Shari'a, State, and Selfhood: Muslim Women's Legal Consciousness in Postcolonial India

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Abstract

This article explores negotiation of legal subjectivity by Muslim women in postcolonial India in the context of Shari'a, state law and daily living. Instead of working with the binary effects of the female subjects of the Islamic world as victims of a patriarchal personal law, or strong women who represent the section of the Islamic world that has received a secularized reform, the paper previews the concept of legal consciousness to understand women as they interpret, take, and challenge a variety of normative orders. It is based on feminist legal theory and South Asian writings on plural legalities and holds that the interactions of Muslim women with law are not entirely oppositional and compliant, but are conditioned by pragmatic moral judgments, communal pressures, and navigational moves through institutional structures. The paper places Muslim Personal Law in the context of the general system of constitutional secularism in India, with its attraction and conflict of dimensions of religious autonomy and gender valor. By examining the court transcripts, reform discourses, and life practices as is reflected in marriage, divorce, maintenance and inheritance it shows how women mobilise Islamic jurisprudence as well as constitutional entitlement to demand claims to dignity, justice and membership. Special focus is put on the subsequent legacies of the key legal constituencies; such processes as arguments on triple talaq to demonstrate how legal reforms are prismatic through local settings and fail to produce empowerment with uniformity. Centring the voices and practices of women, the article discloses the active co-production of the law and self in postcolonial India. It finally provides that legal consciousness by Muslim women is disruptive in fixed divisions between religion and state, providing a less dichotomous sense of agency, legality and gendered citizenship in South Asia today.

Introduction

The history of Muslim women and legislation in the postcolonial India has been recounted in terms of a range of traditional contrasts, namely, tradition versus modernity, religion versus rights, and community autonomy versus gender justice. Although these binaries have ordered both the mass discourse and the dialogic of law reform, they do obliterate the textured ways that Muslim women are in fact subjected to law in their day to day lives. Their legal world is neither single nor fixed; it is stratified, bargained and in many ways very personal. This article shifts beyond the reductive framings and presents an analysis of how law is experienced, perceived, and mobilised by the Muslim women in the various contexts. The middle ground in this is the concept of legal consciousness that is seen to be described as every day meaning that people put on law and how they apply that to order their lives (Ewick, and Silbey, 1998, pp. 45–47). The legal system of India is described as having a complicated form of pluralism. Under interpretation of Shari'a the Muslim Personal Law (MPL), there is co-existence of constitutional equality and formally secular legal system. Such coexistence has created some unending tensions especially in aspects like marriage, divorce, and maintenance. The notorious case of Shah Bano (1985) is an instructive example. In a case that Shah Bano, a divorced Muslim woman, sought maintenance under the Criminal Procedure Code, Section 125, the Supreme

Court ruled in her favour orienting the aspect to constitutional justice and not a religious conviction. The political revelations that ensued however seemed to be the strongest blowback the Muslim Women (Protection of Rights on Divorce) Act, 1986 brought in to view the issue of gender justice mixed up with the question of minority rights and the role of the state (Agnes, 1995, pp. 78–80).

Nevertheless, such landmark cases should not be treated alone because there is a risk of giving privilege to the state-centred narratives. Muslim women tend to relate to law in much more practical ways at the everyday life level. As an example, ethnographic studies by Sylvia Vatuk (2008) indicate that women in North India tend to negotiate divorce locally with the help of community mediators or local qazis instead of a formal court, not necessarily because they do not accept the state law, but because informal activities are seen as less time-consuming, less expensive and less disruptive to society. In a similar vein, Flavia Agnes (2011, pp. 492–494) reports incidences in which women have strategically resorted to both secular courts and Islamic legal doctrines to obtain either maintenance or property rights and then switches between the two legal systems depending on which provides a more favourable result (pp. 156–158). These illustrations indicate that the interaction of Muslim women with the law is not a complex case of oppression or opposition, which can be expressed through a straightforward analogy. Rather, their behaviours are indicators of a subtle type of thought processes formed out of economic limits, family demands and ethicality. In other cases, women have used Quran concepts of fairness to oppose the normless way of divorce, thus reinterpreting Shari'a internally (Engineer, 2003, pp. 102–103). In others, they are relying on the provisions of the constitution to claim equality among others especially in urban settings where accesses to the legal institutions are more or less. It is not that a legal system supersedes the other but the point is that women move in and out of the legal systems and usually have several understandings of justice simultaneously.

This paper poses the following question; How do Muslim women in India create their legal subjectivity in overlapping normative orders? What is their reasoning when it comes to their interaction with courts, cleric, and community institutions? And what does the meaning of Shari is transformed by these engagements in regard to constitutional law? These are especially pressing in the aftermath of the recent events, including the judgments of the Supreme Court of the 2017 that put the instinct triple talaq under the update of the Constitution as unconstitutional due to its discriminatory nature. Although extensively hailed as a triumph of gender justice, later research points out that its effect on daily activities has not been completely uniform, with informal ways of divorce remaining present in most places (Parashar & Menski, 2019, pp. 214–216). In putting legal consciousness as the central focus of analysis, this research paper will claim that the Muslim women are not considered as inactive receivers of the legal norms but agents in the interpretation and change of the laws. Their daily interactions with law in court, homes or community forums disclose that there is dynamic interaction between faith, legality, and selfhood. By so doing, they disrupt hard boundaries between the religious and the secular, and provide a more grounded form of conceptualization of the law in the lived experience not in an abstract doctrine.

Conceptual outline: Legal Consciousness and Plural Legalities

The legal consciousness concept has emerged as the key to the socio-legal scholarship to explore the manner of living, interpretation, and practice of law by non-formal institutions. Instead of law as being an immutable cluster of rules dictated to one by authority, legal consciousness moves to the point of how common individuals view law, and use law in their daily lives. According to Patricia Ewick and Susan Silbey (1998), law is neither obeyed nor resisted, but narrated, negotiated and sewn into everyday practices in ways that usually cannot be reasoned officially within the law (pp. 45–53). This is especially effective in the, as one might say, pluralistic environment such as India, where instead of a single system of law, the agencies of law operate through several systems that overlap and where regular negotiations between the legal and social realms often blur the distinction between law and life. Law legal consciousness has to be put in its context in the wider Indian context of legal pluralism. It has been demonstrated by scholars like Upendra Baxi (1982) and Werner Menski (2006) that the legal order of India is not unique but made out of coexisting normative

regimes comprising of state law, religious law, and custom practices (Baxi, 1982, pp. 35–37; Menski, 2006, pp. 78–82). Pluralism is not a far-fetched state but a common truth to Muslim women. A woman aspiring to divorce can at the same time, be concerned with the sanction of an elder of the family, a qazi in the local sense, and the legal demands of a civil court. All these arenas have various opportunities, limitations, and types of recognition.

The case in point can be observed in disagreements concerning maintenance (nafaqa). In a few instances, women have been using Section 125 of the Criminal Procedure Code to seek maintenance in state courts by relying on the constitutional concepts of equality and welfare. Meanwhile, they can make the argument within the framework of Islamic requirements, and their claim that the duty of support enforced by a husband is based in Shari. According to Flavia Agnes (2011), such duo-invocation is not contradictory as it is the result of practical legal consciousness whereby women negotiate between legal systems maximising their opportunity of achieving justice (pp. 140–143). This law is not a monarchic power but rather a collection of resources. The feminist scholarship has played a significant role in broadening the notion of legal consciousness by anticipating the gendered aspect of legal experience. The relationships that Muslim women have with the law are not only informed by the nature of law but also by the societal norms in terms of honour, respectability, and family unity. Indicatively, in ethnographic studies, it has been established that many women would tend to choose informal dispute resolution at a community level, despite having the knowledge of their rights under the state law, due to the social stigma attached to empowering a court or stigma over potential marginalisation (Vatuk, 2008, pp. 492–494). In this case, when one refuses to litigate, it must not be interpreted as submission, in most cases; it is a decision of calculation based on social realities. Meanwhile, the Islamic law itself is not an isolated and closed system. Ziba Mir-Hosseini (2006) has maintained that Shari a, as understood via fiqh, has internal plurality and interpretative search (pp. 637–640). This is clear during instances of khula (women initiated divorce), during which women bargain with the religious officials to grant separation. In other cases, women can use the Quranic provisions of equality and equality of consent to oppose one-sided customs like arbitrary talaq. These interactions reveal that religious law may be a place of struggle and not of just inhibition. A good example is shown by the urban legal aid centres where Muslim women tend to speak in a mixed language in presenting their demands. A woman who wants to divorce may at the same time claim that the conduct of her husband is against the Islamic ideals of justice as well as constitutional rights against cruelty. These arguments demonstrate how there is a stratified legal consciousness where religious and secular idioms are in no way mutually exclusive but instead mutually reinforcing. According to A. A. Engineer (2003), very often, appeals to Islamic ethics of justice are used to criticize patriarchal interpretations, and not to dissolve religion on the whole (pp. 102–104).

Notably, legal consciousness does not invariably seem antagonistic or openly rebellious. The contribution of Saba Mahmood (2005) in her contribution to the piety movements not only refutes the belief that agency should be expressed as opposition to norms (pp. 14–18). When applied to the Indian context, this observation can make us see how some Muslim women can buy into some of the religious practices and at the same time bargain increased autonomy in them. As an example, membership in reformist religious groups can equip women with different kinds of literacy and interpretive power, which helps them to challenge unfairness in their families. In this case, agency does not work by rejection but reinterpretation. The conceptualisation of Muslim women legal consciousness in this paper therefore is that the legal consciousness works around in three interdependent dimensions. To start with, it is relational, which is influenced by a web of family, kinship and community. They are not very single decisions regarding legal action; they are encorcoded in group concerns, the honour, reputation, and survival. Second, it is strategic, according to which various legislations are mobilised with the selection based on the situation. Women can cross between courts, clerical powers and informal mediation and view law as a resource which can be moulded and not be followed as a fixed order. Third, it is interpretive, which entails the active reformatting of the legal meanings. It is either the principles of the Quran or the rights of the Constitution that women are engaged in creating the meaning of law according to its practice. Combined, this framework has gone past dramaticising the victims of the

religious law or the targeted beneficiaries of the state action towards the Muslim women. Rather, it emphasizes their existence as decoders and policy makers of law in a diverse and adversarial legal environment. It is in attending to these mundane practices that we can develop a better situated perception of the way in which the law is lived, and in how it is constantly recreated by the practices of those that it aims to regulate.

Historical Context: Muslim Personal Law in Postcolonial India

It is impossible to comprehend Muslim Personal Law (MPL) in India without tracking its pedigree to the colonial legal changes, whereby the British state was trying to rule over a diverse populace using categorised regimes of law. Since the late eighteenth century, colonial government officials have institutionalised the approach of applying religious law to the issues of family, marriage, inheritance and succession. Although this style is introduced as respect towards the indigenous practices even found reconfiguring the practices of the law by redressing them into bounded and administratively convenient systems (Anderson, 1971, pp. 22–24). Fluid interpretive traditions of Shari'a are in the process of being transformed into textualised and selective readings, which are often propounded through Anglo-Muhammadan law and colonial courts. Historians have demonstrated that this codification was not neutral and an observation to practiced Islamic legal traditions. Instead, it favored some elite, scripturalist views being linked with ulema and marginalised local, customary practices that had been heretofore influential in dispute settlement (Khan, 2007, pp. 89–92). That colonial legal archive yielded what Bernard Cohn (1996) has termed a reified kind of tradition, a kind of tradition that seemed to be ancient and authoritative, though which was actually pervasively influenced by colonially formed epistemologies (pp. 57–59). This change was irreversible to Muslim women. The aspects of practices that were previously negotiated in flexible community context started to fall under more scrutiny of a formal law, thereby limiting the ability of women to negotiate. This legal structure was not destroyed by the transfer of independence in 1947. Rather, the authors of the Indian Constitution chose a viable middle ground: even as the secular model was followed and equality under the law was guaranteed, they still maintained personal legislation of various religious groups. This ruling was an indication of political situation of Partition and the necessity to assure minorities that their cultural and religious autonomy was guaranteed (Austin, 1999, pp. 115–118). In keeping with the conservative attitude to the law reform, Art. 44 of the Constitution, which provided the Uniform Civil Code, was a directive principle but not a right, which indicated the reluctance of the state.

This structure created a permanent contradiction. On the one hand, Indian state puts itself forward as a secular state that believes in gender equality. On the other, it still administers religious personal law which is commonly criticised to reproduce gender imbalances. The concept of Muslim Personal Law therefore incurs a conflictual territory, where the issues of identity, minority rights and gender justice overlap. As Tahir Mahmood (2006) observes, MPL has been simultaneously justified as an expression of the Indian cultural independence, and condemned as a form of patriarchal domination, and has become to date one of the most politically controversial aspects of the Indian law (pp. 201–204). The strains involved in this system were especially evident in the case of Shah Bano (1985), one of the landmark legal and political cases in the Indian postcolonial history. Shah Bano who was a sixty two year old Muslims woman demanded maintenance of her husband under Section 125 of the Criminal Procedure Code, when her husband divorced her. The Supreme Court decided in her favor declaring maintenance a secularised problem which outweighed religious law. Nonetheless, the decision elicited many objections among some quarters of the Muslim leadership who considered it an encroachment of religiously independence. The later legislation ruling of the Muslim Women (Protection of Rights on Divorce) Act, 1986 in effect reversed its ruling by putting the limit on maintenance to the iddat period although this was later overridden by the courts based on judicial interpretation (Agnes, 1995, pp. 78–81). They are seen by the Shah Bano episode to show how the rights of Muslim women have been negotiated by the larger political agenda. The discussion was not as such that women would lose welfare but rather as Flavia Agnes (1995) suggests the symbolic claim to a community

identity within a post-Partition nation-state. Through this process, Muslims women were often subjected to be defended or even governed, instead of being agents who could make a claim over the law.

However, more recently, another major intervention on the side of the state has occurred in the 2017 Supreme Court case of Shayara Bano v. Union of India that ruled talaq-e-biddat (instant triple talaq) to be unconstitutional. The confirmation is generally hailed as triumphant in the pursuit of gender justice and it was succeeded by the adoption of the Muslim Women (Protection of rights on marriage) Act, 2019 which criminalised the practice. However, the consequences of this reform are not simple as scholars have remarked. It does not resolve all the other wider concerns like the use of maintenance, legal awareness or even the social circumstances that guide the decisions of women though it does answer a particular type of unilateral divorce (Parashar and Menski, 2019, pp. 214–216). Notably, the high profile legal developments tend to override the daily realities on which Muslim Personal Law is lived and bargained. According to ethnographic research, a large number of conflicts are still solved out of court, in negotiations within the family, mediating the communities, or through the religious leaders living in the area (Vatuk, 2008, pp. 492–494). As an exemplification, a woman who needs to be separated will come to a qazi to get a khula yet she can go to a civil court and pursue divorce. These decisions are made under the influence of not only legal but financial and time and social implications. Such an inconsistency between the law and practice underscores the need to change the direction of analysis. Although constitutional discussions and judicial rulings are still essential, they are not the complete picture of the connection of Muslim women with the law to their daily lives. The Personal Law of Muslims is a dynamic process, which never remains the same system and depends on these interactions in the courtroom, in families, and in the community. Since the positioning of MPL in this historical narrative reveals that law in postcolonial India is not simply one of the outcomes of laws or decisions made by courts but rather one that is characterised as a vibrant radius of influence and movement based on the impact of colonial history, relations of political strategies, and practices. It is on this understanding that this paper development the ways in which Muslim women negotiate these layers of law worlds, bringing warfare to law not only by overt challenge but also gaining warfare in the nagging and slow fashion of their daily movements.

Shari'a and Interpretation: Between Text and Practice

Shari'a is not the homogeneous, written code of legal norms, but a living and stratified culture of interpretation as popularly believed. One of the major schools of thought that evolved into classical Islamic jurisprudence (fiqh) varied in the approaches they took to reasoning and the criteria they used to evaluate evidence and its contextual application. Shariah was in fact more a tradition of discursive reasoning rather than a fixed set of rules, as Wael B. Hallaq (2009) has demonstrated (pp. 56–60). This interpretive plasticity is essential to recognize the way Muslim women in modern India interpret their negotiations with the Islamic law as non-practitioners receiver of the Islamic law, but rather, they contribute to the reinterpretation of Islamic law. Shari'a in the South Asian setting has existed alongside customary practice (urf) and local dispute resolution. Colonial change of the Islamic law into Anglo-Muhammadan law reduced this range of interpretive diversity to favor textualist interpretations over practices. However, according to the high scholarship in the recent times, it did not vanish, but it still exists in daily negotiations especially on issues related to marriage, divorce, and inheritance (An-Na'im, 2008, pp. 65–68). The practice of Sharia among women is usually in the nature of reinterpretation and not outright rejection. This has been witnessed in the increasing number of Islamic feminist literature, which aims to reclaim egalitarianism in the Quran, and to critique the patriarchal interpretation of religious scriptures. According to scholars like Margot Badran (2009), Islamic feminism is not alien to the tradition but it develops out of it and the scholars use scriptural texts to make gender justice claims (pp. 241–245). On the same note, Amina Wadud (1999) underlines the need to have contextual and gender sensitive readings of the Quran, this is because a lot of the inequalities found in Islam are related to interpretations of the text and not the text itself (pp. 72–75).

These are intellectual developments that are echoed in the daily practices. Indicatively, during khula (female initiated divorce), women tend to construct their arguments in specifically Islamic language, referring to the concept of fairness (adl) and mutual agreement. According to ethnography, women can invoke Quranic verses or resort to religious books to demonstrate their points to qazis or clerics, thus gaining control in an area in which the dominant role has been traditionally occupied by male scholars (Mir-Hosseini, 2006, pp. 637–639). These practices show that Sharia can also be used as a tool of negotiation and not limiting. Meanwhile, the role of the local religious authorities is prominent as well. The intermediaries between the textual traditions and social realities are Qazis, imams, and community leaders. Their interpretations also tend to influence the application of Shari'a in certain situations especially where formal legal institutions are more inaccessible. Nevertheless, this mediation is not two-way. The relations of women with these powers often have some elements of persuasion and argumentation. As an illustration, a woman asking to get maintenance can make an appeal to the religious obligation of a qazi and present the assertion as a moral imperative instead of legal one. Otherwise, women can appeal against unfavorable rules by appealing to different authorities or appeal to state courts. According to recent empirical studies the plurality of these engagements is emphasized. In her work, Nida Kirmani (2013) investigates the activism by Muslim women in India and demonstrates that the women organisations are using legal literacy and religious reinterpretation to make women feel empowered within their communities (pp. 118–121). On the same note, Seema Kazi (2014) captures the mobilisation of both constitutional rights and the Islamic teachings by the Muslim women groups to challenge discriminative practices especially against divorce and inheritance (pp. 203–206). These programs are a part of a wider trend in which religious and secular structures are not regarded as mutually exclusive but are employed in a tactical manner with each other. The argument surrounding instant triple talaq, is one such highly informative illustration of this interpretive challenge. Although the Supreme Court ruling of 2017 stated talaq-e-biddat to be unconstitutional, the action was already being criticised by a number of Muslim women groups on Islamic grounds, which stated that the practice was contrary to Quranic procedures regarding divorce, which focuses on deliberation and reconciliation (Wadud, 1999, pp. 98–100; Kazi, 2014, pp. 210–212). This meeting point between religious and some constitutional arguments highlights the plurality of interpretive ways by which Shari'a can be comprehended and critiqued. Another factor that should not be overlooked is the fact that the interaction with Shari is influenced by social location. The influence of the issue of class, education, and access to resources also affects how women understand and mobilise religious law. Women living in cities and who have managed to obtain at least some education might have greater access to feminist reinterpretations or legal aid networks, whereas women in rural areas might be forced to go more directly by local authorities and local custom. However, in both instances, women show the ability to negotiate and manipulate the law in such a manner that might serve to represent their unique situations.

Shari'a is therefore not a monolithic or unchanging system but rather a domain of contestation and the meanings of justice, authority and gender are thus constantly negotiated. This view contrasts with the prevailing discourses that suggest that Islamic law cannot be reconciled with gender equality. Instead, it brings out the dynamic actions by which women act upon, redefine, and alter legal traditions. In preempting such practices, this section highlights one of the main arguments of the paper the fact that the legal consciousness of Muslim women is closely entwined with the interpretive one. Their activities show that law, whether religious or secular is not merely imposed but is also created and recreated in the usual experiences. In this respect, Shari'a is not simply a code of rules but a tradition, it is both a developing tradition and a tradition that is being invoked; it is an ongoing process, as traditional as well as interpretative.

Everyday Legal Consciousness: Marriage, Divorce, and Maintenance

Marriage, divorce, and maintenance domains provide some of the most uncovered fronts on which the functioning of legal consciousness in the daily practice can be seen. It is here that, within such close-knit and frequently disputed spaces, norms of law are put into effect, are negotiated within relationships and are repurposed by social realities. In the case of Muslim women in India, these arenas are not under the control

of one system of laws but an interlaced phenomenon of Shari'a, state law and traditions. Consequently, the legal consciousness does not come out as an abstract conception of rights but as a fundum of doing.

Marriage (Nikah): Contracts, Consent, and Quiet Negotiations

In the Islamic law marriage (nikah) is a contract ideally giving women the freedom to enforce clauses like limitations of polygamy, residence, or delegation of divorce powers (talaq-e-tafwid). In practice, however, the degree to which women are allowed to exercise such rights is considerably different. Nikahnamas in India are often standardised and women have little awareness of their contractual rights. According to ethnographical studies of Sylvia Vatuk (2008), marriage negotiations often take place in the family context, where issues of social reputation and family harmony are a priority over legal regulations (pp. 492–495). To use an example, the woman might be the one who is theoretically entitled to prescribe conditions in her marriage contract but will not do it due to the fear of being viewed as suspiciously or being viewed as something demanding. When that is the case then legal consciousness is not only influenced by formal rights but in relation. Concurrently, we encounter cases especially in urbanized, well educated scenarios where women and their families actively enforce contractual conditions. There are women organisations and legal aid groups that have contributed to awareness creation regarding the nikahnama as a rights assertion space (Kirmani, 2013, pp. 124–127). However, even in this case, the effectiveness of such initiatives is determined by a higher level of social acceptance, which highlights the boundaries of law changes and social norm changes.

Divorce (Talaq and Khula): Navigating Multiple Forums

Divorce is a very difficult space of legal consciousness, as both formal legal change and social practice are frequently at work. The 2017 decision of the Supreme Court to suppress instant triple talaq (talaq-e-biddat) changed things dramatically. Nevertheless, it has had a disproportionate influence on daily practices. Extra-legal and informal types of divorce still exist, particularly in the environments that have fewer or socially inappropriate access to formal legal institutions (Parashar and Menski, 2019, pp. 214–216). Multitasking forums are common in women who want to divorce. There are those who apply the laws of the civil courts like the Dissolution of Muslim Marriages Act, 1939, and those who apply to the qazis or the community leaders to grant a khula. The decision on which forum is taken is hardly ever clear cut. The legal protections provided by the court proceedings can be more robust but are time consuming, costly and stigmatizing to society. In its turn, community mediation can be faster and less conflict-based but can also reinstate patriarchal prejudices. A similar scenario is portrayed in the instances of legal aid that are recorded by Flavia Agnes (2011) as women seek the help of community mediation first, before resorting to courts due to failure of informal negotiations (pp. 158–160). This traffic between forums is an indicator of a practical legal consciousness in which women weigh the disadvantages and advantages of various legal courses. Notably, women do not always follow the interpretation of religious figures without a second thought even in the case when contacting them. They can find other views, use the principles of Quran, or use the other support networks to defend themselves. Legal consciousness interpretive dimension is also further brought out by the practice of khula. Although it is traditionally taken as a kind of divorce that is initiated by the wife and the consent of the husband, nowadays, it can be interpreted in a variety of ways. There are qazis who allow khula as a right and those who make it restrictive. The capacity of women to overcome these differences, in most cases, rests on the access to information and support, which suggests the relevance of legal literacy.

Maintenance (Nafaqa): Between Obligation and Rights

Maintenance claims are a good example of the way in which religious legal frameworks collide with secular legal systems in the day-to-day life. According to the Islamic laws, the husband must given financial support (nafaqa) to his wife when they are married, and during divorce, in some interpretations, within a restricted time. Nevertheless, under Indian secular law, especially under Section 125 of the Criminal Procedure Code, there is a wider foundation of maintenance which is based on: welfare and social justice. The moves by women in their pursuit of maintenance can be described as going through these frames. When a woman involves

family or community authorities Agnes (2011) points out some of them present their claims in religious terms highlighting in the Shari'a the moral responsibility of the husband. They can, however, appeal to constitutional rights and statutory provisions in court settings in order to achieve a more favourable outcome (pp. 156–160). This two-fold approach is a complex legal thinking of a kind that acknowledges the benefits of various legal discourses. These dynamics are still informed by the legacy of Shah Bano case. Although the 1986 Act seemed to contain an initial limitation on the accessibility of Muslim women to maintenance, later judicial interpretations like in Danial Latifi v. Union of India (2001) broadened it by introducing a reasonable and fair maintenance after the iddat period. However, distinctiveness of such legal developments is not even. The fact that informal settlements are used by many women means that these may not focus on long-term security but short-term solutions.

Shaping Factors: Economy, Family, and Social Context

In these areas, there are numerous factors that contribute to legal consciousness and interact. The economic dependency factor is very important; poorer women have less capacity to engage in protracted court cases and will more likely have to settle through negotiations. There is also the family pressure which plays a significant role in making decisions as they seldom happen on a one-on-one basis but expand to the large extended kin networks. The variety of available options can be increased by access to legal resources including legal aid services, and women organisations. Research has found that by doing so, women are more prone to demand their rights and to question unfair manners of doing business (Kirmani, 2013, pp. 130–132). Meanwhile, social stigmas of divorce or litigation still influence decision-making, especially in conservative communities where the movement and freedom of women are limited. What we get out of these illustrations is a legal consciousness which is highly practical. The tactics of Muslim women seldom have an abstract commitment to religious or secular law. Rather it is a sign of thoughtful compromising between the conflicting ideas: economic survival, social acceptance, moral legitimacy, and personal dignity. In this regard, law is not something outside to obey or oppose but a tool to be employed, adapted and occasionally compromised. This approach is opposed to the prevailing discourses which describe the experiences of Muslim women in the law as an instance of victimhood or emancipation. It tells us rather a more convoluted truth where women are actively moving and remaking a legal world within the limits of their social worlds. By observing how we practice these things day in day out we are in a position to have a better insight as to how law is actually practised not as an abstract system of rules, but rather more as a living process.

Law, Citizenship, and the Politics of Belonging

The interactions of Muslim women of modern India cannot be explained outside of the political context in which concerns of citizenship, nationalism and identity have turned hot. Reform-based interventions to the Muslim groups often find their way into a narrative of majoritarianism that presents Muslim women both as those to be safeguarded and objects to be used in broader political agendas. This bi-polar framing makes their relation to the state different, placing them at the crossroads of gender justice and minority rights. As researchers have indicated, Muslim women have a very precarious position in this terrain. According to Zoya Hasan (2010), policy discourse tends to reflect them as both the, vulnerable victims of a patriarchal practice and as the beneficiaries of state-driven change which has the power of silencing their voices and agency (pp.213–216). This ambiguity is particularly easily observable in the controversies of personal law, in which actions are often rallied around the rights of women, though they are also bound up with more general political objectives of national integration and cultural homogeneity. The politics of belonging can be seen as probably most visible in terms of recent discussions of citizenship and identity. Legal and administrative enforcement like doctrine, confirmation and citizenship regulation have increased the levels of anxieties amongst Muslim societies and this has had an implication on how people interact and respond to the state. In the case of Muslim women, such processes are likely to overlap with the pre-existing vulnerability in terms of documentation, mobility, and resources. Indians, in fact, as Niraja Gopal Jayal (2013) points out, have

rapidly transformed their status of citizenship toward one that is based on acceptance and verification, shifting the terms on which citizens ascribe their belonging (pp. 167–170).

In this context the law consciousness is not just personal law but general questions about citizenship and the state power. Indicatively, when it comes to activism related to citizenship laws, Muslim women have been able to sound not only as gendered beings but as citizens who are demanding their constitutional rights. The sit-ins which were widely documented by the women belonging to the Muslim community in various regions of India depict how legal language, especially, the language of the Constitution has been subjugated and reconstrued into common political practice. Women who might never have had direct interaction with formal legal institutions have been using things like equality, secularism, and justice as some of the underlying claims to belonging under the constitution (Basu, 2020, pp. 45–48). Simultaneously, such interaction is characterised by tension between visibility and vulnerability. This heightened level of public involvement subjects Muslim women to novel forms of scrutiny and surveillance at the hands of state institutions, as well as society in general. In the light of Nivedita Menon (2012), the feminist activities in relation to the state have a tendency to create a paradox: the state may be a space of rights and redress but it may also recreate the formations of control and exclusion (pp. 89–92). This paradox is given even more significance with the fact that Muslim women live in a politically polarised environment as a religious minority.

Existence in everyday life also demonstrates the intersection of citizenship and legality. In many cases access to welfare schemes, legal documentation and state services involves going through opaque bureaucratic procedures that are exclusionary. Women can use the services of intermediaries, who can be local officials, community leaders, or activists, to mediate those processes, thus again pointing out the relational and mediated aspect of legal consciousness. The law is experienced not in the courts only but on offices, the papers and ordinary processes that are involved with the state. Notably, the demands by Muslim women of justice cannot be used in isolation of their claims to belonging. The legal requirements to maintain or to have security against diverse divorce or to be acknowledged as citizens are incorporated in the wider battles of belonging and respect. Such assertions dispute accounts that only made Muslim women victims or part of a reformation. Rather they demonstrate a more unraveling picture where the women stand as the active participants of the language of rights, religion, and citizenship to express their position in the country. Legal consciousness in modern India should, therefore, be seen not only as a phenomenon related to the sphere of personal law, but as something spreading outside and into the field of political life. To Muslim women, negotiating law does not only imply negotiating the family and community rules, but also the state as a source of rights and as an object of contestation. Their experiences highlight the necessity of considering law not as a collection of rules but as a process of inhabitation where the issues of identity, belonging and justice are not only negotiated but actually lived.

Conclusion

The paper has provided the argument that the legal consciousness of Muslim women in postcolonial India cannot justifiably be explained on the basis of the traditional binaries which predominate in the social and academic discourse such as tradition and modernity, and religion and rights, or community and state. Those structures conceal the stratified and conflicting aspects/methodologies through which women are subjected to law in their daily existence. This study has also revealed that Muslim women do not simply receive norms passively; rather, in most instances they actively extend norms by traversing between two or more legal and moral worlds at the same time. In the spheres of marriage, divorce and maintenance, the strategies of women provide an insight into a kind of legal consciousness that is highly relational, pragmatic and interpretive. They tend to make choices because of economic conditions, family and social, rather than legal, rights. With law, this does not mean that it is not experienced as something remote or abstract but rather as a form of embeddedness in day-to-day negotiations, in households, community, and institutions. Such practices in which law is brought into being, it is getting its meaning by use, not prescription as socio-legal scholars have long argued (Ewick, Silbey, 1998, pp. 45–47). Concurrently, the article has demonstrated that Shari is not a

rigid or unifying system but an area of perpetual interpretation. The interactions of women with the religious law concerning the address on the basis of the Quranic principles as well as relations with the local authorities prove the fact that the modification of the tradition could be aimed at reshaping it inside. This contravenes mainstream discourses that hold the Islamic law as being fundamentally opposed to gender justice, but also underlines the possibilities of Islamic law to act as a source of both ethical and legal demands (Mir-Hosseini, 2006, pp. 637–640).

Significantly, such ordinary negotiations are infused with a larger political space dominated by disputes of citizenship and belonging. The legal claims by Muslim women are not merely confined to the personal law only but also touch on the questions of recognition, dignity, and inclusion in the country. The dynamism of law and political identity is highlighted by their interaction with constitutional words especially during collective mobilisation (Jayal, 2013, pp. 167–170). These observations taken collectively warrant a reconsideration of legal reform controversies in India. Those methods which are entirely top-down or bottom-up by introducing law change or judicial adjudication have the downside of naturalising how the concept of law is lived and negotiated in practice. Rather than that, the different varieties of legal engagement that Muslim women already pursue have to be acknowledged and encouraged. These are empowering access to law, empowering legal literacy, and providing arenas in which women can develop their own conceptualizations of justice. Finally, the paper proposes that the research into Muslims women and law should shift the argument beyond the regulation to a more substantive enterprise of the agentic and selfhood. By focusing on the daily processes in which the law is understood and practiced, we get a better idea regarding how legal subjectivities are constituted and how they, in turn, transform the very meaning of law in postcolonial India.

References

Agnes, F. (1995). State, gender and the rhetoric of law reform. Economic and Political Weekly, 30(44), 78–81.

Agnes, F. (2011). Family law and constitutional claims. Oxford University Press.

An-Na'im, A. A. (2008). Islam and the secular state. Harvard University Press.

Anderson, J. N. D. (1971). Islamic law in the modern world. New York University Press.

Austin, G. (1999). The Indian Constitution: Cornerstone of a nation. Oxford University Press.

Badran, M. (2009). Feminism in Islam. Oneworld.

Basu, S. (2020). Citizenship, protest, and the public sphere. Economic and Political Weekly, 55(6), 45–48.

Baxi, U. (1982). The crisis of the Indian legal system. Vikas.

Cohn, B. S. (1996). Colonialism and its forms of knowledge. Princeton University Press.

Engineer, A. A. (2003). Islam, women and gender justice. Sterling.

Ewick, P., & Silbey, S. (1998). The common place of law: Stories from everyday life. University of Chicago Press.

Hasan, Z. (2010). Politics of inclusion. Oxford University Press.

Hallaq, W. B. (2009). An introduction to Islamic law. Cambridge University Press.

Jayal, N. G. (2013). Citizenship and its discontents: An Indian history. Harvard University Press.

Kazi, S. (2014). Muslim women in India. Palgrave Macmillan.

Khan, S. (2007). Muslim women and the law. Sage.

Kirmani, N. (2013). Questioning "the Muslim woman": Identity and insecurity in an urban Indian locality. Routledge.

Mahmood, S. (2005). Politics of piety: The Islamic revival and the feminist subject. Princeton University Press.

Mahmood, T. (2006). Muslim law in India and abroad. Universal Law Publishing.

Menski, W. (2006). Comparative law in a global context: The legal systems of Asia and Africa. Cambridge University Press.

Menon, N. (2012). Seeing like a feminist. Zubaan.

Mir-Hosseini, Z. (2006). Muslim women's quest for equality: Between Islamic law and feminism. Islamic Law and Society, 13(3), 629–645.

Parashar, A., & Menski, W. (2019). Gender and family law in a plural legal system. Routledge.

Vatuk, S. (2008). Divorce at the wife's initiative in Muslim personal law: What are the options and what are their implications for women's welfare? Modern Asian Studies, 42(2), 492–495.

Wadud, A. (1999). Qur'an and woman: Rereading the sacred text from a woman's perspective. Oxford University Press.

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