

The Investigation on the Role of Colonial Judges in Protecting the Rights of Muslim Women to Dower and Divorce in British India: From the Period between 1800-1939

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Abstract : The colonial court records between 1800 to 1939 in India show the existence of excessive dower, which were usually paid at the dissolution of marriage to discourage divorce. Supporting this view of excessive dower as a useful device, Mitra Sharafi (legal historian of modern South Asia) argues that inflated dower and divorce law protected Muslim women against instant divorce, making it too expensive for husbands to use it. Further, according to her, British judges enhanced women's rights to dower and divorce by pronouncing rulings in favour of a high amount of dower to protect the women against the one-sided authority of men to divorce. Contrary to the view of Sharafi, this paper will argue that inflated dower did not protect the rights of women against instant divorce and undesirable marriage, and British judges did not really work to better the lives of Muslim women. To prove so, we shall firstly argue from the court cases that it was challenging for women to prove divorce on the husbands' denial of divorce in order to avoid the payment of dower. Secondly, it was almost impossible for women to get rid of their undesirable marriage, as divorce was impartially dependent on their husbands. Thirdly, Muslim women were often deprived of their unpaid prompt dower due to the rigorous application of colonial law of limitation by British judges. Furthermore, the abolition of the office of Muslim legal experts from the colonial courts in 1864 deprived Muslim women not only to avail the interpretation of Islamic law but to benefit from the diversity and flexibility of Islamic law in obtaining their right to dower and divorce.

Keywords : courts, divorce, inflated dower, Islamic law, women's rights

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