"DO NOT BETRAY GOD OR YOUR PEOPLE": NEGOTIATING WOMEN'S RIGHTS UNDER MUSLIM FAMILY LAWS IN ISRAEL AND INDIA

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Abstract: Reforming Muslim family laws in countries where Muslims live as minorities has been a challenging task for the proponents of reform. Those who demand reform in such minority settings — ie, women's rights groups — often find themselves in a precarious position. They are often accused of putting their gendered interest before the community's needs and aspirations and of allegedly collaborating with the majority institutions and actors in destroying the culture and identity of their own communities. In the face of such blatant accusations and attacks, women's rights group were forced to innovate nuanced strategies to advance their individual and familial rights under religious laws while ensuring authenticity of their messages and securing the trust of their ethno-religious communities. Against this backdrop, this article will look at the case of state-enforced Muslim family laws in Israel and India, analyse the impact of these laws on women's rights and freedoms and provide further insight into the ways in which Muslim women have overcome the aforementioned socio-political and ideological challenges and contested and reformed religious family laws particularly pertaining to postnuptial maintenance (*nafaqa*).

Keywords: *Israel; India; shari'a; Muslim family law; reform; women's rights; marriage; divorce; maintenance; alimony*

I. Introduction

Whether in the Middle East, or in secular Western democracies, reform in family law has always generated resistance and controversy among those who shared competing visions of state–religion and family–nation relations as well as the place and responsibilities of women (both as mothers and wives) in the society. Resistance to reforming family laws, especially when they were religiously inspired, has been most pronounced within ethno-religious communities which held a minority position vis-à-vis the state whose institutional ethos visibly reflected the majority community's ethno-religious values and culture. Those who demanded reform (ie, women) in such minority communities have been usually alienated and accused of treachery for allegedly putting their own (gendered) interest before those of their religion and the political aspirations of their ethnic communities. No matter where

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and when, challenges women's rights activists in minority settings encountered and charges levelled at them have born striking resemblances: "Is this the right time to raise the issue of women's rights or demand reform in our customs or 'God-given' laws while the homeland remained under occupation? We need to stay united as a people and be alert against the enemy who employs the 'feminist agents' to undermine our collective identity and divide us from within…". These accusations meant that women within such communities have had to innovate nuanced strategies to advance their familial rights under religious laws while ensuring authenticity of their messages and keeping the trust of their communities. Against this backdrop, the following comparison of the cases of India and Israel — where the Muslim minorities' relationships with the state are extremely politicised — provides insight into the ways in which Muslim women have attempted to overcome aforementioned challenges and tried to contest and reform state-enforced Muslim family laws (ie, marriage, divorce, and maintenance in particular).

In both Israel and India, marriage and divorce are regulated according to the family laws of ethno-religious communities: Muslims are thus subject to *shariʿa*, Christians to canon law, Jews to *halakhah*, Hindus to Hindu law and so forth. In Israel, religious family laws are applied directly by communal judges at religious courts (eg, *qudah* at *mahakim sharʿiyya* or *dayanim* at *battei din*), whereas in India, they are implemented by civil judges at secular courts. Israel does not have a uniform civil family code applicable to all citizens; in family law, the Israeli government recognises only religious law. The Indian state, however, which claims to be a socialist, secular and democratic republic, does provide citizens with a secular alternative: the Special Marriage Act of 1954 allows individuals who do not want to be subject to religious laws to contract civil marriage and divorce.

Such legal systems, where individuals are subject to the jurisdiction of their ethno-religious communities in matters of family law, are known as personal status systems. Historically, personal status systems had been employed by imperial powers (eg, the Ottoman Empire, the French in Syria, the Dutch in Indonesia) to categorise their colonial subjects into ethno-religious groupings, excluding subaltern groups from power by denying them terms of equal membership in the political community.[1] Yet, personal status laws are not solely an antiquated system of legal and political ordering; from Morocco to Indonesia, many countries still continue to employ such pluri-legal systems to regulate familial relations among their subject populations.

Nearly all postcolonial governments which inherited such pluri-legal systems from their colonial predecessors have intervened in them in one way or another in the process of state and nation building. Prolongation of old personal status systems after independence would not only have resulted in further ossification

1 Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ: Princeton University Press, 1996).

of the colonial categories of race, gender and ethnicity but also subverted the attempts of postcolonial leaders to redefine the terms of membership in the political community. Therefore, most governments have restructured colonial versions of personal status laws with the aim of inculcating particular ideological visions and notions of subjectivity in their citizens, while ethno-religious communities have generally fiercely resisted government meddling to preserve their juridical autonomy and communal identity.[2] However, it would be inadequate to analyse matters of personal status or family law only from the perspective of state or nation building; as such laws are intimately related to the rights and freedoms of individuals, particularly women, who live under their purview.

Whether in colonial or postcolonial contexts, the restructuring of personal status systems has always been dominated by men. Women's inputs were rarely sought and almost never taken into consideration as men negotiated and renegotiated among themselves the rules pertaining to marriage, divorce, maintenance, succession etc that controlled women's bodies and livelihoods. Men have been the sole interpreters of the "holy" scriptures on matters concerning what was required of a woman to release her from the bond of marriage, when she could be declared a disobedient wife and denied her maintenance, how many days she must wait following divorce before making herself available to another man, how many silver coins must be paid to a non-virgin bride prior to engaging in sexual relations with her and so forth. In other words, religion-based personal status laws, whether Muslim, Jewish or Hindu, have been constructed by men through androcentric readings of sacred texts and customs and thus have come to heavily discriminate against women by subjugating women's bodies and minds while institutionalising traditional male privileges under the cloak of divinity.

While all of the abovementioned religio-legal traditions place certain restrictions and disabilities upon women's individual and familial rights, this article focuses particularly on some of the common problems women encounter under state-enforced Muslim family laws in Israel and India, where Muslims live as religious minorities. Although nowadays it is fashionable to single out Islam as inherently "misogynistic", this article claims nothing of the sort nor is it an analysis of women's rights under Islam in general; rather it considers so-called Muslim family laws as they are interpreted and applied by male-dominated secular and religious institutions in these two non-Muslim states. Furthermore, as I explained elsewhere in greater detail, the present article does not view state-enforced religious personal status laws as "divine" laws in their own right, but as socio-political constructions — not any different than secular enactments of the state, which essentially embody its coercive power and political will rather

2 Yüksel Sezgin, "Legal Unification and Nation Building in the Post-Colonial World: A Comparison of Israel and India" (2009) 8 The Journal of Comparative Asian Development 273; Yüksel Sezgin, "The Israeli Millet System: Examining Legal Pluralism through Lenses of Nation-Building and Human Rights" (2010) 43 Israel Law Review 631.

than those of a "heavenly" authority.[3] In this regard, the present article will engage the following questions: How do state-enforced Muslim family laws affect the rights and freedoms of Muslim women in Israel and India. If and when these laws encroach upon their rights, do Muslim women silently accept their "fate" — that is the oppression and subjugation of their minds and bodies under patriarchy — as is often presented in much of the media? Or do Muslim women devise strategies of resistance? If so, what tactics, particularly in minority settings where public discourse on reform is often dominated by concerns for identity politics rather than concerns for women's rights and well-being, are they using to navigate the maze of personal status systems? How do women go about changing state-sanctioned interpretations of religious norms and precepts? Are there any best practices? What strategies proved successful for integrating international women's rights standards (eg, The Convention on the Elimination of All Forms of Discrimination against Women) into religion-based personal status systems? These are some of the questions that this article seeks to begin to answer by analysing emerging Muslim women's rights movements in Israel and India. Mapping out their strategies and identifying what particular strategies and tactics did and did not work in each case will also offer valuable lessons for human and women's rights activists who struggle to uphold individual rights and liberties under similar religio-legal and customary systems elsewhere.

II. How Do State-Enforced Muslim Family Laws Affect Women's Rights and Freedoms?

Many Muslims believe, and many scholars of contemporary Islam now accept, that when Islam was first revealed in the seventh century, it significantly advanced women's status by granting them revolutionary rights and freedoms which had not previously existed in the Arabian society.[4] However, persistence of pre-Islamic tribal customs coupled with patriarchal interpretations of Islamic law are believed to have undermined the egalitarian principles of Islam and fostered a legal tradition that has denied women equal rights in the name of religion.[5] It is beyond the scope of this article to confirm or reject this assertion; however, like many other scholars

3 Yüksel Sezgin, *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt and India* (Cambridge, UK: Cambridge University Press, 2013) p.44.

4 John L Esposito and Natana J DeLong-Bas, *Women in Muslim Family Law* (Syracuse, NY: Syracuse University Press, 2001); Judith E Tucker, *Women, Family, and Gender in Islamic Law* (Cambridge, UK: Cambridge University Press, 2008).

5 Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (Reading, MA: Addison-Wesley Pub Co, 1991); Asma Barlas, *"Believing Women" in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Karachi: SAMA, 2004); Ahmed E Souaiaia, *Contesting Justice: Women, Islam, Law, and Society* (Albany: State University of New York Press, 2008); Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (New York: Oxford University Press, 1999).

of Islam,[6] I do hold that Muslim family laws, as applied and interpreted by state institutions, are not sacrosanct but are masculine legalities built upon androcentric interpretations of sacred texts, historical narratives and traditions. As such they often discriminate against women, violate their fundamental rights and liberties and deny them the power to control their own bodies and livelihoods. The laws pertaining to divorce are particularly demonstrative of women's subordination under Muslim family laws. With this in mind, the following addresses the question of how Muslim family laws in Israel and India affect women's rights, focusing on intricacies of divorce and other aspects of breakdown of family union such as postnuptial maintenance and looks at specific strategies Muslim women in minority settings have devised to empower themselves and respond to limitations and disabilities imposed upon their rights under state-enforced religious family laws.

A. The status of women under Muslim family law in Israel

Muslim citizens of Israel are subject to the purview of shariʿa courts, which have exclusive jurisdiction over marriage and divorce and have concurrent jurisdiction with civil family courts in regard to all other family matters (eg, custody, maintenance, succession). The position of Muslim women under the current family law system is precarious on two levels: First, since Israel — like other Muslim-minority states (eg, India) — lacked the legitimacy and political motivation to directly intervene in substantive Islamic law and enact a new code to replace the Ottoman Law of Family Rights (1917), Israeli shariʿa courts continue to apply the Ottoman law, allowing men polygynous marriages and the right to unilaterally divorce without recourse to the court (*talaq*). Even though the Israeli legislature, through penal interventions,[7] banned such discriminatory practices as polygyny, *talaq* and underage marriages, religious courts have found ways to protect male privileges and circumvent the secular law which, they claim, contravenes the Islamic law.[8] For instance, the former president of the Shariʿa Court of Appeals, Qadi Ahmad Natour (1994–2013), reports that he repeatedly instructed the *qadis* of shariʿa courts to disregard Israeli criminal law prohibiting *talaq* and confine their decisions to Islamic jurisprudence and precedents alone, arguing that this was necessary to protect Muslim identity under Jewish rule, even though such practices have been banned or curbed in many Muslim majority countries in the region.[9]

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6 Barbara Freyer Stowasser, *Women in the Qur'an, Traditions, and Interpretation* (New York: Oxford University Press, 1994); Wadud, *Qur'an and Woman* (n.5); Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton, NJ: Princeton University Press, 1999).

7 The Age of Marriage Law of 1950, the Women's Equal Rights Law of 1951 and the Penal Law Amendment (Bigamy) Law of 1959.

8 Aharon Layish, *Women and Islamic Law in a Non-Muslim State: A Study Based on Decisions of the Shariʿa Courts in Israel* (New York: John Wiley & Sons, 1975).

9 Personal interview with Qadi Ahmad Natour (Jerusalem, January 2005). Also see Ahmad Natour, "The Role of the Shariʿa Court of Appeals in Promoting the Status of Women in Islamic Law in a Non-Muslim State (Israel)" (JSD Thesis, American University Washington College of Law, 2009) p.220.

Second, as many commentators point out, for ideological and political reasons, Israeli law enforcement agencies often view matrimonial issues as internal affairs of the Arab community[10] and reportedly neglect to enforce civil laws[11] that primarily aim to protect women against discriminatory practices.[12] The state's failure and unwillingness to uphold its own laws vis-à-vis its Muslim citizens has further weakened women's position with regard to communal institutions and diminished their capacity to demand substantive changes in Muslim family laws. Thus, for the most part, Israeli Arab Muslim women have remained silent on issues relating to substantive laws of marriage and divorce, which are often viewed as the pillars of Muslim autonomy and identity in the Jewish state. Instead, as I will shortly demonstrate, they have for the most part limited their demands for reform to procedural aspects of law and less controversial issues such as spousal maintenance (*nafaqa*) and custody.

According to the 1917 Ottoman law (arts.92–101), maintenance, which is minimally understood to include at least food, clothing and shelter, is an unequivocal obligation of the husband within Islamic marriage.[13] However, there are certain circumstances under which a wife may be denied her right to maintenance. For instance, like the Jewish *halakhah* which denies maintenance to a woman who refuses to have sex with her husband, Islamic law also holds that a rebellious wife (*nashiza*), who leaves the marital home without her husband's permission, will lose her right to maintenance. The amount of postnuptial maintenance is normally

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10 Personal interview with Nasreen Alemy-Kabha, the former Coordinator of the Working Group for Equality in Personal Status Issues (Nazareth, January 2005).

11 For instance, under the law, the minimum age for marriage is 18 (raised from 17 to 18 only in November 2013). According to Ruth Halperin-Kaddari:

> "[e]ach year 4,500 children below the age of 18 marry in Israel, 2/3 Muslim, 1/3 Jewish. 90% of them are girls, half of them are under 17, about 500 are not even 16 — and these are only the official numbers".

Ruth Halperin-Kaddari, "Finally in Israel: A Girl Is a Girl, Not a Bride" *The Jerusalem Post* (2 December 2013), available at http://www.jpost.com/Opinion/Op-Ed-Contributors/Finally-in-Israel-A-girl-is-a-girl-not-a-bride-333760. I do not have access to information regarding how many of these underage marriage cases were prosecuted by the Israeli authorities each year. However, we have an earlier figure from 1990 to 1995, according to which only seven cases of underage marriages were prosecuted during the entire period, resulting in just two convictions: The Working Group on the Status of Palestinian Women in Israel, "NGO Report: The Status of Palestinian Women Citizens of Israel" (1997) p.63, available at http://www.adalah.org/eng/intladvocacy/pal_women1.pdf. Given that in 1995 alone nearly 1,750 underage marriages were contracted in the Arab community, the dismal number of convictions for the period of 1990–1995 demonstrates Israeli authorities' lack of interest in upholding secular family laws among its Palestinian citizens.

12 The Israeli state also tends to avoid interfering with the ultra-Orthodox Jewish practices relating to matrimony and domestic sphere that discriminate against women. Gad Barzilai, *Communities and Law: Politics and Cultures of Legal Identities* (Ann Arbor: University of Michigan Press, 2003); Ruth Halperin-Kaddari, *Women in Israel: A State of Their Own* (Philadelphia: University of Pennsylvania Press, 2004).

13 Layish, *Women and Islamic Law in a Non-Muslim State* (n.8) pp.91–111; Iyad Zahalka, "The Challenge of Administering Justice to an Islamic Minority Living in a Non-Muslim State: The Shari'a Courts in Israel" (2012) 2 Journal of Levantine Studies 151.

determined by the parties themselves through negotiations. In the absence of consensus, the *qadi* appoints representatives of the parties (*mukhbirun*) and the court to determine the exact amount of award. As far as average maintenance awards are concerned, Israeli shariʿa courts, like other religious courts, were reported to have been more conservative than civil family courts[14] — especially prior to the so-called maintenance reform initiated by the Shariʿa Court of Appeals under the leadership of Qadi Natour (more on this later). In this regard, Palestinian feminists' main agenda item has been to increase the amount of maintenance Muslim women receive in the event of separation or divorce.[15] The strategy adopted to attain this objective was to give Arab women a choice to alternatively bring their maintenance cases to civil family courts by removing the maintenance from the list of issues over which shariʿa courts had exclusive jurisdiction.

Because Israel does not have a secular maintenance law,[16] the civil family courts still need to determine maintenance cases according to 1917 Ottoman law. However, as is the case for all communities governed by respective religious family laws, Muslim family law applied by secularly trained civil court judges, at the time of writing only four of them were Arab, differs in practice from its application by Muslim *qadis* at shariʿa courts. This is because the legal culture, ideology and the rules of evidence and procedure at civil courts differ from those at shariʿa courts, and civil courts also abide by standards of secular international law even though implementing religious law.[17] Against this background, as shown later, women's rights activists from 1996 to 2001 campaigned for a legislative change that would place all personal status matters except marriage and divorce under concurrent jurisdiction of shariʿa and civil family courts, which they believed would be more generous and friendlier to women.

B. The status of women under Muslim family law in India

Muslim personal law in India, known as Anglo-Muhammadan law, is an uncodified hybrid system incorporating principles of English common law, local customs and Islamic law. In contrast with Israel, in India, Muslim family law is applied exclusively by secularly trained judges in civil courts who are likely to be non-Muslim and most likely to be Hindu.[18] For Indian Muslim women, the most

14 Maha El-Taji T, "Arab Local Authorities in Israel: Hamulas, Nationalism and Dilemmas of Social Change" (PhD Thesis, University of Washington, 2008) p.88.

15 Moussa Abou Ramadan, "Islamic Legal Reform: Shariʿa Court of Appeals and Maintenance for Muslim Wives in Israel" (2006) 4 Hawwa: Journal of Women in the Middle East and the Islamic World 29, 32.

16 Family Law Amendment (Maintenance) Law of 1959 is applicable only to individuals who do not belong to communities governed by personal status law. For further information, see Menashe Shava, "Maintenance in Jewish Law and in the State of Israel" (1973) 4 Diné Israel 181.

17 Ramadan, "Islamic Legal Reform" (n.15).

18 Muslims are underrepresented in Indian judiciary. According to the Sachar Report (Rajindar Sachar, Social, Economic and Educational Status of the Muslim Community of India, 2006) commissioned by the Prime Minister's office, only about 7.8 per cent of all judicial employees are Muslims.

problematic aspect of the current Muslim personal law system is what is known as "triple *talaq*", whereby a man may divorce his wife by uttering *talaq* three times in one sitting. Even though this type of divorce proceeding is heavily frowned upon in classical Islamic law, it is the most common form of divorce within the Indian Muslim community; unlike in Israel, the Indian government has never intervened — perhaps for political reasons and fear of backlash — to curb the customary Muslim male prerogative of unilateral, extrajudicial divorce (*talaq*).

As demonstrated by *Mohd Ahmed Khan v Shah Bano Begum*[19] in 1985, even though the practice of triple *talaq* can condemn Muslim divorcees to years of suffering and destitution, Indian women's rights activists, like their Israeli counterparts, have often restricted their demands for reform to postnuptial maintenance, as marriage and divorce were considered as off limits especially in the post-1985 environment of rising communal violence and identity politics. According to the Sachar Committee Report[20] on the status of the Muslim community in India, Muslim women are among the poorest of the poor in the country. Given high levels of illiteracy, unemployment and poverty among both rural and urban Muslim women, postnuptial maintenance is of critical importance for many women, especially for those who solely rely upon their husbands for their own and their children's well-being.

Postnuptial maintenance under Muslim personal law — especially the question of whether a Muslim husband is under obligation to provide for his ex-wife beyond *iddat* period (three-month waiting period following the divorce) — is a widely controversial matter in India. However, it is commonly accepted that in the event of divorce a Muslim wife is legally entitled to the deferred part of her *mahr*[21] and maintenance (*nafaqa*) for three months, or if pregnant, until she gives birth. Section 125 of the Criminal Procedure Code of 1973 requires all Indian men, regardless of their religious affiliation, to provide for their ex-wives who are destitute and unable to maintain themselves. In 1985, the Supreme Court declared that s.125, being general law of the land, overrode the Muslim personal law and created an obligation for the Muslim husband to provide for his destitute wife beyond religiously sanctioned *iddat* period.

The ruling of the court, which came to be known as the *Shah Bano* judgment, created an uproar within the Muslim minority. In response to the growing threats and demands of conservative and patriarchal elements within the Muslim community, the Rajiv Gandhi government enacted the Muslim Women (Protection of Rights on Divorce) Act in May 1986. The main objective of the Act, as most of its opponents and proponents seem to have believed at the time, was to reverse the court's ruling

19 [1985] 3 SCR 844, AIR 1985 SC 945.

20 See text referred to in note 18.

21 Islamic law requires the husband to provide his bride with *mahr* or dower to seal the marital contract. In practice, *mahr* is often split into two parts: the prompt portion is due upon signing of the contract, while the deferred part (often the larger part aiming to prevent the husband from making a hasty decision) is payable upon divorce.

and exclude Muslim women from the purview of s.125 of the Criminal Procedure Code of 1973, while limiting the husband's responsibility to *iddat* period alone.[22] As will be shown below, in the next two decades, Muslim women's rights activists ran a judicial campaign and mobilised the courts first to strike down the 1986 Act as unconstitutional and later to declare its expansionist interpretations, which surprisingly came to be more supportive (than s.125) of Muslim women's rights to maintenance (thanks to sympathetic activist judges) as binding.[23]

III. How Do Muslim Women Respond to Limitations and Disabilities Placed upon Their Rights by Religious Laws?

As demonstrated, state-enforced Muslim family laws in both Israel and India have been mostly detrimental to women's rights, while governments have proved unable or unwilling to reform these laws to protect women's rights and address their democratic demands. However, this does not mean that women have been resigned to sit on the sidelines, quietly enduring repression. On the contrary, they have fought back to reclaim their individual and familial rights and freedoms, contesting hegemonic narratives of gender and subjectivity to redefine their roles as rights-bearing, equal citizens within both the domestic and public spheres.

In religiously based personal status systems, where the systematic denial of women's fundamental rights is framed in terms of obeying God's orders, debate centres on the question of which interpretation of the Qur'an or hadith is the authoritative one.[24] Hence, it is not surprising that in many Muslim societies, women respond by forming hermeneutic communities that challenge official interpretations of religious precepts and offer alternative women-friendly readings of law. Such attempts to reform the system from within involve discourses framed by both Islam and vernacular readings of international women's rights standards, meticulously grafting ideas of gender equality onto culture, tradition and religious beliefs and teachings of local communities.[25] In this process of "indigenisation",

22 Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (New Delhi: Oxford University Press, 2001).

23 Mirjam Künkler and Yüksel Sezgin, "The Unification of Law and the Postcolonial State: The Limits of State Monism in India and Indonesia" (2016) 60 American Behavioral Scientist 987.

24 Bastiaan de Gaay Fortman, Kurt Martens and Mohamed Abdel Rahim M Salih, *Hermeneutics, Scriptural Politics, and Human Rights: Between Text and Context* (Basingstoke: Palgrave Macmillan, 2010).

25 Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006); Abdullahi Ahmed An-Naim, "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman or Degrading Treatment or Punishment" in Abdullahi A An-Na'im (ed), *Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992); Peggy Levitt and Sally Engle Merry, "Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States" (2009) 9 Global Networks 441; N Rajaram and Vasihali Zararia, "Translating Women's Human Rights in a Globalizing World: The Spiral Process in Reducing Gender Injustice in Baroda, India" (2009) 9 Global Networks 462.

the so-called alien discourses of rights and equality are appropriated and firmly grounded in the morals and traditions of religious communities.

These hermeneutic activist groups do not simply engage in scriptural analysis and debate; they are agents of change working to define and redefine the legal status of women. In doing so, they build cross-communal alliances that transcend ethno-religious divides (eg, Muslim–Jewish alliances in Israel, Muslim–Hindu alliances in India), lobby for judicial and legislative change, mobilise courts, educate the public and seek change by framing gender issues in terms that resonate with the dominant culture. Although they generally use moderate means and strive for incremental change by working within existing institutions, some reformist groups do end up marginalised, calling for more extreme measures demanding abolition of existing family law systems and even establishing alternative legal institutions. In other words, as governments and religious authorities fail to respond to repeated calls for reform, some disillusioned groups cease to use state-run family law institutions and set up their own judicial bodies, applying their own version of law to members of their self-proclaimed communities.[26] "Self-ruling communities" are epitomised by associations such as the All India Muslim Women Personal Law Board (AIMWPLB), which, after years of dissatisfaction with the version of *shariʿa* imposed by the male-dominated All India Muslim Personal Law Board (AIMPLB), set up a *mahila adalat* (women's court) to offer religiously acceptable solutions to such problems as triple *talaq*.

As noted earlier, personal status systems in effect control women's sexuality and bodies by subjugating their desires and wills to the purview of communal and religious authorities. In effect, women's bodies are objectified as communal property, all in the name of obeying "God's" orders and protecting the community's morals, values and identity. Especially in settings where the ethno-religious minority community lacks a national "homeland" or sovereign territory (eg, Palestinian citizens of Israel, Muslim citizens of India), the bodies of females are territorialised — they come to represent the "motherland" the community longs for. Family laws thus in effect demarcate the borders of the community, by regulating who women may marry and have children with. The survival of the community and the endurance of the nation depend upon the defence of its boundaries; tampering with its border markers — the family laws — simply cannot be tolerated by its male members.

As I will shortly demonstrate, in the context of Muslim family laws in Israel and India, interventions by majority-dominated institutions (eg, legislative, judicial) have often been perceived as hostile acts and thus fiercely resisted. In fact, more often than not they have backfired, solidifying patriarchal authoritarianism and intensifying communal resolve to resist change in family laws. In this atmosphere, women's rights groups operating within the community in collaboration with

26 Yüksel Sezgin, "How to Integrate International Human Rights Principles into Religious and Customary Legal Systems?" (2010) 60 Journal of Legal Pluralism 5.

like-minded majority groups to pressure mainstream "enemy" institutions (eg, courts, the parliament) to reform personal status laws and community conventions have been often accused of treason and discredited by self-proclaimed guardians of tradition and identity. As secular remedies thus become increasingly suspect as hostile attempts to weaken the community, hermeneutics has become the favoured route to reform for Muslim-minority women to advance their rights from within an Islamic, culturally acceptable framework. Bearing this in mind, Sections III(A) and III(B) of this article look at the activities of Islamic hermeneutic groups in Israel and India, exploring some of the strategies and tactics employed by them to reinstate Muslim women's claim to their rights under the religious family laws.

A. Internal reform at Israeli shariʿa courts

As mentioned earlier, Palestinian women have been primarily concerned with the issue of maintenance under the shariʿa system and focused their energy and resources to equalise the legal status of Muslim women to that of Jewish and Druze women through "the option of recourse in maintenance suits to the new civil family courts".[27]

In 1995, several Israeli and Palestinian (Jewish, Muslim and Christian) civil and women's rights organisations came together to form the Working Group for Equality in Personal Status Issues.[28] The group's primary goal was to amend the Family Courts Law (1995) as it pertained to Muslim women by giving them the option to choose between religious and civil courts to adjudicate matters pertaining to family law other than marriage and divorce, such as maintenance, custody, etc. In 1997, the coalition initiated a bill to amend the Family Courts Law of 1995, with the support of Nawwaf Masalha, a male Palestinian member of the Knesset. Throughout the process, the Working Group galvanised public opposition to the inequalities suffered by Palestinian Muslim women by publicising National Insurance Institute statistics showing that spousal and child maintenance payments awarded to Muslim women by the shariʿa courts were significantly lower than those awarded to Jewish and Druze women by the civil family courts.[29] After four years of horse-trading in parliament, the amendment (Law No 5) was finally passed in November 2001 by a vote of 51 to 23. Seven Arab members of parliament voted for the bill (three abstained and four voted against).[30]

As expected, the new law caused some profound schisms between the pro-reform groups and conservative elements within the Muslim community. Even

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27 Ido Shahar, "Practicing Islamic Law in a Legal Pluralistic Environment: The Changing Face of a Muslim Court in Present-Day Jerusalem" (PhD Thesis, Ben-Gurion University of the Negev, 2006) p.130.

28 The following organisations were members of the coalition: Women against Violence, the Association for Citizen's Rights in Israel, Israel Women's Network, Kayan — a feminist organisation — Al Tufula Pedagogical Center, the Center for Family Development, Al-Siwar and the Arab Association for Human Rights.

29 Shahar, "Practicing Islamic Law" (n.27) p.130.

30 El-Taji T, "Arab Local Authorities in Israel: Hamulas, Nationalism and Dilemmas of Social Change" 95.

some leftist and liberal members of the community joined conservatives in opposing the law, which they perceived as an assault on the national, cultural and institutional autonomy of the Muslim minority in Israel.[31] Nonetheless, most remarkable about this reform process was the alliance of Muslim and Jewish conservatives, both outside and within the Knesset that formed in opposition to the coalition of Muslim and Jewish women's organisations. Outside parliament, *qadis* allied with the Palestinian Islamic Movement against the pro-reform groups,[32] while in the Knesset, the Islamist and conservative Palestinian representatives joined with Orthodox Jewish parties to forestall and thwart the proposed legislative reform. The conservative front in parliament was eventually defeated by a counter-alliance of secular and centrist parties. As noted by Nasreen Alemy-Kabha, the former coordinator of the Working Group for Equality in Personal Status Issues, "Orthodox religious parties saw this initiative as an assault on religion by secularist forces" and joined the Islamists in opposing the reform.[33]

Even though the passage of Law No 5 of 2001 was an important achievement for Israeli Muslim women, nearly 15 years after its passage, the question remains as to whether the new legislation has actually resulted in women bringing their cases of concurrent jurisdiction to the civil family courts. Although Israeli family courts do not provide any statistics regarding the ethnic and religious background of petitioners, anecdotal evidence suggests that fewer Muslim women are coming to civil court than envisioned in 2001 by the architects of the law.[34] As argued by proponents of the law, this is mostly due to inherent structural problems and limitations of the civil court system. For example, at the time of writing, there were only 4 Palestinian judges and less than 10 Palestinian social workers in all 13 family courts in the country. As the current coordinator of the Working Group suggested, these numbers were still far from sufficient to make civil family courts an attractive and feasible option for Muslim women.[35]

Moreover, proceedings at family courts are conducted in Hebrew, and courts do not provide pro bono translation services for Arabic-speaking citizens. Although, in recent years, the Working Group has been providing free translation and legal aid services to Palestinians through its courtroom stations at the Haifa and Nazareth family courts, the lack of Arabic-speaking personnel familiar with the culturally

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31 *Ibid.*, p.89.

32 Ramadan, "Islamic Legal Reform" (n.15)

33 Personal interview with Nasreen Alemy-Kabha (n.10).

34 That whether Muslim women prefers civil or family courts remains to be controversial issue in the literature: Areen Hawari, "Personal Status in Civil Versus Religious Courts: A Controversial Issue" (December 2012) (16) Jadal, available at http://mada-research.org/en/files/2012/12/Areen-Hawari-Jadal-16.pdf; Heba Yazbek, "Eleven Years Since the Amendment to the Family Rights Law: Achievements and Challenges" (December 2012) (16) Jadal, available at http://mada-research.org/en/files/2012/12/Heba-Yazbek-Jadal-16.pdf; Hamza Ahmad Hamza, "Family Rights Act: Certainty of Equity and Suspicion of Unfairness" (December 2012) (16) Jadal, available at http://mada-research.org/en/files/2012/12/Hamza-Ahmad-Hamza-Jadal-16.pdf.

35 Phone interview with Heba Yazbak (April 2010).

specific concerns of Palestinian families continues to make these courts a largely alien and unwelcoming environment for many Arab women.[36] And, as some suggest, the social and political sanctions for using Israeli courts for family matters traditionally dealt with under *shariʿa* also discourage some women from accessing civil family courts to resolve their maintenance or custody disputes.[37] All in all, the legislative change has not yet produced many of its intended outcomes.

However, there have been some unintended and indirect positive effects resulting from the Working Group's efforts and the new law. Fearing the erosion of their jurisdiction to the civil family courts, Israeli shariʿa courts introduced a number of reforms to improve the status of women concerning maintenance, child custody and even divorce.[38] In this regard, the maintenance reform is especially notable. The process adopted by the Shariʿa Court of Appeals, under the leadership of Qadi Natour, was identical to that used a century earlier by the British to reform Islamic law in the Sudan: a legal circular or *marsoum qadai*.[39] The circular (No 2), issued amidst calls for intervention by the Knesset, ordered *qadis* to rely upon written evidence, such as tax returns or insurance documents, instead of *mukhbirun* (informants), to determine the amount of spousal maintenance. In the months following the promulgation of the new circular, maintenance awards made to Muslim women by the Shariʿa Court in West Jerusalem reportedly rose by nearly 50 per cent.[40] In fact, some claim that shariʿa courts now award the highest average sums of maintenance in the country,[41] while others argue that women are still better off at civil family courts. I could not independently verify whether these claims are true or not; however, my analysis of some family court cases from 2006 to 2012 indicate that the average sums of spousal maintenance awards across civil and Islamic courts seem to be in the range of NIS 1,200–NIS 1,500 per month (~300–400 USD).

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36 *Ibid*.

37 Personal interview with Prof Aharon Layish (Jerusalem, June 2004).

38 Moussa Abou Ramadan, "The Transition Form Tradition to Reform: The Shariʿa Appeals Court Rulings on Child Custody (1992-2001)" (2003) 26 Fordham International Law Journal 595; Ramadan, "Islamic Legal Reform" (n.15); Moussa Abou Ramadan, "Judicial Activism of the Shariʿah Appeals Court in Israel (1994-2001): Rise and Crisis" (2003) 27 Fordham International Law Journal 254; Moussa Abou Ramadan, "Divorce Reform in the Shariʿa Court of Appeals in Israel (1992-2003)" (2005) 13 Islamic Law and Society 242; Natour, "The Role of the Shariʿa Court of Appeals" (n.9); Zahalka, "The Challenge of Administering Justice" (n.13); Iyad Zahalka, *The Guide of Islamic Judiciary-Personal Status* (Tel Aviv: Israel Bar Publishing House [In Arabic], 2010).

39 For further information on *marsoum qadai*, see Yitzhak Reiter, "Qadis and the Implementation of Islamic Law in Present Day Israel" in R Gleave and E Kermeli (eds), *Islamic Law: Theory and Practice* (London and New York: IB Tauris, 1997); Ramadan, "Judicial Activism of the Shariʿah Appeals Court in Israel (1994-2001)" (n.38); Ramadan, "Divorce Reform in the Shariʿa Court of Appeals in Israel (1992-2003)" (n.38); Ramadan, "Islamic Legal Reform" (n.15).

40 Ido Shahar, "Legal Reform, Interpretive Communities and the Quest for Legitimacy: A Contextual Analysis of a Legal Circular" in Ron Shaham (ed), *Law, Custom, and Statute in the Muslim World: Studies in Honor of Aharon Layish* (Leiden: Brill, 2007) p.209.

41 Zahalka, "The Challenge of Administering Justice" (n.13); Hamza, "Family Rights Act" (n.34); Natour, "The Role of the Shariʿa Court of Appeals" (n.9).

Even though the pressure exerted by women's groups during the campaign for Law No 5 seems to have forced shariʿa courts in Israel to embrace a more women-friendly approach,[42] unequal treatment of women remains a major problem under the current system. Some women attribute this to the lack of female voices at the shariʿa courts and advocate for appointment of female *qadis*. The current coordinator of the Working Group noted that women's groups have already raised the issue with the nomination committee for shariʿa judges and received the vocal support of several key members for inclusion of female *qadis* in the future.[43] Muslim women's rights activists remain hopeful that the Israeli authorities will follow the revolutionary example set by the Palestinian Authority[44] and appoint female judges to shariʿa courts in the near future. However, women also recognise that the idea of female *qadis* will be opposed by not only conservative elements within the Muslim community but also orthodox Jewish parties which will be fearful of the impact of such a drastic change on the rabbinical system. In fact, as expected, in December 2015, a bill proposing to appoint female judges to Islamic courts was defeated in the Knesset thanks to ultra-Orthodox members' fear-mongering that such move would set a legal precedent for the appointment of female *dayanot* to rabbinical courts.[45]

The initiative leading to amendment of Law No 5 in 2001 was the first and most successful attempt of Israeli Muslim women's organisations to reform Muslim family laws and exert more control over their bodies and livelihoods.[46] However, the 2001 reform has also shown that a solely secular approach to the issue of reform in Muslim family laws in Israel was inadequate. In this respect, women have drawn two important lessons from the 2001 experience. First, they learned that any change brought through collaboration with "mainstream" Israeli institutions (eg, the Knesset or Israeli civil courts) may raise suspicions among local Muslim population thereby discredit the organisations and individuals spearheading the reform process. Second, they also learned that the inaccessibility of Hebrew-dominated legal institutions for the Arabic-speaking population and the unwillingness of the Israeli state to uphold its own laws aimed at protecting women's rights within the Arab community could undermine any reform and lessen its applicability and effectiveness. Thus, following the 2001 reform, some women's groups, despairing of the limitations of an exclusively secular approach,

42 Yüksel Sezgin, "The Role of Alternative Legalities in Bringing about Socio-Legal Change in Religious Systems" in David Nelken (ed), *Using Legal Culture* (London: Wildy, Simmonds and Hill, 2012).

43 Phone interview with Heba Yazbak (n.35).

44 The Palestinian government in the West Bank appointed two female qadis, Khuloud Faqih and Asmahan Wuheidi to Islamic courts in February 2009.

45 Postscript: The first ever female *qadi* was appointed to Israeli shariʿa courts on 25 April 2017. For further information, see http://www.timesofisrael.com/in-historic-step-first-female-judge-appointed-to-israels-sharia-courts/.

46 In November 2013, the Knesset raised the minimum age of marriage from 17 to 18. The Working Group was again one of the leading actors in the coalition that made the legislative change possible.

have begun looking for remedies to problems in Muslim family law within Islamic tradition itself — ie, seeking women-friendly interpretations of classical sources of *shariʿa* such as Qur'an and Sunna. To date, the leading advocate of this approach has been the Nissa wa Afaq (Women and Horizons).

Nissa wa Afaq was founded in 2002 in Kafr Qara under the leadership of Saida Mohsen-Byadsi, a Muslim lawyer graduated from the Orthodox Jewish Bar-Ilan University. One of the premises of Nissa wa Afaq is that secular discourses are often irrelevant in the Israeli–Palestinian context, where Islam plays a powerful role in every aspect of life. The leaders of the organisation argues that in order for change to benefit women in such a society, Islam must be the vehicle for bringing public awareness of acceptable options — namely liberal and women-friendly interpretations of Qur'an and Sunna. In recent years, Nissa wa Afaq has become the leading organisation in Israel rejecting androcentric interpretations of Qur'an which subjugate women and advocating for a feminist rereading that grants women equal status with men. The organisation and its activities are inspired by not only the writings of such leading Muslim feminists as Fatima Mernissi and Farida Bennani but also the work of Kolech, an Israeli Orthodox Jewish women's organisation that has fought against discriminatory marriage and divorce laws under halakhah, rendering women-friendly interpretations of classical sources of Jewish law. The leading members of Nissa wa Afaq point out that the two organisations, especially early on, enjoyed close ties, as they were essentially undertaking very similar projects to advance women's rights under Islamic and Jewish laws within religious courts by rendering women-friendly interpretations of their respective traditions.[47] Nissa wa Afaq offers classes for Muslim women on the alternative liberal and feminist interpretations of Islamic law and practices relating to marriage, divorce, inheritance and maintenance. Besides its grassroots activities, Nissa wa Afaq is also working on a new code of family law to replace the 1917 Ottoman law and empower women to promote their rights as wives and mothers within the shariʿa system.[48]

B. Impact litigation and the rise of Islamic feminism in India

Indian women's organisations, including mainstream Muslim women's groups, have historically adopted a secularist approach to family law reform. "The absence of a Uniform Civil Code (UCC) in the last quarter of the twentieth

47 Tzafi Saar, "A Feminist Koran?" (7 April 2005), available at http://www.utne.com/2005-04-01/AFeministKoran.aspx; Naifeh Sarrissi, "Towards Amending Personal Status Law in Shariʿa Courts" (2012) (16) Jadal, available at http://mada-research.org/en/files/2012/12/Naifeh-Sarrissi-Jadal-16.pdf; Saida Mohsen-Byadsi, "Feminism in Islamic Religious Discourse: The Experience of 'Women and Horizons'" (2009) (4) Jadal, available at http://mada-research.org/en/files/2009/10/jadal4/jadal4-eng/Jadal_Mohsen-Biadseh_FINAL.pdf.

48 Email correspondence with Nissa wa Afaq (September 2010).

century" declared the 1974 Report of the National Committee on the Status of Women as follows:

> "is an incongruity that cannot be justified with all emphasis that is placed on secularism, science and modernism. The continuation of various personal laws which accept discrimination between men and women violates the fundamental rights".[49]

From the 1950s on, the general belief among Indian feminists was that improving the status of women could be achieved only through replacement of religious family laws with a UCC. However, ideological transformations since the mid-1980s, the rise of inter-communal violence, and the appropriation of the concept of a UCC by right-wing Hindu platforms (eg, Sangh Parivar and Bharatiya Janata Party)[50] have more recently compelled women's organisations to reconsider their strategies and drop their earlier calls for a UCC.[51] In this new environment, the UCC has ceased to symbolise the advancement of women's rights and instead is seen as an issue over which men appropriate women's bodies and selves in their "tribal" wars.[52] As Dr Syeda Hamid,[53] the President of the Muslim Women's Forum put it, the monopolisation of UCC debates by "racist" and "sexist" groups in the 1990s has posed difficult ideological and ethical dilemmas, particularly for Muslim feminists:

> "The bottom line is that there should be a uniform law for all citizens… But of course we changed our attitude and policy…We had to…When the community is battered, you keep your silence. How you can talk about reform when you are being killed…How you can use the same language [UCC] with the people who are battering you [right-wing Hindus]…? You know what happened in Ayodhya, you know about the pogroms,

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49 Nivedita Menon, "Women and Citizenship" in Partha Chatterjee (ed), *Wages of Freedom: Fifty Years of the Indian Nation-State* (Delhi: Oxford University Press, 1998) p.244.

50 Sangh Parivar is an umbrella organisation of right-wing Hindu nationalist organisations established by followers of the Rashtriya Swayamsevak Sangh or RSS (The National Volunteer Corps). BJP (Indian People's Party), a Hindu nationalist party founded in 1980 and the second largest political party in India, belongs to Sangh Parivar. Sangh Parivar and BJP are among the strongest advocates of the Uniform Civil Code, which they consider instrumental for abolishing diverse family laws and imposing upon religious minorities one law, the terms of which will be dictated by the Hindu majority.

51 Menon, "Women and Citizenship" (n.49) p.252; Flavia Agnes, "Constitutional Challenges, Communal Hues and Reforms within Personal Laws" (2004) 3 Combat Law 4, 5.

52 When I asked a BJP member of the Indian parliament who introduced an unsuccessful bill to enact a UCC about his real intentions, he told me that Hindu law prohibited bigamy for Hindu men while Muslim law allowed it. He argued that if this continued, within 25 years, Hindus would become a minority (in their "own" land) and Muslims the majority. To equalise Muslim men's status with that of Hindu men, polygynous marriage had to be outlawed through introduction of a UCC. His introduction of the UCC bill was in fact by his own admission primarily motivated by the political survival of the Hindu majority, and a desire to avenge the loss of Hindu male privileges by inflicting a similar "pain" on Muslim men (Personal interview with Mr Bachi Singh Shri Rawat (New Delhi, March 2005)).

53 Personal interview with Dr Syeda Hamid (New Delhi, March 2005).

> and genocide of Gujarat…When the state becomes a predator…you keep your silence, you do not talk about reforming the Islamic law, because everything is about identity and everything is about religion…"

Currently, Muslim women's groups pursue a combination of legislative and judicial strategies, working together with men and women from other communities (Hindu, Christian, etc) and rely increasingly on a hermeneutic approach — like the Palestinian Muslim women in Israel — to empower themselves and challenge the gender status quo. For example, in the last two decades, Muslim women's rights activists have mobilised the courts to challenge and reform gender unequal family laws.[54] In the aftermath of the infamous 1986 Muslim Women (Protection of Rights on Divorce) Act described earlier, women's organisations launched a judicial onslaught to overturn the Act and defeat its minimalist interpretations denying Muslim women's right to maintenance beyond the *iddat* period, by invoking a seemingly innocuous clause in the law which seems to have escaped the attention of the architects of the legislation.[55] The clause stated, "a divorced woman shall be entitled to a *reasonable and* fair provision and maintenance to be made and paid her within the *iddat* period" (emphasis added).[56] Their campaign culminated in 2001 with the Indian Supreme Court's Danial Latifi case in which the court overruled the minimalist interpretations of the 1986 Act and on grounds of this very clause decided that a Muslim husband was required to make a lump sum payment to his ex-wife during the period of *iddat*, which would include not only the maintenance (*nafaqa*) and the deferred part of her dower (*mahr*) but also a "reasonable and fair provision" that would financially secure her future well beyond the period of *iddat*.[57] Thanks to the expansionist interpretations upheld by the court, Muslim women are now reported to receive some of the highest maintenance awards in the country.[58] However, this is true only if and when Muslim women take their postnuptial maintenance cases to civil courts which are presided over by judges who comply with the Supreme Court's binding maximalist interpretation of the 1986 Act. There are still many lower and even provincial high court judges who continue to revoke minimalist interpretations of the 1986 Act and deny Muslim women maintenance beyond *iddat* period. Moreover, as in Israel, majority-dominated civil courts also remain largely inaccessible (for various cultural, political, financial reasons and

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54 Ashok H Desai and S Muralidhar, "Public Interest Litigation: Potential and Problems" in BN Kirpal, Ashok H Desai and Gopal Subramanium (eds), *Supreme but Not Infallible: Essays in Honour of the Supreme Court of India* (Delhi: Oxford University Press, 2000).

55 Narendra Subramanian, *Nation and Family: Personal Law, Cultural Pluralism, and Gendered Citizenship in India* (Stanford: Stanford University Press, 2014).

56 Agnes, "Constitutional Challenges, Communal Hues and Reforms" (n.51).

57 Narendra Subramanian, "Legal Change and Gender Inequality: Changes in Muslim Family Law in India" (2008) 33 Law & Social Inquiry 631.

58 Werner Menski, "Asking for the Moon: Legal Uniformity in India from a Kerala Perspective" (2006) Kerala Law Times 52; Werner Menski, "Double Benefits and Muslim Women's Postnuptial Rights" (2007) Kerala Law Times 21.

so on) to the majority of Muslim women who instead use community-run shariʿa courts or what Solanki calls "doorstep law courts".[59] In other words, however important or revolutionary they were, changes in Muslim personal law introduced through judicial or legislative means have been rather equivocal and have had limited effects on the ground.[60]

In the post-*Shah Bano* era, when inter-communal tensions and the threat of right wing Hindu groups have escalated, the Muslim community has grown increasingly insular and resistant to the idea of change in its laws.[61] The community has come increasingly under the control of conservative elements such as the AIMPLB. The male-dominated board, which viewed the civil courts' interventions in personal law as assaults on Muslim existence and identity in India, has set up its own network of shariʿa courts (*Dar-ul Qazas*) that applied an androcentric version of *shariʿa* and discouraged women from taking their cases to state courts and claiming maintenance beyond the *iddat* period.[62] Against this background, Muslims women's rights activists realised that the demand for change had to come from within and be firmly grounded in the scripture and tradition of their own communities.

As the AIMPLB's influence over religious law and institutions has increased, many Muslim women activists have joined the organisation trying to draw attention to and reform gender unequal practices under Muslim personal law. For instance, some of the strategies women had tried within AIMPLB included drawing up a model *nikahnama* (marriage contract) that would limit the practice of triple *talaq* and allow women to stipulate conditions of the marriage contract such as the option for delegated divorce (*talaq-e tawfiz*). However, the male-dominated AIMPLB rejected the model *nikahnama* as "un-Islamic" and swiftly silenced reformist women's voices throughout the organisation.[63] In response, in 2005, some female members, representing the major sects and schools of Islamic jurisprudence, left the organisation and established the AIMWPLB, based in Lucknow. The AIMWPLB released a new *nikahnama* in 2007 consisting of a 17-point *hidayatnama* (marriage guidelines for brides and grooms under Islamic law) and an 8-point section on divorce process. It prohibits triple *talaq* through text messaging, email, videoconferencing or phone and recognises women's right to delegated divorce (*talaq-e tawfiz*), no-fault divorce (*khulʿ*) and details women's right to post-marital

59 Gopika Solanki, *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India* (Cambridge: Cambridge University Press, 2011).

60 Sezgin, *Human Rights under State-Enforced Religious Family Laws* (n.3) p.193.

61 Yüksel Sezgin and Mirjam Künkler, "Regulation of 'Religion' and the 'Religious': The Politics of Judicialization and Bureaucratization in India and Indonesia" (2014) 56 Comparative Studies in Society and History 1.

62 Mengia Hong Tschalaer, *Muslim Women's Quest for Justice: Gender, Law and Activism in India* (New Delhi: Cambridge University Press 2017); Jeff Redding, "Institutional v. Liberal Contexts for Contemporary Non-State, Muslim Civil Dispute Resolution Systems" (2010) 6 Journal of Islamic State Practices in International Law 2; Sabiha Hussain, *Shariat Courts and Women's Rights in India* (New Delhi: Centre for Women's Development Studies, 2007).

63 Noorjehan Safia Niaz, "Marriage in Islam" (2004) 3 Combat Law 25, 28.

maintenance and *mahr* (dower). Moreover, the model *nikahnama* also gives women control of their reproductive health and bodies. For example, it allows women to seek dissolution of the marriage if the husband has an illicit relationship with another woman or refused to disclose his human immunodeficiency virus/ acquired immune deficiency syndrome status before or after marriage. To pre-empt the possible attacks of the traditional *ulama* on the new *nikahnama*, the new marriage contract carries extensive quotes from relevant verses of the Qur'an. As the president of the AIMWPLB, Shaista Amber reports that the new *nikahnama* continues to gain acceptance in the community and about 50 couples have so far married under the relatively gender-balanced contract.[64]

In addition, the AIMWPLB has also set up its own court structure (*mahila adalat*) and has begun deciding cases using woman-friendly interpretation of Islamic law.[65] The women's court is located in Lucknow and convenes every Friday at a local mosque.[66] It currently decides about 200 divorce cases per year. Both male and female judges (*qazis*) sit together at *mahila adalat*. While the law they apply is not substantively different from Muslim family law as applied by AIMPLB courts, the *qazis* at the *mahila adalat*, Ms Amber claims, implement it with an eye on universal standards of human and women's rights.[67] The Bharatiya Muslim Mahila Andolan (BMMA), another organisation working to secure women's rights through feminist and humanist interpretations of Islam, has taken the cause one step further, making history by allowing a female *qazi*, Dr Syeda Hamid, for the first time ever to solemnise a *nikah* (marriage) ceremony where all four witnesses were also women. In recent years, BMMA has also set up the first-ever all-women shari'a court in the city of Pune which deals with marital discords and property-related disputes.[68] While mainstream *ulama* were busy questioning whether a woman could solemnise marriage under Islamic law, or whether Islam bestows upon the Muslim wife a right to claim maintenance beyond *iddat*, Muslim feminist groups from AIMWPLB to BMMA and Aawaaz-e-Niswaan quietly proceeded to break with the tradition and opened a new chapter for Muslim women in India, who could rely on neither the secular state nor the male-dominated communal institutions to recover their matrimonial rights, but only on their own initiative to reinterpret *shari'a* through feminist and liberal lenses.[69]

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64 Phone interview with Shaista Amber (May 2010).

65 Puja Awasthi, "Our Own Personal Law Board" (21 September 2006), available at http://www.indiatogether.org/2006/sep/wom-aimwplb.htm.

66 The mosque was founded by Shaista Amber.

67 Phone interview with Shaista Amber (n.64).

68 The Times of India, "All-Women Shari'a Court to Redress Grievances of Muslim Women" *The Times of India-Online Edition* (6 October 2013), available at http://timesofindia.indiatimes.com/india/All-women-sharia-court-to-redress-grievances-of-Muslim-women/articleshow/23601722.cms.

69 Sylvia Vatuk, "Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law" (2008) 42 Modern Asian Studies 489; Sylvia Vatuk, "The 'Women's Court' in India: An Alternative Dispute Resolution Body for Women in Distress" (2013) 45 Journal of Legal Pluralism 76.

IV. Conclusion

Family laws have been a significant channel through which men insure their control over women's bodies and autonomy. Women in many societies have struggled to change this. However, in cases where Muslim communities are a religious minority, women have faced more resistance to the liberalisation of family laws that place restrictions and disabilities upon their individual and familial rights and freedoms. Such encroachments are particularly present in the realms of marriage, divorce and postnuptial maintenance. Women have responded by building cross-communal alliances, by lobbying for change in family law through legislative and judicial channels and by forming hermeneutic communities that offer women-friendly interpretations of state-enforced religious laws in the hope of reforming the law from within an Islamic and traditional framework. At this point, the best strategies for family law reform and the integration of international principles of gender equality into religion-based personal status systems remain to be seen. Nevertheless, there are lessons to be learned from the activism of Muslim women in Israel and India.

Laws pertaining to marriage and divorce in personal status systems are extremely difficult to reform, as they are often viewed by leaders of ethno-religious groups as the pillar of communal identity and the guarantor of cultural autonomy and ethno-genealogical continuity. This is especially true for Muslim minorities living in non-Muslim majority states, which have grown increasingly defensive of their marital laws. And states, as evidenced by the examples of the Israeli and Indian governments, have largely refrained from directly interfering with substantive Muslim marriage and divorce laws for fear of further antagonising conservative elements and especially politically powerful males within minority communities. In Muslim minority settings, where issues of marriage and divorce are intricately entangled with identity politics, women's groups have encountered similar constraints and in the past primarily addressed procedural and less controversial issues (eg, maintenance) through legislative and judicial channels. However, they are increasingly addressing substantive issues of marriage and divorce through hermeneutic means.

It is worth noting that reforming marital laws has not been any easier for Muslim majority governments. Even though they are in theory vested with the necessary moral and political authority and legitimacy to reform substantive family laws, their top–down interventions (eg, Egypt's Law No 44 of 1979)[70] have encountered challenges, at times even inadvertently harming women's cause in the long term by strengthening the hand of anti-reform conservative groups. The same can be said of judicial and legislative interventions into procedural or non-marriage or divorce-related aspects of Islamic law in non-Muslim majority settings. For example, the Indian Supreme Court's (politicised) judgments aiming to expand

70 Sezgin, *Human Rights under State-Enforced Religious Family Laws* (n.3) p.119.

Muslim women's right to maintenance have further antagonised conservative elements within the Muslim community, prompting them to boycott state courts and set up an alternative network of Islamic courts (*Dar-ul Qazas*), which in turn have actively discouraged Muslim women from using the civil courts to claim their expanded rights to maintenance. Similarly, Law No 5 of 2001 aiming to empower Palestinian Muslim women by granting them recourse to Israeli civil family courts in maintenance suits has not fully achieved its objectives, mostly due to the limited accessibility of the courts to Arabic-speaking women and social pressure within the Palestinian community condemning the use of civil courts for family matters that normally fall under the purview of *shari'a*. However, such secular interventions have not been entirely unsuccessful. As seen in the case of Law No 5, the law indirectly induced shari'a courts to undertake internal reform to dissuade Muslim women from going to civil courts. Thus, the impact of top–down interventions can be significant in symbolic and indirect ways, even if, in and of themselves, they may not offer an immediate and practical remedy to Muslim minority women living in hostile environments.

In the final analysis, a relatively promising approach to reform seems to be the hermeneutic approach. Muslim family laws are products of human agency, which through androcentric readings of the sacred texts and tradition have denied women equal representation in the construction of religious law. As seen in the cases of Muslim women in Israel and India, by deconstructing the meaning of texts, historical narratives and tradition, hermeneutic groups are constantly altering the way we understand the legality of religious laws concerning women's rights in marriage and divorce and women's status in both the domestic and public spheres. The pace of reform through hermeneutic means may be criticised for being too slow. Furthermore, it may also fall short of universal and secular standards for women's rights. However, these "limited" and "gradual" changes could potentially play a greater role in influencing women's rights in the desired direction than alternative top–down, heavy-handed legal remedies, which may cause more harm than good in the long term by diminishing the possibility for upholding international women's rights standards in the Muslim world. Therefore, it is the present article's contention that hermeneutic activity — reform from within — is an invaluable approach to expanding Muslim women's rights in the long term. And in the end, the ultimate goal of any reform, whether brought about through hermeneutic, legislative or judicial means, should be to dismantle long-standing, discriminatory cultural dispositions and stereotypes about women's rights and their place in the society.