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The Shah Bano Case: An English-Language Democratic Practice in Post-Colonial India

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For Amu and Baba

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Introduction

In the opening paragraph of the decision for *Mohd. Ahmad Khan v. Shah Bano Begum* (1985), the Supreme Court of India quoted from Edward William Lane's 1879 *Selections from the Kuran*: "[t]he fatal spot in Islam is the degradation of women." In the same breath, the judgment presented a parallel example of Hindu misogyny that had long held a prominent place in British understandings of Hindu norms: "Na stree swatantramarhati said Manu, the Lawgiver: The Women does not deserve independence."[1] Although this legal case occurred nearly forty years after Indian independence, these quotes evoke an uncomfortable legacy of Orientalism and British colonialism. Published in 1879, Lane's *Selections from the Kuran* is a quintessential example of the British Orientalist logic that dominated many Western depictions of the "East." The quote above is part of his broader discussion about Islam's effectiveness as a religion, and its ineffectiveness as a social system. He reasons that Islam does not treat its women with reverence, nor does it protect them. Therefore, Lane concludes that if "Islam is to be a power for good in the future," then it must "cut off the social system from the religion." This distinction between a religious system and a social system, along the lines of "goodness," illuminates a key aspect of modern democratic governance and state legitimacy, in which the state claims to protect religious diversity by subjecting all religions equally to its own higher moral order. Through its parallel presentation of the two quotes, the Court conveys that the two religions are "equal," in their bad treatment of women. In pointing out a shared, negative aspect in both religions, the Court seems to be impartial towards Islam or Hinduism, and it positions itself as separate from "the religious"

[1] *Manu-smriti*, or Laws of Manu is regarded as one of the central legal texts of Hinduism, but the legal nature of the text is contested. It was also one of the first Sanskrit texts to be translated into English, in 1776, by British philologist Sir William Jones. This translation, used by the British East India Company to derive Anglo-Hindu law, characterized the text as a legal code for the "Hindus." However, contemporary scholars have highlighted that the *Manu-smriti* was a social and ritual text.

altogether, while simultaneously upholding (and usurping) the values of dignity and ethical governance that have undergirded religious systems' claims to legitimacy.

The 1985 judgement in *Mohd. Ahmad Khan v. Shah Bano Begum*, commonly known as the Shah Bano Case, evoked the history and legacy of colonial secular governance in post-colonial India. A case that sparked major social and political upheaval during a broader period of political turmoil, the Shah Bano case has long been interpreted as an expression of the crisis and contradictions between the democratic rights of women as citizens and the democratic rights of Muslims as a religious minority in the Indian nation-state. In the immediate aftermath of the case, critical feminist and post-colonial scholarship grappled with the dilemmas it involved, but to some extent remained caught up in those dilemmas. This thesis builds upon the important work of these and later scholars, but it also draws new attention to the specific role of the English-language public sphere in shaping the terms of debate that surrounded the case in the 1980s. I develop two main arguments across the following chapters: First, that the case itself and the debates that followed reflected a colonial legacy that linked English-language publics to both secularism and political legitimacy. State actions and public debates that occurred in English claimed to speak from a position of rationality and neutrality. At the same time, insofar as they occurred in English, these discussions positioned their bearers as distinct from most Indians, whom they characterized as sectarian, irrational, impoverished, and politically "non-modern." However, in the post-colonial 1980s, and particularly in the aftermath of the Emergency (discussed below), this elite English-language claim to represent "the people" increasingly rang hollow. While all sorts of creative democratic political challenges were emerging more broadly in this context in other Indian languages (although I am unable to address these here), I show how in the sphere of English-language governance and debate, the association of English-

language with legitimate political voice continued to empower longstanding Indian elites, even as it did violence to those they claimed to represent.

As a prelude to the close readings that I develop in the following chapters, this Introduction provides key historical and theoretical background for my analysis. Following a brief discussion of the connection between secularism and political legitimacy in the colonial and post-colonial contexts, I provide a basic summary of the 1985 case itself. I then draw on existing historians and theorists to explain more fully what has been at stake in the characterization of a modern state as "secular," and to provide critical historical background on the way the concept of secularism operated in the colonial context. Next, I examine the ways that elite Indian nationalists (Hindu and Muslim) took up and utilized this concept of secularism starting in the late nineteenth century, and the centrality of a shared English-language public sphere to their claims to political legitimacy. I also provide important background on how other elite Muslims engaged with colonial rule, which laid a crucial foundation for the positions they took in the 1980s debates. Finally, I situate the Shah Bano case within the political context of the mid-1980s, when questions about democratic governance, political representation, and political equality had emerged with renewed urgency.

When William Lane was writing in the late 19th century, the Indian subcontinent, which had come increasingly under British East India Company rule from the late eighteenth century, and then under British Crown rule from 1858, formed a major site of experimentation with secularism as integral to the modern state.[2] This history of colonial governance, guided by a conglomerate of ideas about rationality, law, and rights, state neutrality and separation of religion, instated a framework of "secularism," that would be adopted in post-colonial India. As

[2]Julia Stephens, *Governing Islam: Law, Empire, and Secularism in South Asia* (Cambridge: Cambridge University Press, 2018), 10.

highlighted by Julia Stephens, in postcolonial politics, the instability and persistence of secularism have adapted, but with certain similar patterns and common roots.[3] In such a system of legal pluralism, as Sally Engle Merry has detailed, "the sovereign commands different bodies of law for different groups of the population varying by ethnicity, religion…" and "the parallel legal regimes are all dependent on the state legal system.[4] This definition of legal pluralism highlights how the sovereign power lied in the hands of the British, as they presided over religious legal codes. More broadly, colonial secular governance espoused ideals about legal rights, agency, and political subjecthood. Thus, it introduced a framework about how religion properly interacted with law, and how Indians did and should understand themselves and their religion in relation to the law. In addition, though the British used law to dominate, they also articulated purportedly neutral, secular law as central to their claims to political legitimacy. In turn, many elite Indians, operating within this colonial secular governance, internalized the tenets of secularism and understood their political citizenship in relation to it. With independence, the Indian Penal Code (revised later to be the Criminal Procedure Code) and Hindu and Muslim Personal Law remained. Now, presiding above the IPC and the systems of personal law was the Constitution of India. Moreover, while formally both Hindu and Muslim personal law remained parallel and limited legal systems, because the creation of the independent nation-states of India and Pakistan had revolved around the question of whether Muslims, a numerical minority in the subcontinent, could truly be represented and self-governing in an independent India, the space of Muslim Personal Law was particularly fraught. The Shah Bano Case provides a crucial lens into how various elite and non-elite actors understood this framework of secularism in relation to Indian citizenship and legal rights several decades after independence.

[3] Stephens, *Governing Islam*, 9.
[4] Sally Engle Merry, "Legal Pluralism." *Law & Society Review* 22, no. 5 (1988): 871, https://doi.org/10.2307/3053638.

The Shah Bano Case

In 1985, *Mohd. Ahmad Khan v. Shah Bano Begum* became a flashpoint for Indian democracy. The Shah Bano case revolved around the maintenance of a divorced woman, not the first of its kind by any means. The story behind the case begins in 1932. That year, Shah Bano, a Muslim woman, married Mohammed Ahmed Khan, a Muslim man, in Indore, a city in north-central India that would eventually become part of the state of Madhya Pradesh. In the span of their 46 years of marriage, the two had five children. Khan also had a second wife, whom he had seven children with. For many years, all three spouses and children lived in one house. However, for unknown reasons, in 1975, at 62 years old, Shah Bano and her children were forced to leave her marital home. For two years, she received Rs. 200 a month from Khan. When these payments stopped, in 1978, Shah Bano filed a petition in the court of the Judicial Magistrate of Indore, claiming maintenance of Rs. 500 per month, under Section 125 of Code of Criminal Procedure. Before the judge passed a verdict on the case, in November 1978, Khan divorced Shah Bano through triple talaq. He then claimed on the grounds of Muslim Personal Law (MPL) that he was no longer responsible for maintaining legal ex-wife, beyond the *iddat*[5] period. He deposited a total of Rs. 3000 to cover the total expenses of the *iddat* period and paid her *mehr,*[6] which he believed absolved him of his financial obligations. However, in August 1979, the magistrate refuted Khan's claim and ordered him to make maintenance payments of Rs. 25 per month. In July 1980, Shah Bano's lawyer filed a revisional application with the High Court of Madhya

[5] The term, *iddat*, is derived from *adda*, meaning "to count." It refers to a waiting period, a period of abstinence, after the dissolution of a marriage, through divorce, death, or some separation, that the woman remains unmarried. The Quran (2:28) prescribes that a menstruating woman wait three monthly periods before contracting a new marriage; a non-menstruating woman should wait three lunar months; and a window should wait 4 months and 10 days.

[6] The term, *mehr*, refers to the gift that a Muslim bridegroom offers the bride, upon marriage. In English, it is commonly translated as "dower."

Pradesh to increase the existing maintenance amount of Rs. 25; in turn, the court enhanced the amount to Rs. 179.20 per month.

The husband remained persistent that he was governed by MPL and so was not obliged to provide continued maintenance to Shah Bano, now a divorced wife, beyond the *iddat* period. He appealed the Madhya Pradesh High Court's order of maintenance to the Supreme Court of India, on grounds that it conflicted with MPL. In February 1981, a two-judge bench heard the case. Upon hearing the case, the two judges referred the case to a larger bench. Following this reference, the All-India Muslim Personal Law Board (AIMPLB) and Jamiat-e-Ulema-e-Hind joined the case as intervenors, on behalf of the husband. In April 1985, the larger bench Supreme Court delivered its unanimous decision, in which it upheld the right of a divorced Muslim woman to seek maintenance under section 125 of the Criminal Procedure Code (Cr. PC) and dismissed the husband's appeal. This decision created a huge public uproar, and approximately one year after the judgement, in 1986, the Muslim Women (Protection of Rights on Divorce) Act was passed by the Parliament of India, at the instigation of Prime Minister Rajiv Gandhi. At the time, the passing of this Act by the government was seen widely as a nullification of the Supreme Court's decision in the Shah Bano case.

Overall, the central legal questions of both the court proceedings and the subsequent legislative act were whether section 125 of the CrPC applies to Muslims; whether the amount of *mehr* given by the husband on divorce is adequate to rid him of his liability to maintain his wife, and whether Indian criminal law (which had applied universally to all persons regardless of religion since the colonial era) could supersede Muslim Personal Law. These questions highlight how religious identity and legal rights seemed to be inherently tied together.

Histories and Theories of Secularism in British India

In one of the first instances of British legal governance in India, in 1772, Warren Hastings, the first governor-general of British India, issued a plan for the administration of civil justice. Operating on the presumption of religious identity being central to Indians, the plan established colonial legal authority by directing the adjudication of "religious" matters to religious personnel and religious doctrine, while assuming its own legal authority of all other matters. This plan established a system consisting of *diwani*, or civil courts, and *faujadri,* or criminal courts.[7] It also delineated between most matters of civil law—territorial, procedural, adjectival—which would be governed by British law, and matters related to religion and the family, which would be governed by religious law. In Hastings' famous words, "regarding inheritance, marriage, caste, and other religious usages, or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentoos [Hindus], shall be invariably adhered to."[8] This distinction of "religious" matters from other legal matters rested on an essentialized conception of Indians as religious subjects, existing in two categories, conveyed through the pejorative labels of "Mahomedans" and "Gentoos," ruled by their respective religious texts of "the Koran" and the "Shaster."[9] At the same time, and ironically, Hastings' declaration simultaneously construed such "religion" as limited in its sphere of activity.

By placing only issues relating to religion, caste, and family under the jurisdiction of religious law, the plan also subordinated religious legal authorities to colonial legal authority.[10] Through this subordination, and in sharp contrast with the more pluralistic legal governance of the Mughals, the Company expanded the judicial authority of the state and placed itself at the top

[7] Stephens, *Governing Islam*, 30.
[8] Ibid.
[9] "Shaster" is referring to *shastra*, a general word for India literature.
[10] Stephens, *Governing Islam,* 27.

of the hierarchy of legal authority. Ultimately, through the 1772 Judicial Plan, the British articulated a legal regime based on a narrow notion of Indian personhood, in which its own authority lay in its ability to create multiple axes of difference, such as civil law and criminal law; British law and religious law; Hindu and Muslim law.

This expansive vision of state power became even more prominent by the 1830s, under the influence of liberal Utilitarians such as Sir Thomas Babington Macaulay, who laid the foundation for English-language education for Indian elites and for the legal codification of universal criminal law. With the enactment of the Indian Penal Code (IPC), in 1864, the British legal regime had become somewhat "unified" at the level of criminal law. Outside of the purview of this extensive code, however, matters of what could be classified as "secular civil law" were adjudicated according to an uncodified common law, as in Britain, while matters of "succession, inheritance, marriage, and caste, and all religious usages and institutions" remained under the (also uncodified) authority of Hindu and Muslim law. Thus, the British established a legal system in which individual rights took shape differently within civil, criminal, and religious laws.

In its secular governance, the British did not emphasize individual rights, as they deemed Indians' values as incompatible with the secular ideals of "equality" and "human rights." Therefore, secular colonial governance highlights how the secular shapes the ideal "citizen," capable of acquiring these rights. Talal Asad describes the historical process of secularization as effecting "an ideological inversion." Asad sees "'the secular'" as "the ground from which theological discourse was generated (as a form of false consciousness) and from which it gradually emancipated itself in its march to freedom."[11] Through the secular, religion becomes associated with a lack of consciousness. As discussed, Indians, seen as innately religious, were

[11] Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press), 192.

deemed as lacking reason. Furthermore, Asad's use of "emancipation" is key because theology is framed by the secular as opposite to rational consciousness and freedom. Through this secular lens, the British deemed Muslim Law and Hindu Law as less rational than English law. By framing English law, imbued with Christian theology, as neutral, the British also deemed themselves as neutral purveyors of law. Furthermore, Asad highlights how it is the secular ground on which "humans appear as the self-conscious makers of History…, and as the unshakable foundation of universally valid knowledge about nature and society." In place of divine authority, the secular valorizes the human as capable of creating knowledge and agency. However, even as the secular frames religion as something opposite and irreconcilable with its rationality and agency, there is an entanglement between the two where "the latter continually produces the former."[12] The Shah Bano Case highlights the pervasiveness of this form of the secular, as it has sustained itself as a logic of governance and citizenship, from colonial India to the independent India-nation state.

Secularism and the Realization of Political Subjecthood among Indian Nationalists

In the late nineteenth-century, an Indian nationalist elite, drawing upon and developing the colonial English language public sphere, used this colonial secular lens to form and legitimate a new political subjecthood. Most participants in this public sphere, irrespective of religion, were of the same class, educational background, and used the same English dialogue. Their shared position as "elite" Indians gave them access to the language of colonial governance. Their organization, the Indian National Congress (INC), the party of Mohandas Gandhi and Jawaharlal Nehru, has long been regarded "as the bulwark of secularism," and the history of the modern Indian nation is "intimately intertwined with the history of the Congress, a party

[12] Ibid.

synonymous with modern India."[13] Established in 1885, the party was at the forefront of the Indian national movement. It was made up of English-educated moderates who perceived themselves as "lack[ing] the cultural means to communicate with the rural majority and widen the base of their movement."[14] Alongside this communication gap, they also had to navigate their desire to reform indigenous society (which they translated as rural Hindu religion and culture) and assert India's capability to maintain its own modern state. The nationalists' dilemma is aptly encapsulated in a quote from Bipin Chandra Pal, a foremost leader of the Nationalist Movement in the early 20th century: " 'In the name of India we loved Europe… We loved the abstraction we called India, but yes, we hated the thing it actually was… Our love for our people was something like the pious love of Christian missionaries for the heathen.'"[15] His characterization of India as an abstraction speaks to how the elite class spearheading the independence movement, loved the concept of an autonomous Indian state, for the sake of wanting self- rule and the end of colonialism. Yet, they were unsure of how to go about consolidating this future state, as they had cursory contact and awareness of the political desires of the non- elite, largely non- English-speaking majority, and they also viewed this Indian "people" as irrational and non-modern.

In efforts to align themselves as close to the rational, secular ideals seen (by the British) as integral to political subjecthood, the elite nationalists (largely Hindus) drew upon the term and logics of secularism. The British had viewed Indian society as intrinsically divided by caste and sect. Colonial institutions, such as the Census, further categorized Indians into the categories of "Muslim" and "Hindu."[16] The term communalism, as used in the writings of British colonialists,

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[13] Zoya Hasan, *Ideology and Organization in Indian Politics: Growing Polarization and Decline of the Congress Party (2009-19)* (Oxford University Press, 2022), 7.
[14]Aravind Rajagopal, *Politics after Television: Hindu Nationalism and the Reshaping of the Public in India* (Cambridge University Press, 2001), 13.
[15] Ibid.
[16] In addition, through this lens, colonial knowledge proliferated a certain understanding of Indian history as land of Hindus, with Muslims as interlopers and invaders. Perhaps because of their own longstanding engagements with

deemed it a "subcontinental version of nationalism" as they believed that nationalism, in its truest form, was an inherently Western attribute. In the eyes of the colonialists, communalism was "a basic feature of Indian society— its religious bigotry and its fundamentally irrational character."[17] In addition, they believed that it was "age old" and it "flow[ed] from the essential character of the peoples of India." Interestingly, they did also believe that there were a "few enlightened, liberal, western-educated men and women" who were free from "communal spirit."[18]

This latter, liberal English-educated elite, in contrast, viewed communalism as "a problem of recent origins, the outcome basically of economic and political inequality and conflicts." In addition, as Pandey details, they believed it was constructed by "self-interested elite groups (colonial and native)" and therefore, not affecting the mass of the Indian people.[19] Ironically, according to Pandey, these elite Indians, acquainted with European nationalism, "did more than anyone else to propagate the term" by using it to portray a certain, anti-national position of certain religious communities. From the 1920s, the politics of religion became labelled as "communalism," and communalism came to be represented as the primary obstacle to Indian nationalism.[20] Despite nationalist accounts differentiating between the nationalist and colonialist conception of communalism, Pandey argues that there are significant reiterations of the colonialist and nationalist readings of communalism in each other's discourses. These commonalities illuminate an "underlying… search for the causes of communalism points to a

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Islam in Europe and North Africa, the British deemed Muslims and their law as more threatening to their secular power than Hindus and Hindu law. This othering along religious lines is crucial in understanding the formation of political subjecthood in this sphere as one that was both a unified and distinct process.

[17] Gyanendra Pandey, *The Construction of Communalism in Colonial India* (Delhi: Oxford Univeristy Press, 1990), 11.

[18] Achin Vanaik, "Reflections on Communalism and Nationalism in India."

[19] Ibid

[20] Pandey, *The Construction of Communalism*, 265.

prior unity of perception." In other words, while Indian nationalists and the British identified different causes of communalism, they both relied upon a shared logic of communalism being diametrically opposite to "rationalism or liberalism, secularism, or nationalism." In contrast, Pandey draws out how "communalism" and "nationalism" were both made from shared and contested experiences and visions of a political community; these categories of thought were and are part of a broader quest for an "imagined community" in India.

The Formation of a Muslim Public Sphere in Colonial India

In the aftermath of the Rebellion of 1857, confronted with the increasing distrust of the British, several reform movements exemplify how Muslims brokered authority in an increasingly strong colonial sovereign state. One of these reformers, (eventually Sir) Sayyid Ahmed Khan, born in 1817, remained loyal to the British, in the aftermath of the Rebellion. Though affected by the confiscation of Muslims' land and the destruction of Delhi, Khan believed that it would be in the best interest of Muslims to align with the seemingly undefeatable British rule. He thus saw himself as confronting the dual task of showing fellow Muslims that aligning with the British was religiously correct, and showing the British that Muslims were loyal and crucial to their rule.[21]

These two tasks illuminate the different priorities of Muslims and the British in this context: the former was seemingly concerned with religious correctness and the latter with loyalty from those they ruled. To Muslims, Khan used the common grounds of the Abrahamic religion to create a bond of shared culture between Muslims and the British. To the British, identifying a communication gap between the British and Indian subjects, he urged for consultative councils; these councils functioned as interpreters for the regime to "ordinary

[21] Barbara Metcalf, *Islamic Revival in British India Deoband, 1860-1900* (Princeton: Princeton University Press, 1982), 319.

people" and vice versa. Moreover, he translated Western works into Urdu and demonstrated the functioning of Western inventions. These translations and demonstrations initially received little attention, but he laid the foundation for an important ideological strand within the Islamic reform movement. Historian Barbara Metcalf argues that underlying Khan's efforts of bridging Muslims and the British was the conviction that the British "were technically superior" and "personally superior" to Indians. For example, in one article in his newspaper, the *Aligarh Institute Gazette*, Sir Sayyid declares, "We in Hindoostan look upon the English as possessing evil disposition… saying that they look upon Hindoostanees as animals, or beast, and consider them low to a degree." Yet, he continued, even knowing "my countrymen will take this as hard thing from me," he emphatically, "without exaggeration and in all sincerity," suggested that the English view is correct. He writes that indeed, "we are, in comparison with the breeding and affability of the English, as dirty, unclean wild beasts in the presence of beautiful and worthy men."[22] Historian Barbara Metcalf describes the characterization of social reformers such as Khan in recent scholarship as "colonial collaborators" who "internalized the orientalist argument that Indic traditions has fallen into decay and stagnation." Like early Hindu reformers and nationalists discussed above, these Muslim reformers saw education and reform as the most viable means of remedying this decay and stagnation.[23] Even as Sir Sayyid mapped a clear moral and political hierarchy, with the English at the top and Indians at the bottom, he believed that "Western learning, and science in particular, was not inimical to Islam, but actually intrinsic." His positioning of Islam with Western science was based on a specific interpretation of Islam which has been deemed by some as "'modernist'" interpretation of Islam.

[22] Metcalf, *Islamic Revival in British India*, 322.
[23] Ibid.

Sir Sayyid's rational reformism was not the only strand of Islamic reform in this era. Metcalf further explains how the educational agenda advanced by Khan and the Aligarh movement represented an alteration of the educational agenda of existing nineteenth-century Muslim scholars and religious authorities, known as the *ulama*. This alteration consisted of making the agenda "more European and more gender specific."[24] The tension between the social reformers, such as Sir Sayyid, and the reformist *ulama* stemmed from the end of Muslim political control, with the advent of colonial rule. Whereas social reformers sought to align "Muslim" and "Western" knowledge as a means of improving Muslims' position in British India, reformist ulama drew upon a longstanding idiom of calling for a return to original, correct Muslim practice, which people had strayed from over the centuries surrounded by non-Muslims.

The late nineteenth-century ulema, who sought religious reform through re-educating society in the original stories, actions, and sayings of the Prophet, used Urdu print publication to communicate to a wider Muslim audience; in doing so, they solidified a distinct Muslim identity. In the early decades of the nineteenth- century, the ulama, in several north Indian cities, started using lithographic presses to publish books about fundamental sources of Islam and pamphlets that publicized their new formulations of Muslim self-identity. [25] Moreover, as these books and pamphlets were published in Urdu, they were accessible to most of the Muslims in north India as well as upper-class Muslims in Bengal, in scholarly publications.[26] By the late nineteenth century, there was a significant increase in the number of publications as well as an expansion of the kinds of publications, within this revitalized Urdu public sphere. In addition to the early pamphlets about Islamic tradition, Arabic and Persian editions of the Quran and *hadith* were also

[24] Zoya Hasan, *Forging Identities: Gender, Communities and the State of India*, 10.
[25] Litographic presses were introduced by Christian missionaries and became a method adopted by Muslim leaders to preach their religious tradition.
[26] Metcalf, *Islamic Revival in British India*, 207.

being translated into Urdu. Moreover, with this expansion of print media, there was also an increase in competition among different schools of ulema, regarding which Urdu translations were the most effective for fostering familiarity between Indian Muslims and Quranic traditions. Amidst this competition, there were oral debates between different schools of reformist ulema, such as the Deobandis and the Barelwis.[27] Through these debates, each reformist movement solidified a base of followers that "took pride in the combative role of their leaders."[28] With Urdu print media, the ulema directed Muslims to embody their vision of an authentic Muslim identity, while also using public debate to mobilize followers for their own respective schools of ideology. Overall, the ulema's use of media and debate highlights a broader shift in this period, regarding how the public modes of communication, whether written or oral, was used to articulate a group's religious identity.

The ulama's use of Urdu, in their articulation of a Muslim group identity, underscores the capacity of language to elucidate and reify religious and social identities. After 1837, Persian was no longer the court language; instead, the vernacular language, in a geographic region, became the language of the government. Through this system, in north India, Urdu became the "official" language of the government. In turn, educated elites, both Muslims and Hindus, became fluent in the most refined Urdu.[29] However, to Hindus, Urdu, with its Arabic script and Persian influences, was regarded as a Muslim language and a public language. In the late 1860s, Hindus began to increasingly view the language as one for only Muslim elites, rather than one for all regional elites. As a result, some Hindus spearheaded a movement that called for the replacement of Urdu

[27] Deobandis and Barelwis both adhere to Hanafi Law. Originating from the Islamic seminary of Darul Uloom, in the north Indian town of Deoband, the Deobandi movement believed that the world of nineteenth-century British India needed reforms by religious leaders, through preaching, teaching, public debate, and printed books and pamphlets, that was rooted in classical Islamic theology. Barelwis also urged for religious reform but emphasized Sufi beliefs, such as oneness of God.
[28] Metcalf, *Islamic Revival in British India*, 233.
[29] Metcalf, *Islamic Revival in British India*, 207.

with Hindi; they argued that Hindi should be given the same vernacular status as Urdu. The debates about the merits of Urdu and Hindi resulted in an identification of each "vernacular" language with Muslims and Hindus. Notably, this separation of the two groups, along linguistic lines, was done by elite literate Muslims and Hindus. However, it became an understanding that was internalized by individuals in both groups, regardless of their class. In the 1980s, at the time of the Shah Bano Case, the historical overlaps between Hindus and Muslims, such as both speaking Urdu were irrelevant. Many Muslims and Hindus, as well as those discussing the groups, saw them as irreconcilably different.

The Debates on the Shah Bano Case in India's English-language Media

In the aftermath of the judgement, the Shah Bano case was reported, debated, and dissected in detail by English-language newspapers and academics alike. In their extensive coverage of the Shah Bano Case, English language media specifically reproduced the logic of both colonialist and nationalist ideas of communalism as a challenge to modern, secular, rational governance. Although through one lens of analysis, the Shah Bano Case occurred at a time—nearly 40 years after India's independence—where these questions of the nature of India's national and political identity were seemingly established, ultimately, the case powerfully demonstrated that the logics and frameworks of the nation-state's secular political identity were intrinsically unsettled, continually mutable, and seemingly transient.

These debates also highlighted the ongoing resonance of Orientalist stereotypes. In a 1986 article, published in the English language newsweekly, *India Today*, the authors open with, "As most complex communal controversies do, it started out as a mere trifle." This specific trifle began with the 73 old Shah Bano, "tucked away in the Byzantine confines of the old, princely city of Indore," seeking small sustenance. This portrayal of Shah Bano, hidden in a mysterious

ancient part of Indore, presents her as a relic of time—somehow separate from the present-day Indian politics. In turn, her search "has led to unprecedented Islamic resurgence" and rendered Muslims as a "troubled community, torn by an internal rift."[30] In addition, they portray Muslims as having "their minority psyche" which exists in the "innermost core of Muslims religious identity."[31] These sweeping statements about Muslims in India convey both a homogeneous understanding of an extremely diverse group, based solely on their religious identity. The writer's portrayal of Muslims is also reminiscent of the essentialist colonial lens as they ascribed "religion" as inherent to how Indians, particularly Muslims, understood themselves.

The article also articulates the original colonial logic of communalism. It sees the Shah Bano Case as a way to "strengthen[ing] the community's feeling of persecution at the hands of a majority which, many of them believe, regards them as ungrateful, unpatriotic, disloyal, and bigoted."[32] The nebulousness of "the majority" is significant because it does not explicitly link the negative conceptions of Muslims with a Hindu majority. Rather, it frames the negative conceptions as self- imposed limitations, produced out of the "minority psyche" that Muslims carry and operate through. In framing the Shah Bano Case as an advantageous conduit for "fundamentalist ulema and politicians" to pursue their own goals of leadership, the article further riffs off nationalist ideas of communalism being fixed by elite groups. For example, the article describes the "all- consuming fury of hurt, fear and aggression," spurred by the judgement as a "a mix any politician in search of a communal constituency would grab with both hands." Overall, the propagation of communalist logic by an article in *India Today* is a telling example of

[30] Shekhar, Gupta, Inderjit Badhwar, Farzan Ahmed. "Shah Bano Judgment Renders Muslims a Troubled Community, Torn by Internal Strife," *India Today*, January 31, 1986.
[31] Ibid.
[32] Ibid.

how certain terms, inextricably linked to its history, remain part of the language of both political discussion and intellectual inertia, even as the context in which it is used changes.

The Emergency Period and its Implications for the Debates Around the Shah Bano Case: A Fracturing of Indian Political Representation

Understanding the fraught nature of Indian political identity during the Shah Bano case requires us to step back into the decade before the case, to trace a crucial government transition that influenced these debates. On the midnight of June 25-26, 1975, under Prime Minister Indira Gandhi's recommendation, President Fakhruddin Ali Ahmed signed a proclamation, imposing a state of emergency on India. He signed a concurrent proclamation, suspending the fundamental rights of Indian citizens, granted by Article 19.[33] This state of emergency lasted until March 21, 1977. This 21- month period, known commonly as the Emergency Period, was the longest and most controversial state of emergency in the history of independent India. During the Emergency Period, Prime Minister Indira Gandhi was authorized to rule by decree. Her government suspended elections, censored the press, arrested any oppositional political, and committed large scale institutional violence against Indian citizens. Even with these sweeping changes to crucial aspects of Indian government and society, Indira Gandhi maintained that the declaration of Emergency and its subsequent changes were within the confines of constitutional and democratic practice. Technically, her framing was not incorrect.

Indira Gandhi's strategic invocations of democracy and secularism during the Emergency Period, amidst the suspension of the fundamental rights of Indian citizens and the curtailing the powers of judiciary, reflects certain continuities with Indian elite nationalists, responsible for the

[33] Under Article 352 of the Indian Constitution, the President, upon advice from the cabinet of ministers, can declare a national emergency, on the grounds of war, external aggression, and internal rebellion. In addition, under Article 359, when an Emergency is proclaimed, many of the Fundamental Rights enshrined in Articles 12-32, except the right to life and personal liberty, can be suspended. In the Emergency Period, the right to life and personal liberty was also suspended.

drafting of the original 1950 Indian constitution. Once the INC assumed power as the first government of India, they became the "centre," "capable of being neutral and secular."[34] Rajagopal argues that the INC party's claiming of neutrality, obscuring "questions of what the parties actually were and what they claimed to be," is part of a larger state led exercise of secularism. Through this exercise, and in continuity with the colonial state, the nation-state creates a myth that the party in power occupies a politically neutral ground. This temporal continuity also reflects an ideological continuity, where articulations and enactments of Indian democracy are redrawn and delineated by a group of elite, Indian citizens who share a political and at times, even familial, lineage.[35] During the Emergency Period, the tracking of the INC political party with secularism shifted dramatically.

Among the many controversies of Indira Gandhi's Emergency rule, the enactment of the 42nd Amendment to the Constitution emerged as one of the most contentious. The extensive changes that this amendment brought to the Constitution of 1949 earned it the nickname, the "Mini Constitution." Historian Granville Austin states, "The important Constitutional development of the Emergency, other than its very imposition, was the enactment of the Forty Second Amendment. Coming in November 1976, the amendment demonstrates the progression of Prime Minister and her government from having near- absolute power without a coherent programme—other than the protection of her prime ministry—to power expressed through fundamental constitutional change."[36] One of these fundamental constitutional changes was changing the Preamble of the Indian Constitution from "sovereign, democratic republic" to

[34]Aravind Rajagopal, "The Gujarat Experiment" in *The Crisis of Secularism in India*, ed. Anuradha Dingwaney Needham, Rajeswari Sunder Rajan, eds. (Duke University Press), 213.
[35] Rajagopal, "The Gujarat Experiment" in *The Crisis of Secularism in India*, 212.
[36] Granville Austin. *Working a Democratic Constitution: A History of the Indian Experience* (Delhi, 2003; online edn, Oxford Academic, 18 Oct. 2012), https://doi.org/10.1093/acprof:oso/9780195656107.001.0001, accessed 1 May 2023.

"sovereign, *socialist, secular,* democratic republic." This inclusion of "secular," twenty-nine years after the promulgation of the original 1950 constitution, and at a time where many rights of Indian citizens were suspended, is a glaring irony. It raises two crucial questions: who defines and governs the "sovereign, socialist, secular, democratic republic" of India, and how accessible are these ideals of secularism to the entirety of India? The Shah Bano case exemplified a critical context where there were dominating voices that had the privilege to speak about and define Indian democracy.

Structure of Paper

As a historical project, my goal is not to add a new opinion to the debates of the case nor pass judgment about the adequacy of justice given by the law. Rather, I aim to show how these debates were conceived in certain ideological parameters. These parameters have a colonial legacy, significant for its initial conception, that has been continuously pushed. Thus, by connecting certain logics and perspectives, within this debate, to the ideas of Indian nationalists and Muslim reformers of the nineteenth century, I aim to show how certain post-colonial solutions remained grounded in the logic of those nationalists and reformers. These continuities reflect how the dilemmas of secularism and democracy, are embedded in the legal regimes of the State, and are seemingly timeless.

This paper argues against the binary understanding of the landmark Shah Bano Case as either a failure or success of Indian secularism. I argue that the case and its aftermath demonstrate the continual nature of Indian secularism and democratic practice, especially laden in the post- Emergency era. As this era witnessed an unprecedented decline of the Indian Congress Party, this democratic practice harbored a prevailing sentiment among the "Indian people" about an incongruency between the people's desires and the government. One of the

major actors in the shaping of this practice was the English language public sphere, who assumed the voice of the Indian people and articulated "the people's desire." Yet, they represented a small portion of the Indian population as they were educated in English and were members of an elite class. Moreover, in contrast to Habermas's idea of public sphere[37] consisting of citizens whose reasoned debate puts pressure on a neutral state that stands above society, this public sphere was made up of "the government" and citizens, unified by their privileged, Westernized ideas and language about "rational governance," "secularism," and "the neutral state." Therefore, the Indian context, illuminates how the idea of an equal access public sphere for all citizens is a myth; there is a close connection between the leading voices in the public sphere and those in the government. This shared ideology is further exemplified in both the state's and the English language media's attempts to "represent" Indian people and "advance" Indian democracy in ways that also intrinsically minoritized or obscured the social reality that they claimed to represent.

In splitting up my chapters between the media and the state, I aim to show how this normative distinction between "the people" and "the government" is rarely reflective of the practice of democracy. Across both chapters, there are reoccurring themes and logics surrounding women, Hindu- Muslim tensions, morality of religion versus morality of law. The overlapping logics of the Indian state and the Indian English-language media show how the two occupied and reflected a shared discursive space. Furthermore, they illuminate which class of Indian citizens

[37] In Habermas' s sense of public sphere, the media would be part of the public sphere and talking to a separate sphere, consisting of the Court and the government. One of the issues in Habermas's distinction is that the ideas about "the rule of law" is rooted in rational governance, produced by a privileged sphere of English-speaking Indian citizens. Thus, one source of the legitimacy of law is the English language sphere and so, the "opinion" of the English language sphere is entangled with the functioning of institutions of law.

have the most access to membership in the Indian democratic polity. English-speaking Muslims and women, who shared the privileged English language with the Hindu, high-caste elites, were able to use this language to assert their unequivocal Indian citizenship. Thus, even as they framed themselves as those who were left out of the purview of full Indian citizenship, they still had access to the same logics and ideas that other English-language Indian citizens had.

Chapter 1 analyzes the legal debate around the case, starting with the legal precedent to the Shah Bano Case, *Bai Tahira v. Ali Hussain, 1979*, to the 1985 Shah Bano judgment, to the subsequent 1986 Muslim Women's Bill. I argue that questions about secularism that arise in these debates about the maintenance of divorced women underscore how the State utilized claims of neutrality and authority to advance visions of moral, ethical law. Chapter 2 shifts to English- language media publications, specifically *The Hindustan Times, Radiance,* and *Manushi's* reporting on the Shah Bano Case. The English-language debates around the Shah Bano case highlight the underlying shared ideology of this English-language media, where even seemingly disparate positions or logics worked through a similar intellectual frame. In their discussions of the case and subsequent debates about women's rights, I argue that even as the publications have different agendas, in their discussion of religion, law, and rights, there are congruences in how they think these different aspects, in a democratic nation, should function. Thus, this paper explores how one landmark case, centered on a maintenance lawsuit of divorced Muslim women, emerges as one of the most salient expressions of the shaping of Indian democracy within an elite English-language sphere.

Chapter 1
The State: The Self-Proclaimed Arbiters of Secularism

In the aftermath of the 1947 Partition, where the Indian subcontinent was re-ordered along religious lines, the vision of a democratic Indian state seemed lofty. To this end, Jawaharlal Nehru, the first Prime Minister of India, identified one of unique challenges in conceiving a constitution for the new nation of India lied in "'creating a just society by just means…[and] a secular state in a religious society.'"[38] As he knew how deeply religious faith was embedded in the social and political fabric of Indians, Nehru reasoned that Indian secularism could not be irreligious. Instead, Nehru believed that secularism should guarantee religious freedom to all persons and religious denominations so that one can practice their religion of choice, with in a secular framework.[39] Despite his awareness of how central religion was to the Indian nation, the "secular" and secularism was not included in the original 1950 Indian Constitution. Even with the inclusion of secular 29 years later, with the 42nd Amendment, secularism was not explicitly defined.

Drawing on Nehru's secularism—Nehruvian secularism, Marc Galanter poses one theory about how secularism operates in India and the role of the state in upholding secularism. He suggests that secularism in India does not equate to religious neutrality or state impartiality.[40] Instead, the Constitution establishes secularism by granting equality before the law and equal protection of laws to all (Article 14) and prohibits discrimination on the grounds of religion, race, caste, sex or place of birth (Article 15).[41] In respect to religion, individuals are granted the

[38] T. N. Madan, "The Case of India." *Daedalus* 132, no. 3 (2003): 63, http://www.jstor.org/stable/20027861.
[39] Mohammad Ghouse. "NEHRU AND SECULARISM." *Journal of the Indian Law Institute* 20, no. 1 (1978): 109. http://www.jstor.org/stable/43927437.
[40] Marc Galanter, "Hinduism, Secularism and the Indian Judiciary," in *Secularism and its Critics*, ed. Rajeev Bhargava (Delhi: Oxford University Press, 1998), 281.
[41] Indian Constitution, Article 15.

freedom of conscience and free profession, practice, and propagation of religion (Article 25.[42] Moreover, Galanter argues a secular state involves a normative view on religion where the state decides the boundaries in which religion can exist; the state decides what aspects of religion to recognize, support, and encourage and what aspects to be indifferent to, and what aspects to curtail.[43] These boundaries about the functioning of religion are then delineated through law. Through this process, the state and its law exercise an arbitral role over religion and in turn, religion becomes a product of that state's law. Moreover, Galanter distinguishes between two different modes for the exercise of law in the oversight of religion: the mode of limitation and the mode of intervention. In the mode of limitation, courts shape religion "by promulgating public standards and by defining the field in which secular public standards what prevail" and exercising authority to "[overrule] conflicting assertions of religious authority."[44] In the mode of intervention, courts "[attempt] to grasp the levers of religious authority and to reformulate the religious tradition from within, as it were." According to Galanter, the secularism of the Indian constitution exemplifies the limitation mode, but the judges of the Indian Supreme Court often depart from this mode. Overall, Galanter's description of Indian secularism and the general judicial process conveys the idea that Indian secularism has been uniform and immutable. However, in practice, neither secularism nor the adjudication of religion is immutable nor uniform. Drawing on Hussein Ali Agrama, secularism is indefinite, reiterative, and at times contradictory. It is a "process of defining, managing, and intervening into religious life and sensibility."[45] In this process, the State is continuously revising the definition and form of

[42] Indian Constitution, Article 25.
[43] Galanter, "Hinduism, Secularism and the Indian Judiciary," 283.
[44] Galanter, "Hinduism, Secularism and the Indian Judiciary," 282.
[45] Hussein Ali Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt.* (Chicago: University of Chicago Press, 2012), 26.

secularism. Furthermore, through this process of secularism, the "*question* of where to draw a line between religion and politics continually arises and acquires a distinctive salience."[46] The salience of this question lies in how the abstract idea of secularism imbues the state with a sovereign power to decide how freedoms are defined, which articulations of the self are incompatible with the nation's self-narrative, and how the state can intervene to reform individuals to fit the narrative. At the same time, the State's secular apparatuses, such as the Constitution and codified law, also secure its power by portraying the State's legal regime as universal and uniform. Therefore, the State derives its authority from both the perceived uniformity of its legal adjudication and the ambiguity of secular legal governance.

In this chapter, I will examine the legal debates around the maintenance of divorced women, at the center of the Shah Bano Case, to underscore how the State portrays themselves as secular, even as they intervene in religious law. These interventions, by the Supreme Court and the government, are inconstant in how they present the relationship between codified Indian law and Muslim Personal Law (MPL). I will first turn to the revision of the 1973 Criminal Procedure Code. The debate in Parliament about whether the revision of section 125 interferes with MPL articulates two key logics in this legal debate. Then I will turn to the legal precedent of the Shah Bano Case, *Bai Tahira v. Ali Hussain* (1979). In this judgment, one of the logics of the Parliamentary debate is reproduced. I then turn to the judgment of the Shah Bano Case. This decision follows the legal precedent of the 1979 case but differs in how it reaches its decision. I will then turn to the Muslim Women's Bill, passed after the Shah Bano judgment, and analyze one of the first judgments that dealt with petitions challenging the Constitutionality of the Act.

[46]Agrama, *Questioning Secularism,* 27.

One of the key continuities across all the debates is how women become the "ground"[47] for contestation between the State's legal regime, the Criminal Procedure Code, and Muslim Personal Law (MPL). Even as the legal provisions of their maintenance are at the center of the debate, Muslim women are only figuratively present. This figurative presence of women in a debate about divorce and spousal support reflects a broader aspect of the personal law system. Through this system, known as Family Law Exceptionalism (FLE), family matters and family law are in a legal sphere, away from other public concerns. However, as argued by Katherine Lemons, family has "come to be addressed and popularly understood both as a separate (religious) sphere and as a site of production, distribution, welfare provision, and consumption." [48]In turn, this liminal position of the family has situated marriage as the main source of women's well-being and security where her "primary labor is to engage in kinwork" which preserves her marriage and through this work, she also secures "her primary property," which is her marriage. With this primacy of marriage to a woman's security, divorce is an especially significant rupture to a woman's personal life and finances. Ultimately, women, marriage, and divorce are both concerns of the "private, religious sphere" as well as the public, state sphere. Thus, in the legal debates of maintenance of divorced women, their rights as Indian citizens, are asserted to advance the State's interest.

The Defining of "Wife" in the Revision of the 1973 Criminal Procedure Code Bill

In the 1898 IPC, under section 488, titled "Of the Maintenance of Wives and Children," women could seek maintenance on the grounds that "any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain

[47] This term is from Lata Mani's work about the debates around sati in colonial India. Her argument is premised on women being the "ground for a complex and competing set of struggles over Indian society and Hindu tradition.
[48] Katherine Lemons, *Divorcing Traditions: Islamic Marriage Law and the Making of Indian Secularism* (Ithaca: Cornel University Press), 14.

itself." In the section, the term "wife" was used repeatedly, with no further definition of the term. In the revision of the code in 1973, the Indian government specified the definition of wife in section 125. In section 1(b), it states: "Wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried."[49] This section of 125 emerged as a site of contestation between Muslim Personal Law and codified Indian Criminal Law. The government settled this debate by amending section 127 of the code. In this section, if the sums due to divorced women, under customary or personal laws are paid, then the magistrate can cancel an order of maintenance made under section 125.[50] However, the addition of this section would only spur further debate, which would eventually reach the Supreme Court of India.

The initial Parliamentary debate about section 125 set the terms for later debates. A prominent voice within the Muslim league, Suleman Sait, argued that the inclusion of divorced wife in section 125 was at odds with Muslim Personal Law. If the language of section 125 was not changed, then he argued Muslims should be exempt from its purview.[51] In response, the Law Minister rebutted that the provision did not concern MPL. He argued that the section was conceived so "'a helpless lady [along with some other categories] is given relief'" and so, its humanitarian efforts were in fact consistent with Muslim tradition.[52] Notably, Sait's focus on the language of the law and the Law Minister's focus on the purpose of law highlight the two different modes of interpretation, as identified by Galanter, Supreme Court judges use. In the 1979 precedent to the Shah Bano case, *Bai Tahira v. Ali Hussain Fissali*, Justice V.R. Krishna Iyer interprets the purpose of sections of the Cr.P.C. to uphold the maintenance of a divorced

[49] Section 125 of the 1973 Code.
[50] Section 127 of the 1973 Code.
[51] Archana Parashar, *Women and Family Law Reform: Uniform Civil Code and Gender Equality* (SAGE Publications 1992), 165.
[52] Ibid.

Muslim woman. In the Shah Bano case, Judge C.J. Chandrachaud interprets the language of Muslim Personal Law to uphold the maintenance of a divorced Muslim woman. In other words, Iyer interprets the purpose of a section in the legal code, which is not explicitly stated while, Chandrachud uses explicit words of Muslim personal law, to infer an intended purpose of Muslim tradition, that aligns it with the intended purpose of the state's law. In doing so, he attempts to equate the morality of law and the morality of religion. In addition, in the 1979 judgment, Iyer asserts the moral responsibilities of the law while in the 1980 judgment, Chandrachaud asserts the moral responsibilities of MPL. Ultimately, the debate between Sait and the Law Minister foreshadows a seemingly circular debate about how to understand the language and purpose of State Law and Muslim Personal Law and how to understand the relationship between the two legal regimes. The precedent to the Shah Bano Case and the Shah Bano judgment both uphold Section 125 of the Cr.P.C same judgment, but through different understandings of the language and purpose of the Cr.P.C and MPL.

The Legal Precedent to the Shah Bano Case: Bai Tahira v. Ali Hussain Fissali (1979)

In *Bai Tahira v. Ali Hussain Fissali, 1979,* Bai Tahira was divorced by Ali Fissali in 1962. After the divorce, in a consent decree, the husband transferred an apartment in Bombay to the wife. In the decree, mehr money was "adjusted by compromise terms."[53] One of the terms of the compromise was that the wife "'has no claim or right whatsoever against the defendant or against the estate and the properties of the defendant.'" This compromise rested on the wife being the owner of the flat and receiving deposits on the flat from additional shares. There was a period of reconciliation, but the couple separated once again. After this separation, the wife was financially strained and she filed a claim with the magistrate, under section 125 of the Indian

[53] *Bai Tahira v. Ali Hussain*, A.I.R. 1979 S.C. 362.

Criminal Procedure Code, for a monthly allowance for her and her child. The primary point of contention between the husband and wife was that she claimed she was still a wife and deserved maintenance while the husband claimed that she was a divorcee, thus not entitled to maintenance. Ultimately, the magistrate's court ruled that the wife's divorced status did not preclude her from being "a wife" and ordered monthly maintenance of Rs. 300 and Rs. 400 for her and her son, respectively. This order was subsequently challenged by the husband on the grounds that the court did not have jurisdiction, under section 125, to decide whether the wife was "a wife." Even though the High Court of Bombay dismissed the husband's petition, it was brought by special leave before the Supreme Court, after extended litigation.

The lawyer, on behalf of the wife, asserted that there is indeed a definition of wife in section b of section 125(1) that reads, "wife' includes a woman who has not been divorced by, or has obtained a divorce from her husband and has not remarried." Therefore, the wife's side maintained that her divorcee status still located her within the category of "wife", and she was entitled to a monthly allowance. In contestation to the wife, the husband's side argued on three grounds. First, that section 125 (4)[54] would only be relevant if there was absence of proof that the woman was not living separately by mutual consent. Second, there must be proof of neglect to maintain, on the husband's behalf. Third, on the grounds of the section 127 (3) (b),[55] the husband

[54] In Section 125 (4), it states: No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

[55] In Section 127 (3) (b) it states: the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order, -
(i) in the case where, such sum was paid before such order, from the date on Which such order was made, (ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman.
(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman.

has paid *mehr,* through the adjustment in their consent decree on the apartment and so, he is not required to give more maintenance.

In the opening of the judgment of the Court, Judge V.R. Krishna Iyer situated the Court's role as interpreters of section 125 of the Cr.P.C, whose meaning they derive from the Constitution of India. He describes section 125 as a "benign provision enacted to ameliorate the economic condition of neglected wives and discarded divorcees."[56]Furthermore, as a "welfare law" for "weaker sections, like destitute women," he believes section 125 has to be read in the spirit of Article 15, section 3 of the Indian Constitution."[57] Through evoking the Constitution, he grounds his interpretation as operating within the State and conveying the values of the state. Moreover, he describes the Constitution as a "pervasive omnipresence brooding over the meaning and transforming of values of every measure." Through this description, he imbues the Constitution and its law as having the ability to transform one's values. Through this portrayal, the Constitution assumes an authority that can be parallel to that of religious authority. Ultimately, Iyer sees the State's law as supreme and invested in the rights and values of all its citizens.

Through framing section 125 as a welfare law, under the State's jurisdiction, Iyer presents maintenance as a social obligation for men, for the sake of women's protection. He calls on Articles 37, 38, 39, of the Constitution to interpret section 125 with "a compassionate expansion of sense that the words permit." Across the articles, there is repeated reference to equality between men and women, in terms of their right to life.[58] However, Iyer did not utilize the

[56] *Bai Tahira v. Ali Hussain*, A.I.R. 1979 S.C. 362.
[57] Article 15, section 3 of the Indian Constitution states: "Nothing in this article shall prevent the State from making any special provision for women and children."
[58] Articles 37, 38, and 39 of the Indian Constitution states: such as "to promote the welfare of the people by securing and protecting as effectively as it may a social order'"; "to minimize the inequalities in income, and

language of equality in his own judgment. Instead, he portrays women as those who need to be provided for economically by men. Iyer further posited that even though "payment of *mehr* money, as customary discharge is within the cognizance of provision," there is still a question of the amount of *mehr.* He further reasons that if the *mehr* amount is not able to "keep the woman's body and soul together for a day… unless she was ready to sell her body and give up her soul,"[59] then it is not sufficient. Thus, through what he describes as "teleological… sociological decoding of the text," he sees maintenance as a matter of "a payment which will take reasonable care" of women. Iyer's vivid description of the possibility of women being forced into prostitution, in case of economic hardship in the aftermath of divorce, exemplifies how the State intervenes in family law. As marriage traditionally sequesters women to the private sphere, divorce is a rupture in that sequestration. This disruption in normative structures of gender and marriage is a threat to state order. Therefore, in making maintenance an issue of criminal law, rather than personal law, the Court can minimize "ill- used wives and desperate divorcees shall not be driven to material and moral dereliction to seek sanctuary in the streets, " as articulated by Iyer.[60] Thus, the law is particularly concerned with women remaining in the private sphere and being taken care of, rather than rectifying the socio-economic conditions that have led women to be financially dependent on men.

In this closing paragraph, Iyer states that the "law is dynamic, and its meaning cannot be pedantic but purposeful." In contrast, certain aspects of the Shah Bano judgment are pedantic. For example, they draw from different interpretations of *mehr*, in various translations of the Quran, to assert that *mehr* is an amount paid in consideration of marriage and therefore, cannot

endeavor to eliminate inequalities…; "to direct its policy towards securing those citizens, men, and women, equally, have the right to an adequate means of livelihood."

[59] *Bai Tahira v. Ali Hussain*, A.I.R. 1979 S.C. 362.

[60] *Bai Tahira v. Ali Hussain*, A.I.R. 1979 S.C. 362.

be paid in consideration of divorce. Through this pedantic approach to law, the judges in the Shah Bano case spur debates about the State's ability to intervene in religious law.

The Shah Bano Judgement

From the outset, the Court's judgement, delivered by C.J. Chandrachud, framed the issue of maintenance of divorced women as mainly having implications on society, rather than on law. In its opening sentence, the Supreme Court deems the questions of the case as involving no question of "constitutional importance." This is a notable departure when the 1979 judgment, where the Constitution was referred to several times. At the same time, Chandrachud's framing of maintenance as having "far reaching significance to large segments of society which have been traditionally subjected to unjust treatment"[61]resonates with Iyer's interpretation of maintenance as "a fulfillment of social obligation, not a ritual exercise rooted in custom." Both imbue maintenance with a social significance. Furthermore, Chandrachud articulates an expansive social significance to the "straightforward" legal issue. He argues that the issue is "of common interest not only to Muslim women, not only to women generally but, to all those who, aspiring to create an equal society of men and women, lure themselves into the belief that mankind has achieved a remarkable degree of progress in that direction."[62] Through the democratic language of equality, the Court portrays the legal dispute over Shah Bano's maintenance as significant for all Indian citizens who aim to push India towards progress.

Echoing Iyer's portrayal of the Constitution as omnipresent, Chandrachud uses the basis of morality to uphold section 125 of the Cr.PC. over Muslim Personal Law (MPL). As these

[61] Supreme Court of India. "Majority Opinion, Mohammad Ahmad Khan (appellant) v. Shah Bano Begum and others (respondents)." Criminal Appeal number 103 of 1981. Reprinted in Engineer, 25.
[62] Supreme Court of India. "Majority Opinion, Mohammad Ahmad Khan (appellant) v. Shah Bano Begum and others (respondents)." Criminal Appeal number 103 of 1981. Reprinted in Engineer, 25.

provisions are "too clear and precise to admit any doubt or refinement," the judges argued that the religion of Shah Bano is not relevant to the application of these provisions. The "axiomatic" reason being that Section 125 is part of the Code of Criminal Procedure, rather than civil laws which pertain to the rights of parties belonging to religions. Therefore, as part of the criminal code, Section 125 is "truly secular" in nature and "cut across the barriers of religion." Furthermore, the judges acknowledged that the provisions of Section 125 do not "supplant the personal law of the parties" but at the same time, "the religion professed by the parties or the state of personal law" cannot curtail its applicability. The applicability of provisions can only be restricted by the religion of the parties if the Constitution details that "their application is restricted to a defined category of religious groups or classes."[63] Moreover, the judges emphasized that Section 125 was founded upon "the individual's obligation to the society to prevent vagrancy and destitution" and so, it imposes the liability on individuals to manage close relatives "who are indigent."[64] Following this explanation, the next sentence asserts, "That is the moral edict of the law and morality cannot be clubbed by religion." Exemplifying how the law arbitrates religion, the judge's assertion distinguishes between the morality of secular law and the morality of religion. In their distinguishing, they valorize secular principles over religious belief.

This valorization imbues the bench with the authority to interpret verses from the Quran and then posit their own interpretations as doing "justice" to the Quran. In contrast to Iyer's interpretation of the purpose of criminal law, Chandrachud interprets the language of the Quran to deliberate the ethics of Muslim law. Moreover, to prove that all Muslim husbands are required to provide for their divorced wives, Chandrachud cites different English translations of Verses

[63] Supreme Court of India. "Majority Opinion, Mohammad Ahmad Khan (appellant) v. Shah Bano Begum and others (respondents)." Reprinted in Engineer, 25.
[64] Supreme Court of India. "Majority Opinion, Mohammad Ahmad Khan (appellant) v. Shah Bano Begum and others (respondents)." 26

241 and 242. In doing so, the justices undeniably intervene, but frame that intervention as an answer to the question of whether section 125 is at odds with Muslim personal law. In addition, they admonish one of the intervenors, the All- India Muslim Personal Law Board, for "their shuffling plea"[65] that verse 241, obliging maintenance for divorced women, only applied to certain, pious Muslims. Ultimately, the judges deem maintenance as a social issue that is in the purview of criminal law, while intervening in Muslim law, to interpret it the "right way," and align it with criminal law. In doing so, he implicitly negates the legitimacy of Muslim Personal Law.

In one of the concluding paragraphs of the opinion, the judges advocate for the implementation of the Uniform Civil Code (UCC), referred to in Article 44 of the Indian Constitution. As Article 44 is under the Directive Principles of the Indian Constitution, it cannot be enforced by the Constitution.[66] The debates around the Uniform Civil Code hinge on a crucial question about Indian secularism: should the country have a uniform civil code on the grounds of equality of all citizens before the law or should it allow communities within the nation to have personal law on the grounds that a democratic, secular nation must respect minority and group rights.[67] In addition, the implementation of a Uniform Civil Code would require a dismantling, at least partially, of the existing legal pluralistic system. In their advocacy of the UCC, the judges insisted that "a common civil code will help the cause of national integration by removing disparate loyalties to law which have contending ideologies."[68] In setting up this relation

[65] Supreme Court of India. "Majority Opinion, Mohammad Ahmad Khan (appellant) v. Shah Bano Begum and others (respondents)." 29
[66] Article 44 states: The State Shall endeavor to secure the citizens a uniform civil code throughout the territory of India."
[67] Partha S. Ghosh, *The Politics of Personal Law in South Asia: Identity, Nationalism, and the Uniform Civil Code* (London: Taylor and Francis, 2018), 3.
[68] Supreme Court of India. "Majority Opinion, Mohammad Ahmad Khan (appellant) v. Shah Bano Begum and others (respondents)." 29

between national integration and a common civil code, the judges are conveying that the ultimate unification of India lies in eliminating multiple legal codes. Therefore, the state's determining of the parameters of secularism would occur, without the need to intervene in religious legal codes. The judges go on to implicitly acknowledge these undercurrents as they bluntly state, "no community is likely to… [make] gratuitous concessions on this issue." Moreover, the judges still call upon the state to fulfill its "duty of securing uniform civil." Even as the judges charge the state with this duty, they acknowledge "the difficulties involved in bringing persons of different faiths and persuasions in a common platform."[69]Yet, there is no explicit definition of this how their version of secularism would function in their aspirational Indian society, ruled by UCC.

The Muslim Women (Protection of Rights Divorce) of 1986

In the aftermath of the Shah Bano Case, there was wide news coverage as well as academic scholarship about Muslims being outraged by the judges' interpretation of the Quran. Certain groups, like the All-India Muslim Personal Law Board, saw the Court's interpretation as a threat to Muslim personal law and Muslim identity. In addition, they felt that the Court's interpretation was unjustified because it did not rely on Muslim jurists or scholars. Furthermore, one journal article, published in 1987, describes the "political repercussions of the judgment" on the 1985 elections. The article describes how a new party, United Minorites Front (UMF), used the Shah Bano judgment to rally support from Muslims.[70]As a result, the current party at the time, Rajiv Gandhi, the Prime Minister at the time, and his party, the Indian National Congress, were portrayed as desperate for the "Muslim vote." Furthermore, when the Muslim Women

[69] Supreme Court of India. "Majority Opinion, Mohammad Ahmad Khan (appellant) v. Shah Bano Begum and others (respondents)." 33

[70] Nawaz Mody. "The Press in India: The Shah Bano Judgment and Its Aftermath." *Asian Survey* 27, no. 8 (1987): 936, https://doi.org/10.2307/2644865.

(Protection of Rights Divorce) Act, was passed in 1986, it sparked debates about the government's motives because it was intended as a nullification of the Shah Bano judgment.

This highly contentious debate about the Act and its impact on Muslim Women's rights was to result in further litigation in courts. One of the first petitions about the constitutionality of the Act was brought to the Gujarat High Court. Through the Court's interpretation of the Act, women remain figurative in the conversation while the responsibility of maintenance is placed either within a woman's kinship network or her religious community. However, in contrast to Iyer's judgment, their reasoning was based on Muslim Personal Law (MPL) provisions. The Act lies in a liminal position between the state and non- state law, "protection" and its codification of maintenance provisions of MPL.

In its opening, the act states its purpose as "to protect[ing] the rights of Muslim women who have been divorced by, or have obtained a divorce from, their husbands and to provide for matters connected therewith or incidental thereto." The Gujarat High Court describes this as the "simplest language" for understanding the act as "protecting the rights of Muslim Women." In addition, the court highlights how the act does not explicitly state that "it is enacted for taking away some rights which Muslim woman was having either under the Personal Law or under the general law i.e., Ss. 125 to 128 of the Cr.P.C." However, though the act does not state its intent as stripping Muslim women of any of their rights, it explicates the supervision of women under Muslim Law in section 3. In this section, women are entitled to "a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband." The act defines the iddat period in three ways: "three menstrual courses after the date of divorce if she is subject to menstruation; three lunar months after her divorce, if she is not subject to

menstruation; and if she enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier."

In subsection 2 of section 3, it states that if "a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or properties referred to in clause (d)… has not been delivered to a divorced woman on her divorce," then she is authorized "to make an application to Magistrate for an order for payment of the provision and maintenance, mahr, or dower, or delivery of property.[71] The magistrate will then decide on the ground of whether her husband has sufficient means, and whether he has failed or neglected to pay within the *iddat* period. If these conditions are met, then the magistrate can direct her former husband "to pay such reasonable and fair provision and maintenance to the divorced women as he may determine as it." His determination should have proper regard for "the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband." Notably, the needs of the woman are not measured through her; they are deliberated by the law. Therefore, both Muslim Personal Law and state law locates the rights of a woman, outside of her, and a matter of legal deliberation.

In the case that a divorced woman "has not remarried and is not able to maintain herself after the *iddat* period," the magistrate "may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim Law to pay such reasonable and fair maintenance to her."[72] Moreover, in the case that a woman cannot maintain herself or she has no relatives who could inherit her property or has relatives with no means to pay maintenance, then the magistrate may direct "the state Wakf Board established under section

[71] The Muslim Women (Protection of Rights on Divorce) Act, 1986.
[72] The Muslim Women (Protection of Rights on Divorce) Act, 1986.

9 of the Wakf Act, 1954 (29 of 1954)… to pay such maintenance as determines by subsection 1…" This section presents itself as benevolent in its comprehensiveness where the responsibility to maintain women is distributed among different entities. However, the state itself is missing in this distribution as the responsibility of women remains among the family or the broader religious authority in the community. In doing so, the State views women's citizenship in terms of how much protection she has from others, instead of her individual rights, in direct relation to the State.

In response to whether the Act giving women the option to be governed by section 125 of the Cr. P.C is contradictory to the Supreme Court's decision to provide Shah Bano maintenance, the Gujarat High Court argues that this Act reinforces the Court's decision by codifying the rights of Muslim divorced women.[73] Their argument lies in section 3 detailing that women receive reasonable and fair provision and maintenance, in addition to the amount of *mehr* paid to her at the time of her marriage. Therefore, this is in line with the 1985 judgment, in which mehr was deemed separate from a payment on account of divorce. Furthermore, the court insisted that "whatever is laid down by the Supreme Court in Shah Bano's case is codified by the Muslim Women Act." Through this codification language, the Court subverts a broader conception at the time that the Uniform Civil Code (UCC) is antithetical to religious personal law.

The Muslim Women (Protection of Rights Divorce) of 1986 unsettles the binary between Muslims Personal Law and state Law articulated in the debates of the Shah Bano Case. It codifies Muslim Personal Law. In doing so, it confirms its legal provisions, unlike the Shah Bano judgment but still subordinates it to state law. Moreover, at the time of the Act's passage, it was interpreted as the opposite of the Uniform Civil Code because it used the language of MPL.,

[73] *Arab Ahemadhia Abdulla and Etc. vs Arab Bail Mohmuna Saiyadbhai And ...* on 18 February 1988.

Even with this language, issues such as maintenance, are adjudicated in similar ways across state law and Muslim Personal Law. Ultimately, the rights and protection of Muslim divorced wives were decided upon by a multitude of legal and political bodies, other than Muslim women. Therefore, the Act questions arguments about the Uniform Civil Code being a way to secure equal rights for all Indian citizens.

Conclusion

In its penultimate paragraph, the Shah Bano judgment quotes Allama Iqbal, who outlined a vision for a cultural and political framework for Muslims in India, that states:

> "The question which is likely to confront Muslim countries in the near future is whether the law of Islam is capable of evolution-a question which will require great intellectual effort and is sure to be answered in the affirmative."

In the context of the judgment, this quote portrays Muslim law as inflexible, unchangeable, and only compatible with a democratic nation, if it aligns itself with the state's vision of morality. At the same time, in quoting Iqbal, the judgment also evokes his vision for Muslims in India. Born in 1877, he was a proponent of the revival of Islamic and social civilization in South Asia. In a 1930 address to the All- India Muslim League, Iqbal calls for "complete organization and unity of will and purpose in the Muslim community, both in your own interest as a community and in the interest of India as a whole."[74] The inclusion of a political figure, like Iqbal, in a Supreme Court judgement, highlights how there is a continuous dialogue between the State and elite intellectuals. In this next chapter, I will look at how discussions in English-language newspapers, emerging from the Shah Bano case, articulated many of Iqbal's ideals, such as community, unity, and Muslim solidarity, in their own visions of Indian democracy. These articulations did not all necessarily agree with or support the views of

[74] Sir Muhammad Iqbal's 1930 Presidential Address: Speeches, Writings, and Statements of Iqbal, compiled and edited by Latif Ahmed Sherwani (Lahore: Iqbal Academy, 1977 [1944], 2nd ed., revised and enlarged), pp. 3-26.

the judges on the Shah Bano case. However, they all grapple with the same questions about legal rights and Indian citizenship, even as they offer differing remedies for their perceived gaps about the allotment of these rights and citizenship.

Chapter 2
The English Language Media: The Self-Proclaimed Voice of Indian Citizens

"What should be the policy of the State, how the Society should be organized in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether."

- B.R. Ambedkar, 1948 Constituent Assembly

The inclusion of secular in the Premable Constitution was debated by the members of the Constituent Assembly, responsible for the drafting of the Constitution. As part of this debate, in the quote above, B.R. Ambedkar, the first Law and Justice minister of independent India, argued against the inclusion of "secular." In Ambedkar's eyes, inserting secular into the Constitution was a predetermination of the nature of the Indian state. Instead, he vested the power to determine political, social, and economic organization of the state "in the people." Through this articulation, Ambedkar outlined a vision for Indian democracy where the organization of the state was to be decided by the nascent Indian citizens.

Ironically, the inscribing of "secular" occurred in the Emergency era, where Ambedkar's vision of democracy, in which the people worked in tandem with the State, was virtually non-existent. With the end of the Emergency, for many Indians, the year 1977, held promise for a new political dawn after a 21-month period where elections were cancelled, civil liberties were suspended, and the press was censored. In a journal article from 1978, the year is described as a "year of restoration in both a manifest and latent sense."[75]The largest manifest expression being "the restoration of democracy," by the elected Janata government. At the same time, it marked a

[75] Narain, Iqbal. "India 1977: From Promise to Disenchantment?" *Asian Survey* 18, no. 2 (1978): 103–16. https://doi.org/10.2307/2643304.

remarkable turning point in Indian history, where the party of Ambedkar and Nehru, the Indian National Congress (INC), had been defeated for the first time in the history of the nation-state.

This defeat was especially damning, given that the Janata Party was made up of former INC members, along with other members from the Samyukta Socialist Party and the Bharatiya Jana Singh Party. In 1969, the Indian National Congress bifurcated, over the leadership of Indira Gandhi. Those who were in support of Indira Gandhi deemed themselves Indian National Congress (R), where the R denoted "Requisition." Those who opposed Indira Gandhi and viewed her as dictatorial and corrupt deemed themselves, Indian National Congress (O), where O denoted "Organization." In 1977, the Janata Party, running on a platform, in which they admonished Indira Gandhi's Emergency rule and heralded themselves as patrons of democracy, won a sweeping victory. Ultimately, their victory highlighted a decline of in political power and public trust of the Indian, English language elites, such as the INC, who had dominated the politics of the Indian-nation state, from its inception in 1947.[76]

In years following the Shah Bano Case, the fraught nature of the INC was only amplified as Rajiv Gandhi's passing of the Muslim Women (Protection of Rights on Divorce) Act was deemed by many Hindu political leaders as "minority appeasement" and "retrogressive."[77] Moreover, the Shah Bano Case also ushered in a rethinking of political identity and organization among Muslim elites, who felt increasingly alienated by the INC. For example, in protest of the passing of the Muslim Women (Protection of Rights on Divorce) Act, in 1986, Arif Mohammed, a member of the INC, resigned. This Act was also a matter of concern for Indian feminists, who

[76] In 1980, Indira Gandhi and INC returned to power.
[77] Nawaz B. Mody, "The Press in India: The Shah Bano Judgment and Its Aftermath." *Asian Survey* 27, no. 8 (1987): 945. https://doi.org/10.2307/2644865.

viewed unchecked "right to religion," in conflict with gender rights. With the passing of the Act, as political debates were mostly centered on tensions between religion and the State, the question arose about whether the rights of women were truly a matter of concern for the State or religious groups.

In this atmosphere of increasing political and ideological fragmentation, the reporting of the Shah Bano Case was equally fractured, where different publications, in different languages, communicated conflicting viewpoints where terms, like secularism and rationalism, were defined and used to advance different opinions. Moreover, certain languages became associated with certain viewpoints. For example, the Urdu press was deemed "the virtual voice of conservative Muslims" while the "dominant English press" was deemed as "largely 'secular.'"[78] This characterization of the English press as "secular" reflects how English language media legitimizes its "secur [ing] the establishment of a secular, democratic society," through its history as "an elite form of discourse in liberal market society." In this society, English became the language used by "a relatively coherent, well networked national elite language used by for business."[79] In addition, English was phonetically distinct from indigenous languages and so, elites viewed it as more formal and stripped of "the biases that dialect, style and intonation" part of indigenous communication. Altogether, English assumed a "neutrality" which "cemented the functional utility for elite and majority alike." In the context of the Shah Bano case, the English language would serve to broker power and leverage their voices, for elite Muslims and women, as their respective religious and gender identities were otherized in the majority Hindu, "secular" press.

[78] Mody, Nawaz B. "The Press in India," 950.
[79] Rajagopal, *Politics After Television*, 152

Within the English-language sphere, the State and media form a simultaneously symbiotic and contentious relationship, where the media has the power to both legitimize and delegitimize the ideological regime of the State's. This power of the media, in relation to the state, is elucidated in the hasty establishment of a regime of prior restraint, within 24 hours of the inauguration of the state of emergency. In this regime, before news could be printed, it had to be cleared by the Press Information Bureau.[80] Moreover, different publications served different roles in the regime's consolidation of power. Certain publications, like *India Today*, were known to be mouthpieces for the regime, while others implicitly tried to critique Indira Gandhi's government, while still complying with censors.[81] Moreover, the Emergency government's heavy hand on the press is sustained in the Constitution. In Article 19, the freedom of the press is not explicitly stated; the Constitution only guarantees freedom of speech and expression. Even these freedoms cannot:

> "affect the operation hall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."[82]

Notably, even while granting the freedom of speech and expression, the State can intervene on the grounds that one's speech or expression is infringing on "the operation of any existing law or prevent the State from making any law" as well "public order, decency or morality." Thus, these freedoms are still under the supervision of the State's vision of morality as well as law and order.

The exclusion of freedom of press by the Constituent Assembly was, as described by Aravind Rajagopal, a reiteration of the British conception of "the indigenous press… [as] an

[80] Christophe Jaffrelot, *India's First Dictatorship: The Emergency, 1975-77*, (Harper Collins, 2020), 7
[81] Jaffrelot, *India's First Dictatorship,* 381
[82] Indian Constitution, Article 19

irresponsible and trouble-making body requiring strict policing. "[83] Through this lens, the public sphere became an entity that needed to be controlled and supervised, to preserve public order. After independence, this wariness of the public sphere remained; it was "understood as a zone of possible conflict rather than as a realm *sui generis* for enacting debate and legitimating political decisions."[84]At the same time, the media is necessary for the State to create an intellectual regime that fosters dialogue and provides a medium for democratic participation. Moreover, Rajagopal describes how modernity is constitutive of a decline in transcendental authority and "claims of a supramundane religious realm over temporal life."[85] In place of theological authority, a secular society derives its legitimacy from society itself. Within this secular society, where democracy is the political emblem of modernity, politics is "determined by the appeals of the history, culture, and needs of people." Thus, through democracy, there is a merging of the space of politics and the space of the social. Through this merging, mass media operates as an "institutional underpinning of modern society and helping to secure a certain ideological unity across it." Overall, the State's supervision of the freedom of speech and expression as well as its entanglement with the media underscores the fallacy of a "neutral state."

In this chapter, I will be analyzing three English-language media publications: *Hindustan Times*, *Radiance Viewsweekly,* and *Manushi*. Across the three publications, I will be looking at articles spanning from 1977, published in the months right after Emergency ended, to 1985 and 1986, the years of the Shah Bano- judgement and its aftermath. Across all publications, their shared English language aligns them with the State's language of democracy while their power in proliferating ideas makes them equal brokers of power with the State. Within this English-

[83] Rajagopal, *Politics After Television*, 157
[84]Rajagopal, *Politics After Television*, 158
[85] Rajagopal, *Politics After Television*, 7

language sphere, the State and the English press shaped how politics and ideals of the Constitution are understood and internalized by their readers. In turn, the English-language forms a vocabulary where ideas, like "democracy," "rights," and "secularism" circulates among an elite-sphere of English, educated Indian citizens. With the Shah Bano Case, the literal sharing of language and the figurative sharing of ideas renders an English language sphere where the same frameworks are being used to communicate different iterations of Indian citizenship.

In the first section of the chapter, I will highlight how *Radiance Viewsweekly*, a English magazine launched by the Board of Islamic Publications, and the Hindustan Times, a English-language newspaper with a nationalist history interpret "secularism," in line with their religious identity. In the next section, I will link two 19th-century Muslim social reformers with authors in Radiance; two of these authors were cited in the Shah Bano judgment. In doing so, I aim to trace continuities in two Muslim public spheres, that were formed at moments when their Muslim identity was questioned, amidst broader governmental shifts in power. Then, I will turn to *Manushi* and the publication's framing of Shah Bano, as a restricting of women's rights by the patriarchy of the State and religion.

The Contestation of Secularism in a Shared Muslim-Hindu English- Language Sphere

The *Hindustan Times*, founded in 1924 and based in Delhi, is one of the largest newspapers in India by circulation; it is the second- most widely read English newspaper in India. The opening ceremony of the newspaper was inducted by Mahatma Gandhi on September 26, 1924. Gandhi's presence at the newspaper's opening ceremony speaks to the publication's historical roots to India's Independence Movement and its original launching as a nationalist newspaper. In contrast, *Radiance Viewsweekly* is a relatively recent publication. Launched in July

1963, by the Board of Islamic Publication, the objectives in the launching of the English magazine were:

> Remove the prevailing misunderstanding about Islam and present its message in its true light and propagate its teachings; religious and social reform of Muslims; Proper guidance of Muslims in the light of the principles of Islam concerning those special problems which they face as a cultural unit; Counteract irresponsible and false propaganda against the Muslim community and awaken the country's social conscience in regard to its difficulties and problems by presenting the real perspective; Fair and impartial presentation of the Islamic stand-point with regard to the country's political, economic and cultural problems and educate public opinion to discard regional, linguistic and communal prejudices in favour of a humanitarian and national outlook; Help eradicate moral laxity, corruption and other social evils and check the tendency towards violence and intolerance; Champion the just cause of the various religious, cultural and linguistic minorities and other weak and downtrodden sections of the society; Strengthen the democratic forces in the country as against the totalitarian and fascist, protest against any violation of the Fundamental Rights granted by the Constitution, and especially safeguard the principle that the State shall not discriminate against any citizen on religious ground. (*Radiance Viewsweekly Website, https://radianceweekly.net)*

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In May 1985, approximately a month after the Supreme Court judgement, The *Hindustan Times* reporting of the judgement and related topics was understated; coverage and commentary around the case was never on the front page. Instead, it was placed in the "Letter to the Editor" section or columns in the middle of the newspaper. In reporting on Shah Bano case in this manner, the publication implicitly illuminates their awareness of how contentious and divisive the issue may be for certain Indians. At the same time, their commitment to "First voice, last word" meant they felt a need to somehow be a part of a major political debate of the time.

The difference between the reporting of Shah Bano in *The Hindustan Times* and *Radianc*e is a product of the different type of public sphere that they are articulating. From the advent of the publication, Radiance's articulated (or at least, aimed to articulate) an unapologetically Muslim sphere, with a range of opinions from different Muslim figures. The English language medium of the publication marked it with a rational neutrality; the publication

used this perceived neutrality to articulate authority of "Muslim issues." Furthermore, Rajagopal highlights how the victory of the Janata Party, ushering in the end of Emergency, was accompanied by Hindu Nationalist organizations, like the RSS, "carv[ing] pathways unto the political process itself, albeit in the guise of a religious movement." [86]Rajagopal connects this political climate, consisting of one movement's intertwining of religion and politics, with the media "enacting … an epistemological break in the career of Indian secularism." Through the media's reporting of this climate, it transformed "a limited, top-down adjudicatory debate on secularism" into "a question of national identity."[87] The media that had once addressed secularism on "a negotiated and pragmatic basis" had now rendered it into an "all or nothing matter, conflated with Indian society as a whole." As media sources operating at this historical moment, *Radiance* and *The Hindustan Times* were unarguably part of this media transformation, but in different ways.

This difference in their participation, exemplified through its Shah Bano coverage, stems from a crucial difference in their assumed audience's relationship to the State's secular agenda For *Radiance*'s elite Muslim audience, being deemed a threat to Indian secularism further jeopardized their claim to the national identity and political participation, as a numerical minority in India's secular, democratic society. Conversely, for *Hindustan Times's* high caste Hindu, English language speakers, any political pushback from minority group was a threat to the secular ideology, who was constituted by individuals of the same class and religion. Therefore, the political ideology of secularism was only beneficial for this minority's political ideology and ineffective for most of India's population.[88] For *Radiance*, the defense of Islam, through its

[86] Rajagopal, "The Gujarat Experiment", 215
[87] Ibid.
[88] Rajagopal, "The Gujarat Experiment", 216

extensive coverage of the Shah Bano case, aimed to safeguard Muslim's claim to their Indian identity. For the Hindustan Times, their defense of a specific conception of secularism, through its critical coverage of Shah Bano, aimed to safeguard the secularism of elite, high-caste Hindu English language speakers.

Despite this distinction, the assumed audience of both publications remain in the literate, English-educated middle-class elite, "with a sense of being bearers of the agenda of modernization.[89] Rajagopal argues that difference in audiences of English press and Hindi press has rendered a "split public" where the English and Hindi press "behaved as though they were in different societies." This binary, though simplistic, hints at the significant implications of the type of audience that English language media is "speaking" to. As the English press was speaking to a class of the Indian nation that saw themselves as modern, democratic subjects, the publications "emphasized the true value of news, as information serving a critical-rational public."[90] Jointly, as English language publications, *Radiance* and the *Hindustan Times* exemplify how questions of democracy and participation of Indian citizens in the political process, was part of the English language media. These questions, reemerging from the Shah Bano Case, was particularly salient in the years after the Emergency period, an era that provided an unsettling glimpse into an undemocratic Indian state.

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In the *Hindustan Times's* May 1985 issues, the first mention of Shah Bano was on May 5 5, in an article titled, "Never too personal." The newspaper sums up legal correspondent Krishnan Mahajan's argument being that "the Supreme Court has relied on a correct interpretation of the Koranic provisions" but "may soon have to pronounce upon other related

[89]Rajagopal, *Politics After Television*, 159
[90] Rajagopal, *Politics After Television*, 152

issues affecting both the Fundamental Rights and Directive Principles"[91] in upcoming cases. The articles itself opens with the blunt assertion that the "Indian state today is threatened by the fanatic Hindu, Muslim, and the Sikh." From the outset, it establishes religious groups as opponents of the Indian state. In doing so, it reinforces a normative dichotomy between religion and state. Moreover, it further admonishes these groups by invoking the Constitution of India "which spells out the kind of India we want does not recognize fanaticism or fundamentalism." Though Mahajan does not specify who the "we" is referring, it is presumably encompasses the publication's imagined rational audience who do not subscribe to a religiously informed political rhetoric. He goes on to outline a long history of the Constitution. At first, the British gave "each of these communities legal forms like the Muslim Personal Law Application Act 1937 or the Gurdwaras Act." In doing so, the British "legally strengthened" religious identity but "at the cost of the Indian identity." This differentiation between religious identity and a unitary Indian identity conveys that two as separate. Furthermore, through presentism, he sets up a tension between religious identity and Indian identity that is not historically grounded. For example, he argues that the British strengthening of religious identity over the Indian identity led to "the country pa[ying] the price of this at the time of Partition when those who wanted a complete congruence between religious and national identities set up their theocratic state." This implicit reference to Pakistan, as a theocratic state, signifies his attempt to connect an entanglement of religion and politics to a different system of government; one that is categorically separate (and opposite in its distinction between religion and the state) from India and its democracy altogether.

[91] "Never Too Personal," *Hindustan Times* (Delhi, India), May 5, 1985.

He sees questions around the merging of religious and national identity as outside the purview of the Constitution. The legal blueprint of the document vests the Indian state with the authority to "regulate any economic, financial or political activity which may be associated with religious practice, and the State's policy is to be directed to secure a uniform civil code for all its citizens." In tracing the historical legacy of India's democracy and asserting the rights of the State, he is establishing his ideal vision of how the State should be functioning. However, he does not believe that the State is functioning in this manner in the 1980s. Instead, "with the steady erosion and abandonment by the State of this fundamental duty of legal planning and implementation," citizens have "resorted to the courts, especially the Supreme Court, for a human identity other than that laid down by those who control the religious apparatus of the communities to which they belong." Through framing the Supreme Court as an alternative to the eroding State, he imbues the Court with the ability to renew the national identity that citizens cannot find in the state. Therefore, the Court, through its adjudicative power, can give an individual an alternative identity to their religious identity. This alternative, given the secularism the Court sees itself responsible for upholding, would have to be secular—at least, in name.

In his specific analysis of the Shah Bano Judgement, he frames the judgement as "the rule of Indian social justice sought to be implemented by the Indian state as part of its constitutional duty. It is a rule that applies regardless of the caste, class, community, or religion of any Indian."[92] The repetition of Indian signifies his insistence on the judgement being a defense of an Indian identity, above all else. Therefore, the questioning of the judgement by "so called Muslim leaders" is disconnected from the rules of the Indian social justice. In identifying Muslim leaders as interrogators of the Indian state, he is reifying certain historical narratives of Muslim leaders,

[92] "Never Too Personal," *The Hindustan Times*

during the nationalist movement, opposing the Indian National Congress, on grounds of not feeling represented. Further, he sees their questioning as evidence of their questionable investment in the community. He believes that "their leadership and their base for being in Parliament or the State legislatures" is dependent "on their religious identity of their community fed not by Koranic text but by the popular version." Through this popular version, he believes the leaders are responsible for "hav[ing] kept these communities poor and illiterate."[93] By questioning the legitimacy of the leaders' religiosity and leadership, he is conveying their religious practice as an aberration to the "right practice of Islam" and locating their religious practice and identifying at the crux of broader demographic patterns with in the Muslim Indian population. Therefore, as these leaders are misguided in their Islam, he rationalizes the bench's decision to interpret the Quran as a means of re-educating Muslim leaders about the accurate teachings of the Quran. This alignment with the judges' intervention into Muslim law, to instruct Muslims, draws on how secular ideals are a mark of "the modern Indian citizen." Thus, he views the rational, secular authority of the judge to curtail the irrational, religious authority of Muslim leaders. Moreover, anrony emerges in Mahajan's portrayal of the judges where they are both purveyors of an irreligious Indian identity and authorities on the true teachings of the Quran. But how can the judges be champions of Mahajan's secularism, if he also placing the responsibility of intervening, for the sake of rectifying the mistakes of the Muslim leaders? This is a crucial example of the intractability of secularism where the pursuit of separating religion from the state requires intervention.

He ends the article with the charge that "India's march into the twenty first century" requires "electoral politics to fulfill the constitutional mandate of really representing the people

[93] "Never Too Personal," *The Hindustan Times*

and telling them they are Indians."[94] This ending note highlights how the separation of religion from the functioning of the Indian state is part of his vision of India's modernity. Of course, Mahajan is one writer for the publication, whose words cannot be treated as the singular "opinion" of the Hindustan Times. Yet, as the legal correspondent of this publication, he assumes authority over whether a certain interpretation of law, by the courts in India, reflects the values and interest of the people within the Indian state. His authority is bolstered by print being able to "reinforce particular forms of knowledge without disclosing the identity of those who gain most by upholding these forms of knowledge."[95] In the case of Mahajan, through the medium of print and "the shared recognition of a given language," his conception of secularism assumes objectivity among the dominant, elite audience he is addressing.

The Muslim Public Sphere of the 1980s

In my analysis of *Radiance Viewsweekly*, I aim to link the didactic tone of the publication to the Syed Ahmed Khan's Aligarh Movement. This Islamic revivalist movement was established after the Rebellion of 1857. Strongly tied to the present-day Aligarh Muslim University, strived to establish a modern system of Western-style scientific education for the Muslim population of British India, in the late nineteenth century. Through this linking, Radiance serves as an example of how the logic behind Khan's construction of a Western educated Muslim, informed by both Islamic and Western teachings, was reproduced by certain groups of English educated, middle class Muslims in post-colonial India. At the same time, Radiance also has articles that reflect the ideas of the *ulema* within the Islamic Revivalist movement, such as Maulana Ashraf Ali Thanawi of the Deobandi movement. The reformitst *ulema* "did not act in the colonial political arena" and were more so concerned focused on reforming the "custom laden private world, resting in

[94] Never Too Personal," *The Hindustan Times*.
[95]"Never Too Personal," *The Hindustan Times/*

woman's hands."[96] Through this focus on the private sphere of Muslim community, the ulema were more immersed in discussions about women and Islam. Khan and the Aligarh Movement and Thanawi and the Deobandi Movement, formed in the same context of late nineteenth-century British India, represent two different schools of thought advocating for Islamic reform. A key difference between the movements' pedagogies lay in their views on the content and form of education. Generally, in terms of language, the Aligarh movement centered English while the Deobandi Movement centered Urdu; in terms of content, the Aligarh movement emphasized modern sciences while the Deobandi movement emphasized the study of Hadith

In April 1986, amidst the swelling controversy around the Shah Bano Case, *Radiance* issued a "Rights of Woman in Islam" special. This issue elucidates both parallels and divergences with Maulana Ashraf Ali Thanawi's *Bihisti Zewar*. Produced out of the Deobandi schools, *Bihisti Zewar* aimed to provide basic education for "respectable Muslim women." Upon its publishing, the guide a large following among One account describes how Muslim brides would " 'enter their husband's home with the Holy Quran in one hand and the *Bihisti Zewar* in the other.'"[97] By reading selections from Radiance's 1986 Women's Issue alongside select English translated passages from Thanawi's *Bihisti Zewar,* I aim to draw out how certain ideals around gender hierarchy and women, articulated by Thanawi, were reified in by the publication. At the same time, other ideals bear the mark of European, and Western ideals of gender. In linking both the Aligarh Movement and the Deobandi Movement to *Radiance*, I aim to show how the magazine's understanding and presentation of women's rights consisted of the two movements' articulations. Moreover, in an article by Badr-Ud-Din Tyabji, a member of an elite Muslim political dynasty, I turn to one conception of how to assert Muslim authority. More broadly, I argue that the

[96] Barbara Metcalf, *Islamic Revival in Britsih India: Deoband, 1860-1900*
[97] Ibid.

publication's advocacy for Muslim political organizing and moralistic, religious education exemplifies a salient negotiation with the political climate of the 1970s and the 1980s and a conception of how the Muslim voice should exist in public debate.

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Published in the 1986 Republic Day special issue of Radiance, Dr. Tahir Mahmood's "Status and Rights of Woman in the Islamic Socio-Legal System" echoes the sentiments of Sayyid Ahmed Khan's "Essay on the Question Whether Islam Has Been Beneficial or Injurious to Human Society In General." Mahmood is Indian legal scholar, whose interests primarily lie in religion- state relations, Islamic law, and Indian family laws.[98] The authorship of this article (along with many others) being an academic underscore how the magazine's ongoing project of creating a Muslim opinion is informed by individuals who are engaged in higher, more privileged echelons of knowledge production; it is not a project invested in the opinions of the majority of Muslims in India. According to a 1983 government-issued "Report on Minorities," 71% of Muslims live in villages. Within the remaining 29% of the urban Muslim population, businessmen, a small percentage of the educated men and other professionals occupy the upper strata; shop- keepers, small businessmen, and educated employed make up the occupy the middle strata; workers and salaried individuals occupy the lower strata.[99] Presumably, the readers of *Radiance* are individuals of the upper and middle strata of *only* the urban population. Thus, the

[98] Mahmood was also quoted in the Shah Bano Judgement. In the judgement, it states: " 'Dr. Tahir Mahmood in his book 'Muslim Personal Law' (1977 Edition, pages 200-202), has made a powerful plea for framing a Uniform Civil Code for all citizens of India. He says: "In pursuance of the goal of secularism, the State must stop administering religion-based personal laws". He wants the lead to come from the majority community but, we should have thought that, lead or no lead, the State must act. It would be useful to quote the appeal made by the author to the Muslim community: "Instead of wasting their energies in exerting theological and political pressure in order to secure an "immunity" for their traditional personal law from the state' legislative jurisdiction, the Muslim will do well to begin exploring and demonstrating how the true Islamic laws, purged of their time-worn and anachronistic interpretations, can enrich the common civil code of India.'"

[99] "Report on Minorities," Government of India, June 14th, 1983.

language and ideological views of Mahmood's article are directed and accessible to a very small percentage of Muslims in India. Through directing his education of Islam to this audience, he is vesting them with the responsibility to revise accordingly their own relationship to Islam and reimagine how Islam can be compatible with the debates within an elite, rational public sphere.

Mahmood establishes the article's premise as disapproving the depiction of the Muslim woman by non-Muslims "as a miserable creature secluded from the rest of the world and devoid of all natural and human rights." He believes that this rendering of Muslims women "was undoubtedly initiated in the West," and can "be found in the age-old prejudices of the Jews and Christians." To prove how radical Islam, then a "new creed of the seventh century A.D." was in its stance on women, he contextualized how Judeo- Christian society perceived and treated women. He argues that in Jewish society, the "mud of male chauvinism" had buried the "true law of Prophet Moses on men- women relationship." Even east of the Arabian sea, in India, he points out that men relished in "control over female mind and body, leaving no room for an independent existence of women." Notably, he reminds readers of the Islamic legacy of India as "the birthplace of Adam." Therefore, as woman, were essentially seen as "a human machine to be employed for the perpetuation of male lineage" all over the ancient world, Islam and its teaching was "a revolution" and a reckoning with this gender ideology. Furthermore, Mahmood pinpoints the primary source behind codified Muslim law as the Quran where women were elevated "to maximum heights of honour; respect, dignity, and decency."[100] In addition, Prophet Muhammed, through his own enactment of this values and his faith transmission of "Diving intention to the world," he imbued Muslims of "a glorious edifice of men-women a relationship—extremely

[100] "Status and Rights of Woman in the Islamic Socio-Legal System", *Radiance Viewsweekly* (Delhi: India), Jan-February 1, 1986.

humane and surprisingly rational."[101] Mahmood's valorization of Islam and Prophet Muhammed as not simply ushering in a religious reordering, but also a political and social one echoes Khan's framing of Islam's intervention into the conceptions of gender.

In the late 19th century, Khan considers polygamy in Islam from "three points of view, namely, Nature, Society, and Religion." From the point of view of society, before "the advent of Muhammad," where Persia "stood foremost in the corruptness of her morals."[102] According to him, there were no laws governing marriage and family and so, "mother was as lawful to her son as a daughter to her father, or a sister to her brother." He then turns to "a locality mostly inhabited by Jews" where polygamy was practice with no restrictions. As far as Christianity, it was operating on a diametrically opposite course where general celibacy was practiced. Within this context, Khan positions Islam as the light "amidst this mental and intellectual darkness, and the corruptions and depravity of the manners and morals which enveloped the world on all sides." More specifically, he identifies Prophet "Mohammed's genius codif[ying] a law, so perfect in its nature, so consistent with reason and propriety, so conducive to the health and prosperity of society, and so beneficial to the matrimonial existence of both the parties interested."

In both Khan's and Mahmood's narratives, the legitimacy of Islam's intervention into status of women is not drawn only from it being sanctioned by the divine; it is the rational and reasonable way of doing this. In asserting a watering down of Islamic law by regional influences in India, Mahmood creates a distinction between the Islam practiced by Muslims in India and a pure, "unadultered" teaching of Islam. Through his distinction, he frames the practice of Islam as a unitary practice. He reasons that Muslims being a minority in India has placed them in a

[101] Ibid.
[102] "Essay on the Question Whether Islam Has Been Beneficial or Injurious to Human Society in General." 28.

precarious position where they have been inundated by practices and beliefs of non- Muslims all around them. As a result, they have not been "able to keep their socio-legal culture wholly free from regional influence." This altering of an Islamic socio- legal culture has led to "real Islamic law" being conflated with wrongful practices. Thus, he finds it imperative that to clear up the "junk of long history."[103] This clearing up will unveil the "the true Islamic laws on women" to any "unbiased eye ready to see reality, and open mind free from preconceived notions… a searching heart capable of distinguishing between the true principles and their corrupt practice." Mahmood's description of the ideal receiver of this unearthing of a true, infallible Islam parallels Khan's stance on how followers of Islam are implored to follow the doctrine. Khan argues that "not even the grandest, main principles of Islam" forces followers to "blindly and slavishly accept." Rather as there is "no religion upon Earth superior to it in respect of the liberty of judgement,"[104] The Quran pushes its professors to pursue "free inquiry and investigation, as regard the narrators and also the subject matter." He is even "at liberty to reject entirely all such tradition which, according to his free and unbiased judgement, and, after patient investigation, prove themselves to be contrary to reason and nature, or which, by any other way, are found to be spurious."[105] Khan argues that if one were to pursue this investigation, they would find that the Quran's, "inculcating the worship of the Unity of God, is rationalized and supported "by argument and a reference to Nature."[106] Both Mahmood and Khan infuse the religious teachings of Islam with a modern logic that makes Islam seem irrefutable because of how deeply it is grounded in reason. In doing so, they implicitly portray dissent or certain interpretations of

[103] Ibid.
[104] Ibid.
[105] "Essay on the Question Whether Islam Has Been Beneficial or Injurious to Human Society in General." 29.
[106] "Essay on the Question Whether Islam Has Been Beneficial or Injurious to Human Society in General." 30.

Islam's words as not just a clear opposition to the religion but also unfettered from a rational way of thinking.

In his concluding paragraph, titled "Appeal," Mahmood addresses his "Muslim sisters" and "plead[s] that in Islamic law there is for them, a mammoth wealth of valuable rights and privileges." He urges them to "fully and properly educate themselves on those rights and privileges and assert themselves to get them translated into realities of life," rather than "looking towards the West."[107] Mahmood's instruction for Muslim women to turn to Islam rather than to the West can be connected to Maulana Thanawi's belief in the power of instruction. Within this power of instruction, there is "an implicit conviction that women are essentially the same as men."[108] Through this sameness, Thanawi believed both genders that "must contend with the fundamental human condition of struggle between intelligence… '*aql*,' … and the undisciplined impulses of the lower self, *nafs*."[109] However, he did believe that women were more vulnerable to nafs because of cultural factors, rather than genetic factors. Essentially, he did not believe women were morally and inherently different from men. This distinction is crucial because it negates a misconception that the Victorian notion of women's "special spiritual capacity" is part of Islamic tradition. Furthermore, Thanawi's *Bihisti Zewar* dismantles another key misconception about the association of women and home "as the locus of cultural tradition" as part of classic Islamic tradition. In fact, it was constituted by Muslim thinkers during and after colonial rule, not before.[110] Thanawi's relegation of women to the home sphere was not premised on "a radical difference" between the two genders (which was present in European and American discourse at that time). As he was shaped by his society's Galenic theories of common bodily and

[107] "Status and Rights of Woman in the Islamic Socio-Legal System," *Radiance Viewsweekly*.
[108] Barbara Metcalf, trans*., Perfecting Women: Maulana Ashraf 'Ali Thanawi's Bihishti Zewa*r, (UC Press; 1992), 2.
[109] Metcalf, *Perfecting Women*, 8.
[110] Metcalf, *Perfecting Women*, 9.

moral characteristics, he saw men and women as different only in social status, not in their nature. Therefore, his view that women should adhere to the shari'at standard of seclusion, within their home, was based on women being "socially subordinate to men."[111] Overall *Bhihisti Zewar* promoted the education of women on the basis that "the guardianship of morality" was available to any individual who "honed his or her essential character to Islamic standards through knowledge and through relentless discipline and self-control."[112] Mahmood echoes Thanawi, in his belief that Islamic law allots women many rights and privileges, and therefore, it is not necessary for them to turn to "the West."

Turning to the opening page of *Radiance's* Women's Rights Issue, under the "thought of the week section, a verse from the Quran states, "Allah does not distinguish between man and woman; The men would have their due according to what they have earned and the women according to what they have earned." Notably, the implicit reference of equality between men and women is only identified in the eyes of Divine. It is unclear whether that equality is also part of an Islamic vision of society. Furthermore, by starting with a Quranic quote, the publication used an effective tool of persuasion by imbuing its curated ranged of opinions with religious authority. Underneath the quote, an authorless section titled, "Rights of Woman in Islam," highlights a central question that has "baffled the social scientists" all over the world: "how to maintain an ideal relationship between man and woman and strike a golden mean between their rights and duties."[113] The author critiques the solution conceived by these scientists, which "ignoring divine guidance" on the subject has only created an "imbalanced society, more so in the West, in which the family is developing cracks, both vertical and horizontal."

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[111] Ibid.
[112] Metcalf, *Perfecting Women*, 13.
[113] "Rights of Woman in Islam," *Radiance Viewsweekly* (Delhi: India), April 13-19, 1986.

One of the "cracks" the author identifies is the combination of "the free intermingling of sexes" and the "overburden[ing] the weaker sex with the added responsibility of earning." He elaborates that this has left women with the addition to her "natural duties" while the responsibilities of men have stayed the same, since "male can neither conceive nor deliver child!" His critique against the intermingling of the sexes arguably aligns with Thanawi's positioning of men and women in different social spheres. However, the article's association of women's natural duties with her reproductive abilities diverges from Thanawi's conception of men and women being equal in nature. This divergence is crucial because it underscores how the relationship between the sexes, referenced by the publication, does not fully follow Thanawi's logic of equality, despite both using the Quran and Islam to support their different articulations of hierarchies between men and women.

Moreover, the article more explicitly states this natural difference between men and women by explaining Islam's "expound[ing] that in view of biological and psychological differences, male enjoys superiority in the family, 'Men are a degree above women.'"[114] As men are above women in the family, they have the responsibility to "open all avenues and afford all opportunities for women so that they may develop their natural abilities to the maximum within the social framework…" For a woman to develop her natural abilities within the social framework means that "Islam enable her to attain the highest rung of progress—as a woman." Therefore, men and women are not operating on the same trajectory of progress. This conflation of different social roles with natural ability leads one to believe that certain characteristics are solely attainable for men, and some are solely attainable for women. Thus, the article maintains

[114] "Rights of Woman in Islam."

that “Islam’s verdict” is that “to become man is none of women’s right or business” and that to “train her for manly duties is sheer misuse.”

The article repeatedly links natural differences in the two sexes with the differences in their social position. In doing so, it tacitly frames women’s reproductive abilities as adequate reasoning for certain limitations in their intellectual and moral character. By linking it to their bodies, this reasoning also implies that these supposed limitations are sanctioned by the Divine’s vesting of women with reproductive abilities. This reasoning sharply contrasts with Thanawi’s conception of the moral behavior, expressed in book eight of *Bihisti Zewar.* Metcalf identifies Thanawi’s narrative choice to open a chapter titled “Stories of Good Women,” with the account of Prophet’s Muhammad’s good virtues, Thanawi conveys that there are no virtues that are particularly feminine (or masculine). Therefore, a male prophet can be an adequate model for patterns of moral behavior for women. In addition, Thanawi’s publishing of *Bihisti Zewar* was not on the grounds that women needed a separate instruction guide than men on Islamic education but more so, a comprehensive print guide would be more accessible and conducive to wide circulation.

In “The Muslim Woman Today,” located in the same Women’s Rights Special issue, “Marayam Jameelah, American- Pakistani writer, expresses the crucial role Muslim mothers play in instructing and shaping the religious habits and sentiments of their daughters. Jameelah is an American- Pakistani writer known as a prominent female voice for “conservative Islam.” She particularly criticizes the efforts of “modern feminists” to portray “the poor Muslim girl” as a “tyrannized by a domineering father and worthy of no personal rights at all.” She describes the “modernists” as suffering from “mental slavery to values of Western civilization.” Therefore, she believes “an educated Muslim mother is a “‘must for Islamic grooming.” With her education, she

can fruitfully fulfill her "primary duty" and "persuade her children to abide by the teachings of the Quran and the Sunnah of the holy Prophet." Through the mother's educating of young girls, she believes they will realize the practical wisdom of the Quran, the Hadith, and other Islamic literature. Once they understand that these texts do not contain "merely some noble, abstract philosophy," but have practical instructions for everyday life, they will "abandon attending dirty films at the cinema, listening to vulgar songs on the radio… going out to mixed social functions in tight, immodest dress." Mothers will also see that the "the violent rebellion of the young against long-established moral and religious values" and the vilifying of " 'traditional'" ideas is not inevitable. It can be remedied by the youth being "taught in the Islamic way instead of the Western way." Despite the undeniable difference in the tone of Jameelah and Thanawi's delivery, a parallel can be drawn between their vision for Islamic instruction in a socially tumultuous time. From Jameelah's description, she holds a clear anxiety about tradition between supplanted by the dominant Western rhetoric that see Islam as "backward." Similarly, Thanawi responding to a time where Muslim control had been replaced by "alien rule." To him, this political shift also came with a "change that threatened the cultivation of proper Islamic lives in society properly ordered."[115] Therefore, *Bihisti Zewar* and its defining of women's place was part of his broader focus on "stabilizing a correct hierarchy."[116] Even as Jameelah and Thanawi occupy different ideological and temporal spaces, they hold Islam and the instruction of Islam as a blueprint for a stable social order. Thus, they reinforce a shared belief in the Quran's knowledge and Islam's language being applicable to all dimensions of one's life and a solution to all societal maladies, whether religious or psychological or social.

[115] Metcalf, *Perfecting Women*, 37.
[116] Ibid.

In a 1977 *Radiance* article, Badr-Ud-Din Tyabji, the vice-chancellor of the Aligarh Muslim University from 1962 to 1965, offers a vision for Muslims where their religious identity can also be a means of political and social organization. Tyabji is part of a famous political family in India who were heavily involved in India's independence movement. His grandfather, Badruddin Tyabji, the third President of the Indian National Congress, was particularly focused on garnering Muslim support for the Congress party in the late nineteenth century.[117] Tyabji's presence in Radiance is telling of how certain elite families remained both at the forefront of Indian politics and immersed in the English language public sphere, decades after India's independence.

In his *Radiance* article, Badr-Ud-Din Tyabji articulates a vision that strives to balance the heterogeneity of Indian Muslims while also ensuring that Muslims can unite to advocate as a mass on "basic Muslim issues." He foregrounds his recommendation being that "Muslims should stand shoulder to shoulder alongside other citizens of India." At the same time, to ensure that Muslims are both actively participating and "influencing the ''national life'' of India, they should uninhibitedly join whichever political party or organization that conforms most to their ideals." In establishing that Muslims should stand alongside other Indian citizens and honor their own ideological taste, he is careful not to frame their Muslim identity as something that will inhibit expression of their individual ideologies or curtail their own will in how they want to participate in Indian life.

[117] In 1888, there was a letter exchange between Badruddin Tyabji and Sir Sayyid Ahmad Khan. Khan was skeptical of the Congress and its claim of being a "national" party. He believed that Muslims and Hindus agreed only on social issues, not political issues. Therefore, a political party consisting of the two would only result in prejudice and dismissal of Muslim interests. In contrast, Tyabji believed that the Congress was founded on affecting political change that would help all Indians. Therefore, he describes, the Congress as committed to excluding all discussions that Muslim delegates object to.

At the same time, he urges Muslims to "try to arrive at a consensus of Muslim opinion amongst themselves," in regards to "dealing with specific Muslim issues."[118] As the category of "Muslim issue" is vague, he recommends "Muslims belonging to every kind of political organization, social group, or cultural institution" coming together "from time to time to determine what these specific Muslim issues are in the context of present day Indian politics and how best they can be dealt with." In doing so, the diverse Indian Muslim community with be able to combat the "an erroneous assumption…that Indian Muslims form one homogeneous closely knit community, and that all their problems can be dealt with, and solved uniformly." Moreover, he specifies one of the key tasks of this loose organization of Muslims is "to try and distinguish between basic Muslim issues, in which persons who consider themselves Muslim… are interested and on which a consensus among them can arrive, and sectarian issues." Once again, he reiterates that there should be no attempts to "try and create any single monolithic organization" for Muslims, of different sects and geographic affiliation.

Tyabji furthers his vision of forming a "an authentic Muslim public opinion" by encouraging debate among Muslims. He presents the "revitaliz[ing] of a consultative organization like the Majlis-e-Mushawarat" as one promising avenue for pursuing debate. He outlines how the Majlis should meet once a year to go over "specific Muslim questions in all fields of our national life" and try to reach a consensus on how the issues should be dealt with by each constituent unit. However, ultimately, each unit "should… be left free, to accept or reject" the recommendations. His dual emphasis on joint organizing of Muslims and their ability to form their own opinion illuminates an awareness of how the project of forming a Muslim opinion may require a homogenizing, or at least flattening of the diversity of Muslim opinion. Nonetheless, Tyabji is

[118] "Muslims in Indian Society and Policy", *Radiance Viewsweekly* (Delhi, India) October 30, 1977.

optimistic of Muslim's ability to honor the "axiom of 'Unity in Diversity.'" [119] He sees the value of "arriv[ing] at a consensus by discussion, and the weight of the consensus opinion, on Muslim public opinion and on Indian public opinion as a whole," to be "enormous." His tracing of how a uniform consensus of Muslim issues can shape both Muslim public opinion and Indian public opinion reflects a larger characteristic of questions circulating about how Indian democracy, left in the aftermath of the Emergency Period.

Radiance Viewsweekly, in both its ideology and its execution, highlights one example of an English-speaking, Muslim elite public sphere that has both continuities and discontinuities with the English-speaking "secular" public sphere. In constructing this sphere, they embrace the coexistence of Muslim identity with facets of democratic practice, such as rational, enlightened debate while also highlighting the diversity of Muslim opinion. In doing so, they pose a challenge to claims of English-speaking publications, like the *Hindustan Times*, about Muslim identity being a threat to secularism. Regardless of this tension, *Radiance Viewsweekly* and the *Hindustan Times*, with their respective understandings of the division between religion and politics, occupying the same English language sphere of debate, are a striking example of Indian democratic practice.

Manushi: A Public Sphere for Women

This question of Muslim women, and women generally in both the legal judgements and media draws attention to how the voice of women are literally present in these discussions. The female contributor's article in *Radiance* is one instance of a legible Muslim female voice, in print. However, broadly, Muslim women are only figuratively present in most discussions surrounding the Shah Bano case; their "voice," in both a literal and figurative sense, is subsumed

[119] Jawaharlal Nehru coined this famous phrase 'Unity in Diversity' in his book, *Discovery of India*.

by more domineering ones. In Mahua Sarker's investigation of the historical production of Muslim women as invisible, oppressed, and backward in the written history of late colonial Bengal, she argues that this absence is deliberate as "silence itself as constitutive, and not simply an oversight, of dominant— conventional and critical historical accounts." Sarkar further highlights how Muslim women, irrespective of their classes or ethnic locations, are subject to yet another degree of inequality and occlusion."[120] Even within nationalist discourses, where women are treated as emblems of nations and communities, their own perspectives are not foregrounded. This lack of foregrounding of Muslim women is not limited to male-centered processes, such as "nation building."

Manushi: A Journal About Women and Society, produced in Delhi by an independent feminist collective in 1979, is one example of a media publication premised on the all-encompassing women's organizing, striving to articulate their specific conception of democracy. Like the early decades of the Indian nation-state, the decade after Emergency ushered in a revaluation of Indian democracy. In this period of revaluation, *Manushi*'s attempt to create a "herstory," by likening certain struggles of Muslim women to Hindu Women and eventually push for the Uniform Civil Code (UCC), reflects a reiteration of the "All India" phenomenon in the 1980s.In its opening editorial, the editorial staff of *Manushi* described it as "a journal about women, by women."[121] There was a concerted emphasis on collectiveness of "women," regardless of divisions of class, race, caste, and religion. Their emphasis was rooted in the belief that "if we look at the nature and basis of women's oppression," then it is their shared sex that "determines our common predicament in a very a fundamental way." The writers identify

[120] Mahua Sarkar, *Visible Histories, disappearing women: Producing Muslim womanhood in late colonial Bengal*, (Duke University Press), 6.
[121] "Towards Redefining Ourselves and the Society We Live In," *Manushi* (Delhi: India), 1979.

marriage as the first, perhaps the most crucial, aspect of the common predicament of women. They interrogate marriage being "posed as the 'be all and end all'" in a woman's life through a rhetorical question of "why does marriage turn out to be such an unequal affair between a man and a woman" and "what happens to a woman when her marriage crumbles- as a widow, deserted wife or divorcee." These questions highlight the publication's attempt to appeal to a wide breadth of women by criticizing a communal and state structure, irrespective of social categorization, that determined the reality of most Indian women.

Furthermore, they address the generational "burden of housework and childcare fall[ing] upon us" where they "toil with our mothers so that the family can be fed and–perhaps– a brother can go to school." This sacrifice is especially daming as their "heavy labour goes unacknowledged by society, even by women themselves." Furthermore, they bolster their assertions, "borne out not just by our personal experience," with evidence by the "Committee on the Status of Women in India and other scientific investigators" about the deteriorating life conditions of women, since Independence. This committee was formed in 1971, by the Ministry of Education and Social Welfare, after a UN request for a status of women report for International Women's Year in 1975. Efforts, such as the Committee and *Manush*i, highlight broader efforts to depoliticize efforts of women's advocacy through "common visions of Indian woman hood as preserver of Indian national identity."[122] *Manushi* exemplifies this vision of a unitary Indian womanhood in their push while also recognizing the difference in class, caste, and religion, and geography that differentiates individuals within the all-encompassing category of "women."

[122] Emily Rook-Koepsel, *Democracy and Unity in India: Understanding the All-India Phenomenon* (Routledge Studies in South Asian History, 2019), 77.

In my analysis of *Manushi*, I argue that the post- Emergency period serves as a unique historical moment for the magazine to organize and advance a distinctly female public sphere, in which feminist interest could be imagined as crucial to Indian democracy. In addition, I argue that *Manushi's* feminism is not static. Rather, it exemplifies how the agency of women, embedded in the rhetoric of feminism, is "a process of negotiations with structures—often subversive rather than frontal or visible, and as likely to involve capitulation—not simply as a linear, unidirectional story of overcoming and eventual emergence into modern, liberal and/ or 'feminist subjecthood."[123]

One of the co-founders of *Manushi*, Madhu Kishwar, published "Pro Women or Anti Muslim?" to discuss "the Shah Bano Controversy." Through this article, Kishwar illuminates a certain "feminist" understanding of the dialogue around Shah Bano. In the section, "Was the Judgment So Progressive?" she draws a historical parallel between "the spirit of the attack on Muslim law" to the British "mission to reform what they characterized as the 'uncivilized' and 'backward state of Indian society."[124] She specifically points out how "their favorite symbol" of the "'unreformed'" Indian society was Indian women. Kishwar argues that the British's use of "Sati, child marriage, female seclusion, and ban on widow remarriage" to prove the backwardness of Hindu society operates in the "same way as Hindus are today using burka, talaq, and other discriminatory aspects of Muslim personal law and practice" to prove that Muslims and Islam are "backward and barbaric." Kishwar's main point of contention is that for both the British and the Hindu majoritarian voice in the 1980s, the motivation behind picking up "women's issues" was less about the issues but more so about a broader reform campaign. Similarly, the men in opposition to the majoritarian campaigns also mobilized the issue for their

[123] Sarkar, *Visible Histories*, 21
[124] Madhu Kishwar, "Pro Women or Anti Muslim, The Shah Bano Controversy," 5.

own ends. She compares the men who insisted against British intervention into Hindu customs and personal law to Muslim leaders who are pushing against intervention into MPL. Kishwar's argument highlights the objectification of women within the politics of either nation-state-making or the imperial project.

Shah Bano's Open Letter

One of the greatest ironies in analyzing English language media, in the context of the Shah Bano Case, lies in Shah Bano herself not being able to read or write English. In addition, among the numerous legal legal and political debates, Shah Bano's voice and opinion is rarely documented. One of the brief moments where her voice is presumably present is in her "Open Letter to Muslims," signed by her thumb impression. Yet, even in this letter, her words are constructed and filtered by Muslim religious authority. Zakia Pathak and Rajeswari S. Rajan describe this obscuring of Shah Bano's voice as exemplary of how Muslim women, as subject, are either absent or fragmented from legal, religious, sexual, and political texts that apparently center around discourse about her.[125] Pathak and Sunder Rajan view the discourse that result from Shah Bano's plea for maintenance as operating on "the narrative of displacement." First, Bano is driven out of the domestic realm by her husband's triple pronouncement of *talaq*—essentially divorce. Then she enters the realm of law and law courts through her plea for maintenance. Once the Muslim Personal Law Board intervenes for the husband in the Supreme Court, religious discourse meets legal discourse.

In this meeting of religious and legal discourse, two generalized sides are pitted against one another: Muslim opinion and Hindu opinion. As the discourses converge around this case, Shah Bano, the nominal Muslim woman, becomes harder to situate. As a result, Pathak and

[125] Zakia Pathak & Rajeswari S. Ranjan, "Shah Bano," 261.

Sunder Rajan pose a critical question: "has the discourse on the Muslim woman, torn away from its existential moorings, sucked her in and swallowed her up?" Even as the case remains attached to her name and initial action of seeking maintenance, each discourse, whether legal, religious, or political, highlight "one dimension of her identity… homegniz[ing] the subaltern subject for its purposes."[126] Therefore, Shah Bano's letter is not a representation of her subjective, unaltered opinion. Surely, the words in her letter credited to her but Pathak and Rajan underscore that it is not always accurate to operate on the understanding that "'to speak is to become a subject.'" As a lower class, Muslim woman, her subjectivity is not decided by her and is also in constant flux; occupying one subject position estranges her from the rest. To understand Shah Bano as a historical actor and a voice in the media, it is crucial that her actions and words are understood within the framework of her being a "female subaltern subject" who is negotiating "a discontinuous and apparently contradictory subjectivity."[127]

From the outset of the letter, she establishes that "respectable gentlemen," with titles of Maulana and Hajj, have explained to her "the commands concerning nikah, divorce, dower, and maintenance in the light of the Quran and hadith." In highlighting her listening to guidance from male Muslim religious leaders, she portrays herself as an unaware and naïve woman, recently made aware of the directives of Muslim doctrine. By articulating her recent enlightenment of the laws of Allah and the Prophet are everything for me and I have full faith and belief,"[128] she frames herself as a passive recipient of information. In addition, her realization emerging through the leaders' interpretation of the Quran rather that her own, imbues them with authority. The

[126] Zakia Pathak & Rajeswari S. Ranjan, "Shah Bano,"
[127] Zakia Pathak & Rajeswari S. Ranjan, "Shah Bano,"
[128] Shah Bano's Open Letter to Muslims, February 11, 1986, in *The Shah Bano Controversy*, ed. Ashgar Ali Engineer. Mumbai: Orient Longman, 1987.

public nature of her reverence of their guidance enables the religious leaders to mobilize her as an endorsing voice for their representation of the Quran. As a result, Shah Bano's opinion becomes enmeshed with those of these leaders.

Despite her winning the case, she rejects the Court's decision. She believes that "the judgement is contrary to the Quran and the hadith and is an open interference in Muslim personal law. Therefore, she must condone the judgement as "I, Shah Bano, being Muslim, reject it and dissociate myself from every judgement which is contrary to the Islamic Shariat." In framing the judgement in clear opposition to key Islamic texts, she reinforces a stringent understanding of MPL and state law where the two legal spheres are distinct. In efforts to remedy the "agony and distress to which the judgment has subjected the Muslims of India today, she demands that the Indian government:

> (1) To withdraw the said judgement of the Supreme Court immediately;
> (2) That Muslim women be kept out of the purview of section 125 of the Criminal Procedure Code, or it should be amended
> (3) Article 44 of the Indian Constitution, in which there is a directive for enacting a uniform civil code for all, is quite contrary to the Quran and the hadith; Muslims be kept out of the purview of this article;
> (4) Interference in Muslim personal law is against the Indian constitution. Therefore, this interference be stopped, and a guarantee be given that no interference would be ever attempted in the future."
>
> *(Shah Bano's Open Letter)*

Conclusion

Shah Bano's "choice" to close her open letter to Muslims with a list of demands for the government raises one of the critical contradictions of the English language Indian media sphere. It is hard to conceive that the demands listed in her letter would be personal demands as they pertain to broader ideological debates of the 1980s. As discussed earlier in the chapter, these debates have historically occurred within the elite, middle-class public spheres, separate from the ones that Shah Bano, as a poor non-English-speaking Muslim woman, would occupy. Scholars

have offered models where Shah Bano would be placed in the realms where individuals do not share the language and the ideas of the State. For example, Patha Chatarjee describes a split model in which political society is comprised of subaltern communities, overlooked by the state and civil society, whose unstable, fickle arrangements with state representatives do not have a direct role in state politics; on the other hand, civil society is comprised of the urban middles class, whose interests overlap with those of the corporate capital. This dichotomous arrangement of post-colonial Indian society is tempting in its neat compartmentalizing of groups, such as wealthy high-caste Hindus and poor Muslims. However, both Rajagopal's and Chatarjee's separations become muddled by the audience and contributors of *Radiance* and *Manushi;* their respective minority identities, women, and Muslims would place them in political society while their class identity would place them in civil society. Therefore, these distinctions within the public sphere do not drive the democratic changes in post-colonial India; rather these distinctions collapse, resurface, and redraw themselves through the democratic practices of citizens, spurring change, at a specific historical moment.

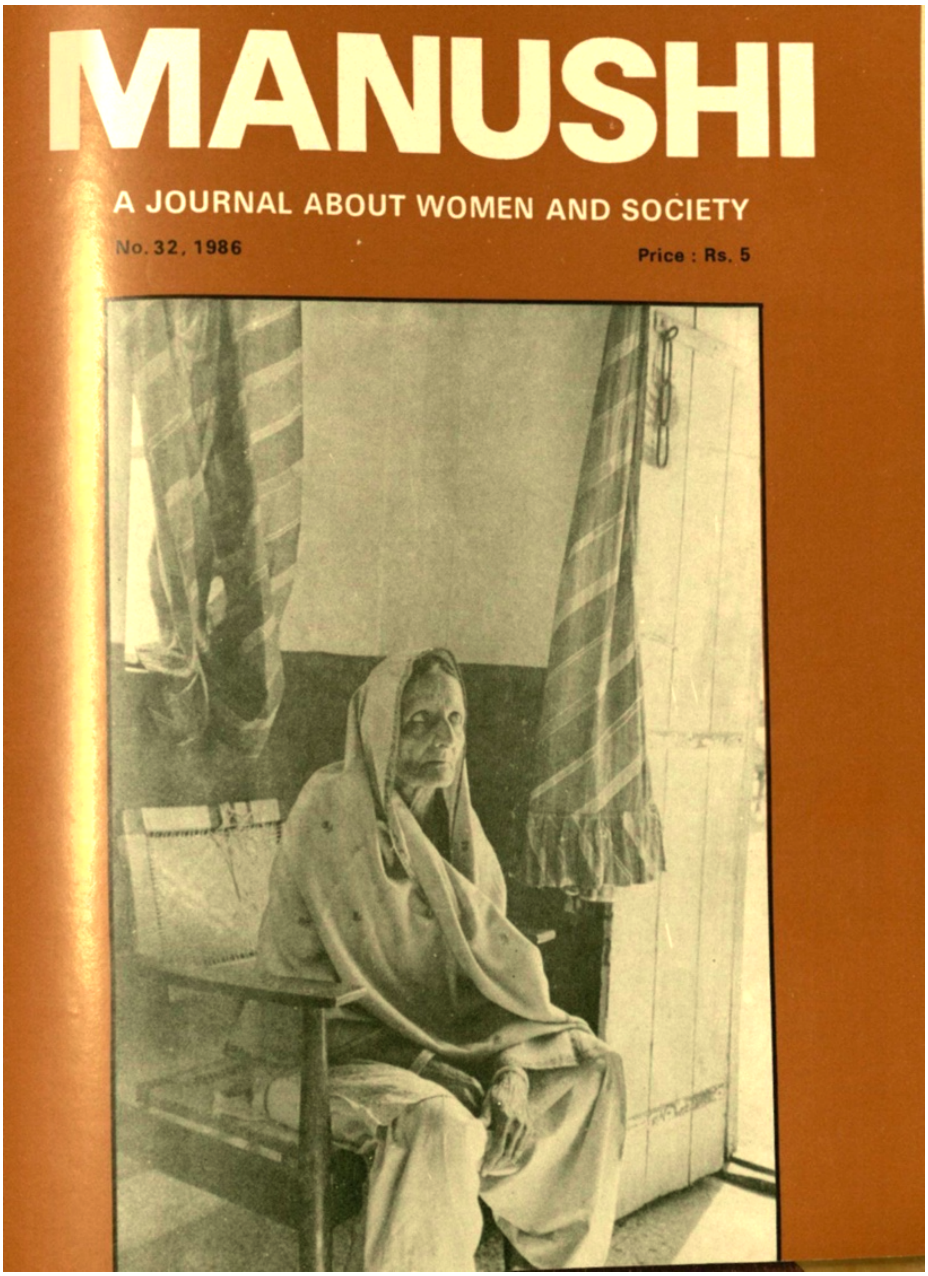

Figure 1: Cover of January-February 1986 Manushi, featuring Shah Bano.

Conclusion

The legal debate around the Shah Bano Case did not end until *Daniel Latifi v. Union of India* (2001). In this lawsuit, Daniel Latifi, the lawyer of Shah Bano in the Shah Bano case, challenged the constitutionality of the 1986 Act. One challenge to the Act was that the law was violative of the right to equality, guaranteed under Article 14 of the Indian constitution, as it deprived Muslim women of maintenance benefits equal to those of non-Muslim women, afforded to them by Section 125. Furthermore, by section 3(1) of the Act, only making it mandatory to pay maintenance to Muslim women within the iddat period, it was depriving women of the right to life, guaranteed under Article 21 of the Indian Constitution.

The Supreme Court ruled that the Muslim Women (Protection of Rights Divorce) Act of 1986 was indeed constitutionally valid. First, through a generous interpretation of "provision," the Court held that a Muslim husband is liable to make reasonable and fair provision for the future of his divorced wife, which includes her maintenance as well.[129] Furthermore, the court argued that the liability of a Muslim husband to pay maintenance to his wife is not confined to *iddat* period. Therefore, this case established that a Muslim husband's liability to provide maintenance goes beyond the *iddat* period, and he must pay his obligatory dues, within the *iddat* period. Ultimately, the verdict in *Daniel Latifi v. Union of India* (2001) presented an ideal solution for the State as well as Muslim women. Through their interpretation of "provision," the State ensured that Muslim women had access to maintenance, as other Indian women, while also securing them more money, in a shorter time.

The question then arises of why it took 15 years, from the 1986 Shah Bano case to the 2001 Daniel Latifi case, to reach this conclusion. In addition, how did a case about one Muslim

[129] *Danial Latifi & Anr vs Union Of India* on 28 September, 2001.

woman's concern about not being able to support herself financially become resolved by a lawsuit about the constitutionality of the government's legislation? This paper attempts to answer both questions by highlighting how the legal question around the rights of Muslim women (and men) is especially complex, given the history of how secularism and democratic self-governance in post-colonial India. Secularism, introduced and implemented by British colonialism, was an attempt to draw a boundary between the State and religion, on the basis that the state and its edicts were more rational than that of all religions. Therefore, claims of the "secular" became a claim to political modernity, rationality, and self-governance. The elite English-language sphere around the Shah Bano case, made use of these claims to assume a domineering, political voice in discussions about Muslims' rights, women's rights, and the potential of bridging the two. However, their claims also reflect the limitations of their democratic politics as where their attempt to speak for "Indians" implicates them in minoritizing groups, such as non-elite Indians, Muslims, and women. Therefore, this sphere made up of both the State and elite non-governmental actors, is emblematic of democratic politics, occurring in the politically fragmented context of the post-Emergency period. This elite sphere also reflects the limitations of their democratic politics as their claims to speak for "Indians" also implicates them in minoritizing groups, such as non-elite Indians, Muslims, and women.

Rather than a "crisis of secularism" or a "failure of Indian democracy," the Shah Bano Case and its aftermath brazenly ask what is at stake for the Indian-nation state, as it attempts to sustain itself as the world's largest democracy while carrying a long colonial history that has seemingly predetermined how Indians, from different religious, economic, and political groups regard one another's claims to the national identity and citizenship rights that binds them all together.

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