinion on the basis of which the British judges adjudicated disputes. Later on, by 1875 it was repealed and replaced by the British law.[8]

What makes this book a notable treatise on the subject of Islamic law is its analysis of the reaction of Islamic scholars and institutions to counterbalance this colonial incursion and intervention. The colonial attempt to transform Islamic law created both challenges and opportunities for Muslims. She argues that in this regard *ulema* of *Deoband* in India and Muhammad 'Abduh and Qadri Pasha in Egypt took these changes as an opportunity to make space for Islamic law. They focused on 'Muslim Private Life' and transformation of the private lives of Muslims. She contends that the Deoband's vision of women in Muslim society was 'far more egalitarian' than that of the modernizers such as Maududi and the

[7] Ibid, 229.
[8] Ibid, 120.

Aligarh School.[9] This is a bold assertion and contrary to the popular view regarding the *Deoband* School—a seminary which is producing graduates incapable of contributing any reformatory and positive changes in the society. Hussin has much admiration for Maulana Ashraf Ali Thanawi. She argues that Thanawi's popular text *Bihishti Zewar*[10] adopted the language of reform and modernity. His reformist agenda, like European reformers, was the reformation of Muslim women, family, landowners and government servants. Maulana Thanawi believed that Muslim women had the ability to reform through reading and education.[11] However, Hussin does not provide any evidence to substantiate her point of view. Maulana Thanawi wrote *al-Hila al-Najiza*[12] (The Successful Legal Stratagem for Helpless Wives) for the desperate and helpless women to get a divorce from the unwilling husband. He prescribed the borrowing of the Malaki School's point of view on this issue instead of the Hanafi School.[13]This is contrary to the views of mainstream Islamic scholars who believe in following one particular school of Islamic jurisprudence instead of picking and choosing selective portions from other schools. Hussin's view about Maulana Thanawi is quite interesting and unique which requires further research in the future on this particular aspect.

Another interesting observation in the book is regarding the role of Muslim lawyers and judges in the application of Islamic law in the courts. Hussin argues that Muslim lawyers helped push the British agenda forward. They were not trained in Islamic law and jurisprudence. Likewise, the British trained judges were also unaware of the knowledge of Islamic law and jurisprudence. She discusses Muslim lawyers (Syed Ameer Ali, Badruddin Tyabji, and Asaf Ali Asghar Fyzee) who became interlocutors between the British colonisers and Indian Muslims. She maintains that these lawyers and judges were not expert of Islamic law and

[9] Ibid, 203.
[10] Ashraf Ali Thanvi and Barbara Daly Metcalf, *Perfecting Women: Maulana Ashraf'Ali Thanawi's Bihishti Zewar* (Berkeley: University of California Press 1990).
[11] (n 1) 201-202.
[12] Ashraf' Ali Thanawi, *al-Hilat al-Najiza, ya'nay Aurataun ka Haqq-i Tansikh-i Nikah* (Karachi Dar ul-Isha'at).
[13] Fareeha Khan, 'Traditionalist Approaches to Shari'ah Reform: Mawlana Ashraf'Ali Thanawi's Fatwa on Women's Right to Divorce' (DPhil thesis, University of Michigan 2008) 6.

fiqh.[14] However, Syed Ameer Ali, Fyzee and Sir Abdul Raheem were experts of Islamic law who rendered valuable contributions for Islamic law and jurisprudence through their books with Syed Ameer Ali being the first South Asian judge of the Privy Council. Syed Ameer Ali and Fyzee are also considered as the leading authorities on Muslim family law.[15] While the former wrote the *Mahommedan Law,*[16] and the latter wrote the *Outlines of Muhammadan Law*.[17] Both these books are considered as the major authorities on the family law in Islam.

Hussin's excellent work covered a wide range of legal treatises on Muslim Personal Law. She aptly reviewed and analysed the notable lawyers and judges' work on Islamic law, especially family law. However, one notable omission is Sir Dinshah Fardunji Mulla's *Principles of Mahomedan law*,[18] which is considered as the most celebrated treatise on Muslim Personal Law. Published in 1905, Scott Kugle is of view that the book was authored on the behest of colonial administration.[19] This book was initially written for the students but gained widespread popularity among lawyers, academia, and judges. Mulla wrote it in the form of a legal statute[20] with the text being one of the most celebrated books on the family law of Islam. The courts in the Indian sub-continent also consider it as the original source of Islamic law.[21] Hussin also refers to Qadri Pasha's semi-official codified work *Kitab al- ahkam al- shar'iyya fi al-ahwal alshakhsiyya wa al- mawarith (The Book of Laws of the Shari'a in Matters of Personal Status and Inheritance)*[22] many times in her book. She argues that Pasha's codification was aimed to guide judges in adjudicating

[14] (n 1) 184.
[15] Rohit De, 'The Two Husbands of Vera Tiscenko: Apostasy, Conversion, and Divorce in Late Colonial India', 28 (2010) *Law and History Review*, 1011, 1020.
[16] Syed Ameer Ali, *Mahommedan law* (6th edn, All Pakistan Legal Decision 1965).
[17] Asaf A. Fyazee, *Outlines of Muhammadan Law* (Oxford University Press 2007).
[18] Dinshah Fardunji Mulla, *Principles of Muhammadan Law* (10th edn, Eastern Law House 1933).
[19] Scott Alan Kugle, 'Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia' (2001) 35(2) *Modern Asian Studies* 257, 259.
[20] Shahbaz Ahmad Cheema, 'Mulla's Principles of Mahomedan Law in Pakistani Courts: Undoing/Unravelling the Colonial Enterprise?' 4 (2018) *LUMS Law Journal* 2, 8.
[21] Ibid, 12.
[22] Muhammad Qadri Pasha, *Kitab al- ahkam al- shar'iyya fi al- ahwal alshakhsiyya wa al- mawarith.* (Cairo/Alexandria 2006).

matters of Islamic law.[23] Mulla's treatise also had similar objectives as it also attained the status of semi-official codified law. Therefore, it is surprising that Hussin did not discuss it in her book.

Another shortcoming of the book is its citation of only a limited number of case law. Granted, it is a socio-political work, yet citation of case law would have added more value, depth, and authenticity to this excellent treatise. For instance, the citation of two Malaysian cases, *Lina Joy* and *Nyonya Tahir,* on the issue of apostasy to elucidate the point that how colonial definition of Muslims has been creating problems in Malaysia helped readers to understand the problems faced by the people.[24] Similarly, Hussin asserts that the colonial remaking of Muslim family law created many problems for the Muslim women. She argues that the British version of Islamic law is "conservative and patriarchal" and it worked against the interests of Muslim women.[25] However, she does not explain how it was conservative and patriarchal. It would have been a very good idea to cite a few judgments to elaborate this point. She could have referred case law to substantiate her argument the way she did in the *Lina Joy* and *Nyonya Tahir*'s cases. In this regard, the historical context of the enactment of the Dissolution of Muslim Marriage Act 1939 and the subsequent problems it posed for Muslim women to get a divorce should have clarified her point.

Similarly, Hussin has not analysed whether the term 'Muslim Personal Law'—one of the most important themes of the book—has been creating confusion in India, Egypt, and Malaysia regarding jurisdictions of the courts. For instance, the term 'Muslim Personal Law' has been differently interpreted by the superior courts of Pakistan. In the *Farishta* case,[26] the Shariat Appellate Bench of the Supreme Court of Pakistan ruled that the Muslim Personal Law has two meanings depending on the context. The first meaning conceptualises it as the divine law for Muslims governing their religious affairs. The second meaning theorises that all personal statutes of Muslims which are exclusively applicable to the

[23] (n 1) 195.
[24] Ibid, 236.
[25] Ibid, 137.
[26] *Federation of Pakistan v Mst. Farishta* PLD 1981 SC 120.

religious Muslim community in Pakistan.[27] In the *Faisal* case,[28] the term Muslim Personal law is redefined by the larger bench of the Supreme Court of Pakistan as "the personal law of each sect of Muslims based on the interpretation of Qur'an and Sunnah by that sect."[29] It would have been interesting to learn how the definition of Muslim Personal law was coined and contested during the colonial period.

The *Politics of Islamic Law* is an outstanding analysis of the making of Islamic law in India, Egypt, and Malaysia during British colonial period. It explores in detail the privatization, secularization and marginalization of Islamic law by the British colonial administration. The main argument of the book is regarding the process through which Islamic law was made, remade and unmade in colonial states by the British colonizers. It is argued that during the colonial period, Islamic law was transformed from being an instance-based, judge-centred and uncodified legal system into the codified, state-centred, family and personal law. This is an excellent book to understand the colonial politics of Islamic law which also highlights the historical roots of the contemporary problems of modern Muslim states.

[27] Ibid.
[28] *Dr. Mahmood-Ur-Rahman Faisal v Government of Pakistan* PLD 1994 SC 607.
[29] Ibid.