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Reflections on Islamic Identity, Citizenship Rights and Women's Struggle For Gender Justice: Illustration From India

By Sabiha Hussain¹

Abstract

Women's rights face an uncertain future throughout much of the Islamic world. The fate of women's rights throughout the Islamic world crucially hinges upon the outcome of debates on reforms of family and penal codes including new understandings of Islamic law and teaching. It requires mention that there is no monolithic trend of women's struggle for gender justice even in Islamic countries. It varies with the cultural setting, the political structure of the state and the location of the community. In the Islamic world, the question of gender justice often becomes a struggle to be fought at two levels: against the forces of conservatism in society and against its anti-democratic effects on the political structure of the country. There is growing tension between gender justice and rising conservatism. Fundamentalist forces try to impose greater control over women, even though this approach may or may not have to do anything with religion. In such a context, Muslim women face several new dilemmas. Do they stand with their community under attack and hold in abeyance their struggle against the fundamentalist leaders or do they foreground their critique of Islamic conservatism at a time when imperialism uses women's unequal status under Islamic law to garner ideological support for their imperial project? A similar dilemma is faced by Muslim women in India as members of a minority community faced with majoritarian communalism. A significant challenge before Muslim women is to find ways to overcome the dilemma and question the foundations of Islamic law where it is incompatible with democratic rights without compromising their sense of solidarity with their community. What must be done to overcome the practical hurdles that stand in the way of reconciling Islam with universal principles of women's rights? How can Muslim feminists win the interpretive struggle against the conservatives?

Keywords: Islamic Identity; Gender Justice; Citizenship rights;

Introduction

Research on Islamic identity and women's rights is neither a new nor an easy task. It is not new, particularly in a period when discourses on the lack of women's rights, in several Islamic states, have become useful propaganda for external interventions. It is a difficult task because despite Islam being a world religion, social practices, legal systems, and even religious mores and interpretations vary across regions, nationalities, cultures and even sects. Nevertheless, several studies have directly or indirectly, touched upon the way in which Islam interfaces with women's participation in state formation, the labour market and the family sphere. The present challenge before progressive women within Muslim communities, is how to combat the mounting influence of discriminatory traditions, and their enforcement through

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political policy in a period when hostility to, and demonisation of Muslims makes intra-community criticism and debate difficult.

When one talks about Islamic identity and the reasons for advocating this identity, two factors seem to be particularly significant in the contemporary era. First, invariably the vast majority of Muslims in most parts of the world have emerged from colonial rule or alien hegemonic rule and control. Many Muslim societies became nation-states without the benefit of an historical evolution of a nation, and all of them have had to cope with both the challenges posed by state-building and the burdens of dislocation of indigenous socio-economic structures and cultural systems caused by colonial imperial power. In the process of integrating the citizens of the state, political leaders selected an infinite range of possible cultural identities, which instead of giving equality of benefits and opportunities to its people, somehow deepened inequality as well as led to discrimination against the specific groups within the state (Taylor and M. Yapps, 1979; Shaheed, 2004)

Second, the emergence of the 'New World Order', wherein the ground of politics generally seem to have shifted away from defining the nature of the state and the appropriate socio-economic and political system, to trying to work out the best deal within the existing system. This shift somehow reinforces the tendency to make demands on the basis of identity that demarcate the boundaries between 'we' and 'they' rather than a well-articulated political agenda that spells out economic and social programs.

The question of women's rights and gender justice both challenges and is challenged by cultural and political issues of identity/identities, in terms of how identity is formed, who defines it, how definitions of gender fit into definitions of community (and those of a collective and personal self), and finally how these definitions interplay at the local, regional, and international levels. All of these factors have direct consequences to women wanting to redefine the parameters of their lives and their struggle for their rights both as members of a nation-state and members of a religious community.

It bears underlining that the role of Muslim women the world over is not religiously fixed²; rather, it is fashioned by the political power and the conflicting views of traditionalists and moderates over how to preserve the identity of the Muslim community. The degree of 'religiosity'³ in a society cannot be taken at face value.⁴ Various studies on Muslim women and their rights have shown that religion influences gender relations and outcomes, but the effects of specific religious affiliations vary, due to different interpretations of religious texts. Further, social obligations and codes of conduct are more determined by cultural settings⁵, despite the frequent use of religious invocations to justify and enforce. The difficulties that confront Muslim women are the same difficulties that confront women in all the major religious traditions of the world that developed in the context of patriarchal

² Amina Wadud, *Quraan and Women* (New York: Oxford University Press, 1999). Cited by Nayereh Tohidi, "The Issues at Hand", in Herbert Bodman, ed., *Women in Muslim Societies: Diversity Within Unity* (London: Lynne Rienner Publishers, 1998) 277-291, 278.

³ Religiosity refers to the extent to which Muslims observe Islamic teachings in their deeds.

⁴ Fadwa Labadi, Penny Johnson, Remma Hammami and Lynn Welchman Report, *Islamic Family Law and the Transition to Palestinian Statehood: Constraints and Opportunities for Legal Reform*, reproduced by Lynn Welchman ed., *Islamic Family Law in Comparative Perspectives* (London: Zed Books, 2002).

⁵ Cited by Christain Morrison and Johannes Jutting, "The Impact of Social Institutions on the Economic Role of Women in Developing Countries" OECD Development Centre, Working Paper No. 234, OECD, May 2004, 13.

cultures and the interpreter of these traditions were men. Yet there may be differences marking out Muslim women from their sisters in other religions. In India, for example, Muslim women's legal status tends to be more guided by the personal/family law than the secular law in comparison to women of other religious communities. Further, the influence of Muslim fundamentalists over the evolution and application of Muslim family laws in India are increasingly affecting women's lives, their legal rights and traditional practices as well as limiting women's organisations, defining the parameters of their struggles and their strategies.

Importantly, there is often a gap, a large discrepancy between the Qur'anic teachings regarding the rights of women, and what is actually happening to Muslim women in both Islamic as well as in multicultural societies and states. For instance, in Pakistan, in the name of Islamization honour killings are taking place, and in Afghanistan in the name of talibanisation various restrictions on women are again being reinforced, including restrictions such as women should not take up professions other than teaching and medicine; they should not appear in public with men other than their husbands, sons or fathers, and so on. Laws have been promulgated which take away from women even those rights given to them in Islam.

Thus, the identities a woman "chooses" for herself (i.e. what she will be, how she will behave, her interaction within the family, and, with respect to the outside, her life occupation, etc.) are all determined by the boundaries of the legal/social space defined for her in her society, and each discriminatory measure reduces the quantum of autonomy she can exercise' (Shaheed 1994: 997-1019).

Hence, our main concern would be why the question of religious/community identity and women's rights has been a central issue for Muslims in so many parts of the world? Does the importance of Muslim women's interests and rights necessarily have to recede whenever the interest/identity of the community is under attack? This paper deals with some of these issues as they have unfolded in India and which have directly impacted the rights of Indian Muslim women and their struggle for a gender just law.

Conservative discourse on identity and women's rights

In general conservative/fundamentalist discourses on identity, irrespective of religion, are centered on the politics of the control of women. For instance, the Christian Right in the US has been asserting its views on morality by assassinating medical personnel who perform abortions; Muslim fundamentalists have instituted gender apartheid in Iran, Sudan, Algeria and Afghanistan, while the Hindu communalist and RSS in India have been glorifying and promoting sati (burning of wives alive on the pyre of their deceased husbands) and so on. As far as Muslim Conservative discourses on identity are concerned they generally revolve around a trans-cultural and ahistorical 'Muslim identity' which completely negates the cultural differences or the actual heterogeneity among Muslims and the way in which Islam has absorbed indigenous cultures and assimilated their practices. There are approximately 1.2 billion Muslims in the world who are divided by class and social structures, political systems, cultures, ethnic and racial identities, natural, technological, and economic resources, and differing histories (to mention only the more obvious dividing lines). Muslim women are not unidimensional entities defined exclusively by their sex or by their religious identity. Neither are they necessarily silent and passive victims. Despite the existence of similarities, the notion of a uniform Muslim world is a misconception which is 'imposed on women'.

However, an unfortunate constant within conservative discourses across all regions is the choice of reinforcing the subordination of women in the name of religion and maintaining community/religious identity through the implementation of family personal laws which is the product of male conservative interpretation, often at variance with Quranic injunctions.

Within the claim of fundamentalists about their public quest for Islamic identity, in daily practice their activities directly affect women and the private sphere, particularly family codes or personal status laws which rule personal life, such as marriage, divorce, guardianship and child custody, polygamy, inheritance, standards of behaviour, clothing and so on. Fundamentalists display a particular fondness for the private domain as a field of action towards restriction on women's participation in the public domain. It is true that Islamic countries have modernized many laws related to economy, education, commerce, and politics and so on but there is practically no forward movement in the status of women. When it comes to women's rights, religion and theology are invoked. Laws pertaining to the public domain are governed more by secular considerations, but the laws governing personal and family matters (private domain) are still regulated by interlocking of religion with law and customs which give little space to women in private domains.

Further, the discourse on identity becomes complicated by the interlocking of traditional customs, values, and beliefs within ethnically defined or geographically specific frameworks outlining the parameters of a Muslim woman's identity. For instance, the custom of female circumcision, which on the one hand controls women's sexuality and on the other hand symbolizes Muslim identity is a feature of just one specific geographical area and indicates the interlocking of localized custom and religion.

The discourse on Islamic identity and the issue of women's rights further gets complicated when there is a clash between the universalisms of Muslim conservative and western discourses. On the one side universalist conservative discourse on Muslim identity and women's rights stresses implementing a similarity in their arguments without considering the difference in the historical, political and economic situation of the countries (for instance, Algeria, a 'socialist' country, Tunisia, capitalist and cosmopolitan, Saudi Arabia, a royal capital, Morocco a monarchist regime, Iran a theocratic state). On the other side western countries use a human rights discourse in relation to women's rights against the spread of so-called Islamic fundamentalism and as an instrument to justify interventions with imperialist content. In many countries Muslim conservatives view the approach of these western agencies and governments as a direct interference in their religious and internal political, legal and economic issues. As a result wherever common Muslims are opposed to imperialist intervention, they also tend to cling more to their Islamic identity which is often maintained through the control over the private domain i.e. women and the family law which creates problems in women's struggle for their rights.

Further, within western countries with sizeable Muslim populations, a tendency to view Islam as an intrusion into western culture creates identity crises. For example, several commentators have argued that in a recent volume on Islam in North America Muslims are described and interpreted by the West as 'other', 'non-us', or 'them', with Islam 'held up as an alien religion against an idealized, a historical Judeo-Christian mirror' (Waugh et. al., 1991: xi; cf. Hourani, 1991; cf. El-Guindi, 1981; Eickelman, 1987). This hostility to Islam helps consolidation of the hold of the conservatives as maintenance of religious identity then takes precedence over efforts to improve the social and economic condition of the women and prevents

development of a more liberal attitude towards the rights of women. Both of these extremes have been created and supported by the internal as well as international politics which ultimately leads to gender injustices made in the name of religion or religious revivalism.

Thus, on the one hand women's lives are shaped, conditioned and governed by practices, customs, and laws synthesized into one cohesive whole in which no distinction is made between laws actually derived from Islamic doctrine and those borrowed from outside. On the other hand their identity is defined by ethnic, national and religious culture and external laws as well as socio-economic structures (Shaheed, 1005). However, these two aspects of women's lives cannot be isolated from a host of other variables, such as cultural specificity, social and political structures as well as the level of economic development. The diversity of contexts within which Muslim women live out their lives can neither be read off solely from Islamic ideology and practice, nor be entirely derived from global processes of socio-economic transformation, nor from universalistic premises of feminist theory (Kandyoti 1991: 2).

The real and living question before us is what are women to do when they are suppressed or victimized in the name of maintaining community identity in a context where imperialism is targeting and demonizing Muslims in the name of women's rights? They are perpetually in a fix as to whether they should stand with their community under attack and hold in abeyance their struggle against the fundamentalist leaders who voice resistance to imperialism or whether they should foreground their critique of Islamic conservatism at a time when imperialism uses women's unequal status under Islamic law to garner ideological support for their imperial project. Despite this dilemma Muslim women from various countries have initiated a debate and started a movement on the issue of women's rights and empowerment by questioning the patriarchal interpretation of Islamic texts and precepts and initiated a process of re-interpretation from a gender perspective.

Feminist discourse on Islamic identity and women's struggle for gender justice

Feminist movements in the Muslim world have undergone a significant transformation during the course of the Twentieth Century. During the 1970s Muslim feminists, especially Arab-Muslim feminists, focused on cultural differences, coupled with the rejection of the paternalistic models of Western feminism (El Guindi, 1999). This stage, which coincided in time with the so-called 'Islamic revival', got feminists working within Muslim spaces, entangled in bitter debates around Muslim historiography and women (Saadawi, 1988). This debate set the frame for the emergence, during the 1990s, of Islamic feminism⁶.

⁶ Islamic feminism is an effort to restore the equal status of women as is their God-given right in Islam from the beginning. One hears a lot of how Islam is great for women in theory. In practice, there have been many systemic abuses against women in Muslim societies. The Taliban were the worst and most extreme example. So there is an urgent need to re-establish women's rights and dismantle the patriarchal rule that has plagued too many Muslim societies. What makes it Islamic is that it's based on the sources of Islam: the Qur'an and the Prophet's example. Islamic feminists basically look into the basic texts of Islam in context of real life situations for concrete ideas and use Islamic categories like the notion of *ijtihad*. The tools can be different like linguistic methodology or historiosizing. But the frame is within Islam, not foreign. Thus, Islamic feminist discourse is a Qur'an-centered one that distances itself from the entangled web of *fiqh* schools as well as existing socio-cultural realities of Muslim societies and their customs and traditions. The main concern is understanding the pure and essential message of Islam and its spirit. (<http://ductapefatwa.blogspot.com/2004/10/prophet-mohammed-as-feminist.html>, Zahila Izadi, Enemy of the State.

The term Islamic feminism began to be visible in the 1990s in various global locations. It was from the writings of Muslims that I discovered the term. Iranian scholars Afsaneh Najmabadeh and Ziba Mir-

Islamic feminism advocates women's rights, gender equality, and social justice using Islamic discourse as its paramount discourse. Mernissi, Ahmed and Wadud argue for women's rights through Islamic law reform. They argue that feminist concepts in the Muslim world had to confront a triple consciousness i.e. national, transnational, and international which is articulated respectively along political, religious and gender lines (Gross 1996; Cooke 2001).

In Iran, major Islamic feminist discourses draw upon secular discourses and methodologies to strengthen and extend its claims. For example, Wadud in her women-sensitive interpretation of the Qur'an combines classical Islamic methodologies with new social science tools and secular discourses of rights and justice while retaining a firm and central grounding in Islamic thought.

Broadly speaking, the Islamic feminism of the 1990s rests on a transition from idealism to reformism focusing on the correction of what they believe, are misinterpretations of Islamic law. They reinterpret and re-examine the Quranic and Sunnah sources of Islamic law to filter out what they consider inauthentic anti-women hadiths (sayings) that they argue were all introduced after Muhammad's death.

Islamic feminist discourses on Islamic identity categorically speak about masculine hegemonies that have turned women into invisible elements of Islamic history through patriarchal discursive practices (Arebi, 1994; Nashat, 1999) According to them among the most negative of such practices, is the abrogation of women's rights to participate in the affairs of the community (*umma*), the negation of 'Aisha's legacy' (Muhammad's wife). But unfortunately mainstream Islamic historiography has excluded her as a model for Muslim women (Wadud; Yamani 1996).

Islamic feminists have also deconstructed Muslim conceptual structures, leaving untouched the foundational character of the Quran and *hadith* as texts with a sacred value. They have reinterpreted the ontology of current readings of both sets of texts by situating them in the precise historical context in which they were produced i.e. the androcentric culture and patriarchal structure that dominated Muslim societies between the 8th and 11th centuries A.D. During this time, Islamic law (*Sharia*) was codified, thus conditioning the creation of an Islamic juridical corpus.

According to Islamic feminists, it is necessary to remove from the text the patriarchal conjunctures that conditioned their production in order to be able to extract the concept of Humanity present in the Quran. This notion is not gender specific, but rather represents the will of each individual to follow her or his path (*sharia*) in this world. This sort of critical thinking has resulted in the production of basic concepts of justice, identity, citizenship and activism that aim at achieving their goals in opposition to conservative forms of Islamic knowledge (Moghadam, 1999; Al-Ali, 2000)

Hosseini explained the rise and use of the term Islamic feminism in Iran by women writing in the Teheran women's journal *Zanan* that Shahla Sherkat founded in 1992. Saudi Arabian scholar Mai Yamani used the term in her 1996 book *Feminism and Islam*. Turkish scholars Yesim Arat and Feride Acar in their articles, and Nilufer Gole in her book *The Forbidden Modern* (published in Turkish in 1991 and in English in 1996) used the term Islamic feminism in their writings in the 1990s to describe a new feminist paradigm they detected emerging in Turkey. South African activist Shamima Shaikh employed the term Islamic feminism in her speeches and articles in the 1990s as did her sister and brother co-activists. Already by the mid-1990s, there was growing evidence of Islamic feminism as a term created and circulated by Muslims in far-flung corners of the global *umma*.

Thus a priority of Islamic feminism is to go straight to Islam's fundamental and central holy text, the Qur'an, in an effort to recuperate its egalitarian message. Some women focus exclusively on the Qur'an (Amina Wadud, Rifaat Hassan, Saudi Arabian Fatima Naseef); others apply their rereadings of the Qur'an to their examination of the various formulations of the Shari'a (Lebanese Aziza Al-Hibri, Pakistani Shaheen Sardar Ali); while others focus on re-examining the *hadith* (Moroccan Fatima Mernissi, Turkish Hidayet Tuksal).

However, in Islamic feminist discourses, one finds that the political and economic issues are left untouched. There is hardly any mention of the alternative positions on democracy (even an Islamic democracy), civil society, and citizen rights. All these issues have a direct impact on the lives of women and their struggle for gender justice (Moghadam V., 1993) as women's rights cannot be dealt with in isolation or from the lens of religion alone.

Nevertheless, one might say that despite the diversity and shortcomings amongst the feminist discourses in Muslim dominated countries, they all have a common concern, as to how to handle the religio-political manipulation of identity and women's autonomy articulated by right-wing political forces and the immense difficulties women face in challenging discrimination. Women's movements in several Islam dominated countries are at the forefront of reforming Islamic knowledge and understanding to stop the use of religion to discriminate against women. For instance, women's organizations in Malaysia, Indonesia, Southern Philippines, Iran have been engaged in the past several years to get their governments and their religious authorities to support the necessity for reform of Islamic Family Law which is not gender just and violates fundamental liberties as upheld by the constitutions of their respective countries.

The changes and challenges of the twentieth century have indeed been rough for Muslim women all over the world. They have been caught in the crossfire between cultural war of Islam and the West, or the civil wars between secularists and Islamists or communal conflict involving other religious fundamentalists. They have to bear the brunt of travails associated with these conflicts at many levels. Even when it comes to historical processes, Muslim women are often caught in the struggle between the imperialism of modernity and the inflexibility of traditions.

This crossfire at various levels clearly indicates that women are controlled in different ways in the interests of demarcating and preserving the identities of national/ethnic collectivities. For instance, until recently, white South African women were not allowed to have sex with men of other groups, as were women of higher castes in India (Anthias and Yuval-Davis 1989:1-15). Similarly, Muslim societies do not normally condone their women marrying out of the faith, although no such strictures exist for men since Islam is transmitted through the male line. In the words of Kandyoti (2004:39) "the identification of women as privileged bearers of corporate identities and boundary markers of their communities has had a deleterious effect on their emergence as full-fledged citizens of modern nation-states".

Construction of religious identity in India: a historical view

The expression of Muslim identity in India is not a new phenomenon; rather, it dates back to the cusp of the 19th century as a section of the Muslim community began to lament the disintegration of the Mughal Empire in their endeavor to locate their position within the changing political structure (Ali 2002). Reformers, publicists, writers and poets engaged in a 'self conscious reassessment of what was deemed authentic religion' based on a rereading of the classical texts. Studies of the Qur'an

and *hadith* gained a prominence that had been unknown during the Mughal period (Washbrook, 1981 pp. 649-721).

Popular understandings of Islam underwent profound changes during the late nineteenth and early twentieth centuries (See discussion in Metacalf, *Islamic Revival*; Aziz Ahmed, *Islamic modernism in India and Pakistan, 1857-1904* (London, 1967 and Rafiuddin Ahmed, *The Bengal Muslims 1871-1906*, 2nd edition Delhi, 1988). Adherence to the *shari'a* in guiding social life became more widespread and was increasingly perceived to be central to the maintenance of Muslim identity. In a way they all tried to develop 'communitarian strategies, advance religious rights and nurturing the vision of unified, pan-Indian Muslim community' (Hasan 1998, 14).

The British also followed the same vision of Islam and saw Muslims as a monolithic community and part of a 'Great tradition' as codified, rigid, unchanging and with no scope of affecting by external influences. This vision defined Muslim identity as a homogenous community. Moreover, in the constitutional plans, the British government showed no sensitivity to the wide-ranging differences that differentiate Muslims from one another.

In the aftermath of the 1857 uprising against the British which was marked by communal unity, the Indian Councils Act of 1892 (which allowed the communal nomination to government) and reforms of 1909 (which allowed separate electorates in representative bodies at all levels of electoral systems) institutionalized divisions between Hindus and Muslims. 'While on the one hand this division gave birth to a sense of Muslims being a religio-political entity in the colonial image, i.e., of being unified, cohesive and segregated from Hindus, on the other hand it effectively consigned [them] to being a perpetual minority in any scheme of constitutional reform' (Ali op.cit, 54). Political developments also added to separate identity and the politics of difference (the Lucknow Pact of 1916, Nehru report of 1928, the Communal Act of 1932 and the government of India Act 1935) (Hasan 1994).

Colonialism-inspired religious segregation and homogenization of India's diverse Muslim population, was further carried forward by the conservative forces of the Muslim societies. It has been argued that the "parameters of the discourse established by the colonizers pushed nationalist forces into either supporting all traditions or initiating reform for women from within the traditional-religious framework. For all participants in the debate, women came to represent 'tradition' and became the ground on which it was debated and reformulated. Simultaneously, the definition of tradition saw a colonial privileging of scripture" (Mani, 1989: 98). Hence, the discourse was not in fact women's welfare or status which is clearly reflected in the negligible action taken in terms of legislative reforms affecting women in personal and family matters. The specific laws governing personal and family matters separated the parameters within which a Muslim woman hoped to define her own identity. For example, the Muslim Marriage Dissolution Act 1939, granted men unconditional rights to divorce their wives while making divorce rights conditional for women. The law thus accepted men as the ultimate arbiters of acceptable and unacceptable conditions within marital relationships and within the family and narrowed down the scope of a woman's identity to that of an adjunct of the husband.

After Independence and the creation of Pakistan, the political situation changed. Indian Muslims, who had struggled for freedom and had opted to remain in India, found themselves referred to as a minority. And being a minority and the feeling of insecurity attached to it, to a large extent, discouraged Muslims from advocating or demanding reforms in their personal law. Any attempt at reforming

Muslim law took political colour in which perceptions of threats to minority autonomy took precedence over women's rights. This approach had a disastrous psychological effect on internal democracy among Muslims. It also provided opportunities to Hindu fundamentalists to politically and ideologically attack Muslims adding to the communally surcharged atmosphere which in turn led to an identity crisis and ultimately in the name of religious identity women had to compromise with their rights.

Citizenship, religious/community identity and gender justice: the case of Shah Bano

The situation of Muslim women living as members of a minority in non-Islamic secular regimes is slightly different from countries where Muslims are in majority. In the former the overbearing concern with their minority community status intersects with their gender identity. The claim of autonomy to maintain religious identity restricts any process towards claiming secular gender and legal equality. The legal equality granted to women under the constitutions of modern states is more often than not circumscribed by family legislation with traditional origin than privileges men in the areas of marriage, divorce, child custody, maintenance, and inheritance rights.

In this situation the preservation of religious identities often becomes detrimental to the realisation of women's citizenship rights (citizenship to mean the right to equality and freedom). The case of Shah Bano⁷ in India is a historical example of depriving women of their citizenship rights in the name of maintaining community/religious identity. This case clearly brought out the discourse on citizenship, community, and gender in which Shah Bano's identity as Indian and her rights to equality were subsumed by her religious/community Identity.

In 1985 the Supreme Court passed a judgment granting a 73 year old woman Shah Bano, the paltry sum of Rs. 179 per month as maintenance from her husband. Shah Bano had been thrown out of her husbands' house in 1975 after forty-three years of marriage. In 1977 he stopped paying her maintenance of Rs. 200 and she filed an application under Section 125 of the Criminal Procedure Code for maintenance at the rate of Rs. 500 a month. In the meantime, her husband divorced her and paid her Rs. 3000 as mehr as his final settlement. The judicial magistrate however ordered him to pay Rs. 25 and this sum was later raised to Rs. 179.20 by the High Court of Madhya Pradesh. The husband appealed to the Supreme Court against this on the grounds that under Muslim Personal Law, he did not have the responsibility to maintain his wife after divorce. The Supreme Court dismissed his appeal and in addition to maintenance, ordered him to pay Rs. 10,000 as the costs of the appeal. This judgment provoked widespread reactions and led to mass demonstrations, strikes and petitions presented by Muslims calling for a reversal of the judgment which was seen as violating Muslim Personal Law. The issue of women's rights turned into a major confrontation of majority and minority interests and finally in 1986 the Indian Parliament passed The Muslim Women's Protection of the Right to Divorce Bill which withdrew the right of Muslim women to appeal for maintenance under the Criminal Procedure Code.

The Shah Bano case became a crucial landmark in relationships between Hindu and Muslim communities, minority communities and the state, civil and religious laws and women (Pathak and Sunder Rajan 1992). The Supreme Court held

that there was no conflict between Muslim law and the Criminal Procedure Code. The court arrived at this conclusion by taking it upon itself to interpret the Quran in an elaborate manner. This enraged Muslim clerics who felt that the court had performed a theological function which was exclusive to them.

The controversy around the judgment reflected a tension between the claims of rights for cultural communities versus the claim of women's citizenship rights. Secular minded people of the community felt that nothing could override the claims of the state, which is democratically constituted by the entire citizenry, and was concerned with ensuring the protection of rights and common good of all, in its capacity as the supreme representative institution. The crucial issue of gender justice was completely sidelined in the controversy over whether the court had the authority to interpret Islamic texts and hence, the opposition to the Shah Bano case was less a dispute over the substance of rights than a battle over the question of who has the authority and jurisdiction to determine rights: parliament, the courts or the religious leaders (Hasan 2005).

The central issue of women's citizenship rights was subsumed by community rights. The social and economic problems that beset Muslim women, implementation of their existing rights or adopting progressive changes made in other Muslim societies, were all set aside by the Muslim conservatives who saw the judgment as an abrogation of their religious-cultural rights by the state and interpreted it as yet another encroachment into the 'internal affairs' of their community.

The agitation was immediately polarized on communal lines. Under militant Hindu attack, and the government's apprehension that the controversy would result in the spread of violence between the majority and minority communities and fear of losing Muslim votes in the impending elections, the ruling party supported the clerics and instituted a new parliamentary legislation called Muslim Women (Protection of Rights on Divorce) Act 1986 (MWA), which deprived women to claim maintenance under secular law.

The insistence of conservative forces on precluding Muslim women from the purview of Section 125 violates Article 14 and 15 of the Constitution which prohibits discrimination by the State on grounds of religion, race, sex or place of birth were neither the issue for them, nor they were able to understand that with the passage of the Muslim women bill the government of India had indeed legislated on Muslim law; it had interfered in the Shariat. As we all know, in Shariah there is no provision for maintaining divorced Muslim women through waqf or charitable organizations (lateef 1990:196-7) as were specified in the 1986 law.

The politics of communalization that had emerged from the Muslim Women Act had two consequences as far as the rights of women were concerned. First the question of community/religious identity overrode the question of women's rights and secondly, it precluded Muslim women from obtaining her secular rights in matrimonial matters. Hence, the onus of preserving religio-cultural identity fell on women at the cost of losing even established rights. This identity syndrome, with women in the centre, diverted attention away from Muslim women's grim realities and force closure of any debate about how several practices in relation to women deviated from actual Quranic injunctions.

The role of the state too was also not positive towards maintaining its secular character as far as the right to equality was concerned. Although, the Indian State espouses both religious freedom and the right to equal protection as important values and functions of the state, by enacting MWA the Indian state ended up blocking Muslim women's recourse to secular law. Hence, one could say that the action of the

modern state does not necessarily lead to greater secularization of the personal status sphere or undercut the power of religious authorities. The approach and action of the state depends on the nature of the state and the representation of clerical and other sectoral interests within it (Kandiyoti, 1989).

The enacting of MWA indicates that state policy is substantially moulded by the norms, values, and lifestyles of the dominant religious collectivity more than the real concern of the rights of women under the constitution. The notions of femininity were intimately bound up in the construction of communal identities (oommen (1990: 144-175; Chhachhi 1991:17-33.Pathak and Rajan: 569).

Muslim women's struggle for gender justice: the present scenario

The road from 1986 to the present has mirrored this basic tension. The ascendance of the Hindu Right wing party's propaganda supposedly on behalf of Muslim Women has caused minority and women's groups to actually temper their anger over the discrimination of women in Muslim personal Law, while Muslim conservative groups have become more steadfast in its defense. This can be seen in the recent campaign for establishing and strengthening Shariat courts for resolving the matrimonial issues by the All India Muslim Personal Law Board. It may also be seen in the increase in religious decree (FATWA) such as putting a ban on Muslim women from contesting elections; the tennis star Sania Mirza who was instructed by a Fatwa to dress herself according to "Islamic norms"; and Imrana⁸, a rape victim, by Darul-ul-uloom, an Islamic Seminary and supported by the All India Personal Law Board. The recent Fatwa declaring DNA testing Un-Islamic by the clerics would further enhance the social and economic problems of Muslim women (NDTV, India, 30th October, 2006). The Fatwas of these self-appointed guardians of Muslim conduct seem to keep Muslim women in a state of permanent subordination and imposing a regressive social agenda on the entire community. Twenty years after Shah Bano controversy Muslim women, therefore, continuously have to face mounting obstacles in their struggle for a gender-just law and right to equality under the equality code of the Constitution in increased communal atmosphere.

At the same time the government uses these conservative forces for political purpose particularly for vote-bank. For instance, in Uttar Pradesh Chief Minister, Mulayam Singh Yadav, on the fatwa of Imrana suggested that the clerics in Muzaffarnagar, should not be questioned. In a way this is a replay of the government stance taken in the case of Shah Bano and the passing of 1986 Act which had excluded divorced/ destitute Muslim women from claiming maintenance under secular provision of the Constitution.

Perhaps the more important question is whether the attempt and advocacy of the All India Muslim personal Law Board, and the role of Islamic seminary in giving Fatwas and their campaign, to establish parallel (Islamic) judicial system (Nizam-ul-

⁸ Imrana, a mother of five children, who was allegedly raped by her father-in-law Ali Mohammed in Charthawal Tehsil of Muzafarnagar district in June, was reportedly directed by Darul-ul-Uloom not to stay with her husband because after her assault by her father-in-law she had lost the right to be the wife of her husband as per the Shariat laws.

The dictates of Darul-ul-Uloom, supported by All India Muslim Personal Law Board and the statement of the chief Minister of the state indicates that the politicians as well as the conservative forces are tip-toeing around the issue of Muslim women's rights, and that it is politics that matters and not women's rights.

qazi), for solving matrimonial disputes not going to deprive women of their citizenship rights?

Further, it is yet unclear as to whether the Constitution permits “concurrent jurisdiction” i.e. both secular courts and “the pseudo-judicial system set up by the clergy of religious communities,” in matters relating to matrimonial disputes governed by the personal law established under the Constitution (as various Article 226, 227, 32 and 136 of the Constitution permits all its citizens a right to approach the High and supreme courts to mitigate their grievances).

Important questions that will have to be addressed by women in the coming days are:

- Are these conservative forces by emphasizing on establishing parallel judicial system not providing a ground to the hard core nationalist Hindu party to advocate for Uniform Civil Code?
- Are these trends, attitudes and approaches of the religious leaders/institutions marginalizing women in their access to citizenship rights, and thus doing more harm to the community;
- Finally, why is the community more inclined towards maintaining their religious/community identity by putting women in the centre rather than evolving a more gender-just law within the ambit of Islam and the Constitution?

The answer to these questions has to be drawn out of the broader social and historical context, that determine the attitudes/feelings and behaviour of the community. Muslims of India till date are in a state of insecurity, poverty and carry the blame of partition. On the one hand the frequent experiences of communal riots resulting in a major social and economic loss of the community, and on the other hand the shrill campaign against Muslims by the Hindu right wing in the form of communal speeches, desecration of Mosques and Shrines, tragedy of Babri Mosque, replacement of Muslim names by Hindus, politics of discrimination and exclusion and adverse propaganda against Islam in text books and so on, hurts the sentiments of Muslim community. This in turn puts pressure on the community to cling more to their religious/community identity, which has an adverse impact on women and their struggle/demand for gender just law.

Conclusion

The issues before Muslim women, as highlighted through this case study, are definitely a complex subject and are further complicated by the interlocking of traditional customs, values, and beliefs into ethnically defined or geographically specific frameworks outlining the parameters of their identity and rights. The issues of democracy and citizenship are crucially connected to current debates about identity, nationalism and women’s rights—in other words broad questions of power and freedom.

Fundamentalists’ concern for identity and women’s rights revolve around the quest for identity, for a trans-cultural and ahistorical 'Muslim identity'. In this discourse women are treated as repositories of the identity which ultimately legitimates women's control, the deliberate confusion of the concepts of nation/community, religion, race/ethnicity, the selective uses of traditions, as well as religious interpretations in order to structure an image of women which conforms to their reconstructed identity. Hence, Islamist leaders assert their commitment to democratic principles and political pluralism but not necessarily with liberal values

that privilege women's rights over community rights. The approach of these leaders exclude and deprive women of their rights as given to them in the Quran and as an individual member of the nation-state and the Shah Bano case is a good example of conservatives' approach towards women's rights.

Despite the changes in social structure brought about by the forces of urbanization and industrialization, conservative forces try to enforce a very restrictive roles and codes of behaviour for women according to their interpretation of Islamic law. At the moment, and except in the West where a civil code generally governs all citizens, most Muslim communities have specific laws termed as personal status or shariat law. These laws, as well as the influence of Muslim fundamentalists over their evolution and application, are increasingly affecting women's lives, their legal rights and traditional practices as well as limiting women's organisations, in defining the parameters of their struggles and their strategies.

The Islamic resurgence that has engulfed most Muslim countries today has thrown forth different levels of tension and competing ideologies such as what is Islam and whose Islam is the right Islam? Very often, it is the status and the rights of women that have become the first victim in this battleground. It is therefore not surprising that in these countries, women's groups are at the forefront in challenging traditional religious figures of authority and Islamist extremists and their use of religion to justify women's subordination and inferior status, and most perniciously, to use religion to silence any dissent. The recent incidents of 'honour killings' in Pakistan and Bangladesh have left most women asking 'Why women's individuality and their rights in matrimonial matters are denied? In Afghanistan, women have been shot to death for appearing in public with a male other than their husband, brother or son, women have acid thrown on their faces for not covering it well enough and so on clearly indicates how Islam is used to deprive women of their rights in a Muslim country.

These women strongly feel that they have a right to reclaim their religion, to redefine it, to participate and contribute to an understanding of Islam--how it is codified and implemented--in ways that take into consideration the realities and experiences of women's lives today. They have also started questioning the non-Islamic patriarchal interpretation of Islamic prescription. Groups like Sisters in Islam (SIS) are reclaiming the Islam that liberated women and uplifted their status by giving them rights which were considered revolutionary 1400 years ago. In Malaysia a coalition of 12 women's groups has launched a campaign against polygamy and is focusing on strengthening the right of Muslim women to opt for a divorce when their husband decides to take a second wife without their consent.

Whether women are suppressed or victimized in the name of maintaining community identity, by homogenizing the Muslim world, either by the Muslim fundamentalists or by the west, the biggest dilemma of women is whether they stand with their community under attack and hold in abeyance their struggle against the fundamentalist leaders who voice resistance to imperialism on the one hand and interpret Shariah without taking into account the hard reality of women's lives and the changing social, economic and political structure of the country, or do they foreground their critique of Islamic conservatism at a time when imperialism uses women's unequal status under Islamic law to garner ideological support for their imperial project.

As far as Muslim women in India and their struggle for gender justice is concerned, the movement has been ongoing in small but in significant ways. For instance, the uproar by women's groups and Muslim women raising their voices

against the Fatwa (decree) in the Imrana case and the way they pressurized the Dar-ul-Uloom Deoband, into its backtracking, did illustrate the importance of women speaking up and challenging conservative forces. Further, the Formation of an All India Muslim Women Personal Law Board and their demand for reforms in personal law within Islamic framework along with other Muslim women's organizations, in fact indicates women's awareness and struggle for their rights

However, their struggle for a gender-just law is not simple particularly in a charged communal atmosphere. Their challenge is twofold: at the community level and the State level. At the community level the dilemma or challenge before Muslim women is how to assimilate their rights issues into broader feminist discourses and, at the same time, how to safeguard their religious and cultural identity. It is a fact that any move/discussion to reform personal law is hijacked by the right wing Hindu nationalist party advocating for Uniform Civil Code, which then appears against the freedom of religion. The Muslim clergy, in the name of community identity then take this issue as interfering in their personal affairs and their right to religious freedom and start putting pressure on women to stay with the community and not argue for their rights. Hence, Muslim women are forced into a doubly oppressed position. For instance, the recent order of the Supreme Court's to the Centre and states to frame rules for compulsory registration of marriages within three months was disapproved by MPLB. Basically, registration was intended to protect women's rights over property and in case of desertion, an issue that was suppressed by the All India Muslim Personal Law Board position that it was interference in their community affair.

At the state level despite the fact that the position of Muslim women fare badly in India, discriminatory Personal laws are hardly touched, either by legislature or the judiciary, out of deference to the perceived cultural sensitivities of the leaders of the community or loosing the votes of a sizeable minority. Most important is the fact that apparently women as a class or as a group do not pose enough threat to any government to undertake sufficient measure to improve their position, so no concrete legal step is taken by the government to improve the status of women. Thus, at one level the state indeed has perpetuated patriarchy and added to the oppression of women through its ambiguous policies. It is also very clear that the continued existence of various religious personal laws may not serve any specific purpose for the state but certainly the political cost of reform may prove to be too high for the government making such attempt. In such a situation, what are the options that lie before Muslim women if they struggle for their rights within the Islamic and constitutional framework?

To my mind, Muslim women in India need to challenge the dominant patriarchal attitudes of the conservatives and political parties and show solidarity with the groups who are working for women's rights. They need to come forward and challenge the conservative forces when their citizenship and Islamic rights are at stake. In order to challenge the conservative forces within the community they need to have a thorough theological knowledge of Islamic texts, and then reinterpret the Quranic injunctions from a gender perspective. Muslim women theologians from various Muslim countries have in fact initiated and started such a movement on the issue of women's rights and empowerment. Drawing upon enduring principles of human rights, enshrined in the text, they need to extract meanings that can interact with the changing circumstances which give greater autonomy and decision-making powers to women. They need to work with the moderate forces from within the community to evolve a strategy for making reforms in Personal Law as well as put a

pressure on the government to amend the law by putting women's rights issue in the centre, and to consult women's organizations, ulemas and other law making authority.

My broadly, Muslim women need to develop a wide network both at national and international levels with those organization or Tanzeem who are working for the rights of women. The secular women's organizations working for the rights of women needs to pay more attention towards the issues of Muslim women's rights by indulging more women from the community. Further, Muslim women need to reflect upon the issues of rights coming up at various national and international forum as to what kind of model of self-actualization can be developed within the framework of normative Islam which takes account of Qur'anic ideals as well as the social, economic and political realities of the contemporary society in which they would demand for their rights.

For Muslim women who are adversely affected by laws and customs which serve the interests of male elite, it is imperative to take the subject of women's rights out of the hands of self-appointed male guardians of Islam and read the Quran, not in Arabic, but in one's mother tongue, to discover what the Quran has to say about Muslim women.

Muslim women in India also need to exercise the option of ijtihaad (consensus) for the assertion of their rights and for this a movement from within the community is required. As was done in the writing in the 1920s by Lebanese Nazira Zin Al Din, on the controversial subject of veiling for Muslim women, who interpreted that since Islam is based on the freedom of thought, will and action, no Muslim has authority over another in matters of religion.

As stated earlier some efforts are on but a consolidated effort is needed for making law more gender just. The formation of All India Muslim women Personal Law Board, women's representation in All India Muslim Personal Law Board, formation of Muslim women's organizations along with secular women's organizations, Women's open objection to the model Nikhanama formulated by All India Muslim Personal Law (which has discourages the discriminatory practice of unilateral triple divorce but did say a word to make it according to Quranic injunctions. This practice of divorce in grants power to men as well as the Nikahnama gives power to Shariat courts to adjudicate matrimonial disputes), Muslim women's representation at the Panchayat level, Muslim women's large scale protest against the fatwa (decree) of Islamic seminary against a rape victim and so on are some of the examples of rejection of oppression and deprivation of women's rights made in the name of religion.

A strong women's mobilization from within the community from the grassroots to the nation is required to make personal law more gender-just and in accordance with the Quranic injunctions. There is also a need to mobilize women for their right to equality as enshrined in the Constitution as well as the rights granted to women by Quranic injunctions and it should be left to women whether they want to go civil court or shariat courts for solving their matrimonial and other disputes. As pointed out by Afkhami, "unless a substantial number of women in a community come to believe they have rights and demand to exercise them, rights remain an abstraction." Hence, mobilization of women for their rights has to be on priority.

And above all there is a need for creating an atmosphere conducive for the minority to feel secure. There should be openness to consultation among women's organizations, progressive community leaders, and even Ulemas towards making personal law more gender-just. For creating this atmosphere the majority community and secular political parties have to take initiative and have to rise above the politics

of religion and appeasement. Simultaneously, the conservative forces from within the community need to focus more attention on a gender just personal law rather than victimizing women in the name of religion for their vested interests.

Needless to say, in the struggle for preservation of democratic norms, minority rights have no meaning if the rights of women are not taken up with utmost sincerity. It is the efforts of men and women from minority communities, along with other democratic-secular forces, which have the potential for being a strong pillar against religious fascism. Such fascism represents a major threat to Indian secular democracy and deprives women, particularly Muslims, of their rights (secular and Islamic) in the name of community identity.

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