

## **Religion, Feminist Politics And Muslim Women's Rights in India: by Zoya Hasan**

Historically, the women's movement has focused its attention primarily on the relationship between women and the state, especially with regard to the rights of women in the legal domain and the relationship of women and politics in relation to political representation. The most important campaigns of the women's movements have centred on issues of dowry, rape and personal laws and more recently women's reservation in legislatures. The last two decades have contributed to the opening up of the "woman's question" in India in ways that have challenged the existing systemic discriminations and deprivations in a way never envisaged by any of the political tendencies or groups that had hitherto espoused the cause of societal change. Over the years the debate on religion in the women's movement has shifted from a position that virtually ignored religion to an attempt to work for religious reform from within. This shift occurred at a time when the communalisation and politicisation of religion was apparent in the series of events, some unintended, others calculated, which helped anti-secular forces to gain a foothold and destabilize the political system. As the issue of minorities catapulted to centre stage Muslim women's rights became a subject of considerable debate, typically with reference to the status of Muslim personal law and the conflicting claims of personal law, identity and gender. This was most clearly underlined during the Shah Bano controversy resulting in the 1986 Muslim Women's (Protection of Rights on Divorce) Act (MWA), 1986, which denied divorced Muslim women the same rights to maintenance as other Indian women under the Criminal Procedure Code (CrPC). The Shah Bano case exemplifies the potential conflict between religion, politics and women's rights.

At stake in the Shah Bano case was the right of a divorced Muslim woman to claim maintenance from her former husband under the CrPC. Avoiding the constitutional question of equality, the court dilated at length on the compatibility of the CrPC and the Quran. The judgement sparked off a major political uproar which the Rajiv Gandhi government pacified by means of the MWA, to override the judgement and thus exclude Muslim women from the purview of the CrPC, to which otherwise all citizens have recourse. The law created huge problems not only for sex equality but also for non-discrimination on grounds of religion: Muslim women were the only ones denied this remedy under the criminal code. The backlash provoked by the reversal of the Shah Bano verdict led to the intensification of communal politics in the 1990s and this hardened

communal boundaries. While it is doubtful how much Muslim support Rajiv Gandhi garnered in terms of votes in the 1989 Parliamentary Election, his move certainly alienated a large section of the Hindu community, especially the media and middle-classes which saw him as “appeasing” Muslims. From a mere two seats in 1984, the Bhartiya Janata Party (BJP) increased its tally to 89 seats in 1989. Following the passage of the MWA, Hindu organisations stepped up their advocacy of uniform laws, primarily as a means of eradicating the “privileges” of minority men. One of the promises made by the BJP when it came to power in 1998 was the promise to institute such a code. This had politicised the issue resulting in backpedalling by liberals who had earlier favoured it as they are wary that the BJP’s real interest is in imposing a Hindu code... Uniform Civil Code and Women’s Groups: The BJP is the strongest advocate of a uniform civil code while Muslim conservatives are among its strongest opponents. The Muslim leadership fears that such laws would inevitably lead to uniform cultural practices and alien customs being foisted upon them. In between are many who believe uniform laws are desirable, but that as a country we are not quite ready for it and, therefore, it is best not to raise the issue at this juncture. The overlaps and convergences between the conservative Hindu and Muslim positions are striking, though, both are overtly communitarian and covertly patriarchal impelled by the need to preserve gender hierarchies as well as retain their own religious authority and autonomy. In 1998, the BJP had promised to institute a uniform civil code if it came to power. Until then, the party had raised the issue of a uniform civil code principally to embarrass the Congress party which was reluctant to change the status quo in the face of Muslim opposition to it. The BJP was keen to draw a parallel between the Congress party’s capitulation to Muslim conservatives in the 1950s and again in the 1980s in the Shah Bano case to underscore this tendency. Its campaign sought to highlight Muslim appeasement to critique secularism as pseudo-secularism. By proclaiming its own commitment to “secular” principles, the BJP tried to seize the high moral ground to castigate the Congress government for its appeasement of minorities. According to BJP’s way of thinking, leaving Muslim law untouched implies unequal and asymmetrical treatment. This asymmetry has formed the basis for the charge that secularism, especially secular practice, implies pandering to Muslims for electoral gains. Hence, the party criticised the unequal exercise of the power of the state which intervened to reform the Hindu personal laws whereas the same was not done in relation to Muslim personal law. The criticism notwithstanding it also gives the dominant Hindu community a sense of “liberal superiority” over other “unreformed”

communities, in particular Muslims. From the outset, the problem with the uniform civil code debate was its gratuitous emphasis on uniformity which found its reflection in terming it a uniform civil code. Both in judicial pronouncements and public debate, the need for a uniform civil code was justified as essential for national integrity and plural systems of law undermine it. For a long time it was rarely articulated in the public consciousness as a feminist issue. It became a debate about uniformity versus minority rights, secularism versus religious laws and modernisation versus tradition, in the context of the new nation-state (Rajan 2003). As Tahir Mahmood, an expert in personal laws, points out that the ultimate object of Article 44 (which enjoins the state to move forward towards uniform civil code) is secularity in family law: 'the call for uniformity is merely the means'. In recent years, the issue has become considerably more complicated with the changing positions of women's groups and sharp divisions on a range of issues relating to it. The decisive shift occurred in the wake of the Ayodhya conflict and the dramatic growth of the BJP and with it Muslim fears of the imposition of a "Hindu" code. There is agreement that all religious personal laws are discriminatory and must, therefore, change. There are, however, disagreements over the means to achieve this objective, whether through a state-sponsored civil code or internal reform. The uniform civil code has been discredited because the BJP was using it as a rhetorical device to attack minorities. Aware that legal change cannot be isolated from wider political conflicts and majoritarian politics, women's groups made an attempt to distance feminist positions from the Hindu right's demand for a uniform civil code. The women's movement has since moved away from an either/or position on the uniform civil code to a more nuanced position which combines the options of reform from within personal laws, with the formulation of gender-just laws deriving from the concept of a common civil code.