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Divorce and Justice: Adjudicating Marital Disputes in Indian Sharia Courts

ABSTRACT:

Drawing on ethnographic and archival research in an Indian “sharia court” (*dār al-qaḍā*), this paper gives an overview of the reasons for which women and men petition the court and elaborates some of the consequences for thinking about Muslim marriage in the contemporary world. The paper covers three types of petitions— *khul'* and *faskh nikāḥ* (two types of woman-initiated divorce), and *rukhsati* (petition for the wife to return to her marital home)—giving a summary of the sources of marital conflict as well as the outcomes of the cases. With this context in place, the paper focuses attention on petitions for *rukhsati* and for *khul'*. Because *rukhsati* cases are initiated by husbands whose wives have left the marital home, often long prior to the petition, while *khul'* cases are initiated by wives, looking at the two types of cases together provides particular insight into the disagreements husbands and wives have about their respective roles and responsibilities in marriage. Both types of cases entail lengthy negotiations about spouses' roles and responsibilities in the household and therefore also provide insight into the way that questions of ethics, emotions, and material conditions entangle in marital negotiations. The *qaḍīs'* approaches to adjudicating these disputes, which includes pragmatic discussions about household finances and divisions of labour but also more philosophical discussions about just family relationships, further illuminate how addressing marital disputes in contemporary contexts requires new interpretations of sources in the Islamic tradition. Such new interpretations are especially important in contexts like this where marital disputes arise for reasons that include changing expectations of gender roles as well as dire financial circumstances. The paper ultimately asks what we learn from the *qaḍīs* about the meaning of justice (*inṣāf*) in such conditions.



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BIO:

Prof. Katherine Lemons is Associate Professor of Anthropology at McGill University. She conducts research on Islamic law, gender and kinship in India, and is the author of *Divorcing Traditions: Islamic Marriage Law and the Making of Indian Secularism* (Cornell University Press 2019).