

Muslim Women in India

AN MRG INTERNATIONAL REPORT • 98/2 • MUSLIM WOMEN IN INDIA



BY SEEMA KAZI



MUSLIM WOMEN IN INDIA

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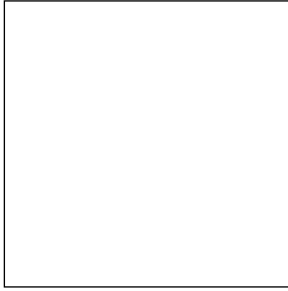
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*Muslim market trader,
Ahmadabad.*

PAUL QUAYLE/AXIOM

Muslim Women in India

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Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (Adopted by the UN General Assembly; Resolution 47/135 of 18 December 1992)

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group, with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights including those as set forth in this Declaration individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights as set forth in this Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, *inter alia* exchanging of information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights as set forth in the present Declaration.

Article 8

1. Nothing in this Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.
2. The exercise of the rights as set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States in order to ensure the effective enjoyment of the rights as set forth in the present Declaration shall not *prima facie* be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.
4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles as set forth in the present Declaration, within their respective fields of competence.

International Covenant on Civil and Political Rights (1966)

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

International Covenant on Economic Social and Cultural Rights (1966)

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Convention recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardian to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the state and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Preface

This Report locates the political, socio-economic and legal position of Muslim women within a historical framework beginning with the evolution of Islam in India and its subsequent interaction with Indian society. It emphasizes the complex diversity of women in Muslim communities and the range of factors influencing their status. The author Seema Kazi traces the developments in discourses of gender *vis-à-vis* Muslim women from the late nineteenth century to the present day, and describes Muslim women's transition from being British subjects to Indian citizens. Muslim women's contributions, successes and failures within the women's movement are outlined, as well as the formidable challenges they face as members of India's largest religious minority community five decades after independence.

The environment in which they have to confront these challenges is an unenviable one for reasons which are essentially twofold.

First, a weighty consideration is the serious threat from the rise of an aggressive Hindu fundamentalism in Indian politics. It has raised fears among the country's many different religious, ethnic and cultural minorities, regarding the future of India's democratic structures and the role of the state in ensuring the protection of minority rights. This is especially true for Indian Muslims – the demolition of the Babri *Masjid* (mosque) at Ayodhya and its aftermath is just one example of the legitimacy of these fears.

Such outward manifestations of prejudice and broader discriminatory practices, based on the misperception that Indian Muslims are anti-India or a 'fifth column for Pakistan', serve only to perpetuate stereotypical claims of divisions and deny the full, effective and meaningful participation of the country's citizens.

The second consideration relates to gender interests within Indian society. As with other communities, Muslim women are differentiated across gender, class and community, and observe a variety of customs and traditions. Like other Indian women, they are subject to the interface between gender, citizenship and community within the Indian social, political and economic context, and to the pressures and constraints of group identity for political purposes.

For Indian Muslim women, this means being subject to a combination of principles varying from the very traditional and patriarchal to a relatively modern egalitarian social role. Rather than a single law, Muslim women are dependent on the different *interpretations* of the *Shari'a* (Islamic law). More often than not, we see the voice of Muslim women being appropriated by a politically influential (within the community) and vocal male Muslim constituency.

One of the recommendations that this Report puts forward is the need for Muslim women to reclaim their right to religious knowledge, and to participate in the contempo-

rary debate on Islam and women's rights. Muslim women need to build cooperation between genders and communities to define their own needs, priorities and space for what they feel is appropriate and effective social evolution.

This can only be achieved, however, within a social, cultural and political environment conducive for Indian Muslim women to articulate and define their own needs. As this Report documents, such an environment does not currently exist.

The appropriation of the women's rights debate by the Hindu right-wing – resulting in an aggressive campaign for a Uniform Civil Code (which would replace Muslim personal law in India) – has raised genuine fear in Indian Muslim women (and indeed the Muslim community) of the imposition of a 'Hindu' code under the guise of national integration. This comes at a time when increasingly in present-day India, communalism – with its inherent links between politics and religion – defines nationalism in terms of the primacy of Hindu identity over all other cultural identities. In this climate, attempts at reform in Muslim law are invariably met with claims of erosion of Muslim cultural identity, with the inevitable consequences: the subordination of the individual rights of Muslim women to the demands of community identity.

Unless India's constitutional ideals of religious non-discrimination, equity before the law and the equality of all Indian citizens are upheld, the confidence of Indian Muslim women and the wider community to bring about the much needed reform in personal law – which are consistent with international human rights standards and based on the ethical principles of Islam – will continue to be muted. Furthermore, there is a need to remove social prejudice against women and to design and implement policies to ensure the participation of Indian women – including Muslim women – in politics and in social and economic development.

Indian Muslims constitute approximately 12 per cent of the country's population of 953 million, representing diverse languages, customs and traditions. They have much to contribute to the cultural, social, political and economic development of their country.

It is hoped that an environment will emerge which will enable India's strength, which lies in the quality and the diversity of its people, to develop its true potential, and with it that of its citizens.

Alan Phillips
Director
December 1998

Muslims in India

'I am a Mussalman and am proud of the fact. Islam's splendid tradition of 1,300 years is my inheritance. The spirit of Islam guides and helps me forward. I am proud of being an Indian. I am part of that indivisible unity that is the Indian nationality. I am indispensable to this noble edifice and without me the splendid structure of India is incomplete. I am an essential element which has gone to build India. I can never surrender this claim.'

(Maulana Azad – who became President of the Congress Party – speaking in 1940.)

Islam's diversity

Today, Muslims – at 12 per cent of the population – are India's largest minority. Islam came to the Indian subcontinent at different periods of time and was absorbed in a variety of ways. Yet Muslim rule lasted for almost eight centuries, leaving an indelible impression on the history, culture, politics and administration of India. In 712 CE¹ the Arab armies of Mohammed Bin Qasim seized part of Baluchistan, stopping at the borders of Sindh.² In fourteenth-century Kashmir, Sufi³ orders originating in Persia and Central Asia merged local traditions with an Islamic message of spirituality, egalitarianism and tolerance. The Rishi⁴ movement subsequently emerged as an expression of popular social discontent against the norms of Brahminic society.

In western India, the depressed classes, attracted by Islam's message of egalitarianism, converted to Sunni Islam, while others belonging to the intermediate castes chose to become Shias.⁵ In the far south, the influence of Muslim traders and their intermarriage had led to growth in Islam from the seventh century onwards. In the wake of the Delhi Sultanate in 1192 CE (see below), one fourth of the Indian population went on to become Muslim.⁶

A divergence of cultures

Muslims, therefore, are not a single homogenous community in India. According to the Anthropological Survey of India, over 350 regional or ethno-linguistic Muslim groups exist in India.⁷ A majority of Indian Muslims are Sunni, existing mainly in northern India while, according to one estimate, approximately 10–15 per cent of Indian Muslims are Shias.⁸ There are four major Sunni schools of law – Hanafi, Hanbali, Maliki and Shafi. Shias follow their own codified laws, which differ from Sunni interpretations.⁹

Cultural diversity among Muslims – including attitudes, habits, languages and traditions – and a non-uniform diffusion of Islam over the centuries has resulted in

a variety of Muslim laws and customary practices within Muslim communities in India. There is a general notion that the Muslim family is influenced by Muslim law or *Shari'a*. This implies that Muslim families and communities are, in some way, uniquely different from non-Muslims. A closer scrutiny, however, does not bear out this assumption.

With reference to law, a woman's right to family property – pro-women legislation from classical Islamic law – is seldom practised, due to social prejudice and resistance towards the notion of women's property rights. Yet the Hindu practice of dowry – with its extremely negative implications for women – has been adopted by Muslim communities in Bihar, for example;¹⁰ and by Moplah Muslims in Kerala.¹¹ Assamese Muslims have incorporated Hindu marriage customs where marriage dates are fixed in consultation with an astrologer or *panjika* and the ritual purificatory bath given to both bride and bridegroom derives from Hindu practice;¹² and the Sakka community from Uttar Pradesh combines the symbolic fire ritual (a traditionally Hindu custom) with Muslim practices as part of its wedding ceremony.¹³

The wide variety of customary practices indicate that Muslim communities have either discarded strict adherence to the *Shari'a*, or reconciled customary practices with it. By doing so, they have preserved a Muslim identity which is in consonance with and closer to the dominant (i.e. Hindu) culture. Such a synthesis of Hindu and Muslim cultural practice is a distinctive feature of Indian composite culture and belies the notion that Muslim communities or Muslim women's status in those communities is defined solely by Islam.

Islam, therefore, in practice is rich and diverse, and more eclectic than its orthodox theological dimensions.

Muslim rule

From 1000 CE onwards, northern India was invaded several times by Mahmud of Ghazni – a Turkish noble. In 1206 he moved south, reaching the coast of Gujarat, where he plundered the temple town of Somnath. Mahmud's desire for gold¹⁴ was disguised in religious terms. He was the 'Believer', smashing the idols of 'infidels'.¹⁵ The loot he plundered from India was used, among other things, for building a library, mosque and museum in his native Ghazni. For several centuries, the destruction of Somnath symbolized not just Mahmud's iconoclasm in Hindu memories, but also the character of some Muslim rulers in India. In 1192, Mohammed Ghauri – a ruling prince from Afghanistan – entered India through the Indus plain and defeated Prithviraj Chauhan¹⁶ at the battle of Tarain. The reigns of Mahmud of Ghazni and Mohammed Ghauri laid the basis for Turkish rule in India and established what came to be known as the Delhi Sultanate.¹⁷

The Delhi Sultanate

Illutmish, a former slave, rose to become the Sultan of Delhi in 1211 CE. He went on to appoint his daughter Raziya Sultan of Delhi, instead of his sons, justifying his decision as follows, 'My sons are incapable of leading and for that reason I have decided that it is my daughter who should reign after me.'¹⁸ Raziya was the only woman to ascend to the throne of Delhi by popular consent. Her reign and ascension is significant considering it took place in a society with rigid caste and gender hierarchies; she also successfully outmanoeuvred male nobles aspiring to the throne of Delhi. Raziya's first act of sovereignty was to have coins minted in her name with the following inscription,

*'Pillar of Women,
Queen of The Times,
Sultana Radia Bint Shams al-Din Illutmish.'*¹⁹

Sultana Raziya ruled Delhi for four years. Raziya discarded the veil and appeared in public wearing 'male' dress. Her short reign was a period of stability, although she was resented by some men. As a historian observes,

*'Sultana Raziya was a great monarch. She was wise, just and generous, a benefactor to her kingdom, a dispenser of justice, the protector of her subjects, and the leader of her armies. She was endowed with all the qualities befitting a king, but she was not born of the right sex, and so, in the estimation of men, all these virtues were worthless.'*²⁰

The Turks and Afghans, despite being perceived as aliens, succeeded in assimilating themselves within existing institutions of north Indian society. Afghans, Indians, Mongols, Persians and Turks fought in the same army. There was no ban on the recruitment of non-Muslim soldiers in the Sultan's army. Religion was not of paramount importance unless it could serve a specific political purpose. Turkish-Afghan raids opened up trade routes into north India. Traders and merchants exchanged goods, linking rural production to nearby towns which became centres of trade. Trade proved lucrative and merchants married local women to settle permanently in towns. A dynamic urban culture was established between the thirteenth and sixteenth centuries. Writing in the fourteenth century, Ibn Batuta described Delhi as,

*'the most magnificent city in the Muslim world – a magnificence which was due not only to the presence of the Sultan and his court but also to the wealthy commercial community.'*²¹

The fusion of Islamic and Indian culture in the period 1200–1600 CE led to new customs and social ideas, yet their form and magnitude varied considerably. While caste is not a feature of Islamic societies, it was not entirely absent in Muslim social life, and developed among Muslims on ethnic lines. The descendants of Afghans, Arabs, Persians and Turks had the highest status, followed by upper-caste Hindu converts, with the occupational caste converts at the bottom of the social ladder. Furthermore, the origins of certain forms of Indian classical dance can be traced back to the Muslim nobility of this period.

The Turks introduced Arab and Persian architecture, while Islamic architecture adopted some Indian features 'resulting from the fusion of Indian and Islamic styles'.²²

The Delhi Sultanate continued with the subsequent Turkish dynasties of the Khaljis and the Tughlaqs, although it was weakened by internal dissension and external threats. In 1398, Taimur (Tamerlane), a Central Asian Turk, sacked Delhi and returned to Central Asia, leaving a nominee who proclaimed himself Sultan of Delhi – establishing the Sayyid dynasty. With the Sayyids – the last of the Turks – being overrun by the Lodis, the Delhi Sultanate came to an end. In 1526 the last of the Lodis were defeated in the battle of Panipat by Babur, marking the beginning of what is referred to as Mughal rule in India.

Mughal rule

Babur, a descendent of Taimur and Genghis Khan, founded the Mughal dynasty in India. By the time of his death in 1530, Babur's empire stretched from Kabul in the west to the borders of Bengal in the east. Babur 'was not only a soldier-statesman ... but a poet and man of letters, of sensibility and taste and humour'.²³ The Mughal dynasty continued through Babur's son Humayun and his grandson Akbar (Akbar the Great). Akbar brought Hindu Rajput²⁴ chiefs within the fold of his empire where they held senior political and administrative positions, and he married a Rajput woman – actions which symbolized the inclusion of non-Muslims as partners in empire. By 1576, Bengal, Gujarat, Rajputana and part of the Deccan kingdoms came under Akbar's Mughal empire. Akbar's espousal of *Din-I-Illahi* (divine faith) sprang from his interest in religion and mysticism, as well as a belief in free thought. It was Akbar who gave the land on which the present holy city of Amritsar²⁵ now stands; the foundation stone of the temple was laid by a Muslim *pir* (saint), Mian Mir, invited from Lahore. As a scholar comments,

*'He [Akbar] provided India with the first Muslim dynasty to receive the free allegiance of Hindus as well as Muslims and whose claim to rule was accepted for reasons other than the possession of superior force.'*²⁶

Mughal rule in India, spanning nearly two centuries and seven rulers, ended in 1712 with the death of Bahadur Shah Zafar, the last Mughal emperor.

The absence of Muslim women from public life is one reason for the lack of information on Muslim women's social history during this period. Another reason was the prevalence of *purdah* (veiling). *Purdah* was a distinct feature of Muslim women's lives during this time – particularly of Muslim elites, even as it was totally absent from the working class. The ideology of *purdah* (female seclusion) derived from the idea of women as *fitna* (potential disorder). The 'disorderly' effects of women upon men's lives could be relegated to the private, walled-off regions of the household. *Purdah* later transformed into a marker of female 'respectability' among upper-class women. The practice of *purdah*, combined with social ideas of women as primarily wives and mothers, prevented female education. Muslim women's education, consequently, was generally restricted to religious knowledge. Although Muslim

girls (and boys) were educated in *maktabs* (primary schools), girls were completely absent from *madarsas* (high schools/colleges). Unless they could afford private instruction, girls' education was restricted to memorizing the Qura'n and learning Persian or Urdu (a combination of Persian and Hindi). However, several women in the Mughal royal family received private education. For example, Babar's daughter, Gulbadan Begum, author of the *Humayun Namah*, was the first Mughal woman to document the social realities of Mughal women. Zeb-un-Nissa, Emperor Aurangzeb's eldest daughter, was an eminent theologian and poet.

Notwithstanding Islamic injunctions against female discrimination and reflecting the customary preference for sons in Indian society, some Muslim rulers desired male offspring. Early marriages were encouraged. Men retained the right to unilateral divorce. Divorce was effective orally or in writing – without any witness. Husbands were liable to pay maintenance to the divorced wife. The practice of *khula* – a woman's right to seek divorce – was prevalent, although this was subject to the willingness of the husband to grant her a divorce.

Polygamy was practised within the Mughal royalty. Muslim women in polygamous marriages lived with their co-wives in the royal harem. The social condition of Muslim women did not differ significantly from other Indian women in terms of the general lack of female education and social disapproval of female autonomy. The practice of *purdah* and its social restrictions, however, presented Muslim women with an additional challenge of overcoming subordination within family, community and society.

The Mughal period was not just a succession of several great rulers; it included the establishment of a country-wide system of administration and a centralized bureaucracy. Such an infrastructure aided both the British reorganization of India, as well as its post-independence rulers. Mughal architectural contributions like the Taj Mahal, the language of Urdu, and the synthesis of Persian art with Indian local tradition to produce Mughal miniature paintings, are examples of some of its enduring cultural contributions.

The death of the last Mughal emperor created a power vacuum in north India. This period of uncertainty coincided with, and contributed to, the East India Company establishing a firm foothold in Bengal. The company's interests turned from commercial to military and by 1757 Bengal, despite being administered by the Muslim Nawab Siraj-du-Daula, had surrendered military power to the company. The revenue or *diwani* of the states of Bengal and Bihar were ceded to the company. By 1818, British hegemony included the provinces of Bengal, Bihar, Delhi and Orissa, among others. The dominion of the East India Company was transformed into the dominion of India.

The loss of imperial power precipitated a general decline for Muslims. Muslim officials were replaced by a British cadre and new court procedures were introduced, putting Muslim lawyers at a disadvantage. The removal of Persian and the introduction of English in 1835 left Muslims reluctant to learn what they considered an 'infidel' language, thus depriving them of access to public office. The demise of Persian also affected women's education due to their being educated at home, usually by family

members who did not speak English. Marginalized within the new colonial settings, Muslims were left with a feeling of inertia. Privileged women, educated by private tutors, were able to breach conventions, albeit as exceptions rather than the rule. In the absence of a male heir, Sikan-der Begum (1819–68), Shah Jahan Begum (1838–1901) and Sultan Jahan Begum (1858–1930) ruled the princely state of Bhopal.

Despite colonialism's numerous humiliations, it influenced the evolution and exchange of new ideas within India. One of these was the debate on social reform and women's rights in Indian society.



Muslim women and ideas of gender in British India

In his critique of the inferior position of Hindu women, Raja Ram Mohan Roy, a Bengali social reformer, stressed the importance of civil liberties and individual rights, and the need to abolish practices such as female infanticide, polygamy and *sati*.²⁷ The Arya Samaj founded in 1875 focused on reform along the lines of caste, idolatry, polygamy and the seclusion of widows. Its exclusive concern with Hindu women 'led it towards intolerance towards both Muslims and Christians'.²⁸ Furthermore, it implicitly addressed itself to middle-class Hindu women, where the above-mentioned practices were limited to a small section of society. Therefore, it effectively sidelined the concerns of poor women, including Muslim women.²⁹

Muslim responses

The social reform debate elicited differing responses from Muslims. Modernist views on women were influenced by Western critiques of Islam – particularly the practice of *purdah*, the lack of women's education, and their discrimination within Muslim law. Modernists argued for the abolition of traditional gender roles, reform in Muslim law, and a greater public role for Muslim women based on the principle of equal rights. Concerns for women's education were also reflected in the newly available print medium. Khwaja Altaf Husain Hali's 1905 novel *Chup Ki Dad* (Voices of the Silent) vividly captured the reality of women's oppression. Hali argued for female education; although he felt this should be imparted at home. Mumtaz Ali and his wife Mohammadi Begum founded a newspaper *Tahzib-un-Niswan* (Women's Reformer) which took up the issues of female education, the age of marriage, the importance of a girl's consent to marriage, polygamy, a woman's role in marriage and *purdah*. Ameer Ali, a Bengali lawyer, author of the celebrated *The Spirit of Islam* (1922) argued against polygamy and emphasized the need for reform in Muslim law. Rokeya Shakhawat Hossain from Bengal (b.1880) – an advocate of social reform – spoke out against the 'excessive absurdities'³⁰ of female seclusion. She was one of the few whose concerns included the bulk of poor, uneducated Muslim women.

Individual and collective efforts notwithstanding, modernist views regarding education for Muslim women were not without their contradictions. Syed Ahmed Khan urged Muslims to gain a modern secular education. His Islamic Anglo-Oriental College was later to become Aligarh Mus-

lim University. However, his vision of modern education for Muslims did not include women. According to this great Muslim social reformer,

*'There could be no satisfactory education ... for Muhammedan [Muslim] females until a large number of Muhammedan males [had] received a sound education.'*³¹

Mohammed Iqbal, the renowned poet and philosopher, was also quite averse to the idea of female education. European suffragettes in his opinion were 'superfluous women ... compelled to "coercive" ideas instead of children.'³²

The *ulema*³³ were Muslim theologians who interpreted Qura'nic verses and the *Shari'a*. The *ulema's* position on women was based on the orthodox Islamic tradition symbolized by the notion of women as *fitna* (potential disorder). Accordingly, women's social interaction with men had to be regulated, which in effect translated into a control over female sexuality, and female seclusion from public space. Like the modernists, the *ulema* also favoured women's education but only insofar as it centred on religion (i.e. the Qur'an), family values and the moral virtue of women. This was hardly surprising given their view of the Muslim family as being based on sexual hierarchy and the social control of women. Although the *ulema* elaborated different roles for men and women, these were not based on any inherent distinction between the sexes. In his classic text *Beheshti Zewar* (Heavenly Ornaments), Maulana Ashraf Ali Thanawi delineated domestic roles for women in great detail, yet acknowledged the equal mental and intellectual potential of men and women. Thanawi was convinced that both girls and boys should receive the same education.

In 1906, he wrote,

*'In a short time, God willing, you will ... become a maulvi – that is, a scholar of Arabic ... You will achieve the rank of a learned person, and you will be able to give judicial opinions, as learned men do. You will begin to teach Arabic to girls, just as learned men [sic] do ... You will be granted the reward equal to that bestowed on each person to whom you have given guidance with your preaching and opinions, teaching and books.'*³⁴

The *ulema's* view was not radical. While it restricted women's participation in public life and extolled the virtue of the family, it did not consider women to be inferior to men. Unlike the modernist discourse the *ulema's* view developed independently of a Western critique.

The 'Islamist' view of women emerged in the early part of the twentieth century. It was based on the argument that Islam conferred a status on women which was superior to that of any other religion. One of its principal proponents, Maulana Abu ala Maududi, in his book *Purdah and the Status of Women in Islam* (1935), was exceedingly critical of what he considered to be the severely detrimental effects of 'freedom' on Western women and its irrelevance for all Muslim women. His critique was more of a diatribe against what he felt were the intrusive and damaging effects of Westernization, rather than being based on the real-life conditions of Muslim women in India. The Islamist discourse was premised on a natural 'Islamic order' whereby women were inherently inferior to men. The public-private dichotomy was a structural feature of this 'natural' sexual hierarchy. Maududi ascribed 'female inferiority' to what he claimed was woman's 'essential' nature, i.e. emotional, irrational and overly sensitive.³⁵ The principle of equality was considered reprehensible by Islamists; similarly, they were strongly opposed to the social intermingling of the sexes, and to any degree of autonomy for women. Unlike the *ulema* (and Thanawi) who did not subscribe to any mental or intellectual difference between men and women, Islamists declared women incapable of learning or of producing knowledge. The Islamist order placed women strictly within the home, endorsed *purdah* and idealized domesticity; the only training women were deemed fit for was to facilitate their predestined role as good housekeepers and mothers.

Education – gender and religious differentials

Despite pressures of religious orthodoxies, social prejudice and class/gender bias, Muslim women at the start of the twentieth century successfully emerged from the isolation of traditional roles as self-aware individuals, determined to claim a greater role in public affairs. The theme of women's education was taken up by all communities including Muslims. This topic was first raised at the all-male Muslim Educational Congress in 1896,³⁶ and in subsequent years there were vigorous attempts by Muslim women to lobby for women's education and entry in politics. In 1906, Sheikh Abdullah and his wife Wahid Jahan Begum established a separate school for girls at Aligarh. 'Purdahnashin Madarsa' – a school for girls in seclusion in Calcutta – was established in 1913; and the Begum of Bhopal also founded a girls' school in 1914. Muslim women began entering educational institutions for the first time. Yet, as a scholar observes, it was not easy to dislodge deeply entrenched social mores, 'At the Mohammedan co-educational college at Madras, girls were required to wear their *burqas* (veils) and at Aligarh male teachers sat behind a curtain.'³⁷

At the beginning of the twentieth century regional differences existed in the levels of education for Muslims depending upon their socio-economic location and local needs. Certain reports³⁸ by colonial authorities sought to create the impression that Muslims were opposed to the

idea of Western education and that Muslim women were prevented from being educated. Regional reviews of education, however, refuted such generalizations, pointing to the differing levels of Western education among Muslims, depending upon their socio-economic status. Large disparities existed in levels of Muslim female education, although these levels of participation were not conspicuously lower than among other Indian women. In the late nineteenth century, only 0.97 per cent of Hindu girls and 0.86 per cent of Muslim girls were attending recognized schools, and no Hindu or Muslim girls had passed the matriculation examination in either Bombay or Madras.³⁹ According to a study in 1901–2, there were 44,695 female secondary students in British India; this represented 27 out of every 100,000 Hindu girls and four out of every 100,000 Muslim girls. Yet, in the United Provinces there were only four Hindu girls attending secondary public school compared to 28 Muslim girls. Enrolment figures for Muslim girls in 1902 placed them ahead of Hindu girls in the provinces of Bombay, Madras and the United Provinces, while they lagged behind in Bengal and Punjab.⁴⁰

Table 1 – School enrolment figures for boys and girls, 1897–1902

Province	Hindu	Muslim
Bengal	2.0	0.8
Bombay	3.7	4.0
Central Provinces	1.0	2.3
Madras	3.1	5.9
Punjab	1.6	0.5
United Provinces	0.3	0.7

(Source: *Fourth Quinquennial Review of Education, India, 1897–1902*, Supdt. of Government Printing, Calcutta, 1904, p. 308.)

While the progress of Muslim women's educational status was not ideal at this time, it was rising steadily. This was due to government initiatives as well as attempts within Muslim communities to promote female education. In 1916–26, the percentage of Muslim male and female pupils registered a rise in all regions. Noting this trend, the *Memorandum of Progress in Education in British India 1916–26* commented that,

*'the percentages for the Mohammedan community were more favourable than the percentages for all communities together, and even figures for Mohammedan girls alone did not fall below the figures for all classes for female pupils. Even at the collegiate and secondary stages, the proportion of Mohammedans has been well maintained.'*⁴¹

Figures for 1922–7 indicate that even though Muslim enrolment was lower than the average of all other communities, there was a rise in girl scholars in Bihar, the Central Provinces and Orissa.⁴² This study found that the Muslim population of British India (1922–7) was 59.5 million, or 24 per cent of the total population; and on the

Table 2 – Muslim school enrolment figures, 1919–26⁴³

Province	Year	% of Muslim male pupils to population	% of other males	% of Muslim female pupils to population	% of other females
Bengal	1916	3.2	3.9	1.3	1.3
	1926	3.8	4.6	1.4	1.6
Bombay	1916	3.1	3.8	–	–
	1926	4.5	5.4	1.4	2.1
Madras	1916	4.9	3.6	1.8	1.4
	1926	7.9	4.1	3.1	2.3
United Provinces	1916	1.7	1.6	–	–
	1926	3.1	2.5	–	–

(Source: *Memorandum on the Progress of Education in British India, 1916–26*, Calcutta, 1927, pp. 47–59.)

whole, Muslim pupils under instruction were also 24 per cent of the total population. The 1931 census figures of illiteracy rates were 91.6 per cent for Hindus and 93.6 per cent for Muslims.⁴⁴ By 1937, the average rate of Muslim girls' education throughout India had surpassed the national average.⁴⁵

Legislative changes

The social reform debate at the turn of the twentieth century generated an awareness of women's issues, and a call for legal changes in the status of women. A

Table 3 – Progress of education for Muslim and non-Muslim females⁴⁶

Province	Year	% of Muslim population to total population	% of Muslim pupils to Muslim population	% of Muslim pupils to total pupils
Bengal	1932	55.2	2.3	55.4
	1937	–	3.0	55.2
Bombay	1932	8.4	2.9	19.8
	1937	–	6.9	12.4
British India	1932	24.1	2.0	26.0
	1937	–	2.5	25.6
Delhi	1932	32.2	2.6	23.3
	1937	–	3.8	25.5
Madras	1932	7.5	5.1	11.5
	1937	–	6.3	11.4
United Provinces	1932	14.9	0.8	15.7
	1937	–	1.0	15.5

(Source: *Review of Education, vol. 1, 1932–7*, Calcutta, 1939.)

nascent women's movement in collaboration with the nationalist leadership sought to introduce legislation favouring women. In 1937 the Shariat Act was passed by the central legislature.

The objective of this Act was to secure uniformity of laws for all Muslims in British India and to clarify,

*'questions regarding succession, special property of females, betrothal, adoption, marriage, divorce, maintenance, dower [dowry], guardianship, minority, bastardy [illegitimacy], family relations, legacies, gifts, partition, etc. The rule of decisions, in cases where the parties are Muslims, shall be Muslim Personal Law, although there may be custom or usage to the contrary ... the Bill aims at uniformity of law among Muslims throughout British India in all their social and personal relations. By doing so it recognises and does justice to the claims of women for inheriting family property who, under customary law, are debarred from succeeding to the same. The Bill in this respect does the same thing for Muslim women as my honourable friends Messrs. Deshmukh, Hosnani and Gupta's bill wants to do for Hindu women'.*⁴⁷

In an ensuing Central Legislative Assembly debate, the Act was justified by pointing to the damaging effect of customary law which prevented Muslim women from claiming their share of inheritance or seeking recourse to their right to divorce guaranteed under Islamic law. The Bill,

*'aroused considerable public interest and the Muslim community, by urging support of the bill, could claim to have furthered the interests of women and unified the community at the same time'.*⁴⁸

Arguing for equal rights and against discriminatory customary practices, Dr G.V. Deshmukh, a member of the Central Legislative Assembly from Bombay, stated that the provisions of the Shariat Act also set a positive precedent for Hindu women. Hindu members who met with little success while proposing Hindu women's right to property felt that the Shariat Act could facilitate similar measures within their own community.⁴⁹ A subsequent legislative measure was the Dissolution of Muslim Marriages Bill 1939, which had the aim of directly benefiting women by combining the liberal features of all four (Sunni) schools of Muslim jurisprudence. In recognition of the difficulty Muslim women experienced in obtaining a divorce, the Dissolution of Muslim Marriages Act specified the grounds under which a Muslim woman was entitled to obtain a decree for the dissolution of her marriage. Ironically, the passage of the Muslim Marriages Act prompted some Hindu members to argue against similar reforms in Hindu law, warning against what they considered the 'damaging' effects of such pro-women legislation on Hindu women. Bhai Parmanand argued,

'I hold it is the business of the Mussalmans themselves to make any changes in their religion they like. We do not want to oppose them and in the same way I expect the Muslims to remain neutral when purely Hindu questions are discussed ... My real objection is that in Hindu society there is no room for divorce

*... this custom has no place in Indian society. In spite of our advance, Hindu widows of respectable families are not allowed to get married again ... women too have to live according to certain social standards. We cannot allow our women to go about and do what they like.'*⁵⁰

Both Bills had the support of Muslim women's groups, and generated public awareness of women's issues, with Muslims favourably inclined towards legislative changes in Muslim personal law.⁵¹ Yet, both these pieces of legislation, while ostensibly in the interests of women, retained male privilege in matters such as divorce or inheritance. This was hardly surprising in a context where the notion of individual women's rights could not supersede communal or family ties. However, the fact that women's rights within the family were subject to public debate consolidated the position of Muslim women and their participation in the emerging women's movement.

Muslim women and the pre-independence women's movement

The early twentieth century witnessed a nascent women's movement which campaigned for furthering female education, raising the age of marriage for women, and the removal of *pardah*.⁵² The position of Muslim women before independence did not differ significantly from that of women belonging to other communities. Differences emerged from caste, class and region, rather than religion. *Purdah* was a common feature of all communities, but varied across regions and communities. Elite Muslim women used the argument against customary practice and non-implementation of women's Islamic rights to denounce customs like *pardah*. The Begum of Bhopal, one of the pioneers of women's education, refuted the view that the practice had religious sanction. In 1929, while presiding over the session of the All India Women's Conference, she publicly removed her veil. A resolution against *pardah* was passed at the same meeting.⁵³ In 1930, the Muslim Educational Conference observed that the practice of *pardah* was decreasing, attributing the decline to economic reasons; and personalities like the Nizam of Hyderabad and Mohammed Ali Jinnah took public positions against *pardah*. Meanwhile, in her address to the All India Women's Conference, the Maharani of Travancore acknowledged the advantages of divorce and inheritance rights for Muslim women but felt that their realization was impeded by the practice of *pardah*.⁵⁴

The early twentieth century also witnessed the establishment of '*pardah* clubs'⁵⁵ across India. Forums for Muslim women provided a space for sharing issues of common concern which had previously been impossible due to women's confinement at home. Attiya Begum established a Muslim women's conference at Aligarh in 1905. The All India Muslim Ladies Conference, claiming to represent the interests of all Muslim women, was established in Lahore in 1907. The latter's session in Lahore in 1917 attracted 400 Muslim women participants from across the country. The *Anjuman-e-Khwateen-Deccan* (women's association) was formed in 1919. At the meetings, resolutions were regularly passed in favour of women's education, and against polygamy and the veil.

Although the leadership of the women's movement was restricted to women from elite families,⁵⁶ it was possible for Muslim women to share their experiences with women from other classes and to transmit ideas to wider audiences. The link between a rising women's movement, the

proximity of several of its leaders to the Indian political leadership and the recognition of the importance of women's issues by the national leadership, contributed towards strengthening the women's movement as a whole. The movement's success in bringing about social and legal reform facilitated the struggle for the enfranchisement of Indian women. By 1921, women had won the right to be elected to central and state legislatures, although women's status as voters depended upon their husband's property. Under the Government of India Act, 1935, 6,600,000 women were eligible to vote for a total of nine seats out of a total of 250 in the Central Assembly, and six seats out of a total of 150 in the State Provincial Assembly. The All India Women's Conference demanded the scrapping of all such discriminatory barriers and pressed for the universal adult franchise for women.

With the re-emergence of the Muslim League during the 1930s, the All India Muslim Ladies Conference faded away. In 1932, the League passed a resolution in favour of women's suffrage, representation and social equality. This was, as a scholar notes, 'not a sea-change in its attitudes towards women', but more in keeping with the League's political priorities (and appeal for the 'women's vote'). It established women's branches all over the country and its success in the 1946 elections was partly due to Muslim women who voted for the party.⁵⁷

The Indian women's movement was not affected by the emerging political differences between the male members of the Congress Party and the Muslim League. Begum Shahnawaz appealed for Hindu and Muslim women to work together for the benefit of all Indian women. The All India Women's Conference, the Indian Women's Association and the National Council for Women opposed the idea of separate electorates which divided women on communal lines. The three organizations subsequently despatched a telegram to the British Prime Minister condemning separate electorates. In 1931, Begum Shahnawaz reiterated the need for women's unity 'whatever men might do'.⁵⁸

The All India Women's Conference session in Lucknow, 1932, passed a resolution favouring (particularly Muslim) girls' education. Resolutions were also passed against communal electorates for women, untouchability and the prevalence of unilateral (i.e. Muslim men's) right to divorce; and on communal unity.⁵⁹

In the 1946 elections, Begum Shahnawaz and Begum Shaista Ikramullah were elected to the Central Con-

stituent Assembly.⁶⁰ By 1947, both of these women – who had been an integral and vocal part of the Indian women's movement – were associated with the Muslim League. Neither the League nor the demand for Pakistan focused on women's rights issues, although the numerous women who supported and voted for the League, and by extension Pakistan, 'believed that women would receive a fair share in the new society which they were helping to bring into existence'.⁶¹

Mainstream history describes the movement for national independence and the demand for Pakistan in terms of a 'binary opposition'⁶² of secular nationalism versus a communal mobilization for Pakistan. The demand for Pakistan is a historical fact, although its nature and the pressures which evoked and sustained it were rather more complex and nuanced than to be classified simply as 'communal'.



Independence, partition and Kashmir

The first stirrings of national consciousness began with a critical appraisal of colonial success and Indian traditions. The Indian National Congress (referred to here as the Congress Party) under the leadership of Jawaharlal Nehru (who assumed the Congress Party presidency in 1936) led an Indian movement for independence. The Congress Party claimed to represent all Indians irrespective of caste, class, religion or any other affiliations. Its basic philosophy was that it was an all-India organization – with members from different religious groups, including Muslims – and was therefore a secular party. However, some Muslims were aggrieved at the way in which Hindu identity was espoused as a vehicle for communal mobilization.

With the certainty of British withdrawal from India drawing ever closer, Muslim discourse included varied positions on independence and the status of the Muslim communities. There was no single political view and no political strand could be considered representative of the culturally differentiated and economically disparate Muslim community in India. With the Congress Party's vision of inclusive secular nationalism gaining ground, the single most important question Muslims now faced was how their religious identity and their parallel Indian nationality was to be accommodated within independent India.

The All India Muslim League (referred to here as the Muslim League) was established in Dhaka in 1906. In 1916, Mohammed Ali Jinnah, a lawyer and former member of the Congress Party – who was very much within the tradition of moderate, secular nationalism – joined the Muslim League.⁶³ After joining the League, Jinnah retained his vision of a united secular India, where Muslims (represented by the Muslim League) would eventually negotiate a power-sharing agreement with the Congress Party in independent India. Jinnah was concerned at the possibility of a permanent Congress Party (Hindu) majority undermining Muslim minority interests.

In this respect, Jinnah's anxiety was understandable. Yet the demand for Muslim autonomy was not without its contradictions. First, it was apparent that culturally diverse, geographically scattered and economically disparate Muslim communities could not be confined to any specific area in the subcontinent and that there would always be Muslims outside a Muslim province or nation. Second, the Muslim majority provinces of Bengal and Punjab were not keen to switch allegiance to the Muslim League and threaten existing cross-communal alliances in both provinces. Therefore the interests of Bengal and

Punjab coincided with a federal structure, a weak centre and greater provincial autonomy – all of which were completely at odds with Jinnah's (and Congress's) centrist visions, albeit for different reasons. The Muslim League's marginal political presence in Bengal and Punjab further undercut its claim to represent Muslim interests in these provinces.

These contradictions ensured that the Muslim League's performance in the 1937 elections was far from spectacular. It fared poorly in Bengal and Punjab, securing just 108 out of a total of 485 Muslim seats in the provincial legislatures. The 1937 election results were a decisive rejection of the League's claim to represent the interests of Indian Muslims. Having been rejected by Muslims in the majority provinces, the League turned its attention to the United Provinces (roughly the region presently called Uttar Pradesh) where it had its best performance yet, in contrast to its dismal showing in other provinces.⁶⁴ Jinnah suggested a Congress Party–Muslim League coalition which the Congress Party rejected. This rejection was interpreted as a sign of the latter's unwillingness to share power with the Muslim League. Spurned by the Congress Party, with little prospect of forming a Congress Party–Muslim League coalition elsewhere, the Muslim League, in its 1940 Lahore session, espoused a theory of nationhood whereby Hindus and Muslims were deemed separate 'nations'. The 1940 resolution did not mention 'partition' or 'Pakistan', although it came to be identified with a demand for the latter.⁶⁵ It proposed a grouping of Muslim majority provinces to form independent states where each constituent unit would be autonomous and sovereign. It accepted existing provincial boundaries and envisaged a constitutional arrangement to protect Muslims in non-Muslim provinces, and vice-versa.

The Congress Party discourse too was not without its internal contradictions. Hindu nationalists within the Congress Party, subscribed to an idea of nationhood centred on an exclusively 'Hindu' reading of history and cultural identity.⁶⁶ Such views fuelled Muslim fears, and imparted an artificial cohesion of Muslim identities. The 1937 election results notwithstanding, there was a general consensus that Muslim interests needed protection in independent India and mere provincial representation, as in the case of the United Provinces (where the Congress refused to enter into a coalition with the League) could not be an adequate or effective safeguard for Muslims.

In 1946–7, the League secured nearly 75 per cent of the total Muslim vote cast in the elections to provincial assemblies throughout India. All Muslim seats for elections to the Central Legislative Assembly were won by the

League. This electoral success vindicated, to a reasonable extent, the Muslim League's claim to represent Muslim interests in India; however, its electoral success was not so much an ideological vindication of the two-nation theory, as a reflection of Muslim fears of a Congress Party-dominated centre. In the same year, there was a final attempt to arrive at a constitutional power-sharing agreement between the Congress Party and the Muslim League via a Cabinet Mission Plan. The Mission rejected a sovereign Pakistan, although it came close to providing parity for Muslims by grouping Hindu and Muslim provinces into three sections (one forming 'Pakistan' and two 'Hindustan'). While it was still to be a Congress-dominated centre, the Party's domain was limited. In its 1946 resolution, the Muslim League accepted the Mission's proposals. The Congress, while accepting the Plan, rejected the proposal of parity through group legislatures.⁶⁷ Soon after Congress's rejection, in a July 1946 press conference, Nehru asserted that the Congress Party felt 'free to change or modify the Cabinet Mission Plan',⁶⁸ conveying an impression, if not the intention, of the Congress Party using its central authority to undermine the very provisions it had just accepted. For the Muslim League, this represented Congress's intention to politically dominate post-independent India. In its subsequent meeting in July 1946, the League revoked its acceptance of the provisions of the Plan. With these developments the chances of a united India seemed impossible.

Partition

Mountbatten became Viceroy of India in March 1947, at a time when the British were to withdraw by June 1947.⁶⁹ On 3 June 1947, he announced the decision of his government to partition India. Maulana Azad, the sole Muslim member of prominence in the Congress Party, summed up the irony and tragedy of the ill-fated negotiations,

*'I warned Jawaharlal [Nehru] that history would never forgive us if we agreed to partition. The verdict would then be that India was divided as much by the Muslim League as by the Congress.'*⁷⁰

Before partition there were some 95 million Muslims in the subcontinent. In British India most Muslims lived in Punjab and Bengal, where they constituted a majority. In Sindh, the North West Frontier Province, and Baluchistan, Muslims were a majority, although relatively smaller in number, while in the United Provinces they were a minority. In 1947, some 60 million of this Muslim population became Pakistani citizens – a state divided into two wings and separated by 1,000 miles of Indian territory. Another 35 million were left inside India, representing the largest number of Muslims in a non-Muslim state.⁷¹ While migration from Punjab was near total, migration from other regions varied from 6–10 per cent of the Muslim populations from Bengal, Bihar, Delhi and UP; and from 0.2–2 per cent in Andhra Pradesh, Bombay, Gujarat, Madhya Pradesh, Madras and Mysore.⁷² Every day 4,000 Muslims boarded the train to Pakistan and by 1951, 329,000 Muslims in Delhi had left for Karachi – reducing

the Muslim proportion of the population in the metropolis from 33.22 per cent to 5.71 per cent by 1961.⁷³ Between August 1947 and March 1948, approximately 4.5 million Hindus and Muslims migrated to India, while approximately 6 million Muslims moved to Pakistan. Between 1950 and 1952, 932,000 Hindus came from East Pakistan (present-day Bangladesh) to India while 384,000 Muslims migrated from India to East Pakistan. (The figures do not include those who crossed by foot or boat.⁷⁴) After an inexplicable and unforgivable delay by the Mountbatten administration,⁷⁵ the boundaries dividing Punjab in the west and Bengal in the east were announced on the eve of independence. The delay provoked fears and heightened communal tensions on both sides of the border. Bengal and Punjab witnessed numerous communal killings with the mass migration of Hindus, Muslims and Sikhs across the borders. Ten million refugees were uprooted from their homes – the largest human migration in recorded history – crossing the borders between the newly independent states of India and Pakistan, and at least one million died.⁷⁶ There were also people who did not have any destination – particularly Muslims – who chose to remain in India; or people such as the inhabitants of Malda, Bengal, who were unsure until 14 August 1947 (the eve of independence) whether they would be Indian or Pakistani citizens. Like Muslim poet Kaifi Azmi's pain at the division of his family, 'What can one say about those who left? That the pain they experienced was nowhere as wrenching as the pain of those they left behind?'⁷⁷

Histories often do not record the suffering of the millions who either perished or survived the trauma of 1947, such as Naeema Begum's unfulfilled dreams after migrating to Pakistan from Sultanpur, India in 1947,

*'When we were young, my father used to say that we would have a better life in Pakistan after making a sacrifice: that is giving up our home in India. In Pakistan, life is the same, a struggle as always.'*⁷⁸

Jinnah failed in his legitimate aim to safeguard the interests of Indian Muslims. Having accepted the contours of a truncated state and been outmanoeuvred by the Congress Party in its claims to 'nationhood', Jinnah's Pakistan began its independent journey on a sombre note. In independent India, strains of prejudice within the Congress Party assumed chilling overtones. Congress Party members Vallabhai Patel and Dr Rajendra Prasad, who were, respectively, to be independent India's future Deputy Prime Minister and President, 'called for the dismissal of Muslim state officials, and suggested that there was little point in the army trying to protect Muslim citizens'.⁷⁹ It was left to Jawaharlal Nehru to visit parts of Delhi to reassure its Muslim citizens that they could rely on the protection of the state.

Partition was the consequence of decisions and follies of leaders who astonishingly could not foresee the horror which was to unfold in 1947. It is the story of the multitudes who did not survive its horror as well as those who lived to narrate its moments of human triumph.

'Where were you Zahra, when I sat up through the nights, watching village after village set on fire,

*each day nearer and nearer?... Do you know who saved me and my child? Sita, who took us to her house ... And Ranjit, who came from his village, because he had heard of what was happening in the foothills and was afraid for us. He drove us back, pretending we were his family, risking discovery and death ... Do you know who saved all the others who had no Sitas and Ranjits? Where were all their leaders? Safely across the border. The only people left to save them were those very Hindus against whom they had ranted. Do you know what "responsibility" and "duty" meant? To stop the murderous mob at any cost, even if it meant shooting people of their own religion.*⁸⁰

Transition

In many ways, the emergence of the state of Pakistan exacerbated the problems of Muslims in India. The 1947 communal holocaust polarized Hindu-Muslim relations; Pakistan was seen to represent the latent separatist inclinations of Indian Muslims. Bereft and yet in urgent need of the very political solidarity which had been deemed 'communal' just a while ago, Muslims in India lacked a voice in the emerging political arena. With the demise of the Muslim League and in the absence of any rival centre of Muslim politics, the political influence of the *ulema* and other conservatives increased.

The exodus of the Muslim intelligentsia and professional classes deprived educational institutions like the Aligarh Muslim University of a large number of its students, teachers and patrons. Among the many who chose to leave was its first female graduate, Begum Pasha Sufi, who resigned as inspector of schools in Hyderabad to leave for Pakistan in 1950. Muslim seminaries at Deoband and Nadwat al-Ulama, Lucknow, lost some of their leading figures. Due to the professional exodus, the Muslim presence in the New Delhi government offices, the defence services, the law courts, the police and in universities declined. There was a reduction in the urban Muslim population, although this was quickly replaced due to an influx of rural migrants to the cities.⁸¹ The abolition of the *zamindari* (landowners with considerable economic power) in 1951, divested Muslim landowners of their estates and landed property, while the Evacuee Property Act invested the state with the right to seize Muslims' property. Partition particularly affected the traditional Muslim centres of Ahmadabad, Bhopal, south Bihar, Calcutta, Delhi, Hyderabad, Madras and regions of western Uttar Pradesh.⁸²

The Urdu language became the subject of a concerted attack by the Hindu Mahasabha – an extremist Hindu organization – who wished to replace Urdu in the very region of its origin. Muslims' desire to consider Urdu a part of their cultural heritage was translated as yet another proof of their long-standing 'disloyalty' to the Indian nation state.⁸³ In 1951, the Uttar Pradesh Official Language Act came into force, making Hindi the sole language of that state.

At the national level the record of a secular party like the Congress in upholding democratic norms is not particularly flattering. In 1983, President Indira Gandhi top-

pled the democratically elected Farooq Abdullah in Kashmir in order to install Congress protégé G.M. Shah.⁸⁴ In 1985, the proposal to nominate the late Prof. Nurul Hasan as Vice-President of India was turned down by Rajiv Gandhi for fear that his atheist beliefs would jeopardize support from the Muslim *ulema*.⁸⁵ In 1986, President Rajiv Gandhi, in deference to the demands of the *ulema* passed the Muslim Women (Protection of Rights On Divorce) Bill, incorporating provisions of the *Shari'a* into secular law. The passage of the Bill ensured a retention of the emphasis on the Muslim family – the agenda of Muslim conservatives. Prime Minister V.P. Singh did not appoint Arif Mohammed Khan to his cabinet because of the Shahi Imam's disapproval of the former for opposing the Muslim Women's Bill.⁸⁶ During the 1990s the Bhartiya Janata Party (BJP) emerged as the second largest party in Parliament. Apart from its explicit appeal to Hindu nationalism, the BJP favours the repression of militant movements in India, including Kashmir. The rise of the BJP in the 1990s coincided with political upheaval in Kashmir, a Muslim majority state.

Kashmir

The state of Jammu and Kashmir (hereafter referred to as Kashmir) includes Jammu, the Kashmir Valley and Ladakh. Jammu has 45 per cent of the population; yet the geographically smaller Kashmir Valley has 53 per cent of the population. Ladakh is bigger than Kashmir, with a population of just under 150,000 – most of whom are Tibetan Buddhists. Jammu is predominantly Hindu and Sikh, with a small Muslim minority. The Kashmir Valley is predominantly Muslim, with its own distinct culture, including the Kashmiri language. The majority of Muslims in the Valley are Sunnis, with a small Shia minority.

According to the 1981 census – the latest (1991) census was not held in Kashmir – 64 per cent of the population was Muslim, 32 per cent Hindu and 3 per cent Buddhist. Before its disputed accession to India in 1947, Kashmir was under the Dogra rule of Maharaja Hari Singh, which was particularly oppressive for Kashmiri Muslims. According to a senior official during this period,

*'Jammu and Kashmir is labouring under many disadvantages, with a large Muhammedan population absolutely illiterate, labouring under poverty and ... practically governed like dumb driven cattle. There is no touch between the government and its people, no suitable opportunity for representing grievances and the administrative machinery itself requires overhauling from top to bottom ... It has, at present, no sympathy with the people's wants and grievances.'*⁸⁷

In 1947, as Maharaja Hari Singh hesitated, Kashmir was invaded by Pathan tribespeople from Pakistan. The Maharaja sought Indian assistance and signed the Instrument of Accession on 26 October 1947. In response to the hostilities between India and Pakistan over Kashmir, the United Nations Security Council on 21 April 1948 (Document No. S/726) called for the Indian and Pakistani forces to withdraw and a subsequent 'free and impartial' plebiscite – to allow the population of the state to decide

its future (remaining with India, joining Pakistan or being independent) – although this was never implemented. Its non-implementation led to Kashmir becoming a disputed territory between India and Pakistan. Bilateral talks in subsequent years between India and Pakistan (which have excluded representatives of the people of Kashmir) have proved inconclusive.

Kashmir acceded to India in 1947 under special circumstances, with a guarantee towards the protection of its autonomy under Article 370⁸⁸ of the Indian Constitution which restricted the powers of the Indian union in Kashmir to communications, defence and foreign affairs. In the decades which followed, this autonomy was successively eroded by the Indian central government. The situation worsened due to central government disregard for the democratic rights of the Kashmiri people. As a human rights report pointed out,

'no elections of any sort have been held in Jammu and Kashmir since 1987, and those too have been rigged by New Delhi and its Kashmiri allies. Direct rule has been imposed from new Delhi since January 1990'.⁸⁹

These developments provoked social unrest and a movement for *azadi* (freedom or self-determination). The official Indian response was an ill-fated military solution for an essentially political problem. State policy, centred on the use of coercive force as a means to suppress dissent and establish central authority, resulted in further alienation of the Kashmiri people. Women were often the retributive targets of operations by military forces. As a human rights researcher commented,

'The CRPF [Central Reserve Police Force], the BSF [Border Security Force] and the hordes of para-military outfits that have been raised by the government, are better trained to rape women and kill unarmed villagers than to squarely face the dare-devil terrorists in Punjab and Kashmir'.⁹⁰

The security forces have been indicted of gross human rights abuses against the Kashmiri people, including Kashmiri women. For example, Kunan Poshpora in Kupwara district was raided on 23–24 February 1990, by soldiers from the 4th Rajput Rifles during a counterinsurgency operation. Women were raped and men tortured. A young bride, Mubina Gani, was detained at a roadblock and raped by BSF soldiers on her way from the marriage ceremony to her husband's home. Her aunt, who was seven months pregnant, was also raped. The official explanation was that the wedding party had been caught in crossfire. Mubina Gani told one reporter, 'We were crying bitterly. I told them I had not yet seen my husband. But they did not listen ... four to six persons raped me I think.'⁹¹ The Press Council of India dismissed the allegations of the victims, while their medical reports were withheld. Women are targeted for political reasons, and in the absence of men who may be away during counterinsurgency operations. In addition, Muslim militants have forced video shops to close and exhorted women to wear the veil.

The militant movement for Kashmiri independence has also committed violence against women, including

rape and abduction. In 1989 Kashmiri militants kidnapped Rubaiya Sayeed, daughter of the then Home Minister and were responsible for the deaths of Lassa Kaul, an employee of Kashmir state television and Mushirul Haq, Vice Chancellor of Kashmir University. Fear at the escalating violence is a reason for the large-scale exodus of Kashmiri *Pandits* (Hindus) from the Kashmir Valley.

Right-wing ideologies

The Kashmir conflict has been exploited by the right-wing in India (see next section) which projects the entire conflict in communal terms, calling for an end to Kashmir's special status (which would undermine Kashmir's autonomy, guaranteed under the Indian Constitution), the reimposition of presidential rule (i.e. central rule from Delhi, and the continued presence of paramilitary forces) in the state; and perceives the problem as another dimension of minority 'appeasement'. In 1991, a 'unity tour' by the BJP leader Murli Manohar Joshi from Kanyakumari (the southern tip of India) to Kashmir, was described by one journalist as 'a way of showing the Kashmiris who was boss'.⁹²

The influence of secular parties like the Jammu and Kashmir Liberation Front (JKLF) declined with a simultaneous rise of militant parties like the Hizbul Mujahideen and Jamaat-i-Islami whose professed aim is to make Kashmir 'part and parcel of the larger "Islamic" Pakistan'. Members of these latter parties have changed the character of Kashmiri identity, now positing it in terms of 'Kashmiri Muslim' and 'Kashmiri Pandit'. The Hizbui Mujahideen announced their goal of creating a *Nizam-e-Mustafa* (Islamic state) in the Valley, and issued slogans like '*Agar Kashmir mein rehna hoga, Allah Allah kehna hoga*' (if you want to continue to live in Kashmir, you have to pray to none but Allah).⁹³ During 1998 militants, allegedly from across the border, killed Hindu families in the Valley, prompting migrations of Hindus from there and adding to the communal colour of a political problem.

The competing discourses of the Hindu right-wing and Muslim militants have, ironically, never considered the larger problem of internal autonomy for the Kashmiri people, which is the major reason for political unrest and social turmoil in the Valley. Both of these discourses have more to do with political opportunism than any concern for the development or dignity of Kashmiris. The central Indian government has a decisive role to play in Kashmir, and must ensure maximum internal autonomy to the Kashmiri people and the protection of their democratic rights.

The Hindu right-wing and communalism

The legacy of partition was exploited by the Rashtriya Swayamsevak Sangh (RSS) – a right-wing Hindu nationalist organization which defines nationalism in terms of the primacy of Hindu identity over all other cultural identities. The RSS was established in 1925 in Nagpur, Maharashtra, and was implicated in the assassination of Mahatma Gandhi.⁹⁴ It has been indicted for inciting Hindu-Muslim conflict, including the demolition of the Babri *Masjid* (mosque) in 1991.⁹⁵ Its rigid hierarchy and authoritarian mode of functioning reflects its ultimate goal of replacing present secular, pluralistic, multicultural India with a 'Hindu Rashtra' (nation).⁹⁶ This ideology is shared by its associated organizations, the Bajrang Dal, the BJP, the Shiv Sena, and the Vishwa Hindu Parishad (VHP).

Right-wing discourse confines women to the role of an '*adarsh naari*' (ideal woman) where she 'inspires her father, brother, husband, and son in the righteous path as a good daughter, sister, wife and mother'. During its communal mobilization in Ayodhya (see later), the right-wing redefined women's role in more aggressive and militant terms. '*Hindu yuvatiyo! Lo hunkaar, jage veerta shubh samskar*' (Oh! Young Hindu women! Raise the war cry to inspire bravery and good values).⁹⁷ The right-wing portrays Muslim women as devoid of femininity, secluded behind *purdah*, possessing 'unbounded sexuality and immorality', victims of polygamous Muslim males and an extremely regressive legal code, who are rescued from their plight by heroic nationalist Hindus – even as it views attempts by Hindu women to renegotiate their relationship with Hindu men as 'Westernization'.⁹⁸ Muslim women and the 'polygamous instincts' of Muslim men are, according to RSS discourse, responsible for India's 'over-population'. Members of the Hindu right-wing parties have consistently attacked secular ideology, declaring it 'pseudo-secular', i.e. favouring Muslims and other minorities; even as Muslims feel insecure within a secular state which has failed to protect their right to life and property. The right-wing has usurped the women's rights debate for its own purposes. Its pro-women rhetoric rings hollow against its intolerance of diversity and its human rights violations against Muslims, including Muslim women.⁹⁹

The incidence of communal violence, relatively low during the 1950s and 1960s increased in subsequent decades. A 1979 government report chronicled a three-fold increase in deaths due to communal riots since 1977, with Uttar Pradesh (with a Muslim population of 17 per cent) heading the casualty list.¹⁰⁰ 'In UP ... the police and the PAC [Provincial Armed Constabulary] acted as though

they were a force expressly organised to beat, loot or kill Muslims'.¹⁰¹ In one of the most infamous incidents of communal prejudice during May 1987, over 600 people were detained in the Hashimpura and Malliana areas of Meerut during search operations by the PAC. Thirty-two of them aged between 13 and 65 'disappeared'. Two survivors testified that they were taken by truck to the Upper Ganga Canal near Muradnagar by the PAC. Here they were shot by uniformed PAC men and their bodies thrown into the canal. A panel established by the government indicted the PAC for the murders. However, the findings of the report were never made public, and the government absolved itself of responsibility for the killings on the plea that it had made *ex gratia* payments to the families of the victims.¹⁰²

In subsequent years, communal violence expanded into rural areas. Riots at Aligarh, Kanpur, Meerut, Moradabad in UP; Hyderabad in Andhra Pradesh; Bhagalpur in Bihar; and Ahmadabad, Baroda and Surat in Gujarat were bloodier, more widespread and extended over weeks or months,¹⁰³ and the vulnerability of Muslim communities increased.

The frequency, time period and apparent organization of communal riots cannot be seen in isolation from the BJP's pre-eminence. In 1990, BJP leader L.K. Advani's *Rath Yatra* journey from Somnath to Ayodhya provoked large-scale communal killings. Many believe that the idea was to encourage Hindu militancy and communal feelings against Muslims. According to official figures, about 1,000 people were killed – over 90 per cent were Muslims.¹⁰⁴ Mr Advani's *Rath Yatra* consequently led to disturbances in 116 places across the country. He was never charged with any offence.

In 1992, the Bajrang Dal, the BJP and the RSS called for the construction of a temple at Ayodhya (which they claim to be the birthplace of the Hindu god Ram at the spot where the Babri *Masjid* [mosque] built by the Mughal emperor Babar stands). They also incited communal prejudice by alleging that Muslims were Pakistani agents, recipients of preferential treatment by the government, and involved in attacks on temples and other Hindu monuments, etc.¹⁰⁵ The demolition of the mosque on 6 December 1992 by cadres of the Bajrang Dal, the BJP, Shiv Sena and VHP provoked widespread violence against Muslims. By the time the government stopped the violence, 14 people had been killed, 267 Muslim homes, 23 mosques and 19 graveyards were destroyed or damaged;¹⁰⁶ attacks on Muslims were also carried out with the connivance of the police (PAC).¹⁰⁷ Bal Thackeray, leader of the right-wing Shiv Sena issued a statement a day after the demolition of the mosque saying he was proud of the *kar*

sevaks (Hindu volunteers) whom he claimed were primarily responsible for having broken the domes of the mosque.¹⁰⁸

Huma, a Muslim resident of Ayodhya, described her family's trauma just before the mosque demolition,

*For three days in Faizabad, before the demolition, it was as if no law and order existed. My family ... had to "evict" the premises to move to "safer" locales. My father moved just one day before the demolition, and he had to leave by the stairs at the back of the house. The feeling of being vulnerable in your own house is one that is etched in my family's memory. It was worse than the partition. Much worse. Then at least one had claimed another land and could go there. We had nowhere else to go. Where could we go?*¹⁰⁹

Violence against Muslim women in the wake of Ayodhya, was not confined to Uttar Pradesh. (Nor was it always perpetrated by men.) In Bhopal, Madhya Pradesh, Muslim women were subjected to sexual violence; out of 11 women who died due to communal violence, three had been raped according to post-mortem reports.

Shakuntala Devi – of the BJP – returned from Ayodhya to Bhopal with other *kar sevaks*. She later led mobs against Muslims in Bhopal city.¹¹⁰ In the old city of Bhopal, illegal arrests of Muslim men forced them to leave their houses for fear of detention. This increased the fears and vulnerability of Muslim women and children. Insecure without their men, fearful of attacks from Hindus or the police, and deprived of milk, food and even water in some localities, the women spent nerve-wracking days and nights. While there have been sexual attacks against Hindu women, it is beyond doubt that the brunt of the atrocities were borne by Muslim women, the worst being Surat.

The collaborative role of organized communal outfits, like the Bajrang Dal, the BJP, Shiv Sena and VHP found its most chilling expression in Surat which witnessed the repeated humiliation of Muslim women. On 7 December 1992 a large mob attacked the locality of Ved Nagar. Muslim women were raped, their husbands killed in their presence and the rapes videoed.¹¹¹ On 10 December 1992, mobs stormed the coaches of a train near Udhna on the outskirts of Surat. They hacked people to death and raped women before killing them. No police came. Significantly, all the major incidents of violence occurred in BJP strongholds.¹¹² There have been no prosecutions.

The Srikrishna Commission – which investigated the mass violence against Muslims in Bombay in 1993 – was disbanded by Chief Minister Manohar Joshi in 1996, but after widespread protest was subsequently reinstituted. In his report on the December 1992 – January 1993 riots in Bombay, Justice B.N. Srikrishna highlighted the communal stereotyping of Muslims and indicted Shiv Sena cadres and the Bombay police of human rights violations against Muslim communities. In her testimony Meherunnissa Ansari recounted the attitude of police whom she approached while her home was ransacked by a Hindu mob on 8–9 January 1993, 'I cannot forget during my entire life the words used by the police – "*Pakistan chale jao; yahan kyon ate ho marne ke liye*".' (Go to Pakistan, why do you come here to die?) Yasmin Hasan Wagle

watched her brother Shahnawaz being shot at point-blank range by police. While Muslims were also responsible for killing innocent Hindus, the Commission found no evidence to suggest that any known Muslim individuals or Muslim organizations were responsible for the riots.

Victims of communal violence in India have suffered a range of internationally-recognized human rights violations. These include the right not to be arbitrarily deprived of life, the right to equal treatment before the law without discrimination, and the right not to be subject to coercion which would impair the freedom to have or adopt a religion. In addition, under international human rights law, states are obliged to prohibit by law any advocacy of national, racial, or religious hatred that constituted incitement to discrimination, hostility or violence.¹¹³ Furthermore, the prejudice behind violence against Muslim women violates Article 2(d) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The demolition at Ayodhya and the ensuing communal violence inspired militancy and extremism in some Muslim youths, who perceived this as a possible cure for the community's problems. 'Defence leagues' formed in Aligarh, Meerut and Muzaffarnagar, and the defunct Adam Sena (militant army) run by the deputy *imam* of Delhi's Jama Masjid was reestablished.¹¹⁴ In Kerala, a state largely free of communal violence, the Ayodhya dispute led to the formation, in 1988, of the Islamic Sevak Sangh (ISS), a militant Muslim organization. 'Like the RSS, it seeks to "defend" Muslims against the perceived militant Hindu threat. The ISS has rapidly acquired mass support among Muslims in Kerala'.¹¹⁵ Certain Muslim political leaders also contributed to the polarization in their own way by launching a counter movement (re the Ayodhya dispute) headed by the Babri Masjid Coordination Committee (BMCC). The BMCC's most ill-advised move, under the aegis of Mr Shahabuddin, was to call for a boycott of India's Republic Day celebrations in 1987, which served to consolidate right-wing interests.

Anti-Muslim prejudice

Communal prejudice against Muslims – though not a uniformly pervasive phenomenon throughout India – is a cause for concern. It can project onto state policy as in 1977, when Mr Jagmohan, in his capacity as Lt Governor of Delhi, asked for a 'dispersal of Muslim populations to prevent future "Pakistans" in India'¹¹⁶ and ordered the demolition of Muslim settlements in part of the old city of Delhi. In 1989, George Fernandes, a cabinet minister, asserted,

*'the Muslim is not wanted in the armed forces because he [sic] is always suspect – whether we want to admit it or not, most Indians consider Muslims a fifth column for Pakistan.'*¹¹⁷

More recently, the BJP supplied free textbooks to all primary schools in Rajasthan; excluding Muslim schools.¹¹⁸ In 1995, the Marwari Muslim Educational Society was refused permission to set up a Muslim Technical Institute.¹¹⁹ In Madhya Pradesh school textbooks in current use

present a distorted picture of medieval Indian history. There are no positive references to non-Hindu religious figures, even to the Prophet Mohammed or Buddha,¹²⁰ while primary school mathematics textbooks include questions like 'If 15 *Kar Sevaks* (Hindu volunteers) demolish the Babri *Masjid* in 300 days, how many *Kar Sevaks* would it take to demolish the mosque in 15 days?'¹²¹ The BJP's 1998 election manifesto aimed to merge the National Commission for the Minorities with the National Human Rights Commission; in Maharashtra, the state (i.e. Shiva Sena-BJP coalition) government's decision to abolish the minority commission was upheld by India's Supreme Court,¹²² and the Rajasthan (BJP) government wants to follow suit.¹²³

Meanwhile, the national BJP government is attempting to rewrite revisionist Hindu histories. Within months of assuming power, the government reinstituted the Indian Council of Historical Research (ICHR), inducting historians who subscribe to the existence of a temple at Ayodhya. The 1972 memorandum of the ICHR which previously declared its aim to 'give a "rational" direction to historical research', has been altered to state that the ICHR now seeks to give a 'national' direction to 'an objective and national presentation of history'.¹²⁴

According to a school history textbook by N.R. Sharma (Uttar Pradesh),

'Hindus had to give away their daughters in marriage very early for fear of the Muslims', and

*'[The] Purdah system and child marriages became common because of the bad conduct of the Muslim rulers.'*¹²⁵

Or according to *Madhyamik Itihas* (Secondary school history) vols 1 and 2 (Madhya Pradesh),

'Ancient India was "Hindu rashtra" [Hindu nation]', and

*'Mughal intolerance led to the rise of Hindu nationalism.'*¹²⁶

Right-wing ascendancy with its authoritarianism, notions of forced cultural uniformity, outright prejudice, and its views on women, bodes ill for all Indian women. Its implications for Muslim women are particularly alarming due to the contradiction between its professed commitment to women's rights and its active complicity in human rights violations against Muslim women. This discrepancy was amply transparent in the BJP position on the 1996 Muslim Women's Bill, which was taken up by the women's movement.



Muslim women and the post-independence women's movement

Independent India's Constitution redefined the relationship between the state and its citizens. The notion of the individual as citizen with fundamental rights, including the right to universal adult suffrage, was a break with past authoritarian structures. The secular discourse of a multilayered past and a common future for all Indians in the wake of partition's bitterness evoked a powerful appeal. Yet, for most uneducated, economically deprived Muslim communities it was difficult, even painful, to identify with a secular Indian identity while their religious identity was still suspect;¹²⁷ while they remained targets of communal violence; when it meant learning Hindi instead of Urdu; or when Hindu right-wing discourse posited Muslims as major impediments to national integration, casting thinly veiled aspersions on Muslim cultural identity. Furthermore, Muslim women faced the additional disadvantage of being women within a minority community. Like most Indian women, Muslim women were yet to benefit from the gains of the women's movement made at the turn of the century. Practices like polygamy and seclusion of women were common to both Hindu and Muslim women; so was the lack of education and economic independence.

Muslim women joined other Indian women in the struggle for access to economic resources, education and employment. The impetus of the women's movement lay somewhat diffused in the aftermath of partition. Its communal solidarity was commendable, yet the transition was particularly difficult for Muslim women. Devoid of a national or visionary leadership, the voices and experiences of Muslim women came to be usurped by male Muslims claiming to represent the community. The political opportunism of the latter, combined with the failure of state programmes to alleviate women's socio-economic status, left the majority of Muslim women economically and educationally impoverished. The restricted agendas of organizations like Jamiat-e-ulema-e-Hind, which focus on the retention of Muslim personal law; the Jamaat-e-Islami, wishing to preserve the *Shari'a*; together with the revivalist and missionary activities of the Tablighi Jamaat, which propagates a particularly rigid and puritanical Islamic doctrine, do not offer any hope of initiating debate within Muslim communities or of taking up problems with central government.

Personal law

Personal law (i.e. laws covering family relations, marriage, divorce, inheritance, custody rights, etc.) is a contested arena for the women's movement as well as for Hindu and Muslim conservatives. It not only defines the relationship between men and women in marriage and family relations but also marks the relationship between women and the state. While civil and criminal laws in post-independent India are secular, personal laws are governed by the respective religious laws. Accordingly, Muslim women came under the purview of Muslim personal (family) law. The passage of the Hindu Code Bill and the Shah Bano controversy (see later) brought Muslim personal law – which had not been subject to any legislative changes since the 1937 Shariat Act and the 1939 Dissolution of Muslim Marriages Act – back into focus.

Legislation on women in post-independence India faced stiff opposition from Hindu and Muslim conservatives. The Assembly debates preceding the passage of the Hindu Code Bill – which gave Hindu women the right to divorce and allowed for inter-caste marriage and monogamy – symbolized the cross-communal patriarchal collusion in opposing any pro-women legislation. The Special Marriages Act, 1952, which allowed two Indians to marry without renouncing their religion provoked strong opposition from Hindu and Muslim Members of Parliament (MPs). The debates also highlighted the transformation of a women's rights debate into a discourse where personal codes merged with perceptions of communal 'identity'. At another level, the debate also translated into a set of competing concessions between Hindu and Muslim men. As Dr Mookerjee and Pandit Govind Malviya asserted,

*'Hindus would accept monogamy only when Muslims did, that divorce could not take place in "Ram Rajya" and that they were against a daughter's share in her father's property since that would be imitating Muslims.'*¹²⁸

In 1973, in an amendment relating to the rights of divorced women to maintenance under the Criminal Procedure Code, the word 'wife' in Section 125 was amended to include a 'divorced wife'. This provoked protests from the Muslim League whose members argued that the amendment violated Muslim personal law. The amend-

ment went on to exclude Muslim women from the provisions of Section 125 if they had already received payment due to them under Muslim law. However, in a subsequent judgment (*Bai Tahira vs Ali Hussain*) the Supreme Court held that,

'the payment of illusory amounts by way of customary or Personal Law requirement will be considered in the reduction of maintenance rate but cannot annihilate the rate unless it is a reasonable substitute'.¹²⁹

The provision of triple *talaq* (unilateral divorce by saying the word *talaq* [divorce] three times in one sitting) is another area within Muslim law where women face discrimination. The threat of verbal divorce (invested with men) acts as a perpetual legal and psychological threat against Muslim women. This was acknowledged by National Commission of Women (NCW) member Syeda Saiyeda Hameed at a recent seminar on Muslim women in Bombay, when she called for personal laws to be amended 'so as to help ease the sufferings of Muslim women'.¹³⁰

In 1986, Shah Bano, a 73-year-old Muslim woman was thrown out of her house by her husband after 43 years of marriage after he used the triple *talaq*. In 1977 Shah Bano's husband stopped the payment of Rs 200 as maintenance, upon which she filed an application for maintenance of Rs 500 under Section 125 of the Criminal Procedure Code. Her husband subsequently divorced her, paying Rs 3,000 as final settlement. A judicial magistrate, however, ordered him to pay a sum of Rs 25 (approximately US \$0.50), which was later raised to Rs 179.20 by the Madhya Pradesh High Court. Shah Bano's former husband appealed to the Supreme Court of India and argued that Muslim personal law did not oblige ex-husbands to provide maintenance for their former wives. The Supreme Court dismissed his appeal and upheld the maintenance order under Section 125 of the Criminal Procedure Code. Subsequently, Parliament passed the Muslim Women Protection of Rights on Divorce Bill – which denied Muslim women the right to maintenance under constitutional law.

The judgment and subsequent Muslim Women's Bill generated much debate and led to widescale mobilization by women's groups on the issue of personal law. It also highlighted the disjunction between constitutional law premised on the principle of sexual equality and religious laws which discriminate on the basis of this very category.

Parties like the Jamaat-e-Islami have argued that Muslim personal law is divine, beyond human intervention and that any attempt to change it would represent an erosion of Muslim cultural identity. Reactions from the Muslim Personal Law Board were equally intolerant. It declared its intention to set up 'Islamic courts' in order to dispense justice according to the Qur'an. The BJP appropriated the women's rights debate by aggressively campaigning for a Uniform Civil Code, which would replace Muslim personal law. Equating nationalism with the adoption of a Uniform Civil Code, the Hindu right-wing portrayed Muslim reluctance towards reform in personal law as 'minority appeasement' and an impediment to national progress. The fact that many Muslims wanted reform

within personal law without being considered culturally inferior or unpatriotic was completely overlooked. As Mr M.Y. Kazi wrote,

'it is such a pity that the issue of Muslim personal law has been politicised by motivated people who have thus vitiated the atmosphere for a serious debate. As a Muslim, I am only too well aware of where the shoe pinches and what needs to be done. But let me make it very plain, I won't oblige those who regard any identity except their own as inferior, alien and unpatriotic, and who would shed copious tears on the "plight" of Muslim women but have no sympathy to spare when those very women are made widows and orphans in the streets of Bhiwandi, Ahmedabad, Baroda, Meerut and other innumerable places ... As a Muslim, I would not mind having a common code provided that code incorporate the good points of all the existing codes'.

Despite its commitment to the principle of gender-just laws for all Indian women, the women's movement, in the case of this divorce Bill, faced the unhappy predicament of sharing the same platform with the right-wing, albeit for very different reasons. The movement's genuine concern at women's subordination within personal laws could not entirely obliterate Muslim fears of the imposition of a 'Hindu' code under the guise of national integration. The women's movement has since then moved away from a pro- or anti-Uniform Civil Code position to more nuanced positions which combine the options of reform within personal law, with the formulation of a gender-just law deriving from the concept of a common civil code. There is no definitive conclusion to the debate, which continues, but as a researcher comments,

'Their [the women's movement] first task is to reclaim the debate, take it back from the fundamentalist forces, debunk the false choices that they are advocating, and expose the electoral gimmicks of the BJP and the Congress'.¹³¹

Since independence, successive Indian governments have avoided taking any legislative measures to end discrimination in personal laws. Such a policy contradicts India's commitment to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which upholds the principle of equality among men and women in the family. India has also entered the following reservations on Articles 5a and 16 of CEDAW.¹³²

i] With regard to Articles 5(a) and 16(I) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declared that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.

ii] With regard to Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of

marriages, it is not practical in a vast country like India with its variety of customs, religions and levels of literacy.

iii] With regard to Article 29 of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares it does not consider itself bound by Paragraph 1 of this Article.'

The Indian government's rejection of the clauses with reference to personal laws highlights its lack of commitment to promoting women's rights in the family and society, and a violation of women's constitutional rights to equality. Government positions notwithstanding, Muslim fundamentalist parties have appropriated the debate for their own ends, while the lesser vocal Muslim majority has been unable to voice its demands at a national level. Reform of Muslim personal law remains an urgent necessity. As an eminent Muslim lawyer remarked,

*'It is futile to argue that where a certain rule of law, as applied by courts in India, needs a change, we are interfering with an immutable rule of divine law. Such an argument is used for personal, polemical or political ends, and not with any spiritual motives ... it is for us Muslims of India, to find a solution and to bring our law into line with every other system of jurisprudence, giving justice to whom it is denied.'*¹³³

Law by itself, however, cannot be the sole determinant of Muslim women's status in Indian society. Nor can their status be ascribed to some essential Islamic feature. The socio-economic status of Indian Muslim women mandates attention not only because it is a marker of women's progress, but also because it is difficult to institute legal reforms without simultaneous progress in Muslim women's educational status and economic autonomy.



Muslims in modern India: Socio-economic profile

Table 4 – Muslims as a percentage of India's population, 1991

State	Population	% of Muslims
Andhra Pradesh	66,508,008	8.91
Andaman and Nicobar islands	280,661	7.61
Arunachal Pradesh	864,558	1.38
Assam	22,414,322	28.34
Bihar	86,374,465	14.08
Chandigarh	642,015	2.72
Dadra and Nagar Haveli	138,477	2.41
Delhi	9,420,644	9.44
Goa, Daman and Diu	1,169,793	5.25
Gujarat	41,309,582	8.73
Haryana	16,463,648	4.64
Himachal Pradesh	5,170,877	1.72
Karnataka	44,977,201	11.64
Kerala	29,098,518	23.33
Lakshwadeep	51,707	94.31
Madhya Pradesh	66,181,170	4.96
Maharashtra	78,937,187	9.67
Manipur	1,837,149	7.27
Meghalaya	1,774,778	3.46
Mizoram	689,756	0.66
Nagaland	1,209,546	1.71
Orissa	31,659,736	1.83
Pondicherry	807,785	6.54
Punjab	20,281,969	1.18
Rajasthan	44,005,990	8.01
Sikkim	406,457	0.95
Tamil Nadu	55,858,946	5.47
Tripura	2,757,205	7.13
Uttar Pradesh	139,112,287	17.33
West Bengal	68,077,965	23.61
India	838,583,988	11.67

(Source: *Census of India, 1991*, series 1, paper 1 of 1995, 'Religion', Government of India publication, New Delhi, 1995.)

According to the 1991 census, there are 101,596,075 Muslims in India. After Indonesia, India has the second largest Muslim population in the world. Muslims in modern India are geographically scattered. More than half of the entire Muslim population lives in Bihar, Uttar Pradesh and West Bengal; yet, in no state or union territory (with the exception of Jammu and Kash-

mir and the Union Territory of Lakshwadeep), do Muslims form a majority. In Jammu and Kashmir, Muslims are 64 per cent of the population; followed by 23 per cent each in the states of Kerala and West Bengal; 17 per cent in Uttar Pradesh; 14 per cent in Bihar; 11 per cent in Karnataka and 9 per cent in Maharashtra. The states where the Muslim population is 5 per cent or less are Haryana, Madhya Pradesh, Orissa, Punjab and Tamil Nadu. Generally-speaking, a larger proportion of Muslims live in urban areas.¹³⁴

Constitutional provisions

The Constitution of India confers equal citizenship rights on all Indians and provides safeguards for minorities.¹³⁵ Constitutional safeguards are meant to ensure the full and active participation of all communities including Muslims in the country's public life.

Article 14 of the Constitution grants equality to all citizens without discrimination on grounds of caste, language or religion. All minorities enjoy equal rights in public employment under Article 16. Under Articles 26, 27 and 28 of the Indian Constitution minorities have the right to manage their own religious affairs, are not compelled to attend state-funded religious institutions, and receive equal treatment for minority-managed institutions. Article 30 ensures the right of minorities to administer their own educational institutions. Article 249 of the Indian Constitution grants 'Backward Classes' a right to preferential treatment in order to bring them up to par with the rest of the population. This includes the provision of reserved seats for 'Backward Classes' in national and legislative bodies, educational institutions and public employment. Successive governments, however, have not been committed to removing the structural inequalities which perpetuate class, caste and gender differentials; rather their policies towards reservation have been politically motivated. In 1977, for example, the Uttar Pradesh government declared 37 Hindu castes and 21 Muslim groups as 'Backward Classes', entitling them to preferential treatment in education and employment.¹³⁶ The government order was overturned by the High Court which ruled that this was unconstitutional, since it included groups whose economic status did not require special concessions.

In 1987, the Muslim Majlis-e-Mushawarat demanded the extension of 'reservation for the Muslim community as a Backward Class in public service and higher education'.¹³⁷ However, this would still not guarantee that the

factors behind their disadvantaged position would be removed, or indeed that those most deserving of reservation would be able to benefit from it.

It is also necessary to place the current demand for reservations for Muslim women in Parliament in its political context. This demand has been voiced by Muslim politicians who have had little concern for Muslim women's welfare in terms of education, employment, health or family law. Against a changing caste composition of Parliament in the wake of the caste reservations for the 'Backward Classes', the pro-reservation stands of the BJP and Congress Party are explained by their expectation that the major beneficiaries of such a policy would be upper caste, upper class women who would maintain the status quo rather than subvert it. As Seema Alavi has argued,

*In this context, it is not the interest of the Muslim women that the Muslim MPs have in mind in raising the demand for a separate quota for them. Rather their concern emanates from the large power games their respective political parties are embroiled in.*¹³⁸

Socio-economic profile

There is a lack of data on Muslim communities in India. Census information includes a broad count by religion but does not present socio-economic information according to religion. Furthermore, there are very few studies on the economic profile of Muslims. There are, reportedly, numerous studies and analyses on Muslims in the possession of the Indian government,¹³⁹ (based on census reports), however, these are yet to be made public.

Employment and work participation¹⁴⁰

Muslim women have the lowest work participation rate (WPR) among all three categories of work, with a large gap between the WPRs for Muslim women and Hindu or Christian women. Sixty per cent of Muslim

Table 5 – Patterns of employment by religion in India 1987–8

	Self-employed (a)	Regular workers (b)	Casual workers (c)	All	Work participation rate (WPR) (d)
Urban females					
Christians	34.3	51.5	14.2	100.0	23.6
Hindus	45.0	27.7	26.4	100.0	15.9
Muslims	60.0	15.7	24.3	100.0	11.4
Urban males					
Christians	29.7	53.4	17.0	100.0	48.9
Hindus	39.1	46.4	14.5	100.0	52.0
Muslims	53.3	29.9	16.7	100.0	49.1
Rural females					
Christians	57.6	9.9	32.4	100.0	37.3
Hindus	59.9	3.6	36.5	100.0	33.7
Muslims	67.9	3.0	29.1	100.0	19.6
Rural males					
Christians	52.1	12.0	35.9	100.0	–
Hindus	58.5	10.1	31.4	100.0	54.2
Muslims	59.0	7.5	33.5	100.0	50.5

(Source: *The National Sample Survey, 43 Round, 1987–88, schedule 10*)

(a) Self-employed includes all those who earn their livelihood by working on their traditional occupations and enterprises including agriculture.

(b) Regular workers are identified as those who work on long-term salaried jobs.

(c) Casual workers are those who work for wages on a day-to-day basis.

(d) WPR indicates the form and extent of employment for men and women as recognized in the national economy.

women are self-employed – the highest percentage among all three religious categories. Figures for Muslim women's employment as regular workers in urban areas, (15.7 per cent as compared to 27.7 per cent for Hindu women and 51.5 per cent for Christian women) highlight their marginal presence in salaried jobs. Figures for rural areas however, dismal as they are, also indicate a more or less similar employment status for Hindu (3.6 per cent) and Muslim (3.0 per cent) women. The high self-employment rates and the corresponding low participation of Muslim women as salaried workers indicates their marginal presence as workers in the formal economy. This does not imply the absence of Muslim women as workers; rather it indicates their 'invisibility' as informal workers. In the absence of existing research and analysis in the area of Muslim women's employment, it is difficult to pinpoint specific causes behind this, their poor employment status, although their educational status must presumably exert a significant influence on the form and levels of Muslim women's employment in both urban and rural areas.

Educational levels

India is one of the least literate societies in the world.¹⁴¹ Within this broader picture of social disadvantage, the literacy levels of Muslim men and women are further skewed towards the bottom.

Figures for female literacy are almost identical for both Hindu (75 per cent) and Muslim (76.1 per cent) women in rural India. As table 6 indicates, there is a marginal difference between figures for Hindu and Muslim women's primary education for rural India, which subsequently widens across middle, secondary and graduate levels. A similar

trend is observed for figures for women's education in urban India. Furthermore, 59.5 per cent of Muslim women are illiterate in urban India, as compared to 42.2 per cent of Hindu women and 22.7 per cent of Christian women who come under this category. There is some semblance of parity between urban Hindu (17.2 per cent) and Muslim (18.5 per cent) women with reference to primary education which widens considerably for corresponding figures for middle school – 25.3 per cent for urban Hindu women, and 16.8 per cent for Muslim women – the difference being much greater when compared to Christian women (33.4 per cent). Only 4.3 per cent of urban Muslim women have secondary education, compared to 10.7 per cent of Hindu women and 20.8 per cent of Christian women. The number of urban Muslim female graduates is negligible (0.8 per cent, against 4.2 per cent of Hindu women and 5.5 per cent of Christian women).

The relative gap between the figures for educational enrolment for Muslim women in comparison to Hindu or Christian women is highlighted in tables 8 and 9.

Unlike the percentage difference between Muslim, Hindu and Christian women in primary education, Muslim women in both rural and urban India lag behind their counterparts in school enrolment from the very beginning. This initial disadvantage is further exacerbated across subsequent educational enrolment categories. The figure of 32.8 per cent for rural Muslim females attending school in the 5–9 age group (compared to 40.6 per cent Hindu women) or 1.4 per cent for Muslim rural female enrolment for the 20+ age group (7.4 per cent for Hindu women) is still more favourable than the corresponding figures for urban India. The enrolment figure of 52.1 per cent for urban Muslim females compares poorly to the corresponding figure of 70.7 per cent for Hindu females, which further widens

Table 6 – Education in rural India 1987–8 (by %)

Educational level	Hindu female	Hindu male	Muslim female	Muslim male	Christian female	Christian male	Other female	Other male
Illiterate	75.0	51.3	76.1	58.2	43.1	33.7	61.4	45.3
Primary	11.8	19.0	13.1	18.6	17.8	20.5	15.7	17.9
Primary to middle	11.2	22.7	9.9	19.1	29.2	35.4	19.4	25.5
Secondary	1.7	5.7	0.8	3.4	8.1	9.3	3.1	9.0
Graduate+	0.2	1.2	–	0.6	1.5	1.8	0.3	2.3

(Source: *The National Sample Survey, 43 Round, 1987–88, Table 31.4.*)

Table 7 – Education in urban India 1987–8 (by %)

Educational level	Hindu female	Hindu male	Muslim female	Muslim male	Christian female	Christian male	Other female	Other male
Illiterate	42.2	25.3	59.5	42.4	22.7	18.8	31.2	18.0
Primary	17.2	18.8	18.5	20.9	17.5	16.0	14.7	15.6
Primary to middle	25.3	30.5	16.8	26.3	33.4	36.7	8.5	30.0
Secondary	10.7	17.2	4.3	8.0	20.8	20.1	17.5	23.6
Graduate+	4.2	7.9	0.8	2.3	5.5	8.1	7.9	11.7

(Source: *The National Sample Survey, 43 Round, 1987–88, Table 31.4.*)

Table 8 – Educational enrolment in urban India 1987–8 (by %)

Age	Hindu female	Hindu male	Muslim female	Muslim male	Christian female	Christian male	Other female	Other male
5–9	70.7	76.3	52.1	56.0	86.1	89.2	85.6	88.0
10–14	74.6	83.2	53.6	63.6	90.0	93.3	82.7	89.9
15–19	42.4	56.1	19.3	34.8	57.1	60.0	60.2	63.7
20+	10.2	21.8	4.7	12.1	17.0	18.2	17.2	35.8
N.R	29.4	31.3	–	6.4	13.6	67.4	40.7	3.0

(Source: *The National Sample Survey, 43 Round, 1987–88, Table 37.*)**Table 9 – Educational enrolment in rural India 1987–8 (by %)**

Age	Hindu female	Hindu male	Muslim female	Muslim male	Christian female	Christian male	Other female	Other male
5–9	40.6	53.3	32.8	42.1	66.9	67.4	50.5	60.1
10–14	41.3	66.9	37.0	56.6	70.1	75.6	65.4	62.6
15–19	12.6	37.7	8.8	26.9	43.3	47.7	13.7	31.3
20+	1.8	8.8	1.4	7.4	10.4	14	1.7	9.3
N.R	1.2	3.2	15.9	15	–	50.9	16.7	8.7

(Source: *The National Sample Survey, 43 Round, 1987–88, Table 37.*)

across subsequent age categories to end with 4.7 per cent of Muslim females attending educational institutions, compared to 10.2 per cent of Hindu women or 18.2 per cent of Christian women. Clearly, Muslim women in urban India are much worse off than their rural counterparts, not only in terms of their overall educational status as citizens of India, but also in terms of their relatively poor educational status when compared to Hindu or Christian women. This trend is all the more alarming when this situation is compared to the advances in Muslim female education achieved at the turn of the century.

This educational disadvantage of women in Muslim communities mandates attention. The Indian government has failed to secure primary and secondary education for most of its citizens and its policies have deprived people of their right to education.¹⁴² It could also be assumed that Muslim girls' schooling is not always encouraged. The female literacy rate is an appalling 28.1 per cent.¹⁴³ An improvement in the overall literacy rates for Muslims would not just lead to a corresponding increase in Muslim enrolment in universities and professional courses but also ensure more social opportunity for Muslim women (and men). This initial disadvantage, i.e. Muslim women's poor literacy rates, completely precludes the possibility of their entering institutions of higher education. Due to this reason the Aligarh Muslim University and the Jamia Millia Islamia – minority institutions with the specific aim of furthering education among Muslims (male and female) in India – are unable to have a majority of Muslim students in their professional schools.

Calls for change

At a glance, Muslims have a poor socio-economic status, with a marginal presence in public life. More than 50 per cent of India's 101.59 million Muslims live below the poverty line, with a monthly income of Rs 150 or less. Hindus who constitute 82.2 per cent of the population form 85.3 per cent of the elite; Christians comprising 2.6 per cent of the population are 3.5 per cent of the elite; Jains constituting 0.5 per cent of the population are 2.8 per cent of the elite; while Muslims who are 11.2 per cent of the population constitute only 4.5 per cent of the elite¹⁴⁴ – with women faring the worst. In addition, Muslim representation in Parliament and State Assemblies is declining. There were 46 Muslims in the Lok Sabha (lower house of Parliament) in 1982, a figure which went down to 26 in the 1991 elections.¹⁴⁵

These problems have recently been a subject of debate within the community. In its first meeting in January 1992, the Muslim Intelligentsia Forum demanded the attention of the government, political parties, the media and the *ulema* to the situation of Muslims in India. The meeting questioned the authority of Muslim political and religious leaders and urged a re-examination of the issues confronting Muslim communities. A new narrative based on critical self-awareness and identity was forged during this meeting.¹⁴⁶ The Muslim Intelligentsia Forum held subsequent meetings in various towns and cities in India. In September 1997, for the first time, a group of past and present Muslim MPs met

to address the educational and economic disadvantage of the community.¹⁴⁷

There were regional initiatives like the formation of the Minorities Vikas Manch (Forum) in Jaipur, Rajasthan, to raise Muslim women's literacy levels in the state and to create awareness among the state's Muslims about state welfare schemes. A series of 'Public Hearings of Muslim Women', instituted by the National Commission For Women, highlighted the economic problems facing Muslim women.

*The overriding concern of these women was the lack of educational facilities for their children. The other concerns were lack of health facilities, lack of hygiene, no housing, no vocational opportunities.*¹⁴⁸

Furthermore, a group of Muslim women, lawyers and Muslim Personal Law Board members in Bombay worked on a model *nikahnama* (marriage contract) stipulating a set of minimal conditions to safeguard women's rights in the marriage contract. They hope to discuss the *nikahnama* with the Muslim Personal Law Board. At a seminar on Muslim women in Bombay held in collaboration with the National Commission for Women, a resolution calling for a dialogue with the Muslim Personal Law Board, and favouring reforms in Muslim personal law, was passed. As Muslim personal law in post-independent India is yet to undergo any reform, with a politically influential section of the Muslim community resisting change, this is an important development. It symbolizes Muslim women and men's determination to challenge existing laws and renegotiate ideas on women's rights which, in turn, are inextricably linked to current debates on Muslim women and Islam.



Gender, Islam and human rights

The debate on Islam and women's rights can be traced back to the time of its evolution. Prophet Mohammed was born in Mecca c. 570 CE when a variety of marriage and divorce practices, and matrilineal customs existed. The initial discourse on gender and women's rights in seventh-century Arabia, when Islam first appeared, continued ideas and traditions set in place by the preceding Judeo-Christian tradition. The veil, for example, which was part of the prevailing custom practised by a certain class of women in the Christian Middle East and Palestine permeated emerging Muslim societies. This new Islamic order institutionalized women's subordination through the institution of patrilineal marriage laws endorsing the control of women and female sexuality. Laws relating to marriage, the family and women's conduct explicitly endorsed the patriarchal control of women and female sexuality. This preceded the physical seclusion of women, the notion of women's submission to male control, the practice of polygamy and the unilateral (male) right to divorce. In its chapter (IV) on women (*al Nis'a*) the Qura'n, permits polygamy,

*'And if you fear that you cannot act equitably towards orphans, then marry such women as seem good to you, two three or four; but if you fear that you will not do justice between them, then (marry) only one or what your right hands possess; this more proper, that you may not deviate from the right course.'*¹⁴⁹

The provision of polygamy, which later translated into classical Islamic law, did not heed the Qura'nic injunction of the equal treatment of co-wives, nor did it place any restriction on the right of men to enter into polygamous unions. The male right to polygamy was later incorporated into family codes/personal laws. However, this verse could also be interpreted as an endorsement of monogamy as it acknowledges that men may not be able to treat their co-wives equally. This ambiguity and divergent interpretations of Islamic law have to be viewed in the light of its historic evolution and formalization.

Islamic law or the *Shari'a* (literally meaning the path or way) was compiled during the ninth and tenth centuries CE by Muslim jurists, well after the death of the Prophet Mohammed. While the basis of the *Shari'a* is divine in that its principal source, the Qura'n, is believed to be the word of God, it has also been subject to human reasoning and interpretation by Islamic jurists over the centuries. Differences among Islamic jurists in analogical reasoning

led to the evolution of four major schools of Islamic law (i.e. Sunni law – Shias have their own law) viz., Hanafi, Shafi, Maliki and Hanbali.¹⁵⁰ All laws agree on the fundamental dogmas, but differ in the application of the Qura'n and its interpretation.¹⁵¹ Jurisprudential difference among the adherents of different schools of law also resulted in varied legal positions for female conduct. Thus, for instance, while all schools agree to the unilateral and extrajudicial termination of marriage by men, women are entitled to judicial divorce under Maliki law.

*'Maliki law allows a woman to petition not just on grounds of sexual impotence, as in Hanafi law, but also on grounds of desertion, failure to maintain her, cruelty, and her husband's being afflicted with a chronic or incurable disease detrimental to her.'*¹⁵²

Hanafi law, meanwhile, allows women to stipulate conditions in their marriage contracts, although it permits polygamy; the other three schools consider both conditions unacceptable.

These varied interpretations on women do not reflect any frozen, definitive model of future family relationships for Muslim women. Rather, this interpretative diversity illustrates how the *Shari'a* has been subject to human reasoning and interpretation at different historical periods, in varied political, social, economic and cultural contexts. The *Shari'a* is therefore a 'historically conditioned document',¹⁵³ combining both divine revelation and human intervention, and was never intended to be the blueprint for all future Muslim societies. Once this point is appreciated it is possible to argue that the different interpretations of the *Shari'a* reflect the constant flux in historical conditions and that the legal principles applied in the ninth and tenth centuries need not be replicated in the twentieth (or twenty-first) century where social, political and cultural conditions differ considerably than those of seventh century Arabia. Furthermore, as a Muslim scholar commented, 'there are very few women interpreters in the history of Islam because women are seen to be the subject of Islamic *Shari'a* and not its legislators'.¹⁵⁴ In the absence of female theologians, there developed a tradition of misogyny among male interpreters of Muslim law. As Zin al Din, a Lebanese scholar observed,

'When I started preparing my defence for women, I studied the works of interpreters and legislators but found no consensus among them on the subject; rather, every time I came across an opinion, I found other opinions that were different or even contradictory. As for the aya(s) [Qura'nic verses] concerning hijab [veil], I found over 10 interpretations, none of

*them in harmony or even in agreement with the others as if each scholar wanted to support what he saw and none of the interpretations was based on clear evidence.*¹⁵⁵

The contention then is not Islam but historical *interpretations* of Islam. This is the fundamental premise of the present debate on Muslim women's rights. Women's rights activists need to simultaneously uncover and emphasize the coexistence of patriarchal legal texts with the Qura'n's spiritual and ethical vision. The voice of the latter is muted – yet unmistakably there – remaining a source of inspiration for all Muslim women who believe in the Islamic vision of equality between men and women. As Leila Ahmed points out,

*'Even as Islam instituted marriage as a sexual hierarchy, in its ethical voice – a voice virtually unheard by rulers and law makers – it insistently stressed the importance of the spiritual and ethical dimensions of being and the equality of all individuals. While the first voice has been extensively elaborated into a body of political and legal thought, which constitutes the technical understanding of Islam, the second – the voice to which ordinary Muslims, who are essentially ignorant of the details of Islam's technical legacy, give their assent – has left little trace on the political and legal heritage of Islam. The unmistakable presence of an ethical egalitarianism explains why Muslim women frequently insist, often inexplicably to non-Muslims, that Islam is not sexist. They hear and read in its sacred text, justly and legitimately, a different message from that heard by the makers and enforcers or orthodox, androcentric Islam.'*¹⁵⁶

Verse 33, chapter 35 of the Qura'n reflects the unity of all believers and their identical moral and spiritual obligations,

*'For Muslim men and women,
For believing men and women,
For devout men and women,
For true [truthful] men and women,
For men and women who are
Patient and constant,
For men and women who humble themselves,
For men and women who give in charity,
For men and women
Who fast [and deny themselves],
For men and women who
Guard their chastity, and
For men and women who
Engage much in God's praise,
For them has God prepared
Forgiveness and a great reward.'*¹⁵⁷

Outlook

At the United Nations Fourth World Conference On Women in Beijing, 1994, 189 governments signed a document which explicitly called for equality between men and women and was acknowledged by the interna-

tional community as a guiding principle towards the promotion of women's human rights.

'1. The Platform for Action is an agenda for women's empowerment. It aims at accelerating the implementation of the Nairobi Forward Looking Strategies for the Advancement of Women and at removing all obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision making. This means that the principle of shared power and responsibility should be established between women and men at home, in the workplace and in the wider national and international communities. Equality between men and women is a matter of human rights and a condition for social justice and is also a necessary and fundamental pre-requisite for equality, development and peace. A transformed partnership based on equality between women and men is a condition for people-centred sustainable development. A sustained and long-term commitment is essential, so that women and men can work together for themselves, for their children, and for society to meet the challenges of the twentieth century.'

*2. The Platform for Action reaffirms the fundamental principle set forth in the Vienna Declaration and the Program for Action, adopted by the World Conference on Human Rights, that the human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights. As an agenda for action, the Platform seeks to promote and protect the full enjoyment of all human rights and the fundamental freedoms of all women throughout their life-cycle.'*¹⁵⁸

The prospects for Muslim women in the wake of the Beijing conference do not seem particularly bright, given the rejection or non-compliance of several Muslim (and non-Muslim) countries with the principle of equality between men and women in the family. The basic premise presented by governments to justify their rejection was that *Shari'a* was a divine law which could not be questioned and that it 'made women as equal as they should be'.¹⁵⁹ These arguments reflected positions of Muslim conservatives at the 1994 Cairo Conference on Population and Development where they had opposed women's rights to reproductive choice. Given that interpretations of the *Shari'a* are employed – by regimes both in and out of power – to violate women's rights at a moment when the international community recognizes women's rights as inalienable, the debate on Islam and women's rights assumes greater urgency.

Against this background Muslim women need to emphasize the ethical vision of Islam. Extending Islam's ethical vision of equality between the sexes to present needs, it is possible to assert that the universal principle of equality between men and women – a significant movement in the contemporary world – is also an Islamic vision. It is therefore obligatory for states and Muslim societies to promote women's rights in the family and society. A discourse which places the concept of universal

rights in constant dialogue with Muslim *Shari'a* therefore has a greater chance of success in human rights education in Muslim societies. Furthermore, Muslim women must engage with Islamic discourse on their own terms. This is necessary not only to redress a tradition of misogyny within establishment Islam but also to challenge the view that Islamist positions or regressive visions are necessarily 'Islamic'.

■

Conclusion

On the completion of five decades of independence, women in Muslim communities face considerable challenges as citizens of India and as members of India's largest minority. Their poor socio-economic status reflects a lack of social opportunity which, though not a feature exclusive to Muslim women, is exacerbated by their marginal status within an overall context of social disadvantage for most Indian women. This point was highlighted in a study of 39 districts in 1981 (where the population of Muslims ranged from 20 per cent to 95 per cent – which could be considered a fairly representative sample of the status of Muslims in India). In the study, the literacy rate of Muslim women was found to be 21.91 per cent – lower than even the poor national average of 24.82 per cent.

According to government reports, Muslim women are among the poorest, educationally disenfranchised, economically vulnerable, politically marginalized group in the country. In 1983, the Gopal Singh Committee instituted by the government, declared Muslims as a 'backward' community in India. A central feature of this 'backwardness' is their exceedingly poor socio-economic status, particularly of Muslim women. Most Muslim women remain 'invisible' workers in the informal economy. The Muslim share in public employment is less than 3 per cent. Within this picture of marginalization, it is a predictable certainty that the corresponding figures for Muslim women are further skewed towards the bottom. A lack of information on Muslim women contributes to the reinforcement of cultural stereotypes, serving to obfuscate their life experiences and struggles. Consequently, the notion that Muslim women's status in India is attributable to certain intrinsic, immutable 'Islamic' features or that their social status derives solely from Muslim laws, is widely prevalent.

On the other hand, the appropriation of Muslim women's issues by a vocal and politically influential male Muslim constituency for political purposes poses a considerable challenge to Muslim women's legal empowerment. This was highlighted during the Shah Bano case and the passage of the Muslim Women's Bill in 1986. In a context where the *Shari'a* is used to justify women's subordination, it is imperative for Muslim women in India to enter the discourse on the *Shari'a* with reference to personal law, and challenge their historic marginalization from religious knowledge. Furthermore, it is crucial for Muslims – women and men – to debate among themselves the possible reasons and remedies for their poor status as citizens of India.

The political ascendance of the Hindu right-wing and its inherent link between politics and religion has threatened India's secular fabric. The rise of communal violence in the last two decades has undermined secular law and violated constitutional ideals of religious non-discrimination, protection of human rights, implementation of social justice and the equality of all Indian citizens – as well as

principles of international human rights law. Right-wing illiberalism, communal prejudice and intolerance of diversity bodes ill for all Indian women; in the case of Muslim women it heightens physical and economic insecurity, limits possibilities of renegotiating their status with Muslim men and precipitates Muslim militancy.

The lack of social opportunities for Muslim women is a crucial issue needing urgent action. An improvement in literacy rates would directly influence Muslim women's socio-economic and political status as citizens of India. The acknowledgement of the universality of women's rights by the international community is relevant to the debate on Islam and women's rights, particularly with reference to women's rights in the family. The formation of forums and associations of Muslim men and women's initiatives in the 1990s is an important step towards facilitating public debate on Muslim women's issues. Muslim women and men must collaborate with individuals and organizations who are committed to the realization of women's human rights. The alliance of Muslim women with the women's movement in India, as well as movements for secularism, democracy and human rights, are crucial for forging a common front against forces opposed to women's self-determination.

Recommendations

1. Strengthening human rights mechanisms

The Indian government must repeal its reservations (on Articles 5a and 16.1) to the International Convention on All Forms of Discrimination Against Women (CEDAW), and take the steps required by the Convention to eliminate discrimination against women, while respecting the rights of the Muslim community to its identity in conformity with Article 1.1 of the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

‘States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities, and shall encourage conditions for the promotion of that identity.’

The government must honour its commitment to CEDAW, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

At a national level, the central government should ensure that State Minority Commissions are not disbanded or subsumed under other bodies. Minority Commissions should be allowed independent functioning. All individuals and parties who are guilty of human rights abuses during communal riots must be indicted and prosecuted.

2. Reform and constitutional provisions

Reform in Muslim personal law based on the needs of Muslim women, on the principles of equal rights and which is consistent with international human rights standards, is an urgent necessity and requires the attention of the Muslim community.

Concurrently, the Indian government should adhere to international human rights standards and its own constitutional provisions safeguarding the interests of women citizens and, in accordance with Article 14 of the Indian Constitution, ‘not deny any person equality before the law or the equal protection of the laws within the territory of India’.

Neither of the above undertakings need compromise the religious identity of the Muslim community nor their Indian nationality.

3. Self-empowerment

It is crucial for members of Muslim communities – especially Muslim women – to debate among them-

selves the reasons and solutions for their poor educational and employment status, their precarious economic situation, as well as the need for legal reform and greater political participation, and the possibilities of overcoming patriarchal structures within their own communities.

Muslim women need to participate in the contemporary debate on Islam and women’s rights and to build cooperation and synergy between genders and between communities to secure their empowerment.

In a context where the *Shari’a* is used to justify the denial of rights and freedoms to Muslim women, Indian Muslim women need to reclaim their right to religious knowledge, enter into the discourse on the *Shari’a* and challenge their historic marginalization from religious knowledge and its discriminatory interpretations.

4. Improving the economic status of Muslims

State agencies should actively develop and implement policies geared towards improving the socio-economic status of Muslim women and the Muslim community generally to ensure their full participation in public life as Indian citizens.

Such measures could include central government (collaboratively with state governments) implementation of loan schemes to facilitate the setting up of small businesses or skill training for Muslims; and the implementation of schemes for Muslim girls’ and women’s education in both rural and urban areas. This should be in conjunction with socio-economic measures so that Muslim women, particularly in urban areas (where illiteracy levels are high), can enjoy such economic benefits.

5. Improving the educational status of Muslims

Given the poor educational and low socio-economic status of Muslims in general, the central and state governments should ensure the implementation of primary and secondary education programmes for Muslims, particularly Muslim women. A survey of availability of textbooks in minority languages should be undertaken, after which printing and distribution of textbooks should be taken up by state governments.

The central and state governments must take measures to ensure the availability of teachers for Muslim communities, the appointment of women teachers, and the establishment of girls’/women’s hostels with the provisions of mid-day meals and school uniforms.

Schemes for adult literacy and reading rooms for Muslim communities must be undertaken by the central and state governments in order to address the compelling literacy needs of Muslim women. In addition, scholarships for minority students should be instituted by state governments.

6. Removing social prejudice against Muslims

Appropriate action must be taken by the central government against people, institutions and political figures who practise or propagate discrimination or intolerance on the basis of religion.

Furthermore, textbooks, films or writing which portray cultural stereotypes of Muslims should be withdrawn from school curricula. Efforts must be made to introduce textbooks which include Muslim history and positive references to all cultures in order to promote communal harmony.

7. Sensitizing the police and paramilitary forces towards human rights

In view of the anti-Muslim bias of police forces and the poor human rights record of paramilitary forces in conflict areas, the police and paramilitary forces should be educated and sensitized towards the protection of citizens' human rights during communal violence or in situations of armed conflict.

In addition, there must be proportional representation of Muslims in state and central police, and paramilitary forces.



- 1 The terms CE (Christian Era) and BCE (Before Christian Era) are used in this Report instead of AD and BC.
- 2 Today, Baluchistan and Sindh form part of Pakistan.
- 3 In contrast to the *ulema* who focused on Islamic theology, Sufis stressed the devotional aspect of Islam based on love, piety and simplicity. The term *sufi* derives from *suf* or wool worn by Sufis signifying their asceticism. Hiro, D., *Islamic Fundamentalism*, UK, Paladin Grafton Books, 1988.
- 4 The word *rishi* in Sanskrit means a saint or ascetic. In the context of Kashmir it denotes the teachings and movement of indigenous Islamic mystics. Khan, M.I., *Kashmir's Transition to Islam: The role of Muslim Rishis*, New Delhi, Manohar Publishers, 1997.
- 5 *Sunni* literally means 'one of the path' and is the largest Muslim sect. Sunni Islam includes all Muslims who believe in the first four *caliphs* as the rightful successors of the prophet Mohammed, who receive the six authentic books of tradition, and who belong to one of the four Sunni schools of jurisprudence. Shias are followers of Ali – the fourth *caliph*.
- 6 Spear, P., *A History of India*, Vol. 2, UK, Penguin Books, 1956, p. 223.
- 7 Khalidi, O., *Indian Muslims Since Independence*, New Delhi, Vikas Publishing House Pvt. Ltd, 1995, p. 2.
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- 16 Prithviraj Chauhan was the last of the Chauhan kings who occupied the Tomara kingdoms in the region of Delhi. He became a romantic hero due to the manner in which he wooed and won the daughter of the King of Kanauj. See Thapar, R., *A History of India*, Vol. 1, London, Penguin Books, 1966.
- 17 The rulers of what came to be called the Delhi Sultanate were Turks – mainly from Central Asia – who had settled in Afghanistan and also some Afgan nobles, *ibid.*, p. 237.
- 18 Prasad, I., *Medieval History of India*, 88, quoted in al-Najrami, M.Y., *Al-'alaqa al-siyasiyya wa thaqaifiyya banya al-Hind wa al-Khalifa al 'Abbasiya*, Beirut, Dar al-Fikr, 1979, p. 125.
- 19 Ucock Un, B., *Al-Nisa' al-hakimat fi tarikh*, tr. I., Daquqi, quoted in M. Mernissi, *The Forgotten Queens of Islam*, UK, Polity Press, 1993.
- 20 Thapar, *op. cit.*, p. 269.
- 21 *Ibid.*, p. 295. (Ibn Batuta was a north African Arab employed as a judge by the Sultan.)
- 22 *Ibid.*, p. 318.
- 23 Spear, *op. cit.*, p. 23.
- 24 Rajput rulers during the Sultanate period were chieftains of principalities in northern and central India, some of which were annexed by the Sultanate.
- 25 The Sikh faith (based on a synthesis between Hinduism and Islam) has its headquarters at the Golden Temple of Amritsar.
- 26 Spear, *op. cit.*, p. 37.
- 27 *Sati* – widows threw themselves on their husbands' funeral pyres – was a very limited practice. It was, however, used by the British to justify colonial rule and identify Indian 'tradition'.
- 28 Spear, *op. cit.*, p. 167.
- 29 'This "new Hindu woman" was at once different from unreformed, poor and uneducated women; from English women, who were both a model and a threat; and from non-Hindu, above all, Muslim women.' Metcalf, B.D., 'Reading and writing about Muslim women in British India', in Z. Hasan, (ed.), *Forging Identities: Gender, Communities and the State*, Kali for Women, 1994, p. 2.
- 30 *Ibid.*, p. 12.
- 31 Jalal, A., 'The convenience of subservience: Women and the state of Pakistan', in D. Kandiyoti (ed.), *Women, Islam and the State*, London, Macmillan, 1991, p. 81.
- 32 *Ibid.*, p. 83.
- 33 Having assumed a political role by conferring religious and legal legitimacy to the Sultan's authority since the Sultanate, the *ulema*, or 'clergy', became a voice which could not be ignored. In a context where the social order and its institutions were not Islamic, the *ulema* became religious and theological arbiters in state matters. Thapar, *op. cit.*, p. 290.
- 34 Thanawi, 1906, cited in Metcalf, *op. cit.*, p. 8.
- 35 Cited in Metcalf, *ibid.*, p. 16.
- 36 Shaheed, F., *et al*, *Women In Politics: Participation and Representation in Pakistan*, Special Bulletin, Shirkatgah, Lahore, May 1998, p. 4.
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- 43 Note – some figures unavailable.

- 44 *Ninth Quinquennial Review of Education*, op. cit., p. 51.
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- 47 Legislative Assembly debates, 1939, quoted in Lateef, *Muslim Women in India*, op. cit., pp. 68–9.
- 48 Lateef, 'Defining women through legislation', in Z. Hasan, op. cit., 1994, pp. 45–6.
- 49 Legislative Assembly debates, 1939, op. cit.
- 50 *Ibid.*, p. 72.
- 51 *Ibid.*, pp. 71–3.
- 52 *Purdah* is a Persian word used widely in India; its usage is not restricted to Muslim communities. *Purdah* here means the concealment of women and the separation of women's and men's worlds.
- 53 Caton, A.R., *The Key of Progress*, Oxford University Press, writing in 1930, quoted by Lateef, *Muslim Women in India*, op. cit., p. 78.
- 54 Shahnawaz, Begum J., *Father and Daughter*, Lahore, Nagarishar, 1971, quoted by Lateef, *ibid.*, p. 84.
- 55 *Ibid.*
- 56 The leadership of the Muslim women's movement, as with the movement in other communities, tended to become identified with particular families; in Bombay, for example, their activities were closely connected with the activities of the women from the Chinoy, Rahimtoola and Tyabji families, in Punjab, with those of Mohammed Shafi and Abul Qadir and in United Provinces with those of Begum Shahnawaz. Lateef, *ibid.*, p. 83.
- 57 Jalal, in Kandiyoti, op. cit., p. 84.
- 58 Lateef, *Muslim Women in India*, op. cit., p. 89.
- 59 *Ibid.*, p. 90.
- 60 Shaheed et al, op. cit., p. 4–5.
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- 62 Jalal, A., 'Exploding communalism: The politics of Muslim identity in South Asia', in S. Bose and J. Ayesha (eds), *Nationalism, Democracy, Development: State and Politics in India*, New Delhi, Oxford University Press, 1998, p. 78.
- 63 'In 1916, Jinnah persuaded the League and the Congress to agree upon a common scheme of reforms. At the League's Lucknow session Jinnah confessed he had been "a staunch congressman" and had "no love for sectarian cries".' Jalal, A., *Jinnah, the Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan*, Lahore, Sang-e-Meel Publications, 1992, p. 7.
- 64 In Punjab the League could win only one seat. In Sindh and the North West Frontier province it failed to win a single seat, while in Bengal, it won 37 seats out of 119. Jalal, *ibid.*, pp. 23, 33.
- 65 See Jinnah speech, quoted in Bin Sayeed, K., *Pakistan: The Formative Phase 1857–1948*, Karachi, Oxford University Press, 1968, p. 118.
- 66 The Constituent Assembly debates testify to two competing visions of India represented by Jawaharlal Nehru and Sardar Patel. Nehru wanted to reform and reconstitute a democratic India, bringing it in line with what he considered to be the movement of universal history. Patel, however, preferred a continuation of existing hierarchies and institutions. Nehru's vision finally prevailed, albeit with tenuous durability, lacking support from any powerful group. See Khilnani, S., *The Idea of India*, London, Hamish Hamilton, 1997, pp. 33–4.
- 67 'The three-tier system would start at the bottom with the provinces and such larger states or groups of states as agree to join one or the other groups. These groups should be grouped according to the desire expressed by their popular assemblies into two groups, one of which we refer to as Pakistan and the other as Hindustan. Finally there should be a union of all India embracing both Pakistan and Hindustan and if it were so agreed, some or all of the states or groups of states'. Memorandum by Sir Stafford Cripps, 18 April 1946.
- 68 Jalal, *Jinnah, the Sole Spokesman*, op. cit., p. 209.
- 69 Mounbatten came to India with the explicit instruction to 'avoid partition and to obtain an unitary government for British India and Indian states and at the same time observe the pledges to the princes and the Muslims ...'. Attlee to Mounbatten, cited by Jalal, 1992, p. 250.
- 70 Azad, A.K., *India Wins Freedom*, New Delhi, Orient Longman, 1988.
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- 73 *The Gazette of India*, quoted in M. Hasan, *Legacy of a Divided Nation*, op. cit.
- 74 *Ibid.*, p. 167.
- 75 The determination of the boundaries of the states of India and Pakistan was entrusted to the Boundary Commission headed by Cyril Radcliffe. Radcliffe visited India for the first time, taking five weeks to accomplish his task.
- 76 For further information, see Hasan, M., op. cit.
- 77 Kaifi Azmi quoted in *Outlook*, 28 May 1997, p. 51.
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- 79 Khilnani, op. cit., p. 31.
- 80 Hosain, A., *Sunlight on a Broken Column*, New Delhi, Penguin, 1992. Sita and Ranjit are Hindu names. There were numerous instances of Muslims being saved or rescued by Hindus at great personal risk, and vice versa.
- 81 This was perhaps due to the displacement of traditional patronage, and the search for employment. Lateef, *Muslim Women in India*, op. cit., p. 97.
- 82 *Ibid.*
- 83 Urdu was replaced by Hindi in Uttar Pradesh and the Punjab. See also Jalal, 'Exploding communalism', p. 97.
- 84 See Singh, T., *Kashmir, A Tragedy of Errors*, New Delhi, Penguin, 1995.
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- 87 Banerjee, A., quoted in Singh, op. cit., p. xiv.
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- 89 Varadarajan, P., *Kashmir: A People Terrorised. A report on Torture, Extrajudicial Executions, Rape, Arbitrary Arrests, Disappearances and other Violations of Basic Human Rights by the Indian Security Forces in Indian Administered Kashmir*, Paris, Federation Internationale Des Ligues Des Droits De L'Homme, 1993.
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- 112 Nayar, R., 'Gujarat in "Frenzy"', *Sunday (Calcutta)*, 20–26 December 1992, p. 54, quoted in Human Rights Watch/Asia, 1996, p. 18.
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- Article 16(1) of CEDAW: 'States parties shall take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right to freely choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all

cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.'

Article 29 CEDAW: '1. Any dispute between two or more States parties concerning the interpretation or application of the present convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organisation of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.', *Convention On the Elimination Of All Forms of Discrimination Against Women*, Geneva, United Nations Department of Public Information.

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- 139 Personal conversation with Dr Asghar Ali Engineer, Bombay, 27 March 1998.
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