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INTERSECTIONALITY AND MUSLIM WOMEN'S MAINTENANCE RIGHTS: BEYOND GENDER

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ABSTRACT

This article explores the complex interplay of intersectionality in the context of Muslim women's maintenance rights, transcending traditional gender-based analyses. By examining the multifaceted dimensions of identity, such as race, class, and religion, the study uncovers the intricate dynamics shaping maintenance claims within the Muslim community. The research employs a multidisciplinary approach to dissect the various factors influencing the equitable distribution of resources and support for Muslim women, shedding light on often-overlooked aspects. Through a comprehensive examination of legal frameworks, cultural norms, and social realities, the article offers valuable insights into how intersectionality can enhance our understanding of Muslim women's maintenance rights and pave the way for more inclusive and just solutions. This article is a crucial contribution to the ongoing discourse on gender equity and social justice within the Muslim community, emphasizing the need for a nuanced approach to address the complexities of maintenance rights.

Keyword: *Intersectionality, Muslim women, maintenance rights, gender, race, class, religion, legal frameworks, cultural norms, social justice, equity, identity*

1. INTRODUCTION

Muslim women in India are often caught between loyalties to their religious or ethnic communities and a desire for greater freedom and equality as women within those communities. Yet, they face considerable constraints in reconciling these two needs that oftentimes pull in different directions. As Zoya Hasan notes, “Muslim women are triply disadvantaged: as members of a minority, as women, and most of all as poor women.” On one hand, traditionalists within the Muslim communities in India seek to universalize interpretations and practices of Islam that maintain women as second-class members with far fewer rights. Furthermore, resistances to the conservative interpretations of Islam are cast as disloyalty and can call into question the very identity of a Muslim woman. On the other hand, loyalty to religious interpretations and to principles that are clearly gender biased calls into question Muslim women’s commitment to emancipation and gender justice. These experiences are exacerbated for women who are economically impoverished.

In spite of these opposing forces that cut across each other, Muslim women continue to struggle articulately for their rights at the crossroads and margins of Indian and Indian-Muslim society. And although they have made several inroads, Muslim women are still subject to an archaic family law codified nearly 70-years ago which has remained unreformed and continues to disadvantage women legally.

Further, the way in which Indian secularism operates further reinforces religious identity and protects religion in the public sphere. But this respect for religious pluralism has come at the cost of many women’s rights. It has meant that Muslim Personal Law remains in the limbic state of being both subject to state intervention first through the act of codification and then through acts of enforcement and non-intervention as part of the and private religious sphere of Muslims.

Under the current law and custom, Muslim women are unable to divorce except for cause unlike Muslim men who may divorce unilaterally and without cause. After divorce, Muslim women have no legal right to maintenance except for a period of three months after the marriage. And finally, Muslim men have a legal right to marry up to four wives without the consent of their wives while Muslim women have no such right to polyandry (despite the fact that there are more males in India than there are females). These laws indicate the subordinate position of Muslim women in in relation to Muslim men.

Neither of the feminist secular UCC nor the traditionalists’ solutions is adequate in providing Muslim women the

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rights they deserve. The secular feminist approach of an opt-in UCC makes three assumptions. First, it assumes that there exists a robust secularism in India that would produce a code that operates neutrally across all religions. Second, it assumes that there is political will for gender justice as opposed to gender protectionism based on patriarchal notions of womanhood. An examination of the influence of the Hindu Right in Indian politics and on secular institutions reveals that neither of these assumptions is warranted and therefore a "secular" code would be unlikely to operate neutrally or give women the kind of equality and justice they desire. Moreover, there already exists a secular opt-in marriage law. Examining this law reveals the limits of Indian secularism and its vulnerability to majoritarianism. Third, an examination of this law also reveals the limits of formal rights and assumptions about their effects that may not be defensible.

Navigating the shoals of religion and gender in a political climate of hostility is not easy. Nevertheless, the rights of Indian Muslim women should not be sacrificed in order to preserve a group identity. This article conclude with the consideration of two arguments. First, there is the argument forwarded by a number of feminist activists and scholars about the limits of "rights" and the law to effect genuine transformation in society. The second argument has to do with the impossibility of "women" as coherent legal subjects and the desirability of inscribing the boundaries of and enshrining the definition of "womanhood" or women's experience through and in the law. Both of these arguments call into question the legitimacy of legal reform and its effects. While recognizing the importance of these arguments, the counter argument is that law reform remains one, certainly not the only and perhaps not even the most important, avenue of attempting to broaden the scope and change the negative effects of the rules by which "women"—insofar as that name describes an overlap in experience—are required to live.

2. A GENEALOGY OF IDENTITY AND SECULARISM IN INDIAN LAW

The idea of Muslims as different from other Indians and the role of law in creating that identity has its genesis in the Mughal period. Through the introduction of Muslim rule into India, the law was bifurcated into public and private spheres governed by two distinct traditions of law: the former by Islamic and temporal law and the latter by religious law. The Mughal policy of allowing non-Muslims to be governed by their religious family and inheritance law was continued by the British who further extended it to all religious communities including Muslims. Thus, in British India, all subjects were governed by secular public law and religious private/personal law. Indeed, law and religious identity has remained closely connected through this right until the present. However, the notion that Muslims were somehow a different ethnicity altogether was an idea that did not develop until after the Mughal period. Rather, it was a development arising from the enumeration of Muslims as a separate category in the census, the creation of separate electorates and the codification of religious laws for India's religious communities and the administration of these laws by the colonial judiciary during the independence movement. In fact, the creation of separation by the British was exploited by both Congress and Muslim leaders during the anti-colonial struggle thereby consolidating a separate Muslim identity with both religious and political dimensions.

Nevertheless, one of the most important steps towards legal recognition of difference was the process of codifying religious laws. Codification of religious law was a complicated undertaking. Although there were textual sources for both Hindu and Muslim law before the advent of British authority over the courts, a dizzying array of customary practices complicated the matter of finding the law to be applied in any particular case. The complexities of such variant practices and norms of several religious communities were forcibly simplified into codes that could then be applied by British judges in a more systematic manner. However, ignoring the local and customary practices meant that such codification of "the personal law" created a sizeable gap between the reality of social practices and the code. In other words, the law that the codes purported to fix into a coherent form were non-normative. Even so, the process of codification resulted in the Muslim Personal Law and the Hindu Code which British judges began to apply to the respective religious communities.

The 1947 Partition of India was the single most traumatic moment in the region's history. There is no doubt that much of the violence that accompanied the transmigration of Muslims and Hindus from one state to another was largely communal in nature. Nevertheless, the communal animus was not born at the moment of partition or unaided. First, religious difference as cultural difference was deployed by the British to enumerate and classify its subject population. The institution of separate electorates along religious lines and the codification of

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personal laws further solidified this separation. And finally, the nationalism of the Congress party which attempted to include all the various minorities while retaining the rights of the majority and while clearly using a religious vernacular further consolidated the use of religion as a major marker of difference.

3. GENDER JUSTICE AND MUSLIM LAW

The account of the separation of Muslims from the "norm" of Indian identity is not a gendered account. That is to say, it is more of an account of the discursive formation of a fantasy character defined singularly by Islamic affiliation rather than the story of any particular Muslim or set of Muslims. And regardless of how important and alluring the fantasy of a discreet Muslim was to the political players during partition, the story of Muslim women is certainly not adequately covered by such politically focused histories; indeed, such histories preserve the silence surrounding the ways in which partition violence and rhetoric was enacted on women's bodies.

But in order to understand the unique position of poor Muslim women in the present day, particularly in areas where Muslims are not integrated into the community, it is important to understand the ways in which they have been made symbols of honor by the Muslim community and objects through which punishment can be visited upon that community by hyper patriarchal fundamentalist organizations. As Jalal notes, "all said and done, the commonality of masculinity was thicker than the bond of religion. There were men in all three communities who delighted in their momentary sense of power over vulnerable women; such was the courage of these citizens of newly independent states."

Misapplication of the Muslim Personal Law and the patriarchal construction put on it has disadvantaged women a great deal. Changes in substantive practices to conform to the laws as they are written would indeed be an improvement over what is now practiced. However, proper application is simply not enough. In the absence of a truly secular and feminist uniform civil code applied impartially, reform and change of the Muslim Personal Law is the only option available for Muslim women to better their lives until such a time when the code can be promulgated.

Gender inequality in India stems from deep rooted cultural patriarchy as it is reflected in context of property rights, without having any religious backing. Such inequality is further endorsed by discriminatory laws. Deep rooted patriarchal mindset which pervades the Indian society, cutting across the religious lines, is the basic reason for gender inequalities. The law of dissolution of a Muslim marriage, at the instance of the wife has certain peculiarities in Indian context which in the given current socio-political scenario in the country, adds to the perceptible notions of gender inequality in Islam.

Even though with the Shayra Bano judgement, a ray of hope has lighted that as misconceptions about talaq disappear, khula might also get a centre stage, it is yet to be seen how the community responds to the judgement. With respect to the despicable condition of the Muslim women in India, the basic reason remains the non-assertion of rights which Shariat already guarantees them. This non assertion of rights is due to complete ignorance of the usul al-fiqh in Muslims, especially women. Popular misconceptions floating around in the media which paint a picture of Shariat as being oppressive towards women, does not help the women at all rather it reinforces the patriarchy already inherent in the society. Absence of codification of Muslim personal law adds to the problem. A discourse on usul al-fiqh in India, in absence of codification, is neigh impossibility. It is extremely important that Muslims in India, both men and women, should be made aware of the usul al-fiqh so as to lessen the gender inequality existing in the society.

4. WHEN AND WHY LAW MATTERS: THE PLACE OF LEGAL REFORM IN FEMINIST ACTIVISM

Law reform may be overdue. However, the question remains as to whether it will make a difference to women's lives; whether it will matter. The first argument is a general argument about the limited ability of the law to transform the norms of a society. Nivedita Menon's Recovering Subversion: Feminist Politics Beyond the Law extends the critique of law done by Western feminists to the Indian context and, therefore, it is fair to use her as an example of this important line of critique. While Menon does restate the critique of formal rights. Thus, the concentration is on the part of her argument that discusses social movements as a better alternative to legal reform.

Menon argues rather than working to change laws or legal norms, such social movements would seek to do the much harder work of changing societal norms. This is an extremely important argument because it highlights the weaknesses that can exist in feminist activism where it conflates laws with the norms that women actually live

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by. Such a conflation considers changes in law as having a consequential transformative impact in society. For the most part, such normative changes are either non-existence or very slow to materialize. However, this is not to say that change driven by the law does not happen. In the Indian context, despite the tortured relationship of law as a tool of the civilizing mission of empire and its subjects , it has had a visible effect is some areas. For instance, Sylvia Vatuk observes about the age of marriage of Muslim women: "Whereas 70 per cent of those who married before 1978 (when the revised Child Marriage Restraint Act was passed) claim to have been under 18 at the time of their wedding, this was true of only 20 per cent of those who married after that date." Such a dramatic drop of 50 per cent in the incidence of underage marriage among Muslims following the passage of the Child Marriage Restraint Act seems to imply that the law did in fact have its intended effect. This in and of itself is not a negation of the argument that law has a limited impact; nevertheless, a limited impact is sometimes better, if not the only, progress that can be achieved in the short run. At any rate, the lesson ought to be that law reform should not be foreclosed because of a theoretical discomfort with "rights" and in the absence of evidence of the real harms that institutionalization of a different configuration of rights may produce.

While it cannot be said that Muslim women have had "no rights" rather there has been little by way of progress in obtaining more equitable rights and enforcement of whatever rights they have had has been heavily mediated by customary practices, societal norms and political considerations. And as Williams so aptly notes with regard to the black experience in the United States, the law has enshrined "rights" for dominant groups and at the expense of the subordinated. Translating this to the Indian context, rights have similarly privileged majority groups (along with those constructed as such) whether they be religious groups or a gender group in ways that have harmed Muslim women. Thus, while focusing solely on rights may be unwise, to give up on rights completely is premature despite the relevance of the critique. To put it another way, rights are already encoded into the law and they, for the most part, distribute resources towards and prefer Muslim men to Muslim women. To give up on the fight for just laws, even in the form of rights, does nothing to redress the already existing imbalance that such encoded entitlements provide.

Second and equally important, is the argument that shari'ah or Islamic law—at least in its formal sense—has a limited impact on the quotidian life of Muslims, that legal considerations do not necessarily shape the identity or behavior of Muslims, and that economic factors are far more important with regard to both than the legal codes to which Muslims are subject. Zoya Hasan's The Diversity of Muslim Women's Lives in India articulates this line of critique. According to Hasan, far too much attention has been paid to the legal codes that govern Muslims and far too little to the actual subjects of the code. As a result, rather than illuminating the needs of the diverse body of people that adhere to Islam in India, these attempts have obscured those needs by reducing them to the singular identity fixed in those codes. In other words, the fantasy Muslim contemplated by the imperial creators of the personal law code has overshadowed the multi-dimensional, diverse and, therefore, much more complex people that adhere to Islam (or who are secular Muslims) in India. Furthermore, concentration on law obscures the more important issues facing Muslims which are primarily socio-economic.

Given the dual nature of Indian law, having both a secular and a religious component, any movement towards unification of the code into a singular instrument raises the question of legitimacy. That is to say, that in addition to being subject to the critiques raised above, a secular code would also require some grounds on which it would be acceptable to the majority of Indians. The Muslim Personal Law, insofar as it purports to be based on the shari'ah derives its legitimacy from religion (as do all the other codes). However, in order for a secular code to be acceptable, it too must be legitimized. Generally, the proponents for such legitimacy have resorted to some form of shared values, experience or "universal" norms.

5. CONCLUSION

In conclusion, this article has delved into the intricate web of intersectionality to redefine our understanding of Muslim women's maintenance rights, moving beyond a simplistic gender-based analysis. By acknowledging the multifaceted dimensions of identity, encompassing race, class, and religion, we have unraveled the complexity of maintenance claims within the Muslim community. The study has highlighted the necessity of recognizing and addressing the influence of these diverse factors on the equitable distribution of resources and support for Muslim women.

Through a comprehensive examination of legal frameworks, cultural norms, and social realities, we have underscored the importance of adopting a

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multidisciplinary approach in understanding and addressing maintenance rights. This research stands as a crucial contribution to the ongoing discourse on gender equity and social justice within the Muslim community, emphasizing the need for a nuanced, inclusive, and just approach.

In striving for a more equitable and inclusive society, we must embrace intersectionality as a guiding principle, acknowledging that the experiences of Muslim women cannot be reduced to a monolithic narrative of gender alone. Only by recognizing the interplay of various intersecting identities can we hope to create solutions that address the complexities of maintenance rights, ultimately fostering a more just and inclusive society for all.

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