

## WOMEN'S RIGHTS IN THE TRIANGLE OF STATE, LAW, AND RELIGION: A COMPARISON OF EGYPT AND INDIA

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A personal status system can be defined as a system in which members of various ethno-religious communities, which are judicially recognized as such by central authorities, are subject to jurisdiction of communal (rather than national or territorial) norms regarding matters such as marriage, divorce, spousal maintenance, and inheritance.<sup>1</sup> Such systems often feature not a national body of family law that is uniformly applied to all citizens, but instead a confessional system in which a Muslim is subject to Sharia, a Jew to *Halakha*, and so forth.

In the past, colonial rulers employed personal status systems to compartmentalize subjects into ethno-religious and confessional groupings, and to distribute goods and services while denying certain populations the benefits of full membership in the political community.<sup>2</sup> We can understand why colonial rulers, who often had a “divide and conquer” approach toward their subject populations, may have employed pluri-legal personal status systems. However, it is difficult to comprehend why such modern nation-states as Egypt and India—both constitutionally obliged to treat their citizens equally before the law<sup>3</sup>—would ignore their constitutional obligations and hold people to different legal standards on the basis of gender, ethnicity, and religion by continuing to employ old personal status systems.

Many nations that originally inherited such pluri-legal systems from their colonial predecessors—such as Egypt, India, Indonesia, and Morocco—still continue to employ variant forms of personal status in their legal systems. Some scholars have considered the survival and persistence of pluri-legal

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<sup>1</sup> Yüksel Sezgin, *A Comparative Study of Personal Status Systems in Israel, Egypt and India* 1 (Int'l Council on Hum. Rts. Pol'y, Working Paper No. 169, 1999), available at [http://www.ichrp.org/files/papers/169/135\\_sezgin.pdf](http://www.ichrp.org/files/papers/169/135_sezgin.pdf) [hereinafter *Comparative Study*].

<sup>2</sup> See generally MAHMOOD MAMDANI, *CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM* (1996).

<sup>3</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, *as amended*, May 22, 1980, May 25, 2005, Mar. 26, 2007, art. 40; INDIA CONST. arts. 14, 15.

personal status systems as an anachronistic legacy of colonialism.<sup>4</sup> According to the proponents of the “colonial legacy” thesis, postcolonial governments, despite their strong desire to unify their field of personal status under an overarching network of law and courts, acquiesced to communal jurisdictions, which had originally enjoyed autonomy under colonial rule, because they failed to overcome the resistance of ethno-religious groups and authorities after independence.<sup>5</sup>

However, “colonial legacy” accounts do not alone explain why personal status systems continue to exist today; these explanations often neglect the centrality of the state and the desire of its leaders to control and utilize personal status as a potent tool in the process of state- and nation-building. In fact, all postcolonial nations that inherited pluri-legal personal status systems upon independence faced more or less the same dilemma: what were they going to do with these fragmented systems, which were not necessarily conducive to building a modern bureaucratic machinery or a civic sense of national identity? Some countries opted for institutional unification (consolidating the courts of different groups under an overarching system of national courts); some for normative unification (abolishing different bodies of communal laws and enacting in their place uniform territorial laws); some for both; and some for neither.<sup>6</sup> In the final analysis, however, countries’ choices were simultaneously determined by their ruling elites’ ideological orientations and ability to impose political will upon ethno-religious groups; and by the capacity of ethno-religious groups to resist government interventions in personal status, preserving their juridico-political autonomy.<sup>7</sup>

For example, Egypt inherited the Ottoman Millet system under which fifteen ethno-religious communities were granted autonomy to run their own courts and apply their own laws regarding their members’ matters of personal status.<sup>8</sup> The Free Officers regime, which overtook the government in 1952,<sup>9</sup> viewed the Millet system as an undesirable legacy of “Ottoman imperialism”

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<sup>4</sup> See John Griffiths, *What Is Legal Pluralism?*, 24 J. LEGAL PLURALISM & UNOFFICIAL L. 1, 6 (1986).

<sup>5</sup> *Id.* at 7–8; see also M.B. HOOKER, LEGAL PLURALISM: AN INTRODUCTION TO COLONIAL AND NEO-COLONIAL LAWS 454–79 (1975); Jacques Vanderlinden, *Return to Legal Pluralism: Twenty Years Later*, 28 J. LEGAL PLURALISM & UNOFFICIAL L. 149, 153 (1989).

<sup>6</sup> Yüksel Sezgin, *Legal Unification and Nation Building in the Post-Colonial World: A Comparison of Israel and India*, 8 J. COMP. ASIAN DEV. 273, 275–76 (2009).

<sup>7</sup> *Id.* at 276.

<sup>8</sup> See *Comparative Study*, *supra* note 1, at 8.

<sup>9</sup> Paul S. Rowe, *Neo-Millet Systems and Transnational Religious Movements: The Humayun Decrees and Church Construction in Egypt*, 49 J. CHURCH & ST. 329, 334 (2007).

and extra-territoriality, which they thought had to be eliminated to attain full sovereignty.<sup>10</sup> Moreover, like the post-1966 military rulers of Nigeria, who abolished the customary courts and reorganized them under the umbrella of the Ministry of Justice,<sup>11</sup> the Free Officers were primarily concerned with the inefficiency, inconsistency, and prohibitive cost of religious jurisdictions and resolved to put an end to this “juridical anarchy” through institutional unification.<sup>12</sup> As a result, in September 1955, the Nasserite regime enacted Law No. 462 abolishing all religious courts in the country, including Sharia courts, and unifying them under an overarching network of national courts.<sup>13</sup> In the process, the government effectively co-opted and neutralized the opposition of *ulama* and clergy, who were directly affected by abolition of religious courts, and assured the long-term success of its reform.<sup>14</sup> As a result, “secularly-trained” judges at civil courts, specialized family courts since October 2004, continue to apply different bodies of religious laws to individuals with different ethno-religious backgrounds.<sup>15</sup> For example, when a Muslim Egyptian comes to the Family Court, the judge will decide the case according to Islamic law (statutory laws and *Hanafi* jurisprudence where the law is silent). Similarly, when a Coptic Orthodox Egyptian resorts to the court, the judge will apply the 1938 Coptic Orthodox Personal Status Ordinance, provided that the application of non-Muslim law will not violate Egyptian public policy essentially defined in reference to Sharia.

India inherited a very similar personal status system upon independence. Thanks to British colonial rule, the country's personal status system was already institutionally unified as of 1947; secular judges at civil courts applied different personal laws, such as Muslim, Hindu, and Christian laws.<sup>16</sup> However, post-1947 Indian leaders (most prominently Prime Minister Nehru and Law Minister Ambedkar) deemed the colonial practice of personal status as the main culprit that nurtured communalist sentiments and prevented the people of India from attaining a common sense of unity.<sup>17</sup> Hence, they believed, if India had to be one composite nation under the law, that the

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<sup>10</sup> See *Comparative Study*, *supra* note 1, at 8–9.

<sup>11</sup> E.I. Nwogugu, *Abolition of Customary Courts—The Nigerian Experiment*, 20 J. AFR. L. 1, 1–2 (1976); see also A.O. Obilade, *Reform of Customary Court Systems in Nigeria Under the Military Government*, 13 J. AFR. L. 28, 30–40 (1969).

<sup>12</sup> *Comparative Study*, *supra* note 1, at 9.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* at 9.

<sup>15</sup> See *id.* at 8.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> See *id.*

archaic system of personal law had to be abolished and replaced with a secular uniform civil code (“UCC”) applicable to all citizens irrespective of caste or religion.<sup>18</sup> Consequently, this desire of the founding elite was embodied in Article 44 of the 1950 Constitution.<sup>19</sup> However, having failed to surmount the muscular opposition of religious minorities (especially the Muslim community), Indian leaders completely gave up on their dream of a UCC, instead implementing a limited version of the normative unification originally envisaged by the framers.<sup>20</sup> They unified the law for Hindus, Sikhs, Buddhists, and Jains through the 1955 and 1956 Hindu code bill reforms,<sup>21</sup> reluctantly agreeing to the continuance of separate personal laws for Muslims, Christians, and Zoroastrian Parsis.<sup>22</sup> As a result, Indian civil courts (and specialized family courts, where available) continue to apply different religious laws to people with different ethno-religious backgrounds.<sup>23</sup> Currently Sikhs, Buddhists, and Jains are treated as “Hindus” for purposes of personal law—the only distinction from the pre-1947 period.<sup>24</sup> Thus, when a person professing any of these religions comes to court, the judge will apply to his case the statutory Hindu law as codified by the parliament in 1955 and 1956, while applying to non-“Hindus” their own communal laws.

Despite different regime and reform choices, Egypt and India share similar personal status systems. However, it would be incorrect to analyze Egyptian and Indian personal status systems solely from a state- or nation-building angle, and completely ignore the systems’ impact on fundamental rights and liberties of individuals, particularly women, who live under these systems. For a Coptic woman who needs to change her denomination to divorce her husband in Egypt, or for a Muslim woman in India ripped of her legal entitlements to maintenance by an unholy alliance between self-proclaimed leaders of her community and the Hindu government, personal status is not just an instrument of nation-building or judicial consolidation but a matter of rights

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<sup>18</sup> *Id.*

<sup>19</sup> INDIA CONST. art. 44 (“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”).

<sup>20</sup> *See Comparative Study, supra* note 1, at 10.

<sup>21</sup> The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955), <http://indiacode.nic.in/fullact1.asp?tfnm=195525>; The Hindu Succession Act, No. 30 of 1956, INDIA CODE (1956), <http://indiacode.nic.in/fullact1.asp?tfnm=195630>; The Hindu Minority and Guardianship Act, No. 32 of 1956, INDIA CODE (1956), <http://indiacode.nic.in/fullact1.asp?tfnm=195632>; The Hindu Adoptions and Maintenance Act, No. 78 of 1956, INDIA CODE (1956), <http://indiacode.nic.in/fullact1.asp?tfnm=195678>.

<sup>22</sup> *See Comparative Study, supra* note 1, at 10.

<sup>23</sup> *See id.*

<sup>24</sup> *See id.*

and liberties. With this in mind, this Essay addresses the following two questions: (1) how do Egyptian and Indian personal status systems affect the rights and freedoms of women who are subject to their purview?; and (2) what strategies and tactics do women use to claim rights and liberties that are unrecognized or encroached upon by the Egyptian and Indian personal status laws?

The main premise of this Essay is that personal status laws, whether based on Muslim, Jewish, or Hindu tradition, are men-made (implying that no females were involved in this process), socio-political constructions that have come invariably to discriminate against women and deny them equal rights in familial relations. However, women do not silently acquiesce in violation of their rights and liberties by male-dominated religious norms and institutions. On the contrary, women-led hermeneutic communities all over the world are spearheading a silent but steady revolution that redefines women's role as rights-bearing and equal individuals in familial and public space. In doing so, women's groups contest the scriptural monopoly of state-sanctioned religious institutions, reinterpret religious laws, and reinvent the tradition by vernacularizing international human rights and women's discourses. Against this background, Part I of this Essay demonstrates the implications of personal status laws on the rights and freedoms of women by looking at the Egyptian and Indian personal status systems. Part II of this Essay traces women-led reform movements emerging in the last two decades in these two countries and demonstrates how Egyptian and Indian women have claimed the rights and freedoms that current systems have denied them by forming reinterpetive hermeneutic communities.

#### I. HOW DO MUSLIM PERSONAL STATUS LAWS AFFECT WOMEN'S RIGHTS AND FREEDOMS?

Whether done in the colonial or postcolonial era, restructuring personal status systems has always been a project dominated by men, both in the center and on the periphery. Women's voices and inputs were rarely sought and almost never taken into consideration as men continuously negotiated among themselves rules pertaining to familial issues, such as marriage, divorce, and maintenance.<sup>25</sup> Men "played god" by interpreting his commands in the holy

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<sup>25</sup> ASMA BARLAS, "BELIEVING WOMEN" IN ISLAM: UNREADING PATRIARCHAL INTERPRETATIONS OF THE QUR'ĀN 94-95 (2002); JUDITH E. TUCKER, WOMEN, FAMILY, AND GENDER IN ISLAMIC LAW 30-31 (2008);

scripture regarding what was required of a woman to release her from the bond of marriage, when a woman could be declared a disobedient wife and her husband could deny her maintenance, and how many days a woman must wait following her divorce before she makes herself available to another man. Personal status systems have always been manipulated to preserve traditional male privileges by institutionalizing discriminatory characteristics and gender-unequal interpretations of major religious traditions. Thus, all personal status systems, whether based on Muslim, Jewish, or Hindu laws, constructed through androcentric readings of sacred texts and traditions, have come to discriminate heavily against women in familial matters such as marriage and divorce.

However, one should not conclude that there is an inevitable and irreconcilable conflict between religion and women's rights and liberties. The central premise of this Essay is that personal status laws are not inviolable or sacrosanct laws in their own right but socio-political constructions built through selective interpretations of sacred texts, narratives, and traditions. These laws were not carved in stone by God, but are laws made based on male interpretation of what God may have meant by a particular verse, word, or phrase in the holy scripture.<sup>26</sup> By virtue of being men-made, religiously inspired laws are open to constant reinterpretation and amendment. As demonstrated below, some human rights and women's groups in Egypt and India constantly challenge the legitimacy of state-sanctioned personal status laws by offering enlightened, emancipatory, and women-friendly interpretations of classical texts, narratives, and customs—in some cases successfully reforming the system internally.

Although nearly all personal status laws (e.g., Jewish, Hindu, and Christian) discriminate against women, this Essay focuses exclusively on Muslim personal status laws in Egypt and India as they are interpreted and applied by male-dominated secular and religious institutions. Most 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 that had not previously existed in Arabian society.<sup>27</sup> However, patriarchal interpretations of

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AMINA WADUD, *QUR'AN AND WOMAN: REREADING THE SACRED TEXT FROM A WOMAN'S PERSPECTIVE*, at xi (Oxford Univ. Press 1999) (1992).

<sup>26</sup> BARLAS, *supra* note 25, at 2.

<sup>27</sup> *See id.* at 14.

Muslim law and persistence of pre-Islamic tribal customs later caused this egalitarian tradition to become a patriarchal legal system that denied women equal rights in familial relations.<sup>28</sup> Rules pertaining to divorce are especially demonstrative of women's subordination under Muslim family laws.<sup>29</sup> With this in mind, Part I.A addresses how Muslim personal status laws in Egypt and India affect women's rights by focusing on intricacies of divorce and other aspects of breakdown of the family union such as postnuptial maintenance. Part I.B then explores specific strategies Muslim women have devised to empower themselves and respond to encroachments of their rights under the religious law.

### A. *Egyptian Women and the Predicament of Divorce*

All Muslim citizens of Egypt are subject to mandatory jurisdiction of Sharia law for matters of personal status.<sup>30</sup> Non-Muslims are subject to their own communal laws only if both spouses belong to the same sect (*ta'ifa*) and rite (*milla*); otherwise, Sharia law is applicable to them.<sup>31</sup> Under Sharia law, a Muslim man has a right to a unilateral, no-fault, extra-judicial divorce (*Talaq*).<sup>32</sup> A husband, who can have up to four wives,<sup>33</sup> can divorce his wife anytime for any reason without a need to appear before a court, by pronouncing "*Talaq*" three times.<sup>34</sup>

A Muslim woman, on the other hand, has truncated rights to "judicial" divorce (*Faskh*), through which she can ask the court to dissolve the marriage on grounds of harm or injury (*darar*).<sup>35</sup> For example, if *darar* to the wife by the husband is satisfactorily established, under certain conditions, such as the

<sup>28</sup> See *id.* at 203; WADUD, *supra* note 25, at 80–82. See generally FATIMA MERNISSI, *THE VEIL AND THE MALE ELITE: A FEMINIST INTERPRETATION OF WOMEN'S RIGHTS IN ISLAM* (Mary Jo Lakeland trans., Addison-Wesley Publ'g Co. 1991) (1987).

<sup>29</sup> See generally TUCKER, *supra* note 25, at 84–132.

<sup>30</sup> See INCORPORATING SHARIA INTO LEGAL SYSTEMS, BBC NEWS, <http://news.bbc.co.uk/2/hi/7235357.stm> (last updated Feb. 8, 2008, 7:36 PM).

<sup>31</sup> Aznan Hasan, *Granting Khul' for a Non-Muslim Couple in Egyptian Personal Status Law: Generosity or Laxity?*, 18 ARAB L.Q. 81, 81 (2003) (citing Law No. 462 of 1955 (Dissolution of the Sharia and Confessional Courts and Transfer the Complaints that Would be Heard Before them to the National Courts), *Al-Waqai al-Misriyah*, 21 Sept. 2003 (Egypt)).

<sup>32</sup> TUCKER, *supra* note 25, at 86.

<sup>33</sup> ORZALA ASHRAF NEMAT, HEINRICH BÖLL FOUND., *COMPARATIVE ANALYSIS OF FAMILY LAW IN THE CONTEXT OF ISLAM* 12 (2006), available at [http://www.boell-afghanistan.org/downloads/English\\_Family\\_Law.pdf](http://www.boell-afghanistan.org/downloads/English_Family_Law.pdf).

<sup>34</sup> See Valerie M. Hudson & Patricia Leidl, *The Arab Intifada and Women's Rights*, WORLD POL. REV. (Feb. 2, 2011), <http://www.worldpoliticsreview.com/articles/7749/the-arab-intifada-and-womens-rights>.

<sup>35</sup> See TUCKER, *supra* note 25, at 92–95.

husband's sexual incompetence or his prolonged absence or imprisonment, the judge may dissolve the marriage at the wife's request.<sup>36</sup> However, unlike *Talaq, Faskh* is a painful and costly process. It takes eight to ten years on average for a woman to obtain a judicial divorce.<sup>37</sup> Egyptian women's divorce predicament was somewhat eased with the enactment of Law No. 1 in 2000.<sup>38</sup> Under this law a woman can initiate a "no-fault" divorce (*Khul*) that does not require the husband's consent, provided that she forgoes all financial claims upon him including maintenance (*nafaqa*) and the deferred dowry (*mu'akhar saddaq*) normally paid at divorce and provided that she returns the prompt dowry (*Mahr al-muajjal*) given to her at the time of the marriage (*nikah*).<sup>39</sup> Whether Law No. 1 has been able to fully remedy the Egyptian women's predicament is discussed and answered at greater detail below. However, Law No. 1 has seemingly opened the door to no-fault divorce for an unlikely beneficiary: the Coptic Orthodox women who can now seek *Khul* divorce under Islamic law.

Personal status matters of Copts are subject to the jurisdiction of civil courts, which apply the 1938 ordinance single-handedly promulgated by the liberal-minded laity without much input from the clergy.<sup>40</sup> The ordinance, which had a very liberal attitude toward divorce, allowed divorce on nine different grounds<sup>41</sup> including spousal incompatibility.<sup>42</sup> However, the Coptic Church has repeatedly denounced the ordinance's liberal attitude and failed to recognize divorce decrees granted by civil courts for any reason other than

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<sup>36</sup> *See id.*

<sup>37</sup> *See, e.g.,* Diane Singerman, *Rewriting Divorce in Egypt: Reclaiming Islam, Legal Activism, and Coalition Politics*, in *REMAKING MUSLIM POLITICS: PLURALISM, CONTESTATION, DEMOCRATIZATION* 161, 165 (Robert W. Hefner ed., 2005).

<sup>38</sup> Hasan, *supra* note 31, at 82.

<sup>39</sup> *See* TUCKER, *supra* note 25, at 95–100; Hasan, *supra* note 31, at 82; Gabriel Sawma, *The Khul' Islamic Divorce in Egypt*, *MUSLIM CORNER* (June 3, 2011), <http://www.themuslimcorner.com/sunnah/the-khul-islamic-divorce-in-egypt>.

<sup>40</sup> Ron Shaham, *Communal Identity, Political Islam and Family Law: Copts and the Debate over the Grounds for Dissolution of Marriage in Twentieth-Century Egypt*, 21 *ISLAM & CHRISTIAN-MUSLIM REL.* 409, 409 (2010).

<sup>41</sup> These grounds for divorce include: (1) adultery; (2) one spouse's conversion to another religion; (3) five-year absence with no news of the spouse's whereabouts; (4) imprisonment for seven years or more; (5) mental illness lasting more than three years with no hope of cure, a contagious disease that threatens the partner's health, or a husband's sexual impotence over a period of three years; (6) domestic violence; (7) immoral or incorrigible behavior (e.g., homosexuality); (8) spousal incompatibility lasting over three years; and (9) joining a monastic order. Adel Guindy, *Family Status Issues Among Egypt's Copts: A Brief Overview*, *MIDDLE E. REV. INT'L AFF.*, Sept. 2007, <http://meria.idc.ac.il/journal/2007/issue3/jv11no3a1.html>.

<sup>42</sup> *See* Shaham, *supra* note 40, at 418 (noting that "a deep-rooted hostility between" spouses can be grounds for divorce).

adultery.<sup>43</sup> The normative discrepancy between the church's views and the views of the 1938 ordinance on divorce created a legal limbo for nearly 50,000 Copts, whose marriages courts dissolved on grounds other than adultery.<sup>44</sup> These people are practically banned from remarriage because, in the eyes of the church, they are still married.<sup>45</sup> To avoid the likelihood of such a marriage ban, couples seeking divorce must engage both ecclesiastical and civil authorities at once. This is a painstakingly long and complicated process.

It is even more difficult and expensive for Coptic women, who must overcome judges' unsympathetic minds and patriarchal attitudes. To ease their predicament, some Coptic women resort to a backdoor approach, *Khul* divorces, by exploiting the loophole that allows application of Sharia to non-Muslims. For example, Hala Sidqi, a famous actress, divorced her husband in 2002 through *Khul*.<sup>46</sup> In order to obtain a *Khul* divorce under Sharia, she had to belong to a church other than her husband's;<sup>47</sup> she migrated to the Syriac Church (Syrian Orthodox), while her husband remained a Copt.<sup>48</sup> By doing so, she was able not only to get a divorce under Sharia law, but also to obtain permission to remarry in her new church.<sup>49</sup> The exact number of Coptic women who followed in Sidqi's footsteps and applied for a *Khul* divorce remains unknown. But, as observers indicate, not many Christian women have been granted *Khul*, as Egyptian judges remain deeply divided over whether non-Muslims should be able to obtain *Khul* divorces by resorting to deceitful conversions.<sup>50</sup> According to Mariz Tadros, a female Coptic Orthodox scholar, although it is debatable whether *Khul* is a feasible option for Coptic women, the very existence of this approach has unmistakably strengthened the bargaining position of Coptic women vis-à-vis their husbands and communal institutions, because they now may threaten to migrate to another church to get

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<sup>43</sup> See Amira Ibrahim, *Hope on the Horizon?*, AL-AHRAM WKLY. (Cairo), Mar. 11–17, 1999, <http://weekly.ahram.org.eg/1999/420/fe1.htm> (describing the Coptic Church's efforts to restrict legal justifications for divorce to a more limited definition of adultery).

<sup>44</sup> *Id.*

<sup>45</sup> *See id.*

<sup>46</sup> *Egyptian Christian Actress Granted Divorce Under Islamic Law After 10-year Court Battle*, ORTHODOX CHRISTIAN NEWS (Mar. 30, 2002), [http://www.orthodoxnews.org/index.cfm?fuseaction=worldnews.one&content\\_id=11362&CFID=48154697&CFTOKEN=13787379&tp\\_preview=true](http://www.orthodoxnews.org/index.cfm?fuseaction=worldnews.one&content_id=11362&CFID=48154697&CFTOKEN=13787379&tp_preview=true). Both Sidqi and her husband were Orthodox Copts. *Id.*

<sup>47</sup> *See id.*

<sup>48</sup> *Id.*

<sup>49</sup> See Gamel Nkrumah, *Church Weddings*, AL-AHRAM WKLY. (Cairo), Mar. 27–Apr. 2, 2008, <http://weekly.ahram.org.eg/2008/890/eg3.htm>.

<sup>50</sup> Interview with Mohamed Hamed El-Gamal, Former President, Maglis Al-Dawla [Council of State], in Cairo, Egypt (Apr. 14, 2004).

a divorce.<sup>51</sup> If migrating to obtain *Khul* divorces does not work, Coptic women may always resort to a more drastic measure: conversion to Islam. The moment they convert to Islam, the marriage to a Christian husband is null and void (*batil*), as Sharia does not allow Muslim women to marry non-Muslim men.

### B. “Triple Talaq” and Maintenance in India

Muslim personal law, heavily influenced by principles of English common law, local customs, and Islamic law and jurisprudence, governs family matters of Indian Muslims.<sup>52</sup> As in Egypt, secularly trained judges at civil courts apply Muslim personal law in India.<sup>53</sup> However, unlike in Egypt, an Indian judge who applies the Muslim law may be a non-Muslim, most likely a Hindu. Another important difference is that application of religious laws in India is not mandatory, but consensual.<sup>54</sup> India, which claims to be a socialist, secular, and democratic republic,<sup>55</sup> gives its citizens who do not want to be subject to religious laws an option to wed civilly and divorce under the Special Marriage Act (“SMA”)<sup>56</sup> 43 of 1954.<sup>57</sup> In practice, however, the SMA remains ineffective legislation because most Indians are either unaware of it or are hesitant to use it due to socio-cultural dispositions and institutional limitations.<sup>58</sup>

Like Egyptian Muslim women, Indian Muslim women suffer most from the husband’s right to unilateral extrajudicial divorce under the current system. In the Indian context, however, the specific problem is “triple *Talaq*,” or divorce by uttering “*Talaq*” thrice in a single sitting.<sup>59</sup> Despite the urgency of the problem of triple *Talaq*, Muslim women’s groups in India have focused their attention on issues of spousal maintenance, especially since the *Shah Bano*

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<sup>51</sup> Interview with Mariz Tadros, University of Oxford, in Cairo, Egypt (Apr. 18, 2004).

<sup>52</sup> See *Comparative Study*, *supra* note 1, at 9.

<sup>53</sup> *Id.*

<sup>54</sup> TAHIR MAHMOOD, INDIAN LAW INST., CIVIL MARRIAGE LAW: PERSPECTIVES AND PROSPECTS 11 (1978).

<sup>55</sup> INDIA CONST. pmbl., amended by The Constitution (Forty-Second Amendment) Act, 1976.

<sup>56</sup> The Special Marriage Act, No. 43 of 1954, INDIA CODE (1954), <http://indiacode.nic.in/fullact1.asp?tfnm=195443>.

<sup>57</sup> MAHMOOD, *supra* note 54, at 11–12.

<sup>58</sup> *Id.* at 51–55; see also PERVEEZ MODY, THE INTIMATE STATE: LOVE-MARRIAGE AND THE LAW IN DELHI 129–34 (2008).

<sup>59</sup> Karen Leslie Hernandez-Andrews, *Talaq, Talaq, Talaq—Women Suffering in India Because of the Misuse of Triple Talaq* (May 29, 2006) (unpublished manuscript), available at [http://www.wunrn.com/news/2006/07\\_03\\_06/070906\\_india\\_triple.htm](http://www.wunrn.com/news/2006/07_03_06/070906_india_triple.htm).

judgment of the Indian Supreme Court in 1985,<sup>60</sup> and mostly shied away from dealing with issues of marriage and divorce. In minority settings, where issues of marriage and divorce are intricately entangled with identity politics as in India, women's rights groups tend to deal with procedural and less controversial issues, such as maintenance, through legislative or judicial channels, while refraining from addressing substantive issues of marriage and divorce in majority institutions such as courts or legislative bodies. If controversial issues of marriages and divorce are ever addressed, they are usually addressed within the community through hermeneutic means, as demonstrated below.

According to Sharia law in India, in the event of divorce, the husband must pay his wife the deferred part of her *Mahr* and provide her with maintenance (*nafaqa*) during the three-month waiting period following the divorce, which may last until the end of pregnancy if the wife is expecting (*iddat*). Otherwise, the husband has no further financial obligations toward his wife. Even though Section 125 of the Criminal Procedure Code of 1973 requires all Indian husbands to continue providing for their divorcées who are destitute and unable to maintain themselves,<sup>61</sup> Muslim men were excluded from the purview of Section 125 by virtue of the Muslim Women (Protection of Rights in Divorce) Act ("MWA") of 1986.<sup>62</sup> The MWA limited the Muslim husband's postnuptial maintenance obligation to the *iddat* period.<sup>63</sup> With the enactment of the MWA, the Indian government openly discriminated against Muslim women and denied them financial guarantees that it bestowed upon Hindu, Parsi, and Christian women. As shown below, despite their recent successes in the battle over maintenance, Indian Muslim women continue their struggle to end gender discrimination and injustices perpetrated by religious and secular laws and secure their right to "a reasonable and fair provision," which is increasingly under attack by communal forces.

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<sup>60</sup> Khan v. Begum (*Shah Bano*), (1985) 3 S.C.R. 844 (India), <http://indiankanoon.org/doc/823221>. See generally Nawaz B. Mody, *The Press in India: The Shah Bano Judgment and Its Aftermath*, 27 *ASIAN SURV.* 935 (1987).

<sup>61</sup> The Code of Criminal Procedure Act, No. 2 of 1974, § 125, CODE CRIM. PROC. (1974), <http://indiacode.nic.in/fullact1.asp?tfm=197402>.

<sup>62</sup> The Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, § 5, INDIA CODE (1986), <http://indiacode.nic.in/fullact1.asp?tfm=198625>.

<sup>63</sup> See *id.* § 4.

## II. HOW DO WOMEN CLAIM THE RIGHTS DENIED THEM BY PERSONAL STATUS LAWS?

Muslim personal status laws in both Egypt and India are detrimental to the rights and freedoms of women. This is because neither government has proved able or willing to reform their personal status systems, and both failed to protect women against encroachments of religious norms and authorities. Nevertheless, neither Egyptian nor Indian Muslim women silently accept violation of their fundamental rights under state-sanctified personal status laws. These women are fighting back fiercely to advance their rights and freedoms. In doing so, they challenge the hegemonic narratives of gender and subjectivity and redefine their roles as rights-bearing individuals and equal citizens in the familial and public space.

In these religious systems, where women are systematically denied their fundamental rights in the name of obeying God's orders, the discussion revolves around the question of whose interpretation of the Holy Quran or *Hadith* is authoritative. Hence, it is not surprising to see that in both countries women increasingly respond to violations of their rights by forming hermeneutic communities that challenge official interpretations of religious precepts and offer alternative women-friendly readings of law hoping to advance their rights and reform the system internally. In the process, to identify and remove disabilities and women's rights violations, hermeneutic communities engage in an An-Na'imian "internal discourse" through enlightened interpretations of cultural values and norms.<sup>64</sup> However, hermeneutic groups are not only agents who solely engage in internal scriptural activity, but also interlocutors who participate in cross-cultural dialogues on a global level from which they draw intellectual inspiration, resources, and moral authority. These dialogues guide the hermeneutic groups in locating and retrospectively constructing cultural references and narratives that promote a particular vision and set of rights. This is the very process that Peggy Levitt and Sally Engle Merry refer to as "vernacularization" through which hermeneutic communities translate global women's rights discourses and

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<sup>64</sup> See generally, e.g., Abdullahi Ahmed An-Na'im, *Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment*, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS 19, 19-43 (Abdullahi Ahmed An-Na'im ed., 1991).

practices by meticulously grafting them onto culture, tradition, religious beliefs, and teachings of their own societies.<sup>65</sup>

Hermeneutic communities usually adopt moderate means and strive for incremental change by working within current institutions. They may build cross-communal alliances, lobby for judicial and legislative change, mobilize courts, educate the public, and seek behavioral change by framing gender issues in terms that resonate with the dominant religio-legal culture.<sup>66</sup> However, as governments and religious authorities repeatedly fail to respond to calls for reform, some disillusioned groups may completely cease to use state-run personal status institutions and steadily evolve into “self-ruling” communities by setting up their own judicial bodies that apply their own version of law to members of their self-proclaimed communities. The All India Muslim Women Personal Law Board (“AIMWPLB”), after long years of dissatisfaction with the version of Sharia promoted by the male-dominated All India Muslim Personal Law Board (“AIMPLB”) and secular state courts, set up a women’s Sharia court (*mahila adalat*) in Lucknow to offer religiously acceptable solutions to problems like triple *Talaq*, implementing an enlightened and egalitarian interpretation of Islamic law. Against this backdrop, this Part looks at activities of hermeneutic and rule-making communities in Egypt and India and illustrates strategies and tactics successfully employed by these groups to advance women’s rights under Muslim personal status laws.

#### A. *Khul Law: Egyptian Muslim Women Redefining Sharia*

Hermeneutic communities have been particularly active in Egypt, where top-down approaches to reform have failed and the women’s rights regressed, especially since a 1985 decision of the Egyptian Supreme Constitutional Court striking down Law No. 44 of 1979 as unconstitutional.<sup>67</sup> Law No. 44 stipulated that taking a second wife without the consent of the first wife constituted an *darar* to the first wife and therefore entitled her to seek divorce from the

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<sup>65</sup> See generally Peggy Levitt & Sally Engle Merry, Unpacking the Vernacularization Process: The Transnational Circulation of Women’s Human Rights (Oct. 2008) (unpublished manuscript) (on file with author).

<sup>66</sup> See *id.* (manuscript at 3–4).

<sup>67</sup> *Comparative Study, supra* note 1, at 12.

court.<sup>68</sup> This law was unconstitutionally promulgated by a presidential decree, but was a quantum leap in women's right to divorce.<sup>69</sup> It did not take long for opponents of the law, who viewed it in violation of Sharia for curbing Muslim men's "god-given" right to polygyny, to launch a judicial onslaught to stop its implementation. In May 1985, their efforts finally came to fruition when the court declared Law No. 44 unconstitutional on technical grounds.<sup>70</sup> Two months later, the parliament hastily put together a revised law (Law No. 100) to replace and eliminate the controversial provision of Law No. 44 that "considered a second marriage by the husband as ipso facto a cause of harm to the first wife" and grounds for divorce.<sup>71</sup>

The failure of the 1979 law taught invaluable lessons to Egyptian women's rights groups that wanted to reform the personal status laws. First, the reform had to be initiated *by* the women themselves through a combination of grassroots mobilization and government support, rather than *for* the women through unpopular top-down processes.<sup>72</sup> Second, any change in the law had to be firmly rooted in historical sources and Sharia traditions.<sup>73</sup> As evidenced by Law No. 44, a solely liberal or secular approach would backfire and do more harm than good to the Egyptian women's cause. As one prominent feminist put it, Egyptian women's groups throughout the 1990s adopted the "strategy of engaging religious discourse, based on the women's reading of their rights under the principles of Sharia."<sup>74</sup> Hence, the setback experienced in 1985 led various women's groups to act collectively and campaign for equal rights for women in personal status by utilizing an Islamic framework.

During the next two decades, women's groups devoted their energy primarily to the *Khul* law. As noted above, the new law allowed a woman to initiate a no-fault divorce without the consent of her husband, provided she renounced her pecuniary claims against him and returned the prompt dowry

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<sup>68</sup> Nathalie Bernard-Maugiron with Baudouin Dupret, *Breaking up the Family: Divorce in Egyptian Law and Practice*, 6 HAWWA: J. WOMEN MIDDLE E. & ISLAMIC WORLD 52, 56 (2008) [hereinafter *Breaking up the Family*].

<sup>69</sup> See *id.* at 56–57; *Comparative Study*, *supra* note 1, at 12. The "decree-law procedure," used to pass Law No. 44, was improperly used because this was not an "urgent matter." *Breaking up the Family*, *supra* note 68, at 57.

<sup>70</sup> *Breaking up the Family*, *supra* note 68, at 56–57; *Comparative Study*, *supra* note 1, at 12.

<sup>71</sup> Fauzi M. Najjar, *Egypt's Laws of Personal Status*, 10 ARAB STUD. Q. 319, 341 (1988).

<sup>72</sup> See *Comparative Study*, *supra* note 1, at 12.

<sup>73</sup> *Id.*

<sup>74</sup> Singerman, *supra* note 37, at 161 (quoting Mona Zulficar, *The Islamic Marriage Contract in Egypt* (Jan. 1999) (unpublished manuscript) (on file with author)).

she received at the time of *nikah*.<sup>75</sup> Throughout the process that culminated in the enactment of Law No. 1, women's groups worked directly with government officials, lobbied members of parliament, and consulted with members of *ulama* at al-Azhar. As Professor Zeinab Redwan, a female member of the Egyptian Parliament and one of the architects of the reform noted, "[during the entire process] women repeatedly resorted to the Islamic rhetoric and built their case around a *hadith* that reported Prophet Muhammad allowing a woman to divorce her husband by returning the orchard that she had received as dowry."<sup>76</sup>

Critics argued that the Sharia had required the consent of the husband to divorce even in the case of *Khul*. Opponents also added that the law was only meant for rich women, as the poor could not afford to forgo their rights to maintenance and deferred dowry, nor could they pay back the prompt dowry.<sup>77</sup> However, recent evidence shows that an increasing number of middle and lower class women are taking advantage of *Khul*, because its actual cost has not been as high as was claimed by the critics of Law No. 1.<sup>78</sup> With this in mind, most problems that women encounter are social and institutional in nature. Public opinion surveys point out that most Egyptians consider *Khul* as an option to be taken only by Westernized women.<sup>79</sup> In popular culture, such as movies and cartoons, the women who resort to *Khul* are often depicted as immoral persons in Westernized garments who divorce their husbands for frivolous reasons just to run to the arms of their secret lovers.<sup>80</sup> In the early years of the reform, these negative images were also widespread among personal status court judges.<sup>81</sup> In fact, some attribute the discrepancy<sup>82</sup> between

<sup>75</sup> See *supra* Part I.A.

<sup>76</sup> Interview with Zeinab Radwan, Member, Shariah Council, Dean, Cairo University's Dar Al-Ulum, in Cairo, Egypt (May 14, 2004).

<sup>77</sup> Hala Sakr & Mohamed Hakim, *One Law for All*, AL-AHRAM WKLY. (Cairo), Mar. 1–7, 2001, <http://weekly.ahram.org.eg/2001/523/sc1k.htm>.

<sup>78</sup> Nadia Sonneveld, *Reinterpretation of Khul' in Egypt: Intellectual Disputes, the Practice of the Courts, and Everyday Life* (2007) (unpublished Ph.D. thesis, Leiden University) (on file with author).

<sup>79</sup> See Fayza Hassan, *The Meaning of Emancipation*, AL-AHRAM WKLY. (Cairo), Mar. 1–7, 2001, <http://weekly.ahram.org.eg/2001/523/sc1.htm>; Nadia Sonneveld, *If Only There Was Khul' . . .*, 17 ISIM REV. 50, 50–51 (2006).

<sup>80</sup> See generally, e.g., Sonneveld, *supra* note 79.

<sup>81</sup> Singerman, *supra* note 37, at 181–82.

<sup>82</sup> For example, in the Cairo Governorate, only 4.5% of the *khul'* applications filed between March 2000 and March 2001 were actually ruled on by the personal status courts. Azza Soliman & Azza Salah, *The Legal Aspects of Khol' and Its Application*, in THE HARVEST: TWO YEARS AFTER KHOL' 19–20 (Seham Abd el Salam trans., 2003), available at <http://www.cewla.org/admin/issues/download/14.rar?PHPSESSID=51b2a8d9a12115a33ff3f4ee7390cc72>. For the same period, in the Giza Governorate, the rate was 6.9%. *Id.* at 21–22.

the number of *Khul* petitions filed and the actual number of divorces granted by the courts to the unwillingness and obstructive practices of the judges and other court officials.<sup>83</sup> During the first three years of the law, out of nearly 210,000 divorces granted by the Egyptian judges, only about 5,000 were *Khul* divorces.<sup>84</sup>

### *B. Impact Litigation and the Rise of Islamic Feminism in India*

Indian women's organizations, including mainstream Muslim women's groups, have historically adopted a secularist approach toward the issue of reform in personal law:

*Towards Equality*, the report of the National Committee on the Status of Women, said:

The absence of a UCC in the last quarter of the twentieth century . . . is an incongruity that cannot be justified with all the emphasis that is placed on secularism, science and modernism. The continuance of various personal laws which accept discrimination between men and women violates the fundamental rights.<sup>85</sup>

Since the 1950s, Indian feminists generally have believed that social uplifting of women could only be achieved through replacement of religious laws with a secular UCC. However, ideological transformations since the mid-1980s, the rise of communal violence, and the appropriation of the concept of the UCC by right-wing Hindu platforms (e.g., Sangh Parivar and Bharatiya Janata Party) have forced the women's organizations to reconsider their strategies and drop their earlier calls for a UCC.<sup>86</sup> In this new environment, a UCC has ceased to symbolize the advancement of women's rights and become a weapon in the hands of racist and sexist groups. As Syeda Hamid, the President of the

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<sup>83</sup> Mulki Al-Sharmani, *Egyptian Family Courts: A Pathway of Women's Empowerment?*, 7 HAWWA: J. WOMEN MIDDLE E. & ISLAMIC WORLD 89, 101–03 (2009).

<sup>84</sup> See *Divorce Statistics*, CENT. AGENCY FOR PUB. MOBILIZATION & STAT., [http://msrintranet.capmas.gov.eg/pls/census/spart\\_all\\_e?lname=FREE&lang=0](http://msrintranet.capmas.gov.eg/pls/census/spart_all_e?lname=FREE&lang=0) (last visited Aug. 19, 2011). The statistics agency does not provide any information on the number of *Khul* divorces awarded by the courts. Unfortunately, nearly all information provided on the number of *Khul* divorces relies upon anecdotal evidence offered by judges, lawyers, and activists.

<sup>85</sup> Nivedita Menon, *Women and Citizenship*, in WAGES OF FREEDOM: FIFTY YEARS OF THE INDIAN NATION-STATE 241, 244 (Partha Chatterjee ed., 1998) (quoting MINISTRY OF EDUC. & SOC. WELFARE, INDIA DEP'T OF SOC. WELFARE, TOWARDS EQUALITY: REPORT OF THE COMMITTEE ON THE STATUS OF WOMEN IN INDIA 142 (1974)).

<sup>86</sup> Flavia Agnes, *Constitutional Challenges, Communal Hues and Reforms Within Personal Laws*, COMBAT L. (Mumbai), Nov.–Dec. 2004, at 4, 5–6.

Muslim Women's Forum, put it, this has posed difficult ideological and ethical dilemmas particularly to 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 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. . . .<sup>87</sup>

As a result, since the 1990s Muslim women's groups have instead relied upon a mixture of legislative and judicial strategies and, whenever possible, engaged in hermeneutic activities to change Muslim laws internally. For instance, in the last two decades, Muslim women's rights activists have put forth quintessential examples of ways to mobilize courts to challenge and reform gender-unequal personal status laws. In the aftermath of the infamous MWA of 1986,<sup>88</sup> women's rights activists launched a campaign to defeat the ill-famed legislation's minimalist interpretations, which denied Muslim women's right to maintenance beyond the *iddat* period by invoking an innocuous clause that escaped the attention of conservative groups:<sup>89</sup> "[A] divorced woman shall be entitled to- (a) *a reasonable and fair provision* and maintenance to be made and paid to her within the *iddat* period."<sup>90</sup> Their campaign culminated with the Indian Supreme Court's ruling in *Danial Latifi*,<sup>91</sup> in which the court overruled the minimalist interpretations of the MWA, and held that the Muslim husband was required to make a lump-sum payment to his ex-wife during the period of *iddat*, including not only the *nafaqa* and deferred part of her *Mahr*, but also a "reasonable and fair provision" that would financially secure her future well beyond *iddat*.<sup>92</sup> Thanks

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<sup>87</sup> Interview with Syeda Hamid, Founder & President, Muslim Women's Forum, in New Delhi, India (Mar. 19, 2005).

<sup>88</sup> See *supra* Part I.B.

<sup>89</sup> Agnes, *supra* note 86, at 8.

<sup>90</sup> The Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, § 3(1)(a), INDIA CODE (1986) (emphasis added), <http://indiacode.nic.in/fullact1.asp?tfnm=198625>.

<sup>91</sup> *Latifi v. Union of India (Daniel Latifi)*, (2001) 7 S.C.C. 740 (India), <http://indiankanoon.org/doc/410660/>.

<sup>92</sup> *Id.*

to the expansionist interpretation adopted by the court, Muslim women who resort to state courts now receive some of the highest maintenance awards in the country.<sup>93</sup>

In post-*Shah Bano* India where communal tensions rose and the threat of Hindutva groups escalated, the Muslim community has grown increasingly insular and resistant to change in its laws. The community fell under the control of conservative elements such as the AIMPLB. The board has set up its own network of Sharia courts (*Dar-ul Qazas*) on the premise that non-Muslims are not qualified to administer Sharia.<sup>94</sup> This view has increasingly gained currency in the Muslim community since the *Shah Bano* case in which the all-Hindu bench of the Indian Supreme Court practically engaged in independent thought (*ijtihad*) and told Muslims how to read and interpret the Quran correctly!<sup>95</sup> The AIMPLB was the main architect of the MWA of 1986, which limited women's right to maintenance to only *iddat*. However, after it failed to influence the Indian Supreme Court's interpretation of the act in *Danial Latifi*, the AIMPLB and its courts applying a male-centric version of Sharia have sought to discourage women in the community from taking their cases to state courts and claiming maintenance beyond the *iddat*. For example, the *qazi* of the Delhi Sharia Court, argues:

It is the obligation of a Muslim to live according to rules of *shariat*. When there is a *shariat* court, if one goes to civil courts and wins a case according to rules applied by non-Muslims it will be *haram* or a sin in the eyes of Allah. . . . Muslims have to come to *shariat* courts; even if they lose, they will still be winners in the eyes of Allah.<sup>96</sup>

Against this background, where communal forces prevented women from enjoying the rights and liberties promised to them under the secular law, there was only one option left for groups who demanded change in Muslim personal laws: internal reform through hermeneutic means. In fact, like their Egyptian counterparts, some Indian Muslim women's groups have increasingly resorted

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<sup>93</sup> See generally Werner Menski, *Double Benefits and Muslim Women's Postnuptial Rights*, KERALA L. TIMES, Apr. 30, 2007, at 21.

<sup>94</sup> Interview with Qasim Rasool Ilyas, All India Muslim Pers. Law Bd., in New Delhi, India (Mar. 8, 2005).

<sup>95</sup> Subrata K. Mitra & Alexander Fischer, *Sacred Laws and the Secular State: An Analytical Narrative of the Controversy over Personal Laws in India*, INDIA REV., July 2002, at 99, 119.

<sup>96</sup> Interview with Mohammad Kamil Qasmi, Qazi, Delhi Shariat Court, All India Muslim Pers. Law Bd., in New Delhi, India (Mar. 8, 2005).

to reinterpretative strategies to challenge the textual authority of the AIMPLB and state courts and pushed to advance their rights under Sharia law.<sup>97</sup>

Realizing the increasing control of the AIMPLB over personal status law and institutions, many Muslim women activists joined the board and its decision-making bodies to draw attention to and resolve women's issues under the Muslim personal law. For example, to put an end to the predicament of triple *Talaq*, some female members prepared a model marriage contract (*nikahnama*), which allowed women to stipulate conditions in the contract such as an option for delegated divorce (*Talaq-e tawfiz*), through which the husband permits his wife to initiate divorce at her own will, and presented it to the board for approval. However, the male-dominated board rejected it on the claim that it was an "un-Islamic" proposal and swiftly silenced uncompliant women's voices throughout the organization.<sup>98</sup> In response, in 2005, some female members of the board split and organized in Lucknow the AIMWPLB, representing the major sects and schools of Islamic jurisprudence. The AIMWPLB released a new *nikahnama* in 2008 that consisted of seventeen-point guidelines for marriage for bride and groom under the Islamic law (*hidayatnama*) and an eight-point section on divorce process. It prohibits triple *Talaq* through text messaging, email, video-conferencing, or phone, and recognizes women's right to delegated divorce (*Talaq-e tawfiz*) and *Khul*. The model *nikahnama* also details women's right to postmarital maintenance and *Mahr*. To preempt the possible attacks of the traditional *ulama* on the new *nikahnama*, the new marriage contract carries extensive quotes from relevant verses of the Quran. As Shaista Amber, president of the AIMWPLB, reports, the new *nikahnama* steadily gains acceptance in the community and about fifty couples have married under the relatively gender-balanced contract.<sup>99</sup>

In addition, AIMWPLB has established its own court structure (*mahila adalat*), deciding cases according to a women-friendly interpretation of Sharia. The women's court is located in Lucknow and convenes every Friday at a local mosque built by Ms. Amber. It currently decides about 200 divorce cases per year. Both male and female judges (*qazis*) sit together at *mahila adalat*. The law applied is not substantively different from the Sharia law applied by AIMPLB courts, but *qazis* at the *mahila adalat* implement it with an eye to

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<sup>97</sup> See generally Sylvia Vatuk, *Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law*, 42 MOD. ASIAN STUD. 489 (2008).

<sup>98</sup> Noorjehan Safia Niaz, *Marriage in Islam*, COMBAT L. (Mumbai), Nov.–Dec. 2004, at 25, 28.

<sup>99</sup> Telephone Interview with Shaista Amber, President, All India Muslim Women Pers. Law Bd. (May 12, 2010).

“universal standards of human and women’s rights.”<sup>100</sup> The Bharatiya Muslim Mahila Andolan (“BMMA”), another organization working to secure the rights of women through feminist and humanist interpretations of Islam, has taken the women’s cause one step further and made history by allowing a female *qazi*, Syeda Hamid, to solemnize a *nikah* ceremony where all four witnesses were also women.<sup>101</sup> While the members of the mainstream *ulama* questioned whether a woman could solemnize marriage under the Islamic law, BMMA silently broke the tradition and opened a new page for Muslim women in India who could rely on neither the secular state nor male-dominated communal institutions but their own initiative to end the discrimination they suffer under Indian personal laws.

### CONCLUSION

Egypt is a Muslim-majority, authoritarian state where Sharia is the principal source of legislation. India is a Hindu-majority state with a socialist, secular, and democratic regime. Despite differences in political orientation, for various reasons explained above, both nations have similar personal status systems, under which secularly trained judges at civil courts apply different religious laws in regard to matters of family law.

Experiences of Indian and Egyptian Muslim women under the personal status systems of the two countries seem to be strikingly similar as well. The main problems that women suffer from under both systems are related to gender-unequal divorce laws and postnuptial maintenance. Solutions offered by political and judicial authorities to these problems in both countries are also very similar. In Egypt, to ease Muslim women’s predicament of divorce, President Sadat promulgated Law No. 44 in 1979 through unpopular top-down means. The result was a conservative backlash. The Egyptian Supreme Constitutional Court struck down Law No. 44 of 1979 as unconstitutional in 1985. Law No. 100, which replaced Law No. 44, reverted women rights to divorce back to their pre-1979 state. In India, an all-Hindu bench of the India Supreme Court tried to unilaterally expand Muslim women’s right to maintenance by practically engaging in *ijtihad* and imposing its own interpretation of Sharia upon the Muslim community. The result was another

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<sup>100</sup> *Id.*

<sup>101</sup> *Law Commission Member Hails Syeda Acting ‘Kazi’ to Solemnize ‘Nikah,’* ONEINDIA NEWS (Aug. 14, 2008), <http://news.oneindia.in/2008/08/14/law-commission-member-hails-syeda-acting-kazi-to-solemnise-nikah-1218717283.html>.

conservative backlash. The Indian parliament enacted the MWA of 1986 to reverse the court's judgment and limit Muslim women's right to maintenance to *iddat* alone.

In response, Egyptian Muslim women resorted to hermeneutic means to render women-friendly interpretations of Sharia and finally succeeded in convincing the political authorities to enact Law No. 1 of 2000 that recognized women's right to *Khul*. This was the greatest achievement of the women's movement in modern Egyptian history. However, prevailing socio-cultural dispositions and obstructive practices of some judges,<sup>102</sup> who even called women who made use of their "prophet-given" right to *Khul* whores (*sharmoota*), derailed the application of the law and eclipsed its success.

Indian Muslim women's rights activists mobilized the courts and turned the ill-intended MWA into favorable legislation by defeating its minimalist interpretations. Although this was a remarkable achievement for women, it also galvanized communal forces into action that in turn effectively discouraged and prevented Muslim women from claiming their right to extended maintenance under the secular law. In other words, the method of challenging Muslim laws through majority-controlled judicial channels has proved of limited use and mostly ineffectual. Thus, the only viable option left for Muslim minority women in India was hermeneutics. As exemplified by AIMWPLB and BMMA, an increasing number of women's groups engages in feminist and liberal theology and renders emancipatory interpretations of Sharia, and by doing so, constantly challenges the scriptural and exegetical monopoly of male-dominated institutions and prevailing gender norms in society.

It cannot yet be claimed that there is a full-blown feminist or theological revolution taking place in either country. However, there is certainly a steady and silent revolution in the making. Hermeneutic communities constantly alter the way society understands the legality of Muslim personal status laws that dictate women's role in the familial and public space by deconstructing the meaning of texts, historical narratives, and tradition. The pace of reform introduced through hermeneutic means may be criticized as too slow. It may also fall short of so-called universal and secular standards of women's rights. However, these "limited" and "gradual" changes may be more likely to affect

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<sup>102</sup> Interview with Pers. Status Court Judge, in Cairo, Egypt (June 21, 2004). The interviewee declined to be identified.

women's rights in the desired direction than top-down secular remedies. This does not mean that secular interventions are always doomed to fail. Experiences of these two countries, however, suggest that they tend to be rather symbolic, limited and indirect, and rarely offer a viable option, especially to Muslim women in minority settings. Therefore, hermeneutic activity or "reform from within" stands a better chance of acceptance and success in the long term. However, the ultimate goal of any reform, whether brought about through hermeneutic or secular means, should be to attain social change by altering long-existing cultural dispositions and stereotypes about women's role and place in the society. Otherwise, prevailing cultural and institutional prejudices against women will undercut reform and prevent it from attaining its full potential.