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Policy Analysis beyond Personal Law: Muslim Women's Rights in India

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Granting legal rights to groups in deeply divided societies is important and necessary, but the cost of awarding these rights—in terms of their negative impact on civil rights, and particularly on women's rights—are key issues affecting the politics and policy of diverse polities. The article explores the implications for Muslim women of applying minority autonomy in India. In parallel, it delves into India's policy of religious autonomy for minorities as viewed by the political and legal authorities, and through the eyes of different sectors of the minority community. Analyzing the complex construction of rights within a communalized polity, this article attempts to transcend the ongoing debate on the implications of Muslim Personal Law in India and suggests policy directives aimed at empowering minority women. The Indian case provides a constructive microcosm for studying these tensions comprehensively and comparatively, and holds important lessons for other multicultural societies worldwide.

Keywords: Gender Policy, Women's Rights, Minority Rights, India, Muslim, Communalism, Deeply Divided Societies, Judicial Politics—India, Muslim Personal Law, Religious Autonomy, Comparative Politics.

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Otorgar derechos a grupos en sociedades profundamente divididas es importante y necesario. En términos de su alcance, de su impacto negativo sobre derechos civiles y particularmente sobre los derechos de la mujer, los costos de otorgar estos derechos son asuntos clave que afectan la política y las políticas de sociedades diversas. Este artículo explora las implicaciones sobre mujeres musulmanas en la India de aplicar políticas de autonomía para minorías. Paralelamente, se aproxima a la política india de autonomía religiosa para minorías desde la perspectiva de las autoridades políticas y legales y a través de la óptica de diferentes sectores de la comunidad de minorías. Este estudio intenta trascender el debate sobre las implicaciones de la Ley Personal Musulmana de la India mediante el análisis de la compleja construcción de derechos dentro de una sociedad de comunidades y propone lineamientos de política adicionales dirigidas a empoderar a mujeres de minorías. El caso indio provee un microcosmos constructivo para estudiar estas tensiones de manera comprensiva y comparativa, y proporciona importantes lecciones para otras sociedades multiculturales.

The quality of democracy is determined not only by the form of institutions, but also by the extent that different social groups participate in these institutions. In this regard, the gender of democracy matters profoundly. The absence of women from political life results in democratization with a male face . . . an incomplete and very biased form of democracy.

—Moghadam (2004, 2-3)

. . . polygamy illustrates a deep and growing tension between feminism and multiculturalist concerns to protect cultural diversity. I think we—especially those of us who consider ourselves politically progressive and opposed to all forms of oppression—have been too quick to assume that feminism and multiculturalism are both good things which are easily reconciled. I shall argue instead that there is considerable likelihood of

> **tension between them—more precisely, between feminism and a multiculturalist commitment to group rights for minority cultures.**
>
> —Okin (1999)

Social scientists, feminist scholars, and law professors disagree concerning what constitutes appropriate group rights policies for minority communities. This multifaceted debate comprises several major strands. First, which approach will result in greater stability in deeply divided societies? Second, which policy is more durable in maintaining an integrated and stable society? Third, which policy is the most moral and ethical? Fourth, where should the emphasis be as regards group rights: on the community, on politics of recognition and cultural preservation, or on the equality of the individual and liberal egalitarianism? Finally, how can the state legally protect individuals, women, and groups within the community itself? My underlying assumption is that both gender issues and group rights are part of the struggle encountered in the processes of democratization. Granting minority rights in deeply divided societies is crucial, but their *cost*, in terms of their negative impact on civil rights in general and on women's rights in particular, should not be disregarded; indeed, it demands exploration both comparatively and via in-depth single case studies. Moreover, to enable religion, democracy, and women's rights to coexist in a democratic state, in some cases, certain adjustments in family law should be considered.

The topic of state policy toward personal law, Islam, and *Sharia* in Western societies has received much attention in the last two decades (see e.g., Okin 1999; Shachar 2010). Nevertheless, Islamic personal law and the corresponding status of Muslim women in India are often overlooked by mainstream Western scholars despite their significant importance, wider comparative value, and the marked effects they have on the lives of more than 80 million women. The analysis of personal law in India is a highly politicized and extremely sensitive subject. It often creates a situation in which group rights discourse based on liberal reasoning acts as an obstacle to liberalization and democratization for Indian Muslim women and ignores feminist principles.

Beyond the issue of women's rights, the topic demands a careful analysis of such key factors as Islam and democracy, and minority rights—especially those rights granted to nonliberal communities—coupled with the complexity of deeply divided societies that have different and occasionally conflicting values, ethnic origins, and nationalities. Current debates cannot overlook the sociopolitical and legal aspects of the Indian polity, first and foremost the constitutional complexity of Indian democracy and citizenship, which entails elements of secularism, equality, and minority rights, in addition to the political conflict between Hindus and Muslims in India. Specifically, the dynamics inherent to the struggle between the Hindu right- and left-wing groups, which inevitably intensifies the overall conflict in the Indian arena, should be taken into account.

To begin to tackle these dilemmas, this article focuses on the thorny issue of Muslim women's status in India and takes a closer look at the issues critical to the successful implementation of minority rights. It aims to provide a clearer picture of the potential of Muslim women in India (and women in general) to achieve empowerment. Given that the heterogeneous interests of the Muslim community tend to be disregarded, this article deliberately goes beyond the prevailing debate concerning implementing Muslim Personal Law in democratic societies and in India by suggesting that additional factors, such as quotas, education, and the minimum age of marriage, need to be reconsidered. The Indian case thus offers a constructive microcosm for studying these tensions in depth and holds important lessons for other societies with multiple legal systems.

The article is organized as follows: After a theoretical introduction, I provide a concise analysis of India's policy toward Muslim Personal Law and the effects of this policy on Indian Muslim women. Governmental and judicial policies are considered in light of both the specific sociopolitical reality of the Muslim minority in Indian society and the various Muslim perspectives. The article concludes with a review of several alternative policies.

Religious Communities and the State

There is abundant literature on the issue of whether the world's religious systems are compatible with democracy. Researchers have suggested that Islamic religion and culture should not be assumed to be incompatible with democratic values (Bayat 2007; Karatnycky 2002). Numerous democratization studies have examined the attitudes and views of people living in Muslim countries. Despite the undemocratic regimes found in many of them, scholars have consistently observed that most citizens, even the staunchly religious, steadfastly advocate democracy as the best form of government in Muslim nations (e.g., Egypt, Jordan, Algeria, Morocco, Turkey, Pakistan, Bangladesh, and Saudi Arabia). The extent of identification among a country's populace with Islamic religion and culture does not seem to be a barrier to the democratization process (Al-Braizat 2002; Moaddel 2006; Tessler 2002). A review of the history of Pakistan, for example, shows that although it is a Muslim state, it reformed its Muslim Personal Law and introduced several important changes for women, such as raising the minimum age of marriage. Bangladesh, also a state with an overwhelming Muslim majority, altered Muslim family law in a substantial manner in favor of Muslim women (Basu 2008, 503; Hudson, Bowen, and Nielsen 2011; Smith 1963, 422).

A review of Huntington's "clash of civilizations" thesis by Inglehart and Norris (2003) argues that the core clash between the Islamic world and the West centers on issues concerning gender equality and sexual liberalization rather than democratic governance (Rizzo, Abdel-Latif, and Meyer 2007). The suggestion is that the current debate should examine Muslim attitudes toward

women's rights as a highly important topic for cases in which the Muslim community is not the ruling community, but a minority. This approach is especially applicable to democratic states with Muslim minorities, where state–minority relations and the potential clash between group rights versus civil rights and women's rights can be analyzed.

The academic spheres of law and the social sciences have engaged in extensive normative theoretical discussions concerning group rights and their scope (see e.g., Dahl 1982; Kukathas 1995; Kymlicka 1995; Selznick 1992; Taylor 1989; Young 1997). In a nutshell, the analysis of the necessity and scope of group rights and autonomy for nonruling communities can be depicted as a continuum: at one end, the communitarian perspective perceives religious self-rule and the state's acknowledgement of the importance of preserving the special needs and unique self-identity of the minority community as crucial. At the other, liberal theoreticians argue that the state is justified in compelling the members of certain communities to relinquish their collective identities and adopt and internalize those of the greater state, even if these are foreign to their traditions. Liberal researchers tend to assume that the expression by the state of liberal values and its granting of appropriate civic rights confers sufficient protection on all its citizens.[1]

The prominent feminist scholar Susan Moller Okin (1999) correctly pointed out that when arguments are put forward for the rights of groups, within-group inequalities need to be examined with particular care. She highlighted the importance of considering inequalities between the sexes because they are likely to be less public and less easily discernible. Therefore, in her view, "policies aiming to respond to the needs and claims of cultural minority groups must take seriously the need for adequate representation of less powerful members of such groups."

Deeply divided societies that comprise two or more homeland communities deserve critical communitarian thinking for several reasons (see Barzilai 2003; Harel-Shalev 2010, 2013). Critical communitarian discourse suggests that community and minority rights are indeed essential, although they should be adaptable to democratic values, including a gender-just perspective. That said, literature from the critical communitarian perspective acknowledges that the sphere of religious matters when a state awards jurisdictional powers to a group in the arena of family law, it confers on that group greater autonomy and empowerment. At the same time, however, such a move also exposes certain individuals and groups within the community to systematic sanctioned in-group rights violations. An examination of family law from this perspective may reveal myriad conflicts among the state, the minority community, the weak communities within the minority, and the individual.

[1] For more on the differences between Liberal and Communitarian perspectives, see Barzilai (2003).

My analysis of Muslim women's rights in India was conducted according to the theoretical and methodological approach advanced by Migdal, Kohli, and Shue (1994), who advised scholars to disaggregate the state and the society (from a research standpoint), and explore the attitudes expressed by various government entities toward different sectors in society through an analysis of public policies. I therefore analyze the state at various levels—judicial and parliamentarian, national and local—and when applying this methodology to the community, I attempt to disaggregate the moderate versus the conservative voices of both men and women.

Muslim Women in India: Political, Judicial, and Public Perspectives

State law, legal rulings and ideology, and actual public policy all affect the community's legal culture by shaping identities and legal consciousness (Barzilai 2003, 144; Shachar 2001). Thus the attitudes of the various state agencies toward the status of minority women and religious group rights need to be monitored over time. In parallel, the groups in society that advocate changes in personal law should be identified as well as their motives. The existing "personal laws" are not scriptural or customary, but are rather the product of political negotiations, and frequently reflect class and gender hegemonies (Agnes 2012; Basu 2003, 132). This suggests how important it is to inquire, as Basu (2008, 497) did, "[h]ow far should Family Law precepts conform to '*Shari'a* law', if any *Shari'a* commonalities can be agreed upon among diverse Muslims?" Muslim Personal Law has been the target of innumerable critiques in India launched not only by Hindutva forces,[2] but also by secular forces that stand for gender equality (Agnes 2012). Obviously, a thirst for gender equality has not necessarily been the driving force behind Hindutva attacks on Muslim Personal Law. The Hindutva resentment of Islam has been responsible in most cases, but criticism of the laws by secular forces has been prevalent as well who found that the existing Muslim Personal Law is gender biased in favor of men (Engineer 2009). Other elements in Indian society, such as various women's organizations, care deeply concerning women's rights, and the principles of equality and equal opportunity in a divided democracy (Basu 2008).

Among society's marginalized groups, women in many instances are blocked from participating in public and political life by various forces (Wolkowitz 1987). The status of Muslim women in India is even more complicated because it is intrinsically linked to the sensitive, often volatile relations between Hindus and Muslims in India that lead to occasional political

[2] The Hindutva is a social movement (including social, religious, and political groups) advocating Hindu nationalism and the emphasis of the dominance of the Hindu culture in India, some members of which claim the establishment of a Hindu state (rather than multicultural state) in India.

conflicts. In addition, the state, in many cases, identifies with the Hindu community and is not a neutral player in the political game.

The constitutional articles affecting Muslim women's rights were set down in the midst of a conflict between Hindus and Muslims. India was founded over 60 years ago amid a violent partition process characterized by, among other issues, acute competition between Hindus and Muslims. The controversy over minority reservation and participation in politics was among the major causes of the partition between India and Pakistan. The dominant Hindu leaders of colonial India rejected the demand of Muslim leaders to establish a cooperative Hindu–Muslim government. Accordingly, the Muslims aspired to establish a separate state of their own: Pakistan.

Nevertheless, the Indian independent state formed alongside the Muslim state of Pakistan grants equal civic rights to all citizens, regardless of religion, gender, or ethnic origin. India is not defined in its official documents as "a Hindu state," but rather as a secular democracy that is formally neutral in terms of its myriad communities, both majorities and minorities (Harel-Shalev 2010, 2013). India does not restrict itself to civil rights; aside from provisions that entitle all its citizens to equal civic rights, India recognizes collective group rights and recognizes cultural and religious autonomy for religious minorities.

India's secularism is complex and contested. It also affects gender power relations in India in many ways (Ganguly 2003; Kishwar 1998). In Will Kymlicka's (1995) terminology, India offers "differentiated citizenship rights" to its citizens (Menon 1998b). Accordingly, the autonomy of religious minorities is recognized within the spheres of education and religion, resulting in minorities being awarded rights that have occasionally conflicted with the state's liberal laws, as well as gender equality concerns. In previous work (Harel-Shalev 2009), I analyzed the legal processes in the sphere of religious autonomy for minorities. In the current article, I will mention it briefly, and move forward to analyze the political and social consequences of these legal developments.

In the country's early days, the Indian Constituent Assembly recommended the legislation of "uniform personal laws" for all the citizens of India in accordance with the principles of secularism and with its self-definition as a civic nation. This recommendation later became Article 44 of the Constitution of India (2011): "Uniform Civil Code for Citizens: The state shall endeavour to secure for citizens a uniform civil code (UCC) throughout the territory of India." This article has remained intact to this today. In addition to Article 44, Article 372 states that existing family laws will remain in force until Parliament revises the original laws (see Constitution of India 2011).

The guarantees established by the Indian Constitution concerning civil rights and the right to equality often clash with the personal laws upheld by the separate religious communities. Nonetheless, Article 13 states that the laws passed prior to the country's independence in 1947 are valid as long as they do not conflict with the fundamental rights granted by the Constitution (Constitution of India 2011). In cases of incongruity, however, the earlier laws

should be considered void. Since the Constitution supersedes all other laws, conflicts between personal laws and the principles guiding the Constitution, especially in the area of human rights, led to difficult constitutional and judicial predicaments for the fledgling government. In the early years of the State, India's Supreme Court ruled in *State of Bombay v. Narasu Appa* (1952) that distinctive personal laws were to be upheld until alternative laws determined otherwise (Harel-Shalev 2010, 2013; Mahmood 1986).

For several decades, this decision provided the escape hatch required by the judicial system and other government agencies to avoid all intervention in religious affairs (Aslam 1989; Chatterjee 1995; Hasan 1993). Hindu Personal Law was nevertheless revised by parliament during the 1950s to adapt it to the conditions of a democratic society.[3] In this sense, the state nationalized Hinduism, and the government assumed authority, which allowed it to reform Hindu civic and marriage laws. Each revision was accompanied by a chorus of objections from orthodox Hindus, who perceived these laws as gross state interventions in the community's religious affairs. The new civic laws for Hindus eliminated almost every reference to castes, and they also granted women many rights, including the right to divorce. Concomitant with the government's resolution to implement its revisions to the Hindu Personal Law, it refused to submit to the pressures imposed by numerous Hindu organizations.[4] Hindu resistance to government policy in this area was tireless because, among other things, the Muslims refused to revise their own Personal Law in any way. Official activity in the area of Hindu Personal Law was consequently perceived by Hindu nationalists as anti-Hindu. Legislation of the Hindu Civil Code Act made Parliament directly responsible for Hindu Personal Law in the family and social life spheres. Objections voiced by the Hindu religious elite were summarily disregarded (Galanter 1989).

From this position of power, the government took it upon itself to revise Hindu law as it saw fit (Jacobsohn 2003, 33-4). Although they tried, the state's legal and political institutions have thus far not interfered with Muslim marriage and religious laws. Out of their desire for stability, legislators

[3] Traditional Hinduism is extremely rigid with respect to all matters of social hierarchy and the caste system; therefore, its principles frequently contradict the liberal values of the Constitution. Despite this inherent source of friction, the Indian government succeeded in introducing some changes that revised the law in efforts to adapt it to the modern climate. The Hindu Code Act of 1954-56 was, in effect, applicable to all Hindus belonging to all the castes and living throughout the country. The collection of laws regulating Hindu personal affairs was legislated during 1954-56 under the inclusive title "the Hindu Code Act." It includes the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoptions and Maintenance Act, 1956. In addition, the Untouchability (Offences) Act, 1955, was passed, making it illegal to discriminate against the Untouchables (Dalits) in any way, shape, or form. For more on alteration in the Hindu civic code, see Galanter (1997), Weiner (1997), and Newbigin (2009).

[4] On the fierce Hindu resistance to revision of the Personal Law, see Smith (1963, 277-91) and Nandini (2012, 52-8).

consciously avoided making similar changes to Muslim Personal Law. They concluded that the still-fresh trauma of partition behooved them to defer legal reform of the Muslim minority's religious practices to a more opportune time (Jacobsohn 2003, 286). This decision not to interfere in minority civic laws effectively cultivated a complex and inequitable social reality in which the same state allowed Muslims to practice polygamy while prohibiting it for Hindus. As I elaborate later, ultimately, Muslim women seem to have paid the price. Liberal Hindus and Muslims alike have complained that this state of affairs contradicts Article 15 of the Constitution of India (2011), which stipulates that the discrimination of any group on the basis of religion is inherently unconstitutional (Baxi 1994).

Following the submission of a petition requesting the nullification of a regional court ruling convicting several Hindus of polygamy, the issue was brought before the High Court in the State of Bombay in 1952 (see *State of Bombay v. Narasu Appa*). The court, however, upheld the heavy penalties inflicted on the polygamists, arguing that such penalties were necessary, a position rationalized by the fact that the purported discrimination was not committed on the basis of religion. In a later case (see *Ram Prasad v. State of Uttar Pradesh* 1957), the Supreme Court of Uttar Pradesh (UP) ruled that polygamy is not "a required practice" of Hinduism. Therefore, state law was not in question, and polygamy was definitely prohibited. The court also ruled that the state was authorized to introduce gradual reforms into the various personal laws and that it was perfectly legitimate to begin such reforms with the Hindu religion (see *State of Bombay v. Narasu Appa* 1952).

The court hoped to use this announcement, considered to be congruent with the respective legislation, to encourage state adoption of the UCC. The initial agreements to preserve the *status quo* of Muslim Personal Law and to reinvent Hindu civic code eventually became inseparable parts of India's fragile system for distributing minority rights. There were a few exceptions, nonetheless, to the state's hands-off policy toward Muslims. Galanter and Krishnan (2000, 113-4) identified two cases where court intervention in Muslim Personal Law did not spark a public storm.[5] The Supreme Court ruled in these cases that according to India's criminal law, women were eligible to receive alimony beyond the three-month postdivorce period (the *idatt*) set by the Muslim *Sharia*. At the time, Muslims did not publicly object to the rulings because, as Galanter and Krishnan (2000) claim, the presiding judge, Krishna Iyer, did not hand down a universal judgment abrogating the *Sharia*; rather, he limited the scope of his decisions to the specific cases involving the women who demanded additional compensation.

A subsequent case (see *Shah Bano Begum v. Mohd. Ahmed Kahn* 1985) set a controversial precedent. This was the first time that the courts openly

[5] For details, see *Bai Tahira v. Ali Hussain Fissalli* (1979); *Fazlunbi v. Kahder Vali* (1980).

contravened Muslim Personal Law by ruling as unjust the alimony due to divorced women according to the *Sharia*. Crucially, the court also declared that Indian civil law was legally superior to the *Sharia*. In the landmark case, a woman named Shah Bano petitioned the court to force her husband to pay her alimony after he divorced her following 46 years of marriage. Her petition was based on Article 125 of India's Code of Criminal Procedure (CrPC 1973), which states that the estranged husband is to pay his former spouse a standard payment every month. In her plea, Shah Bano claimed that her former husband did not provide her with sufficient means to support herself. In his defense, the husband argued that the *Sharia* required him to transfer only a designated amount (known as the *mahr*) during the three-month duration of the *idatt*. Backed by Islamic law, therefore, he was confident that he had fulfilled his spousal duties and that his ex-wife was not entitled to additional support.

The High Court in Madhya Pradesh (MP) ruled that in addition to the *mahr* paid during the *idatt*, the husband was to pay his ex-wife monthly alimony as dictated by the CrPC. The husband then appealed to India's Supreme Court, but it upheld the April 1985 decision handed down by the High Court in MP. Included with the decision was a clarification by the Supreme Court that the husband was obligated to abide by CrPC dictates because the state's civic law superseded community religious law.

The justices began their verdict with the following sentence: "[T]his appeal does not involve any constitutional importance" (*Shah Bano Begum v. Mohd. Ahmed Kahn* 1985, 844). Arguably, the judges were convinced that their decision, like those in the other two cases cited, touched on mere conventional attributes of the law; however, it is far more likely that they were well aware of its potentially highly charged impact and worded their decision accordingly in an effort to attenuate the public outrage that rightfully could have been anticipated in the wake of the ruling (Harel-Shalev 2009).

The theoretical literature on the behavior of high courts has shown that courts in democratic countries rarely hand down decisions that oppose prevailing public moods, instead preferring to reflect the wider trends prevalent in their society (Barzilai 2003; Mishler and Sheehan 1993). The *Shah Bano* case gave the courts an opportunity to state their positions regarding India's progress toward a universal and uniform personal law. For this reason, India's Supreme Court declared that previous court's reluctance to intervene in Muslim Personal Law was misguided. The Supreme Court ruled that in the name of "justice," Indian state law—which emphasizes the principle of equality—was superior to Muslim Personal Law in this case, but the court refrained from basing its decision on the argument that Muslim Personal Law interfered with the exercise of fundamental rights. Had the courts employed this argument, Muslim Personal Law could have been nullified according to the Constitution. Instead, the court's refusal to invalidate Muslim Personal Law effectively waived the opportunity for the Parliament to reform the law (Dhavan and Nariman 2000, 274).

Nevertheless, conservative Muslim figures and organizations were infuriated by the decision, arguing that the ruling represented a red flag in the face of Islam in general and India's Muslims in particular. Tahir Mahmood (1995) argued that the court's ignorance of Islam was behind such a flawed decision and likewise held (1986) that the Constitution called for the formulation of a *uniform* personal law but not of a single law held *in common*.

The Muslim community's reactions were not unified: an extensive protest campaign, organized by the *All India Personal Law Board*, was subsequently waged with the participation of the Muslim press, religious institutions and mosques, and local communities. Its platform stated that the Shah Bano decision represented a death knell to Islamic identity in India (see "The Shah Bano Verdict" 1985). Other organizations, like the *Muslim Majlis–e-Mushawarat*, led by Syed Shahabuddin, announced that if the decision was not reversed, Muslims would treat Indian Republic Day as "a black day."[6] Importantly—although not loudly enough to be heard by all—more moderate, liberal Muslims and numerous academics concurred with the Supreme Court decision (Pathak and Sunder Rajan 1989). The issues raised by the Shah Bano decision were of singular importance both to Indian women generally and to Muslim women in particular (Menon 1998a). But conservative Muslim interests were able to transform the ruling in the case into a threat to Muslim identity and self-respect within the confines of India (Hasan 1993). Rajiv Gandhi, India's prime minister, initially supported the court but later reversed his position in response to pressure from Muslim members of his party (The Congress Party). Subsequent demonstrations and riots by Muslims throughout India affected the political system. To quell the unrest, Prime Minister Gandhi assigned Z. R. Ansari, a Muslim cabinet member, the task of investigating the issue. In so doing, he garnered the support needed to formulate a legislative proposal declaring the superiority of *Sharia* to civil law in matters of divorce and personal law. Parliamentary debates on the subject were lengthy, with many participants objecting to the proposal on the grounds that it was inherently undemocratic and anticonstitutional. In fact, liberal Muslims also strongly opposed the proposal, and A. M. Kahn even resigned from the cabinet in protest over the proposal's "inhumane" and "anti-Islamic" elements (Lok Sabha Debates, May 5, 1986, 17[45], 451).

Despite strong bipartisan antagonism, the proposal was passed and signed into law on May 5, 1986 (Lok Sabha Debates 1986, 17[45], 610-24). The new law (Muslim Women's Protection of Rights in Divorce Bill 1986) effectively turned back the clock and transformed Muslim women into second-class citizens. It prevented them from exercising their rights according to article 125 of the federal CrPC and shifted the responsibility for a divorced woman's support to

[6] This expression has also been attached to the government decision to allow Hindus to pray in the Ram Temple/Babri Mosque in Ayodhya (see Rajgopal 1987, 54).

her family rather than to her ex-husband. Moreover, *Sharia* decrees regarding the *mahr* remained intact; it curtailed the right of Muslim women to lifelong postdivorce maintenance, however small, under Section 125 of the CrPC (1973). The parliament's response, expressed in the new law that overturned the Shah Bano verdict, succinctly captured government policy toward Muslim Personal Law and Muslim orthodoxy; it also reflected the shortcomings of state efforts to implement a UCC. The decision to propose the legislation also reflects state policy toward women in general and Muslim women in particular. Furthermore, it contradicted the platform championed by Rajiv Gandhi and the Congress, in which he declared his intention to promote the rights of women as partners in state development (Congress I Party 1982, 1989).

India's democratic, secular republicanism floundered with the government's choice not to intervene in the practice of Muslim Personal Law. Moreover, its choice of action effectively indicated its acceptance of orthodox Muslims as the community's sole representatives. Zoya Hasan (2000, 283), a distinguished Muslim political scientist, claimed that the proposal overturning the court ruling was defective, and as such, it represented nothing short of a perversion of the basic principle of equality. The proposed law placed Muslims, especially Muslim women, beyond the reach of justice and equality. Ironically entitled "Muslim Women's Protection of Rights in Divorce Bill," it was passed after a campaign headed by the provocative slogan "What Muslims want." Reformist groups and Muslims who held different views and maintained that the Shah Bano decision was not at all detrimental to Islam were not included in the debate (Raghubir 1986). Neither were Muslim women (Pathak and Sunder Rajan 1989, 577; Sunder Rajan 2003). Instead, the state capitulated to Orthodox Muslim forces (Basu 1993; Hasan 1993).

Former Supreme Court Justice Iyer wrote a public letter to Rajiv Gandhi stating that the new law was unjust and unconstitutional (Iyer 1986). Nonetheless, several moderate politicians backed Rajiv Gandhi because the amendment appeared to promote community autonomy in the face of excessive parliamentary power (Lok Sabha Debates 1986, 317, 390). Liberal political scientists, including Baxi (1994) and Hasan (1993), argued that parliament was not authorized to act contrary to the Constitution, either to differentiate between Muslim women and the rest of the population or to undermine their civil rights. By passing legislation that circumvented the Supreme Court, parliament had violated several of the articles of the Constitution (Baxi 1994).

As Agnes (2012) has indicated, the period between the ruling by a Constitutional Bench in April 1985 and the date the Act was passed under a party whip in May 1986 was a turbulent one for Indian Muslim women. They were considered the core of the controversy, with both sides laying claims on them to justify their respective positions. The need to choose between religious beliefs and community affiliations versus gender claims is never easy, if not impossible. Moreover, in the two decades since the Shah Bano ruling, the realities on the ground have changed in terms of intercommunal violence, and

the intensity and growing popularity of the right wing (Agnes 2012), which have made women's struggles even more complicated.

Yet numerous petitions, such as in the *Maharshi Avadhesh* case, which called for nullification of the "Supreme Court circumvention law" due to its incongruity with the Constitution, were subsequently filed (*Maharshi Avadhesh v. Union of India* 1994). The Supreme Court dismissed these petitions and ruled that it had stated its position in the *Shah Bano* case, and it was unwilling to comment further given that the matter was before the legislature. Much later, in 1995, another Supreme Court decision deviated from the policy of nonintervention. In the case of Sarla Mudgal (1995),[7] the president of the social action organization Kalyani, the Supreme Court was petitioned in the name of a group of Muslim and Hindu women who were victims of a loophole in personal law legislation. India's Supreme Court decided that this was an appropriate case through which to review its position on the existing distinctive personal laws. In the process, it emphasized that since the 1950s, voluntary liberalizations and democratizing reforms and revisions had been introduced into Hindu Personal Law, whereas similar reforms of Muslim Personal Law were persistently avoided. Within their verdict, they noted that numerous Muslim states, such as Syria, had revised their personal laws and that actually only a minority of India's Muslims was unwilling to do the same.

In a more recent case, a petition presented by the Ahmedabad Women's Action Group (1997) gave the Supreme Court an opportunity to revert to its former policy of nonintervention. The petition dealt with two issues: the first, a demand to nullify the "*triple talaq*," which allowed Muslim males to validate a divorce simply by declaring aloud, three times, "you are divorced"; the second issue expressed the group's uncertainty concerning the constitutionality of the "Supreme Court circumvention law" regarding divorce among Muslims (Agnes 2012; Hasan 1994, 38). In a lengthy opinion, the Supreme Court reiterated its previous position, adding that although it recommended preventing discrimination and promoting efforts to enact a UCC, the issue had been referred to the legislature. The court was therefore uninterested in creating a situation of "dual proceedings," and it likewise submitted that progress had been made in implementing Article 44 with respect to the formulation of a UCC, although it relegated its own proposal to the rather low level of "a recommendation to Parliament" (see Constitution of India 2011). Numerous Hindu organizations and Muslim women's groups supported the court's recommendation, but orthodox Muslims were still unprepared to do so (Harel-Shalev 2009).

[7] Among the petitioners, a Hindu, Meena Mathur, complained that her husband had converted to Islam and taken a Muslim woman as a second wife; as a result, she was now inadequately protected by the law because no personal law statute applied to women in her specific position. In this case, the constitutional issue was whether a person who had married according to Hindu civil code and had converted to Islam was eligible to marry another woman given that Hindus were forbidden to practice bigamy.

The only evidence of some progress in Muslim willingness to revise Muslim Personal Law has been with regard to unilateral accelerated divorce, a common practice among Sunni Muslims. The Supreme Court in Allahabad ruled that the "*triple talaq*" was illegal and that only full divorce proceedings would be considered valid, a decision that India's Supreme Court confirmed ("Apex Court Review of Triple Talaq" 1994; "Muslim Differs on Talaq Procedure" 1994). The matter was again reviewed by the Supreme Court in 2001 (see *Daniel Latifi v. Union of India* 2001). In that case, the court encouraged the reform of Muslim Personal Law, specifically the nullification of polygamy and the eradication of "rapid" one-sided divorce practices, which were in any case considered by many as inherently anti-Islamic in spirit.[8] In response, in June 2002 the All India Muslim Personal Law Board (MPLB) announced at a meeting in Hyderabad that Muslims were to continue to carry out their religious duties according to the Koran and the *Sharia* (Editorial 2002, 376; Shahabuddin 2002).

From the state's point of view, in July 2003 the judiciary again expressed its agenda when the Supreme Court endorsed the idea of a uniform civil law for all religious communities.[9] Each major camp reacted predictably: while the ruling party, at that time of the Bharatiya Janata Party (BJP), praised the Court, the Congress party suggested that such legislation should not be imposed on minority religious communities, and Muslim spokesmen suggested that only Islamic scholars were competent to decide about matters affected by the proposed uniform civil law (Ganguly 2003). The Parliament, for its part, took no action to implement this judicial recommendation.

Family law in many countries has changed significantly over time, in most cases toward greater equality and safeguards for women in marriage and family matters (Hudson, Bowen, and Nielsen 2011). Over the last decade, Muslim men have called for polygamy to be restricted in India (Bandukwala 2006; Farrah 2009; Wajihuddin 2012), but to date, with the exception of nullifying the validity of "*triple talaq*," there have been no other signs of change. One small step toward democratizing Muslim Personal Law in India was taken by the MPLB, which meanwhile agreed to abolish the practice of triple divorce, but it did not agree to make any other substantive changes (Engineer 2004).

This discussion of the policy sphere of Muslim religious autonomy in India highlights the major contradiction between the proclaimed aspirations of a democratic state and its stance toward one of its nonruling minorities. Overall, the democratic steps that the Indian regime has taken, in which human rights are promoted for the Hindu community, have not involved a substantial change

[8] In *Shamim Ara v. State of UP* (2002), the court had claimed that a unilateral divorce pronounced by the husband without a reasonable cause and without any attempts at reconciliation prior to the divorce is not a legally valid divorce. Once again, the High Court in Bombay also ruled that the *triple talaq* was illegal (see "Bombay HC: Triple Talaq Not Good Enough for Divorce" 2007).

[9] See *Vallamattam v. Union of India* (2003).

in the Muslim community. Groups that aim to challenge the MPLB, such as women's activist groups, and the new Shia board, have not yet affected state policy in this matter (Jones 2010). The 2005 Misra committee—which evaluated the status of minorities in India—declared in its report that "[h]uman rights organisations and women's groups have suggested appropriate changes in the various personal laws . . . This is a sensitive issue and has not been handled adequately by any government so far" (Misra Report [2005] 2007, 44).

In short, the Indian state considered nonintervention in community cultural affairs as promoting its own interest, in terms of political stability. The multicultural Indian state did not succeed in awarding all its diverse communities the same levels of civic and democratic rights, an outcome that has been most detrimental to Muslim women. While it is clear that Parliament should not force dramatic changes on the minority regarding the scope of group rights and should avoid significant, one-sided moves (Harel-Shalev 2010, 2013), the crawling pace of the Indian judicial process as witnessed in the *Sarla Mudgal, President, Kalyani and Others v. Union of India and Others* (1995) case precludes Muslim women from attaining empowerment, particularly when no parallel attempts are being made by the various state *Kali* arms, especially the Parliament and government. Nonetheless, growing numbers of Muslims in India have been publicly calling for reform of Muslim Personal Law (Basu 2008; Lateef 2008).

Muslim Women in India: Education, Marriage, Affirmative Action, and Representation

> Muslim women's rights and resources within family law in India provide a complex site for examining negotiations of community, feminism, and the responsibilities of the State; indeed, family law may be seen as the overdetermined site of Muslim women's visibility while every other issue in their lives fades away . . . This hyperfocus on family law occurs at the intersection of several historical and political factors. (Basu 2008, 501)

Without denying the need for a gender-just personal law, it should be emphasized that the nonegalitarian Personal Law simply compounds other challenges faced by women in Muslim communities. The controversies regarding the Muslim personal law thus should not be evaluated without addressing the other challenges affecting Muslim women's lives. Most social scientists argue that the virtues of democracy—such as fair representation and accountability—emerge over time, through the slow building of new social ties (Lipset 1960), cultural changes (Putnam 1993), and class formations (Moore 1966). However, it appears that, at least in deeply divided societies, the implementation of inclusive formal citizenship does not guarantee equal citizenship rights for the nonruling communities (Harel-Shalev 2013), even after many years of sustained democracy.

In the case of India, after more than 60 years of independence, the Muslim community is underrepresented in both the political realm and in public employment (Shahabuddin 1991). Despite India's stated aims to achieve equality for all groups and individuals on the subcontinent, the various branches of the state have chosen not to rectify this situation, even though they have effective affirmative action tools at their disposal. The status of Muslim women in India, in terms of liberal rights, cannot be properly understood without framing the discussion in terms of the sociopolitical status of Muslims in India and Muslim women in particular. The Sachar Committee (2006), formed to study the Muslim community's status in India, found that the Muslim community is far from being homogenous. However, the stark underrepresentation of Muslims and systematic evidence show that they are, in many respects, as disadvantaged as the lowest caste groups among Hindus. Furthermore, within the Muslim community, women enjoy even less representation than men (Deutsch-Karlekar 2005; Hasan 2009; Misra Report [2005] 2007; Sachar Committee 2006). Thus, in India, where women in general are underrepresented in the political sphere, Indian Muslim women, who belong to two underrepresented groups are twice as disadvantaged in terms of their overall representation in Indian public and political life (Deutsch-Karlekar 2005, 246-7).

The status of Muslim women in India is not affected merely by religion and the personal law. Matters of education and women's representation in the public sphere and public life affect their lives dramatically. Disagreements as to how and why to promote women are raised regularly in the literature (Celis *et al*. 2008). In various countries around the globe, including in India, political reservations for women are often proposed as a way to rapidly enhance women's ability to participate in policy making. In fact, as of today, quotas for women in assemblies or on party candidate lists are in force in the legislation of over 30 countries (Chattopadhyay and Duflo 2004). But can affirmative action significantly check the inherent gender discrimination against women in India? Intriguingly, a recent empirical examination of the effects of quotas in general, and quotas for women in particular, shows that policy makers have the tools to achieve fairer representation more rapidly (Bhavnani 2009; Geissel and Hust 2005; Pande 2003) by implementing the appropriate reservation method (Hughes 2011). Bhavnani (2009) found that the overall impact of quotas for women, even after they were rescinded, was a substantial rise in women's chances of winning subsequent elections.[10] The recognition of the strength of this possibility should encourage governments to design better policies that

[10] In an analysis of elections for Mumbai's city legislature, Bhavnani (2009) found that women's chances of securing political office in wards that had been reserved for women in the previous election were approximately five times their chances in wards that had not been reserved for women previously.

ensure representation of the politically marginalized without permanently "ethnifying" politics.

Over the past 150 years, democratic regimes around the world have dismantled legal barriers to the political participation of women and minorities. Yet women, minorities, and minority women remain substantially underrepresented in high-level political positions (Bird, Saalfeld, and Wüst 2011). In addition to the democratization of the Hindu civic code (which applies to the practitioners of Asian religions—Hindus, Sikhs, Jains, and Buddhists) in terms that will benefit women, the legislators also decided to implement an affirmative action policy to empower women. The 73rd and 74th constitutional amendments, passed in 1992, directed India's state governments to conduct elections at local levels, devolved powers of expenditure and oversight to these bodies, and mandated the reservation of one-third of the seats in these local bodies for women. Because only female candidates can run for election in wards reserved for women, only women are elected to these seats. Subsequently, women's representation, which had ranged between 3 and 9 percent of house strength in India's state and national legislatures, now stands at more than one-third of the seats in local bodies. Most of the nominees are, however, Hindu women (Bhavnani 2009).

In March 2010, a law aimed at promoting women was passed in the Rajya Sabha, or the Council of States, the upper house of the Indian Parliament. The Constitution (Amendment 108) seeks to reserve one-third of all seats for women in the Lok Sabha (lower house of the Indian Parliament) and the State Legislative Assemblies. In addition, one-third of the total number of seats reserved for Scheduled Castes and Scheduled Tribes are to be reserved for women of those groups in the Lok Sabha and the State Legislative Assemblies. Although the amendment has been tabled in the Lok Sabha, it has not been implemented, and in any case, it does not include any reference to Muslim women. It seems that reservation for women, even if incorporated at the national level, would probably not benefit a significant proportion of Muslim women unless a specific article is passed to include minority women. Indeed, research has shown that minority women do not usually enjoy the fruit of reservations instituted for women in general (Hughes 2011).

The topic of the inclusion of Muslim women in Indian public and political life therefore requires the examination of yet another issue, that of the representation of Muslims as a whole. Affirmative action is extended to members of lower caste Hindus, but Muslims, as a separate, weak, and underrepresented community, are ineligible for its benefits. The Mandal Commission of 1980 objected to declaring Muslims as a whole a "backward" community, a protective designation that would entitle them to the same status as scheduled castes or tribes. The official policy was premised on the principle of class social and educational backwardness, with backwardness established by certain defined criteria. Cutting across religion, it recognized specific

communities as backward on the basis of castes and a time-tested criterion of backwardness evolved by different states (Hasan 2009).

Some Muslim groups have been included in backward class lists at the central and state levels (Sachar Committee 2006, 189-214), but arguably, they do not actually benefit from this provision. Obvious proof of its failure for backward Muslims is the continued underrepresentation of Muslims in the central services. A guaranteed minimum within the Other Backward Classes quota of 27 percent would increase the likelihood of backward Muslims getting the reserved jobs. Intriguingly, the areas of Kerala, Karnataka, and Tamil Nadu follow the approach of using a mix of economic and social status criteria, rather than merely castes, for the classification of backwardness and have already implemented reservations on this basis for Muslims, although these states have not given reservations to all Muslims. As of this writing, Muslim women remain unrepresented (Hasan 2009; Kadam 2012).

Recent research has indicated that some quota systems are associated with enhanced legislative representation for minority women, while others leave minority women behind (Hughes 2011). But clarification is required before analyzing the intriguing empirical approach to quota categorization. At the political level, the awareness of the importance of promoting women and the determination to do so are high. Moreover, before further discussing the topic of reservations for Muslim women, I emphasize that the opportunity to be included in the workforce or in politics is strongly correlated to two important demographic elements: (1) age at marriage, and (2) level of education. These parameters are closely linked.

Level of education directly affects many facets of life, particularly family planning, and there is a general consensus that a good education leads to new opportunities (Bandukwala 2006). Consequently, early marriage is commonly believed to be a barrier to a girl's education, and its incidence is slowly being recognized as both the reason and the cause of the low status of certain segments of the female Indian population (Sanyukta and Malhotra 2003; UNICEF 2005).

There are several parallel laws that deal with the topic of the legal age of marriage. In fact, in several regions different ages for marriages are allowed (Law Commission of India 2008). Despite the inconsistency and the jurisdictional disputes, the Child Marriage Restraint Act of 1978, The Hindu Marriage Act of 1955, and the Special Marriage Act of 1954 stipulate that the marriage of girls under the age of 18 is illegal (Law Commission of India 2008). In practice, the average age at marriage for females in India is relatively low and stands at 18.3 years (UNICEF 2008), and a substantial percentage of Indian girls marry before reaching that age (Law Commission of India 2008).

The situation is worse for Muslim Indian girls, for whom the average age of 15.9 years at marriage is much lower than the inclusive national average and not unexpectedly affects their lives dramatically (Desai 2010; Morgan *et al*. 2002). For example, only 16 percent of Muslim women participate in the workforce (compared with 31 percent of Hindu women). Additionally, the fertility rate in

the Indian Muslim community is much higher than in any other. In light of these statistics, it is not surprising that political participation and representation of Muslim women are also low.

Immense gaps in education exist between Hindus and Muslims (Bhalotra and Zamora 2010; Lateef 2008). In fact, the latter group's achievements in education are similar to those of the Hindu Backward Classes, who are rated among the least educated people in Indian society. The educational achievements of the Muslim minority are much lower than those not only of the Hindu majority, but also of the other minorities (Sachar Committee 2006, 49-8). Although the gap between Muslim male literacy rate and the rest of the society is large, the "Education of Muslim Women and Girls in India" report by the Department of Women and Child Development (Nayar 2009) and the Misra Report ([2005] 2007) indicated that while the female literacy rate in India is 53.7 percent for all communities, the average female literacy rate of Muslim women lags only slightly behind at 50.1 percent (Misra Report [2005] 2007, 83; Nayar 2009). However, among female literates with 7+ years of education, among those who have education up to graduation and above, Jains lead with 18.6 percent, followed by Christians (8.6 percent), Sikhs (7 percent), Hindus (5.6 percent), Buddhists (3.8 percent), and Muslims at 2.4 percent (Misra Report [2005] 2007, 84).

One of the main reasons for the educational shortfalls is poverty, as the children of poorer families are often forced to halt their educations, frequently before completing primary school, to begin working to help their families. But there are many reasons behind the typically lower rates of education among Muslims: state discrimination may indeed be a factor, but it is not the only one (Sachar Committee 2006) because the distance of the family home from school also plays a role. Perceptions of public security among Muslims, which are partly associated with the increasing incidence of communal violence, are necessarily intertwined with other spheres of life. The Sachar Report of 2006 indicates that the insecurity Muslims feel in India prevents Muslim parents from sending their daughters to schools that are located far from home, which thus require them to use public transportation. This is especially true when they are old enough to attend upper primary and middle schools, and subsequently leads to high dropout rates among Muslim girls in this age group (Sachar Committee 2006, 20). In addition, recent empirical research indicates that Hindus have a stronger innate preference for education (Bhalotra and Zamora 2010), revealing another potential cause of poor educational achievement that is internal to some extent and rooted in the community's preferences. Thus, despite whatever improvements that may have been made, Muslims still do not view modern education as a valuable resource that necessarily translates into formal employment (Farouqui 2002; Sachar Committee 2006, 85; Shariff 1995, 2953).

An inadequate level of education, of course, directly influences the types of employment for which they are qualified and their socioeconomic status in general. Within the Muslim community, very few Muslim girls attend middle

school and even fewer continue beyond that level. Moreover, data indicate that the literacy rate among Muslim girls is lower than that of their male counterparts, and the Muslim community as a whole has lower literacy rates than any other religious group in India (Deutsch-Karlekar 2005, 217). In terms of representation in public jobs, the overall underrepresentation of Muslims in administrative positions is also detrimental to Muslim women's status. Deutsch-Karlekar (2005) found that only a handful of Muslim women have ever participated in the political process as nominees for various positions. In fact, a total of only eight Muslim women actually served in the Lok Sabha during the first 60 years of independence. While the average percentage of women in the Lok Sabha since the first election in 1952 to the present day was 6.2, Muslim women form a mere 3.2 percent of all women serving in Parliament.

The state-supported education system of India is free for all based on a recently declared fundamental act. The Constitutional Act (2009, Section 35) makes education a fundamental right of every child between the ages of 6 and 14, and specifies minimum standards in elementary schools.[11] In addition, Article 30 of the Indian Constitution states that all religious minorities can found and independently manage educational institutions and that the government will not discriminate between the various minorities' educational institutions when allocating funds. And yet, as mentioned, about half of all Muslim women in India are illiterate. A thorough and innovative research by Hasan and Menon (2005b) has presented some striking figures concerning variation of Muslim women's education: Muslim girls' school enrollment rates continue to be low, just 40.6 percent. However, there are substantial differences in school enrollment rates across India at the local scale: in rural North India, only 13.5 percent of Muslim girls attend school, while in urban North India the figure is 23.1 percent, and in rural and urban south India it is above 70 percent, which exceeds the inclusive national average for girls. Overall, girls from poor families are less likely to attend school (16.1 percent of Muslim girls from poor families attend school compared with 70 percent of Muslim girls from economically better-off families). At the country level, less than 17 percent of Muslim girls finish eight years of schooling, and less than 10 percent continue and complete higher secondary education. In summary, the poor educational levels of Muslim girls seem to be linked to poverty as well as parents' preferences (Hasan and Menon 2005b). Although several policy directives have been suggested by the government,[12] a substantial change has yet to occur.

[11] The 86th Constitutional Amendment Act 2002 states that: For children aged 6-14 years, education is now a fundamental right. The 86th Constitutional Amendment Act 2002 added Article 21A to direct the state to provide free and compulsory education to all children between the ages of 6 and 14 years; see http://librarykvpattom.files.wordpress.com/2010/04/india_education_act_2009.pdf

[12] For details on this, see http://www.jeywin.com/wp-content/uploads/2009/12/An-Analytical-Study-of-Education-of-Muslim-Women-and-Girls-in-India.pdf

Despite these challenging conditions, in the last ten years a substantial number of Muslim women's groups have been created throughout India. Muslim-led women's nongovernmental organizations began to make an appearance in the late 1980s, but after the Shah Bano verdict and the ensuing legislation, about 15 women's organizations consisting of hundreds of women rallied in Delhi to protest the bill but were ignored by Parliament (Pathak and Sunder Rajan 1989, 578); currently the realm of civic society has been strengthened by a rise in Muslim feminism (Jones 2010; Kirmani 2011). These include the All India Muslim Women's Personal Law Board (2005), the Muslim Women's Rights Network (1999), the Women's Research and Action Group (1993), and the Bharatiya Muslim Mahila Andolan (2005). As Vatuk (2001) and Kirmani (2011) showed in their innovative studies on Muslim women's activism, Muslim women's rights activists stress their right to read the *Qur'an* for themselves and interpret it in a feminist way (Hasan and Menon 2005a, 1-5). Most of these groups justify their demands for gender equality through religious arguments, the principles presented in the Indian Constitution, or liberal values and the universalistic principles of human rights. In their view, "Indian civil laws or family laws ought to be guided by universally recognized principles of what constitutes women's rights and human rights as well as the principles enshrined in the Indian Constitution" (Women's Research and Action Group 2008, 2).

There is a general consensus among Muslim women's rights activists that the physical insecurity of Muslims as a result of repeated episodes of violence, and the specific effects this insecurity has on women, should be a priority on their agendas (Kirmani 2011). Other important concerns are the abolition of polygamy and changes in divorce and maintenance laws (Vatuk 2001, 2008). Ever since the Hindutva forces co-opted the issue of the UCC into their political agenda, the women's movement has been rethinking its demand for a UCC and acting in various ways to promote Muslim women (Women's Research and Action Group 2008, 2).

Conclusions

> In the Indian republic, there was to be only one nation—the Indian nation—and no community could claim to remain a separate entity on the basis of religion . . . The desirability of a uniform code can hardly be doubted. But it can concretize only when the social climate is properly built up by society's elites, statesmen among leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change . . .
>
> We, therefore, request the Government of India, through the prime minister of the country, to take a fresh look at Article 44 of the Constitution of India and endeavor to secure for the citizens a UCC throughout the territory of India . . . We further direct the government of

> India through the secretary of the Ministry of Law and Justice to file an affidavit of a responsible officer in this Court . . . indicating therein the steps taken and efforts made, by the government of India, toward securing a 'UCC' for the citizens of India . . . (*Sarla Mudgal, President Kalyani, and Others v. Union of India and Others* 1995, 1531)

> When liberal arguments are made for the rights of groups, then, special care must be taken to look at within-group inequalities. It is especially important to consider inequalities between the sexes because they are likely to be less public and less easily discernible. Moreover, policies aiming to respond to the needs and claims of cultural minority groups must take seriously the need for adequate representation of less powerful members of such groups. Since attention to the rights of minority cultural groups, if it is to be consistent with the fundamentals of liberalism, must be ultimately aimed at furthering the well-being of the members of these groups, there can be no justification for assuming that the groups' self-proclaimed leaders—invariably mainly composed of their older and their male members—represent the interests of all of the groups' members. Unless women—and, more specifically, young women because older women often become co-opted into reinforcing gender inequality—are fully represented in negotiations concerning group rights, their interests may be harmed rather than promoted by the granting of such rights. (Okin 1999)

Feminist scholars should adopt solutions that will empower women and solutions in which women, particularly women of a minority group, have equal potential to control their status. This article has shown that the status of Muslim women in India is equally affected by traditional community and by state preferences. The intrareligious conflicts and variety of community interests were put in the shade by the intercommunal conflicts. In its efforts to achieve political stability, the reluctance of the Indian state to interfere with the religious affairs of communities other than the Hindus has been another important factor.

This situation is not new in the political realities nonruling communities endure in deeply divided societies. For example, in Israel, another deeply divided society, while the tendency of the political elite and the judicial system regarding the majority Jewish community has been to curtail and restrict self-jurisdiction of its religious institutions by limiting their ability to apply religious norms, state institutions are typically reluctant to meddle in the religious affairs of the Palestinian-Arab community to bring about change (see Harel-Shalev 2013). Research by Karayanni (2006, 69) revealed a striking example of incongruity. Israel set a minimum age for marriage for all citizens, regardless of religious affiliation. Nevertheless, because of the religious autonomy granted to minorities, in 1953 only Jewish divorced women were given the legal right to bring maintenance claims against their husbands before a civil court. Muslim and Christian women had to wait patiently until 2001 to

enjoy the same fundamental right, after a legal struggle.[13] This example emphasizes the fact that the state in deeply divided societies is willing to make efforts to democratize the community it identifies with, or considers as "the core nation," but when it comes to the minority, the state prefers to preserve political stability and to co-opt the dominant sector of the minority rather than advance democratization or promote civic rights.

The great challenge for the governing bodies of India and similarly divided societies is therefore to commit to and maintain broad visions that entail parallel progress of different groups, both majority and minority, that make up the country. In the early twenty-first century reality, a broad spectrum of family law implemented in various areas in the world can be located along an imaginary continuum, between family law that fully encodes male dominance over women and relatively equitable family law that encodes a meaningful degree of parity between men and women (Hudson, Bowen, and Nielsen 2011, 470). The objectives of democratic states should involve implementing personal laws that will respect religious traditions but at the same time applying gender-just laws.

One step India could take to set the stage for the widespread, fundamental changes needed is to enforce, through judicial decision and whatever policy directives are deemed necessary, the legal age of marriage for *all* Indians. Such a step would benefit family planning immeasurably and pave the way for previously unexploited educational opportunities for all Indian women, especially young Muslim girls. Moreover, this initial change has the potential to lead to other changes, among them the right to maintenance and the prohibition of polygamy.

In a country in which Hindu women held the most powerful positions in the political arena—as a prime minister (Indira Ghandi) and a president (Pratibha Patil)—a policy change regarding representation of women at other levels should be implemented.

Although the Indian judicial system has demonstrated its willingness to promote equality and women's rights within the majority community, it did take a step further toward a more gender-just interpretation of the Muslim Personal Law. In fact, the various institutions of the Indian state do not manifest a unified perspective on Muslim Personal Law. The political system is even more reluctant to implement a change that might threaten stability. Moreover, shifting the perspective from state to community reveals that many differences exist within the Muslim community itself. For example, the Shia-Sunni divide in matters of personal law is fairly deep (see Mahajan 2005), and women's status thus varies accordingly depending on the group. Substantial scholarly work in the field of family law and its various interpretations has been published (see e.g., Barazangi 2004; Esposito 1980, 2001; Khare 1999;

[13] For a more detailed analysis on the different attitude of Israeli legal and political bodies toward different religious minorities in Israel, see Karayanni (2006, 61-3).

Mahmood 1990; Mayer 1991). Typically, each Muslim sect counts among its members those individuals who view state nonintervention into Muslim Personal Law as a cornerstone of secular democracy.[14] In addition, sizeable progressive groups can be traced as well within the Muslim community (Pathak and Sunder Rajan 1989, 562). Despite differences of opinion regarding Muslim Personal Law within the Muslim community, the political elite in India and the government, however, have traditionally perceived orthodox Islam, typically men only, as the hegemonic authority over all decisions pertaining to the Muslim community.

The commonly accepted authority of orthodox Muslims *vis-à-vis* government action likely to affect their community translates into the striking inability of the various branches of Indian government to work in concert to promote Muslim women. The government's preference for nonintervention in religious affairs has been sustained over the years even though intercommunal peace was bought, to some degree, at a substantial cost to women's rights. The government has thus used nonintervention to increase stability, maintain public order, and reduce state–minority tensions. As mentioned earlier, the judicial system has also avoided conflict with those responsible for minority religious affairs despite its liberal interpretations of the Constitution. In its verdicts pertaining to Muslim Personal Law, the Indian Supreme Court has refrained from declaring that several components of Muslim Personal Law contradict citizens' fundamental rights. Therefore, an informal *status quo*, initially formulated during the early days of independence, has apparently been upheld. As Hasan (2010) indicated, while the BJP is the strongest advocate of a UCC, Muslim conservatives remain its staunchest opponents. In the last two decades, Indian women's groups have had to cope with threats to minority religious groups in the face of rising Hindu fundamentalism (Agnes 2012; Basu 2008; Chhachhi 1991). Nevertheless, Islamic feminist groups still continue to demand a change *from within* (Vatuk 2008).

While the state continues to pursue the democratization of the Hindu religion by amending Hindu civic laws,[15] it refrains from doing so when it comes to the Muslim community. Muslim women are "doubly disadvantaged." An effort should thus be made to encourage the education of Muslims as well as the education of young girls. By doing so, it will make it easier to ensure that they are proportionally represented. In addition, Muslim women should be included in the reservations both for women and for lower class citizens. Finally, because the right to security is one of the important civil rights, the state and the Indian criminal justice system should press full charges against those who use force and

[14] For details on the judicial and political struggles regarding Muslim Personal Law, see the All India MPLB website at http://www.aimplboard.org

[15] For instance, under the Hindu Succession (Amendment) Act, 2005, daughters are entitled to equal inheritance rights along with other male siblings (Women Living Under Muslim Laws [WLUML] 2011).

violence against women. All these steps would promote the status of Muslim women and would encourage young girls to demand their civic and collective rights.

The emergence in recent years of forums and associations of educated Muslim women is an important step in facilitating a new public debate on women's rights (Vatuk 2008). The alliance of Muslim women's groups with the broader women's movement, together with movements for secularism, democracy, and human rights, has also been crucial in widening the struggle for women's rights (Hasan 2010; Sunder 1996) as well as a more feminist interpretation of religion (Vatuk 2008).

Approaching the subject matter of this article from a more international comparative perspective, the current debate is of particular relevance to other multireligious nation states, where Islam is not the religion of the majority but where there are very large numbers of Muslims (e.g., China, the United Kingdom, Canada, and Germany). In all these societies, state law has to address both religious pluralism and women rights. As Basu (2008, 497) asked, "[w]hat should be the basis for Family Law-related rights in these settings? Should minority communities have the space to turn to their customary legal precepts in seeking to preserve group identity?" These questions are not only applicable to states with Muslim minorities, but rather to other religious minorities in many states and can lead to possible clashes between religious norms, constitutional law, and gender equality. For instance, while the Muslim Personal Law in Bangladesh has been changed dramatically (a state with a majority of Muslims), the Hindu Personal Law in Bangladesh has remained largely untouched in the postcolonial era, forming a mirror image of nonintervention in minority affairs. Indian Christian women also struggle and protest against the obstacles Christian Personal Law poses on women who seek divorce (Galanter and Krishnan 2000, 110). The situation becomes highly fragile when the women of a particular group are less powerful, with a weaker sociopolitical status. Under such conditions, it is harder for the women of this particular group to demand their rights. States, therefore, should be highly sensitive to interests of weaker groups within communities.

In deeply divided societies, religious affiliation is much more than an expression of freedom of conscience (Karayanni 2006). Religious identity can also serve as a connecting factor between the self and the legal system, as well as an indicator of the allocation of rights (Karayanni 2006). In that sense, analyzing India's religious sphere is a complex task. The aim of this article was to show that granting full religious autonomy to the minority, in the sense of granting hegemony to one stream of a heterogeneous community, may not be in the best interests of instituting democratic norms in India or protecting its minorities in a multifaceted and multicultural society. But reform should not concentrate merely on personal law.

In addition, enforcement of minimum marriage age laws and the dramatic enhancement of education for girls, including Muslim girls, should be

promoted. A critical communitarian prism might guide the pace and the direction of change by acknowledging the importance of communities and their culture, but at the same time being sensitive to the weaker groups within the communities and providing a listening ear to various groups within the community.

From the state's point of view, ensuring gender equality and equal protection should be of utmost importance. Enforcing the laws as to the minimum legal age of marriage is a positive first step in promoting Muslim girls who will then be able to pursue secondary and higher education, which will expose them to better opportunities. In that sense, "the right to education is unique. In many respects, the right to education is also a civil and political right since people cannot fully realize their freedoms without education" (Chamblee 2004, 1078). The complex construction of rights, which involves women, religious minorities, and the state, fuels substantial tensions between certain levels of rights and various groups in society. Nevertheless, the incorporation of gender-just principles into a multilayered system of rights within communalized society and state is essential.

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Appendix

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