

January 2015

## A Socio-historical and Political Discourse on the Rights of Muslim Women: Concerns for Women's Rights or Community Identity: *(Special reference to 1937 and 1939 Acts)*

Sabiha Hussain

Follow this and additional works at: <https://vc.bridgew.edu/jiws>



Part of the [Women's Studies Commons](#)

---

### Recommended Citation

Hussain, Sabiha (2015). A Socio-historical and Political Discourse on the Rights of Muslim Women: Concerns for Women's Rights or Community Identity: *(Special reference to 1937 and 1939 Acts)*. *Journal of International Women's Studies*, 16(2), 1-14.

Available at: <https://vc.bridgew.edu/jiws/vol16/iss2/1>

This item is available as part of Virtual Commons, the open-access institutional repository of Bridgewater State University, Bridgewater, Massachusetts.

This journal and its contents may be used for research, teaching, and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply, or distribution in any form to anyone is expressly forbidden. Authors share joint copyright with the JIWS. ©2022 Journal of International Women's Studies.

**A Socio-historical and Political Discourse on the Rights of Muslim Women: Concerns for Women's Rights or Community Identity**  
*(Special reference to 1937 and 1939 Acts)*

By Sabiha Hussain<sup>1</sup>

**Abstract**

The present paper deals with the discourse of the rights of Muslim women in the pre-independence period with particular reference to the Shariat Act 1937 and the Muslim Marriage Dissolution Act 1939 and the socio- historical and political background in the enactment of these Acts. The role of women's organizations and the women's movement, community leaders and political parties has been taken into account in dealing with the discourse. Whether the discourse was more to show political strength of the Muslim community or to protect the rights of women? Why was a need for these enactments felt by women's organizations, the community, national leaders, and reformers? Was issue of gender justice the focus for demanding these enactments by the community leaders and the political parties? The argument which I have tried to put throughout this paper is that these two acts were seen more of maintaining community identity and showing numerical strength for political gains than protecting and rights of Muslim women. To this end, we have tried to capture various debates that took place among the legislators in the assembly, women's organizations, social reformers, community leaders and so on with regard to application of Sharia. The paper is based on information collected from secondary sources, and analysis is more from a gender rights perspective with a historical and political background.

**Key Words:** Shariah, Community identity, Legal disability, Polygamy, Ulema, Untouchability, Unilateral divorce, apostasy

**Women's Movement and Undivided Agenda of Women's Rights**

From the early 19th century, the status of women became an issue of concern for upper-caste male and upper-class Hindu reformers. Early efforts by the reformers were against certain customs such as sati and the sanctions against widow re-marriage which were detrimental to the status of women. Later, they tried to educate women and bring them into public life. However, Indian men who encouraged women's education and the formation of social organization did not like women raising their voices about the ills of patriarchy (Forbes 1998:93).

The women's movement in India emerged during the 1920s. The two organizations namely: Women's Indian Organization formed in 1917 and the All India Women's Conference (henceforth AIWC) by the Indian National Congress, formed in 1927 focused on the issues specific to women and their social and legal disabilities. And thus, started demanding for women's rights to divorce inherit, and control over property. The Begum of Bhopal, in her second annual meeting of the All-India Women's Conference in Delhi in 1928, strongly appealed the women to avoid the religious divisions and urged to work in solidarity to improve the quality

---

<sup>1</sup> Associate Professor Dr. KR Narayanan Centre for Dalit and Minorities Studies Jamia Millia Islamia.  
sabahajaz@gmail.com

of women's education, and rights for women. She particularly supported the Sarda bill, then in the legislature. Despite Muslim leaders opposing the amendment of this Act (to exclude Muslims from this Act), the women's organisations tried to remain united on this issue. Muslim women members of the AIWC presented a memorial in support of the Sarda Act and told the Viceroy:

'We, speaking also on behalf of the Muslim women of India, assert that it is only a small section of Mussalman men who have been approaching your Excellency and demanding exemption from the Act. This Act affects girls and women far more than it affects men, and we deny their right to speak on our behalf' (Forbes 1998:89).

In 1931, Begum Shahnawaz reiterated the need for women's unity and appealed to Hindu and Muslim women to work together for the benefit of all Indian women. Thus, the women's movement in India tried to develop a broader political, social and economic agenda in which legislative changes have been the cutting edge of induced social change. Abru Begam urged women to support the campaign to raise the age of consent for marriage in 1929. Begum Jehan Ara Shahnawaz, passed a resolution against polygamy in the session held at Lahore in 1918. She pointed out that Indian unity was only possible through its women, and in a message to south Indian women, she made an appeal that all women work together for the upliftment of Indian women.

The women's organisations categorically advocated the issues of inheritance, marriage and guardianship of children. The ultimate goal was to have a new law (Renuka Ray, AIWC Files no. 84) for all women, irrespective of caste or religion. Hence, all through the 1930s women's organisations formed committees on legal status, undertook studies of the laws, talked to lawyers, published pamphlets on women's position and encouraged various pieces of legislation to enhance women's status. However, women realized that all Assembly bills that were introduced during the 1930s, was a piecemeal approach to improving women's status. Also it became apparent that male reformers and women's organisations had differing concepts of women's legal needs. For instance, 'For Muslim reformers, considerations of women's position in the family and plans for women's education was more on household customs and rituals, of purdah, and of Islamic law as it pertained to women' (Minault, 1998:6). But the women's organisations were more concerned with the rights and protection of women without being affected by other considerations. Women like Muthulakshmi, Renuka, Mrs. Damle and Hamid Ali were not satisfied with these piecemeal acts and wanted comprehensive legislation accompanied by social and economic change instead (Forbes 1998). For instance, the Women's Indian Association emphasized more on the need for securing civil rights through legislation. Mrs. Hamid Ali, in her presidential address to the AIWC held in Lucknow in 1932 demanded a solution for the disabilities of Hindu women along with passing a resolution favouring girls' (particularly Muslim girls) education, against communal electorates for women, untouchability, the prevalence of unilateral (i.e., Muslim men's) right to divorce, and on communal unity. The Women's Indian Association Report of 1933 reveals that the Simon Commission viewed the Indian women's movement as the possible 'key of progress' for an India free of communalism (Lateef, 1990:87). In 1934, the AIWC asked the government to appoint an all-India commission to consider the legal disabilities of women.

However, there had been a struggle amongst reformers, community leaders, the government and women leaders as to who would set the agenda for women. But the Indian

women's movement, specifically the Congress led AIWC, remained united on the issues relating to women's rights and worked together for removing legal disabilities. For instance, Hajra Begum, a leading member of the AIWC blamed the Muslim League for fomenting communalism by insisting that Muslim women leave the AIWC. The Begum and a number of other Muslim women were becoming aware of an all India sisterhood in which Muslim women could support Hindu women in their campaign to raise the age of marriage, while calling upon Hindu women to support their efforts to lessen the restriction of Purdah.

Nevertheless, while women's organizations found it easy to take a firm and consistent stand as patriots, they were a bit uncomfortable when it came to accepting the priorities and tactics dictated by male-dominated political parties and the emerging political differences amongst the men of two major political parties i.e. the Indian National Congress and the All India Muslim League. The AIWC also urged the removal of customary law of the Muslims, particularly in the North -West province, which had denied Muslim women of their Islamic rights related to inheritance and urged for the implementation of the Shariat law, Commenting on a debate in the Central Legislative Assembly on women's legal disabilities in 1940, Hajra Begum asked,

'When will men of India realize that it is of no use asking a third party to play fair when they themselves are willing to close their eyes to all the wrongs the women suffer and have mental reservations when freedom is proposed for woman-hood?. ... Indians would not gain Swaraj until they had set their own house in order and granted women legal equality'. (Geraldine 1981p: 63).

But despite women's untiring effort to remain united on the issue of women's rights, women found themselves confronting the conservative religious sections and political parties in their struggle for their rights. Having left with no option to avoid confrontation with the conservative religious sections in the community, women started using the Sharia in the first half of the 19<sup>th</sup> century to press their claim to property that were being denied to them under customary law. Muslim women felt that if the Shariat were in force instead of customary law, their rights to property, inheritance, and choice in marriage would be affirmed. In a way they felt that the Islamic patriarchy would be a better option than the customary patriarchy where they had no rights. And this desire to reclaim their rights could be seen as one of the reasons for Muslim women recognizing the application of Sharai law. It is also an important turning point for the division of women's movement. Hence, in the matter of legal reform, Muslim women's sense of separate community identity was articulated and recognition of the shariat as the operative Muslim personal law became a matter of concern for both Muslim men and women' (Minault1998:295).

### **Debates on Application of Sharia Law: Women's Rights vs Community Identity**

We have tried to outline the debate on application of Sharia and how the demand for Shariat law was seen both as a tool to maintain the ethnic/group identity, preserve women's Islamic rights and resentment for the British rule by the community leaders/reformers. But before that a brief background of the community and need for reform is necessary. When we look at the debate on reform of the Muslim community, we notice that it was divided into two groups of people more because of the politicization of group solidarity and to maintain group identity than

preserving the Islamic rights of women. On the one hand were those who opted for covert change without any open rejection of past customs and practices, which would make community solidarity more difficult in political and economic terms. On the other were those who felt social change was a necessary prerequisite for the desired political and economic changes in the community (Lateef, 1990:17). The most important aspect of these divided but relevant concerns was that this division overlooked the basic question of improving the status of women for which the women's movement had advocated. Thus, there was in general a difference of opinion (community-wise) regarding the process through which social change should be implemented in India rather than an emphasis on the question of women's rights. As Robinson observed that Muslim communities had to deal with the reality of a new and powerful adversary who not only introduced changes that fundamentally affected their economic position (in case of Bengali Muslims) constantly and successively, but also eroded the inscriptive rules by which success and status were determined (Robinson, 1974).

Thus, the communities that were already struggling to cope with the political and economic changes tended to resist social legislation and felt that they could do so without political or economic loss. The community realized that through a display of numerical strength and organization, the community could gain benefit of the legislations. Muslims felt a need to evolve a common political and economic strategy to minimize differences between the two groups of reformers, which would have some positive impact on women.

At the same time however, a strong need to protect community interest and the importance of group cohesion proved detrimental to the interests of Muslim women, which were consciously subjugated to the perceived interests of the community. Therefore, on the one hand one group was in favour of changes, but within individual communities, making community interest and group cohesion a priority, while on the other the social reformers fought for legislatively enforced secular changes. For instance, the enforcement of Muslim Personal Law and the realization of women's right to divorce may be cited as examples of the process of reconstruction of community identity (Azra Asghar Ali 2000). While the Muslim communities initially supported legislations changing customs prejudicial to women, they soon realized that Muslim women's interests would be best served with the restoration of rights under the Shariat or Muslim Personal Law than customs and traditions. Women's groups pointed out that Muslim women did have rights under the Shariat and urged the community to support the application of those laws to improve the status of women.

Nevertheless, there was indeed an argument amongst the reformers as to how the interests and rights given to women in Islam would be restored. They felt that they were in a position to do so because of the non-interfering stand of the government in socio-religious matters. Thus, 'the whole agenda of the restoration of women's rights revolved around the numerical strength of the community, the attitude of reformers, the governments' approach towards the issue of reform and the magnitude of political support' (Azra A Ali, 2000:124). Further, during 1920s the subsequent constitutional discourse also became a means to express the numerical strength of the Muslim community along with the issues of Muslim women's rights. Thus, during this period Muslims were facing a peculiar problem as to what position to adopt vis-a-vis legislation that was apparently interfering with their own personal laws. Some of the secular laws were accepted but others were strongly opposed on the grounds that the Shariat had already prescribed rules for these matters for instance, the Married Women's Property Act 1876, the Indian Succession Act 1885, and the Guardian and the Wards Act of 1890.

## **Major Debates on the Muslim Personal Law (Shariat) Application Act 1937 and Muslim Marriage Dissolution Act 1939**

Now, against this historical and social background now we will be discussing the Muslim Personal Law (Shariat) Application Act 1937 and 1939 from women's right perspective. As far as the historical debate on Muslim Personal Law (Shariat) Application Act 1937 is concerned, the unionist party, the Ulemas ((majority from Sunni sect and belonged to northern part of India) the reformers and Women's organisations had different concerns. The most important aspect of the Act was the economic conditions created by colonial ruler, especially in the agrarian province of Punjab. The colonial ruler was more concerned with the recognition and codification of 'tribal' customary law for economic reasons. Application of Shariah was primarily opposed by the Unionist Party in 1930 in Punjab, on the grounds of maintaining the tribal system underlying their authority. The provincial government also reflected the same concern when it said, 'The Governor in Council considers that the bill is dangerous to the general economic structure of the province as a whole, and to the interests of the rural Muslim community in particular' (Gilmartin 1981:167). However, the political debate and conflict between customary law and Shariat, the main issue of female inheritance within this conflict were subsequently analyzed in the Punjab government's discussion of the bill.

During the discussion, the British circulated the bill for opinions in the district, and many rural Punjabi Muslims felt that granting women a share in inheritance under the Shariat was a threat to the entire structure of rural tribal authority. The Muslim tehsildar of Kharian Tehsil declared that implementation of the Shariat would completely destroy the homogeneity of the agricultural tribe (Punjab Legislative Council Debates, Vol 19 1931, pp. 788-792: Vol. 20, pp. 61-78, 120-133, 183-205).

The Muslim supporter of Shariah mainly the Ulemas (mainly from the northern part of India), wanted to free India from British domination, and to transform the indigenous political system based on Islam. But the conflict between these two groups over the foundations of law, the question of the legal status of women, became a significant symbolic issue than an issue of right. While the Ulemas were concerned about following the rules of succession and inheritance enjoined by the Shariat, for Muslim reformers a collective Muslim identity became more important than a demand for Shariat.

The support for Shariat emerged among the Muslim League, Jamiat-ul-Ulama-e-Hind, the Anjuman-e-Ittehad-e-Islam, Madras, Anjuman-i- Islam, Guahati, and the Anjuman-i-Islamic, Jorhat, and several individuals for both religious and nationalistic reasons. These organizations strongly criticized those Muslims who were using the Shariat in matters of marriage and divorce, but not in distribution of inheritance and family property (Azra 2000). Such practices were widely prevalent among Muslims belonging to the agricultural classes, particularly in the Punjab. For instance, under Punjab Law act IV of 1872, Muslim women were deprived of their share in agricultural lands on account of the fact that many Indian Muslims were originally converts to Islam and still wanted to be governed by the customary laws. In 1927 the Jamiat-ul-Ulam-e-Hind passed a resolution demanding the enforcement of Muslim Personal law at the annual meeting at Peshawar. This was followed by the introduction of the Muslim Shariat Bill in the council in 1934. The bill was introduced into the legislature of the North West Frontier Province, and later enacted as the North West Frontier Province Personal Law (Shariat) Application Act, 1935. Thereafter the Jamiat decided to have a central law enacted that would apply to the Muslim community of the whole of India. However, the bill to apply the Shariat in the Punjab,

which specifically sought to improve women's rights to land inheritance, was blocked by the Unionists in the provincial Legislative Council in the mid-1930s.

As far as Women's organizations are concerned, educated women of Anjuman and other women's groups remained active in the fight for inheritance rights at the all-India level, with the central issue in the fight for the Shariat revolving around the challenge to the structure of political authority. By the 1920s some urban educated Muslim women started agitation for improvements in female inheritance law. For instance, the Begum of Bhopal along with other women associated with the Anjuman, felt that if the Shariat were in force instead of customary law, Muslim women's right to property, inheritance and choice of marriage would be assured. Therefore, for women, the rejection of the normative order based on tribal solidarity was the main issue than the specific provisions of Muslim law (Gilmartin David 1981). Thus one could say that for Muslim women, supported the Shariat from a women's rights perspective as they could see that the rights can be restored if Shariat is implemented.

However, in the political and religious discourse the question of improving the status of women by giving them a share in inheritance became more an issue of ideology and group identity than giving rights under the Shariat. Further, the support for the Shariat was symbolically important for Muslims in Punjab as a call for a new political order, a new foundation for the state to replace the colonial ideology of the British. Therefore, the issue of women's right to inheritance was seen at two levels- ideological and political. For those attacking the colonial regime from an Islamic perspective, the question of female inheritance became an ideological issue. For those who were more concerned about the formation of Muslim identity the question of women's share in inheritance became a political issue.

Despite the opposition, the Act was passed in November 1935 and considered one of the most important efforts ever made in the best interests of Muslim women (Azra 2000). The overwhelming support extended to this Act led to the introduction of a similar Shariat bill<sup>2</sup> in the Central Legislative Assembly in 1935 by M.H.M. Abdullah and various reasons were stated during the introduction of the bill. It includes customary law as a misnomer and by the application of this Act will give women their entitlements. In the Federal Assembly of Punjab it was also stated that the Muslim women of Punjab condemned customary law and demanded application of Muslim Shariat law (Legislative Assembly Debates, III: p. 2530-2532).

But the Bill was strongly opposed by several provincial governments, Associations and certain individuals mainly at two grounds: some customs and usages of law were so old and well-established that replacing them with the Shariat would seriously disrupt the whole fabric of society, and the implementation of Muslim Personal law should be left to provincial governments to decide. For instance, Justice Niamatullah from Lucknow, said that if an omnibus bill of this description passed into law, the result would be endless confusion for the large number of ancient zamindar families who had been following certain rules of succession for generations. The Chief Commissioner of Ajmer and Marwara said that the people of that region would not like any change in their customary practices, and that female inheritance would not be accepted at any cost. (Azra 2000:151).

---

<sup>2</sup> The main provision in the bill was Notwithstanding any custom or usage to the contrary, in all questions regarding adoption, wills, women's legacies, rights of inheritance, special property of females (including personal property inherited or obtained under contract or gift or any other provision of personal law, marriage, dissolution of marriage including talaq, ilya, ihar, lian, khul, mubaraa), maintenance, dower, guardianship, gifts, trusts, trust properties and wakfs, the rule of decision in cases where the parties to a case are Muslims, shall be the Muslim personal law (Shariat). (Legislative Assembly Debates 1939:2528).

Despite these arguments the Bill was eventually enacted on 16 September and was given the name of Muslim Personal Law (Shariat)–Application Act 1937. It provided a ray of hope to those seeking changes in the social, economic and political status of Muslim women in India. Thus the 19th century movement for the restoration of Muslim law to Muslims was not merely a religious but also a strong feminist movement for social reform (Mahmood 1995). Organizations of Muslim women in the country supported the movement whole-heartedly. Since Muslim law gave them, at least in theory, a better legal status and property rights than that found in the usage of the country.

But soon it was realized that the restoration of Muslim law should not only be limited to property rights, but also in other matters too. This realization led to the passing of another Act in 1939 called the Muslim Marriage Dissolution Act to give more relief to Muslim women in the marital sphere.

### **The Dissolution of Muslim Marriage Act 1939: an interface of women's rights and community identity**

Within 18 months of the passing of the Muslim Personal Law Shariat Application Act 1937, the Dissolution of Muslim Marriage Act 1939 was passed. Because there was no provision in Hanafi code of Muslim law for a woman to obtain a divorce from the court in case the husband failed to maintain her, deserted her, maltreated her, or left her un-provided for. The statement of Objects and Reasons (Gazette of India, Part V, 1936, p.154) for its introduction was that the existing law had caused 'unspeakable misery to innumerable Muslim women in British India'. In the Federal Assembly, the bill was described as being constituted of three parts: it gave grounds for the dissolution of marriage, described the effect of apostasy on the marriage tie, and provided for the authorised court personnel to dissolve a Muslim marriage. The bill clearly enlisted the grounds on which Muslim women could seek a judicial divorce on the standard grounds of cruelty, desertion, failure to maintain, etc. which was not available to women.

When we look at the background of enactment of this act, it was the frequent incidence of the conversion of Muslim women to other religions for seeking divorce. The Ulama have issued fatwa supporting non-dissolution of marriage by reason of wife's apostasy. Some Muslim jurists laid down the principle that by conversion the marriage would not be dissolved and the woman would be imprisoned till she returned to Islam. In British India, however, it was not possible to enforce this ruling. The courts in British India had held in a number of cases that the apostasy of married Muslim woman dissolves her marriage. This view has been repeatedly (expressed) at the bar, but the courts continue to stick to precedents created by rulings based on an erroneous view of the Muslim law. The Muslim community was not satisfied with the view held by the courts.

If we look this act of apostasy from women's rights perspective, this increase was mainly the non-availability of options to women to come out of cruel and abusive marriages. Muslim organizations and social reformers started thinking of ways and means to curb the tendency of renouncing Islam simply because religious laws as it applied at that time did not allow women to get rid of their husbands lawfully. This alarming situation was noticed by community leaders, scholars and ulemas. The famous poet Iqbal made an appeal to Muslim scholars to reform Hanafi law in order to find a solution for this problem, so that Muslim women would not have to take recourse to this desperate mode of dissolving their marriages (Masud 1995:155-78).

However, the situation became alarming during the early decades of the 20<sup>th</sup> century when there was an alarming increase in number of Muslim women renouncing Islam to secure



judicial divorces. The issue of conversion was a challenge for the ulemas as well as the Jamiat-ul-Ulam-e-Hin. The latent impact of this act of apostasy, as visualized by political parties and community leaders, was the upcoming numerical imbalance. Growing apostasy was also stated to be the result of the selfishness of Muslim men who denied their women the rights given to them by Islam. Rashid-ul-Khairi ( a social reformer) during discussion with a Kazi on the necessity of *Khula* points out '..... I requested the kazi to give women Islamic right of *Khulah* but the Kazi said 'you are very right in your point of view but if I would give this right to Muslim women, the decision will destroy the whole Muslim society in India and thousands of married women will run away from their husband's house. The obstinacy of the Kazi led Qaisar to change her religion.'<sup>3</sup>

### Debates on Dissolution of Muslim Marriage Act 1939

In 1931 Maulana Ashraf ali Thanvi in his lengthy revision of his fatwa: *Al-hilat un-Najiza li'l-Halitat al-'Ajiza* (translation: *A Successful Legal Device for the Helpless Wife* ' *Women Legal Reform and Muslim Identity in South Asia*' In *Jura Gentium* 1, No. 1 2005, accessed September 2013 <http://www.juragentium.unifi.it/en/survey/rol/minault.htm>) ruled that apostasy did not annul a Muslim marriage, but a wife might obtain a judicial divorce based on grounds permitted by the Maliki school of Muslim jurisprudence. Maulana's opinion was seconded by the Jamat-e-Ulma-Hind. A Bill was introduced in the central legislature of 1936 by Muhammad Ahmad Kazmi, a member of the central legislative assembly, debated and enacted in 1939. The statement of objects of the bill was announced by Hussain Imam, M.L.A. from Bihar and Orissa as:

There is no provision in the Hanafi Code of Muslim Law enabling a married Muslim woman to obtain a decree from the Court dissolving her marriage in case the husband neglects to maintain her, makes her life miserable by deserting or persistently maltreating her, or absconds, leaving her un-provided for and under certain other circumstances. The absence of such a provision has entailed unspeakable misery to innumerable Muslim women in British India. The Hanafi jurists, however, have clearly laid down that in cases in which the application of Hanafi law causes hardship, it is permissible to apply the provision of the Maliki, Shafi or Hanbali law<sup>4</sup>. Acting on this principle, the Ulama had issued fatwa to the effect that in cases enumerated in clause 3, part A of this Bill, a married Muslim woman may obtain a decree dissolving her marriage. (Government of India, Legal Department Record, 1938, L/p & J/7/1839)

In proposing the Bill, Ahmad Kazmi said,

The reason for proceeding with the bill is the great trouble in which I find women in India today. Their condition is really heartrending, and to stay any longer without the provisions of the bill and allow the males to continue to exercise their rights and to deprive women of their rights given to them by religion would not be

<sup>3</sup> The case of apostasy was declared in the supplement of Curzon Gazette which was published from Delhi at that time ( Saimuddin and Khanam 2002)

<sup>4</sup> There are four schools of Islamic jurisprudence: Hanafi, Maliki, Shafi and Hambli

justifiable— the rights of women should not be jeopardized simply because they are not represented in this house. I am sure if we had a single properly educated Muslim woman here in this house, then absolutely different ideas would have been expressed on the floor of this house. I know, sir that the demand from educated Muslim women is becoming more and more insistent, that their rights be conceded to them according to Islamic law—. – I think a Muslim woman must be given full liberty, full right to exercise her choice in matrimonial matters. (Legislative Assembly Debates 1939:616).

During the course of debate, Mr. M.S. Aney, a member from Berar, pointed out that by using the legislature to reform Muslim law, the law was being secularised and government courts should therefore be allowed to judge cases; there was thus no need for a special Kazi, as had been proposed (Legislative Assembly Debates 1939: 868).

The only woman member of the Assembly, Mrs. Radhabai Subaroyan, in her support of the bill pointed out,

Mr. Deputy President, I rise with pleasure to support the motion moved by my honourable friend, Mr. Kazmi. I feel this bill recognizes the principles of equality between men and women. It has been stated here and outside that though Islamic law lays down this principle, in actual practice in several parts of our country, it is ignored to the disadvantage of women. It is heartening...to hear my Muslim colleagues condemn this state of affairs and advocate that justice should be done to women and that women should have the rights to claim divorce on the same terms as men— it definitely raises the status of women and recognizes their individuality and human personality'. (Legislative Assembly Debates 1939:881)

The Act permitted the wife to seek a judicial divorce on grounds permitted by the Malikis, including the husbands' cruelty, insanity, impotence, disappearance or imprisonment, and his failure to perform his marital obligations or provide maintenance for specified periods of time, ranging from two to seven years. The Act also provided for divorce based on the 'option of puberty', that is, if a woman had been married off by her elders before puberty and the marriage had not been consummated, she could ask for its dissolution. Sir Zaffarullah Khan stated that the outstanding merit of this Bill was that it provided various grounds on which divorce could be obtained by a woman under Muslim law in very definite, clear and precise terms, and any judge, whether Muslim or non-Muslim, would not have much room left for doubt with regard to them.

However, the ulemas were not comfortable with the proposed Bill, particularly Clause VI which says:

that suits of the dissolution of marriage on the part of Muslim women should be held in proper courts under the supervision of Muslim judges and, when the presiding officer was not Muslim, the suit should be passed from one place to another until it could find a Muslim official. After the decision, the suit would then be referred back to the original court. In the case of appeals against the decision of the trial court, people would have to look to the high court and their cases should be heard and decided again by a Muslim judge.

They felt that the Act differed in several respects from the recommendations of the Ulema especially not reserving jurisdiction in cases of Muslim divorce to Muslim judges alone. Many fatwas were issued during the period, arguing that if a non-Muslim could not perform the ceremony of Muslim Nikah, there was simply no way in which he could be justified in dissolving a Muslim marriage. It was also made to apply to all Muslims—not only Sunnis, but Shias as well. Consequently, Maulana Thanavi and the other Ulemas who had originally urged for the reform of the divorce law were unhappy with the Act in its final form, and condemned the Muslim Dissolution of Marriage Act as un-Islamic (Masud1971:251-97). They were apprehensive of religious freedom and the imposition of artificial arrangements from a foreign government. This feeling arose after the ruling of various courts in British India, which in turn strengthened the idea that the enforcement of Muslim Family Law could not be accomplished without the appointment of Muslim authorities in such institutions. The Jamait-ul-Ulama-i-Hind blamed the member of Muslim League legislature for the enactment of such 'Un-Islamic measures' on Muslim mainly due to political rivalry and the leadership of Jinnah, who had a progressive outlook on the matter of legal reforms (Mahmood, 1995:58).

From evaluation of all debates that took place in support of the bill it can be concluded that all legal arguments put forth by supporters of the bill, particularly the two parties the unionist party and the Jamat-ul-e-Hind had little to do with improving the status of Muslim women. Rather the intention to support the bill had more to do with putting a stop to the illicit conversion of women to alien faiths, which were usually followed by immediate and hurried marriages with someone from the faith she happened to have joined, with a view to locking her in the new community and preventing her from returning to the one to which she originally belonged. The conversion of a Muslim woman to Hinduism and of a Hindu woman to Islam was not only looked at from social and political points of view, but also from the point of view of the long term consequences this conversion would have on the numerical strength of the communities. In other words, it was feared that this could create a disturbance in the numerical balance between the two communities, which is what they were more concerned about.

The above observation is made on the basis of the two provisions to Section 4 of this Act. In proviso I the Hindus concede to the Musalmans that if they convert a woman who was originally a Muslim, she will remain bound to her former Muslim husband, notwithstanding her conversion. Through proviso 2 the Muslims concede to the Hindus that if they convert a Hindu married woman and she is married to a Musalman, her marriage will be deemed to be dissolved if she renounces Islam and she will be free to return to her Hindu fold. Thus, what underlies the change in law is the desire to retain the numerical balance, and it is for this purpose that the rights of women were sacrificed.

## Conclusion

Looking at the overall situation in which these Acts were passed and the whole socio-political process that was involved, no doubt, that legislation was considered an urgent necessity to protect women from the existing social and customary practices that had made women's lives miserable. But if we see the whole debate for the demand of these laws by the Muslim leaders and the ulemas however, we find that the question of community/religious identity overrode the question of gender identity and women's rights.

As far as the framework of Islamic doctrine is concerned, religious symbolism was interpreted to a large extent to match existing perceptions about the status of women, while

legislation was used as a means to help women regain the rights that the Shariat had given them. Although the community supported the legislation, it realized that Muslim women's interests would be best served by the restoration of rights under the Shariat. However, efforts to restore these rights were played out between the government, ulemas, and representatives of both community-based political groups and in all this the pressure of community politics had always been an important factor.

The ulemas were afraid of religious freedom and the imposition of artificial arrangements from a foreign government, and considered themselves the sole custodians of the Shariat and advocates of women's rights (this trend is still found. For instance, the role and interference of the members of All India Muslim Personal Law Board on the issues related to women's Islamic rights and its claim as being the custodian of Muslim Personal law as well as the Muslim community). The role of reformers has very much been a part of community-based politics irrespective of religion, since the reform movement tended to focus on specific aspects of the community's regional customs and traditions vis-a-vis women. The legislators were more concerned about the dangers of the Muslims losing their solidarity and national unity, and with them showing numerical strength for political purposes. Jinnah, for instance, demanded amendment during the assembly debate on Shariat Bill wanted to change the wording to 'custom and usage' only, implying that prior legislation would be upheld even when it clashed with the rights of women.

Reformers also used women's issues to challenge the existing social structure, and claimed the colonial government's support by organizing a show of numerical strength to buttress their claims. The political parties provided a platform for both proponents and opponents of reform, so that henceforth debates for and against it were conducted more or less within party confines. Women were encouraged to participate in party activities, thus further internalizing the debate. For instance, for those attacking the colonial regime from an Islamic perspective, the question of female inheritance was an ideological issue of prime importance. As a political issue, this question was for many reformers central to the formation of Muslim solidarity.

As far as women's organizations and women leaders were concerned, they did formulate an agenda and lobbied the government and political parties without reference to community or caste politics and the best result one could find the commencement of Child Marriage Restraint Act in which gender identity overrode the community identity. But the divisiveness of Indian politics and its polarization on religious lines meant that legislative changes were loaded with claims and counter-claims made by competing community interests, which all but submerged the real problems confronting women.

Though both the Acts were apparently in the interests of women, they retained male privilege in matters like divorce or inheritance. The scene has remained unchanged as is evident from the case of Shah Bano and the subsequent passing of Muslim Women Act of 1986 (which aspect I am not going to discuss here). Muslim women were, to a large extent, affected by this divisive environment. While the Ulemas tried to place the onus of preserving religio-cultural identity on women, the political parties played the politics of proving numerical strength for gaining political power. In this process maintaining community identity and political power the real concern of women and social justice somehow took back seat. Thus, this position of the reformers, Ulemas and the political leaders, diverted their main concern of improving women status and giving proper attention to the grim realities, problems of Muslim women and the deviations from the actual Islamic position

Thus the question of improving the status of women and making the laws more gender just by giving them a share in inheritance and giving right to dissolution of marriage, the issue was concerned more with the religious ideology and group solidarity/ identity. Moreover, the focus shifted and women's interests were squarely placed in the political arena, subject to debate and political maneuvering, which exists even today.

And to me, this seems to be the biggest challenge as well as dilemma for women's movement in contemporary times. Being a secular movement, it is in a-fix as to 'how to assimilate Muslim women's issues into broader framework of rights discourse and, at the same time, safeguard their religious and cultural identity provided under the Constitution. This has been most obvious in the case of initiating a debate to reform Muslim Personal Law/uniform civil code. Placing Muslim women's issues within the confines of religion has further marginalised them, and created hesitancy among the secular feminists in addressing their problems for fear of hurting religious sentiments (Bhatty2003). However, the reality that women's rights within the family were subjected to public debates in both the pre and post independence periods consolidated the position of Muslim women and their participation in the women's movement for gender equality and justice.

## References

- Anderson, J.N.D., 1959. (ed) *Islamic Law in the Modern World*, New York University Press, New York.
- Ashraf Ali Thanavi, *Imdad ul-Fatwa, Ma'ruf be Fatwa-i-Ashrafiya* (Deoband, nd) pp 407-19.
- Andrews, C.F., *The True India*, London: George Allen and Unwin, 1939.
- Azra Asghar Ali., 2000. *The Emergence of Feminism among Indian Muslim Women 1920-1947* Oxford University Press.
- Begum Shaista Ikramulla, 1963, *From Purdah to Parliament*, Cresset Press, London, P 87.
- Bhatty Z., 'Feminists or reformists'? *The Hindu*, March 16, 2003.
- Caton, A.R., 1930. *The Key of Progress*, Oxford University Press, Oxford.
- Everett J., 1978. *Women and Social Change in India* Heritage New Delhi.
- Faruqi Z., 1963. *The Deoband School and the Demand for Pakistan*, Asia Publishing House Bombay.
- Fyzee A. A., 1974. *An Outline of Mohammdan Law*, Oxford University Press Delhi p.15.
- Gazette of India, Part V, 1936, p.154.
- Geraldine Forbes., 1981. 'The Indian Women's Movement: A Struggle for Women's Rights or National Liberation?' In Gail Menault (ed) *The Extended Family*, Chanakya Publication Delhi, p.63.
- Gilmartin David., 1981. 'Kinship, Women, and Politics in Twentieth Century Punjab' in Gail Minault(ed) *The Extended Family* Chanakya Publication Delhi.
- Khalid M Aasud, Brinkely Messick and David S. Powers 1996 (eds) *Islamic Legal Interpretation. Muftis and their Fatwas*, Cambridge MA, pp 193-203.
- Khalid Masud, 1995 'Apostasy and Judicial Separation; Idem., Iqbal's Reconstruction of Ijtihad Lahore cf. Furqan Ahmad, Contribution of Maulana Ashraf Ali Thanavi to the Protection and Development of Islamic law in the Indian Subcontinent' *Islamic and Comparative Law Quarterly*, 6, 1, March 1986 pp.71-9.
- Lateef Shahida., 1990 *Muslim Women in India*, Kali for Women; New Delhi, p.62.
- Lateef Shahida., 1994. 'Defining women through legislation' In Zoya Hasan (ed) *Forging Identities; Kali for women*, New Delhi
- Legal Disabilities of Indian Women, Renuka Ray, reprint from MR (November 1934); 'women's Movement in India', *Manchester Guradian*, (August 15, 1935) AIWC Files no. 84)
- Legislative Assembly Debates 1937; 1427-287
- Legislative Assembly Debates 1937; 1430
- Legislative Assembly Debates 1939:1854.
- Legislative Assembly debates 1939; 1832.
- Legislative Assembly Debates, 1939 1823-4.
- Legislative Assembly Debates, Seventh Session of the Fifth Legislative Assembly, 31st January to 22nd February 1938.p.319.
- Legislative Assembly Debates, V, 9. ix.38, p 1954.
- Legislative Assembly Debates, V: 9. ix.37, pp 1443-44.
- Mahmood T., *Muslim personal law: The Role of the State in the Subcontinent*, Vikas New Delhi.
- Mahmood, Tahir, 1995. *Statute-Law Relating to Muslims in India*, Institute of Objective Studies, New Delhi.
- Masud, M. Khalid, 'Apostasy' the text of the law is contained in B.R. Verma, *Muslim marriage and dissolution* Allahabad, 1971; pp 251-97.

- Meherally, Yusuf., 1947. *At the Crossroads*, The National Information and Publications, Bombay, pp 90-92.
- Minault G., 1982. 'Purdah Politics: The Role of Muslim Women in Indian Nationalism, 1911-1924' in Hanna Pappanek and Minault, G. (Edited) *Separate Worlds: Studies of Purdah in South Asia* Chanakya Publications, New Delhi.
- Minault, G., 1981. 'Sisterhood or Separatism: The All India Muslim Ladies Conference and the Nationalist Movement' in G. Minault (edited), *The Extended Family: Women and Political Participation in India and Pakistan*, Chanakya Publications, New Delhi.
- Minault G 2005, 'Women Legal Reform and Muslim Identity in South Asia' In *Jura Gentium* 1, Minault No. 1 2005, accessed September 2013  
<http://www.juragentium.unifi.it/en/survey/rol/minault.htm>
- Mumtaz, K. and Shaheed, F., 1987. *Women of Pakistan: Two Steps Forward, One Step Back?* London: Zed.
- Prashar Archana., 1992. *Women and Family Law Reform in India*, Sage Publication New Delhi
- Proceedings of the All India Muslim League sixth Session, Patna in Sharfuddin Pirzada edited *Foundation of Pakistan*, vol.11, p. 318).
- Punjab Legislative Council Debates, Vol.19 (1931), pp. 788-792: Vol. 20 (1931), pp. 61-78, 120-133, 183-205
- Rashida Patel., 1979. *Women and Law in Pakistan*, Faiza Publishers Karachi, p.8.
- Ray, Renuka., All India Women's Conference Files no. 84, February, 1946, Roshini Publication
- Report of The Age of Consent Committee 1928-29, Government of India, Central Publication
- Branc, 1929 p.12.
- Robinson, F.C.R., 1974. *Separatism among Indian Muslims: The Politics of the United Provinces, 1860-1923*, Cambridge University Press, Cambridge
- Roshini, Publication of the All India Women's Conference; Feb 1946 No.1 p 4.
- Saimuddin Abida R. Khanam., 2002.(ed) *Muslim Feminism and Feminist Movement* vol. 1 Global vision Publishing House, Delhi
- The N.W.F.P. Muslim Personal Law (Shariat Application bill 1934). Introduced in the Legislative Council of N.W.F.P., See Notification No.732 L.C. dated 29 March 1934, L/P&J/7/667, pp.1-2, (IOL)