

February 2021

## An Alternative Proposal of Justice: Muslim Women Activists and Socio-Legal Realities in India

Qazi S. Rasheed  
*Indian Institute of Technology Kanpur*

Arun K. Sharma  
*Indian Institute of Technology Kanpur*

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



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

### Recommended Citation

Rasheed, Qazi S. and Sharma, Arun K. (2021). An Alternative Proposal of Justice: Muslim Women Activists and Socio-Legal Realities in India. *Journal of International Women's Studies*, 22(1), 270-292. Available at: <https://vc.bridgew.edu/jiws/vol22/iss1/16>

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.

## **An Alternative Proposal of Justice: Muslim Women Activists and Socio-Legal Realities in India**

By Qazi Sarah Rasheed<sup>1</sup>, Arun Kumar Sharma<sup>2</sup>

### **Abstract**

In India, with the change of political leadership at the center, the sanctity of religion-based Muslim family law has been contested. This has led to the development of a new socio-political discourse which is influenced and shaped by the basic feminist ideals of equal rights for women. In this discourse, Muslim women are portrayed as necessarily suffering from unjust family laws and needing immediate cover and protection from the secular state. In the light of the judicial reform which makes the practice of instant divorce through 'triple *talaq*' among Muslims a punishable offence, this article discusses that for Muslim women the domain of law is liminal and they choose between multiple legal forums to increase their access to justice. It explores how Muslim women approach different alternative forums, and in what ways Muslim women activists are creating an opportunity for the distressed women to resolve their marital disputes more efficiently. Such an examination provides important insights into how Muslim women's rights activists undertake their pursuit of justice within a complex, legally pluralistic landscape in the area of Muslim family law in India.

*Keywords:* Muslim women activists, Triple *talaq*, Judicial reforms, Muslim personal law, Legal pluralism, Islamic feminism, Uniform civil code

### **Introduction**

In civil affairs in India the main religious communities—such as Hindu, Muslim, Christian and Parsi—are governed by their respective religion based personal laws.<sup>3</sup> These religiously grounded personal laws are often regarded as biased against women by the secular

---

<sup>1</sup>Dr. Qazi Sarah Rasheed completed her Ph.D. in Sociology from the Department of Humanities and Social Sciences, Indian Institute of Technology Kanpur. Her research interests lie in the fields of family law, feminist studies, grassroots initiatives, and South Asian women's activism. Email: qsarahrasheed@gmail.com

<sup>2</sup>Dr. Arun Kumar Sharma is Emeritus Fellow in the Department of Humanities and Social Sciences, Indian Institute of Technology Kanpur. His areas of interest include gender studies, rural development, and Sociology of health. Email: arunk@iitk.ac.in

<sup>3</sup>At the time of drafting the Indian Constitution, the women members of the Constituent Assembly like Minoo Masani, Rajkumari Amrit Kaur, and Hansa Mehta backed a UCC and wanted it to be made as a fundamental right. However, their proposition received sharp reactions from various members of the Constituent Assembly, especially Muslims. The Muslim members strongly opposed a UCC in the realm of family law and wanted to preclude the Muslim community from Article 44 of Directive Principles. They insisted that personal laws are an intrinsic part of their religion, and therefore, the state should not legislate on it. Considering the fear among the religious minority communities following the Partition of India, Christians, Parsis, and Muslims were assured that their different cultures and identities would be secured through the continued existence of their personal law. Amidst the arguments on UCC, views of both the parties were discarded and the clause for a UCC was included as a Directive principle, making it an issue to be resolved by future governments.

feminists<sup>4</sup> who consider that all personal laws are based on an interpretation of religion that supposedly sanctions patriarchy. From this perspective, the secular feminists justify the need for the Uniform Civil Code (UCC) as essential to achieve secular, progressive and non-discriminatory law in order to promote women's interests (Seth, 2005). However, some political parties (especially those which claim to represent the interests of minorities such as Indian National Congress (INC), Janta Dal United (JDU), and All India Majlis-e-Ittehadul Muslimeen (AIMIM) and some scholars (who are sensitive to identity problems of minorities such as Flavia Agnes, Zoya Hasan, and Nivedita Menon) argue against the UCC as they deem it a right-wing, Hindu majoritarian project rather than a tool of gender justice. The debate between the retention of the personal laws and UCC intensified after the Shah Bano case in the 1980s. Shah Bano was a sixty-year-old woman who went to the Supreme Court of India seeking maintenance after being repudiated by her husband. The Supreme Court ruled in her favor and granted her maintenance under Section 125 of Code of Criminal Procedure (CrPC), 1973. Under this section, an Indian woman, regardless of her religion is entitled to receive maintenance from her ex-husband until she gets re-married. The Supreme Court's judgment angered conservative Muslim groups, who mounted "an attack on what they perceived as the Hindus' homogenizing influence, an influence that would eventually lead to the assimilation and destruction of Muslim identity" (Pathak and Sunder Rajan, 1989: 561). In an attempt to satisfy the Muslim vote bank, the state rushed to enact Muslim Women's (Protection of Rights on Divorce) Act, 1986 which not only denied Muslim women same rights to maintenance as other Indian women under secular jurisdiction but also legitimized the patriarchal control of the Muslim clerical leadership over them (Schneider, 2009).

The discriminatory aspects of Muslim Personal Law (MPL) re-emerged in 2016 when the country was witnessing a shift in political paradigm and a rise of Hindu nationalism. In May 2014, Bharatiya Janta Party (BJP), a right-wing, Hindu nationalist party won the Indian national election. The BJP's win subsequently gave rise to anti-Muslim and anti-minority fervor and brought up issues like the Ram Janambhoomi-Babri masjid dispute,<sup>5</sup> the beef ban controversy<sup>6</sup>, and the enactment of a Uniform Civil Code on the surface. A Muslim woman, Shayara Bano, approached the Supreme Court demanding that the triple *talaq* (*talaq-i-biddat*) pronounced by her husband be declared void. In August 2017, the Supreme Court declared the practice of triple *talaq* unconstitutional, after which the government issued an ordinance making triple *talaq* a punishable offence with a maximum three-year sentence for the man. After Narendra Modi's re-election as Prime Minister in May 2019, the parliament finally adopted the "Triple *Talaq* Bill" in

---

<sup>4</sup>By secular feminists, we refer to Muslim and non-Muslim women who recognize that all religions are patriarchal and promote binary gender roles.

<sup>5</sup>In the mid-1980s, the Hindu right-wing groups led a Ram Janambhoomi campaign which claimed that the 16<sup>th</sup> century Babri Masjid built in Ayodhya was constructed on the birthplace of Rama, believed to be an incarnation of Hindu God, Vishnu. The right-wing Hindu extremist groups intensified its campaign for the construction of a temple dedicated to Rama at the site of Babri Masjid. Eventually, on 6<sup>th</sup> December, 1992 the Babri mosque was demolished by a large crowd of Hindu karsevaks (volunteers) which sparked widespread communal riots between Hindus and Muslims around the country. After demolition of the mosque, the issue of building a Ram temple has been used by BJP to increase its support base among India's Hindu majority.

<sup>6</sup>In Hindu religion, cows are considered sacred. The trade and consumption of beef has become a very contentious issue ever since BJP came to power in 2014. There have been many cases of violence reported in different parts of the country perpetuated against Muslims by the cow vigilante groups.

July 2019, despite the opposition leaders' criticism.<sup>7</sup> Reacting to the ordinance, a group of Muslim and non-Muslim scholar-activists, including Farah Naqvi, Ayesha Kidwai, Uma Chakravarti, and Irfan Engineer along with organizations like Bebaak Collective, Awaaz-e-Niswan, released a joint statement against the criminalization of triple *talaq*.<sup>8</sup> They stated that in the Shayara Bano case, the Supreme Court already declared the practice of triple *talaq* as unconstitutional which implied that utterance of triple *talaq* no longer dissolves marriage. Moreover, they claimed, the criminal provision would ultimately close all doors of possible reconciliation between a husband and a wife. The issue of triple *talaq* thus stirred a nationwide debate among the political leaders, Muslim clerics and women activists. It has also received significant media attention.

The issue of “Muslim women’s rights” under India’s personal law framework and the demand for judicial reform evoke the debate around “legal pluralism”, a situation “in which people could choose from among more than one co-existing set of rules” (Beckmann & Turner, 2018:262). This paradigm rejects both the hegemonic community politics of male clerics and the assimilative tendency of the majoritarian, nationalist secular perspective. We may broadly call it the perspective of legal pluralism in which the rights activists accept the supremacy of the Qur’an and the Constitution of India, but reject both the patriarchal interpretations of tradition and the idea that “law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions” (Griffiths, 1986:3). Following Griffiths, we wish to add that for Muslim women the domain of law is liminal. Their understanding of law is not based on a fixed set of formal laws, but rather emanates from a combination of “morals, social norms and practices, customary law, religious law, state law, and so forth” (Solanki, 2011:46).

Exploring the phenomenon of legal pluralism in the Indian context, Solanki (2011) puts forth a model of “shared adjudication”, a term she coined to describe India’s unique method of adjudication of both Hindu and Muslim religious family laws. Through the processes of centralization and decentralization of law, she explains that though the “Indian state seeks to consolidate its authority by infiltrating and shaping the conjugal family from above” (p. 49), at grassroots level “state law and organizations are captured, appropriated, resisted, or transformed by societal agents” (p. 49), i.e., the state shares its adjudicative authority with diverse societal actors, religious bodies and organizations in the regulation of marriage and divorce among Hindus and Muslims. Similarly, studies conducted by Vatuk (2013), Tschalaer (2017), and Lemons (2010, 2019) highlight some of the basic premises of Muslim family law including its procedural aspects. In a situation where the adjudication of Muslim marital and civil matters is shrouded in mystery,<sup>9</sup> these empirical studies bring to the fore how Muslim women in a plurilegal system navigate between state and non-state dispute resolution mechanisms to maximize the chances for a just outcome.

<sup>7</sup>The opposition parties opposed the triple *talaq* ordinance on three grounds: a) triple *talaq* is a civil matter and hence, should not be turned into a criminal offence; b) the Bill does not have the provision for the welfare of the Muslim women in case their husbands are jailed; and, c) it was targeted at a particular religion and hence, was unconstitutional.

<sup>8</sup>See: Stop the Criminalization of Triple *Talaq*: Women’s Rights Activists. Retrieved, <https://kafila.online/2018/12/28/stop-the-criminalisation-of-triple-talaq-womens-rights-activists/>

<sup>9</sup>During triple *talaq* case hearing gender rights lawyer, Flavia Agnes observed that the advocates and legal experts lacked an understanding of the intricacies involved in adjudication of MPL at the community level. For detail see: Contradictions, Confusions & Lighter Moments during Triple *Talaq* Hearing. Retrieved from <https://www.livelaw.in/contradictions-confusions-lighter-moments-triple-talaq-hearing/>

Against this backdrop, this article focuses on the role of Muslim women activists as adjudicators and mediators (go-between for the parties in dispute). We define “Muslim women activists” as women who campaign for political and social change in women’s lives using a combination of religious, humanitarian and democratic arguments. It is a more pragmatic position than of secular feminists who discard religious discourse to advance women’s rights, and Islamic feminists who largely focus on the reinterpretation and recuperation of Islam from Islamists (Moghadam, 2004). These activists belong to three Muslim women’s rights organizations based in Lucknow<sup>10</sup>—Bazm-e-Khawateen (Bek), All India Muslim Women’s Personal Law Board (AIMWPLB), and Bharatiya Muslim Mahila Andolan (BMMA). These organizations work towards the promotion of Muslim women’s rights within an Islamic framework, albeit from different perspectives. Based on ethnographic research,<sup>11</sup> the article explains how Muslim women approach different alternative forums, and in what ways Muslim women activists affiliated with these organizations create opportunities for distressed women to resolve their disputes more efficiently. Such an examination provides important insights into how Muslim women’s rights activists undertake their pursuit of justice within a complex, legally pluralistic landscape in the area of Muslim family law. On a parallel track, the paper also seeks to examine the different approaches and strategies of Muslim women activists to enhance their socio-legal activism.

### **The History of Muslim Women’s Activism in India**

Before proceeding further, let us first review the history of Muslim women’s rights activism in India. After Indian independence in 1947, “for all practical purposes, the women’s question disappeared from the public arena for a period of over twenty years” (Mazumdar, 1985:3). With the inclusion of the principle of “equality” of all citizens of India in the Indian Constitution, the predominantly male political leadership did not address women’s issues effectively and considered women as “recipients of welfare as wives, mothers and daughters” (Chaudhuri, 2012:30). The inability of state policies to bring about gender equality in the post-independence period led to the emergence of an “autonomous women’s movement” in the 1970s (Subramanian, 2008). The “autonomous women’s movement” highlighted not only issues pertaining to the public sphere, such as land rights and political representation, but also issues concerning the private sphere, such as dowry, divorce laws, child custody, sexual harassment and rape (Sen, 1990). Yet the women’s movement lacked in terms of the inclusive representation and

---

<sup>10</sup>Lucknow is the capital city of the Indian state of Uttar Pradesh. According to Indian census (2011), in Uttar Pradesh, Muslims form a higher proportion of the population than in the rest of the country. In Lucknow, their proportion is even higher, with Hindus constituting 77% of the population, and Muslims 21%.

<sup>11</sup>This article is based in twelve months of fieldwork carried out in 2015 and 2016 in Lucknow. We conducted thirty in-depth, open-ended interviews, to make a sense of the interviewee’s everyday understanding of justice and equality. These interviews, conducted in several sittings with the respondents, provided us sufficient flexibility to approach the participants according to their convenience, while focusing on the same areas of data collection. We interviewed the participants at their homes, and workplaces. All the interviews were conducted mostly in Hindi and Urdu languages as participants were conversant in these languages and were recorded after taking their prior consent. We accompanied women activists to different sites such as the homes of women who were obtaining counseling or legal help from them, and police stations where these women had gone for legal or police protection. The mediation sessions were usually conducted at their offices and were closely observed by us. We also analyzed many documents to obtain relevant documentary evidence of the facticity of statements made by the participants. These documents include the pamphlets and magazines published by different organizations, government reports, and newspaper articles.

remained elitist (Kirmani, 2009). Because the Indian women's movement assumed the homogeneity of women's identity, it could not effectively address the specific issues of women from minority communities (Sharma, 2015; Niaz, 2016; Dietrich, 2003). Moreover, the Indian women's movement had a contentious relationship with religion since it was based on the principle of secularism (Kirmani, 2011) and was mostly led by highly educated and modernized women, influenced by the history of feminism in the West. With the rise of communal tension and divisive environment in the country post 1980s, the women belonging to minority communities especially Muslims felt excluded and threatened. The secular women's movement failed to incorporate Muslim women's issues into a broader feminist framework to secure their religious and cultural identity (Bhatty, 2003).

As previously stated, Indian Muslims are governed by religion-based personal laws which cover matters related to family affairs such as marriage, divorce, maintenance, and succession. Personal laws specific to religious communities were instituted under British colonial rule.<sup>12</sup> A major part of MPL as practiced today is not codified and has little uniformity across the different parts of the country (Mahmood, 1972). The non-codification of MPL makes it open to several interpretations by religious clerics who work in a patriarchal structure and therefore go in favor of Muslim men. The traditional Muslim leadership refuses to reform the discriminatory provisions of the personal law as they claim that it is based on *shari'ah* and, hence, immutable. In fact, submitting its response to the Supreme Court in connection with the matter on the triple *talaq* issue in 2016, the All India Muslim Personal Law Board (AIMPLB)<sup>13</sup> stated that personal laws cannot be re-written in the name of social reforms.<sup>14</sup> On the other hand, some modernist Muslim scholars and reformists like Asaf Ali Fyzee and Asghar Ali Engineer advocated reforms in MPL, particularly on matters related to gender justice (Engineer 2004; Sikand 2005). However, the Indian state overlooked the repeated demands of the Muslim women and remained silent due to the fear of backlash of the Muslim "community".

The systematic exclusion and the alienation at all levels forced Muslim women "to look for new ways to engage with the religious and political discourse and to seek legitimacy within the Islamic discourse" (Schneider, 2009:61). Consequently, in the 1990s many Muslim women organizations and network were established such as the Muslim Women's Forum, Awaaz-e-Niswaan, and the Muslim Women's Rights Network. These organizations demanded equality for Muslim women in all spheres of life and at the same time highlighted the larger issues of the community concerns such as poverty, unemployment, and marginalization. Kirmani (2011) termed the growing assertion of Muslim women as "minority feminism", while Vatuk (2008) called this phenomenon as the "nascent Islamic feminist movement" in India. The Islamic feminism is essentially an attempt to enlarge the space for women's rights within an Islamic framework (Badran, 2009). However, whether or not Islam is compatible with feminism is debatable. The scholars who accord with the norms of secular-liberal feminism (Moghissi, 1999;

<sup>12</sup>The British lawmakers established separate courts to adjudicate cases pertaining to family matters of Muslim and Hindus. Since English and Indian judges were not trained in Muslim law, they relied on *Al-Hedayah*, an influential compendium of *Hanafi* jurisprudence, which was originally written in Persian and translated into English by Charles Hamilton, a British orientalist. The book aided the judges in the British courts in adjudication of Muslim civil matters which were inextricably interwoven with religion.

<sup>13</sup>The AIMPLB is a non-government organization constituted in 1973 to ensure the protection and continued applicability of MPL in India.

<sup>14</sup>Triple talaq: Personal laws can't be rewritten in the name of social reform, AIMPLB tells SC. Retrieved from: <http://indianexpress.com/article/india/india-news-india/triple-talaq-personal-laws-cant-be-written-in-name-of-social-reform-aimplb-tells-sc-3009855/>

Mojab, 2001; Shahidian, 1998) criticize Islam for being “anti-woman” and for supporting a social system in which women are economically and politically marginalized, but at the same time, other studies reveal how revivalist Islam’s public piety serves as a resource for Muslim women’s agency and activism (Gole, 1996; Mahmood, 2005; Rinaldo, 2013). In India, the discourse on rights of Muslim women has been shaped and informed by both local reformist trends (Osella and Osella, 2008; Suneetha, 2012) and global women’s solidarity movements such as Women Living Under Muslim Laws (WLUML) formed in 1984 in United Kingdom, Sisters in Islam (SIS) formed in 1988 in Malaysia, and Musawah formed in 2009 in Malaysia (Schneider, 2009; Tschalaer, 2017). These transnational movements and networks are committed to promote an understanding of Islam that recognizes the principles of gender equality, justice, freedom, and dignity.

Traditionally in Muslim societies, male *qazi* (judge) have held authority and played a key role in the context of formal or extra-formal conflict resolution mechanisms, whereas women have been considered ineligible for the office. Most of the Islamic scholars see the role of a judge as masculine and therefore oppose women’s appointment to these positions (Smith, 1995; Zahalka, 2017). In India too, there have been instances when religious clerics or Islamic institutions issued *fatwas* prohibiting women from becoming experts in Islamic law (Tschalaer, 2015). Recently, however, some Muslim women activists have taken upon themselves a role as mediator or arbitrator in dealing with the injustice committed against women. Arbitration in *shari’ah* is defined as “two parties choosing a judge to resolve their dispute and their claim. Traditionally...the parties themselves select the arbitrator and...the parties themselves must voluntarily accept and obey the decision of the arbitrator” (Al-Ramahi, 2008:3), while the decision of the civil court is binding on both parties. The legitimacy and permission of arbitration in Islamic law finds justification in a Qur’anic verse which states, “And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them” (The Qur’an 4:35). These women activists aim to create new conditions for conflict resolution in which knowledgeable women can also be accepted as arbitrators in dispute resolution and provide a gender-neutral solution acceptable to the disputing parties.

### **Muslim Women’s Difficult Access to Legal Forums**

#### *Dar-ul-Qaza and the Lack of Female Judges*

Section 89 of the Indian Civil Procedure Code (CPC), allows the parties in dispute to resolve their cases through mediation, reconciliation, and arbitration outside the court. For Muslims, the non-state judicatory bodies which function as an alternate dispute resolution system comprise of the local imam, elders of the community, caste and sect-based panchayats, and *dar-ul-qazas* (Subramanian, 2008; Vatuk, 2001). A Muslim woman, lacking in education, awareness, money, and facing a troubled or abusive marriage, generally first seeks the help of elders of the family who try to fine-tune the situation. If this fails, the matter is forwarded to the influential “man” from the caste or village for mediation. When these efforts also prove unsuccessful, the issue is taken to the community-based *dar-ul-qazas* (Vatuk, 2013). *Dar-ul-qazas* popularly known as *shari’ah* courts, are the arbitration councils which help the Indian Muslims to resolve their family issues in accordance with *shari’ah*. The AIMPLB has established *dar-ul-qazas* in several Indian states like Delhi, Goa, Gujarat, Haryana, Madhya Pradesh, Uttar Pradesh, and Uttarakhand, with two main objectives: a) to streamline the adjudication process under Muslim

personal law; and b) to remove the presence of un-Islamic accretions from the Islamic practices (Solanki, 2011). In *dar-ul-qazas* trained *qazis* who hold a considerable degree of religious and moral influence on the community, conduct the adjudication of disputes.

In the *mediadar-ul-qazas* are often projected as either parallel to or in conflict with the Indian judicial system. A judgment delivered by the Supreme Court of India in 2014 in *Vishwa Lochan Madan vs. Union of India* cleared the legal status of *dar-ul-qazas*. Although the Supreme Court's verdict did not delegitimize *dar-ul-qazas*, it made clear that *dar-ul-qazas* are not a part of the *corpus juris* of the state. *Dar-ul-qazas* are approached by the parties voluntarily and cannot forcibly enforce their orders on them. If the concerned parties are not satisfied with the decision, they are free to move to the civil courts. Mustafa (2018), a renowned jurist of constitutional law, argues that *dar-ul-qazas* respond to the decline of the civil justice system in recent times. However, despite their merits, *dar-ul-qazas* have their own limitations which cannot be ignored or neglected. Some scholars (Moore, 1993; Hussain, 2013; Vatuk, 2013) described the community-based resolution systems as paternalistic and inconsiderate towards women.

Indeed, most of the women that we interviewed believed that *dar-ul-qazas* are exclusively male dominated and biased against women. They pointed out that *dar-ul-qazas* rarely have female *qazis*, a situation which jeopardizes their rights to fair treatment in cases involving divorce, maintenance, and domestic violence. Highlighting the problem, MehjabiNaaz, 42, an activist and member of AIMWPLB who conducts mediation maintained that:

The administration of *dar-ul-qaza* doesn't listen to the woes of women. Because of *pardah* (veiling) their presence is ignored. They summon the males and take one-sided decision arbitrarily. If there is any issue between spouses, both husband and wife should be given an equal chance to present their case. They must be properly counseled and helped in resolving their grievances. But since most of *darulqazas* are occupied by male clerics, they hold certain stereotypes associated with women which effects the final outcome of case mostly in favor of men.<sup>15</sup>

The lack of sensitive and effective response to women's issues has led Muslim women activists to advocate for the inclusion of female *qazis* in *dar-ul-qazas*—in a context where they feel there is no organized effort to train and appoint female *qazis*. They argue that if there are female *qazis* then there would be greater chances of women getting justice. Shaista Amber, the President of AIMWPLB, pointed out the absence of female *qazis* in *dar-ul-qazas*:

Where are our women supposed to go when their problems and issues are not addressed at *dar-ul-qazas*? There should be women *qazis* at *dar-ul-qazas*. Today, we have very few women *qazis*. This is primarily because in *madrasas* only men are trained to be *qazis* and *muftis*. If we look into the initial phases of Islam women could study, earn religious degrees and qualify as '*ulama*. But later on, their role was confined within the walls of their home. Women continue to face discrimination in marital issues due to patriarchal attitude of clerics. So, we need female *qazis* who are more sensitive to women's problems and ensure that their rights are not violated.<sup>16</sup>

<sup>15</sup>Interview with MehjabiNaaz (pseudonym) October 28, 2016.

<sup>16</sup>Interview with Shaista Amber February 6, 2016.



In many cases, women seeking settlement from *dar-ul-qazas* do not see their rights properly addressed. For instance, in 2010, two Shia Muslim women, Arshi and Hina, approached the *Sultan-ul Madaris*<sup>17</sup> based *dar-ul-qaza* after their husbands arbitrary and unilaterally divorced them. The clerics validated the unilateral divorce and issued *ex partetalaqnamas*(divorce documents) in favor of the husbands without verifying the facts and seeking the consent of both parties—in principle a mandatory precondition among Shias. Similarly, a woman in her late twenties was divorced over the phone by her husband working abroad. When she approached *dar-ul-qaza* and stated her case, the *qazi* declared the divorce as legal and irrevocable. Moreover, the *qazi* failed to convince the husband to provide maintenance to her and her minor daughter. As we will now see, women sometimes have to resort to civil courts since *qazis* are often unable to force husbands to comply with their decisions.

### Difficulties in Formal Legal Avenues

For Muslim women in a matrimonial crisis, the civil courts tend to act as the last resort (Holden, 2008; Vatuk, 2013). Several factors discourage Muslim women from reaching out to courts for justice. First, in Indian culture there is a negative connotation attached to intervention by public institutions in one's private disputes (Lemons, 2010). There is a social stigma attached to a woman resorting to courts and a fear that she might end up facing social disapproval (Basu, 1999). Second, civil court proceedings incur a huge expenditure and usually take a lot of time. In the interviews, eight out of nine women who approached the courts seeking maintenance and/or divorce expressed their dissatisfaction over the functioning of the civil justice system.

In one case encountered during fieldwork, Farzana Khatoon, a woman in her late thirties filed a case for divorce and maintenance in the civil court in 2008. She claimed that, after marriage her husband did not support her and her two children financially. He even used to inflict physical “torture” on her. Despite the repeated attempts of her family to settle the dispute, the situation did not change much. She endured this abusive marriage for many years before finally deciding to leave him. She left her nuptial house and moved to her father's house along with her children. During this time, she claimed, her husband neither expressed any willingness to bring her back to his house nor tried to settle the dispute. After some time, she sued her husband for harassment and domestic violence under Section 498A of Indian Penal Code (IPC), 1860. She also requested the court to grant maintenance to her and her children and to determine its amount. Every year she attended six to seven hearings, hoping every time that it would be the last one. But each time after hearing the lawyer's arguments, the judge simply scheduled another hearing. Despite all her efforts, the court neither fixed the maintenance nor granted her divorce. Eventually, due to the expensive and uncertain court proceedings, she decided to withdraw the maintenance. Commenting on the lengthy legal procedure, she complained that the civil courts did not help the situation of “helpless women”:

Fighting a case in a court of law is an expensive affair. Where will a woman get the money from? All that matters for a woman is financial security. Helpless women just settle for anything so that they have a roof over their heads. The court should direct the husband to start paying the maintenance to his wife in the second hearing itself. Section 498 (IPC) is a case that could take time to settle. But as far

<sup>17</sup>The *Sultan-ul Madaris* is a Shia Islamic seminary for higher religious education in Lucknow. It was established in 1892.

as providing maintenance to the wife is concerned it should start immediately. I have been fighting for six-seven years for maintenance, but all the hard work was in vain. I don't want any maintenance, now; I am only seeking divorce. Fighting a case is very costly. Sometimes lawyers charge Rs.1000 (\$13) and sometimes Rs.2000 (\$26). One just can't get his or her work done without bribing. Where are we going to get the money for fighting the case when we don't have a penny to eat?<sup>18</sup>

The Indian legal system is inefficient in addressing the financial needs of divorced/destitute women and their children of all religious communities. A study conducted by Singh (2013a) revealed that women seeking maintenance have to go through "tiers of litigation" (p. 3), meaning that even if the lower courts award them maintenance, the husbands approach higher courts challenging the maintenance order which may again last for years. The study also reported that on an average court usually takes one to five years in granting maintenance. However, the time period exceeds more than five years in some cases. The long delays are due to several reasons such as inability of wife to proof income of the husband, non-appearance of opposite party on designated court date, repeated adjournments sought by lawyer of the male spouse on flimsy grounds, and lack of sincere effort on the part of judges in discouraging the practice of unnecessary adjournments. Even while determining the amount of maintenance, courts hardly consider the number of children being brought up by a woman. They fix a meagre amount of maintenance which is insufficient for a decent living.

The third factor that discourages Muslim women from approaching courts is the intimidating character of the legal representation in India and the complexity of Indian laws. To get access to the justice delivery system people often depend on legal experts who act as mediators between them and the legal world (Law Commission of India, 2009). Furthermore, some of the women interviewed were also skeptical about the court's ability to provide justice to the poorer litigants and described it as the "domain of the powerful" (Moore, 1993:523). They pointed out that people with more power and greater financial resources have the ability to influence the court's decisions and win a case, a possibility unavailable to those who lack both of these. The problem of corruption in legal institutions was also highlighted. The general impression among the illiterate women is that courts are corrupt, especially at the lower level. Such was the opinion of Noori, 36, a married woman who has received no formal education and approached Shaista Amber to resolve a conflict with her in-laws:

Whether it is a case of property dispute or a case of a married couple, only those who are rich and shrewd will win the case. What will a poor woman do? Where will she get money from to fight the case? For her it is already a task to have two square meals a day.<sup>19</sup>

To deal with the procedural loopholes of the existing civil courts, the Family Courts Act was enacted in 1984 to promote reconciliation and secure speedy settlements of disputes relating to marriage and family affairs (Jamwal, 2009). Yet the Act enforces a normative positive to the courts: it intimates the persons appointed to the family courts to preserve the institution of

<sup>18</sup>Interview with Farzana Khatoon (pseudonym) July 10, 2016.

<sup>19</sup>Interview with Noori (pseudonym) February 6, 2016.

marriage rather than destroy it. For this reason, women are expected to compromise in the course of hearing with constant pressure on reconciliation (Vatuk, 2001).

### **Working for Women from Within the Islam**

Muslim women activists have made a conscious choice to work for women from within the fold of Islam. Shehnaz Sidrat is the President of Lucknow's oldest Sunni Muslim women's rights organization, Bazm-e-Khawateen (BeK). It was established in 1934 by Begum Sultana Hayat as a small collective of women who would gather for religious teachings and discuss social issues facing the community. Begum Sultana Hayat hailed from an elite class Muslim family and was then actively engaged, with reform issues among Muslims. Begum Shehnaz Sidrat is the daughter-in-law of late Begum Sultana Hayat who took over as the President of the organization in 1994 in order to carry forward the legacy of her mother-in-law. BeK's office is situated in the *Firangi Mahal* area, an old part of the city of Lucknow. It is a lower-middle class neighborhood predominantly occupied by Muslims. The office of BeK is quite big, spacious and simply maintained with a large wooden table placed at the center and some chairs kept for the visitors. In the office, one could observe several framed pictures neatly placed on the walls of Begum Sultana Hayat, and her husband Hayatullah Ansari, with the former Indian Prime Ministers Jawaharlal Nehru, and Indira Gandhi.

In an interview, Shehnaz Sidrat, brought out the fact that she got involved with the BeK with the clear objective of helping Muslim women get educated and overcome the socio-economic backwardness of the Muslim community. Secular political activists, feminists, and journalists generally locate the source of Muslim women's subjugation in the patriarchal nature of Islamic laws. Muslim women activists like Shehnaz Sidrat refuse to attribute the marginalization of Muslim women to Islam. According to her, Islam is based on the principle of justice and confers equal rights and opportunities to Muslim women and men.

Shehnaz Sidrat argues that the problem lies in the interpretation of Islamic laws that men have done, over the centuries, in a manner that favors them:

Today we talk about women's rights. But do you know that nobody is bestowed with more rights than us. In terms of financial rights, no woman of any other religion is as strong as a Muslim woman. Not even in the entire world women have such rights. But yes, there is a gap in the implementation because of the male dominated society and male interpretation of the Qur'an. Men can't see women at par with them. Their mentality has not changed.<sup>20</sup>

Lack of education is another factor which Shehnaz Sidrat thinks keeps most Muslim women deprived of their basic religious and secular rights. She maintains that due to the poverty, among Muslims hinders their educational opportunities and further progress.

Shaista Amber, the founder of AIMWPLB, counts among the most influential in the Muslim women's rights movement in Lucknow. During a personal interview in her office located in a mosque,<sup>21</sup> Shaista Amber recalled her early days of activism when her husband was a

---

<sup>20</sup>Interview with Shehnaz Sidrat September 28, 2015.

<sup>21</sup>Shaista Amber is the founder of Lucknow's first women-inclusive mosque known as Amber masjid. The motivation to build a mosque came to her after she was denied entry into a mosque in 1997.

sub-divisional magistrate in Aligarh. She witnessed several criminal cases perpetuated against women such as rapes, dowry deaths, and domestic violence. This experience gave her a deeper insight into the nature and causes of sufferings of Indian women. Anguished by the society's unfair treatment of women, she subscribed to the communist ideology as it claimed to fight the widespread social, political, economic, and other forms of inequalities. As a member of the Communist Party of India (CPI) until she left it in 2005, Shaista Amber also embraced the communist's emphasis on the secular Indian identity irrespective of religious or other identities. Expressing her sympathies with communism, she said:

Assessing logically and deeply, you will conceive that communists are forthright. They present sensible ideas. They do not talk about Hindus and Muslims; they do not talk about Dalits either. They talk of the destitute and downtrodden class of the society. They speak for Tribals. Why are people becoming Naxals? Because you are not even providing them with the basic amenities. They are not given anything to eat. Outsiders and traffickers abduct their girls. Rangers and forest workers rape their women. They snatch their hens and plunder their animals. Communists fight for social and political issues. They propound that religion is one's personal thing. When you leave your house, you are a common person and have only one identity, i.e., you are an Indian.

Shaista Amber explained that during her struggle for equal rights and justice for women, she realized that Muslim women are doubly disadvantaged. On the one hand, the *'ulama* never come to rescue the harassed, divorced or victimized women at the community level. On the other hand, the state shies away from interfering in so-called religious matters. Being part of the CPI actually came in the way of her will to address the issues of Muslim women. While working among Muslim women, her identity as a "Muslim" was called into question. She was often labeled as an "atheist" by Muslim leaders and clerics. Hence, she started thinking that she would need to be seen as a Muslim in order to be accepted by the community and secure legitimacy for her work. Notwithstanding the ideological opposition to socialism from traditional *'ulama* who denounce it as "anti-Islam" (Conn, 1976), women's issues among Muslims have been looked at from socialist perspective to emphasize the notion of human equality in Islam (Qutb, 1953). Despite her inclination towards the ideals of communism, Shaista Amber decided to quit the CPI to fight injustice perpetuated against Muslim women in the name of Islam. In 2005, she founded a new organization known as All India Muslim Women's Personal Law Board (AIMWPLB) as an effort to counter the retrograde interpretations of MPL by the male *'ulama* and members of the AIMPLB. Shaista Amber argues that despite the AIMPLB's claim to represent the entire Muslim community at the national level, it has been reluctant to bring about any reform in the MPL to protect women's rights related to the family matters. To address this problem, Shaista Amber also established a dispute resolution center in her mosque to address the matters of Muslim women in distress. She is supported by a group of social workers, activists and some male religious clerics who advise her in the matters related to *shari'ah*.

Naish Hasan, the co-founder of BharatiyaMuslim MahilaAndolan (BMMA), is also quite active in this arena and is approached by women suffering from problems in family and marriage. Formed in January 2007 by a group of Muslim women, BMMA describes itself as a rights-based organization that aims to "create an alternative progressive voice within the Muslim

community.”<sup>22</sup>Naish Hasan mostly works in the slums of Lucknow to ameliorate the socio-economic conditions of women and frequently comes across the issues of poor Muslim women in everyday activism. She feels that her association with religion is crucial to maintain the identity of a Muslim, Indian woman. However, in a conversation with Naish Hasan, it was visible that this approach only developed when she started to work at the grassroots level. Her initial stance on religion was completely different from her current position. During her college days, she was inspired by Western feminist theory. She then considered religion as repressive and detrimental to women’s rights and hence discarded it:

When I used to study theories of gender and women’s rights, I was also inspired by those ideologies. I used to be in the company of feminist women. So, it got in my consciousness that this deliberation of religion is not legitimate and is, therefore malicious. So, we used to sideline religious laws and beliefs, it was a long time back though. We aspired to seek freedom.<sup>23</sup>

After college when Naish Hasan started working in the slums and other poor localities, she became actively involved with Muslim women’s rights and issues. She describes going to Muslim slum areas to tell women about their rights and being confronted with several questions intrinsically linked with Islam such as *nikah halala*,<sup>24</sup> polygyny, and unilateral arbitrary divorce. She recalled:

When I started working in *bastis* (slums), I realized that many complex issues appear, then how would we try and resolve them by sidelining religious precepts? If a woman is told *talaq, talaq, talaq*, by virtue of what can we say that these stances are reprehensible? If a man undertakes a second or a third marriage, what can we do? If *halala* is occurring, how will we contend that it is an untoward proceeding? What base do we have to assert this? How would we convince and exhort them? Who would listen and pay heed to us?

According to Naish Hasan, a feminist or human rights framework is irrelevant when working with Muslim women who take Islam as the main source of values and principles. In course of her social work with poor Muslims, she realized the significance of religion in the lives of women she wanted to help. Because in this context she could not negate the values and practices traditionally seen as Islamic, she thought that voicing the concerns of the voiceless women with the help of the scriptures themselves could be a good strategy. To fight for women’s rights, she then started utilizing Islamic texts that have traditionally been used to deprive women of their rights. To work among Muslims the activists have to show their deep allegiance to the Qur’an. Social workers suspected of being non-believers or “communists” will find it difficult to be accepted among Muslims. Hence, while both Shaista Amber and Naish Hasan started working for women’s rights from a non-religious platform, they eventually chose to work from within the Islamic framework. But it also required them to change themselves and appear as Muslim women, which required some scholarship and training.

---

<sup>22</sup><https://bmmaindia.com/about/>

<sup>23</sup>Interview with Naish Hasan October 29, 2016.

<sup>24</sup>*Nikah halala* is a temporary marriage where a victim of instant triple *talaq* is forced to undergo with another man to remarry her first husband.

Muslim women activists come from middle and upper middle-class backgrounds, with a secular education in social sciences (such as economics, sociology, or political science). They are not formally trained in Islamic jurisprudence but have a broad understanding of Islamic provisions through self-study of religious texts. For instance, Afsana Lateef, 48, is an activist associated with Bazm-e-Khawateen. She claims that Islam does not ordain a class of professional interpreters of religion in the form of clerics or suggest that only experts should deal with the Qur'an. She claims that the Qur'an repeatedly calls on Muslims—men and women, educated or uneducated, laypeople or experts—to reflect for themselves on its injunctions. She recalled how she acquired religious knowledge:

I did not go to any *madrassa* for my education. I am a convent educated woman. And therefore, I did not know much about religion except for whatever little that was taught to me at my home. Then, I read many religious texts on my own. I read exegesis of the Qur'an and thereafter attained an understanding about Islam. I am not a scholarly person. But you don't have to be a scholarly person to understand religious books, texts or anything. These religious books are for everybody. It is the right of every Muslim to know the will of God. It is not rocket science and you require a degree to understand what God said. God said that Qur'an is conveyed in the simplest form so that everybody can understand it.<sup>25</sup>

In the Islamic tradition, the male religious clerics have solely held the “legitimate authority” to interpret the religious scriptures (Sardar, 2011). They have an upper hand when it comes to reading and interpreting the Islamic textual sources. Against this background, reviewing the religious scriptures stands out as one of the core strategies of the Muslim women activists to assist their goal to ensure gender equality and justice in Muslim family law and practices. They try to redefine Islamic laws by reviewing the religious textual sources for engaging with gender, suggesting that these can be read as fully supportive of equal rights for all.

### **Muslim Women Activists as Arbitrators, Mediators and Counselors**

In Muslim context, the parties in dispute are free to choose the arbitrator themselves. The arbitrator or mediator irrespective of gender must have three main attributes: respectability, trust, and wisdom among the community people (Shehada, 2004). This holds true for Muslim women activists in Lucknow as well. Several years of activism has helped these women gain considerable respect in the community. In addition, their family background also helps them strengthen the trust of the local community. For instance, ShehnazSidrat's predecessors belonged to the *Firangi Mahal*, a renowned family of Muslim scholars in Lucknow which “have a good claim to have been the leading learned family of Muslim India for much of the past 300 years” (Robinson, 2001:70). Moreover, her father-in-law, Hayatullah Ansari, was a well-known Congress leader. He was a member of the Uttar Pradesh Legislative Council and was also nominated as a member of the Rajya Sabha in 1966. This affiliation earns her good respect and credibility within the community and she is frequently approached mostly by women involved in family disputes at her *Firangi Mahal* office. Muslim women activists believe that all Muslim women, irrespective of class and caste, face domestic violence, arbitrary triple *talaq*, and polygyny but the activists' approach mostly the lower class and uneducated women who are

<sup>25</sup>Interview with Afsana Lateef (pseudonym) October 13, 2015.

more likely to trust them than women from the upper class. These activists are referred to as “baaji” and “aapa”, terms used to denote an elder sister. However, they also receive hostile reactions from their detractors who refer to them as *behaya* (immodest) and *besharmauraten* (shameless women). Therefore, Muslim women activists forge an alliance with progressive and liberal Muslim and non-Muslim intellectuals, scholars, lawyers, and activists to strengthen their cause. According to Naish Hasan:

Those people who understand our ideology support us in every possible way. Setting aside those fanatic Muslim men, the rest of them are with us. Many men meet me and tell that they agree with our thoughts and ideas. They say that they want to help us. Many of them have given money to support our cause. To pay the school fees of poor children, for community development and to fight court cases of helpless women.

Muslim women activists use mediation as an important tool in conflict resolution. The priority of these women is to find a solution to the problem at hand through dialogue and negotiations though it is not always achievable. They encourage both the husband and wife and sometimes other relatives, including in-laws, to attend the counseling sessions in order to facilitate reconciliation and avoid marriage breakdown. Under Muslim law, marriage is regarded as a civil contract between a man and a woman, i.e., it can be dissolved when it fails to serve the purpose of living together (Carroll, 1982). The Qur’an makes specific reference to the provision of maintenance for divorced women. It proclaims: “For divorced women a provision in kindness: a duty for those who ward off (evil)” (The Qur’an 2:241). It also directs that a divorced woman should neither be forced out nor should she leave her marital home until the expiry of *iddah*.<sup>26</sup> During this period husband is entitled to provide maintenance and residence of both wife and children (Bahadur, 1895). Moreover, the father is bound for the maintenance of his children even if he divorces his wife (Machae et al., 2015). But in practice, due to socio-cultural influences, ignorance of the Qur’anic injunctions, and distorted interpretations, the husband does away with his wife after final pronouncement of divorce and get rid of his financial obligations towards her and his children (Sahay, 1998). A woman then is forced to depend on the members of her natal family/relatives who “may provide shelter and support only grudgingly and temporarily” (Jeffery, 2001:19). Therefore, since most of the Muslim women who approach these forums are either poor or lack the support of their natal family, they are advised to make a compromise rather than seek a divorce or separation from their husband. The latter then is considered as the only possible means of support for them and their children. Shehnaz Sidrat claims that she has saved around eight thousand marriages through counseling and mediation:

Roughly five to ten women approach us every day. We deal with innumerable cases of marital disputes. Where will a woman go if she is thrown out of her house after divorce? She is left with no choice except to wander here and there along with her children. Who will provide for their maintenance? Only a husband will. Both the law of the land and Islam state this fact. But still they wander here

---

<sup>26</sup>*Iddah* is a waiting period for divorced women (i.e., three months) and widowed women (i.e., four months and ten days), before they can marry again, except for pregnant women, for whom it is the end of the pregnancy. The waiting period is prescribed to determine pregnancy or to attempt reconciliation between a husband and a wife in case of divorce.

and there with no financial support.

The above statement reflects that while dealing with cases of marital/familial issues, Muslim women activists re-produce the idea of women as vulnerable and in need of protection. For this reason, women activists “work within a framework of marital preservation” (Tschalaer, 2017:163). Undoubtedly, saving marriage is one of the priorities of activists but they do not seek to preserve marriage “at all costs”. If, after listening to both parties and understanding the history of the case, they sense that insisting on saving the marriage will be detrimental to the women’s interests, they then provide help in arranging the break-up of the couple, which includes settling the *mahr*, or alimony. They have also helped couples to initiate a divorce in a mutually agreeable manner, if deemed to best serve the interests of the parties.

Apart from counseling and mediation, the activists also hold sessions to inform Muslim women about the discriminatory practices which are widely prevalent in the community as a part of misinterpretation of Islam and highlight what they see as the correct provisions as stated in the Qur’an. They also make women aware of the measures taken by the government to address violence against women, legal provisions, and policies. They publish literature in the form of magazines and booklets to make women aware of the laws dealing with sexual harassment, dowry, and domestic violence. The following pages deal with Muslim women other approaches to deal with marital and familial disputes.

### **Muslim Women Activists Other Roles: Negotiation and the Recourse to Secular Law**

Apart from arbitration, mediation, and counseling, Muslim women activists are also engaged in other ways in resolution of marital disputes. Among those, negotiation is one of the key methods to bring about reconciliation.

Since, in most cases, “Islamic legal and moral arguments are central to these negotiations” (Lemons, 2010:80), activists often secure the endorsement or opinion of liberal Islamic scholars in order to pursue dispute settlement or negotiation. For instance, Naish Hasan came across one such case where the husband and wife wanted to reunite after a dispute that lasted for a few months. They got a *sulahnama* (agreement paper) prepared where they mutually agreed to live with each other peacefully. It was then that a *maulvi*<sup>27</sup> (cleric) from the same locality objected to this and suggested *nikah halala* to make the relationship lawful between the two. According to him, since the wife left the husband’s house and stayed away from him for a certain period of time, it would be regarded as *talaq*.<sup>28</sup> Aggrieved with the *maulvi*’s suggestion, both the husband and wife approached Naish Hasan with the issue. After listening to both the parties, Naish Hasan opposed the *maulvi*’s suggestion of *nikah halala* as an un-Islamic practice. She put forward two main arguments. First, she argued that the practice of *nikah halala* has no Islamic validation rather it is an invention of the clerics based on the “wrong interpretation” of a Qur’anic verse. Secondly, she argued that Islam does not permit any act which is based on a wrong intention and quoted a *hadith*: *innamala’ malubinniyat* (actions are judged by intentions).

<sup>27</sup>*Maulvi* is a general term for religious figures who have studied a basic course on Islamic education.

<sup>28</sup>In Muslim law, if a husband vows to abstain from having conjugal relations with his wife for a period of four months, it makes divorce effective on wife. But if he reverts during this period, then divorce will not take place. This kind of divorce is called *ila*. Although, the period of four months applies only in those cases of separation where the husband swears an oath of sexual abstinence. Without an oath, husband and wife can live separately for an indefinite period of time (See Hawting, 1994).



The *hadith* emphasizes on the importance of *niyah* (intention) for each act performed by human beings. In this respect, a temporary marriage planned with an intention of divorce is *haram* (unlawful) and contrary to the principles of Islam. Naish Hasan's view on *nikah halala* was based on a *fatwa* which she obtained from a *mufti*.<sup>29</sup> Since, *maulvis* hold a considerable degree of influence at the local level, challenging their authority is difficult for the activists as they lack religious credentials. For this reason, the women activists seek alternative interpretations of Islamic law by approaching male scholars and clerics who are liberal. The latter's Islamic credentials enhance the women activist's acceptability among Muslims. In a negotiation process that lasted for a month, Naish Hasan convinced the couple that a mere separation without an intention of divorce does not dissolve marriage and that they would not commit a sin (*gunah*) by living together.

Although, much of the work of Muslim women activists is informal, they also resort to the formal court system, particularly when cases go beyond of the purview of civil matters to criminal law—for instance, in instances of rape, or, domestic violence. In 2004, after a man raped his two teenage daughters for five years, his elder daughter gave birth to three children and the younger daughter delivered one child.<sup>30</sup> The incident came into the limelight when the elder daughter fled the house and informed the neighbors about her father's actions. The case sparked uproar in the media for two main reasons. First, as per Islamic law it was an act of “*zina bi al-ikrah*” which can be translated as forcible unlawful sexual intercourse (Noor, 2010:427). Secondly, the fact that the crime was committed by a father on his two daughters contributed to public indignation. On the basis of these two arguments, Shaista Amber appealed to the religious clerics of *Darul 'Uloom Nadwatul 'Ulama* to extend legal help and support to the rape victims. However, they refused to do so on the ground that the jurisdiction of *dar-ul-qaza* is limited to family law. Disappointed with their stand, Shaista Amber with other group members and activists assisted the victims with legal aid and helped them file a lawsuit against their father. Finally, a fast track court in Lucknow found the father guilty and sentenced him to seventeen years of imprisonment, ten years for raping his daughters and seven years for threatening to kill them. It needs to be mentioned that Islamic punishment for perpetrators of coercive or non-consensual *zina* is classified into three legal categories, i.e., *hadd of zina* (death by stoning or public lashing), *hadd of hirabah* (punishment based on the severity of the crime committed) and *ta'zir* (discretionary punishment) (Khan and Gul, 2017).

In helping women to the formal legal system, Muslim women activists also perform the role of “gatekeepers” (Macaulay, 1979), in the sense that they in effect screen the access of women who approach the formal courts for the resolution of their issues. For instance, Shaista Amber was approached by Subuhi, a married girl in her early twenties who complained that her husband forced her to engage in non-consensual sexual acts. She decided to seek a divorce but the husband refused to divorce her and remained recalcitrant. She wanted to seek a *khul'*, but the intimate nature of the problem prevented her from approaching *dar-ul-qazato* to discuss the issue with a male *qazi*. The feeling of shame and guilt left her entrapped in the abusive situation for a long time until her maternal aunt brought her to Shaista Amber to resolve the matter. Shaista Amber first consulted a lawyer and then she advised the aggrieved woman to register a complaint with the police before initiating legal action for divorce under the Dissolution of

<sup>29</sup>*Mufti* is an expert in Islamic law who can issue a legal opinion interpreting *shari'ah*.

<sup>30</sup>A beast masquerading as a man. Retrieved <https://timesofindia.indiatimes.com/city/lucknow/A-beast-masquerading-as-man/articleshow/504989.cms>

Muslim Marriages Act, 1939<sup>31</sup> or a lawsuit under Section 377 of IPC for sexual activity “against the order of nature”.<sup>32</sup> Shaista Amber assisted her in filing the complaint and her insistence forced the police to put pressure on her husband, following which he finally gave in and divorced her.

## Conclusion

In the light of above discussion, there is a crucial need to rethink the issue of judicial reforms and its effectiveness in ending injustice and inequality perpetuated against women. Gender justice is not simply about passing laws that appear on the face of them to be gender neutral or pro-women. Many such laws constitute discrimination against women. For instance, women’s rights are protected under several legislations in India (e.g., The Dowry Prohibition Act, 1961, Pre-conception and Pre-natal Diagnostic Techniques (PCPNDT) Act, 1994, and Prohibition of Child Marriage Act, 2006), in reality these laws are not just inadequate, but in many cases, advance discriminatory practices against women (Singh, 2013b). In view of this, claiming to protect rights of Muslim women through criminalizing triple *talaq* remains doubtful. It would rather serve as a hindrance for women instead of offering them justice. This is because the criminal justice system has its own drawbacks. In this system, power to investigate a case is primarily left to the discretion of police officers. Serious concerns have been raised over police behaviour and attitude towards minorities, women, and other vulnerable groups of society. They may misuse their power and exceed their authority due to their own personal biases based on caste, class, gender, and religion (Verma, 2001). Moreover, if the husband is imprisoned for pronouncing triple *talaq*, it would prevent him from earning and provide maintenance to his wife and dependent children for three years, thus depriving them of financial security. It would also lead to the end of marriage as after the release of the husband from prison, it is unlikely that he would reunite with his wife who got him imprisoned. Expressing her concern about criminality clause, Agnes (2018) raised an important question: “Is the end goal for a Muslim wife in a conflict marriage incarcerating her husband or securing her economic rights?” (para. 4).

The findings of this study suggest that aggrieved Muslim women, especially those belonging to the lower social strata are reluctant to resort to formal legal avenues to resolve their disputes. Instead, they prefer a “softer solution” (Nagaraj, 2010:430) in the form of mediation and arbitration offered by different socio-legal forums operating at the local level. Although alternative sites of adjudication are often marked by power relations, but allow women to negotiate power in families, and communities, hence giving them more rights than state law (Solanki, 2011). Having recourse to Muslim women activists has emerged as a viable option for dispute resolution in this regard. The functioning of Muslim women activists differs from the traditional justice forums in certain ways. First, since *qazis* jurisdiction is limited to the realm of MPL, they cannot intervene in criminal cases. Muslim women activists on the other hand, take recourse to both civil and criminal law in case of need. They are networked with lawyers, other

---

<sup>31</sup>The Dissolution of Muslim Marriages Act, 1939 contains five sections. Section 2 of the Act provides nine grounds under which a Muslim woman shall be entitled to obtain a decree for the dissolution of her marriage from civil court.

<sup>32</sup>Section 377 of Indian Penal Code refers to sexual offences in which body parts other than the reproductive organs are used which may include anal and oral sex. On September 6, 2018, the Supreme Court of India decriminalized homosexuality, however, it remains in force relating to sex with minors, non-consensual sexual acts, and bestiality.

activists, politicians, and liberal Islamic scholars. This helps in strengthening their position in arbitration and counseling.

Second, most of the *qazis* or influential persons within the community are males. In some cases, as mentioned above, women hesitate and do not feel comfortable to discuss their intimate problems due to a feeling of “shame” but are quite open to discussing such issues with a woman. Vatuk (2013) writes that this sort of gender congruity facilitates the arbitration process as it provides women a sense of belief of being heard and understood with empathy. Moreover, these forums may be more effective alternatives to the civil courts as they encourage women to resolve their marital or domestic disputes informally, rather than to resort directly to the civil courts which are already over-burdened. While high cost, corruption, long delay, and limited access lead to frustration with existing judicial processes, Muslim women arbitrators can facilitate the achievement of a mutually agreeable outcome while increasing the satisfaction of the disputants at no cost. What we argue here is that contrary to perceptions and popular notions, Muslim women are not without remedy and do not lack agency in family matters, including marriage and divorce. There are many alternatives to traditional litigation which help women in resolving marital disputes without having to endure the rigours of criminal proceedings.

Moreover, Muslim women activists can be viewed as an Islamic alternative to the courts. Yet while *qazis* emphasize the resolution of marital disputes in the light of the Qur’an and *hadith*, Muslim women activists differ in their rationale for doing so. Indeed, their choice of Islamic discourse seems to be an outcome of both genuine religious conviction and a pragmatic realization of socio-political realities in India. Muslim women activists may be placed into two categories based on their strategy to secure the rights of Muslim women. Some Muslim women activists take a strict Qur’anic standpoint. This category comprises of women who firmly believe that justice and equality, although an inherent part of Islam, fail to translate into reality because women’s position is determined by social practices rather than by the principles of the Qur’an. The other category includes those women who initially held secular ideas about women’s rights but eventually realized that religion as a social phenomenon is hard to ignore in the private and public sphere. They expressed their dissatisfaction with the secular approach to deal with Muslim women’s issues as it failed to provide adequate and feasible solutions. They work within the universal human rights framework, but at the same time employ Islamic ideas as a matter of legitimacy required to justify their demands among Muslims. Such an approach offers them an important ideological foundation to anchor and articulate Muslim women’s issues and challenge patriarchal norms, ideas and practices which continue to be a source of Muslim family law. This allows the conclusion that Muslim women activists can be seen to be a potential partner in women’s movements and not an adversary on the ground of their faith in Islam. To be effective, Muslim women’s groups, networks, and other non-governmental organizations should collaborate to minimize boundaries between the religious and secular, thus facilitating the potential for dialogue in support of women’s rights and gender equality. They should meet annually and discuss their approaches to evolve a common approach to women’s issues in both formal and informal manner without losing sight of the changes that are taking place in national politics and identity politics. Establishing a dialogue with religious clerics may also lead to issuance of certain norms by them to support women’s cause within an Islamic framework.

### **Recommendations**

Based on the findings and conclusion, this paper makes the following recommendations to policy makers and other stakeholders:

The move to criminalize the practice of triple *talaq* largely leaves issues of economic and social security of women unaddressed. Instead of adopting a punitive approach, the government should uphold Muslim women's rights by improving their access to secure livelihoods, economic resources and socio-legal support. Such measures would help women to negotiate assertively for themselves and achieve favorable outcomes.

Though law is an important instrument to enforce social order, it alone does not bring about social reform or social change. Thus, it is crucial for Muslims to take an initiative to reform their communities from within including their personal laws. Also, the Muslim leaders and religious scholars must organize large scale awareness campaigns on discriminatory practices against women or publicize the legal rights of women. They must educate the masses about the Qur'anic procedure of divorce.

For future research, it is suggested that, since there is a lack of understanding on dynamics of adjudication of MPL, more studies on the subject are needed to reveal ground realities of Muslim women and their everyday negotiations around the law. There are a number of socio-economic and cultural barriers which prevent women from seeking or receiving justice. Understanding how these barriers affect women's decision is crucial in improving their prospects for justice.

## References

- Agnes, F. (2018). The endgame of triple talaq. *The Tribune*. Retrieved from <https://www.tribuneindia.com/news/archive/comment/the-endgame-of-triple-talaq-656256>
- Al- Qur'an, Surah al-baqarah 2:241.
- Al- Qur'an, Surah al-nisa 4:35.
- Al-Ramahi, A. (2009). Sulh: A crucial part of Islamic arbitration, LSE Law. Society and Economy Working Papers. *London School of Economics and Political Science Law Department*. Retrieved from [http://eprints.lse.ac.uk/24598/1/WPS2008-12\\_Al-Ramahi.pdf](http://eprints.lse.ac.uk/24598/1/WPS2008-12_Al-Ramahi.pdf)
- Badran, M. (2009). *Feminism in Islam: Secular and religious convergences*. Oxford: Oneworld Publications.
- Bahadur, M. Y. (1895). *Mahomedan law relating to marriage, dower, divorce, legitimacy and guardianship of minors, according to the sonnees* (Vol. 1). Calcutta: Thacker, Spink & Co.
- Basu, S. (1999). *She comes to take her rights: Indian women, property and propriety*. Albany: SUNY Albany.
- Beckmann, K. and Turner, B. (2018). Legal pluralism, social theory, and the state. *The Journal of Legal Pluralism and Unofficial Law*. 50 (3), 255-274.
- Bhatty, Z. (2003). Feminists or reformists? *The Hindu*. Retrieved from <https://www.thehindu.com/thehindu/mag/2003/03/16/stories/2003031600350400.htm>
- Carroll, L. (1982). Talaq-i-tafwid and stipulations in a Muslim marriage contract: Important means of protecting the position of the South Asian Muslim wife. *Modern Asian Studies*. 16 (2), 277-309.
- Chaudhuri, M. (2012). Feminism in India: The tale and its telling. *Reveu Tier Monde*. 19-36.
- Conn, H. M. (1976). Islamic socialism in Pakistan: An overview. *Islamic Studies*. 15 (2), 111-121.
- Dietrich, G. (2003). Dalit movements and women's movements, In Anupama Rao (ed.), *Gender and caste* (pp. 57-79). New Delhi: Kali for Women.
- Engineer, A. A. (2004). *Rights of women in Islam*. New Delhi: Sterling Publishers.
- Gole, N. (1996). *The forbidden modern: Civilization and veiling (Critical perspectives on women and gender)*. Ann Arbor: The University of Michigan Press.
- Griffiths, J. (1986). What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law*. 18 (24), 1- 55.
- Hawting, G. (1994). An ascetic vow and an unseemly oath? "Ila" and "zihar" in Muslim law. *Bulletin of the School of Oriental and African Studies, University of London*. 57 (1), 113-125.
- Holden, L. (2008). *Hindu divorce: A legal anthropology*. England: Ashgate Publications.
- Hussain, S. (2013). Unfolding the reality of Islamic rights of women: *Mahrand maintenance rights in India*. *Pakistan Journal of Women's Studies*. 20 (2), 29-50.
- Jamwal, N. S. (2009). Have family courts lived upto expectations? *MainstreamWeekly*. 47 (12). Retrieved from <https://www.mainstreamweekly.net/article1205.html>
- Jeffery, P. (2001). A uniform customary code? Marital breakdown and women's economic entitlements in rural Bijnor. *Contributions to Indian Sociology*. 35 (1), 1-32.

- Khan, S. B. and Gul, S. (2017). *The criminalization of rape in Pakistan*. (CMI Working Paper No.8). Retrieved from <https://www.cmi.no/publications/file/6323-the-criminalisation-of-rape-in-pakistan.pdf>
- Kirman, N. (2009). Claiming their space: Muslim women-led networks and the women's movement in India. *Journal of International Women's Studies*. 11(1), 72-85.
- Kirman, N. (2011). Beyond the impasse: 'Muslim feminism(s)' and the Indian women's movement. *Contributions to Indian Sociology*. 45 (1), 1-26.
- Lemons, K. (2010). *At the margins of law: Adjudicating Muslim families in contemporary Delhi*. PhD Diss, University of California.
- Lemons, K. (2019). *Divorcing traditions: Islamic marriage law and the making of Indian secularism*. London: Cornell University Press.
- Macaulay, S. (1979). Lawyers and consumer protection laws. *Law and Society Review*. 14 (1), 115-171.
- Machae, R., Mohamad, A. B. and Khareng, M. (2015). Children maintenance: The rights in Islamic family law and the law of Thailand. *Mediterranean Journal of Social Sciences*. 6 (4), 193-199.
- Mahmood, S. (2005). *Politics of piety: The Islamic revival and the feminist subject*. Princeton: Princeton University Press.
- Mahmood, T. (1972). Progressive codification of Muslim personal law. In Tahir Mahmood (ed.), *Islamic Law in Modern India* (pp. 80-98). New Delhi: Indian Law Institute.
- Mazumdar, V. (1985). Emergence of women's question in India and role of women's studies. Occasional Paper No. 7. New Delhi: Centre for Women's Development Studies.
- Moghadam, V. (2004). Towards gender equality in the Arab/ Middle East region: Islam, culture, and feminist activism. *UNDP Human Development Report*. Retrieved from [http://hdr.undp.org/sites/default/files/hdr2004\\_valentine\\_moghadam.pdf](http://hdr.undp.org/sites/default/files/hdr2004_valentine_moghadam.pdf)
- Moghissi, H. (1999). *Feminism and Islamic fundamentalism: The limits of postmodern analysis*. London: Zed Books.
- Mojab, S. (2001). Theorizing the politics of 'Islamic feminism'. *Feminist Review*. 69, 124-146.
- Moore, E. P. (1993). Gender, power, and legal pluralism: Rajasthan, India. *American Ethnologist*. 20 (3), 522-542.
- Mustafa, F. (2018). Justice more accessible. *The Indian Express*. Retrieved from <https://indianexpress.com/article/opinion/columns/sharia-courts-muslim-personal-law-board-aimplb-shariat-act-law-commission-uniform-civil-code-5260892/>
- Nagaraj, V. (2010). Local and customary forums: Adapting and innovating rules of formal law. *Indian Journal of Gender Studies*. 17 (3), 429-450.
- Niaz, N. S. (2016). *Women's shariah court-muslim women's quest for justice: An alternative dispute resolution forum for and by Muslim women*. Chennai: Notion Press.
- Noor, A. M. (2010). Rape: A problem of crime classification in Islamic law. *Arab Law Quarterly*. 24 (4), 417-438.
- Osella, F. and Osella, C. (2008). Islamism and social reform in Kerala, South India. *Modern Asian Studies*. 42 (2/3), 317-346.
- Pathak, Z. and SunderRajan, R. (1989). ShahBano. *Signs*. 14 (3), 558-582.
- Qutb, S. (1953). *Social justice in Islam* (J. B. Hardie & H. Algar, Trans.). New York: Islamic Publications International.
- Reforms in the judiciary-some suggestions (2009). *Law Commission of India*. Report No. 230. Retrieved from <http://lawcommissionofindia.nic.in/reports/report230.pdf>

- Rinaldo, R. (2013). *Mobilizing piety: Islam and feminism in Indonesia*. New York: Oxford University Press.
- Robinson, F. (2001). *The 'ulama offarangimahall and Islamic culture in South Asia*. New Delhi: Permanent Black.
- Sahay, R. (1998). Divorce in Muslim society, laws and reality: A study among Telis in Delhi. *Indian Anthropologist*. 28 (2), 49-60.
- Sardar, Z. (2011). *Reading the Qur'an: The contemporary relevance of the sacred text of Islam*. Gurgaon: Hachette Book.
- Schneider, N. C. (2009). Islamic feminism and Muslim women's rights activism in India: From transnational discourse to local movement —or vice versa? *Journal of International Women's Studies*. 11 (1), 56-71.
- Sen, I. (1990). *A space within the struggle: Women's participation in people's movements*. New Delhi: Kali for women.
- Seth, L. (2005). A uniform civil code: Towards gender justice. *India International Centre Quarterly*. 31 (4), 40-54.
- Shahidian, H. (1998). "Islamic feminism" encounters "western feminism": Towards an indigenous alternative? *Paper presented to the Feminism and Globalization Seminar*, Illinois State University, Springfield.
- Sharma, A. (2015). Feminism in India- A fractured movement. *Paripex- Indian Journal of Research*. 4 (2), 75-78.
- Shehada, N. Y. (2004). Uncodified justice: Women negotiating family law and customary practice in Palestine. *Development*. 47 (1), 103-108.
- Sikand, Y. (2005). Reforming Muslim personal laws in India. The Fyzee formula. *Women Living Under Muslim Laws*. Retrieved from <http://www.wluml.org/node/499>
- Singh, K. (2013a). *Separated and divorced women in India: Economic rights and entitlements*. Thousand Oaks: Sage Publications.
- Singh, K. (2013b). *Laws and son preference in India: A reality check*. United Nations Population Fund (UNFPA). Retrieved from <https://india.unfpa.org/sites/default/files/pub-pdf/LawsandSonPreferenceinIndia.pdf>
- Smith, V. P. (1995). Settlement of disputes by arbitration under shari'ah and at Common law. *Islamic Studies*. 34 (1), 5-41.
- Solanki, G. (2011). *Adjudication in religious family laws: Cultural accommodation, legal pluralism, and gender equality in India*. New Delhi: Cambridge University Press.
- Subramaniam, N. (2008). Legal change and gender inequality: Changes in Muslim family law in India. *Law and Social Inquiry*. 33 (3), 631-672.
- Suneetha, A. (2012). Between haquq and taaleem: Muslim women's activism in contemporary Hyderabad. *Economic and Political Weekly*. 47 (34), 57-63.
- Tschalaer, M. H. (2015). Muslim women's rights activists' visibility: Stretching the gendered boundaries of the public space in the city of Lucknow. *South Asia Multidisciplinary Academic Journal* (Online), 11.
- Tschalaer, M. H. (2017). *Muslim women's quest for justice: Gender, law and activism in India*. Cambridge: Cambridge University Press.
- Vatuk, S. (2001). Where will she go? What will she do? Paternalism toward women in the administration of Muslim personal law in contemporary India. In Gerald J. Larson (ed.), *Religion and personal law in secular India: A call to judgment* (pp. 226-248). Bloomington: Indiana University Press.

- Vatuk, S. (2008). Islamic feminism in India: Indian Muslim women activists and the reform of Muslim personal law. *Modern Asian Studies*. 42 (2/3), 489-518.
- Vatuk, S. (2013). The “women’s court” in India: An alternative dispute resolution body for women in distress. *Journal of Legal Pluralism and Unofficial Law*. 45 (1), 76-103.
- Verma, A. (2001). The uniform civil code debates: Lessons from the criminal procedures. In Gerald J. Larson (ed.), *Religion and personal law in secular India: A call to judgment* (pp. 124-141). Bloomington: Indiana University Press.
- Zahalka, I. (2017). A female qadi appointed in the sharia court: Religious law and public opinion. *The Moshe Dayan Centre for Middle Eastern and African Studies*, Tel Aviv University. Retrieved from <https://dayan.org/content/female-qadi-appointed-sharia-court-religious-law-and-public-opinion>