

"OUR WOMEN": CONSTRUCTION OF HINDU AND MUSLIM WOMEN'S
IDENTITIES BY THE RELIGIOUS NATIONALIST DISCOURSES IN INDIA

A Dissertation

by

ZEBA IMAM

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

December 2009

Major Subject: Communication

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ABSTRACT

"Our Women": Construction of Hindu and Muslim Women's Identities by the Religious Nationalist Discourses in India.

(December 2009)

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Secular nationalism, India's official ideology and the basis for its secular Constitution, is being challenged by the rising religious nationalist discourses. This has resulted in an ongoing struggle between the secular and religious nationalist discourses. Since women are regarded as symbols of religious tradition and purity, the religious nationalist discourses subject them to increasing rules and regulations aimed at controlling their behavior to conform to the ideal of religious purity.

In this study I examine the subject positions that the Hindu and Muslim nationalist discourses in India are constructing for "their women" and its implication for women's citizenship rights. I focus my research on two topics, where religious nationalist discourses intersect with the women's question in obvious ways. These are "the Muslim personal law" and "marriages between Hindu women and Muslim men". The Muslim personal law has emerged as the most important symbol of Muslim identity over the years, and holds an important position within the Hindu and the Muslim nationalist discourses as well as the secular discourse. The debates around the Muslim personal law are centered on questions of religious freedom and equal citizenship rights for Muslim women. The issue of marriages

between Hindu women and Muslim men is located in the Hindu nationalist discourse's larger theme pertaining to the threat that the Muslim "other" poses to the Hindu community/nation.

I juxtapose the religious nationalist discourses with the secular nationalist discourse to understand how the latter is contesting and negotiating with the former two to counter the restrictive subject positions that the religious nationalist discourses are constructing for Hindu and Muslim women. The study is based on the content of debates taken from three mainstream English newspapers in India. Further, interviews with people associated with projects related to women rights and/or countering religious nationalism are used to supplement the analysis.

The analysis is carried out using concepts from Laclau and Mouffe's discourse theory. The analysis suggests that the subject positions being constructed by the religious nationalist discourses for Hindu and Muslim women, although different from each other, freeze them as subjects of religious communities, marginalizing or rejecting their identities as subjects of State with equal citizenship rights. The women rights and secular discourse counters this by offering a subject position with more agency and rights compared to the former two. However, it is increasingly getting trapped within the boundaries being set by the religious nationalist discourses. I argue that there is a need for women rights and secular discourse to break the boundaries being set by the religious nationalist discourses. In order to prevent the sedimentation of the meaning "women as subjects of community", the secular discourse needs to employ the vocabulary of liberal citizenship as rearticulated in feminist, pluralist terms.

ACKNOWLEDGEMENTS

Much as I try, it is difficult to mention everyone who helped me on this four year journey that led to the completion of my dissertation. To begin with, I would like to thank Antonio LaPastina for encouraging me to pursue a doctoral degree and complete my dissertation. It was your guidance and support, throughout my time at Texas A&M, that made me trust my ability to carry this forward. Most of all, you helped me by understanding my passion for this project.

Linda Putnam, I thank you for introducing me to the literature on discourse and helping me think about its relevance to gender politics of India. Without your guidance this project could not have taken the shape that it did.

Charles Conrad, you have been a source of clarity and understanding at numerous levels. Your inputs have always helped me think through ideas critically and keep track of what matters and what doesn't.

Cynthia Werner, you have been immensely helpful in my development as a researcher. In the classroom and through your feedback, you taught me to pay attention to details that make research meaningful and useful.

The Melburn G. Glasscock Center for Humanities Research and College of Liberal Arts, Texas A&M University, generously provided the funds which made it possible to stay financially afloat.

I am especially grateful to the research respondents who patiently answered my, often controversial, questions with so much clarity and conviction.

I am also grateful to Sandra Maldonado. You saved me so much time and anxiety by your willingness to help with the endless queries and paperwork that international students have to navigate through in a university. Thank you!

My friends and colleagues were a tremendous source of emotional and social support whenever I needed it. Yogita, I cannot begin to list the ways in which you have contributed, to not just my dissertation but to help me deal with the experience of life as a graduate student at Texas A&M. It is hard to imagine the completion of this project without your support and intellectual input. Ravi, your unique sense of humor and willingness to discuss everything under the sun, including my research, helped me more than you know. Richa, I thank you for devoting time to read my drafts and provide feedback. Shadab, thank you for convincing me that this was a project worth pursuing. Your help was invaluable in completing the field research that I carried out in India. Thanks also to Ranu for helping to get the interviews transcribed in India.

I would also like to thank my mother, Laila Imam, for teaching me the value of persistence and my father, Raza Imam, for encouraging me to think critically and for his valuable feedback on the manuscript. This acknowledgement will be incomplete without mentioning my three siblings Parvez, Sehba and Shavez who have always contributed in every significant event in my life. I also thank my parents in law, Brajesh and Veena Sinha for being anxious but supportive observers all through these years.

Finally, I would like to say to my husband, Tanmay Chetan, thanks for believing in me and never doubting that I could do it, for your support at every step, and for just being there.

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CHAPTER I

INTRODUCTION

This thesis addresses the issue of religious nationalist discourse in India and how it constructs women's identities. While I focus on the contemporary period beginning roughly from 2000 to pin down the specific events, debates and controversies on which I base my analysis, I contextualize these debates and events by tracing the discourse of nationalist movement from pre-colonial times through independence to the current debates. In doing so I restrict my focus to women's question within the nationalist discourse before and after independence and its connection to the two issues I have centered my research on – the Muslim Personal Law and marriages between Muslim men and Hindu women.

The subject positions being constructed by these two, as I argue, extremely significant issues implicated in, and constituting the religious nationalist discourse in India, have consequences for women's citizenship rights.

In this chapter I will discuss the rationale for studying how religious nationalism impacts women's identity. Giving a brief overview of the scholarship on nationalism, I discuss the relationship of the specific kind of nationalist discourse – the religious nationalist discourse – with women's identities. I then go on to discuss why this relationship concerns women's citizenship status and practice. Finally, I will comment on the scope of this research and give a scheme of the remaining chapters.

Nationalism

Scholarship on nationalism, nations and nation states, points to the end of eighteenth

century as the period when the ideology of nationalism emerged leading to the world order organized into sovereign nations-states. There are various conceptions giving different accounts of the specific reasons for the emergence of nations, the driving force behind nationalism and its future or relevance in the age of globalization.

Most modernist conceptions focus on socio-economic factors and see emergence of nations as a necessary corollary to the modern industrial age. A mobile, literate workforce was a necessary condition for industrial capitalism. Nations provided it and thereby supported industrialism which in turn encouraged nationalism (Balibar and Wallerstein, 1992; Gellner, 1983; Hobsbawm, 1990).

There are other modernist conceptions that see ideological developments during the eighteenth century as the reason behind emergence of nations. According to Kedourie (1971), for instance, Enlightenment and Kantian ideas of self-determination contributed to the emergence of nationalist ideologies.

The social constructionists agree with the modernist paradigm that nations are a product of modernization but their emphasis is on the socially constructed nature of nations. Anderson's (2006) influential work describing nations as "imagined communities" exemplifies this paradigm. He defines nation as "an imagined political community – and imagined as both inherently limited and sovereign" (p. 6). He explains that it is imagined as limited because no nation, however big it may be, imagines itself as "coterminous with mankind" in a way that, for instance, was possible for Christians who dreamt of an entirely Christian world. Each nation has a boundary that distinguishes it from other nations. They are imagined as sovereign because the notion of nationalism and nations emerged at a time when "Enlightenment and Revolution was destroying the legitimacy of the divinely-ordained,

hierarchical dynastic realm” (p.7). According to Anderson, the weakening of these universal and religious certainties that structured the world also explains the religion-like reverence and passions that nationalisms generate. These universal conceptions had given meaning to the everyday fatalities and existence of human life. In the event of their erosion, what was required was a “secular transformation of fatality into continuity, contingency into meaning” (Anderson, p. 11) and the idea of nation fitted the bill. It is for this reason, Anderson explains, that there exists a paradox in the form of the objective modernity of nations as historians see it and the subjective antiquity with which nationalists regard it; for if “the nation-states are widely conceded to be ‘new’ and ‘historical’, the nations to which they give political expression always loom out of an immemorial past, and, still more important, glide into limitless future” (pp. 11, 12).

Whatever the differences in each of these views, they all see the emergence of nations as a product of modernity and the historical turn of events. Ethno-symbolic paradigm differs from these views in the sense that it emphasizes subjective facets like memory, sentiments, myth and symbols, the so called ‘inner worlds’ of nationalism over the objective circumstances that produced nations. This paradigm sees national identities in relation to prior collective cultural identities and because they focus on the subjective dimensions of shared symbols and myths, their explanation for intensity of ethnic conflicts within and between nations gives primacy to the role of key symbolic issues over political and economic accounts. Although this paradigm casts the cultural and ethnic identities as *almost* essential and stable, the relationship between past, present and future is understood as that of reinterpretation where the elite and leaders of aspirant communities try to discover their ‘authentic’ history that points towards “golden ages”. Restoration of the “glorious destiny”

becomes the substance of nationalist ideologies in one form or the other (Smith, 2001). This is not very different from the modernist understanding of nations as expounded by Anderson except that while Anderson emphasizes the imagined nature of the community, the ethno-symbolists trace the community to previously existing cultural / ethnic ties.

A purely socio-economic modernist understanding of nations like Hobsbawm's (1990) account holds the view that nations and nationalism, having fulfilled their function, are irrelevant for the current era of globalization and are therefore becoming obsolete. The opposite view exemplified by neo-perennialists, and closer to ethno-symbolists understanding, is that at root, nations and nationalisms are "ethnic" and though they may eventually transcend a particular ethnicity / cultural group and incorporate other groups as a part of its political community, the mobilizing power remains a sense of unique heritage and history (Smith, 2001). This understanding counters the notion that the postmodern society will also be post-national. The idea of a post-national society is predicated on the "rise of cosmopolitan global culture which will increasingly subsume and erode national cultures and identities" (Smith, p. 122). The latter view avers that the military and economic functions of nation states may become irrelevant but that does not imply attenuation of national identities.

While the notion of somewhat essential, stable ethnic identities that perennial understanding indicates is arguable, the persistence of, and even strengthening of national identities (Juergensmeyer, 1993, Anderson, 2006) does point towards the resilience of collective cultural identities over the economic and political utility of nation states. Smith (2001) explains this resilience of nations and national identity as an effect of ethno-history. Ethno-history, unlike history, is concerned with:

...members' own records and memories of a community and its own rediscovery of an 'authentic' communal past or pasts... [that] appears as a series of original moral lessons and

imaginative tableaux, which vividly illustrate the identity and uniqueness, and the centrality and essential goodness of the community – whatever the shortcomings of its individual members. Ethno-history does not address economic and social issues in themselves, or indeed the development of political institutions. Instead, it focuses on questions of heroism and sacrifice, creativity and renaissance, sanctity and worship, genealogy and tradition, community and leadership. Above all it harks back to one or more ‘golden age’, to which it seeks, through precept and example, to restore the community in the future. Such golden ages embody the essence of the community, their ‘true’ character... (p. 140).

Ethno-historic memories of golden ages may take different forms. They could be political and economic, directing to ages of wealth and power as, for instance ancient Egypt; or religious pointing to a period of faith and wisdom, for instance the age of the Upanishads, the Bible or the Qur’an. For the aspiring communities, these ages become canonical and epitomize all that was great and noble in the community and is missing now and is to be restored with the nation’s rebirth (or restoration). This account of nationalism and the consequent national identity is based on four categories that are seen as almost sacred by the members of a given nation (Smith, 2001). These sacred categories are:

- (1) Community - a belief in ethnic election, the idea of the nation as a chosen people, entrusted with a special mission or having an exclusive covenant with the deity;
- (2) Territory - an attachment to a sacred territory, an ancestral home-land sanctified by saints, heroes and sages, as well as by the tombs and monuments of the ancestors;
- (3) History - shared memories of ‘golden ages’, as the high points of the nation’s ethno-history, ages of material and/or spiritual and artistic splendor;
- (4) Destiny - the cult of the ‘glorious dead’, and of their heroic self-sacrifice on behalf of the nation and its destiny.

Depending on how widely dispersed each of these properties of nationalism are in a population, the sense of national identity and the boundary between the members and outsiders will be correspondingly stronger or weaker. Further, depending on the ethnic, cultural or religious composition of a national population, outsiders can be both within and outside the national boundaries. Perhaps, this explains why a monolithic 'nation state', where there is just one nation in a given state and one state for a given nation is rare. With nearly 90 percent of world's state being polyethnic, state and nation are rarely coextensive (Walker Connor, 1972). Smith (2001) offers a working definition of nationalism: "An ideological movement for attaining and maintaining autonomy, unity and identity for a population which some of its members deem to constitute an actual or potential 'nation'" (p. 9). The phrase "potential nation", Smith explains, indicates towards the fact that in many situations a small (or not so small) minority of nationalists may possess their own concept of the abstract 'nation' and endeavor to create the particular nation 'on the ground' (p. 9). In post-colonial regions of Africa and Asia, there are numerous cases of nationalisms without "nations". Such nationalisms do not only have the political goal of attaining independence but are also deeply concerned with preserving aspects like culture and "authentic" identity.

It can be concluded from this overview that most perspectives on nations and nationalism recognize that nationalism holds a quasi-religious quality. Nonetheless, it is largely understood as a secular ideology. Juergensmeyer (1993), notes that the belief in secular-nationalist loyalties were based "on the idea that the legitimacy of the state was rooted in the will of the people, divorced from any religious sanction" (p. 11). Even neo-perennialist viewpoint holds that in time a nation may transcend "a given ethnicity and incorporate other ethnies within a broader political community" (Smith, 2001, p.101). In

other words the understanding that the concept of nation provides an overriding collective cultural identity over “ethnic”, religious and other forms of collective cultural identities existing within a nation was a part of the idea of world order founded on nations (Anderson, 2006; Nairn, 1977).

However, the challenge to the notion of secular nationalism from what has now come to be termed as “religious nationalism” around the globe has belied these assumptions. The religious nationalist ideology holds that “religious rather than secular nationalism is the appropriate premise on which to build a nation” (Juergensmeyer, 1994, p. 40). It is aimed at societal transformation based on strict interpretation of religious texts and practices. India is a classic example where the notions of secular nationalism and religious nationalism are engaged in a tussle to shape the Indian nation. While I undertake a detailed discussion on Indian nationalisms in the next chapter, a point of critical significance for my research, the relationship of women’s identities and Indian nationalisms, is briefly sketched here.

Religious Nationalism and Women’s Identities

Scholarship on women and nationalist movement has demonstrated that the question of women played a central part in the nationalist discourse before as well as at the inception of independent Indian nationhood (Chatterjee, 1993; Chandra, 2006; Sunder Rajan, 2003). In the fervor of nationalist identity politics “rescue, reclaim and rehabilitation” of women became a critical means for self-representation of the new Indian and Pakistani nations as was evident by the problem of abducted Hindu and Muslim women on both sides of the border. There are many accounts of the violence inflicted on women on both sides of the India-Pakistan border (Butalia, 2000; Menon & Bhasin, 1998; Sunder Rajan, 2003). The violence resulted not just because of their identities as Hindus or Muslims but also because of

their identity as women. Abduction and rape of women was a means of dishonoring the other community, while killing their own women became a way of saving the community honor from being sullied by the “other”. Finally, returning abducted women as a part of a treaty between India and Pakistan was undertaken a few years after the partition. This was more than anything else a gesture of restoring the honor of each community. Menon and Bhasin (1998) have recounted tales of women who had built their lives, had families and children and were forced once again to undergo the trauma of being uprooted during this process.

Werbner & Yuval-Davis (2005) explain that in the face of nationalist or religious movements women “are subjected to special rules and regulations aimed at controlling their behavior in order to ensure that they conform to the imposed ‘burden of representation’” (p.13). The notion of “burden of representation” is perhaps the key to understanding how religious or cultural nationalist discourses are engaged in constructing women’s identity. Sunder Rajan (2003) suggests that a religious community can be understood in two ways, one as a political identity, and the other as an actual anthropological entity. As is obvious, it is the first understanding of the religious community that holds the center in the politics of religious nationalism. The religion based community, much like families, is centered on and led by men. However, women’s inclusion in these communities is not at all marginal. In fact, their inclusion is central to the community identity. But unlike men, women “are not viewed as constituting’ these spheres; they are described instead as belonging to them” (Sunder Rajan, p. 163). In other words they arrive on a scene that is already there and their membership is contingent on their conforming to the preexisting practices, rules, roles, and meanings that have been institutionalized. Additionally, since they are a symbol of communities’ honor, they need to be protected and, by extension, controlled.

This location of women within the religious nationalist discourse is of critical significance in the light of Mouffe's (1992) argument that "the category 'woman' does not correspond to any unified and unifying essence, [therefore] the question can no longer be to try to unearth it". Instead, "[t]he central issues become: How is "woman" constructed as a category within different discourses? How sexual difference is made a pertinent distinction in social relations? And how are relations of subordination constructed through such a distinction?" (p. 373). As is evident, the religious nationalist discourse constructs a specific subject position for women with consequences for their status in a given society and the content and practice of citizenship.

Why this Relationship Concerns Women's Citizenship Rights

Feminists of all persuasions have been grappling with issues surrounding women and citizenship for a long time. Citizenship is understood as a status conferred on the people of a nation state within a democratic framework that establishes legal equality among citizens and allows them to participate in government (Sunder Rajan, 2003). It is true that since the concept of citizenship is tied to the logic of nation-states it is a component of authoritarian nations as well. However, for the purpose of my research I draw on the theoretical conceptualization of citizenship that is founded on Marshall's (1950) definition of citizenship as being a full member of a community realizable in the form of civil, political and social rights. Further, it needs to be acknowledged that the concept of citizenship is in many ways exclusionary and is often tied to essentializing cultural discourses (entrenched in nationalist ideologies). Nonetheless, feminist scholars argue that, the language of citizenship provides women with valuable weapon in the fight for human, democratic, civil and social rights (Werbner & Yuval-Davis, 2005).

Though suffrage and other forms of political participation brought women at an equal footing with men with regard to citizenship rights that were historically conceptualized for a male subject, the relationship of women and state continues to be fraught with contradictions and difficulties. In postcolonial India, the obstacles women face in enjoying full citizenship rights exist at the level of both substance and practice. On the one hand, despite being recognized as equal citizens, many civil and family laws perpetuate traditional patriarchal practices, and on the other, there are areas where customary and traditional practices are invoked to prevent women from utilizing constitutionally granted rights (Agnes, 2006; Sunder Rajan, 2003).

In this context, there goes on a constant process of engagement with the state, through its administrative, legislative and judicial institutions, to negotiate women's citizenship rights. This may take place at the level of individual women seeking justice and/or activists or women's rights groups seeking amendment, reinterpretation, enactment and deletion of laws or their enforcement. The state's response to these ways of engagement has the potential of constraining or advancing women's citizenship rights. How the state actually responds, however, depends on how it constructs "woman" (Sunder Rajan, 2003) which is undeniably linked to the social and cultural processes that influence women's identity formation. Since religious nationalism has come to play an increasingly critical role in the contemporary social and political realm in India and women's identities are inextricably implicated in this discourse, my research focuses on what subject positions the religious nationalist discourse is constructing for women, what other discourses is it competing with and what possible implications this may have for women's citizenship status and practice.

The Scope of this Research

This study is an attempt to understand how women's identities are being impacted by the increasing influence of religious nationalist discourses in the political and social realm in India. At the theoretical level, I demonstrate the use of the discourse theory, propounded by Laclau and Mouffe, in understanding how relations of subordination are created in a society. By focusing on the arguments and the counter-arguments of religious nationalist and the competing discourses, I try to locate the specific "nodal points" around which these debates are constructed. The two issues, the Muslim Personal Law and the marriages involving Muslim men and Hindu women, that I examine, are deeply implicated in the identity politics of Hindu and Muslim right groups and are organized around women's lives. At a practical level then, by looking at the premises of religious as well as secular discourses, I hope to identify the strengths and weaknesses of the subject positions being constructed for women; look at assumptions that are being challenged or getting sedimented and going unchallenged and; hopefully point to aspects of discourse that need to be challenged to protect and advance women's citizenship rights in India.

This is neither an exhaustive study on religious nationalist discourses in India - and their way of constructing women's identities - nor an effort to establish any direct causal links between the discourses and their impact on women's citizenship rights. The study focuses only on Hindu and Muslim religious discourses and covers only those aspects of the debates that get covered in the mainstream news media. While this limits the content of discourses I get access to, leaving out, for instance, vernacular print media - that often has its readership concentrated within a certain religious community and therefore may have content that will give a sharper and purer version of the position a discourse holds- it does indicate

the aspects that are part of the mainstream debates. This makes these aspects potentially more influential in impacting the political and legal decisions affecting women's lives.

The Scheme of Chapters

This study is divided into six chapters. In chapter II, I undertake a review of the relevant literature. I discuss three separate topics. These are: identity; Indian nationalism and citizenship.

Chapter III deals with my reasons for focusing on the two issues: the Muslim Personal Law and the marriages involving Muslim men and Hindu women. I also talk about the selection of sources - the three mainstream English media newspapers and interviews - to understand the discourses. I then go on to discuss why the discourse theory is relevant for studying the relationship between women's identities and religious nationalism.

In chapter IV, I undertake an analysis of discourses on Muslim personal Law in relation to women. I juxtapose three distinct discourses -the Muslim right, the Hindu right and the secular/women rights - to illustrate how each discourse is constructing the identity of a "Muslim woman" and is engaged in a struggle with the other discourses.

Chapter V analyses the discourses on inter-religious marriages involving Hindu women and Muslim men. Here I discuss two competing discourses – the Hindu Right and the secular/women rights – to illustrate how each one is constructing the identity of "Hindu woman".

In the sixth and the final chapter I revisit chapters IV and V to reiterate how the religious nationalist discourse is impacting women's identity and how the women's rights and secular discourse is competing and negotiating with this discourse. The chapter will also

highlight the pitfalls and opportunities of the arguments used by this latter group and the potential implication of these discourses for women's citizenship rights.

CHAPTER II

CONCEPTUAL FRAMEWORK

This research project concerns the question of identity at several levels. While its primary concern is to understand how the religious nationalist discourses are constructing women's identities, it also takes a look at the obvious concern of these discourses with nationalist and religious identities that are both, closely connected to gender identities and are a separate category of identities in themselves. In this chapter, I first discuss the various ways of understanding the concept of identity, and state my position on it. In the second section I deal with the topic of Indian nationalisms. Here I map the rise and existence of various kinds of nationalisms in the pre and post independent India and the identities implicated in each. In the third and the final section, I overview the scholarship on citizenship with a focus on feminist understanding of the subject and reiterate its relevance to my research project.

Identity

It seems ironic that as the philosophical discussions on identity have more or less settled on anti-essentialist understanding of it (Butler, 2000; Hall, 1996; Grossberg, 1996; Laclau, 1994), the political movements on the ground are more and more leaning towards essentialist notions of cultural identity (Bacchetta, 2002; Grossberg, 1996; Sen, 2006; Smith, 2001). In this section, I cover the scholarship on identity, illustrating the philosophical developments in the field. The section on nationalism gives an example of the latter.

Hall's identification of three different ways of conceptualizing identity helps charting the scholarship on identity. He broadly classifies these into: the enlightenment subject, the sociological subject and the postmodern subject (Hall, 1992). A product of the enlightenment

philosophy, exemplified by Descartes' well known declaration "I think therefore I am", the enlightenment subject is:

based on a conception of the human person as fully centered, unified individual, endowed with the capacities of reason, consciousness and action, whose 'centre' consisted of an inner core which first emerged when the subject was born, and unfolded with it, while remaining essentially the same.... The essential centre of the self was a person's identity (Hall, 1992, p. 275).

In this view the subject is understood as possessing inherently rational capacities making it possible to make sense of the world as it exists. Further, the human subject is seen as having an initial and primary existence from which all laws and forms of society flow (Williams, 1976).

The sociological subject provided a critique of the self-sufficient Cartesian subject. Advancing a theory of socialization, this view saw the individual located in wider social processes, formed in relations to "significant others", who mediated to the subject the values, meanings and symbols – the culture – of the world he/she inhabited" (Hall, 1992, p. 275). This view exemplifies the symbolic interactionist position that understood identity as formed in the interaction between the self and the society, the inner and the outside. This view did not deny the existence of an inner core of the subject but it did not see the inner core as autonomous (Hall).

The assumption of an inner essence or core of a human subject was challenged by several developments in the late twentieth century or what is termed as late-modernity. The re-reading of the Marxist theory that displaced the notion of human agency (Althusser, 1966); Freud's postulation of the "unconscious" that countered the concept of a knowing, rational individual with a unified identity; and Saussure's theories of language that displaced

the human subject as the “author” of the meanings expressed in language; positing, instead that meanings are embedded within the language and our cultural systems, led to the decentring of the autonomous subject (Hall and Gieben, 1992).

Foucault’s radically historicized subject destabilized the notion of a unified agent-subject even further. His theories are influential in establishing the “subject - of- language” approach. Foucault’s work focused on the regulatory power of discourse. His concern was to show how the disciplinary discourses that operated in modern sites like schools, clinics, prisons etc. produced subjects by naming and categorizing them (Foucault, 1977). His “archeological” work discusses how the subject rather than being the author or originator of a statement merely fills in a subject position that exists in discourse, a subject position that “can be filled by virtually any individual when he formulates the statement; and in so far as one and the same individual may occupy in turn, in the same series of statement, different positions, and assume the role of different subjects”. A problem that his theories were critiqued for (and one that perhaps vexes all “subject of language” approaches to some degree) is that it offers, in Hall’s (1996) words, “a formal account of the construction of subject positions within discourse while revealing little about why it is that certain individuals occupy some subject positions rather than others” (p. 10). In his later works Foucault addresses the total lack of agency of the human subject that was evident in his theory of disciplinary technologies by introducing the logic of “the forms of subjectivation and the practices of the self”. The forms of subjectivation, he explains, are “the forms of relations with the self, ...the methods and techniques by which he works them out, ...the exercises by which he makes of himself an object to be known, and...the practices that enable him to transform his own mode of being” (Foucault, 2000, p. 368). While this goes

some way beyond the account of discursively formed subject positions to how the subject is constituted, it still doesn't answer the question about the mechanisms by which the subjects identify with the "positions" they are summoned to occupy. Nonetheless, Foucault's theories are considered to be the most influential in advancing the anti-essentialist notion of human subject.

The problem left unresolved in Foucault's conceptualization has been attempted to be resolved by bringing together insights from discursive and psychoanalytic perspectives. Butler's critique of early feminist work for assuming "women" as an essential, seamless category, reiterates the regulative power of discourses in forming "sexed" subjects. Her work, however, also concerns the question "how certain regulatory norms form a 'sexed' subject in terms that establish the indistinguishability of psychic and bodily formation" (Butler, 1993, p. 23). She turns to psychoanalytic theories to discuss how identities are constituted by the suturing of the psychic and the discursive through a process of identification (Hall, 1996). Explaining identification, Butler says

...identifications belong to the imaginary; they are phantasmatic efforts of alignment, loyalty, ambiguous and cross-corporeal cohabitations....Identifications are never fully and finally made; they are incessantly reconstituted, and, as such, are subject to the volatile logic of iterability. They are that which is constantly marshaled, consolidated, retrenched, contested and, on occasion, compelled to give way. (1993, p. 105)

The process of identification forms an important component of Laclau and Mouffe's discourse theory as well. Borrowing from Lacan, they give the subject "an unconscious, which can explain why people allow themselves to be interpellated by discourses" (Phillips and Jorgensen, 2006, p. 42). Countering the notion of essential, already existing identities, Laclau (1994) says that any social identity entails as one of its necessary dimensions:

construction and not simply recognition. The key term for understanding this process of construction is the psychoanalytic category of *identification*, with its explicit assertion of a lack at the root of any identity: one needs to identify with something because there is an originary and insurmountable lack of identity. (p. 3)

The “lack” that in Lacanian terms occurs during the “mirror stage”, is understood “*as an identification*, in the full sense... [i.e.] the transformation that takes place in the subject when he assumes an image....” (Lacan, 2000, p. 45). Occurring in infancy, the mirror stage marks “the loss, the lack, the division” (Hall, 1996, p. 9); the memory of the feeling of wholeness that existed before this stage leaves the subject in a perpetual striving to be whole again (Hall). It is this lack that the subject tries to fill by identifying with subject positions or the discursive images presented to it through socialization. These images are internalized and continuously compared to that memory of wholeness but they never match it perfectly (Philips and Jorgensen, 2006). This notion of the “subject of lack” implies that the content that fills the lack through the act of identification is not destined a priori to fulfill that lack; its meaningfulness lies in its possibility of performing the filling function. This means, Laclau and Zac (1994) explain:

that there is not a unique act of identification whose effect would fulfill unchallenged its filling function. As any identification takes place through contents which are essentially inadequate to this fulfillment, the identification will be constitutively incomplete and will have to be always re-created through new identification acts. (p. 17)

This contingency of discourses leads to what Laclau and Mouffe call overdetermination of the subject. It means that since there is no objective logic for identifying with a specific subject position, the subject always, in principle, has the

possibility of identifying with different positions in a specific context (Laclau 1994; Phillips and Jorgensen, 2006).

The different theories of identity that critique the notion of a unified rational subject with an essential core may offer varying conceptualizations but have made one thing relatively clear that what the term “identity” was held to refer - whether it was “for example, the category ‘man’, ‘black’, ‘work’, ‘nation’ or ‘community’ – is ...more contingent, fragile and incomplete and thus more amenable to reconstitution than was previously thought possible” (Gay, Evan and Redman, 2000, p. 1). Halls (1996) definition of identity captures the “subject-of-language approach comprehensively. He defines it as:

the meeting point, the point of *suture*, between on the one hand, the discourses and practices which attempt to ‘interpellate’, speak to us or hail us into place as the social subjects of particular discourses, and on the other hand, the processes which produce subjectivities, which construct us as subjects which can be ‘spoken’. Identities are thus points of temporary attachment to the subject positions which discursive practices construct for us. (pp. 5, 6)

While the earlier conceptions of identity are termed as essentialist approaches - which include not only the Cartesian subject but also, to some extent, the Marxist notion of essential class identities, the Freudian notion of the unconscious being the domain where “real” motivations can be found and the feminist notion of essential category of “women”- the discursively constructed subject positions constitute the anti-essentialist notions of identity. The two significant points that the anti-essentialist understanding of identities imply are: one, that the subject is fragmented, meaning that not only does it not have a single unified identity but also that the project of identity construction is an ongoing one and never gets completed; two, since there are no true selves, collective identities are formed through marking of difference rather than sameness. In Hall’s (2000) words, they are “more the product of

marking of difference and exclusion, than they are the sign of an identical, naturally constituted unity – an ‘identity’ in its traditional meaning (that is, an all-inclusive sameness, seamless, without internal differentiation)” (p. 4). This later point leads to the recognition that it is in relation to the “other”, to what it is not, its “constitutive outside” that any ‘identity’ is constructed (Butler, 1993; Derrida, 1981; Laclau, 1990).

In carrying out this research to understand the identity construction of women within the religious nationalist discourses, I obviously take the anti-essentialist position and specifically use the concepts from Laclau and Mouffe’s discourse theory to carry out the analyses. I will discuss the discourse theory in the methodology section of the next chapter.

In the next section I discuss the nationalist discourses in India. Just as the individual subject is understood to have a stable core self within the essentialist notions of identity, a cultural or group identity is characterized as “collective or true self hiding inside the many other, more superficial or artificially imposed ‘selves’ which a people with a shared history and ancestry hold in common”. Such an essential cultural identity is understood to “stabilize, fix or guarantee an unchanging ‘oneness’ or cultural belongingness underlying all the other superficial differences” (Hall, 1990, p. 224). A review of nationalisms in colonial and post-colonial India, exemplifies this.

Indian Nationalisms

The origin of Indian nationalism is pinned down to the formation of Indian National Congress (INC) in 1885, which marked the beginning of the political struggle against the British rule (Seal, 1971). However, Chatterjee (1993) argues that the birth of a nationalist ideology precedes its political manifestation. According to his reading, anti-colonial struggle

had created its own domain of sovereignty much earlier by dividing “the world of social institutions and practices” materially and spiritually:

The material is the domain of the “outside,” of the economy and of state- craft, of science and technology, a domain where West had proved its superiority.... The spiritual, on the other hand, is an “inside” domain bearing the “essential” marks of cultural identity. (Chatterjee, 1993, p. 6)

It was the preservation and highlighting of distinctness in the spiritual domain that became, and remained, a fundamental feature of anti-colonial nationalism. The distinction of inside and outside domain had a direct bearing on the place of women within the nationalist discourse. My discussion on the development of two kinds of nationalisms - the secular and the religious – as they evolved in pre and postcolonial India, elaborates this point further.

Of the two dominant master narratives on nationalism, the first is India’s “official ideology”. It guided the national movement for independence and was legitimized by the country’s constitution after independence from the British rule. According to this narrative all religions have an equal place in the national “family” and none will dominate the functioning of the state. The term “secular” does not mean a separation between religion and state but neutrality implying “religious equidistan[ce], not non-involvement” (Varshney, 2002, p. 56).

Religious nationalism, the second master narrative has primarily taken two forms: Muslim and Hindu. The Muslim nationalism emerged in the first half of the twentieth century and led to the birth of Pakistan in 1947 by popularizing the idea that Hindus and Muslims were not two different religious communities but two separate nations. The Hindu nationalism can be viewed as the mirror image of Muslim nationalism. The RSS (Rashtriya

Swayamsevak Sangh - National Volunteers' Organization) created in 1925 is the institutional core of Hindu nationalism.

The cultural revivalism or the assertion of the spiritual domain to resurrect India's cultural pride in reaction to the British rule was foundational for both the secular and the Hindu nationalism. With the formation of INC, the political struggle for independence, while retaining the cultural revivalist discourse, took the form of a secular nationalist movement. The Hindu nationalism that became formalized with the formation of RSS in 1925 stayed focused on creating Hindu unity and later the Hindu nation.

Bacchetta's (2002) insightful work on the intersection between the notion of Hindu nation and gender explains that Rashtriya Swayamsewak Sangh (RSS) (The core organization leading the Hindu nationalist movement) imagines the Hindu nation as having three components: the citizen-body, the territory and culture religion. Drawing on Golwalkar's (a prominent RSS leader and ideologue) works, "We or Our Nationhood Defined", published in 1939 and "Bunch of Thoughts", its third edition published in 1996, Bacchetta explains:

The citizen-body is composed of men, the "sons of the soil" The nation's territory is a maternal body, symbolized by the goddess Bharatmata, the mother of ancient King Bharat, Here, the RSS represents the nation as a symbiotic son/mother relation. Hindu women are supposed to be like Bharatmata, raising brave warrior sons. For the RSS, "today, more than anything else, Mother" (Bharatmata) "needs such young, intelligent, dedicated and more than all virile and masculine" men.... (pp. 47, 48)

Further, she explains:

For the RSS, in an ancient past, Bharatmata was pure, Hindu men militaristic, and the nation glorious. The Muslim invaders entered, violated Bharatmata and Hindu women's bodies,

thereby provoking the nation's downfall which was consolidated through British colonialism.
(p. 48)

The Muslim League, which was founded in early twentieth century, stood for Muslim nationalism and became the moving force for the partition of India and creation of Pakistan. I will discuss the distinctions between the two discourses- the religious and the secular- particularly as they unfold in the post-colonial India in the following subsections. But before that I will elaborate on the anti-colonial nationalist discourse and its engagement with the "Indian woman" that sets the context for women's position in the post-colonial nationalist discourses.

Women's Position in the Anti-Colonial Nationalist Movement

The early phase of nationalism led not only to the distinction between what Chatterjee terms the "inside" and the "outside" domain but also to refashioning of the "inside" to make it suitable as a symbol of India's cultural superiority. The refashioning occurred in the form of social reforms for uplifting the position of Indian woman. Criticism of Indian traditional and religious practices as barbaric by the British focused mostly on the treatment of women. Practices like Sati and the treatment of widows became visible symbols of women's persecution and contributed to colonial rule's legitimizing discourse. An early phase of social reforms was focused on legislative actions to curb these practices. However, the rise of nationalist discourse led to resistance to interference by the colonial powers in the nation's traditional practices. Opposing legislative intervention, "[t]hey asserted that only the nation itself could have the right to intervene in such an essential aspect of its cultural identity" (Chatterjee. 1993. P. 9). This interiorizing took the agenda of women's position off from the political contest of power to the aspect of discovering and restoring India's "traditional past",

where women had a better social position but at the same time different from the West's notion of "womanhood". This division between the modern political processes and the traditional appeals is explained well by the "Janus- faced" quality of the nation which Roy (1998) describes as:

nation's simultaneous and paradoxical adherence to a primeval past and its turn to the future. This 'temporal anomaly within nationalism' brings together in a mutually uncomfortable but necessary alliance the elements of nostalgia and social and cultural atavism with the notions of modernity and 'progress'. (p. 137)

Discussing the place of women in this dilemma, McClintock (1993) explains that it is resolved by "figuring woman as inherently atavistic – the conservative repository of the national archaic" and "men, by contrast were seen to embody the forward thrusting agency of national progress" (p. 67).

The women's question was thus resolved by introducing reforms that brought about transformation in their status but maintained what was viewed as the essence of Indian womanhood. For instance, women's education became acceptable and in fact was encouraged as a means of improving the condition of the country. Further, female education was promoted as an aspect that was in consonance with the ancient Indian values. Chatterjee (1993) relates that "a prize essay on 'Hindu female education' marshaled evidence that women's education was encouraged in Ancient India It went into numerous practical considerations on how women from respectable families could learn to read and write without any harm to their caste or their honor" (p. 125). Along with the emphasis on transforming the situation of women, there was a simultaneous emphasis on a need for women to *not* emulate the "Western woman" who symbolized lack of spirituality and feminine virtues like self-sacrifice, modesty and a commitment to family life (Chatterjee;

Roy, 1998). This new Indian woman was totally integrated into the discourse of nationalism, where she became the symbol of the sovereign “inside” domain as well as of spiritual superiority over West.

Further, with emphasis on preservation of the Indian spiritual essence from the assault of alien colonial power, the (Hindu / Indian) woman question became “abstracted, regulated and desexualized in a suffering and idealized Mother India” (Roy, 1998, p. 116), an enduring image that continues to occupy a central position in the discourse of nationalism even today. This interweaving of gender, politics and nation is captured well by William’s (2006) observation that the “figure of the ‘traditional woman’ or, more accurately, the myth of the uncolonizable feminine domain of the community, is vital to nation-building narratives because national communities define their inner coherence and outer boundary through the trope-laden female body” (p.32).

Women’s participation in the nationalist movement embodied these constructions. Sarojani Naidu, one of the prominent women freedom movement icons and a poetess exemplifies this embodiment. It was precisely the “celebratory archaism of Sarojini’s poetry, including its parade of submissive and sacrificial women” that facilitated her entry into the nationalist movement, Roy (1998, p.136) suggests. Sarojani, like many other women nationalist leaders, was insistent on differentiating the Indian movement from that of the women in the West, by not being “feminist”. Feminism denoted the unfeminine virtues and a desire for sameness and equality with men rather than maintaining a complementary role and feminine difference (Roy).

Roy (1998) quotes from Sarojani Naidu’s speech made in 1916 at a Congress session to illustrate the centrality of the maternal aspect in women’s identity as a nationalist:

It is suitable that I who represent the other sex, that is, the mothers of the men whom we wish to make men and not emasculated machines, should raise a voice on behalf of the future mothers of India to demand that the birthright of their sons should be given back to them. (p. 142)

Once women's essential femininity was established and invested with the nationalist content in this way, it became possible for them to overcome the rules of *purdah* that confined them to the boundaries of home and participate in other activities as long as they observed the differences between the culturally determinate and socially approved male and female behavior. This was the refashioned Indian woman, symbolizing the essence of Indian nation (Chatterjee, 1993; Roy, 1998; Zacharias, 2001). Gandhi is credited to have encouraged women's active participation in the freedom movement in large numbers. He did so, Roy explains, by:

...a deployment of the rhetoric of (Indian) female exceptionalism and purity. Thus he invoked traditional Hindu heroines like Sita and Draupadi as exemplars of moral courage and self-sacrifice. Women were, according to this scheme, peculiarly and intuitively suited for the exigencies of satyagraha and nonviolent struggle... (p. 40).

While the cultural revivalism (that largely relied on Hindu symbols) was an integral aspect of the anti-colonial nationalist movement in India, the political movement that grew out of it and led to the birth of the Republic of India adopted a secular nationalist ideology.

Post-colonial Nationalism

The secular nationalism, under the leadership of Gandhi dominated India's independence movement and continued to dominate India's post-independence political scene, too. The assassination of Gandhi by a member of RSS in 1948 delivered a huge setback to the RSS and the Hindu nationalist movement in general. The political party

representing this movement, the Bhartiya Jan Sangh (predecessor of the Bhartiya Janta Party, one of the two national political parties today), which was founded in 1952, remained a minor player in the Indian political scene for a very long time. The resurgence of Hindu nationalism in the current Indian politics can be distinctly traced to events that took place a couple of decades back which I discuss a little later in this section.

Hinduism, according to the Hindu nationalist narrative:

is not only the religion of India's majority community but also what gives India its distinctive national identity; other religions must assimilate to the Hindu center.... According to this narrative, whether or not Hindus can enjoy legal primacy, they must have cultural and political primacy in shaping India's destiny. The aim of this narrative is not only to emphasize the centrality of Hinduism to India but, when used in politics, to build Hindu unity. (Varshney, 2002, p.56-p. 58)

In secular nationalism the two terms – religion and culture – are clearly separable, and syncretism (implying give and take between cultures and religions) and tolerance are believed to be the basis of India's plurality. In the discourse of Hindu nationalism, on the other hand, first, the two terms India and Hindu are synonymous and second, the cultural and religious meaning of Hinduism blend into each other. This brand of Hinduism is termed as Hindutva by Savarkar, the ideological father of Hindu nationalism. Varshney (2002) quotes a definition from the classical text of Hindu nationalism written by Savarkar (the ideological father of Hindu nationalism) to illustrate the conflation of Hindu and Indian: "A Hindu means a person who regards this land...from the Indus to the Seas as his fatherland (pitribhumi) as well as his holyland (Punyabhumi)" (p. 62). The argument follows that while Hindus, Buddhists, Sikhs and Jains belong to the Hindu umbrella, as all these religions originated in India; Muslims, Christians, Jews and Parsis don't because their holyland is

outside India (Chatterjee, 1993; Varshney, 2002). According to this logic these non-Hindu groups can therefore be part of India only through “assimilation”. Assimilation is different from syncretism as it implies “absorption into the dominant culture or religion” (Varshney, 2002, p.62).

Since Parsis and Jews constitute a miniscule percentage of Indian population and are seen as largely assimilated, it is the Muslims and Christians that are mainly targeted by the Hindu nationalists. Savarkar’s text argues that they cannot be identified as Hindu (meaning Indian) because, although India is their fatherland, their holyland is far off in Arabia and Palestine and their ideas and heroes do not come from Indian soil and, consequently, their “names and their outlook smack of a foreign origin. Their love is divided” (Varshney, 2002, p.66).

Muslims are identified as the principal adversaries by the Hindu nationalists because they form a sizable 12% of the country’s population (which makes them the largest minority group) and because the post-independence formation of Pakistan as the Muslim homeland resulted in the partitioning of India. Conditions for Muslim assimilation include acknowledging key mythological figures, such as Lord Ram, as Indian heroes and not just religious figures of Hinduism; accepting that “Muslim rulers of India between A.D. 1000 and 1757 destroyed pillars of Hindu civilization” and apologizing for it; not claiming any special privileges as maintenance of Personal Laws; not demanding state grants for their educational institutions, etc. Any action to maintain distinctiveness would imply their inability to prove their loyalty to India (Varshney, 2002, p. 66).

The original form of Muslim nationalism that articulated Hindus and Muslims as separate nations led to the birth of Pakistan. The adherents of this point of view believed that

Muslims formed a “natural” community, distinct from the Hindu community and that their interests would be jeopardized under the Hindu majority ruled Indian state. This perspective is illustrative of what Smith (2001) characterizes as the concern of nationalists with expressing their “true self”. He explains that for nationalists, realizing a free nation translates into the freedom of being able to express one’s true self:

To be ‘truly’ ourselves, means to find the ‘authentic’ elements of our being, and strip away the accretions of the ages. Here authenticity translates into correspondence with ‘truth’, opposing the genuine to the fake, but also into what was the original version of an object, style or way of life. This leads on ... to the myth of origins and descent: ‘who we are’ is a function of ‘whence we came’ in time and space.... Here, the concept of authenticity overlaps with that of autonomy: the ‘true’ community is also the self-determining nation. (p.29)

The Muslim nationalists, very much like Hindu nationalists, saw their religious community and its connection to the past ages of “purity”- when they practiced the “original” way of being a Muslim unencumbered by compulsions to accommodate the other - as a foundation for the formation of “their” nation.

The Muslim nationalist discourse in the post-independence India is a mix of the residue of this earlier discourse and a defensive position vis-à-vis the Hindu nationalist discourse. It is thus a discourse of protection and assertion of Muslim minority identity. It is largely played out in a reactive mode with the Muslim Personal law (MPL) emerging as the most representative symbol of Muslim identity. Since the Constitution of India, created within the framework of secular nationalism, granted each religious community the right to govern their civic life according to their religious laws, - an aspect I will discuss further in this section - the MPL is perceived and projected by the Muslim nationalists as an instrument of protecting their Muslim identity from the onslaught of Hindu nationalism. Simultaneously,

the MPL is also used by the Hindu nationalists to demonstrate the incapability of Muslims to assimilate the Indian / Hindu culture. Indeed it was in some ways a catalyst, or one of the catalysts, for the current rise of religious nationalism in India (Sunder Rajan, 2003).

In early 1980s the case of Shahbano, a 62 year old divorced Muslim woman who had applied for and was granted maintenance¹ by the Supreme Court of India, was cast by several Muslim leaders as an affront to the MPL. The Supreme Court had invoked a section of Criminal Procedure that applied to everybody regardless of religion or caste, and had been used earlier too in cases of maintenance for divorced Muslim women as well as for women belonging to other religions. However, due to a combination of various political and situational reasons, the Muslim nationalists were able to build this into a huge controversy and project the court decision as state's interference in the personal affairs of Muslims. It culminated in the enactment of Muslim Women (Protection of rights in Divorce) Act, 1986. Contrary to its title, the bill as a matter of fact dissolved the right of Muslim women to appeal under the 1973 Code of Criminal Procedure on the pretext that it interfered with the Muslim Personal Law (Narain, 2008; Pathak & Sunder Rajan, 1989; Williams, 2006).

The controversy also granted enormous visibility to All India Muslim Personal Law Board (AIMPLB) – till then a somewhat obscure body – and established it as a representative of the interests of Indian Muslims. Although it has no statutory status but it has come to occupy the position of final authority over, not just MPL, but more or less all issues pertaining to Muslims. The Hindu nationalists used the Shahbano case to strengthen their discourse about the Muslims' lack of assimilation and consequently the threat they posed to Indian values, culture and the Constitution. The case thus became a turning point in the

¹ A monthly allowance that a divorced woman, who has not remarried and is not able to financially support herself, is entitled to from her ex- husband.

political landscape of India. There are few texts that discuss religious nationalism in India since the 1980s and do not mention the Shahbano case. As Agnes (2007) puts it “Shahbano is both a human being and a social and juridical text, marking and posing infinite intertextualities...” (p. 281).

The energy that the Hindu nationalists got from this controversy was utilized for another campaign that proved to be an even bigger landmark in the rise of religious nationalism in India. Babri Mosque, a 16th century structure, located in Ayodhya, a north Indian town of religious significance to Hindus had been a latent issue of contention for several decades. According to the Hindu nationalist narrative, the Muslim mosque was built on a demolished structure of a temple that marked the birthplace of Lord Ram. The movement was built around the discourse that in order to assert the Hindu identity and rectify the historical wrongs committed against Hindus by the erstwhile Moghul rulers, the mosque should be demolished and a temple commemorating Lord Ram built in its place. A tremendously successful movement to build the temple was carried out in late 1980s led by Bhartiya Janta Party (BJP), the political party representing the discourse of Hindu nationalism. The building of temple at that particular location was framed as an issue not just of religious significance but also the cultural heritage of Hindus (Varsheney, 2002; Sunder Rajan & Needham, 2007; Prakash, 2007), and, therefore, a part of the project to store India as a Hindu nation. The movement generated mass support and in December 1992 the mosque was demolished by a mob, in defiance of court orders. In discussing the Indian politics it is common to refer to the shifts in politics as well as social and cultural life in India as “post-Babri”. The BJP since then has come to play an increasingly important role in Indian politics. Today, it is one of the two leading political parties in India. The other, the Indian National

Congress party that is credited with leading the Indian national movement for independence, represents the secular nationalist discourse.

With Hindu nationalism established as one of the dominant political discourses in India, the Muslim religious discourse, which in any case draws its justification from the projected threat to the Muslim identity from the Hindu majority, has simultaneously got strengthened. In this assertion of identities, gender plays an enormously important role for both the communities.

There are two points of critical importance that concern the link between the anti-colonial nationalist ideologies and the post-colonial India. First, the “inside” and the “outside” domain distinguished by Chatterjee (1993) are not exactly coextensive with the distinction between “private” and “public”. Rather, the “inside” was the space where lives should be lived on the basis of unanimity and consensus of the community. The outside, on the other hand was the space of individual freedom. The “inside” was the spiritual and the essential domain that was to be governed by the communitarian ideals with the aim of preserving the traditional and cultural way of living. Family being an important component of this domain, women’s lives automatically became the stuff of the “inside”. These communitarian elements had to be accommodated in the liberal, secular constitution as they were firmly entrenched in the nationalist politics. The “inside” realm therefore became the communities’ sphere of influence, with retention of personal laws (formed by the British rulers) as a direct consequence. This gave communities not only a substantial legal power over women’s lives but also legitimized controlling them as symbols of the “essential” characteristics of a community.

Second, the fixing of religious identity as the primary identity - and the “otherness” of Hindus and Muslims for each other as constitutive of that identity - influenced the law making procedures in independent India. Efforts to reform the personal laws after independence were primarily undertaken for the Hindu Personal Law. These reforms that took place during 1955 and 1956, although did not confer equal status to women, they did reform marriage and inheritance laws in favor of women. However, no comparable reforms took place in other personal laws. At the time of the framing of Constitution, article 44 was included in the Constitution in the form of a directive principle stipulating that “[t]he state shall endeavor to secure for citizens a uniform civil code throughout the territory of India” (The Constitution of India, p. 21). A directive principle is not enforceable but lays down the aims of state policy. The decision to retain personal laws and defer UCC, putting it as a directive principle, was a strategic compromise made between the aim of unifying the nation and reassuring the religious minority populations - particularly the Muslims remaining in India after the partition - that their religious identities were secure under the Hindu majoritarian secular state. The logic governing this decision was that the reforms in personal laws would be undertaken on demand and with the support of the respective communities. However, in practice this logic worked differentially for majority and minority communities.

While the Hindu law reforms were undertaken despite vehement opposition from not only the Hindu nationalist groups but also Hindu members of the ruling secular party, the INC, reforms in the Muslim law were stalled as opposition from Muslim religious groups was seen as sufficient reason for that. The Hindu conservative groups protested the introduction of such provisions in the Hindu Personal Law as abolition of polygamy, allowing divorce and right to inheritance to daughters terming them as “anti-Hindu” and

“anti-Indian” (Mukhopadhyay, 1998; Agnes, 2006; Narain, 2008). The state’s comfort in disregarding the voice of Hindu leaders and legitimizing the voice of Muslim religious leaders can be interpreted as a consequence of the entrenchment and legitimization of communitarian politics, where community mediates the relationship between the individual and the state. The Indian State, although secular, but largely “Hindu” in its constitution could legislate on behalf of the Hindu citizens but not Muslims unless the community itself (read its leaders) desires or acquiesces to it.

Contrary to the expectation that the collective nationalist identity would eventually overtake religious identities, these identities have only hardened. Sunder Rajan (2003) observes that from the initial constitutional emphasis on the individual and state’s relationship, there has been a shift “to an increasing reliance on direct relationship with communities....It [the state] has also responded to demands for decentralization and greater autonomy to local bodies, region blocs and religion-based organizations in politics” (p. 152).

With the rise in religious nationalism, establishment of religious communities as the mediating units between the individual and the state and the fact that women are deemed as belonging to communities in the sense of “owned by” in addition to “affiliated to” (which is the operative meaning for men) has implications for their relationship with the state and consequently their citizenship (Sunder Rajan, 2003).

In the next section, I discuss the concept of citizenship, particularly its rearticulation by feminist scholarship, and its relationship to the woman subject.

Citizenship

The concept of citizenship, as understood in current times, is closely related to the idea and reality of nation-states. This link was effectively established during the nineteenth

century, when the nation-state became the basic unit - political and economic- of the modern world. The link between nation-states and citizenship constructs the legal and ideological boundaries of inclusion and exclusion (Taylor, 1989). Citizenship is broadly conceptualized as a collection of rights and obligations for those deemed as members of a nation-state. To the notion of civil and political rights - that were understood as constituting citizenship in the classical liberal theories - T.H. Marshall's (1950) well known exposition added the notion of social rights. He defined citizenship as being a full member of a community realizable in the form of civil, political and social rights. Elaborating the three rights, he posits:

The civil element is composed of the rights necessary for individual freedom – liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice. The last is of a different order from the others, because it is the right to defend and assert all one's rights on terms of equality with others and by due process of law. ... By the political element I mean the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body. ... By the social element I mean the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society. (pp. 10-11)

There is a debate between classical liberalism and social liberalism about the inclusion of social rights. The classical liberal understanding defines freedom in negative terms “as the absence of coercion and interference so that the role of government is limited to the protection of the freedom of individual citizens” (Lister, 1997, p. 17). Under this conception, the promotion of a more positive notion of freedom by the state like the capacity to participate in society as full citizens is regarded as illegitimate. Further, it is argued that

“citizenship cannot embrace social rights because, implying a claim on resources, they are categorically different from civil and political rights” (Lister, p.17). In the defense of social rights, the liberal argument offers two points. The first one challenges the assertion that social rights are categorically different from the civil and political rights, as it argues that a claim on resources is implied in the protection of the latter two rights. The second point argues that if the negative freedom is aimed at protecting individuals’ autonomy so as to enable them to pursue their life projects then it cannot be separated from the ability to do so. Therefore, positive freedom in the form of promoting material and social conditions that enable achievement of life projects is very much a part of citizenship rights (Gould, 1988; Plant, 2003). Another argument defending the social rights as constituting citizenship, asserts that for groups that are marginalized or disadvantaged in terms of power and resources, the effective exercise of civil and political rights is possible only if social rights are incorporated (Kymlica, 1995; Voet, 1998). In other words social liberals argue that civil and political rights are a necessary precondition of full and equal citizenship but they are not a sufficient condition and need to be backed by social rights (Yeatman, 1994).

In the western liberal democracies as well as the relatively new nation-states in the East, it is variants of social liberal citizenship that are institutionalized (Voet, 1998, Sunder Rajan, 2003, Assiter, 2005). Feminist scholarship on citizenship has both critiqued and engaged with the notion of social liberal citizenship. It is regarded as “an uneven terrain with dangers as well as resources for women’s movements” (Rai & Lievesley, 1996, p. i). Before, elaborating on the feminist critique, I will first briefly lay out the position of civic republican and communitarian notions of citizenship that are advanced as an alternative to the liberal form of citizenship.

The civic republican notion of citizenship challenges the idea of liberal citizenship primarily for advocating a passive form of citizenship as it emphasizes rights over obligations and is too individualistic. The civic republicans instead focus on civic duty, the idea of privileging common good over individual interest and the “the elevation of public sphere in which the citizen is constituted as political actor” (Lister, 1997, p. 24). The appeal of this ideal, however, “is not confined to any one point in the political spectrum, for elements of its creed resonate for many supporters of radical democracy as well as for communitarians” (Lister, p. 25).

The communitarian conception too is critical of liberal citizenship for, what it sees, as an aggressively individualistic conception of the citizen (Assiter, 2005). Further, the communitarians question the universalisation of values like freedom and justice and their appropriateness for groups that follow radically different values. The latter point is an argument that many post-colonial writers have asserted and have expressed the need for a version of citizenship that is not imported from the West but more rooted in the values of the national community/communities which get defined by it (Chatterjee, 1993; Nandy, 1994; Bilgrami, 1998).

Assiter (2005) explains that in contrast to the liberal perspective, that believes in “universal principles based upon an abstract consideration of an individual’s needs and wants”, communitarians suggest that “political thinking involves interpreting shared understandings bearing upon the political life of a community” (P. 44). They assert that since people are social creatures existing in a condition of interdependence, public interest should be given primacy over individual self-interest (Lister, 1997). This view finds resonance with some feminists as they see it as an alternative to the liberalist conception of an autonomous

and disembodied individual that completely ignores particularity and social existence (Benhabib, 1992).

While the communitarian alternative has not found favor with many feminists (and for good reasons), all feminist critiques of liberal citizenship center on its analysis that the universal, disembodied citizen is imagined as male. Therefore, they argue that despite women having gained formal and legal citizenship, their exclusion from “full membership” in a society continues (Assiter, 2005; Lister, 1997; Sunder Rajan, 2003; Voet, 1998; Werbner and Yuval-Davis, 2005).

In the following pages, I will elaborate on the feminist critique of social liberal citizenship as well as the communitarian alternative and then discuss the feminist re-articulation of the concept of citizenship. Historically, citizenship has been conceptualized as a part of masculinist public sphere. Women were kept out of its purview for as late as the twentieth century when women’s movements in many regions of the world ended this exclusion with women’s right to suffrage as an important milestone. However, feminist scholarship argues that, because of its masculinist roots, women continue to be marginalized. Lister (1997) discusses two intertwined constructs to expose the gender-neutral claim of liberal citizenship. These are: the hidden male image of “the abstract, disembodied individual on whose shoulders the cloak of citizenship sits and the public-private divide which has facilitated the relegation to the ‘private’ sphere of all the functions and qualities deemed incompatible with the exercise of citizenship in the ‘public’” (p. 71).

This public private divide is, of course, gendered where qualities like rationality, independence and political agency, which a citizen is expected to possess to participate in the public sphere, are typically thought of as male qualities in the binary thinking. Lister (1997)

sees this as an illustration of a classic double bind where “women are banished to the private realm of the family, either physically or figuratively, because they do not display such qualities and because of their association with that realm, they are deemed incapable of developing them (p. 71). In fact, Pateman (1995) argues, liberal citizenship relies on women’s role as wives and mother in the private sphere to hold the society together. In her well known critique of the social contract theory, Pateman (1988) says that the social contract leaves half the story unsaid, the half that deals with the “sexual contract and men’s patriarchal right over women” (p. 42). She basically argues that the individuals who form the social contract, that gives rise to citizenship, are imagined as men and it assumes sexual / conjugal rights as natural that leads to viewing of men’s dominion over women also as natural.

The public private divide leads to the feminist dilemma that should women enter the public realm on the same terms as men or should they demand for their unpaid work - as care takers and mothers - to be placed as central to their citizenship rights and status. The former reflects the liberal feminist approach and the latter the radical feminist with its different versions like maternalist citizenship or women-centered citizenship (Sunder Rajan, 2003; Voet, 1998).

The appeal of the communitarian notion of citizenship for some feminists is also partially based on this. They argue that the liberal citizenship by hiding a male citizen in the garb of a universal citizen ignores the social existence and particularity of women as well as the situation of other minority groups. It is the feminist rearticulation of the social liberal citizenship that, in my view, holds realistic possibilities for feminists to employ the concept of citizenship in ensuring women’s equality. Here, I talk about the reasons that, particularly

in the context of a postcolonial India, make other options problematic. I also discuss the emerging rearticulation of citizenship by feminist scholars and why feminists need to continue working with the social liberal notion (in its rearticulated form).

The “community” in the communitarian view may range from groups based on ethnicity, religion, nature of work, etc. An obvious problem with any kind of grouping is that making it a constitutive identity amounts to homogenizing; there is no recognition of the differences and conflicts between individuals (Campbell, 1995). Assiter (2005) points out that “[i]t tends to gloss over class, gender, racial and other power differentials between groupings in the interest of generating a common identity and a common value system” (p.45). In Yeatman’s (1994) words “[t]he problem arises in ‘determining which or whose community of interest we may be talking about’” (p. 93). In the context of India, as is evident from the current political rhetoric, as well as the reality of “personal laws”, the communities manifest in terms of religious communities. Therefore, “the place and function of religion in the modern democratic state becomes the central issue, rather than (only) a question of group (cultural) rights versus individual (legal) rights,” (Sunder Rajan, 2003, p. 151) as is the case with debates between communitarians and liberals in the West (Assiter, 2005).

Sunder Rajan’s (2003) exposition of women’s subordinate position in religious communities as political communities and the fact that the existences of personal laws undermines women’s equal citizenship status points to the problems for women’s citizenship rights in India. Although the formal citizenship status for women was relatively easily won in India due to the specific nature of the independence movement, the substantive equal citizenship, due to deeply entrenched patriarchal structures and values, is still far from being realized. In this context, communitarian notions can further undermine the ideal of equal

citizenship for women. Also, since the community is not necessarily the egalitarian, democratic, and intimately affective place that it is claimed to be in communitarian discourse, Sen (1997) insists that the state needs to play a protective role in relation to inequities within the community. In any case, one needs to be critical of essentialist notion of groups which assumes group identities and interests as given and unchangeable and seeks to reify them (Assiter, 2005; Mouffe, 1992).

The other alternative is the radical revisioning of the idea of citizenship arguing for predicating women's citizenship status on feminine values and valuing their unpaid labor in the family sphere. Though this seems valid in the context of gendered spheres on ground, it has consequences in terms of fixing gendered boundaries. Such conceptions essentialise masculine and feminine attributes and may contribute to further constraining women's participation in the "public" sphere and political decision-making.

That these alternatives may not meet the goal of ensuring equal citizenship – formal and substantive – does not, however, mean that the general "masculine norm in political theory masquerading as universalism" should not be questioned (Lister, 1997, p.73). This false gender-neutrality in liberal citizenship conceptions leads to either assuming uncritically that women are incorporated or simply forgetting them (Lister). However, a critique of universalism doesn't amount to abandoning the concept altogether.

The ideal of universalism, many argue, despite its danger of masking real differences, has the strength of its own idealism. The egalitarian promise of citizenship is based precisely on its universalist "emancipatory potential" (Lister, 1997; Vogel, 1988, p. 157; Werbner and Yuval-Davis, 2005). Lister considers the citizenship ideal worth pursuing because, she says, "[w]ithout the promise of the universal, against which the denial of full and genuine

citizenship to women and ‘minority groups’ can be measured and claims for inclusion can be directed, the concept of citizenship loses its political force” (p. 89).

A notion of “differentiated universalism” is proposed by Lister (1997). She borrows from Iris Young’s (1990) idea of distinction between “universality as impartiality” and “universality of moral commitments”. Impartiality implies “adoption of a general point of view that leaves behind particular affiliations, feelings, commitments, and desires” (Young, p. 105) and moral commitment refers to a commitment to “the equal moral worth and participation and inclusion of all persons” (Lister, p. 89). Lister says that it is in the latter sense that the notion of citizenship cannot be separated from its universalist ideal. This distinction is critical because the earlier conceptions of citizenship were based on the assumption of a “common culture” or “civilization” (Turner, 1997). Marshall’s conceptualization of citizenship, for example, “emphasized the right to full share ‘in the social heritage’ and... he argued that a community that enforces the duty ‘to improve and civilize oneself’ in the interest of its ‘social health’ ‘has begun to realize that its culture is an organic unity and its civilization a national heritage’” (Lister, 1997, p. 83). Considering that ninety percent of world’s states are polythentic (Conner, 1972), it is not surprising that the “notion of common cultural standard, implicit or explicit in traditional formulations of citizenship, and the realities of a pluralist society” (Lister 1997, p. 83) are at odds.

This suggests the need for a multi-cultural model of citizenship that recognizes particularity and differences, much like communitarian notions, and sees citizens as “simultaneously having *equal rights as individuals and different needs and wants as members of groups with specific characteristics and social situations*” (Castles, 2000, p. 144, emphasis in original). To address the issue of power within the communities, Kymlica (1995)

suggests that differentiating between minority rights that promote the interests of the concerned minority group against homogenizing tendencies of the majority community and rights that permit these groups to impose restrictions on the individual members in the name of tradition and authority, can help check the problem of inequity within the communities. There should be support for the former but not the latter. This, of course, has direct consequence for women's citizenship, as illustrated in my discussion on religious nationalist discourse and women's identity in chapters IV and V.

However, there is still the problem of essentializing and treating communities as homogenous and closed, priming one particular identity at the cost of ignoring multiple others of its members. Further, as Lister (1997) points out, there is the danger of the multi-cultural model embodying "superficial liberal toleration of diversity, confined to the 'private sphere', rather than genuine acceptance and recognition of such diversity in the 'public'" (p. 51).

A plural conception of community where differences will be positioned center stage and will be viewed as 'multiple and open' rather than 'fixed and eternal', forms the basis of Lister's (1997) "differentiated universalism". She does so by conceptualizing the tension between difference and universalism as creative rather than destructive and asserts that this can lead to an "enriched understanding of citizenship both as a status [liberal citizenship concept] and a practice [civic republican concept]. She applies the principle of differentiated universalism to recast binary terms into pluralistic terms. Rejecting the either/or choice for women, between claiming citizenship on universalistic terms based "on the principle of their equality with men" and on particularistic terms based "on their difference with men", Lister suggests embracing the dialectical relationship between the two. Such a re-articulation is

necessary for, as Licalo (1996) says, both (universal and particular) are “ineradicable dimensions in the making of political identities” (p. viii). In both the above models – “one ostensibly gender-neutral” and the other “explicitly gender-differentiated” – women’s citizenship is measured against male standards. In pluralist terms, “in place of the male standard, masquerading as universalism, citizenship will then embody a differentiated universalism that gives equal status to women and men in their diversity” (Lister, 1997, p. 197). By applying the same principle to the gendered public-private divide, it can be rearticulated for the purpose of citizenship. This will involve:

the disruption of its gendered meaning; recognition of the ways in which it is socially and politically constructed and therefore fluid rather than fixed; and acknowledgement of how in practice each side impacts on the other. The ways in which the gateways to citizenship for women and men are differently shaped by the interaction of public and private are thereby illuminated. (Lister, 1997, p. 197)

It is in this sense that citizenship, recast in a feminist and plural perspective, can be used as a political tool. The notion of differentiated universalism takes into account women’s (as well as other group’s) particularity and differences, as they exist; it escapes the trap of essentialising these differences; it upholds universal citizenship values of equality; and, it makes a claim on full participation in all spheres without making it a condition for full citizenship.

I will draw on this concept of citizenship in the sixth and last chapter where I discuss how religious nationalist discourse is influencing and can potentially alter women’s citizenship status in India and the potential of the citizenship vocabulary for being utilized by women rights groups to counter this discourse.

There are two points that need to be made here in regard to the relevance of a feminist citizenship project in terms of recasting and utilizing the concept to demand human, political, civil and social rights for women. One, since such re-articulations recognize multiplicity and inessential nature of identities, they imply the instability of the category “women” too, on whose behalf the citizenship rights are being claimed. However, acknowledging that “woman” is not a unitary category in no way renders it meaningless (Jones, 1993; Lister 1997; Maynard, 1994). Jones suggests that gender can be viewed as “a space whose occupation we ‘negotiate’ and experience in different ways, rather than a rigidly determining ‘identity card’” (p. 222).

Second, feminist scholarship recognizes that citizenship is “double-edged” since it not only provides vocabulary for demanding equal rights but simultaneously creates exclusionary positions of non-citizens and partial citizens. Though I have not dealt with it here, notions of “global citizenship” within the framework of a pluralist concept address the issue of “citizenship’s exclusionary power” (Lister, 1997, p. 196; Werbner and Yuval-Davis, 2005).

In the next chapter, I contextualize the two issues –Muslim Personal Law and inter-religious marriages – and discuss my rationale for focusing on them to understand the religious nationalist discourse. I also discuss Lacalu and Mouffe’s discourse theory and why it is relevant for studying the relationship between women’s identities and religious nationalism.

CHAPTER III

METHODOLOGY AND MORE

This chapter is organized to briefly reintroduce the context of Indian nationalism that rationalizes this research. In the next section, I talk about the two issues – the Muslim Personal Law and the inter-religious marriages that my analysis focuses on - and why I chose them. In the third section I discuss Laclau and Mouffe’s discourse theory. I close this section by reiterating my research question. Finally, I conclude the chapter by explaining the data collection process.

Why Study Religious Nationalist Discourse

In his book, “Identity and Violence”, Amratya Sen (2006) writes:

...the world is increasingly seen, if only implicitly, as a federation of religions or of civilizations, thereby ignoring all the other ways in which people see themselves. Underlying this line of thinking is the odd presumption that the people of the world can be uniquely categorized according to some *singular and overarching* system of partitioning. Civilizational or religious partitioning of the world population yields a “solitarist” approach to human identity, which sees human beings as members of exactly one group.... (p. xii).

India is a multi-religious secular democratic state and therefore this particular version of identity politics, where religion is invoked as the prime determinant of one’s identity and, consequently, the basis for political organization has always been present within the boundaries of Indian nation, in both pre and post colonial periods. However, its significance in the political life of India hasn’t been consistent. In the 1950s, as India began its journey as a new independent nation, it was the national identity that took the center-stage. Religious

identities, though very much figuring in national decision making processes, as discussed in the previous chapter, played a marginal role in the electoral politics. The process of the rise of Hindu nationalist political party – the Bhartiya Janata Party (BJP) - in the mainstream political arena and its establishment as one of the two main politics parties (the other being the Indian National Congress) began in 1980s. It coincided both with the global developments as hinted on by Sen and the events in India that I have discussed in the previous chapter.

With these developments the religious nationalist discourses and the religious identities implicated in it have become a legitimate and increasingly significant part of the everyday social and political existence of Indian population. The centrality that the religious nationalist discourses have come to occupy in India is evident in several ways. Some of these are: proliferation of identity symbols in ways of dressing; increasing number of mass events and organizations around religious rituals and festivals; increasing polarization in terms of space; formation and visibility of religio-political groups around issues that are deemed as critical to their religious and cultural traditions (usually motivated by perceived disrespect of a religious figure or tradition, in a work of art, a written text or even actions like celebrating Valentine's day, etc.); occasional eruption of violence between different religious communities; and, of course, the content of entertainment and news media (Brass, 2003; Bharucha 1995; Mankekar, 1999; Mazumdar, 1995).

In her discussion on women in religion-based communities, Sunder Rajan (2003) makes clear that women's relation to the community "is one of subordination and subjection to control" (p.165). With women bearing the burden of representation, this relationship gets more pronounced in situations where that identity is being asserted and its boundaries being

clearly demarcated against the “other” (Lister, 1997; Werbner and Yuval Davis, 2005). A religious nationalist movement, as currently manifested in Indian politics, is just such a situation. This research project focuses on the Hindu and the Muslim religious discourse -for reasons discussed in the previous chapter in the section on Indian nationalism- and on understanding the specific subject positions these discourses are constructing for “their” women. It is worth mentioning here that there exist other minority religious discourses as well that would make equally significant research sites.

The Two Issues

For understanding the identity construction of Muslim women by religious nationalist discourses, I have chosen to focus on the issue of Muslim Personal Law. For studying the identity construction of Hindu women, I look at the discourses around inter-religious marriages involving Muslim men and Hindu women . The following sub-sections talk about the location of these two issues within the religious nationalist discourses and explain my reasons behind choosing to study them.

The Muslim Personal Law

The significance of Muslim Personal Law (MPL) originates as much from its legal provisions as from the fact that it has become the most important symbol of Muslim identity vis-à-vis the new impetus that Hindu nationalism has gained since late 1980’s.

The Muslim Personal Law (Shariat) Application Act, 1937 allows Indian Muslims to govern their “personal” matters according to the Islamic tenets. The origin of personal laws that allow all religious communities – Hindu, Muslim, Christian, Sikh and Parsi² - goes back to the colonial times. Adopting a policy of non-interference in the private sphere, the British

² Jains, Buddhists and Sikhs are covered by the Hindu Personal Law.

preserved the indigenous family laws while transforming matters related to criminal and other civil matters according to the Western legal structures. Family laws included “laws on marriage, divorce, maintenance, inheritance, succession, adoption, and guardianship” (Williams, 2006, p. 6). The reasons, suggested by the post-colonial scholars, for the differential treatment of laws by the British vary. They include the idea that: preservation of indigenous laws in family setting was in keeping with their policy of neutrality in regard to the religious affairs of natives; tampering with them could have led to religious protests and; the topics covered by these laws seemed of little relevance to their economic interests (although, as Agnes [2006] demonstrates, through issues related to inheritance of agricultural land by women and its consequences for revenue patterns, such a clear divide between private and public wasn’t possible) (Sunder Rajan, 2003; Williams, 2006).

The policy of “non-interference” was continued in the postcolonial state as, at the time of independence, the administrative and legal structures of the British rule were incorporated in their entirety. Policy of non-interference implied that the government would not enact or reform any law that pertained to personal laws unless it had popular support and the community itself demanded it. However, in practice, non-interference unfolded in a very different way. Decisions by both, colonial and postcolonial, governments were “dictated more by political consideration than by any consistent application of the principles of non-interference” (William, 2006, p. 10). Thus, in the 1950s, the reform and codification of Hindu Personal Laws was undertaken as the first step towards modernization and unification of the nation, under Nehru’s leadership. The reforms were aimed as elimination of regional and other group differences in the interpretation of customary Hindu laws. It was expected that such an action would propel support for reform and codification in other, particularly

Muslim, personal laws too and pave the way for unified laws for all. Therefore, despite fierce opposition from Hindu conservatives who saw the reforms as “against the basic principles of Hindu Dharam Shastras [religious texts]” and predicted that it would “lead the Hindus to destruction” (resolution passed by Hindu Mahasabha, quoted by Williams, 2006, p. 111), the Hindu Code Bill was passed. The Muslim personal laws, however, were left untouched and although no efforts were made to ascertain the larger public opinion, the voices opposing “interference” - for reasons similar to those of Hindu conservatives- were reified as the legitimate Muslim opinion (Narain, 2008; Williams, 2006).

Feminist scholars suggest that the reforms in the Hindu Code Bill were diluted so much in order to get them passed that the reforms left out a lot and made only symbolic change in terms of giving rights to women. In any case, they argue, the debate was framed in terms of socio-religious tradition versus national integration. It was never about gender (Agnes, 2006; Basu, 2006; Narain, 2008; William, 2006). Nonetheless, the fact of reforms in the Hindu laws with no such corresponding reforms taking place in regard to the Muslim Personal Law (opposition from the community used to justify it), established the binary contrast of “progressive Hindus” and “conservative Muslims”. This binary relationship was further reinforced in the 1980s due to the Shahbano case. Again, the policy of non-interference was used to justify the passing of Muslim Women’s (Protection of Rights on Divorce Act), 1986 that is considered by most Indian feminist scholars as a setback for Muslim women.

Shahbano, who was divorced by her husband after 46 years of marriage³, had been granted a monthly allowance of Rupees 179.20 (roughly 4 dollars), payable by her ex-husband, by a state High Court. The matter was dealt under the Criminal Procedure Code (Cr.P.C.), section 125 and 127. The purpose of this section is to prevent vagrancy and, before the passing of Muslim Women's Act, it was applicable to all women irrespective of religion. This provision had been invoked several times before by divorced Muslim women and they had received judgments in their favor. Muslim leaders had earlier too expressed disapproval over this law and demanded that Muslims be excluded from its jurisdiction as it amounted to interference in their personal laws. According to the generally accepted interpretation of the Muslim Personal Law in India, a man is required to provide financial support to a divorced wife who is unable to support herself only for the period of *iddat* that lasts 3 months after the divorce. In 1970s, in response to their concern, the then government under Prime Minister Indira Gandhi had amended section 127 to allow a judge to determine if the woman has got the amount due to her under the personal law that governed the couple and uphold or cancel the maintenance granted to her on the basis of that determination. Although several cases were decided in favor of Muslim women even after the passing of this amendment, it seemed to pacify the Muslim leaders at that time.

The Supreme Court's judgment in the case of Shahbano blew into a bigger controversy as the conservative Muslim leaders, in favor of keeping Muslims out of the purview of Cr.P.C section 125 and 127, were able to frame it as interference by focusing on two aspects of the court judgment. One, the judgment included a general observation referring to a need to reform personal laws advising the State to take initiative and gradually work towards a uniform civil code, rather than waiting for the community to initiate the

³ right to divorce is enjoyed unilaterally by men under the provisions of Muslim Personal Law

process; and two, in trying to assure that the current judgment did not conflict with the Muslim Personal Law, it quoted parts of two verses from the Quran, that, in view of the court, supported the provision of adequate maintenance. These two observations in the judgment were cast as interference; the latter because all the five judges on the bench were Hindus and therefore, those opposing the judgment argued, had no business interpreting the Quran.

Despite protests from Muslim leaders, the then government under Rajiv Gandhi initially supported the judgment but later, due to electoral political compulsions and the perception that the support for the judgment might cost Muslim votes, it changed the stance and introduced the Muslim Woman Protection Bill, 1986 that effectively reversed the judgment. Its enactment excluded divorced Muslim women from the provisions of Cr.P.C. section 125 and 127. According to the amended Muslim Personal Law the responsibility of the husband of a destitute, divorced Muslim woman is over after the period of *Iddat* is over; subsequently, she has to be supported either by her immediate family or, in case of their inability to do so, by the wider Muslim community, represented by Waqf Boards (charitable Muslim organizations).

Muslim opinion on the judgment as well as the Women's bill was obviously, not uniform. Several Muslim organizations, including women's organization, and individuals fiercely opposed the proposed bill. However, again in a selective interpretation of the "Muslim opinion", the pro-bill voices were held as representing the Muslim voice, while those opposing it were ignored. The bill was passed despite substantial opposition to it within the ruling Congress party.

The fallout of all this was that the conservative Muslim opinion came to represent the community's stance and gained strength and the Muslim Personal Law became ever more important symbol of their separate identity. The BJP, the main Hindu nationalist party, cast the Congress government's action as an act of appeasement of the Muslim minority. At the same time they framed the anti-reform Muslim opinion as a proof of their inability to be a part of Indian mainstream and therefore "anti-national and a threat to the national security" (Agnes, 2006; Basu, 2006; Hasan, 1998, p. 79; William, 2006). With the BJP's rise to power in 1990's, the debate on the Muslim Personal Law continued to hold a prominent place in the political discourse. The passage of Hindu Code Bill between 1955 and 1956 had given the Hindu nationalists a basis to reject "the fundamental premises of noninterference and indeed the system of personal laws itself, calling instead for the abolishment of personal laws and the establishment of uniform civil code" (Williams, 2006, p. 150). Although the BJP refrained to take any action in regard to this while in power, it continues to be a part of their rhetoric of the unification of India.

In the context of this back ground of the Muslim Personal Law and the policy of personal laws in general, it is evident that the MPL has become the most important symbol of Muslim identity, in the eyes of Muslim Right, the Hindu Right and, indeed, the state. Since it deals with the so called family sphere, it has obvious implications for Muslim women's rights. The Muslim Personal Law is thus the ideal site to understand the conflation of Muslim religious discourse and Muslim women's identities.

I next deal with my choice of issue for the construction of Hindu women's identities within the Hindu nationalist discourse.

Marriages between Hindu women and Muslim men

It was relatively easy to identify the debate on the MPL as critical in constructing the subject position for Muslim women. The Hindu Code Bill is the legal equivalent of Muslim Personal Law in terms of laws affecting women's lives; however, it is not evoked as a symbol of Hindu identity in the same way as the Muslim Personal Law is. If there is any intersection of religious nationalist discourse and the Hindu Code Bill in the current times, it is in terms of implicit comparison between the "progressive" Hindu laws and the "regressive" Muslim laws. Thus, while the discourse around it might have been significant at the time when it was the topic of conflict between pro-reform and anti-reform forces at the time of the passage of Hindu Code Bill in the 1950s, it doesn't hold the same significance in terms of debating about women's place in the society anymore. This is not to say that its legal content itself cannot be interpreted as discourse constructing women's identities. But I am interested specifically in the current content of the Hindu Right discourse and the subject positions it is constructing for Hindu women.

The decision to focus on the inter-religious marriages involving Hindu women and Muslim men was based on the increasing visibility of this issue in the electronic and print media and the clear and obvious conflation of Hindu nationalist discourse and women's place in the community that is evident in this issue.

In India inter-religious as well as inter-caste marriages in general are discouraged. The opposition is almost always stronger from the woman's family. This is because, as in any patriarchal society, it is expected that she has to adapt to the husband's and his family's way of living. In the case of inter-religious marriages it implies that she will take up his religion. Hindu-Muslim marriages are regarded as the most controversial and face greater

opposition from parents and extended families. While there are many cases where inter-religious and inter-caste marriages have led to violence against the couple and sometimes between the communities to which the man and the woman in question belong, by and large the opposition is limited to the immediate and extended family (Chowdhry, 1997; Mody, 2002).

In the recent past, however, the frequency with which a marriage or elopement involving a Muslim man and a Hindu woman has taken the shape of a political issue has increased sharply. The spokespersons from Hindu right groups can be heard, in mainstream Indian news media, casting each case as a part of the larger conspiracy by the Muslim community of trapping Hindu women and converting them to Islam. This makes for a clear convergence of the discourse of Hindu nationalism and deployment of “Hindu woman” in constructing a “Hindu” identity. As I researched further there emerged a clear pattern where the Hindu Right discourse articulates the need for “protecting” Hindu women from the Muslim “other”.

An analysis of Hindu Right literature on Hindu women will reveal that the theme of Hindu women under threat from Muslim men is not new (Bacchetta, 2002). However, its successful deployment in mainstream public discourse implies that it is now playing an important role in defining “Hindu women” and through them the Hindu community (against the Muslim other). In 2007, I undertook a preliminary study (that I later presented at 2008 NCA Conference) where I looked at 20 articles - 10 each for search terms “Muslim Personal Law” and combinations of terms “Hindu women”, “honor/protection” and “inter-religious/inter-faith marriages” - in one mainstream Indian newspaper, “The Hindu”. The resulting content that concerned relationships between Hindu women and Muslim men

confirmed that the debate around the issue, although not as copious as on MPL, holds a critical place in the Hindu nationalist discourse and offers a valuable site for understanding how this discourse is constructing women's identity. The interviews, that I later conducted for the main research project, with individuals invested in issues related to women rights and/or countering religious nationalist organizations further confirmed this perception.

I have chosen to work with Laclau and Mouffe's discourse theory to understand these constructions for two reasons: one, the theory obviously takes the anti-essentialist position and therefore will help reveal the assumptions or - in Laclau and Mouffe's terms - the contingency of these identities that are otherwise considered as fixed; and two, the distinction between the "political" and the "sedimented" aspects of social identities together with the vocabulary to understand the struggle between competing discourses will help to chart the complex interplay of discourses and the direction they are taking in terms of hegemonic fixing of meanings.

Discourse Theory

In this section, I discuss some foundational concepts on which Laclau and Mouffe's discourse theory is built. Then, I elaborate on the tools that the discourse theory offers to carry out the discourse analysis. To do so, I draw on Phillips and Jorgensen (2006) and Howarth and Stavrakakis (2000) - for, as Phillips and Jorgensen say, "Laclau and Mouffe's texts aim at theory development, [therefore] they do not include so many practical tools", a task that they tried to fulfill (p. 24).

At its most basic, discourse theory "aims at an understanding of the social as a discursive construction whereby, in principle, all social phenomena can be analysed using

discourse analytical tools” (Phillips and Jorgensen, 2006, p. 24). Explaining the notion of discursive construction, Lacalu and Mouffe (1985) say:

The fact that every object is constituted as an object of discourse has nothing to do with whether there is a world external to thought, or with the realism/idealism opposition. An earthquake...is an event that certainly exists, in the sense that it occurs here and now, independently of my will. But whether their specificity as objects is constructed in terms of ‘natural phenomena’ or expressions of the wrath of God’, depends upon structuring of a discursive field. What is denied is not that such objects exist externally to thought, but the rather different assertion that they could constitute themselves as objects outside any discursive conditions of emergence. (p. 108)

Emphasizing the anti-essentialist, discursive character of social identities, Laclau (1994) says that the issue of identity is not a “matter of people *discovering* or *recognizing* their own identity” but of “*constructing* it” (emphasis in original) (p. 2). This is done through the process of identification that, as discussed in the previous chapter, is a function of the “originary and an insurmountable lack” at the root of any identity” (p. 3). Further, he explains that all social identities are “political” due to the very process by which they are formed. Differentiating between the “sedimented” and political, Laclau (1994) observes:

The social world presents itself to us, primarily, as a sedimented ensemble of social practices accepted at face value, without questioning the founding acts of their institution. If the social world, however, is not entirely defined in terms of repetitive, sedimented practices, it is because the social always overflows the institutionalized frameworks of ‘society’, and because social antagonisms show the inherent contingency of those frameworks. Thus a dimension of construction and creation is inherent in all social practice. The latter do not involve only repetition, but also reconstruction. (p. 3)

This constructive moment that “exceeds the repetitive possibilities opened by a sedimented social framework” is termed as “political”. “Political” (as opposed to sedimented social practices) is the “instituting” act of any social practice or identity. The “political” moment or act is necessarily a visible act as it is only when opposite forms of institution are put forward and fought for in a historical space that the political moment is revealed. Laccabue (1994) explains:

...it is only in their antagonistic relation to other projects that the contingency of particular acts of institution is shown, and it is this contingency that gives them their political character. (Sedimented social practices are unchallenged and, as such, they conceal the political moment of their institution). (p. 3)

The pair “political” and “sedimented” corresponds to the pair “identification” and “identity” in the sense that just as the sedimented practices hide the moment of their institution or the political moment, so do identities (since they are seen as natural to the individual or group) hide the act of identification. The aim of discourse theory, thus, is to look at the process of struggle for fixing the meaning of a sign and “the processes by which some fixations of meaning become so conventionalized that we think of them as natural” (Phillips and Jørgensen, 2006, p. 26). These conventionalized fixations are the sedimented meanings.

The theory entails analysis of empirical raw material and information as discursive forms that give meaning to the “raw material”. Empirical data in this sense is regarded as sets of “signifying practices that constitute a “discourse” and its “reality””, thus providing the conditions which enable subjects to experience the world of objects, words and practices” (Howarth and Stavrakakis, 2000, p. 4). This means that a researcher can treat a wide range of linguistic and non-linguistic data like speeches, reports, manifestos, events, interviews, ideas

and even organizations and institutions as texts that can be analyzed to understand the social reality including formation of identities of subjects and objects (Howarth and Stavrakakis).

Laclau and Mouffe introduce various concepts that can be treated as tools for carrying out discourse analysis to understand the process of creating social identities. Four basic concepts that form the theory are “articulation”, “discourse”, “empty signifiers” and “nodal points”.

Articulation is defined as “any practice establishing a relation among elements such that their identity is modified as a result of the articulatory practice”. The term element refers to signs that are open, their meanings yet to be fixed. Discourse is “the structured totality resulting from the articulatory practice” (Laclau and Mouffe, 1985, p. 105). The empty signifiers (or the elements) get their meaning in a discourse through their relation to the other signs. In any discourse, there are some privileged signs around which other signs are ordered and acquire their meaning in relationship to it. These are termed as “key signifiers”. Further, key signifiers that organize discourse are termed as nodal points; the signs that organize identity are termed as “master signifiers” and those that organize the social space are termed as “myths” (Phillips and Jorgensen, 2006). Myths are defined by Laclau as “a space of representation which bears no relation of continuity with the dominant ‘structural objectivity’” (Laclau, 1990, p. 61). Phillips and Jorgensen (2006) unpack the concept of “myths” in the following paragraph:

We continuously produce society and act *as if* it exists as a totality, and we verbalise it as a totality. With words like ‘the people’ or ‘the country’ we seek to demarcate a totality by ascribing it an objective content. But the totality remains an imaginary entity. If, for instance, a Labour politician in a British electoral campaign announces that ‘we will do the best for the country’, and a Conservative politician says the same thing, then it is most

probably very different images of the country, and very different plans, they have in mind. 'The country', and all other terms for society as a totality, are floating signifiers; they are invested with different content by different articulations. Laclau's term for a floating signifier that refers to a totality is *myth*". (p.39)

Examples of nodal points are "Islam", "Hinduism", "democracy"; examples of master signifiers are "man", "woman", "Hindu", "Muslim", "Black", "European"; and, examples of Myths are "India", "West", "Islamic Umma".

Any discourse according to Laclau and Mouffe is a "reduction of possibilities" as fixing a meaning for any sign implies exclusion of all other possible meanings that signs could have had. For instance, in studying the Rastafari movement using the discourse theory, Smith (1994) concludes that blackness in the context of the movement came to have meaning not with reference to a multiplicity of heterogeneous positions and discourses, but through the all-embracing single frontier structure of Rastafari. The possible meanings that the discourse excludes are assigned to the "field of discursivity". Blackness experienced in terms of nationality, gender, class or any other position will in the case of Rastafari movement be assigned to the field of discursivity.

There are a few other important concepts, which make the discourse theory that I explain here. These are: "chains of equivalence", the notion of "antagonisms" and the notion of "hegemony". The concept of "chains of equivalence" explains that identity is established relationally. In other words, the different discourses offer different content to fill the master signifier and they do this by pinpointing what the master signifier equals and what it differs from (Philips and Jorgensen, 2006).

To understand the notion of antagonisms, it is useful to remember that inherent in discourse theory is the idea that identities and social meanings are never fully achieved. The

fixations of meanings are always partial. This is because there is no meaning or content that is a priori destined to fill the sign. Partial fixation of meaning is achieved by excluding other possible articulations and discourses and is always vulnerable to those discourses that are excluded in establishing the meaning. Referring to sedimented aspects of the social world including identities, Philips and Jorgensen (2006) say, “[a]t particular historical moments, certain discourses can seem natural and be relatively uncontested.... But the naturalized discourses are never definitively established and their moments [that is the signs that have their meaning fixed] can again become elements [signs that have multiple, potential meanings] and thus objects for new articulations” (p. 47). A social antagonism takes place when different meanings or identities mutually exclude each other. Although different identities can exist simultaneously, in the event of contrasting demands by two identities, that is, when one inevitably blocks the realization of the other, the relationship between the two identities becomes antagonistic. The discourses constructing these antagonistic identities are obviously a part of each other’s “field of discursivity”. Therefore, whatever the individual had excluded threatens to destabilize the fixed meanings within that discourse and indeed the discourse itself (Phillips and Jorgensen, 2006). Antagonisms, in a sense, reveal the “frontiers of social formation” (Howarth and Stavrakakis, 2000, p. 9). Howarth and Stavrakakis further explain that since these antagonisms “cannot be reduced to the preconstituted interests and identities of social agents, the construction of antagonisms and the institution of political frontiers between agents are partly *constitutive* of identities and of social objectivities itself” (p. 10). Identities, after all, are formed in relation to the “other”, to what it is not.

Hegemonic interventions are what contingently resolve these antagonisms. A hegemonic intervention succeeds if one discourse comes to dominate the other, or dissolves it

by “rearticulating its elements” (Howarth and Stavrakakis, 2000; Phillips and Jorgensen, 2006, p. 48). Hegemony in this context, Phillips and Jorgensen explain, is “similar to ‘discourse’ because both terms denote fixation of element in moments. But the hegemonic intervention achieves this fixation across discourses that collide antagonistically” (p. 48).

A final concept that I want to explain here is “the logic of equivalence and difference” that is useful to understand group identity formation. According to Laclau and Mouffe, collective identity is organized according to the same principles and through the same discursive processes as individual identity. Therefore, the “group formation is [also] to be understood as a reduction of possibilities. People are constituted as groups through a process by which some possibilities of identification are put forward as relevant while others are ignored” (Phillips & Jorgensen, 2006, p. 44). Group formation according to the theory plays a part in the struggle over how the “myth” about society (the social space) is filled with meaning. Different myths divide the social space into different groups. Group identities involve construction of antagonisms and “the drawing of political frontiers between ‘insiders’ and ‘outsiders’” (Howarth and Stavrakakis, 2000, p. 4). This is explained by the logic of equivalence that “functions by splitting a system of differences and instituting a political frontier between two opposed camps...” (Howarth and Stavrakakis, 2000, p. 11). The logic of difference does its exact opposite, that is, it disperses the two opposed camps into multiple, more specific identities (Howarth and Stavrakakis; Phillips and Jorgensens). The “myth” that prevails, and the group division that accompanies it, has critical consequences for the society.

A glossary to provide an overview of all the terms that discourse theory uses as tools for carrying out discourse analysis is included as Appendix I.

Finally, the questions that guide the analysis of text according to this theory are: What are different understandings of reality at stake and where are they in antagonistic opposition to one another? What are the social consequences if one or the other wins out and hegemonically pins down the meaning of the floating signifier?

Based on the explicated theoretical framework the following overarching research question is formulated to guide this inquiry:

RQ: What subject positions are the Hindu and Muslim religious nationalist discourses offering women to identify with?

Within this larger question I also explore the implications of the identities inherent in these subject positions for the Hindu and Muslim women's citizenship rights.

In the following section, titled methodology, I talk about the sources I have relied on to collect material for discourse analysis and the data interpretation processes.

Methodology

Here, I discuss my reasons to rely on three mainstream English news papers and interviews with "experts" - in the sense of the term as used by Schensul, Schensul and Lecompte (1999) - on issues related to religious nationalism and/or women rights.

Newspapers: A Source for Understanding Nationalist Discourses

My data sources are the three most widely read mainstream English newspapers in India – "The Times of India", "The Hindustan Times" and "The Hindu"⁴ (Marketing funda: Indian readership survey, 2007). Each of these newspapers is generally perceived to be

⁴The newspaper's name "The Hindu" doesn't signify its allegiance to the religion Hinduism in any way. It was launched in 1878 purportedly to counter the biases inherent in the Anglo Indian Press and is known to be committed to secularism (Muthiah, 2003). In fact in current times it is perceived to be a left leaning newspaper (worldpress.org, n.d.).

conservative, centrist and leftist respectively in its inclination (worldpress.org, n.d.).

Together, I therefore see them as a good source of getting varied stances, on the two issues discussed above, to understand what different discourses are competing and how the debates are unfolding.

Using the search phrase “Muslim Personal Law” I got the initial batch of articles from each newspaper for the analysis of the identity construction of Muslim women. I sorted the articles that were relevant to understanding the discourses and taking leads from them looked for further reporting on the relevant topics. For example, a few articles reported on a case related to a Muslim woman named Imrana (that I discuss in the next chapter). Since I found it to be relevant to my research I searched the newspaper websites for “Imrana” to get more information on it.

Using the search terms “Inter-religious / interfaith marriages” and “Hindu Muslim marriages”, I got the initial batch of articles for the analysis of the identity construction of Hindu women. I followed the same process as I did for “Muslim Personal Law” to search for additional information on specific cases or issues that concerned the debate on marriages between Hindu women and Muslim men.

Beginning from the date of availability of online edition (that ranged between years 2000 and 2002) of each newspaper, I looked at articles published up till May 2008. Over all, I looked at over 200 newspaper articles. Reports, write-ups, editorials, etc. concerning inter-religious marriages were significantly less, although considerable, than those on Muslim Personal Law. Articles on Muslim Personal Law and Muslim women made up for over 60 percent of all. This was expected as Muslim Personal Law has been a far more contentious and debated issue and invested with political meaning for not only the Hindu and the Muslim

Right but also for secular groups, for a much longer period. Inter-religious marriages, on the other hand, though contentious, have gained relevance as a political issue relatively recently.

I would like to clarify here that my analysis of articles is not an attempt to interpret the discourse and biases (if any) of the specific newspapers but to use them as a source for understanding different stances, voices and opinions, that were reported or expressed on a story or a topic, relevant to my research. In other words I use the views and statements of various actors as reported or expressed in the newspaper articles to do a thematic analysis and understand how relationships between different “signs” are being articulated by different political discourses.

In this regard, it is pertinent to mention that while I hope that a comprehensive picture will emerge due to my reliance on three different newspapers, the fact that I have relied on English medium newspapers has implications for the content of debates. The vernacular languages newspapers in India have their readership differentiated by regions, lingual boundaries and, in some cases, even by religion. The English newspapers, on the other hand, are the choice of urban English speaking middle class across the country. Although, “The Hindu” has its head quarter in South India and the other two newspapers, “Times of India” and “Hindustan Times”, in North India, they are neither deemed as regional papers, nor is their readership limited to any regional or religious groups. The depth of coverage and the content of a particular issue in vernacular newspapers, depending on their readership, may give a sharper and purer and/or different version of the position a discourse holds as compared to the English newspapers. But the choice of English newspapers, besides being practical (due to their online availability and my familiarity with the language) is more suited to give an insight into all competing discourse for the subject of my research. This is so

because they do not cater to any specific regional (cultural) and/ or religious group. Also, as I indicated in the first chapter, their content indicates the aspects that are part of the mainstream (meaning the English educated middle class that can still largely be understood as the decision- making class) debates and, therefore, potentially more influential in impacting the political and legal decisions affecting women's lives.

Interviews

The informants for the interviews were selected from among the social and/or political activists and scholars working on women issues. Interviews were in-depth and open ended to explore “any and all facets” of the topic (Schensul et al., 1999, p. 121). I used “Snowball sampling” method to identify the interviewees beginning with some reputed names associated with the issues relevant to my research. I interviewed 19 people that included 3 men and 16 women. The interviewees were people who can be identified as falling outside the discourses of both Hindu and Muslim religious nationalism and who are identified with the secular discourse. There was a twofold reason to limit my interviews to this group. First, I wanted to understand the positions of those who were dealing with and responding to religious nationalist discourses in some way or the other -whether through political and social activism or academic debates. And second, my own identity as a “Muslim” married to a “Hindu” would have had implications for the process of getting access to and carrying out the interview with both the Hindu and Muslim Right in India.

Though my interviewees did not identify with the religious nationalist discourse of either side, I ensured that my sample comprised of a more or less equal number of Hindu (10) and Muslim (9) respondents. The interview protocol is attached as appendix II. I used the criterion of practicality that asks whether a researcher can “assemble enough information to

make a credible analysis...within available time and resources” to ascertain the sites for my interviews (Lofland, 1996, p.26). With this rationale, I carried out interviews in my home town New Delhi and a few other cities in North India that snowball sampling lead me to. This, of course, means that I have excluded insights of activists from other parts of India that, given the demographic and political differences between North and South India, would have added to the richness of interview data.

I use the interview text to highlight discussion points in terms of dilemmas, traps and opportunities that the religious nationalist discourses and their construction of women present to those who have been countering it. The practical and theoretical positions emerging from the interviews as well as from the analysis of newspaper text help understanding the “political” and the “sedimented” aspects in regard to the religious and gender identities.

Data Interpretation

I interpret the newspaper texts by drawing on the tools of discourse theory. I investigate how the “master signifier” woman is being invested with meaning through “chains of equivalence”. Having identified the “nodal points” – MPL and inter-religious marriages - I identify other “signifiers” through thematising newspaper texts. I then organize the themes to understand how the relationships between these signifiers, the nodal points and the master signifiers are combined relationally with one another by each discourse; and how through these relationships the category “woman” gets articulated by each discourse. In other words I attempt to determine the “field of discursivity” by understanding how the two antagonistic religious discourses and the competing secular discourse(s) are struggling, with each other, filling the “sign” woman with their specific meanings. I also try to identify the political and the sedimented moments in this discursive

struggle. In doing so I, obviously, take a position on what opportunities are worth seizing of in the “political” moments and what sedimented meanings need to be challenged. I discuss this in terms of women’s citizenship status.

It may be useful to add here that the discourse theory “rejects the rigid separation of facts and values, accepting that the discourse theorist and analyst is always located in a particular historical and political context with no neutral Archimedian point from which to describe, argue and evaluate” (Howarth and Stavrakakis, 2000, p.7).

In the next two chapters, using the concepts elucidated in this chapter, I analyze the discourses – Hindu nationalist, Muslim nationalist and the secular/women rights – around the two identified issues. Chapter IV deals with discourses around the Muslim Personal Law and chapter V examines the discourses around marriages between Hindu women and Muslim men.

CHAPTER IV

THE MUSLIM PERSONAL LAW AND THE “MUSLIM WOMAN”

Prologue

I was visiting my former hometown Aligarh, a town well known for being the home to Aligarh Muslim University (AMU). It was the summer of 2007 and I was in India to conduct interviews for this research project. I was there to interview some of the scholars and professors in AMU who were associated with the issue of women's rights in one way or the other. AMU was founded as a college in 1875 to promote western education among Indian Muslims and it became a central university in 1920 through an act of British Parliament. As it is still considered primarily a center of modern education for India's Muslim population, it seemed to me the right place to start contacting people working on issues related to Muslim women. A friend, who belongs to a faculty in AMU and is invested deeply in women's issues, was hosting me as well as helping me in getting in touch with the relevant people. At that point of time she was actively associated with a newly formed group of women that got together periodically to identify the problems that women, especially the Muslim women, were facing in Aligarh and to find out possible ways of resolving them and creating a sense of solidarity among women. While I was there, she invited me to a meeting of the group that she was going to attend. The event at the meeting, I realize in retrospect, was so emblematic of the focus of my thesis that I feel compelled to relate it here.

There were seven members present at the meeting. They came from varying professional backgrounds such as teaching, sports instruction, university office administration and home making. The main agenda of the meeting was intervention options to prevent the marriage of an underage girl. The family of the girl lived in the same

apartment building where the meeting was taking place. The member (I will call her Samina) who was hosting the meeting was on neighborly terms with the 16 year old girl and her mother and had already expressed her concern about the approaching marriage to them. The girl had recently passed the high school examination with impressive grades. The group decided to pay a visit to the mother, first to persuade her to let the girl pursue higher studies and delay the marriage by a few years and secondly, in the likely event of the failure of that strategy, to remind her that marrying a girl who was not 18 years yet was against the provisions of the Child Marriage [Prohibition] Act and could invite penal action against her.

I accompanied the group to the girl's house. We were received by the mother a little apprehensively but graciously. While it is impossible to capture the entire hour long conversation here, I shall try to summarize the proceedings as accurately as possible. As we all sat in her living room, Samina introduced us to the girl's mother as her (Samina's) friends and told her that we were all well wishers and were concerned about her intention of getting her daughter married at such a young age. The mother politely but firmly told us that she wanted to live her life according to the Islamic tenets and was doing what all good Muslims should do. A woman should be married as soon as she attains puberty and therefore no amount of pressure from anyone would stop her from marrying off her daughter. Efforts to win her confidence by pointing out that all the members of the group were themselves Muslims and therefore wouldn't suggest anything that threatened her faith were countered by her eloquently. Finally, the group invoked the Child Marriage (Prohibition) Act⁵ and pointed out the illegality of her action. But, while expressing her determination to face any opposition or punishment in order to live according to *sunnat* (the practice of Prophet Mohammad), she

⁵ It was Child Marriage Restraint Act 1929 (amended in 1978) earlier.

countered it by telling the group that Muslim marriages were governed by the Muslim Personal Law (MPL) so she was well within the boundaries of law.

The group tried to argue with her that the Act was applicable to all religious communities, including Muslims, and overrode the MPL. But she remained adamant and informed us that she had consulted her brother who was a lawyer and that she knew what she was talking about. Her daughter, the girl in question, walked in after a while, and, on being asked about her opinion, answered in English that her mother was doing the right thing. To drive home her point, she mentioned the case of a cousin of hers who had given up studying medicine in order to marry and was living quite happily. She also wondered why she could not pursue higher studies after the marriage if she wanted.

On reaching a dead end in the discussion, the group reiterated their reservations about the underage marriage and bade a polite goodbye to the mother and daughter. As we walked out of their house, both impressed by the eloquence and conviction of the two women and upset at their plans to go ahead with the marriage, the group started discussing their options. Going to the press and reporting the matter to the police were the two possible actions that the group could take. As a well known women's organization working at the national level in India was providing strategic support to this women's group, Samina decided to call up one of the leaders of the organization to get her advice on how to proceed. To everyone's disappointment, she suggested that they desist from taking any such action as it might turn the case into a public issue. The group was essentially advised to leave the case alone, particularly if the girl herself was willing to go ahead with the wedding. There was a pragmatic reason for her to give this advice. I will elaborate on it along with a few other points that make this case so pertinent to my thesis.

The mother's insistence on the righteousness of her actions was premised not on the laws of the Indian state but on the actions that, according to her, were required for leading the life of a good Muslim. She referred to the presumed legality of her act only as a matter of convenience and made it clear that she was prepared to face the legal and social consequences if needed.

That the girl chose to speak to us in English is another point worth discussing here. In the Indian context, ability to speak in English is perceived as a sign of being educated and "modern". The fact that all the group members present there were talking in Hindi / Urdu, and as, given the profiles of the group members, it was clear that some of them might not be fluent in English, it makes her choice of English particularly significant. It was quite evidently an attempt to convey to the group that she was not a helpless girl caught in a regressive household and being married off at a young age because her family and she did not know any better. Rather she was, like her cousin, a modern and educated woman who was *choosing* to act as a good Muslim woman should. As I elaborate below, such aggressive assertion of Muslim identity is symptomatic of the broader political scene in contemporary India, and the reason for the advice of the women's organization to the group to not turn the case into a public issue was a strategic one, given this political situation.

The reluctance of the women's organization to take up the issue, if unpacked, underscores the complex interplay of secular laws and personal laws. The topic of personal laws, particularly the Muslim personal Law, is a vexed one. There are areas that often generate confusion and contention in regard to whether the case rightfully falls under a personal law or the secular law. Laws regarding the marriageable age is one such issue. The Child Marriage (Prohibition) Act specifies the minimum age for marriage as 18 years for

women and 21 years for men. Although there are numerous incidents of violation of this act, particularly in the rural areas, among the urban, educated, middle class, the marriage of underage children is rare, irrespective of religion. In the context of the current political scenario in India, however, any real or perceived threat to any symbol of religious identity (particularly of Muslims and Hindus) has the potential of snowballing into a conflict.

The Muslim Personal Law, as mentioned in the previous chapter, has become a symbol of Muslim identity both for right wing Muslims as well as right wing Hindus. In this context, any direct debate on the age of marriage for Muslim women has the potential of escalating into a political issue with the rightist Muslims rallying for the protection of MPL and the rightist Hindus rallying for scrapping it, ostensibly to protect the “modern” and “secular” values of India from the “backward” Muslims but basically to assail the supposed religious identity of Muslims. With the Hindu Right having gained unprecedented strength in the Indian politics, secular women organizations find themselves in a bind where any direct attack on the MPL and its provisions affecting Muslim women may lead to the issue being exploited by the Hindu Right and used in its discourse of “othering” the Muslim community.

Introduction

As discussed in the methodology chapter, I focused on the Muslim Personal Law (MPL) as the nodal point for studying the construction of Muslim women’s identity for obvious reasons. The MPL is not just a legal document but also the most talked about symbol of the Muslim minority in India. Within the discourse of religious nationalism in India, the issue of MPL – almost always manifested in the form of discussion on the rights of Muslim women - has become a source of both consolidating the Muslim identity by the Muslim Right and “othering” of Muslim population by the Hindu Right.

In this chapter, I begin by delineating the three identifiable discourses on the MPL. I then relate the events beginning from the year 2000 (based on online availability of newspaper archives). In the third section, I discuss the different discourses and their struggles in three subsections organized around three different sets of signifiers being used by each discourse to invest the MPL and, through it, “Muslim women” with meaning. These are: (1) Islam and Islamic principles; (2) Secularism / National Integration / Indian Constitution; and (3) Justice / Equality and Women’s Rights. The fourth and final section concludes by discussing the implications of each discourse in terms of creating subject positions for Muslim women.

The Three Discourses

The sign “woman” is a master signifier that in the discourse of Muslim religious nationalism gets its meaning in (and only in) association with another sign, also a master signifier, “Muslim”. There are distinct discourses that are struggling to fill these signifiers with meaning. The Muslim Personal Law (MPL) is one of the nodal points around which each of these discourses is organized. I will use the notion of the chain of equivalence to plot the key signifiers and other signs that are being combined relationally with one another, and with the MPL, to invest it with meaning and in turn to invest the sign “Muslim women” with meaning. Some of the meanings are clearly antagonistic to each other, while others though not antagonistic are struggling to be in the foreground in relation to some other.

For the purpose of categorizing these discourses, I have established three broad categories: the Muslim Right discourse, the Hindu Right discourse and the Secular and Women’s rights discourse.

The group identifiable with the Muslim Right discourse asserts that the MPL should be preserved in exactly the same form as it exists and that the “Muslim community” in India should not allow any interference from any quarter, be it the state, women’s organizations, or even the other Muslim groups or individuals who challenge or question the MPL in anyway. This discourse largely gets reflected in the arguments advanced by the members of All India Muslim Personal Law Board (henceforth the Board) and others who recognize it as the final authority on the MPL and any other issue related to the Muslim population of India. In the interest of ease in writing I will refer to this discourse henceforth as MR discourse.

The Hindu Right discourse (henceforth HR discourse), in a clearly antagonistic stance to the MR discourse, is identifiable with the group that believes that the MPL should be replaced by a uniform Civil Code (UCC). Though, a demand for the UCC essentially implies that personal laws of all religions be dissolved and give way to UCC, this discourse is almost exclusively constructed around the MPL.

The Secular and Women’s rights discourse (henceforth S/W discourse) is more complex and is, in many ways, not uniform. There are several voices, some closer to the Muslim Right, some challenging it more directly while countering HR discourse at the same time. While I illustrate the differences in these voices, my reason for putting them together under one label is motivated by strategic purposes. All these discourses are pointing to a position that is different from either the Muslim Right or the Hindu Right discourse, both of which, as I illustrate in the final section of this chapter, offer identities to Muslim women that constrict their agency.

By applying the notion of chain of equivalence, it becomes evident that each discourse is employing certain key signifiers and it is in combination with these signs that

“MPL” and in turn “Muslim women” get invested with meaning. Three sets of signs emerge that can be treated as key signifiers in the debate around “MPL”. These are: (1) Islam and Islamic principles; (2) secularism / national integration / Indian constitution; and (3) values pertaining to justice, equality and women rights as human rights. Before delving into an analysis of the three discourses, I delineate the context by describing the issues and events that spurred public debates on the MPL over the recent past.

The MPL in News

In the last 8 years, the time period for which data is available to me, the debate over MPL has been precipitated by varied events. I will relate them in the chronology in which the events took place.

In the year 2000, the then government led by the BJP and its allies formed the Constitution Review Committee and the UCC was among the main issues to be considered by the committee. Newspaper reports and articles around this issue appear off and on till the year 2003. The talking point in this debate on either side (for and against UCC) was the Muslim Personal Law. An observation by a Supreme Court judge in favor of UCC gave another push to the issue in 2003. Then on, however, other events and issues have taken over, although the UCC vs. MPL controversy continues to figure in other debates, as well.

Between 2000 and 2003, activities and voices of Muslim women’s organizations and networks challenging the Board and negotiating with it for reforms granting more rights to women under the MPL is another topic that has been covered frequently. Notably, the coverage of this act of Muslim women’s organizations is not around any specific event or incidence but as an event in itself. The demand for reform in the MPL is related to various issues. These are: (a) *triple talaq* (unilateral right granted to men to effect divorce by

uttering the word “*talaq*” [meaning divorce] three times; (b) men’s right to polygamy; (c) maintenance for divorced women; (d) pressure to wear veil and (e) restrictions on women to initiate divorce. The most frequently quoted issues are however triple *talaq*, maintenance and polygamy.

Since 2000, there has been an ongoing discussion about a model *nikahnama* (Marriage contract) to be framed by the Board that would stipulate conditions to be followed by the husband and wife in case of marriage and divorce. The idea was to have a uniform contract that could be followed by all couples getting married under the MPL and to build into it more rights and agency for women. A couple of news articles at the end of year 2000 indicate that some women’s rights groups had drafted such a contract and forwarded it to the Board for approval. It was finally in early 2004 that the Board’s communication hinted at considering the model *nikahanama* during its forthcoming annual meeting. There was considerable discussion on banning triple *talaq* as well. The outcome of the meeting held on July 4, 2004 belied the expectations of women’s groups and others, on both the issues. Critique and defense of the Board’s inaction was the focus of most articles for several months after the meeting.

In the year 2005, dissent on these and other issues led to the Shia sect forming a separate Board, followed by the formation of the All India Muslim *Women’s* Personal Law Board (henceforth *Women’s* Board). The *Women’s* Board was formed with the stated objective of Muslim women taking control and restoring gender just provisions that they claimed were inherent in the *Shariah* but were overlooked or misinterpreted by the predominantly male Board. The Board dismissed the splinter groups as publicity mongers and unoriginal. In its annual meeting in April 2005, the Board adopted a model *nikahanama*.

The newspaper articles before and after the annual meeting focus explicitly on the debate around the *nikahnama*. Those that were published before the meeting are again optimistic and anticipatory of significant reforms, while those published after the meeting document the disappointment and anger over the tokenism of new *nikahanama* and the defense proffered by the Board. This debate however, got disrupted by a new issue: the case of a poor Muslim woman named Imrana.

In June 2005, the debate around Imrana's fate dominated the newspaper articles on the MPL. Imrana was raped by her father-in-law and a local Islamic religious body held a hearing of the case and issued a *fatwa* (religious edict) that the incident nullified her marriage with her husband. *Dar-ul-Uloom Deoband*⁶ which is regarded as an authority on Islam, ratified the *fatwa*. The Board, as reported, initially supported the *fatwa* as a decision in compliance with the Shariat but eventually several members of the Board condemned the *fatwa* as a misinterpretation of shariat. The issue got extensive coverage and remained the only point of discussion in regard to the MPL during the entire month of July 2005. In discussing the case, some articles compared the issue to the Shahbano case in terms of its ability to generate nationwide debate on the MPL and the fate of Muslim women. The issue stayed in news, though the frequency of its coverage dwindled. A related debate that got impetus due to Imrana's case was related to the legality and functioning of *dar-ul-qazas* or the Islamic courts. These "courts" decide cases related to marriage, divorce, inheritance and other issues that fall within the ambit of MPL. Although, these bodies do not possess any formal legal enforcing power, they are influential at the local level among the poorer sections

⁶ An institute for training scholars in Islamic theology and jurisprudence, founded in 1866 and based in Uttar Pradesh, a north Indian state.

of the Muslim population in several regions of India. This issue continued to be covered in newspapers till the end of year 2006.

In November 2006, the central government of India submitted a report in response to a notice of the Supreme Court that *Dar-ul-qazas*' existence was not in conflict with the Indian judicial system.

The year 2007, did not have any specific theme or issue that generated extensive public debate. However, scattered reports on the controversy over a court's directive to make registration of all marriages compulsory and the demand of several women's groups for its codification kept the debate about the MPL alive.

In March 2008, the Women's Board unveiled a new *nikahanama* that contained more safeguards for ensuring women's rights in marriage and divorce. For my data, this was the last issue that carried the debate on the MPL forward.

The Competing Discourses

In the following section I will discuss how each discourse is using the identified key signs and in what combinations to invest "MPL", the nodal point, with meaning.

Islam and Islamic Principles

The two antagonistic discourses – the MR discourse that believes that any intervention in regard to the MPL is an attempt to undermine the Muslim identity and the HR discourse that regards the existence of MPL as an undue privilege to the Muslim population – do not dispute the symbolic meaning of MPL as signifying Muslim identity. The S/W discourse, on the other hand, seems to be caught between agreeing to and contesting this symbolism of MPL.

“Islam” is one of the three categories of key signifiers that I have identified as signs giving meaning to the MPL. The Muslim Right invokes Islam as the source of unquestionable principles and rules that define the laws under the MPL. In this discourse there is no scope of any debate on the MPL without undermining the right to religion of the Muslim minority population. Thus in all cases, be it the demand for banning triple *talaq*, or the controversy generated due to a *fatwa* passed by some local clerics prohibiting a rape victim to reside with her husband, the debate is cast as a challenge to the MPL. It is then countered by invoking the “*Shariat*” that cannot be questioned.

The organization of arguments around the sign “Islam”, in this section, primarily illustrates the position of MR and S/W discourse. The position of HR discourse is revealed in S/W discourse where its arguments are framed to counter the HR discourse. The MR discourse fails to highlight the position of HR discourse as it rounds up both the S/W and the HR discourses in a single frontier in responding to any challenge to its own position. While it is impossible to discuss one discourse without referring to the other discourse that is competing with it I first focus more on the MR discourse and then the S/W discourse. In the final sub-section, I briefly discuss how the sign “Islam” is used to articulate the MPL as a symbol of Muslim identity.

Muslim Right’s Articulation of MPL through the Sign “Islam”

In July 2002, Parveen Akhtar - whose husband had divorced her in 1991 by pronouncing the word “*talaq*” thrice - petitioned for outlawing this form of divorce known as “*talaaq-ul-bidaat*” under section 2 of the Muslim Personal Law (Shariat) Application Act, 1937. Ms. Bader Sayeed, an activist for Muslim women’s cause, impleaded as a party in the case and filed a petition that supported Akhtar and maintained that “Talaaq-ul-Bidaat was

unislamic in nature leading the affected Muslim women to misery”. In response, the lawyer defending the Act contended that this kind of divorce “was an Islamic practice, where courts could not intervene” [TH: 26-Jul-02]⁷, and the Union Government, which was cited as a respondent, maintained that since the Parliament alone was empowered to amend the law, the court could not interfere in the matter. The battle thus is centered round what is Islamic and what is not.

Besides the legal actions (till now unsuccessful in outlawing the practice), women’s organizations have also been negotiating with the Board, for banning the practice of *triple talaq*. Since out of four Islamic schools of law, only one, the *Hanafi*, recognizes this practice as valid, the women’s organizations point to the interpretations of other Islamic schools of law to argue the invalidity of the practice. During the Board’s executive committee meeting in July 2004, it was expected that the *triple talaq* “will be proclaimed unislamic [sic]” – an expectation that was belied [TH: 13-Jul-04].

The Board’s stance on the issue of changes in the MPL has remained extremely inflexible. In the case of triple *talaq* even though they concede that reform is required, they refuse to budge on changing the provisions of the law. A remark of a Board member is illustrative of their stance. He says, “While principles governing *talaq* would remain as they are, the board on the other hand had[sic] ushered in a process of bringing in social reforms within the community by way of mutual understanding and consensus” [TH: 16-Aug-04]. Within the Muslim Right discourse, therefore, there is no scope of any changes in the MPL as it characterizes the laws flowing out of Islamic principles. In conveying this inflexibility, they not only imply that any position challenging Islamic principles is outside the realm of

⁷ The code [TH: 26-Jul-02] refers to the name of the newspaper and the date of publication. TH = The Hindu; TOI – Times of India; HT = Hindustan Times.

debate but also that *their* understanding of those principles and the laws flowing out of them are the only reality.

Reacting to a Mumbai High court's judgment pronouncing uttering of talaq in the absence of the wife as invalid, Jilani, a Board member says, "It is a blatant interference in Shariat which was drafted by Allah. How could anyone make amendments in laws framed by Allah? We will never tolerate this," [TOI: 9-May-02]. Similarly, in 2003, the debate on UCC and Personal Laws, generated by the Supreme Court's judge V. N. Khare's suggestion for implementing UCC in a case unrelated to MPL, led a Board member to state "Muslim Personal Law...was a divine law and that adhering to it was an essential part of being a Muslim" [TH:25-Jul-03]. Three years later, the Board's general secretary, Nizamuddin, casting article 44⁸ as a "permanent threat to the community", stressed the impossibility of any amendment in the 'Shariat' (Islamic laws) and added that the Board "would also not accept any outside intervention through constitutional provisions" [HT: 31- Jan- 06].

In the wake of the Board's 16th annual executive committee meeting, in 2005, the debate on the issue of *triple talaq*, and other laws that worked against the interest of women, again got an impetus. During this meeting the Board released the much awaited "model *nikahnama*" but it turned out to be a "damp squib" as it did not address any of the issues concerning women. Without changing any aspect of *triple talaq*, the *nikahanama* simply added a line advising the groom "to the extent possible avoid pronouncing three talaqs at a time" [TH: 11-May-05].

In response, Faizur Rahman, a member of an organization formed to promote communal harmony in India, raises the question as to why the practice is not abolished

⁸ A directive principle in the constitution of India that directs the State to work towards UCC but does not make the directive mandatory and time bound.

totally. He bases his case for the prohibition of *triple talaq* on the assertion that it is against the Shariah and the “*sunnah* (trodden path) of the prophet”. He quotes from the “model *nikahanama*” where it says, “Nikah is the tradition of the prophet and all prophets. Therefore, it is important that it be performed as per Sunnah, and all acts that are anti-Shariah be eschewed” [TH: 11-May-05], and wonders why the same phraseology is not used in the document in dealing with *talaq*. He asserts that the Board avoids this phraseology in order to legitimize *triple talaq* as it is not as per *sunnah*. Rahman reasons that the question before the Board was “whether triple talaq as practiced in India today was in accordance with the teachings of the Quran and the authentic traditions of the Prophet” and adds, “[t]he truth is that in its present form [it] is totally antithetical to the spirit of the Quran” [TH: 13-7-04]. This argument, like all other arguments within the S/W discourse that are attempting to negotiate with the Board in an effort to get a better deal for women within the MPL framework, is complementary to the MR Discourse in the sense that in negotiating with the Board it acknowledges the MPL as a symbol of Muslim identity and legitimizes the Board as an authority over it. The challenge of such arguments to the Board consists in contesting the meaning of Islamic principles and the Board’s interpretation of the Quran and the *Shariah* law.

In Imrana’s case, given the nature of the issue, the proponents of MR discourse were somewhat defensive and spoke in different voices. A local cleric had issued a fatwa that instructed Imrana and her husband to dissolve their marriage. *Darul Uloom Deoband* upheld the fatwa. According to their interpretation “a woman becomes *haram* (unfit) for her husband if she is raped by her husband’s blood relative” [TOI: 1-Jun-05]. As the issue gained more and more publicity, various women’s organizations (both Muslim and Secular)

condemned the fatwa and demanded criminal proceedings against the rapist [HT: 19-Oct-06]. These organizations, as did other individuals and groups, challenged it on two bases. The first one being that the case needed to be decided according to the country's criminal law and not the personal law. The second was that the fatwa did not reflect the true Islamic principles.

The statement of the General Secretary of CPI (M) illustrates the former argument. He stated that “[t]he act of barbarity that was committed on a woman from Muzaffarnagar is very deplorable. In our country the guilty should be punished and justice given to the deserving” [TOI: 30-Jun-05]. This strand within the S/W discourse was perhaps able to unequivocally challenge the *fatwa* since by defining the case as a criminal issue (and not one that falls in the personal / private domain), the argument stayed clear of any challenge to the MPL. The latter argument focused on contesting *Dar-ul -Uloom's* interpretation of *Shariah*. While the proponents of this latter argument reiterated that the matter ought to be dealt with under the country's criminal law, they, nonetheless, saw a need to challenge the *fatwa* on the basis of “correct” interpretation of the *sharia* law as well. A letter to the editor, typical of many such letters, condemning *Dar-ul -Uloom's* decision on Imrana, captures this stance well. It says, “...how heavily loaded the *interpretation* [emphasis mine] of the Shariat is against the women. Islam gives equal rights to men and women in judicial matters” [TH: 2-Jul-05].

The proponents of MR discourse rather than responding directly to it focused on different aspects of the controversy, maintaining all along that the decision was based on a sound interpretation of *Shariah*. *Darul Uloom* was the most assertive and said, “[t]here is no scope for debate or change in the Muslim Personal Law which is fundamental law of Quran, Hadees [sic] and is 1,400 years old”. To bolster the argument, the spokesperson of *Dar-ul-*

Uloom pointed out emphatically the dictum of the Quran: “Do not perform ‘nikah’ with a woman whom your father had bedded” [TH: 1-Jul-05]. However, later on, shaken by the sharp Muslim reaction, the Deoband seminary backtracked, claiming that it had not issued “any edict in the name of Imrana” [HT: 24-Oct-06].

Another body, known as The Muslim Political Council of India, contested the details of the case and averred that the incident was that of “molestation” not rape and accused “a women’s group” of paying Rupees 5000 (approximately \$100) to Imrana to say that she would not accept the *fatwa*. In its view, “the case was blown out of proportion to malign the Muslims and the Shariat”. It too did not contest the decision on its principle but said “[t]he legal and Shariat rules will automatically change in the case of the molestation” [TH: 1-Jul-05].

The Board’s stance on the case had been equivocal. According to the initial newspaper reports the Board supported the *fatwa*. There were some Board members who eventually condemned the fatwa as uncalled for in the specific case and concurred with the view that it should be treated as a criminal case [HT: 26-Oct-06]. Officially, the Board did not question the principle of the decision but promised to “reach a consensus, keeping in view the circumstances and the demand for justice” which, they added, was “... one of the basic principles of Islam”. Another member said that the issue had two aspects: the criminal and the personal, and while there was a uniform opinion that the criminal aspect should be dealt by the court, on personal law the “different schools of Islamic jurisprudence have different opinions” [TH: 3-Jul-05].

Eventually, Imrana’s father-in-law was convicted for rape under the Indian Penal code and was sentenced for 10 years. The Board welcomed the decision. It, however,

defended the logic of the fatwa explaining that “the fatwa was issued as per the Hannafi school of Law, which maintains that once a woman has sexual relations with a person, she is not qualified to be someone else’s wife. Islam wants the family to be stable. But if the wife has pointed a finger at her father- in- law, how can she live in that family? Let the law take its course and punish the culprit” [TOI: 1-Jul-05].

In October 2006, responding to a critique by a secular women’s body, All India Democratic Women’s Association (AIDWA), that in its current form the MPL is anti-women, a Board member, emphasizing the soundness of Islamic laws and blaming non-adherence to the “real principles” as the cause of all problems, said, “Imrana’s case would not have happened had the family been aware of Islamic laws. Because it discourages joint family structure and states that married persons should stay separately” [TOI: 25-Oct-06]. The denouncement of the joint family structure has an implied critique of the Hindu Personal Laws that support joint family structure. It was thus an antagonistic response attacking HR discourse, while defending its own. In other words it had an implicit message that if the Muslim population stuck to the Muslim way of life (under the guidance of the Board) and was not influenced by the “Hindu values”, it could lead a better life. Such an argument affirms the value of MPL in the governance of the “personal realm” of Indian Muslims.

Secular and Women Right’s Articulation of MPL through the Sign “Islam”

As is evident, in most debates around the MPL, a strand of S/W discourse, in contesting the MR discourse, concentrates on the “correct” interpretation of Islam and Islamic principles. The arguments subscribing to this strand of S/W discourse, point to what they believe is a disjoint between the true principles of Islam and its practice in India. They blame the *ulemas* (Islamic scholars) who claim to be the authority on Islamic laws, for the

misinterpretation of Islamic laws. The main thrust of these arguments is that the original Islamic principles and laws are progressive and fair and grant equal status and rights to Muslim women. They maintain that the MPL needs reform so that the progressive elements of “real” Islam could get incorporated in it.

In the wake of the debate generated by the formation of the constitutional review committee in 2000, Asghar Ali Engineer, a well known advocate of reforms in the MPL said, “Islam lays great emphasis on gender equality and accordingly, granted women equal rights in marriage, divorce, ownership of property etc....The *ulemas* are a product of their time and interpreted the divine word from the male perspective” [TH: 31-Oct-2000]. By investing a different meaning into “Islam” and by extension “MPL”, this strand of S/W discourse, challenges MR discourse on each issue that pertains to women’s position in the MPL. Engineer says, “... though the Koran nowhere says that a woman’s duty is to look after her husband and children and fulfill household work, the whole of Islamic juristic literature is full of such assertions.... Muslim Personal Law in India is also based on many such assumptions” [TH: 31-Oct-2000].

On the four most controversial issues: *triple talaq*, Women’s right to divorce, polygamy and maintenance, this discourse refers to the Quran and the Prophet to argue that the Board’s stance on each of these is not in congruence with the Islamic principles.

Triple talaq

On *triple talaq*, Faizur Rahman’s argument summarizes the arguments of almost all women and secular groups negotiating with MR discourse for reform in the MPL. He writes:

[Triple talaq] is not recognized by the Shia sect and as a number of scholars of Islamic jurisprudence have pointed out, does not find sanction anywhere in the Koran. In fact, it is a distortion

of the Koran... there is either an express or implied restriction against the practice in a large number of avowedly Islamic countries. [TH: 13-Jul-04]

He quotes from one of the translations of the Hadith, “Even the Prophet when he was informed about a man who gave three divorces at a time was so enraged that he said, ‘Are you playing with the Book of Allah...?’” [TH: 13-Jul-04].

Women’s right to divorce

Similarly, asserting that “Islam gives the women an inalienable right to divorce”, an article refers to the “Islamic history” to relate a story of a woman who:

approached Prophet Mohammed and expressed her inability to adjust with her husband, Mughis. The Prophet advised reconciliation; upon which she asked him if it was his suggestion or command. When told it was the former, she said: ‘then, I do not need this suggestion’ and marriage was annulled [sic]. [TH: 15-Sep-02]

The author stresses that under the Islamic law, a woman can demand *khula* (divorce initiated by women) from her husband for various reasons including a “mere dislike of the husband’s looks”. If, upon the husband’s reluctance to accept the divorce, the matter reaches a court headed by a *Qazi*, he can at the most delay the process, hoping for reconciliation. The author was optimistic that the model *Nikahanama* (that in 2002 was presumably under preparation by the Board) would end the ignorance in regard to *khula* by eliminating “regional variations and subjective interpretations”. This particular argument does not so much contest the meaning of Islam as articulated by MR discourse but complements theirs and encourages the Board to emphasize what it deems to be the, progressive provisions for

women granted by Islam⁹. The expectation that the model *nikahnama* would be adopted by the Board at its 2002 annual executive committee meeting was, however, belied.

Polygamy

Polygamy is another issue that surfaces, as a provision in the MPL that disadvantages Muslim women, in all the forums and meetings of women's organizations. Within the HR discourse, it is articulated as a symbol of "backwardness" of Muslims, a cause for alleged disproportionate increase in the Muslim population and as a clear case for leashing the MPL (TH: 24-Sept-04). In India, polygamy is illegal for all religious groups except Muslims. Although S/W discourse often counters HR by pointing out that, in practice, polygamy is as rare or infrequent among Muslims as in other communities, it argues, for changing the laws to ban polygamy as it puts Muslim women at a disadvantage [TH: 5-Mar-02]. Voices in S/W discourse who invoke "real" Islamic principles for banning polygamy say, "Islam as a religion was not wrong it was the people who misinterpreted it.... The Koran permitted four marriages only in specific conditions" [TH: 2-Jan-05]. This argument maintains that those conditions are so rigorous that it is virtually impossible to fulfill them and therefore, in essence, Islam does not permit polygamy. A well known Muslim women's rights activist, Hameeda quotes specific verses from the Quran to argue against polygamy. She says:

So far as polygamy is concerned; surah nisa (4:3) ... states 'that in case of orphans (girls) men may marry two, three or four but if they feel that they cannot do justice then only one'.

Section 129 of the same surah further states the psychological truism that you (men) are never able to be fair and just between women even if it may be your ardent desire... [Therefore] the koranic intention vis-à-vis polygamy is clear. Men have not been stopped from the practice

⁹ The MPL in its current form has provision for *Khula*. However, in practice it leads to women waiting and pleading with the *qazi* to grant divorce, if the husband refuses to accept the woman's divorce request.

but its condition has been so difficult that no flesh and blood human being can honestly say that he is capable of fulfilling it....what it [Islam] gave with one hand it took away with the other.[TOI: 20-Jun-01]

In response, MR discourse has never specifically defended polygamy but, as in other cases, diverted the debate to “freedom of religion” and resorted to the assertion that no change is possible in MPL.

Maintenance

Maintenance has been the issue that brought the MPL into focus and infused it with the meaning that has made it a nodal point in the discourse of religious nationalism. The aftermath of Shahbano continues to be discussed, challenged, attacked and defended by all discourses. In challenging the position of MPL on maintenance, the S/W discourse argues that the “provisions of 127(3) (b)¹⁰ have prejudiced no one but Muslim women and have played mischief with all the constitutional and Quranic rights (verse 241 of ch. II)¹¹ of the divorced Indian Muslim women” [TH: 30-May-01]. This argument not only contests MR discourse by asserting that the MPL is keeping women from exercising the rights that have been granted by the Quran, but by using the words “constitutional” and “Quranic” concurrently , it also implies that there is no conflict between the two. In other words it asserts that, unlike the way the custodians of MPL make it sound, Islam does not keep women from availing rights that are available to all women under a secular (progressive) constitution.

¹⁰ It specifies that Muslim women are ineligible to petition for maintenance under the provisions of CrPC, Sec. 125.

¹¹ It is, perhaps, mistakenly written verse 241 as it is verse 242 that says “And for the divorced women *also* there should be a provision according to what is - an obligation on the God-fearing”. Retrieved from <http://www.alislam.org/quran/tafseer/?page=98®ion=EN>, on 27 January, 2009.

An extension of the argument that contests the interpretation of Islam focuses on the role of the “forces of orthodoxy” [TH: 27-May-01]. According to the proponents of this argument, owing to reasons ranging from “power mongering” to “ignorance” to having a “patriarchal mindset”, they have distorted the interpretation of Islamic laws and made them work against Muslim women. Sayeed argues for the codification of MPL, so that the “dispersed injunction throughout the Holy Quran and the Shariat ... [could] be brought under one statute to facilitate reference and interpretation...” She blames the “self-styled leaders and clerics for misrepresenting to the community that codification is synonymous with the implementation of a UCC” [TH: 25-Jul-2000].

On issues like triple *talaq* and polygamy, the voices advocating for women’s rights blame *ulemas* for ““playing with the lives of the Muslim women’ largely because of pervasive illiteracy among the women” [TH: 5-Mar-02]. Reacting to a resolution, passed at one of the Board’s sessions, that demanded exemption of the MPL from the ambit of Child Marriage (Restraint) Act and advanced the idea of imposing a dress code on women, a noted social activist working for Muslim women’s rights accused the Board of taking “the [Muslim] community to the primitive era of exploitation and backwardness” [TH: 29-Jun-02].

The formation of the All India Muslim Women’s Personal Law Board (AIMWPLB), was in itself a statement that held the Board incapable of restoring Muslim women’s rights. Quotes like “high time the monopoly of male muftis ended” [TH: 17-Feb-02] or “Muslim leaders like the members of the All-India Muslim Personal Law Board, are unrepresentative....fanatics who are not willing to listen” [TH: 10-Aug-03] illustrate this stance well. At the time of its foundation, the General Secretary of the newly formed

Women's Board "charged AIMPLB [The Board] with ignoring problems faced by Muslim women in the society" [TOI: 1-Feb-05]. In March, 2008 after the Board's 2005 "model *nikhanama*" had disappointed the women's groups, the Women's Board issued a new *nikahnama* called *Sharayat Nikahanama* [translatable as marriage contract form based on religious law]. This new *nikahanama* "makes registration of marriage compulsory, accords several rights to the wife and is applicable to both Shias and Sunnis" [TH: 17-Mar-08].

Demonstrating a clear and overt contest over the meaning of *shariat*, the Board dismissed the *Sharayat Nikahanama* by asserting that as "a *nikahanama* issued by the AIMPLB" already exists, there was "no room for another one" and that "the old one was as per the Koran and *Shariat* and was in practice" [TH: 17-Mar-08]. In turn, the Women's Board and several other groups and individuals, representing S/W discourse, countered this dismissal by asserting that the *Sharayat Nikahanama* was totally in conformity with the *Shariat* and therefore valid [TH: 19-Mar-08].

MPL and Muslim Identity

The appeal to Muslim identity, which is implied in all the arguments of MR discourse and in majority of the arguments of S/W discourse, gets overtly manifested in several ways. In the case of MR discourse, it is closely related to the former appeal - the finality of Islamic principles. Since the MPL in this discourse is deemed to be representing those principles, it becomes imperative for those who profess Islam to follow it and not to question. Those who are cast as outsiders are reprimanded for questioning something that is sacrosanct to Muslims. The Muslim identity thus becomes primary, and the specific case or issue that generates the debate on the appropriateness of MPL, secondary.

In the year 2002, responding to the anticipation that the forthcoming Board's meeting would make changes to the MPL in favor of women's rights, a Board member stated, "Muslims feel that the rules of the Shariat governing their personal and family life are an integral and inseparable part of their religion" [TH: 14-Jun-02]. On the occasion of its annual meeting in 2005, a member said "The shariat determines mutual rights and duties in a Muslim family and does not affect non-Muslims in any way" [TH: 4-Apr-05]. He thus created a defined boundary between "us" and "others" with an implicit admonition to "others" not to question any aspect related to the MPL. At another event in Calcutta, a Board member asserted, "Muslims in this country have their own identity and that can only be preserved by the law framed according to the holy Quran" [TH: 3-Mar-08]. In keeping with this premise, the formation of a separate Shia Board and, later, the Women's Board were both cast as actions being carried out on the behest of vested interests and "causing damage to the Muslim unity" [TH: 24-Jun-05].

While it is true that S/W discourse, in negotiating for women's rights within the framework of MPL, reinforces the MPL as a symbol of Muslim identity, there is full recognition within this discourse that the identity politics has affected women's rights issues. Echoing this sentiment, Hasina Khan, an activist working with a Muslim women's rights organization blames both the anti-Muslim discourse [of the Hindu right], the Muslim "leaders" and the State for submergence of women's issues in their obsession with the MPL. She says that because of the Muslims being "under attack, Muslim 'leaders' play on their sense of insecurity to silence the voices of change by equating personal laws with Muslim identity". She adds that "outside the community, there is no dialogue on the real needs of

Muslims...[as] the state believes that religious identity is the only identity and that religious leaders are the only representatives” [TH: 10-Aug-03].

Another set of signifiers that are evoked for reforms in the MPL are related to the ideas of secularism, national integration and India’s legal framework including its Constitution. I discuss these in the following section.

Secularism/National Integration/Indian Constitution

The key signifiers, secularism / national integration / Indian constitution, are invoked by each discourse. However, the emphasis placed on one sign as compared to the other varies from one to another. Also, these key signifiers are invested with differing meanings by combining them with different signs. Consequently, the MPL gets articulated in distinct ways within each discourse. Due to the intertwined nature of the discourses in regard to the set of these three key signifiers, any discussion of the discourses separately runs the risk of losing its context. Therefore, rather than treating each discourse as a separate sub-section, I have divided this section into three parts by dealing with each sign - secularism, national integration, and Indian Constitution – separately and by delineating the struggle between the three discourses.

Secularism

In invoking the principle of secularism in defense of MPL, MR discourse equates secularism to a religious community’s right to govern its “private” realm according to its religious tenets. In filling the sign “secularism” with meaning, these arguments point to both: the specific constitutional provisions and secularism as a value defining the Indian nation.

In all instances, where secularism is employed to counter any challenge to the MPL, not unlike the use of key signifier Islam, the specific case that raises questions about the provisions of MPL is cast as secondary or even irrelevant, and the threat to the MPL takes over as the main issue. In 2001, Julekhabai, a Muslim woman filed a petition with the Supreme Court seeking outlawing of the practice of polygamy among the Muslim community in India. Fazal, her husband, had divorced her for her unwillingness to accept his second marriage. Later, after losing a meager grant of maintenance through a local court's decision in favor of Fazal, too, she moved the Supreme Court. Describing her as a victim of polygamy, her petition claimed that "... the custom and usage of polygamy and extra-judicial divorce allowed to be practiced by Muslim men is a denial of equality, personal liberty and human rights guaranteed to all citizens by Articles 14, 15 and 21 of the Constitution¹²". Acting on the petition, the Supreme Court issued a notice to the Central Government for appropriate action. In turn the issue was referred to the Board that dismissed the discussion on the issue of polygamy and its effect on women by mentioning that the issue has been referred to its legal cell. However, shifting the focus and recasting it as an issue of freedom of religion and preservation of MPL, the Board's president asserted that "[a]ny legislation impinging on the *freedom of religion* compelling the Muslim community to do away with the Islamic shariat would not be acceptable" (emphasis mine) [TH: 13-May-01].

Following the July 2004 annual meeting of AIMPLB and its failure to either adopt the *model nikahanama* or ban the practice of triple *talaq*, the debate on the need for reforms in MPL intensified and inevitably the issue of UCC cropped up. While the Board's leaders

¹² Article 14: 'Equality before law. – The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.'

Article 15 pertains to prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth. Article 21: Protection of life and personal liberty – 'No person shall be deprived of his life or personal liberty except according to procedure established by law'.

wrote off the possibility of any principle changes in the MPL, they countered the need for the UCC by explaining that “the personal law dealt with crucial issues such as marriage and succession and a common civil code would hinder that”. Any and all aspects related to issues like “marriage and succession” were, thus, cast as community issues (marginalizing the notion of citizenship rights), and the Board re-cast the issues as an issue of the freedom of religion and went on to add “Constitution has upheld secularism where everyone was free to practice his religion” [TH: 16-Aug-04].

In 2005, the newspaper reports repeatedly compared the controversy generated over Imrana’s case to the 1985 Shahbano controversy. One such article analyzes how extreme ideologies have affected women in India and reminds that in 1985 too, the Muslim clerics had said, “The apex court has no right to interfere in our personal laws...” [TH: 10-Jul-05]. At that time, the then ruling party, by its actions, reinforced this notion of secularism. The chief Minister of a northern Indian state, Uttar Pradesh, was posed to do the same in Imrana’s case by coming out in support of the clerics’ decision. Although, the uproar over this case forced the proponents of MR discourse to backtrack on their initial stance, their arguments and the Chief Minister’s stance (whose party, the Samajwadi Party, is positioned as a champion of backward castes and Muslims) illustrate that in this discourse, “secularism” is articulated to mean primacy of religious laws over secular laws in governing the issues that the community’s leaders claim as “personal”.

The debate over *Dar-ul- Qazas* or the Islamic courts that operate in several parts of India had kept appearing in newspaper articles off and on but it had never generated much discussion earlier. The Imrana case brought it into focus and a lawyer filed a public interest petition seeking a direction from the Supreme Court to check the establishment of, what he

labeled as a “parallel Muslim Judicial system”, suggesting that the “the defiant attitude” of the functionaries of *Dar-ul-Ulooms* and AIMPLB was an “open affront” to the judicial system set up under the Indian Constitution [TOI: 27- Mar-06]. The Court admitted the petition and issued notices to the Central government and the Board to explain their stance on the issue. The Central government’s response (at that time headed by the Congress party)¹³, is indicative of the fact that, as far as the issue of MPL is concerned, it complements the Board’s articulation of the sign “secularism”. In response to the Court’s notice, the Center averred that the “freedom guaranteed by Article 26 to every religious denomination or every section thereof to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion would include freedom to establish *Dar-ul-Qaza / Nizam-e-Qaza* to settle disputes between two persons professing Islam, according to Shariat” [HT: 4- Jan- 06; TH: 3-Nov-06]. Arguing that the *Dar-ul-Qazas* do not have any enforcement powers but are only a form of alternative dispute redress forum, the Center denied that they constitute any threat to the Indian Judicial system. The reality that these courts, as much as caste panchayats¹⁴ in rural areas, wield enormous power among the poor and rural population and carry the same force for them that a judicial institution does (Dogra, 2004), gets ignored in this discourse. In Imrana’s case, at one point, an article reports that “the societal pressures on her are such that she has stated she would abide by the ‘religious laws’ even if the fatwa has no force in law” [TH: 2-Jul-05]. Indeed, the Board and other Muslim organizations that hold the MPL as sacrosanct make efforts to encourage the Muslim population to take recourse to *dar-ul-qazas* rather than the Indian judicial system [TOI: 18-Jul-07].

¹³ Congress party is ideologically aligned to the secular values of the Indian state.

¹⁴ Caste based groups of village elders that hear disputes and take decisions in cases involving people belonging to the caste group. Like dar-ul-qazas, they do not have any legal power.

While in the case of Imrana, due to the publicity the case generated, the criminal law procedures took over, in ordinary circumstances these bodies carry immense social enforcing power or as a Muslim cleric says it is “‘khuda ka dar’ (fear of god)” that sustains these institutions [HT: 23-Apr- 06]. The Center’s response, leading to the dismissal of the PIL, thus emphasized the “right to freedom of religion” at the expense of other issues like justice and equality for Muslim women. While the issue of MPL and the unequal status of women within it as well as other personal laws is already a vexed one, the acceptance of extra-judicial bodies to interpret those laws, as part of the “secularism” deal fills this sign quite unambiguously with a meaning that is very specific to MR discourse. It is worth mentioning here, however, that the petitioner’s context and the nature of PIL that isolated *dar-ul-qazas*, ignoring the existence of caste panchayats which work on exactly the same principles, characterize the action as belonging to the HR discourse that specifically frames the MPL and associated structures as a threat to Indian values and the Constitution.

The meaning that HR discourse invests in “secularism” is clearly antagonistic to that of MR discourse. In this discourse, “secularism” is invoked for exactly the opposite purpose. It is used as an argument for abolishing the MPL and implementing a uniform civil code (UCC). In the wake of controversy generated by Imrana’s case, a barrage of letters to the editor, published by all newspapers, demanded leashing the clerics and the trend of issuing *fatwas*. Among these, many cite the case of Imrana to make the case for replacing the Personal Laws with UCC. For instance one of the letters says, “Imrana’s case is an eye-opener to every Muslim of this country to realize the need for a common civil code. Rather than taking recourse to the secular law of the land to solve such complex issues, dependence on seminaries and *moulvies* [clerics] for justice will only prove detrimental to the interests of

Muslim women” [TH: 2-Jul-05]. Another writes sardonically, “Secular India has become the laughing stock of even Muslim nations” [TH: 2-Jul-05]. Within this discourse secularism becomes the very reason for interfering in and dissolving personal laws to make way for secular laws.

The newspaper data does not provide too many direct quotes illustrating HR discourse. Their arguments, however, can be discerned by examining the S/W discourse. It is significant that although the HR discourse does not emerge in overt and direct quotes, the S/W discourse is engaged in challenging and responding to the HR discourse constantly. This implies the pervasiveness of the HR discourse’s arguments. This is also illustrative of the tight rope walk that the S/W discourse has to manage wherein actors of this discourse have to ensure that any challenge to MR discourse does not, wittingly or unwittingly, strengthen the HR discourse or what it has come to stand for: persecution of Muslim minority population.

In July 2000, the debate around the issue of Constitutional review, more precisely on Article 44, was an obvious site of contest for the meaning of a secular constitution. An article by a former chairperson of Minorities’ Commission, Ms. Sayeed, counters the HR discourse by suggesting that “[t]he Uniform Civil Code is a ‘Damocles Sword’ dangling over the heads of all religious denominations. With least provocation [sic] ... the minorities are threatened with the possible imposition of the Uniform Civil Code”. She goes on to say that “[m]ulti-religious, pluralistic and secular democratic societies follow their individual personal laws and are entitled to practice the same, within the freedoms encompassed and enshrined in our Constitution” [TH: 24-Jul-2000]. As HR discourse invokes “secularism” to make the case for the implementation of Article 44, the author invokes it to make the case for deletion of Article 44. In this regard the S/W discourse that Minorities’ Commission (consisting of

representative of different religious communities) share, complements the MR discourse. However, it distinguishes itself from the MR discourse by adding that there is a need to loosen the control of “self-styled leaders and clerics” on the MPL. This, Ms. Sayeed suggests can be done by the codification of MPL, an action that the proponents of MR discourse claims is akin to the implementation of UCC. She counters this argument by calling it a “misrepresentation”.

The codification of MPL and its reform has been a demand of many Muslim (and secular) women’s organizations for a long time now. As discussed in the previous section, the challenge to the MR discourse by this strand of S/W discourse gets manifested overtly in contesting the meanings of key signifiers like “Islam”, “justice”, “equality”, etc.

“Secularism” as a sign is not the site of contest between the S/W discourse and the MR discourse, even when “right to freedom of religion” gets translated as privileging of personal laws over secular laws in influencing women’s life. In other words, what gets contested by this strand of S/W discourse is the interpretation and practice of *shariah* laws, not the notion of religious laws marginalizing secular laws in the “personal” realm.

Going beyond the reform of MPL, another related strand within the S/W discourse invokes “secularism” by focusing on the secular rights of Muslim women that are being undermined by confusing them with the provisions of personal laws. In an article on the exclusion of Muslim women from the provisions of section 125 of CrPC¹⁵, a Muslim woman lawyer argues that “Muslim women have been grossly discriminated against because of religion with regard to the applicability of the secular provisions of CrPC section 125” [TH:

¹⁵ Law for the maintenance of destitute wives, children and parents. The relevant provisions of section 125 are as follows ‘(1) If any person leaving sufficient means neglects or refuses to maintain- (a) his wife, unable to maintain herself, ... a Magistrate...may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife.... - (b)"wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried’.

30-May-01]. This argument does not demand replacement of the MPL by the UCC but points towards “progressive” interpretation of both secular and Personal Laws. Referring to the Supreme Court’s judgment in Shabano’s case that granted her the right to maintenance from her husband, the lawyer Sona Khan argues that the judgment rightly justified a husband’s responsibility to maintain his divorced wife by citing the Quran to show that it too provides for this. However, she does not stop at it; she also argues that the judgment should have upheld the simple secular rights of Muslim women and should have struck down the provisions of CrPC section 127(3)¹⁶ as unconstitutional on the grounds that they tend to deny Muslim women their secular rights and relief available under section 125 [TH: 30-May-01].

In effect it poses a challenge to MR discourse without taking an antagonistic position. It invests “secularism” with another meaning in addition to (and not by rejecting) the meaning given by MR discourse. It thus challenges the meaning of secularism defined by MR discourse without aligning itself with the meaning given to it by HR discourse.

National Integration

A sign which is related to secularism and is often used by HR discourse is “national integration” that is cast as a reason for the implementation of UCC. In 1985, granting the maintenance claim of Shahbano, the then Chief Justice, Y. V. Chandrachud had stressed the need for the UCC by asserting that such a code would “remove disparate loyalties to laws which have conflicting ideologies” [TH: 28-Jul-03]. It was this feature of the judgment in Shahbano case that the proponents of MR discourse were able to utilize to generate a furor over the decision of granting maintenance under section 125 of CrPC act. By bringing and

¹⁶ It says that if a woman has received any relief after divorce, under any customary or personal law, she shall not be entitled to the benefit of seeking maintenance under CrPC section 125.

keeping the focus on the statement about the UCC, they were able to cast that decision as a threat to the MPL. In 1995, a bench of two Supreme Court judges again exhorted the government to take a “fresh look” at Article 44 in a case related to four deserted Hindu women whose husbands had converted to Islam [TH: 28-Jul-03].

In 2003, Chief Justice V. N. Khare made a similar observation and appealed to the cause of “national integration” that according to him would benefit if “contradictions [in laws] based on ideologies were removed. Chief Justice Khare’s observation was made in regard to a case under a section of the Indian Succession Act, 1925 that relates to property related rights of Christians exclusively. Although the observation was in a case unrelated to the MPL, the debate eventually got directed into the issue of MPL vs. the UCC. An article, illustrating the S/W discourse, pointed out that the Sangh Parivar (a conglomeration of a number of Hindu Right organization), had “pugnaciously supported [the decision]”. The author goes on to say, “...Khare claimed that such a code would help the cause of national integration.... [But] to coerce the Muslim minority to give up its family law may do more harm than good to national unity”. However, not letting the issue of gender equality get buried under this defense of MPL, the article recommends “...value based progressive changes, preserving the separate identity of each religious group, is a feasible project avoiding insult and injury to any minority” [TH: 6-Sept-03].

A member of the Board termed Khare’s recommendation as “highly regrettable” and reinforcing the standpoint of MR discourse, asserted “Muslims would never accept any interference in their personal law and ...would not agree to a uniform civil code” [TH: 25-Jul-03].

S/W discourse's contest of the notion that the UCC could facilitate "national integration" is exemplified by an observation in an article, quoted earlier too, titled "Personal Law and Common Sense": It says that "[g]ender discrimination is the critical issue. Pious advocacy of a uniform civil code as an instrument for ushering 'national integration' and communal campaigns that use Article 44 as a stick to intimidate minorities will fail to address this issue" [TH: 28-Jul-03].

In an article titled "It is about equality, not uniformity", Anjali Modi, a lawyer and a women's rights activist, comments on the debate generated by the Chief Justice V. N. Khare; she says that "[b]y exhorting the Government to create a uniform civil code as a way of achieving national integration, Mr. Khare underlined the curious conflation of issues- women rights with definitions of the nation state" [TH: 10-Aug-03]. In support of her argument that the real issue is the "general lack of consideration for the constitutionally guaranteed fundamental rights", Modi quotes Indira Jaisingh, a well known legal practitioner who is associated with women rights issues:

...there exists what can be called a "gender plus" formula which is repeatedly applied to subvert the constitutional guarantee of equality. In almost all domains private and public women are subjected to injustice and inequality on the basis of their gender plus something else....where personal law is concerned, it is gender plus religion and/or culture... [As regards the uniform civil code,] there is only one common civil code in operation, common code of inequality. [TH: 10-Aug-03]

Challenging Justice Khare's suggestion the article "Personal Law and Common Sense" goes on to say that "[t]he democratic women's movement is absolutely right when it proposes that the call for a uniform civil code, which must eventually be put in place by any society that calls itself secular and democratic, must be preceded by the demand for equal

rights and equal laws that ensure gender justice” [TH: 28-Jul-03]. This stance, thus, distinguishes itself from MR discourse by refraining from treating the MPL and all personal laws as sacrosanct but postpones the task of dissolving them to a distant future.

The S/W discourse calls the notion of UCC as a facilitator of national integration a “false debate” that takes the focus away from women rights and puts it on “an emotive and easy-to-throw-around idea of ‘national integration’” [TH: 10-Aug-03]. As a suggestion to deal with this, a feminist academic, Kumkum Sangri is quoted as saying “leave personal laws as they are, let them reform or change at their own pace, but make provisions for women to opt for common civil code”. She adds that there are issues such as dowry and domestic violence “which not long ago were accepted as traditional” or customary practice, but which are today governed by secular law” [TH: 10-Aug-03]. This idea is sometimes extended to a suggestion that an optional common civil code based on secular laws ought to be enacted to give women a choice without meddling with Personal Laws.

The S/W discourse, thus, tries hard not to strengthen the MR discourse’s position on the issue of women rights in countering the HR discourse’s attack on the Muslim community symbolized by the MPL. Using Special Marriage Act, 1954 as an example, an article in “The Hindu” suggests that “the UCC and the Personal Laws do not represent an either/or choice and that the one does not mandate the obliteration of the other” [TH: 13-Aug-03]. It is only when the premise that the UCC and the personal laws can coexist has been established, that the S/W discourse ventures to frame the challenge to the MR discourse in somewhat antagonistic terms. For instance, this article suggests that eventually the “old and outmoded social order of which conservative personal laws are part will be broken”, a prospect that is expressed only after establishing that dissolving the MPL is not the intention, at least in any

foreseeable future. Pointing to the resistance of the Board to any debate on the MPL, it adds that “[i]niquitous social prohibitions and restraints, including on women, are now being falsely portrayed as religious verities to thwart secular reform” [TH: 13-Aug-03].

Constitution and Legal Framework

Appeal to the Constitution and the legal framework of the country has been a signifier used by all three discourses along with “secularism” and “national integration” to bolster their articulation. How and what segments of the law and the Constitution are emphasized and which ones are contested varies for each discourse. The most illustrative example of this discursive struggle is that while Article 44 of the Constitution is employed as the strongest argument by the HR discourse in arguing for the implementation of UCC, the MR discourse as well as the S/W discourse invokes other articles of the Constitution to argue for stalling or deletion of Article 44. For instance, the former Chairperson of the Minorities Commission who favors codification and progressive reading of the MPL, but not the demand for UCC, says, “The Supreme court has time and again reinforced the concept that it is the people of India who are the authors of the Constitution and, it is the people of India whose dignity and honour and the right to practice a religion of their choice has to be assured and ensured. Article 44 jeopardises these rights” [TH: 25-Jul-2000].

At the same time, the S/W discourse invokes Constitutional rights to counter the assertions of MR discourse that the MPL is sacrosanct and cannot be interfered with. Sona Khan, the advocate who has filed a PIL to challenge the validity of Muslim Women Act (1986), argues that “[t]here is no provision in the constitution which...allows a section of the society to go backwards in the name of religious freedom.... There is no scope in the constitution for exercising this negative form of freedom by any section of the society

Therefore the right conferred upon all Indian women by CrPC section 125 cannot be denied to one section identified solely by religion. Article 13(2)¹⁷ of the Constitution does not permit this” [TH: 30-May-01].

The MR discourse, although quick to reject secular laws when they conflict with any of its interpretations of the *Shariah* laws, cite Constitutional and legal provisions selectively when they can be utilized to bolsters their argument. For instance, on the one hand, in defending the existence of *Dar-ul- Qazas*, the MR discourse pleaded that they were “consistent with the prevailing legal culture in the country” [TH: 5-Jul-04; HT: 15 –Oct- 06], on the other, asserting the primacy of *Shariah laws*, in June 2002, the Board formed a committee to study the “‘interference’ of courts in *Shariah law*”. This was in reaction to a Mumbai High Court judgment favoring payment of maintenance to a Muslim woman in a divorce case and, around the same time, registration of a case against a Muslim parent under the Child Marriage Restraint Act (CMRA 1929, amended in 1978). The Board members demanded the exemption of Muslims from the Child Marriage Act and the Compulsory Registration of Marriage Act , and expressed disapproval of the interpretation of maintenance issue by the court [TH: 29-Jun-02]. Similarly, an executive member of the Board, describing a Supreme Court verdict permitting a divorced Muslim couple to live together as against the MPL, remarks, “ When we have to choose between the law of the Supreme Court and the law of Allah, we will choose the law of Allah” [HT: 29 Apr-06]. This makes for an interesting paradox: in case of a perceived threat to the MPL, the argument is so framed that it emphasizes for Muslims the primacy of *Shariah* over any legal or constitutional provisions, but these very provisions are invoked as the final authority when they can be used to

¹⁷ Article 13 (2) states- "The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void". The term Part refers to Part III of the Constitution which lists the fundamental rights of the citizen.

demonstrate that the Board's actions and arguments are in keeping with the legal and constitutional framework of the country. The MR discourse's demand for the removal of Article 44 and its invocation of the Constitution to argue that "article 25 guarantees freedom to practice any religion and any interference in the Muslim Personal Law will be a violation of that fundamental right" [TH: 4-Apr-05] is also illustrative of the same paradox.

Voices within the S/W discourse, though consistently giving primacy to the Constitution and its secular provisions, frequently supplement their appeal to these provisions by citing *Shariah* and the *Quran*. For instance, on the issue of *triple talaq*, Badar Sayeed, the former minorities Commission chairperson and a well known advocate for Muslim women's right says, "Muslim community should work within the parameters of *Quran* and the Supreme court directions, which has instructed the Muslims to follow *Quran* in which triple talaq was not valid [sic]" [TH: 1-Jun-05]. She thus tries to settle the conflict between personal laws and secular laws by framing the argument in a way that the one complements the other rather than challenge it. In Imrana's case, the critique of the cleric's decision was framed in a similar manner by many. A letter to the editor asserts that "[i]t is a clear assault on the human values and justice that Islam stands for and interference in a straightforward case of punishing the guilty in accordance with the law of the land" [TH: 2-Jul-05]. In these arguments, the voices within the S/W discourse appeal for the "correct" interpretation of the *Quran*, which is seen as progressive (in regard to women's rights) and not in contradiction with the secular laws.

In the case of Imrana, where the victimization of a woman was blatant and, due to media focus, was visible and tangible in the form of a real person, there were voices in the S/W discourse, that focused exclusively on the values of justice and human rights as

enshrined in the Constitution without overtly trying to negotiate with the MR discourse or affirming the importance of MPL for the Muslim community. However, even while stressing on the primacy of constitutional provisions over “Islamic” laws / practices, the S/W discourse does not frame the argument as an antagonistic discourse to the MR discourse as it refrains from questioning the MPL or *Shariah* per se; the attack is directed at the clerics, instead. It can therefore be understood as an extension of the contest over the “real meaning” of Islamic principles. An editorial in *The Hindu* states that “[t]he fatwa of the Islamic seminary, *Dar-ul-Uloom Deoband*, asking a Muslim woman, who was allegedly raped by her father-in-law, not to live with her husband calls into question the fundamental principles of human dignity and freedom enshrined in the Constitution”. Reproaching the Board, it further says that “...it might be too much to expect the infamously conservative All India Muslim Personal Law Board to intervene effectively in this case...” [TH: 2-Jul-05].

Proponents of the MR discourse, in an initial offensive stance termed the furor on the issues as “political exploitation”. Syed Shahabuddin, a Board member chose to focus on the BJP’s response to the case and said that “it was doing this to promote its agenda of the religious assimilation of Muslims through the imposition of a common civil code” and appealed to the media “not to blow up individual cases in the interest of inter-faith understanding or read a stray ‘fatwa’ as a final ruling under the *Shariat*” [TH: 3-Jul-05]. The representatives of *Dar-ul-Uloom Deoband*, in an even more stringent stance, rounded up any challenge to the fatwa into single frontier and accused both the left CPI (M), that has traditionally taken on the Hindu Right for its anti-minority policies, and the BJP of making “totally unjustified demands” by asking for changes in the MPL. Reproaching the CPI (M) general secretary for demanding reforms in the MPL, a *Mufti* (authorized interpreter of

Islamic law) from Deoband said, “Mr Karat should not echo the views of the Rashtriya Swamsevak Sangh.... The views of people like Mr. Karat should be corrected instead of the Muslim Personal Law” [TH: 1-Jul-05].

For the MR discourse, thus, the MPL remains sacrosanct and its preservation in its “original” form the most important issue; any attempt to “interfere” with it, whether it comes from the HR or the S/W discourse, gets termed as “anti-minority”(read “anti-Muslim”) through the logic of equivalence. The Constitution is appealed to as the final authority only when its provisions can be used to support the paradoxical claim of the primacy of shariah for the Muslim population of India.

The final set of signifiers in articulating the “MPL” are values pertaining to justice, equality and women rights as human rights.

Justice/Equality and Women’s Rights

The set of related signifiers, justice, equality and women’s rights is again used by all three discourses. It is however, the S/W discourse that emphasizes it the most. The MR discourse deploys these signifiers in a defensive stance to ward off challenges to the MPL by both the S/W discourse and the HR discourse. The HR discourse uses them to demand dissolution of the MPL. In this section, I will first illustrate the S/W discourse’s articulation of MPL by employing this set of key signifiers. This sub-section will constitute discussion of subtly different forms of S/W discourse as well as its struggle to distance itself from the HR discourse despite, rather because of, apparent similarities in the two discourses. I then talk about the MR discourse’s articulation using the key signifiers justice, equality and women’s rights in articulating the MPL and countering the S/W and the HR discourses.

S/W and HR Discourse

In using the signs equality and justice, a strand of S/W discourse, in an extension of the contest between the S/W and the MR discourse over the “true” meaning of Islam discussed in the previous section, argues that the MPL needs reforms because it does not reflect the true Islamic values. For instance, Syeda Hameed, a founder member of Muslim Women Forum – an organization working for Muslim women’s rights, argues for reforms in the MPL by stating:

The fact that Islam has given the most liberal gender rights becomes clear to anyone who goes beyond these heinous practices [triple *talaq* and polygamy] and tries to understand the spirit of the religion. We read in the *Koran* repeated injunctions that women and men have equal status before Allah; whatever is decreed for men is equally applicable for women. We read that Islam is the first religion to have lifted the woman from her abject pre-Islamic status to one in which her right to inherit property is clearly defined” [TOI: 20-Jun-01].

This strand of S/W discourse stresses the congruency between the notion of equality, justice and human rights and Islam to argue that reform in the MPL and its codification can effectively ensure rights of Muslim women and are in keeping with the Islamic values.

Arif Mohammed Khan, a Muslim politician who is known for taking a stance in favor of the court’s decision to grant Shahbano maintenance in 1985 avers that “[a]s far as Islam is concerned, the greatest emphasis is on equality, compassion, righteous conduct and the rights of women. He also maintains that “ ‘reform’ is not the right word to be used in this context since the original scheme as envisaged in the Qur’an is not being implemented to its fullest in the first place” [TOI: 9-Jun-02].

This argument that “true” Islamic values support the notion of equality and women’s rights is also implicitly built in all the arguments of S/W discourse that demand reform in the MPL. As a matter of fact, the proponents of S/W discourse, at various junctures, do acknowledge the desirability of UCC but prefer postponing it precisely for the reasons (justice and women’s rights) that HR discourse cites for implementing it. Brinda Karat of All India Democratic Women’s Association (AIDWA) illustrates this view, by commenting on the HR discourse’s persistent demand for the UCC. She says that “[u]niformity is viewed very narrowly – from a single perspective...between communities, not within communities. This is because they ignore the equality aspect, and look at the issue from the position of men in different communities rather than as an issue of equality between men and women” [TH: 10-Aug-03]. Justice Iyer, former Chief Justice of India, is of the opinion that:

Nationalism is a paramount value and that is higher than personal laws with plural variations. However, when we regard the rights of child and empowerment of women, when we consider the importance of secular justice in family relations, there is a good case for changes in the personal laws. And this applies to Hindu code, Christian law and the Muslim shariat. [TH: 6-Sep-03]

Thus, prioritizing women and child rights over the need for the UCC, he recommends that the first step should be to “introduce progressive changes in the Muslim law, the Christian law, the Parsi law and the Hindu law, keeping their identity intact” [TH: 6-Sep-03]. Madhava Menon, a legal expert and educator, who is also an advocate of incremental reform, says, “Islamic law like any other law is in need of reform. The urgency lies in application of contemporary standards of equality, dignity and individual rights in matters relating to marriage divorce, inheritance, guardianship and maintenance” [TH: 18-Oct-05].

This stance, while challenging the MR discourse's insistence on the inviolability of the MPL, counters the HR discourse on the MPL in two ways. First, by recognizing the MPL as a symbol of Muslim identity, it legitimizes its protection (albeit with reforms); secondly, by indicting all personal laws (not the MPL alone) as disadvantageous to women, it undermines the effort of the HR discourse to target the Muslim community and its personal laws as exclusively regressive.

Besides demanding the codification of the MPL and its reform, the S/W discourse uses the key signs "justice, equality and women rights" to argue that the MPL should not be allowed to override the rights available to women under secular provisions like for instance CrPC section 125 [TH: 30-May-01]. B. G. Verghese, a well known journalist and author, argues that the right to freedom of religion doesn't preclude the availability of secular options that exist along with personal laws for all citizens. He reiterates that "[b]oth Article 25 (freedom of conscience and free profession, practice and propagation of religion) and Article 26 (freedom to manage religious affairs) are ... subject to considerations of public order...and to the values enshrined in all other fundamental rights such as equality and social justice" [TH: 13-Aug-03]. In this view the existence of MPL, or other personal laws, is not a problem, but treating them as over and above all other rights that Indian citizens are entitled to is. An article comparing Imrana's case and its potential political fallout to the Shahbano controversy asks "[h]ow can we hand over the citizens of a secular nation to the dictates of religious and caste *panchayats* and not assert that their actions violate the fundamental rights granted to all people? [TH: 10-Jul-05].

The HR discourse uses the position of S/W discourse on justice, equality and women's rights to complement its own approach and to seek legitimization of its demand for

the dissolution of MPL. In the context of Imrana controversy, the Hindu nationalist party BJP's president, L. K. Advani, proclaimed in a State Committee meeting in Madhya Pradesh that his party was "serious about ending unjust acts against Muslim women in the country". The committee passed a resolution condemning the Board's decision and called it "shameful", "against humanity", and "against natural justice" [TOI: 2-Jul-05].

The S/W discourse, therefore, while challenging the Board by deploying this set of key signifiers, also contains an implicit or explicit indictment of HR discourse for employing "equality", "women's rights" and "justice" for its own ends. It argues that the proponents of HR discourse use these signs only in connection with the MPL for the purpose of criticizing it and are not really committed to these values. Shabana Azmi, an outspoken women's rights activist and an actress explains that "... BJP becomes suspect when it asks for a uniform civil code because it raises this issue only when a Muslim woman's misfortune is highlighted in media..." [TOI: 7- Jul-05]. Guha, a renowned historian and columnist who writes on social and political issues, points out:

The opposition to the reform of Hindu personal laws was led by the Jana Sangh (forerunner of today's BJP). The RSS held hundreds of meetings throughout India, where the proposals to outlaw bigamy [among Hindus] and to give women property rights were denounced in the strongest language. ... The laws being drafted to allow personal choice in marriage and inheritance rights to daughters were denounced as 'an Atom Bomb on Hindu society. [HT: 13-Dec-07]

Doubting the commitment of BJP to ensure justice to Muslim women, Guha further reminds that, during its six years term of heading the Central Government, the party did not attempt to introduce any legislation in favor of Muslim women. He suggests that "[t]his may well have been because to resolve the issue would have been to render it impotent as an

electoral gambit. So long as the Muslims had their separate laws, it was easy to portray the community itself as separate, and hence not worthy of trust” [HT: 13-Dec-07].

Muslim Right Discourse

The MR discourse deploys the key signifiers, equality, justice and women’s rights in a defensive stance; it invokes these signs to articulate the MPL in response to the challenge posed by both the S/W discourse and the HR discourse, both of which point out the inadequacy of MPL in measuring up to these values.

It does so by combining the signs equality, justice and women’s rights with Islam, not unlike the S/W discourse. However, unlike the S/W discourse, the MR discourse casts the MPL as manifesting those values and reflecting “true” Islamic laws.

As a part of efforts to “dispel misconceptions about the Muslim Personal Law” the then assistant secretary of the Board defended “Shariat as being more progressive than the Hindu or Christian laws as far as women are concerned”. He added that “[i]t frowns on dowry, for instance, and does not allow women to be left destitute or without support” [TH: 4-Apr-05].

In asserting Islam’s efficacy in ensuring women’s rights (and through a chain of equivalence of the MPL’s and the Board’s), the MR discourse never fails to mention dowry. Machchala, a prominent member of the Board, defends the Board by saying that “[t]he board has several achievements to its credit” and points out as an example that “it took the initiative in doing away with the practice of dowry” [TOI: 4-Jul-04]. Assertions like “[d]owry is being propagated as 'haram' and anti-Islam” [TOI: 25-Oct-06] abound in the MR discourse specifically in the statements made by the Board members. The issue of dowry is deployed to defend and reinforce the MR discourse for two reasons. One, dowry related exploitation and

violence against women is a visible and a prevalent social problem in India. Second, traditionally the practice of dowry is identified as a Hindu matrimonial practice. It thus gives the MR discourse both: a visible issue on which they can claim to be pro-women and a reason to assert Islam's position in regard to women as more progressive than that of Hinduism's and thereby give a retort to the HR discourse for its attack on Islam / MPL.

Property rights for women are another issue that the Board refers to in its discussions very often. Here too, the comparison with the "Hindu" way of life is implied as traditionally, before the reforms in the Hindu Property Act, Hindu women were not eligible to inherit property.

On the issue of triple *talaq*, one of the most controversial issues, the general stance of the MR discourse is captured by the following statement made by a group that threatened to protest if the Board accepted the demand for changes in the MPL: "...under the Shariat law, a person should refrain from giving three talaqs in one go. But if he ever does that, the divorce is absolutely valid and there can be no reconciliation between the husband and the wife. The basic law of the Shariat should be followed and it cannot be changed under any circumstance," [TOI: 30-Jun-04]. The Board casts triple talaq as a "social evil" but refuses to ban it and maintains that if "the Shariat laws are implemented in letter and spirit there is no need for any change" [HT: 28-Jan-06; TOI: 2-Jul-04]. This discourse reframes the issue not as an inequitable legal provision but as an issue of marital discord, for which the Board claims to have taken various steps, including awareness generation (TH: 26-Dec-04). The Board's convener, Afridi, cites the usefulness of model nikahnama in this regard. He says:

Apart from incorporating 'hidayat' (advice) to the married couple to follow in case of disputes, the guidelines fix roles of each of the partners... the women have been defined as

'owner of the household' responsible for looking after its affairs, while the men have been made responsible to earn and run the family. [TOI: 1-May-05]

On other occasions, question of not providing women the right to divorce is explained away by statements like "... it was always the husband who had to bear the financial burden of divorce and someone who did not have to bear the financial burden could not have the right to break the marriage contract" [TH: 2-May-05] or that "[s]uch a clause will only increase the number of divorces in the community" [TOI: 30-Jun-04].

The issue of polygamy is always sidelined (at least in the mainstream discourse) and my research did not reveal any direct defense of the provision, other than the general assertion that no changes are possible in the MPL. The maintenance issue, according to this discourse, has been settled, of course, by the provisions under The Muslim Women's Act (1986). At other occasions it resorts to metaphors that deflect any concrete discussion on gender equality. For instance, on being questioned about Board's reservation on letting women pray in the mosques, Qureshi, a Board member, says, "'We have two hands, if one hand wishes to come over to the other side, can we function normally?'" [TH: 4-Apr-05]. Sadiq, who is a Vice President of the Board, is considered to be the most progressive member of the Board and is often quoted in newspapers for holding views that are deemed as unorthodox and in disagreement with the other Board members. On being asked about the position of Muslim women, he too skirted any direct response to the specific issues by observing that "[n]o other religion is as gender friendly as Islam...[it is the] first religion that accorded equal property rights to women". He added "[a]ccording to Qur'an, if you offer namaz in a house where a female claimant has been denied her share, your prayers will not be answered [TOI: 7-Nov-06]. The MR discourse thus either reframes issues or shifts the focus by bringing in discussions about dowry and property rights.

Thus, by creating chains of equivalence between the signs ‘justice, equality and women rights’ and ‘Islam’ and ‘MPL’, each discourse articulates the MPL differently. The S/W discourse equates the signs ‘justice, equality and women’s rights’ with ‘Islam’ and casts ‘MPL’ as incongruent with both (laying the premise for reform in the MPL). The HR discourse equates the signs ‘Islam’ and ‘MPL’ and differentiates between both of them and the signs ‘justice, equality and women rights’ (bolstering the argument for dissolving the MPL altogether). Finally, the MR discourse equates all three signs ‘justice, equality and women rights’ with ‘Islam’ and ‘MPL’ (countering arguments for changes in the MPL or its dissolution on the grounds of their incongruence with either the notions of justice or with the ‘true’ Islamic values).

Discourses Articulate the “Muslim Woman”

In this section I will discuss specifically, the subject positions that the discourses discussed above are constructing for the Muslim woman. In doing so, I use the interview data to supplement my arguments.

It is quite evident that the MPL as a symbol of “Muslim” identity is entirely anchored on the position of “Muslim woman” within the “Muslim community”. As the preceding discussions underscore, the debate over the MPL is spurred exclusively by the question of treatment of Muslim women on issues categorized as private or “personal”. Before delving into how the three discourses are articulating a Muslim woman’s identity, I will underscore, how all discourses are rooted in meanings that are already fixed and in this sense have been established hegemonically. Since the central debate on the Muslim women’s question pertains to the “personal” / private domain, it is exclusively their position in this domain - or more specifically, their marital relationship and their rights and duties within it - that defines

the “Muslim woman”. As a professor in AMU observed, “... the framework is still private sphere and patriarchal; the women’s movements are not able to challenge it. Intellectuals and feminists all work within this framework” (I: 2-M- 6/22)¹⁸. The MPL is the most significant and talked about sign in the mainstream media that generates discussion on the status of Muslim woman. To the exclusion of all other issues like education, health and employment that may affect Muslim women’s lives (Hasan and Menon, 2005) - in ways similar to or different than other women- it is the debate around her rights and duties as a wife (or a divorcee) that becomes an important source of constructing the meaning or identity of a “Muslim woman”.

Should a Muslim man have a right to keep four wives? How much say does a Muslim woman have in asking for or accepting a divorce? What rights does she have once she becomes a divorcee? These are the questions that determine a major part of her identity in the public discourse? Even before these questions are answered by different discourses, there are several aspects of her identity that get already fixed by the very nature of questions: that she will be dealt with not as a woman but always as a “Muslim woman”; that it is her position as a (Muslim) wife that determines who she is; and that the position is clearly an unequal one compared to her husband, the (Muslim) man as well as to other women, as the issues afflicting her do not afflict other women.

In regard to the media representation an interviewee, a practicing doctor and a women’s rights activist echoed many other interviewees’ observation that “... as for Muslim women, media doesn’t even recognize [them as] women, they are neither here nor there. The only projection is that of victims. There are no normal, thinking working women who can

¹⁸ The code [I: 2-M- 6/22] refers to interviews. I: 2 = interview number 2; M = man (W=woman); 6/22 = month/day (all interviews were conducted in year 2006).

argue and talk” (I: 5-W-6/26). Another women’s rights activist, an academician, recognizes the value of debating issues related to Muslim women but adds that the focus of media only on certain kinds of issues may harm in two ways: one, that it sensationalizes and plays to the market forces and, two, there is “absolute falling into the trap of some of these fundamentalist stereotypes... that everything is alright with Hindu women but Muslim women live in this condition (I: 15-W-7/26). It will be appropriate to conclude that the victimhood and the domestic boundary within which the most significant debates about the status of a “Muslim woman” are taking place in the country, constructs her as a different and, in a way, a lesser citizen (a position that MPL has fixed for her) than all the other women and, of course, the men in her community. Starting from this premise then, different discourses try to constrict or enhance the agency of this existing “Muslim woman”.

The HR discourse is most unambiguous in articulating this passive identity. In this discourse, she is never a woman but always a “Muslim woman” whose exploitation and helplessness is a result of being a “Muslim woman”, living under the tyranny of her husband, the Muslim man, and governed by the “regressive” and “medieval” Islamic laws. Illustrative of this view is a VCD released by BJP for its election campaign (discussed in more detail in chapter V) that contains fictionalized scenes where the protagonist called “Masterjee” is trying to raise awareness about the threat that Muslims in India pose to the Indian nation. Among these scenes there is one where a Muslim woman (who is “educated and wise”) complains to Masterjee about her religion saying “this religion considers us as objects to be used” [TH: 7-Apr-07]. In this discourse this is, in effect, a fixed identity and the only way out of it is to break free of the MPL, of the control of Muslim men and, by extension, of the Muslim identity- an event that is paradoxically not extended as a real possibility as the

identities are assumed to be absolutely essential and fixed. The term “Muslim” or “Islam” in this discourse equates to regressive and undesirable and, therefore, by definition a “Muslim woman” in general cannot be modern or empowered unlike other Indian (read Hindu) women.

The dissolution of MPL is advanced as the solution for addressing the situation of Muslim women, in which case the secular Indian laws, in the form of UCC will be able to save them from the regressive Muslim men. As Sunder Rajan (2003) explicates “[t]he UCC that is envisaged will be a version of Hindu Law and will thereby secure Hindu hegemony” and adds “[m]uch is made of the so-called progressive reform of Hindu Law in the 1950’s as a model for a UCC” (p. 149). However, since this discourse never recognizes them as women with concerns and needs other than those of being protected within the oppressive marital relationships with Muslim men and as women who have some agency (an attribute that in the context of debates on the MPL, other [especially Hindu] women do not lack), it offers Muslim women a subject position of passive victims.

Like the HR discourse, the MR discourse also always constructs the Muslim woman as a “Muslim woman” and never as a woman. Here too, her identity as a (Muslim) woman is constituted, primarily and most tellingly, by her position in the framework of marital relationships. However, according to this discourse rather than being a victim she is getting a fair deal that has been fixed divinely. It is not claimed to be the same or as equal to that of man but fair, as under Islamic laws she gets the rights that she is entitled to as a woman. Arguments like “women’s rights as human rights” or appeal to fundamental rights available to all citizens under the constitution are of little relevance for this discourse for two obvious reasons. One, as the debate is about the “*Muslim* woman”, so it is the Islamic laws that

should guide what she is entitled to, and two, since the rights of a Muslim woman pertain to the “personal” domain, so it should be left to the Muslim community (read the Board and allied institutions) to deal with them, without any “outside” interference, in keeping with the State’s policy of non-interference.

In this discourse, then, what “Muslim women” are entitled to get is determined foremost by the religious community they are deemed to belong; their entitlement as citizens of the Indian state becomes secondary. The rights granted to all its citizens by the Indian state can be exercised by Muslim women only if they are not in conflict with the religious rules as specified by the religious leaders (the Board). This, of course, pertains only to the “personal” or private domain. However, even from a cursory analysis of the “rights” granted to “Muslim women” and the obligations specified for them, it can be concluded that they are not constructed as much more than existing in this private domain only. For their happiness, well being and livelihood, they can depend on their husbands who, in keeping with the Islamic laws, will be (or should be) generous towards their wives. For a Muslim woman divorced from her husband, and having no source of income, there is the larger Muslim community in the form of *waqf* Boards that becomes responsible for destitute, divorced “Muslim women” as per the Muslim Women Act (1986). This seems to be a foolproof arrangement that can take care of all the needs of a “Muslim woman”. Therefore, it is not only not appropriate for the state, or any other entity, to interfere in the “personal” affairs of the Muslim community but also pointless as Islam itself has made generous provisions for women and MPL in its current form is making them available what is due to them.

In the face of rising Hindu nationalism, the overtly anti-minority, particularly anti-Muslim, position has become a part of the mainstream political discourse. The MR discourse,

consequentially, gets cast as the discourse of a persecuted community. This provides legitimacy and credence to the MR discourse's appeal to religious freedom for preserving the MPL. In this context any challenge to the MR discourse, is framed by its proponents as constituting an alignment with the HR discourse. Alternatively, the HR discourse also treats any challenge to the MR discourse as legitimization of its own stance. This creates a predicament which the S/W discourse finds itself navigating at all times. The manner in which the (Muslim) women's rights and the right to freedom of religion (by Muslims) have been positioned as two competing discourses by both the MR and the HR discourses, has created a catch-22 situation for the proponents of S/W discourse. Countering the MR discourse's anti-women stance puts it at the risk of being co-opted by the HR discourse, and countering the HR discourse's anti-minority stance tends to legitimize and strengthen the MR discourse.

The fact that the central debate on the rights of Muslim women has been bounded by the concerns pertaining to the "personal domain" has forced the S/W discourse to argue within this boundary. These debates and their outcomes (or lack of an outcome), no doubt, pertain to a critical reality of the lives of a very large number of women. It therefore, becomes absolutely essential for a women's rights group to be a participant in these debates and challenge both the MR and the HR discourses. But, as the boundary is set by the HR and the MR discourses' ideals of womanhood, the S/W discourse's obligatory restriction to that boundary only legitimizes it further. Also, since it allows a limited room for the S/W discourse to navigate, most of the assumptions of MR and HR discourses remain unquestioned. However, it is also true that within this boundary the S/W discourse is keeping the agenda of women's rights alive.

As the previous sections illustrate, the S/W discourse's challenge to the MR discourse is framed primarily in two ways: (1) misinterpretation, i.e. Islam gives more rights to women than have been granted to them by the Board on account of its misinterpretation Islamic provision; (2) citizenship + religious rights, i.e. there are secular laws that can be practiced by Muslim women without being in conflict with the Islamic laws. There is a third, less vocal stance in public debates about Muslim women that argues for women's rights as human rights irrespective of religious community they belong to. I will discuss each stance separately.

Misinterpretation: This stance, which can be identified as a communitarian view reinforces the Muslim woman's identity as a "Muslim woman" not unlike the MR and the HR discourse. However, this discourse neither constructs her as a victim (like the HR discourse) nor agrees to the MR discourse's claim that the present deal for women is a divinely created deal. It challenges the Board's (and other allied bodies') interpretation of the Quran to argue that Islamic laws give a much fairer deal to women. Muslim women, according to this discourse, might be treated differently but not unequally to men. This position avers that Islamic laws are adequately progressive to ensure women all rights due to them as human beings and therefore the MPL (if practiced in its "real" form) doesn't need to be replaced or supplemented by any other law. It is constantly negotiating with the Board for the acceptance of its interpretation over theirs. In doing so, however, it paradoxically gives power to the Board, the very body it is trying to challenge. By negotiating with it and trying to persuade them to accept a more progressive interpretation of *shariat*, it acknowledges Board's authority over the lives of "Muslim women". The formation of the Women's Board in 2005 was an action that challenged the Board's authority overtly. How much success the

Women's Board gets in establishing itself as an authority over the "personal" affairs of the Muslim community is yet to be seen. In public debates, the Board continues to project itself as the authority over Islamic laws that should govern the Muslim community's way of life in India and that is how it is regarded by the State and the media. However, the Women's Board is a visible and symbolic challenge to the MR discourse. It complements the MR discourse with its position that the Muslim women be governed by the MPL but confronts it by rejecting the Board's interpretation of *shariat* on many counts.

Citizen + religious rights: The second stance of S/W discourse builds on the first. It censures the MR discourse for an insincere and regressive interpretation of the Quran and believes that women can get a much fairer treatment than is meted out to them under the MPL. However, going a step beyond, it also demands extension of secular rights to Muslim women that are their due as women citizens¹⁹ of India. Thus, within this discourse, the MPL is not a threat either to the modern Indian nation or to the rights of Muslim women but it and its custodians shouldn't be seen as the only decisive agents of how a "Muslim woman" should lead her life. This discourse while recognizing her as a "Muslim woman", also recognizes her as a woman and therefore extends to her the rights and privileges beyond the boundary of MPL and her identity as a member of the Muslim community. Thus while negotiating with MR discourse for more rights for the "Muslim woman", this discourse also demands the state to step in and treat her as similar to other Indian women. In practice, however, since the legitimization of MPL has come to be associated with legitimization of the Board's authority over deciding all "personal" issues pertaining to the Muslim population in India - and because there is inescapably an overlap between "personal" and other issues

¹⁹ I specify women citizens as there are differences in rights and provisions for men and women under the secular civil laws, some (but not all) of these are manifestation of the principle of positive discrimination.

related to citizenship rights – the answer to the question, how and when to tell the Board to back off, is not clear.

Women rights as human rights: The third stance that simply asks for treating women's rights as human rights irrespective of the religious community they belong to - although the most straightforward as far as ensuring women's rights are concerned – has always been the most controversial. The marginality of this stance even within the proponents of S/W discourse is illustrative of the significance of the religious nationalist discourse.

The complexity of this position is made evident by the array of opinions on these issues among my interviewees. All of them, of course, concurred that the MPL is heavily discriminatory against Muslim women. They had, however, different positions on how to deal with it. Expressing her own predicament, a women's rights activist, who is a social worker by profession, said, "It is a dilemma. You say that you want UCC; you are siding with the Hindutva forces. As a woman I think you need to do away with all personal laws but not at the cost of siding with the Hindutva forces [I:11-W- 7/6]. Translating this personal dilemma at the level of women's movement, an academician, whose works include writings on women's issues and communalism in India explains that the women's movement started rethinking about the UCC "because the Hindu right claimed the idea of UCC. They turned on its head the idea of equal rights. That is at the heart of the crisis, of what is happening" [I:12-W-7/06].

Another interviewee, a practicing doctor who is closely associated with a women's rights organization, believes that "only if the Muslim intelligentsia itself decides, then the issue will get out of BJP's [the Hindu right political party's] hands... [I: 5-W- 6/26].

An academician, also a member of the All India Democratic Women's Association (AIDWA, the largest women's organization in India), explains the shift in the AIDWA's stance by saying:

It is a movement that exists within the conditions that prevail and it can grow and advance only by negotiating space within those conditions. . . . When the demand for uniform civil code came up it was in terms of a law that was to come up. . . . it was located in the discourse of equality. It was not located in the discourse of identity where the religious fundamentalists are today trying to pitch their slogans. [The demand for equality] cannot be transposed totally out of context in a political context where the political manipulation and negotiations are happening on the basis of identity as a primary category. Because in that the demand for the uniform civil code becomes a demand for . . . Hindu majoritarian position saying you are in the minority so you have to accept this. [I: 15-W-7/26]

Another AIDWA member, justifying negotiations with the Board to secure more rights for Muslim women, states that since the RSS has communalized the issue of UCC “what we can at least ask for, at this juncture, is a more progressive interpretation of Shariah” [I:7 W-6/30].

Exemplifying the citizenship + community rights position, some of my interviewees suggested availability of choice to opt for secular laws as a solution. For instance, a History and Women Studies professor suggested:

Property rights etc. should not be framed by religion alone; it should be one of the options. Just like the civil marriage, there needs to be similar provisions for other civil rights too besides MPL. The problem of reform in MPL is that with the Hindutva making it an issue, Muslims will not like [anyone] to tinker with their laws” [I: 6-W- 6/24].

There were others who firmly believed that the women's rights discourse needed to be less defensive. As one of the interviewees recognizes “you can't run away from the fact

that women are concerned with their religious identity and caste identity” and that “you can’t have an easy point of view based on women’s experiences who are Hindu, urban and middle class alone”. However, she adds “there is a need to move away from being afraid of talking about patriarchy without being afraid of the holy cows”. [I:12-W-7/6].

Taking this position forward, a social activist, running a publishing house for feminist writings, says that the shift in stance from demanding the UCC to reform in the MPL “is a bit of both [compromise and a strategic move]. She adds:

Within the women’s movement ...one line of thinking says that yes you have to reform the personal laws and you have to codify them and you cannot bring radical change until the communities themselves are ready for it. There is another line of thinking that the terrain is too politicized and we should wait. I am with the line of thinking that thinks the opposite. We need to make a fairly radical kind of change ...; a change that says no matter which religious community you have been born into, from the moment of your birth you are an Indian and you are governed by the Indian law. If you wish to choose to be governed by a personal law you can choose when you are getting married. So you make a choice then but the default is you are an Indian. Currently, the default is that you are either a Hindu or a Muslim or whatever and then if you are getting married if you want to be an Indian you choose the Special Marriage Act” [I: 19-W-8/9].

Taking a somewhat similar position, another women’s rights activist laments that:

The whole discussion around all personal laws - Hindu, Muslim, Christian - has now been totally shelved which means the question of equality in the eyes of law, which is a constitutional guarantee, is in abeyance. Obviously, if women are no longer equal in the law, it is reinforcing patriarchal privilege. [I: 18-W-8/08]

Further, rejecting the strategy of asking for more rights within religious laws, she contends, “[How] can it be because no religion believes in the equality between the sexes? It

is a contradiction. ... You have to have secular discourse because equality itself is a discourse of secularism; it is not a discourse of religion [I: 18-W-8/08].

The fact that any real or perceived threat to the MPL is framed by the proponents of MR discourse as a threat to the right to religion of the Muslim minority population in India, and that the HR discourse has employed the existence of MPL and the authority of the Board in strengthening its rhetoric of the threat that Muslims pose to the Indian (Hindu / secular)²⁰ nation, makes this stance of S/W discourse a grist for both the other discourses. The fear that the HR discourse will use it to bash the Muslim community and the MR discourse may use it to pull another “Shahbano” and further put Muslim women outside the scope of secular laws, makes the proponents of S/W discourse hesitate from supporting this stance in the current scenario. While it has never been easy to challenge personal laws in India particularly the MPL, since the Shahbano case and with the new impetus that the Hindu nationalist discourse has gained in the last 18 years or so, it is increasingly the HR and the MR discourses that have been defining the boundaries for S/W discourse where the rights of Muslim women are concerned. As the prologue to this chapter exemplifies, it finds itself positioned precariously when it comes to demanding just treatment to women as Indian citizens if the women concerned are Muslim. It finds itself in a position where any overt challenge to the identity “Muslim woman” runs the risk of reinforcing that identity even further.

²⁰ The HR discourse argues that it is because of Hindu values that India is secular and in fact has let its minorities - both Muslims and Christians - dominate Hindus. This tolerance of Hinduism is therefore used to justify a militant Hindutva brand of Hinduism (Bacchetta, 2002).

CHAPTER V

MARRIAGES: “HINDU WOMEN AND MUSLIM MEN”

Prologue

This was back in 2002 in India, way before this research was conceptualized. A friend and his girlfriend came to our house in panic. The problem – our friend (I will call him Ahmed) was a Muslim and his girlfriend (I will call her Mohita) was a Hindu. They wanted to get married but Mohita’s family was against the alliance. They were concerned that being upper-caste Hindus of good social standing, they would lose face in their hometown (located in Uttar Pradesh in North India) if their daughter married a Muslim. Additionally, they were concerned that Mohita will give up her Hindu identity and convert to Islam. Ahmed and Mohita had tried in vain to convince them that they intended to marry under the Special Marriage Act, 1954, under which no conversion took place and both of them would continue to follow their respective religions. While they were aware that it would not be easy to convince Mohita’s parents to let her marry a Muslim, they did not realize the enormity of the situation until Ahmed was threatened by Mohita’s uncle who, being an influential government official, threatened to get Ahmed arrested on charges of terrorism and put behind bars. When this, too, failed, Mohita’s family decided to force her to leave her university accommodation in Delhi and go back home with them. She somehow managed to get in touch with Ahmed; and while her family waited outside the university dorms, she picked up her few belongings, scaled the back wall of the building, and came with Ahmed to our house.

The next few days were spent in figuring out how to get them married as soon as possible so that Mohita’s family could not put any further pressure on them. Since the

marriage under the Special Marriage Act, 1954 requires a notice period of one month and the prospective bride and bridegroom's family is informed about the approaching marriage by registered post²¹, their situation ruled out that option for them. The other available option to them was to get married either according to the Hindu custom or according to the Muslim custom. But that needed one of them to get converted to the religion of the other. A friend, who knew a *qazi* (Muslim priest), suggested that if they wanted to adopt the Islamic procedure, they could get legally married right away as the process of conversion and *nikah* (marriage rites) both required only reciting a few Quranic verses after the *qazi*. They considered the option but then decided against it. They feared that this would further infuriate Mohita's family as they would perceive it as a deliberate affront to them and their religion. A Hindu marriage therefore appeared to be the compromise solution. In order to arrange for that they needed a Hindu priest who would agree to perform the marriage. In ordinary circumstances, it wouldn't have been difficult to walk into one of the many temples around the place where we lived and request a priest to perform the marriage. However, in this case, everyone involved felt the need to be guarded. While inter-religious marriages have always been a sensitive issue in India, with the rise of Hindu religious nationalism, marriage between a Hindu girl and a Muslim boy is regarded with particular suspicion by the Hindu religious bigots. Therefore, we were hesitant to approach any of the temples randomly without knowing how the priests would respond to Ahmed and Mohita's alliance. After seeking help from several friends, we were finally able to contact an *Arya Samaj*²² temple priest who was willing to perform the marriage.

²¹ In 2009, the Act has been amended to discontinue the practice of informing parents of the prospective bride and bridegroom.

²² A reformist sect of Hinduism, based on the tenets of Swami Dayanand who, in the last quarter of the 19th century, wanted the Hindus to revive ancient Aryan vedic rituals and give up idol-worship.

The next day, at the temple, after Ahmed performed the rituals that were required for his conversion to Hinduism, they both were married in the presence of several friends. The marriage certificate issued by the temple was valid to prove that they were legally wedded. It had been over a week since they had eloped. Now armed with a marriage certificate, Mohita decided to confront her family. She called them up to inform them about the marriage and insisted upon paying them a visit along with Ahmed. She made a deliberate effort to dress up like a traditional, married Hindu woman for the meeting. She ensured that she put on *sindoor* (vermillion - red powder that Married Hindu women put in the parting of their hair, symbolizing their married status and wish for their husband's long life and good health), wore a *managalsutra* (a necklace made of black beads, having the same symbolic value that vermillion has) and a set of toe rings (when worn in both feet, they indicate that the woman is married). Since she did not care much about those traditional symbols and gave up wearing them later on,²³ her decision to do so for that occasion was significant. In retrospect, during the process of this research, I realized that Mohita's attempt to play the part of an ideal Hindu married woman for that occasion embodied a range of meanings that she wanted to convey to her family so that they would accept the marriage.

At a basic level, her attire that announced overtly her married status to anyone who knew the significance of those symbols, was a way to make her parents recognize the fact that she was now a married woman. This symbolism was perhaps as significant, if not more, as the legal aspect of her married status. The fact that she dressed up as a quintessential Hindu wife has a sub-text conveying that her destiny has been fixed. Indian cultural values permit parents, or more specifically, the fathers to take decisions regarding all aspects of their

²³ Traditionally a married woman is supposed to wear these symbols, especially the first two, all her life and to take them off if and when her husband passes away.

daughters' lives as long as they remain unmarried. The daughter's marriage, which is deemed as permanent and destined, transfers that control over her life to her husband (Raheja, 1995). At that level of cultural values, thus, she was perhaps sending a message that they did not have control over her life anymore and therefore might well accept the situation.

At another level, she was responding to the anxieties of her family (as well as that of the larger "Hindu community") that had led them to oppose her and Ahmed's alliance in the first place. In other words she was responding to the social and (in the context of the contemporary political scene in India) political discourse about the threat that Muslim men pose to Hindu women (and the Hindu community) by conquering them over to "their" side. She wanted to reassure them that she was still a Hindu and that she was no different than all the other married Hindu women. She was overplaying her Hindu (wife's) identity to compensate for the '*Muslimness*' of her husband.

Ahmed and Mohita's story had a happy ending with her parents finally giving in and accepting the marriage. Nevertheless, her family's reaction to their intention of getting married and Mohita's effort to make them accept the marriage and to pacify their fears is illustrative of the process of how the sign "Hindu woman" is being deployed in constructing and consolidating the group identity "Hindu".

Introduction

My reasons to study "marriages between Hindu women and Muslim men" in India, as discussed in chapter III, pertain to the increasing incidences of conflict around such marriages. While inter-religious marriages are disapproved of in general, the Hindu Right's opposition to marriages between Hindu women and Muslim men is particularly strong and often takes the form of public protests. Individual incidences of Hindu women marrying

Muslim men get framed as a threat to the Hindu community. This makes for a clear convergence of the discourse of Hindu nationalism and the deployment of “Hindu woman” in constructing a “Hindu” identity.

In this chapter, I first contextualize the discourse around the issue of alliances between Muslim men and Hindu women by relating some of the specific stories that have been covered by news media, over a period of time. I then map the debate between the two competing discourses - the Hindu Right and the Secular / Women’s rights. In the third and final section, I discuss what subject position each discourse is constructing for Hindu women.

Before delineating the context, I would like to briefly talk about the newspaper articles that I used for this analysis. My search terms (“Inter-religious / interfaith marriages” and “Hindu Muslim marriages”) generated articles that dealt with specific stories as well as that dealt with opinions on inter-religious marriages in general. While the specific stories were all, but two, about Muslim men and Hindu women, the second category was not limited to Muslim men and Hindu women alone. It covered inter-religious marriages involving different religions, also including marriages between Muslim women and Hindu men. These articles largely exemplified the discourse that countered opposition to inter-religious marriages and did not frame marriages involving Muslim men and Hindu women as any different from other inter-religious marriages.

Since inter-religious marriages are a relatively less debated issues and became a part of the public debate much later than the MPL, the need for additional research to supplement information available in the newspaper articles took me to other sources of information - primarily news magazines and organizational websites that I have quoted in this chapter.

The Contentious Marriages

In this section, I relate four specific cases of marriages between Hindu women and Muslim men that exemplify the role of the families and the Hindu rightist groups as well as of other institutions in opposing such alliances.

Case 1- Bharti Barot and Salim Khan

In 2001, Bharti Barot, a 19 year old Hindu girl from the state of Gujarat, and Salim Khan, a 21 year old neighborhood Muslim boy, eloped and got married. The girl's father lodged a police complaint against Salim of kidnapping his daughter, leading to police visits to Salim's house where his mother lived. About a month later, in August, Bharti appeared before the police along with her lawyer. She gave a statement that she had married Salim Khan of her own accord and presented their marriage certificate as proof. Despite recording Bharti's statement, the police sent her to a women's shelter and refused to let her go to her husband's home. Later, her parents took her away from the shelter claiming that she had contacted them and wanted to go with them. Her parents eventually took her to the *Hindu Mahasabha* (a right wing Hindu organization) office to have her persuaded to snap all ties with Salim and go through a 'purification process' for reconversion to Hinduism. According to the report, her parents planned to get her married off to a Hindu boy after that process. At the office, she was said to have gone to the bathroom under the pretext of taking a bath, poured kerosene oil over her and set herself on fire. She later died of burns in a hospital [TH: 11-Aug-01].

An online news website that covers stories concerning *dalit*, tribal and minority issues suggests complicity of police and the women's shelter in preventing Bharti from going to her

husband's house. Also, it highlights the gaps in the story about the events that led to Bharti's death at the *Mahasabha's* office [Ambedkar.org: 24-Aug-01].

Case 2 - Avedna Sharma and Zakir Hussain

In 2003, Avedna Sharma, a 21 year old Hindu girl from a north Indian state, appeared before the state High Court on July 18, with a 37 year old Muslim man, Zakir Hussain, who she claimed to have married under the Muslim Personal Law on June 4 of that year. However following it, she also had a grand wedding, arranged by her family, with a Hindu man, Amitabh, on July 13. Apparently, two days after her wedding, while travelling with Amitabh, she got off the train at a railway station, purportedly to go to the restroom and disappeared until her appearance at the court. Avedna and Zakir claimed that her marriage to Amitabh was a forced one while her parent's accused Zakir of abducting Avedna and keeping her with him forcibly. Avedna maintained that she had married Zakir of her own choice on their second appearance at the court, too [TOI: 2-Aug-03].

Online editions of two other news papers "cities.expressindia.com" and "tribuneindia.com" covered the issue extensively. The story pieced together through several articles from these sources give the following details. Initially, in her interviews to newspapers Avedna pleaded for her parent to accept her marriage with Zakir. She informed that during her appearances in the court, she and Zakir were mobbed and along with her parents, people were pressurizing her to return to her parent's house. On her plea, she was granted protection orders to prevent her parents from forcing her to come home.

Subsequently, however, admitting Avedna's brother's complaint of abduction against Zakir, the city magistrate ordered a probe. Avedna and Zakir fled but were later arrested by the police. The charges on Zakir ranged from abduction, forging affidavits and the marriage

certificate. Both Zakir and Avedna were kept under judicial custody for questioning. Later Zakir was put in jail, his bail plea rejected as proof against him for falsifying documents emerged. Untill October 2003 Avedna maintained that she married Zakir of her own free will and, as she waited in the court is reported as saying “Why can’t they realize that I am living happily with my husband? Why are they trying to give a simple love story a communal touch? I simply fail to understand” [tribuneindia.com: 10-Oct-03]. For her protection, she was sent to an undisclosed location at the order of the judge. However, the coverage of the case around June 2004 informs that she was returned to her parents and in a press conference she alleged that she was kidnapped, tortured and harassed and feared that her kidnappers wanted to sell her to someone in Gulf countries. She also expressed “gratitude to her parents for accepting her despite all she had been through” [cities.expressindia.com: 20-Jun-2004].

Meanwhile, Zakir was in jail facing cases under various sections of Indian Penal Code [expressindia.com: 28-Aug-03 2003; 20-Jun-04; tribuneindia.com: 28-Jul-03; 10-Oct-03; 18-Oct-03; 26-Jan-04].

Case 3 - Swati and Amir

Amir Mirza, a Muslim man, and Swati, a Hindu girl, both from a small town in Gujarat - a western Indian state - got married in June 2006 after a four year courting period. In Amir’s words, “My parents were against the marriage. Her parents had problems. Our friends thought it was a bad idea. At that time we only had ourselves”. He took out all his savings and both of them eloped to Bangalore, a south Indian city where they got married. They returned to Gujarat some months later hoping to win over their parents. Swati was pregnant then. Her parents invited them to lunch and kidnapped her from the car in which the couple drove to her house. They dragged her out with the help of some friends. She was

“[d]rugged and locked up in her brother’s house... [and] forced to sign papers claiming her husband had assaulted her”. Later she was taken to a hospital where her two month old fetus was aborted under anesthesia. She managed to escape after two weeks and the couple was in hiding at the time of interview with a Hindustan Times correspondent. Amir’s family however, had reluctantly accepted their marriage [HT: 9-Apr-07].

Case 4 - Rizwanur Rahman and Priyanka

On 18th August 2007, Rizwanur Rahman, a 30 year old computer graphic designer and Priyanka Todi, a 23 year old daughter of a prominent businessman, got married under the Special Marriage Act in Kolkata, West Bengal. They kept their marriage a secret from their respective families until Priyanka moved in with Rizwanur in August 31, 2007. Priyanka’s father refused to accept the marriage, and Rizwanur started receiving threats that he would be kidnapped and murdered unless Priyanka ‘was returned’ to her family. The couple had anticipated harassment from Priyanka’s family and had sought police protection that was refused to them. Instead, the police summoned the couple thrice to the police headquarters and tried to “‘persuade’ Priyanka to return to her parents and harassed Rizwanur” [TOI: 4-Oct-07]. Finally, on September 8 the police registered a case of abduction and theft against Rizwanur and threatened to arrest him unless Priyanaka agreed to go to her family for a week. Under the pressure Priyanka agreed to go but the couple asked for a written assurance from the police that she would be able to return after a week, a request that was denied.

Rizwanur stayed in touch with Priyanka while she was at her parent’s house, until September 12; after that he did not hear from her. He then sought the help of an NGO called The Association for Protection of Democratic Rights (APDR). On September 21, Rizwanur had an appointment with an APDR activist to go to the police station in question, but 20

minutes after his communication with the activist, he was found dead on nearby railway tracks. The police commissioner “shrugged away his death as a ‘simple case of suicide’ even before the post-mortem was completed” [TOI: 4-Oct-07]. The case became widely publicized through media reports, involvement of NGOs, people’s groups and political parties.

Rizwanur’s family and friends were convinced it was murder. The complicity of police right from the Police Commissioner to the lower level officials in pressurizing the couple to separate was under scrutiny of the news media. The ruling left front government ordered a judicial probe, but Rizwanur’s family expressed distrust in it and sought an inquiry by the Central Bureau of Investigation (CBI) The CBI, after an inquiry lasting months, finally concluded that it was a suicide but implicated Priyanka’s father, a couple of other family members and several police officials in forcing Rizwanur to commit suicide. The case is under judicial process now [TOI: 4-Oct-07; HT: 5-Oct-07; HT: 6-Oct-07].

An evident theme running through all the four stories is the characterization of Muslim men as abductors and the Hindu woman as their victims, no matter what the details of the story may be. The theme of abduction of Hindu women makes the idea of marriage between a Hindu woman and a Muslim man an important nodal point around which the Hindu nationalist discourse is organized and, inevitably so, is the discourse that counters it.

The Two Discourses

The debates around inter-religious marriages can be read as two clearly antagonistic discourses struggling to establish their primacy. The first is that of the Hindu Right (henceforth HR) and the other of secular and women’s rights (henceforth S/W). The HR discourse on Hindu women mirrors the Muslim right discourse on Muslim women in that the master signifier “woman” gets its meaning only in association with the other master signifier

“Hindu”. The S/W discourse counters this not only by challenging the meanings of the two master signifiers but also by dissociating the two from each other.

There is one key signifier that is prominently deployed by the HR discourse in giving meaning to the incidences of Hindu women marrying Muslim men: the “Hindu honor”. The S/W discourse contests the meaning given by the Hindu Right to inter-religious marriages by deploying two key signifiers: “national integration” and “women’s right to choice”. The sign “Hindu honor” is challenged by the secular and women’s rights discourse not so much by giving it a new meaning but by discarding it as meaningless.

In the next section I will illustrate the ongoing struggle between the two discourses by first focusing on the Hindu Right discourse and then on the secular and women’s rights discourse.

The Hindu Right Discourse

As discussed in chapter II, Hindu nationalism in the contemporary political discourse has identified the Muslim as the “other”, against which it defines itself. In forging the frontier between “us” and “them”, debate around inter-religious marriages has become one of the important nodal points. The discourse of the Hindu Right around the issue is anchored on Hindu women, thus constructing a very specific identity for them. In this discourse, the two master signifiers “Hindu” and “women” get fused into a single master signifier and there is no scope of their separation. A Hindu woman is always a “Hindu woman”. It is not just that her identity as a Hindu and/or a woman makes sense only in combination with one another, but that “Hindu woman” is her primary and essential identity. In debates around inter-religious marriages, the sign “Hindu honor” is not only used in association with the “Hindu woman” but often used synonymously with it. The common theme - Hindu women always

under threat of abduction by Muslim men - runs through all the four stories and constitutes both the notion of the otherness of “Muslim” and of the essentiality of “Hindu woman” including her position as a repository of “Hindu honor”.

Referring to Gujarat - the state known as the laboratory of the *Sangh Parivar* and for the sway that Hindu rightist groups and political parties have held over its political and social institutions for over a decade or so - a women’s rights activist writes:

There are other dimensions to the experiments of the Sangh Parivar which have been documented by activists and research organisations in Gujarat.... One such dimension is the huge amount of hate literature which is in constant circulation. One of the pamphlets brought out in the form of an Amar Chitra Katha-type comic²⁴ page depicts the sorry state of a Hindu woman “abducted” by a Muslim. This pamphlet was first published during the VHP-inspired violence against the Muslim community in an area of Surat after the marriage of two young Hindu women with Muslim men early last year. It will be recalled that the men were accused of abduction in spite of the statements given by the women that they had married out of their own choice. In the latest version, brought out to observe the 75th birthday of the VHP leader, Mr. Ashok Singhal, vituperative and abusive charges are made against Muslims. The most outrageous charge is that every year five lakh (500,000) Hindu women are abducted and are forcibly married to Muslim men. [TH: 16-Dec-2000]

This complements the theme of the fictional forcible marriages depicted in an election campaign Video Compact Disc (VCD) launched by the BJP (The Hindu Nationalist Party) in a north Indian state as well. In April 2007, the BJP released a VCD as part of its election campaign in the north Indian state of Uttar Pradesh. The title of the VCD “Bharat ki Pukar” can be roughly translated as “The Cry of India”. The VCD consists of a series of fictionalized scenes revolving around several characters including one called *Masterji* (school teacher), a

²⁴ Amar chitra katha are popular children’s comics based on mythology and historical legends.

BJP campaigner and a social worker, all of whom try to protect their motherland India from the threat posed by Muslims, while people do not pay attention to it. It is not until *Masterji* dies of a heart attack on learning about a terrorist attack, that the people realize the truth of his words and congregate around his body. They vow to act, the visuals imply, by voting BJP into power [TH: 19-Apr-07].

The scenes show Muslim youth planting bombs in cars, duping Hindu men into selling their cows²⁵ so that they can slaughter them later, and luring a Hindu girl into marriage and forceful conversion to Islam. I quote an excerpt from the transcript of the VCD published in a newspaper:

Chameli: A Muslim boy pretended to be a Hindu and lured my young daughter away. Fearing *badnami* (dishonor), my husband committed suicide. If I say I am going to the police, then those people threaten me [cut to visual of a Muslim man wearing a turban and looking threateningly] that if you report us, we will kill your child. Now you tell me what should I do? ...

[Cut to scene of Chameli's daughter praying in front of a portrait of Krishna (A Hindu God)].

[A man walks up and throws the Krishna portrait on the floor.]

Man: If you perform puja [prayer to Hindu gods] in this house again, I will really fix you. Remember that.

Girl: What is this you have done, Ram [a quintessential Hindu name based on the name of Lord Ram]? You have thrown *Bhagwanji's* (God's) picture! ...

Man: Ram? Ha ha ha! My name is not Ram, it is Shehzad Ali. And I am not a Hindu but a true Muslim! Ha ha ha ha! ...

Man: Listen carefully to what I say because from today, I am no longer Ram and you are no longer Geeta. From today your name is Fatima Begum. And tomorrow, you will be married

²⁵ According to the tenets of Hinduism cow is regarded a sacred animal and its slaughter considered a sin.

to this boy, Yaamin, according to our rituals. [Cut to a picture of an older man laughing in an evil manner.] ...

Girl: [Crying] You are lying. This can't be.

Man [slaps girl]: And don't ever utter a name that is against our Islam. What is there in these pictures? [Camera pans to portrait of Krishna on floor.]

....

Girl: [Breaks down, falls at his feet, and says with folded hands] Let me go back to my home.

Man: Home? Ha ha ha! Which home? This is your home and you will have to live here. ...

Because by tomorrow, you will have become a true Muslim. Yaamin! Come here. Take this girl away. Tomorrow you will be married to her.

[Yaamin drags girl away, minus her dupatta²⁶.]

Man: Ha ha ha! When Hindu girls get ensnared by us, they scream and shout but sadly there is no one to listen to them and we have great fun. Ha ha ha ha ha! [TH: 7-Apr-07]

This fictionalized narrative can be unpacked for understanding several aspects of the Hindu Right discourse on inter-religious marriages. One, the fact that the girl couldn't see through the man's deception and got lured away is indicative of the naiveté on the part of (Hindu) women. Two, the act of "ensnaring" Hindu women is not an act committed by an individual alone; rather it comprises a collective action undertaken in the context of a well thought out strategy by the Muslim community as a whole. And three, the narrative goads the Hindu community (read men) by depicting the glee of the Muslim man at the prospect of having "great fun" while no one comes to the help of the ensnared Hindu woman. The symbolism of the girl being dragged away without her "dupatta" and the last statement by the man is indicative of sexual exploitation and feed directly into the notion of honor. The Muslim man's agenda is not only to convert the girl to Islam but his delight at her

²⁶ A kind of stole, that is part of the traditional Indian attire; taking it away symbolizes dishonoring a woman.

helplessness implies delight in dishonoring the “Hindu girls” and by extension the Hindu community.

With the theme of force and abduction integral to this narrative, in the case of real life marriages too, this discourse treats the “Hindu woman” as naïve and vulnerable to the trap of Muslim men. In December 2005, the *Vishwa Hindu Parishad* (VHP), another right wing Hindu outfit, organized a protest in a small town, called Karjan, in the State of Gujarat. They were protesting the elopement and marriage of a Muslim boy, Imran and a Hindu girl, Prachi [TOI: 28-Dec-05; cities.expressindia.com]. The protest enforced the closing of all business and other establishments except banks and post offices for an entire day. Imran, a 22 year old chartered accountancy student, and Prachi, a 21 year old law student had secretly married 6 months earlier, before eloping. On learning about the elopement Prachi’s father went to Imran’s house with a couple of BJP members and a few VHP activists and threatened his mother of dire consequences if Imran was not persuaded to divorce Prachi.

Imran’s mother lodged a complaint with police leading to the arrest and subsequent bail of the people who accompanied Prachi’s father to Imran’s house. Subsequently, a VHP activist lodged a counter-complaint against Imran’s mother and her neighbors charging them of assault during the meeting. The protest was organized, the VHP general secretary explained, because “in the last three months, four such marriages have taken place. We consider it a threat to our culture” [expressindia.com: 19-Dec-05]. He justified the protest demonstration as necessary to stop this "*trend* of inter religious marriages" (emphasis mine) [TOI: 28-Dec-05].

An article titled “When a Hindu girl marries a Muslim” recounts various cases over the years where couples faced public disapproval, ranging from jibes and non-cooperation from public service officials to outright violence.

One such case is that of Tarla who married a Muslim man ten years back. She relates that her parents had no objection to their alliance. However, when the couple went to give notice of their impending marriage to the Registrar of Marriages, as is required by law, the clerk there muttered, loud enough for them to hear, "This is happening too frequently now". [TOI: 3-Feb-08] The article further narrates two gory instances of violence against women that occurred during the 1992-93 Bombay riots:

...knowing they enjoyed a free rein, mobs went all out to target Hindu women who were married to Muslim men. Neighbours dragged Zainabbi Pathan by her hair, tried to tie her to an electric pole, set her on fire and then stabbed her leg to prevent her from running. As policemen watched, the 35-year-old Bandra resident begged, "Maaf karo" [forgive me]. Her dying declaration described her plight-"They were angry because being a Hindu I had married a Muslim". Twenty-two-year-old Reshma Umar Makki was luckier. Only her home was ransacked repeatedly by neighbours who were looking for her husband. They kept taunting her, "Why did you marry him? Couldn't you find a Hindu boy?" Again, the police did not interfere. [TOI: 3-Feb-08]

Since, the Hindu Right discourse locates the individual instances of marriages in the larger theme of threat posed by the Muslim men to the Hindu honor, each incident of an inter-religious marriage can turn into a politically charged event where the woman in question ceases to be an individual. Instead, she becomes a symbol of collective honor of the entire community, giving it (the community) not just the right but making it their duty to “save” (or punish) the “Hindu woman”.

In reporting the controversy involving Bharti Barot, the young Hindu woman who had allegedly committed suicide at the *Hindu Mahasabha* office, the article states that the “Hindu Mahasabha and the Vishwa Hindu Parishad frown upon Hindu girls marrying Muslim boys, while encouraging Muslim girls marrying Hindu boys”. [TH: 11-Aug-01] Women on both “sides” thus become the communities’ property and the logic goes that if “they”, the Muslims, are taking away “our” women, we will set the score even by taking “their” women. Inter-religious marriages get cast as an act of war of one community against the other. The inherent logic of this understanding casts Hindu women’s bodies and sexuality as an object of control and protection and that of Muslim women’s as objects of attack and capture. This differential objectifying of “their own” and “other” women is typical of religious and cultural nationalism in general (Lister, 1997; Young, 1993) and frequently leads to physical violence against women on both sides, an aspect I will discuss in more detail in the last section of this chapter.

The formation of organizations like the *Hindu Kanya Raksha Samiti* [Hindu Girl’s Protection Committee] for, in Bajrang Dal’s words, “protection of Hindu girls following two recent cases of inter-communal elopement” [TOI: 12-Apr-07] is an expected outcome of this discourse. One of the marriages that the Bajrang Dal referred to was that of Priyanka and Umer.

In April 2007, Mohammad Umer and Priyanaka Wadhvani, anticipating opposition to their plans of getting married, left Bhopal, the capital of a central Indian state, and traveled to Mumbai. Umer went through the purification rites to convert to Hinduism, and they married according to the traditional Hindu ceremony on April 2. Meanwhile, Priyanka’s family in Bhopal lodged a complaint of kidnapping against Umer leading to police detaining

Umer's elder brother and sending a team to search for the couple in Mumbai. Priyanka called up the police station to confirm that she had married Umer of her own free will. However, the Police refused to drop the case against Umer until Priyanka and Umer came back to Bhopal. Meanwhile, *Bajrang Dal*, a Hindu Right organization called a protest demonstration at 40 different places in the city including in front of Umer's family home. The same day Hindu Right organizations in the city floated the above mentioned organization, the *Hindu Kanya Raksha Samiti*, and threatened to intensify the protest.

Umer and Priyanka filed a petition with the Mumbai high court stating that they were both adults and legally married and therefore the case of kidnapping against Umer be dropped and the couple as well as Umer's family in Bhopal be provided protection. The Mumbai High Court upheld the validity of their marriage, directed the Mumbai police to provide protection to the couple and restrained the Bhopal police from arresting Umer. The Madhya Pradesh High Court too responded to the writ filed by Umer's brother and directed the state government to provide security to the couple. The Hindu organizations, however, went ahead with protests clashing with the police deployed to prevent rioting and "for protection of the minority [Muslim] community". That the Muslim community in general was the object of attack by the protesting groups indicates, as I have pointed out earlier in this section, that these groups regard individual marriages as a collective and purposeful action by the Muslim community to disparage "Hindu honor". While the fear of Hindu Right organizations deterred the couple from returning to Bhopal despite the court order [TOI: 12-Apr-07; TH: 14 Apr-07; and Indian Express.com 12-Apr-07], their marriage led to *Sindhi Samaj* - the community organization of the regional Hindu sect to which Priyanka belonged - issuing a set of rules that Sindhi girls should follow: they shall not cover their faces with

scarf, shall not ride two wheelers and shall not be allowed to use mobile phones. Explaining the logic behind the ban on covering their face an article quotes the general secretary of the organization, a woman, as saying “they say they do it to protect themselves from heat and dust, but it's clearly a fashion picked up from some Muslim girls (TOI: 30 – Apr -07). The other two rules were to ensure that too much mobility does not lead the girls astray and vulnerable to the trap of Muslim boys. The formation and authorization of community organizations to protect and discipline “their” women clinches the community’s ownership over Hindu women and in the process locks each woman’s –for whom this discourse claims to have a duty / right to protect and control – identity as a “Hindu woman” first and foremost.

Reacting to the court’s order to provide protection to Priyanka and Umer, the *Hindu Kanya Raksha Samiti* is reported as saying that courts cannot have the powers to issue marriage certificates. It announced that it will go in appeal against orders of both the Mumbai and the Jabalpur High Courts that declared the Priyanka-Umar marriage legal and valid [TH: 14-Apr-07]. A senior advocate and RSS leader Uttamchand Israni said, “[Everyone] talks of the children's right to marry but what about the parents' rights?" He said the courts could not be given the powers to decide social norms, beliefs and traditions [TH: 14-Apr-07].

Much like the Muslim Right, the Hindu Right discourse resists state “interference” if it gets in the way of preserving the Hindu identity and Hindu honor from the perceived threat of the “other”. Preserving social norms, beliefs and traditions, obviously, translates into disciplining “Hindu women”. Their identity as “Hindu women” thus takes precedence over the identity as citizens of the State entitled to the rights provided under its legal framework.

This discourse influences the actions of not only the Hindu Right activist groups and individuals but the actions of institutions like the police and, at times, the judiciary as well. This is very well exemplified by the case of Meena and Peter.

The story of Peter Abraham and Meena Gond who hailed from the same state as Priyanaka and Umer, was different from theirs only in the fact that the man in question was a Christian. He was 38 years old and an auto-rickshaw driver by profession. Meena Gond was a 36 year old tribal²⁷ woman. They had applied for marriage under the Special Marriage Act, but when, after completing the mandatory 30 days of notice required by law, they reached the office of the Registrar of Marriages on December 13, 2007, they were accosted by the activists of a local Hindu Right organization named *Dharm Sena* (loosely translated as Religious Army), associated with the VHP. The *Sena* had lodged a complaint with the marriage officer, stating that “Peter had lured Meena by offering money and would subsequently convert her to his faith after marriage”. The *Sena* activists, therefore, did not let them register their marriage and chased the couple away. Eventually the local leaders of the Congress Party in the State got involved and pledged to help the couple get married. While the BJP was in power in the state, the Congress was the largest opposition party at that time. They accompanied the couple to the Registrar’s office, but the marriage officer again refused to register Peter and Meena’s marriage on the grounds that the complaint against Peter (of luring Meena to marry him) was being probed [HT: 5-Jan-07; HT: 12-Jan-07].

The Congress Party men protested against the marriage officer’s move and submitted a memorandum demanding immediate registration of the couple’s marriage to the Collector. They also took the couple to meet the Governor of the State, who directed the Chief Secretary to look into the case. It was only then that the couple was able to register their

²⁷The Hindu right counts tribals as falling within the fold of Hinduism.

marriage. They were taken to the court under “heavy police cover” and their marriage was solemnized quickly. This was done so that the *Dharm Sena* could not “get a whiff of it”. They wanted a civil marriage, they explained, because they wanted to continue following their own faiths [HT: 12- Jan -05].

It is telling that while both Meena and Peter were adults and followed the due process, the police entertained the complaint of the Dharm Sena and the marriage officer refused to register the marriage on the grounds that it was being probed [HT: 12-Jan-07].

In the case of Rizwanur and Priyanka too, several police officials were found involved in harassing the couple and forcing them to separate by registering an abduction complaint against Rizwanur. At a press conference following Rizwanur's death, the police commissioner justified Priyanka's father's opposition to her marriage as "natural". He went on to question the desirability of relationships in which "financial and social status" do not match. He ended the press conference by asserting that the police would handle similar cases "professionally" - in the same fashion - in the future also [TOI: 4-Oct-07].

In another case, Rajni Vishwakarma and Obaid Khan had to go into hiding for fear of police action. In January 2006, in Sehore, a small town in the central Indian state where a couple of other related cases had earlier taken place, Rajni, a Hindu woman, married Obaid, a Muslim man against her parents' wishes. The Sehore police registered a case of abduction against Obaid Khan. The couple feared that if they appeared before the police they would be separated and she would be forcibly sent back to her parents. Finally, in May they resorted to calling a press conference where Rajni declared that she was an adult and had married Obaid of her own free will. According to the couple due to police harassment they had been moving

from one city to another. Rajni alleged that the police were pressurizing her in-laws to send her back to her parent's home [HT: 11-May-06].

Aiding the woman's family or her community in their effort to stop her from falling into the trap of the "other" man is thus regarded by many officials as a part of their professional duty. Such actions on the part of the police are not isolated incidences but a frequent occurrence. As an article suggests, "[i]ronically, criminal law, intended to protect women from forced marriages, is used against consenting couples. The natal family [of the woman] in consultation with the police and lawyers invoke [sic] laws on rape, abduction and kidnapping to criminalize love and frame the boy" [TOI: 4-Oct-07].

The infantilizing of adult women – wherein they are regarded as unfit to take decisions in their own (and their community's) interest – and legitimization of supervision and control by family and community is not peculiar to the Hindu Right. However, the support of state institutions in preventing marriages specifically between Hindu women and Muslim men indicates successful deployment of the signs "inter-religious marriages" and "Hindu woman" as key to the Hindu identity by the Hindu Right discourse.

Babu Bajrangi, a VHP leader from Gujarat, is reported to have said, "In every house there is a live bomb that can erupt at any time. Do you know who that is? Daughters are the honour of the family and the community, and to protect that is our Hindu duty and Hindu culture... Come, and let's unite to save bombs... I don't believe in love marriage. We have to marry within our own community" [Frontline, 16-29-Dec-06]. He runs an organization named the Navchetan Trust (*Navchetan* means new awakening) for "rescuing" girls of the Patel community (a predominant caste group in Gujarat) who have married outside the community. A pamphlet released by the Navchetan Trust reads, "If you rescue one girl, it is

the same as saving 100 cows. One daughter equals 100 holy cows" [Frontline: 16-29 Dec-06]. While his organization is against Patel women marrying even Hindus outside the Patel community, his opposition to their marrying Muslims is particularly fierce. He asserts, "We do whatever it takes and somehow bring them. If it's a Musalman²⁸, we definitely use force even if the girl doesn't want to leave. Musalmans don't have a right to live in our country. How dare they marry our girls?" [Frontline: 16-29 Dec-06] The Frontline article informs that till date Babu Bajrangi has claimed to have "saved" 706 girls.

On the basis of a court case filed by four boys (not Muslims but non-Patel) who had their wives abducted by Babu Bajrangi's men about two years earlier, and had not been able to get them back despite police complaints, the Bombay High Court ordered a police inquiry. The inquiry revealed that "the women had been kidnapped and forced to ask for divorce in court. Other girls, who had managed to escape Babu Bajrangi's clutches, also testified about how he captured, beat and abused girls and forced them to nullify their marriages. Those who were pregnant were forced to have abortions". However, on the ground that the allegedly abducted wives had not substantiated their claims the bench said that the court could not take any action and that the matter should be settled in matrimonial courts [Frontline: 16-29 Dec-06].

The case against Babu Bajrangi is now pending in the Supreme Court of India. Since he has been served a notice on charges of kidnapping, and has become too controversial, the Hindu Right organizations he was earlier associated with, the VHP and the *Bajrang Dal*, have distanced from him and he has joined another right wing organization, the Shiv Sena, which wields considerable political power in the neighboring state of Maharashtra.

Commenting on his leaving the VHP, Bajrangi is quoted as saying "[t]hat doesn't in any way

²⁸ Hindi/Urdu, meaning *Muslim*.

mean I will stop working for the cause of Hindutva,” and that his Navchetan Trust will continue their work of rescuing strayed Hindu girls [cities.expressindia.com; 29-June-06].

That the discourse of guarding Hindu women and by extension Hindu Honor from (primarily Muslim) the “other” is critical to the establishing of Hindu identity is evident from the fact that it plays an important role in the formation of Hindu Right organizations even outside India. An article on the Hindu Right groups in UK informs:

A group of Indian schoolgirls in North London explained that their fathers' rule about boys they associated with, was “No BMWs — No Blacks, Muslims or Whites — but a Muslim would probably be the worst”. Meanwhile, Indian boys in their (state) school attended the HSS²⁹ shakha [branch] meeting [sic] which were held regularly and rent-free in the school premises. As in India, the Sangh Parivar's youth organisations, which include a network of student groups, the National Hindu Students Federation, have focused on "protecting" Hindu women from relationships with Muslim men. [TH: 23-Mar-03]

A website named HinduUnity.Org proclaims its purpose as supporting and promoting the ideals of *Bajrang Dal*. The site contains a prominently placed warning labeled “Hindu Girls Beware”. It reads:

A warning to Hindu & Sikh girls!

The Muslims won't rest until they convert you to Islam! £10,000 rewards are being given to Muslim youths (sic) by Islamic organizations in U.K. to any Muslim boy who can convert a Hindu or Sikh girl. They are on the prowl for gullible Hindu girls. Beware!

Be careful of being trapped into having relationships with Muslim boys in your school and college. The love they show is love based on an ulterior motive. To get you to accept

²⁹ Hindu Swyam Sevak Sangh – A global counterpart of RSS (Rashtriya Swyam Seval Sangh) the core organization promoting Hindu nationalism.

Islam.[sic] Hindu girls have suffered dire consequences from these Muslim men who promise to love them but treat them like dogs!... (“A Warning”, n.d.).

To add to the urgency of the warning it provides a scanned copy of what is purportedly “a leaflet ... picked up from a university ... which was being distributed to Muslim youths”. The leaflet marked “for private circulation” exhorts Muslim youth to join in the mission to spread Islam. It asks the youth to use manipulation if a “kafir (non believer) does not accept [Islam] by gentle persuasion or reasoning”. To further make the intentions of Muslim men clear and to reproach Hindu women for their naivety, the leaflet states:

The task is getting easier by the day as the Sikh and the Hindu girls are not taught...much about their religion at all. They have a more westernized upbringing... school, college and university campus is the ideal place for our youth to carry [not clear].” (“A Warning”, n.d.)

The boundaries between “us” and “them” are solid and clear in this discourse. A relationship between a Hindu girl and a Muslim boy is a premeditated and strategic action orchestrated by the Muslim community against the entire Hindu community. While underscoring the essentialism of religious identity of both their own and the enemy groups, these campaigns naturalize the Hindu woman’s sexuality as an object of target by the enemy (men) and therefore to be protected by her own community’s men. The unpacking of these campaigns reveals several layers of identity construction for “Hindu women” as well as for (Hindu and Muslim) men. As they are synonymous with Hindu honor, they are the natural targets of the enemy. They are reproached for being “westernized”, meaning independent and willful, and thus becoming easy targets of Muslim men. Inherent in this reproach is the critique of independence and individual choice. The practice of individual choice becomes an act of betrayal to the community and simplifies the task of the enemy (a fact in which the enemy delights in, as is evident by the purported pamphlet). Also, since women in their

gullibility and selfishness may not see through the real intentions of the Muslim youth, their own self-interest is appealed to: Muslim men will treat them like “dogs”.

The theme of the BJP VCD mentioned at the beginning of this section reiterates this as well. The Hindu woman should be aware that even if they are willing to betray their community for love that is not what they are going to get. Finally, because the “Hindu woman” cannot be depended upon for protecting herself from the entrapment by Muslim men – be that because as a woman she is weak, naive or selfish – it is the Hindu man who has to be ready to defend the honor by saving the Hindu woman from Muslim men. And that is precisely what Babu Bajrangi’s men have been doing.

There is no identifiable body of evidence that can be attributed to the Muslim discourse in response to the Hindu Right on inter-religious marriages. The only statement that I came across, that directly responds to the charge of Muslim conspiracy is one that takes a defensive stance. The Hindustan Times reports, “Majlis-e-Shura of Masjid committee has appealed to Muslim youths (sic) to marry within the community and keep away from inter-religious marriages that cause embarrassment, committee secretary Syed Wasimuddin told the media” [HT: 16-Apr-07]. Predictably, this stance counters the conspiracy charges but reinforces the Hindu Right’s construction of women as belonging to their religious communities or for that matter fixing the religious identities as essential on both sides.

It is what I have identified as the secular and women’s rights discourse that is actively engaged in countering the Hindu Right discourse. This discourse dismisses the sign “Hindu honor” as meaningless and the nodal point inter-religious marriage is invested with meaning by associating it primarily with two signs – “national integration” and “women’s right to choose”. In the following section I discuss how the secular and women’s rights discourse

utilizes the two signs to counter the meanings invested, by the Hindu right discourse, in the nodal point, inter-religious marriages, as well as the master signifier, “Hindu woman”.

The Secular Discourse

The sign “national integration” is employed by the secular discourse to give inter-religious marriages a meaning that is diametrically opposite to the meaning given to it by the HR discourse.

National Integration

Clearly unwilling to engage with the Hindu Right discourse’s key signifier “Hindu honor” Brinda Karat, the then general secretary of AIDWA had observed in 2000 that “the *so-called* honour of Hindu women has been a key theme in hate propaganda” (emphasis mine) [TH: 16-Dec-2000]. Further, in response to the Hindu Right’s casting of inter-religious marriages as an act of aggression by the “enemy” community, the secular discourse constructs inter-religious marriages as a symbol of communal harmony.

Lamenting the increasing use of religion for divisive purposes, an article titled “Inter-religion marriage: Does it set an example?” says, “Religion, a binding force is increasingly becoming a killer force. In this volatile time what is it that could provide us with a solution? Marriages between individuals from different religious backgrounds may not offer an answer to a problem of the magnitude we are witnessing. However, from a distance, these ties certainly provide a symbolic hope, that a bond between two communities is possible” [TOI: 5-Apr-02].

References to celebrity couples whose marriages have been inter-religious are frequently used to assert this symbolism. Characterizing inter-religious marriages as a means

to promote the “religion of love”, another article refers to several well-known inter-religious couples to affirm that religious differences are inconsequential when people fall in love. It emphatically says

As the monsters of mob-fury feed on the flames of communal passion, it is for us - we, the people in the plural - to keep the faith. Exemplifying this spirit are icons of Indian society who share not just a country or home, but their lives together. The message that inter-religious marriages prove that love - and hope - spring eternal, is the story of Mansoor Ali Khan and Sharmila Tagore.”³⁰ [TOI: 7-Mar-02]

Shahrukh Khan and Hritik Roshan are two widely popular stars of Hindi film industry. Both are known to be happily married. Shahrukh Khan, a Muslim to a Hindu woman and Hritik Roshan, a Hindu to a Muslim woman. An article showcases their marriages to assert that “religion is no barrier for true love” and characterizes marriages as “two happy and very mixed marriages” [TOI: 15-Aug-03].

The examples of celebrity couples’ very public and desirable lives are employed to counter (not always directly) the assertions of the Hindu Right discourse that inter-religious marriages are a conspiracy from which Hindu women / Hindu community has to be defended. In discussing the relationships of couples (celebrity or otherwise) in inter-religious marriages, the articles emphasize that not only does the difference in religious identities of the couple not pose any problem but also leads to opportunities for leading a richer life. For instance, a well known Ghazal maestro Talat Aziz - a Muslim man married to a Hindu woman - is quoted as saying, “Community was never an issue with Bina and me. We leave each other free to follow our own faiths; ...we celebrate festivals of both faiths and our

³⁰ Mansoor Ali Khan is a well know Indian cricketer who played for the National cricket team in 70s and his wife Sharmila Tagore is an acclaimed film actor.

children pray with both of us. I believe that there are two religions — hate and love. Both can come from any community.’ [TOI: 7-Mar-02]

Siraj, who has been married to Renu for 28 years, opines, “I believe that religion is a personal issue. We have great reverence and respect for each other's faith. My wife and I celebrate all festivals. In fact, we have not had one single argument concerning religion right through our marriage” [TOI: 19-Mar-02].

In a lighter vein, a popular MTV India VJ, Cyrus Broacha, who is known for his comic performances, jokes that his wife Ayesha is “two-thirds Muslim and one-third Hindu, but she practices atheism and I’m half Parsi, half Christian, and I practice hedonism.” Ridiculing the concern over inter-religious marriages, and dismissing it as a non-issue, he adds “we’re having more trouble with the dog than with God at the moment” [TOI: 7-Mar-02].

The secular discourse, however, recognizes the fact that the Hindu Right discourse has been quite successful in fixing the meaning of the nodal point “inter-religious marriages” as an assault on Hindu honor. This recognition infuses this discourse with a sense of urgency as it sees a real threat of Hindu Right succeeding in making a “hegemonic intervention” whereby their discourse comes to dominate alone. An article laments:

...sadly, indeed tragically, society is already doing what the BJP’s politics is trying to gamely follow. We are already a hopelessly ghettoised society Inter-religious marriages are almost non-existent as many young people, even educated at the IITs and IIMs³¹, have turned conservative in their choice of life partners. Suspicion of the Muslim is almost endemic in the police force” [HT: 16-Mar-06].

³¹ Indian Institute of Technology (IIT) and Indian Institute of Management (IIM) are regarded as premier educational institutions of India.

Expressing exasperation over the hounding of inter-religious couples, and underscoring what the secular discourse sees as incongruence of the Hindu Right discourse with modern democratic values, another article says, “Yes, we are talking of India, apparently the world's largest secular, multicultural, democratic nation. And yes we are talking 2005 and not 1895 here!” [TOI: 28-Dec-05] The author makes this observation in the context of a demonstration organized by the VHP to protest elopement and marriage of a Muslim boy and a Hindu girl.

The article, titled “When a Hindu girl marries a Muslim”, which has been quoted in the previous section, identifies Chaitali Shah and Naeem Ansari as “the latest victims of police and public persecution” and ends with the thought “...in the 58th year of our Constitution that promises freedom of religion and equality before law, here's wishing Chaitali Shah and Naeem Ansari a safe married life” [TOI: 3-Feb-08].

The other, more prominently employed sign by the secular discourse is “women’s / individual’s right to choice”. The meaning that the nodal point “inter-religious marriages” gets in association with this sign is, in fact, quite different from the meaning that it gets in association with the sign “national integration”. The difference results from the fact that while the sign “national integration” treats the two individuals involved in an inter-religious marriage as representatives of their religious communities, the sign “right to choice” treats the religious community of the individuals as irrelevant. However, in their consequence both signs (national integration and right to choice) are complementary, and are used as such by the secular discourse. They invest the nodal point “inter-religious marriages” with a positive meaning and counter the Hindu Right’s negative one. Their implications for the master

signifier “Hindu woman”, however, are different, an aspect I will discuss in detail in the last section of this chapter.

In the next section I will illustrate how secular discourse is using the sign “women’s / individual’s choice” in contesting the HR discourse on inter-religious marriages.

Women’s Right to Choice

Following incidences of violence against the religious minority communities in Gujarat in 1998, The National Minorities Commission submitted its finding to the State Government. An article reports that among other things:

“[i]n an apparent reference to the Vishwa Hindu Parishad’s (VHP) move to restrict the freedom of Hindu women who wished to marry Muslims, the Commission said that there was an infringement of the basic human right to choose a life partner of one’s own choice, which citizens were entitled to under Indian laws. [Frontline: Oct. 1998]

In 2007, in the context of furor generated by Umer and Priyanka’s marriage, All India Democratic Women’s Association (AIDWA) “condemned the attempts being made by the Sangh parivar to `communalise’ inter-religious, self-choice marriages” asserting that “[w]omen must uphold right to self-choice marriages”. In a statement to the press it said:

[T]he harassment of couples who married across religions in Surat in Gujarat and Bhopal in Madhya Pradesh — both States ruled by the Bharatiya Janata Party — was a violation of the Constitution and indicative of the parivar’s `communal’ nature. While the young couples had to leave their States, in Madhya Pradesh their family members were threatened and harassed by the police and the “henchmen” of the parivar. [TH: 19-Apr-07]

Punwani, in her article discussing the opposition faced by Hindu girls who marry Muslims, explains that “[t]he feudal notion of women as property, and as repositories of family and community honour make any inter-religious marriage risky. But when a Hindu

girl marries a Muslim, she fights not only her family, but also the entire Hindu-dominated Establishment” [TOI: 3-Feb-08].

By appealing to the couple’s right to exercise choice and citing constitutional support for it, the secular discourse introduces this new key signifier that reframes the debate on inter-religious marriages. It is no more about religious identities but about individual’s legally granted rights. Rather than the issue of matrimonial alliances between people from different religious communities (whether for good, as cast by the sign “national integration” or bad, as cast by the sign “Hindu honor”), the inability of individuals and specifically women to exercise their right to choose becomes the object of concern.

Rajashri Dasgupta, a freelance journalist, discussing the gap between the social reality and legal rights, writes that “[t]he assumption of the police and parents is that an adult woman is incapable of choosing her own partner - even though she can vote and decide the future of the country - and must therefore be coaxed, coerced or emotionally blackmailed to do her father's bidding” [TOI: 4-Oct-07]. Regarding the story of Priyanka-Rizwanur as “the eternal tale of young couples trapped between their desire, the rights guaranteed by the law and their socio-cultural reality,” she adds, “It is about how the family, community and state agencies like the police treat love as a criminal activity and young lovers as criminals” [TOI: 4-Oct-07].

A few years back, the Gujarat State government, headed by the BJP, issued a controversial circular making parental consent mandatory for marriages under the Special Marriage Act. The Act is a provision that is most often used by couples, including inter-religious couples, who do not have their families’ sanction for their marriages. A prominent lawyer and president of Gujarat Bar Association, Yatin Oza, like some others quoted in the

article, was of the opinion that the Government was trying to stop inter-religious marriages. Asserting that the circular was illegal, he said, "This circular is illegal and cannot stand in the court of law. If challenged, it can be struck down within seconds because any girl above 18 years and boy above 21 years have the right to get married". According to the newspaper report, the information department of the State Government first issued a statement saying that it was mandatory but soon after clarified that it wasn't [TOI: 23-Jul-05]. Although my research did not furnish any further information on the controversy, it does hint at a struggle between the meanings that the Hindu Right discourse and the secular discourse are trying to invest in "inter-religious" marriages with tangible legal consequences.

In her analysis of the societal norms that lead to tragedies like that of Rizwanur's death, Dasgupta refers to the July 7, 2006 Supreme Court ruling to point out the discrepancy between the legal provisions and the actions of Priyanka's family and the involved police officials. "The 'professionalism' with which the Kolkata police handled the Rizwanur-Priyanka case," she comments, "smacks of its class, social and communal bias. It ends up making marriages from personal choice look like an illegal activity" [TOI: 4-Oct-07].

The court's ruling referred to by Dasgupta was made in the context of an inter-caste marriage where police arrested and harassed the boy's family at the insistence of the girl's relatives. The Bench ruled:

Such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country and once a person becomes a major he or she can marry whosoever he or she likes. If the parents of the boy or girl do not approve of an inter-caste or inter-religious marriage, the maximum they can do is to cut off social relations with the son or the daughter, but they cannot give threats or commit or

instigate acts of violence and cannot harass the person who opts for inter-caste or inter-religious marriage. [TH: 8-Jul-06]

In condemning the West Bengal State government for its initial inaction in the case of Rizwanur's death, the former chief minister, Ray said, "Buddhadeb Bhattacharya's [present Chief Minister] 'inaction makes him guilty' of violating the Supreme Court's verdict of July 7, 2006, which asked the administration and police to protect couples in inter-caste or inter-religious marriages from harassment" [HT: 5-Oct-07].

Earlier in the case of Umer and Priyanka too the groups and organizations aligning with the secular discourse highlighted the acts of Hindu Right groups as being contrary to the law of the land. An article informed "...three women's organisations, including All India Democratic Women's Association's (AIDWA) statewing has expressed solidarity with the inter-religious couple and demanded that fundamentalist forces threatening the couple should be prosecuted for the contempt of court". Sandhay Shaili, the AIDWA leader from Madhya Pradesh, the state to which Umer and Priyanka belonged, is quoted as saying: "We want to let the Madhya Pradesh government [ruled by the BJP then] know that the rule of law prevails here and not that of some fundamentalist forces trying to chain women" [HT: 16-Apr-07].

In another incident involving a 17 year old Muslim girl and a Hindu boy, where the girl's father pressed charges of kidnapping on the ground that the girl was a minor, the court remarked, "Can falling in love be said to be enticing? If two persons fall in love, who is enticing whom? Does providing shelter to a driven away girl amount to enticing and kidnapping? The answer is an emphatic 'no'" [HT: 12-Apr-07].

The secular discourse is thus geared towards defending inter-religious marriages as an assertion of legally granted right to choice and encourages it as a symbol of national

integration. There are organizations that have come up with the avowed purpose of supporting and promoting inter-religious marriages.

An organization called “The Inter-Caste Couples Welfare Association”, in association with the Communist Party of India (CPI), is reported to have presided over an inter-religious marriage involving a Muslim woman and a Hindu man. One of the participants said, “... inter-religion and inter-caste marriages should be encouraged to drive away caste and religion barriers in society. Such marriages would also play a key role in eradicating dowry, caste-based discrimination and religious hatred” [TH: 27-Jul-04].

Another article reports about a “group of youngsters [that] has developed a website that cuts out the run-of-the-mill search for prospective brides and grooms from the same religion, caste, *gotra* (caste-group at birth) and the like. Treading off the beaten track, the website will cater exclusively to people wanting to go in for an inter-caste or inter-religion marriage” [TOI: 4-Jun-08]. Justifying the need for such an organization, the website “Pratibimbh” (reflection) states, “In present marriage system, we use religion / caste as primary filter ... while selecting life partner. The choice of partner is limited to particular religion / caste only. We don’t give importance to girl’s opinion while selecting groom for her [sic]” [[pratibimb](#), n.d.]. Shivaji Pawar, one of the members of the group, in elaborating the criteria for those who could register with “Pratibimbh” said, among other things, that “[t]he person should be interested in an inter-caste or inter-religion marriage” [TOI: 4-Jun-08].

“The Hindu” reports about another organization called the Assembly for Mixed Marriages. The article informs that “[i]t is a non-governmental organisation with a distinct objective ... to uplift the lifestyle of the couples who have gone in for inter-caste and inter-

religious marriages [TH: 14-Mar-02]. Another group that calls itself “Dhanak” (The Rainbow), founded by a social worker who I interviewed for this research project, tries to bring together people in inter-religious marriages to provide social support to those who are in or are planning to have an inter-religious marriage [I:8-M-7/03].

Discourses Articulate the “Hindu Woman”

In this section, drawing from the discussion of the two discourses, I isolate the subject positions being constructed for the Hindu woman by them. In doing so, I use insights from the interview data to supplement my arguments.

The notion of honor associated with a woman’s body and sexuality is, as is evident, an essential component in the discourse of Hindu nationalism. As discussed in Chapter II and 3, the threat that the Muslim “other” poses to the Hindu community and the Hindu nation is manifested in many forms. Assault on Hindu honor by dishonoring Hindu women is, however, one of the most enduring and emotive themes. Stories about rape, abduction and forced marriages of Hindu women to Muslim men during the violence in the aftermath of partition of India in 1947 continue to be an integral theme in the Hindu Right’s effort at organizing (Chowdhry, 1997) Incidents of relationships and marriages between Muslim men and Hindu women in the present time are used to feed into that theme. In this section, I will first discuss how the Hindu woman gets articulated through the Hindu Right discourse on interreligious marriages illustrated in the previous section. I will then discuss how the secular discourse responds to this and in the process articulates “Hindu woman”.

For the Hindu Right discourse, the relationship between a *Hindu woman* and a *Muslim man* has a meaning that is unique in the sense of being different from inter-religious marriages involving any other combination, for instance a relationship between a *Muslim*

woman and a *Hindu man*. The difference in the meaning is derived both from the notion of “woman” as *belonging* to the community and representing its honor and the essential difference between a Hindu and a Muslim.

While the Hindu woman belongs to the “Hindu community” due to her essential *Hinduness*, her *womanness* (femininity) gives her the quality of being weak and vulnerable and/or selfish. At the same time by being cast as a symbol of community’s honor, her sexuality requires protection and control. Additionally, since within the Hindu nationalist discourse the terms “Hindu” and “Indian” are synonymous (Varshney, 2002), actions to prevent or end relationships between “their own” women and the other, particularly Muslim men, become nationalist acts.

The discourse on womanhood in the Hindu Right literature casts them not only as symbols of honor but also as mothers of Hindu sons and by extension of the Hindu nation. The notion of ideal Hindu woman is most illustrative in the chapter about women in “Bunch of thoughts”, written by M. S. Golwalkar, an iconic figure for the Hindu nationalist movement. The “Bunch of Thoughts” is a compilation of essays that serve as the philosophical guide for the Hindu nationalist movement. An excerpt from the chapter on ideal motherhood in relation to nationalist sons reads:

Our mothers have a special responsibility of rearing up the budding generations of our society. ...the essential aspect is to inculcate in them the right type of samskars [values] such as devotion to duty, spirit of personal endeavour, love of the motherland and readiness for service to society. ...[there is a] couplet in Mahabharata which says: may no woman give birth to one who would mutely suffer insults, who is devoid of vigour and manly prowess and one who would bring joy to the enemies. Chapter 31

While Hindu men are expected to display warrior like masculine qualities in service of the (Hindu) nation, women are iconized as mothers. Further, this imagery is an extension of *Bharat Mata* (Mother India) who in Hindu nationalist discourse is metaphorically depicted as a chaste mother and a victim in need of protection by her warrior sons (Bacchetta, 2002). The fictionalized scene of the Hindu woman's abduction in BJP's election VCD discussed earlier in this chapter is an example where Hindu men's masculinity is being challenged through the utterances of Muslim men: "When Hindu girls get ensnared by us, they scream and shout but sadly there is no one to listen to them and we have great fun" [TH: 7-Apr-07]. The Hindu men, through this discourse are called to assume their masculine role of protecting and thereby controlling their women. One of my interview respondents, who is actively involved in anti-communal activities, had witnessed a similar campaign on his visit to Gujarat. He saw glossy posters that depicted a young man wearing checkered scarf (a piece of cloth associated with Muslims) waiting outside a women's college on a motorbike. The poster informed that the Muslim organizations provided such young men with motorbikes for the job of trapping Hindu girls. These posters were displayed on the walls of a fitness center specifically for the Hindu youth meant to keep them fit for the task of saving Hindu women from this threat.

The conflation of motherhood and honor imposes a double burden on women. They are not only responsible for safeguarding the community's honor but also to reproduce Hindu sons and perpetuate the Hindu Nation. In this context, the position and actions of the Hindu Right groups with regard to Hindu women marrying Muslims can be unpacked to unravel the subject position being offered to the Hindu women to identify with.

The notions of honor and motherhood both reduce them to their sexual and reproductive organs that have to be protected from the enemy men and revered as procreators of the Hindu Nation. Since the essentiality of a “Hindu woman” is already fixed in this discourse, a Hindu woman unwilling to accept these roles is someone who is misled and might hurt the Hindu interest. It, therefore, becomes the responsibility of other “Hindus” to prevent her from acting thus. Hindu women who *stray* into inter-religious relationships or marriages, particularly with Muslim men, are either being naïve or selfish and traitorous. The “Hindu community” has an obligation to save, control and/or punish these women. Acts of harassment and violence against Hindu women who have married or planning to marry Muslim men, thus, get cast as acts of protection and/or punishment. This discourse grants a moral and social sanction to the participation of activist groups and individuals and implicit or explicit support of government officials in carrying out these acts. By intervening and preventing or breaking inter-religious marriages they act, therefore, in the interest of the community and the imagined Hindu Nation.

Remarkably, on the one hand an RSS leader, making a case against state’s interference in the “private” sphere, argues that “the courts could not be given the powers to decide social norms, beliefs and traditions” [TH: 14-Apr-07], on the other, the issue of inter-religious marriages is located in the larger, very political campaign of building a Hindu nation. The former argument denounces State’s intervention to secure women’s right to choice on the grounds of community’s right to manage its social affairs, the later however, if taken to its logical conclusion will have the State legitimize the “community’s stance on who the “Hindu woman” should or should not marry.

Thus, an ideal Hindu woman is conceptualized as one who is domesticated and safeguards her honor. She does so in the service of the Hindu community and nation. The “Rashtriya Sevika Samiti”, the Hindu women’s organization and a counterpart to the RSS, (the Hindu men’s organization and a central body leading the Hindu nationalist movement) has been formed to train women to be good (Hindu) wives and mothers and extend their womanly role of service within the family to the service of the larger community and the (Hindu) nation. The *Samiti*’s many goals include countering “potential of Hindu femininity to stray into feminism,” that leads to the “disintegration of family” (Bacchetta, 2004, p.16).

An academician, associated with groups working for communal harmony, observes that while the RSS literature, that constructs this notion of Hindu woman may not reach everywhere, soap operas on Indian television are helping in spreading that message. Pointing to Hindu festivals that are centered on rituals followed chiefly by women to celebrate the privilege of being related to men as their wives or sisters, he says, “Karvachauth³² was not earlier a national event, ... Rakhi³³ was also not a national festival but now thanks to TV ... by and large the image is still that of a Hindu woman dependent on a Hindu man. Her future is constructed with his. Still *sindoor* and similar ceremonies are very important” [I: 14-M-7/27]. Echoing this observation, another interviewee, also an academician, is of the opinion that a symptom of focusing on Hindu identity, specifically on Hindu woman’s identity, is manifested in “kind of a new excitement about the ritual of marriage” as evident by the popularity of Hindu films like “the *Dil wale dulhaniya le jayenge*, *Hum Aapke hain kaun*³⁴,

³² A festival that married Hindu women observe by fasting for a day and praying for their husband’s long and healthy life.

³³ The festival involves sisters tying colorful threads called “rakhi” on their brothers wrist, signifying the bond between a brother and a sister and emphasizing brother’s responsibility to protect and care for his sister.

³⁴ Two very popular movies of the 90s, that set a trend for depicting the grand Hindu wedding rituals and celebrations.

all these wedding films identifying with the Hindu community with its marriage rituals and so on” [I: 12-W-7/6]. A women’s activist commenting on increasing constraints on women in both Hindu and Muslim communities stresses “the stronger the communal politics gets, the more the women, being the weaker section, get affected. Women become more and more restricted to homes as symbols of honor; then there are things related to cultural revivalism like support for sati. Vijay Raje, herself a woman leader, was in support of the whole process of glorification of Sati³⁵ [I: 7-W-6/30].

These observations highlight the increasing emphasis in entertainment media and public discourse on rituals and religio / cultural practices focused on Hindu women’s position in regard to their relationship with male relatives, specially the husband. They are indicative of and directly connected to their identity as primarily domestic subjects and a symbol of family’s honor and by extension that of the (Hindu) community. In this regard, an interviewee who manages a publishing house for feminist writing provides thought provoking insight. She says:

it is a fact that many right wing parties are mobilizing women on a large scale and giving them access to the public space and in a way it does [hurt women’s movement] because that is an access that does not question patriarchy and does not question the power relation that exist with your loved ones. In a sense it is much less dangerous discourse [for those who oppose feminist ideas] than the feminist discourse. Feminists can see that and they can see the attraction of a faith enabling discourse which gives you access to the public space and gives you a certain kind of empowerment”. [I: 19-W-8/09]

³⁵ Temples dedicated to Sati Matas (goddesses who are believed to have attained that status by carrying out sati - the ritual of immolating themselves on their husband’s funeral pyre to protect their chastity and show devotion to their dead husband) are not permitted to hold mass rituals celebrating the goddesses. The practice of Sati was banned through the Sati Prevention Act 19.. but isolated cases of forced or voluntary Sati in rural India have been reported in the recent past. Vije Raje, a BJP leader supported groups protesting the ban on observation of mass rituals in praise of Sati Matas and defended their right to do so on grounds of right to religious practice.

Several other interviewees echoed this aspect of organizing women as “Hindu women” (as well as “Muslim women” in some parts of India). Their concerns with this kind of organizing are most succinctly articulated by a social activist who is herself in an inter-religious marriage (a Hindu married to a Muslim) and founder of a group for supporting inter-religious couples. She says:

We know instances of them [A Hindu right women’s group] harassing couples in Meerut³⁶. But you will never hear of them organizing against issues like female feticide, dowry... also they are very vocal against inter-religious marriages. Basically, these groups are not there to address the needs of women but to protect the religious cultural framework that doesn’t give rights to women. [I: 9-W-7/03]

Two related ways of understanding women’s increasing participation in religion based organizations as well as participation in “re-ritualisation” can be identified in my interviewees’ responses: 1) women are concerned with their religious identities; and as a couple of interviewees put it, there is no escaping from this fact; [I: 19-W-8/09;I: 12-W-7/06] 2) observation and participation of religious rituals and/or wearing visible symbols like *mangalsutra* and *sindoor* (or hijab in case of Muslim women) makes it easier for women to negotiate their own space in conditions where heightened awareness about religious identities brings their role as keepers of tradition in sharp focus [I: 10-W-7/06].

The second point reiterates Chatterjee’s observation that:

“[o]nce the essential femininity of women was fixed in terms of certain culturally visible spiritual qualities, they could go to schools, travel in public conveyances, watch public entertainment programs, and in time even take up employment outside the home. But the

³⁶ She was referring to harassment of unmarried couples on Valentine’s day as part of their campaign to stop activities that go against Indian values.

‘spiritual’ signs of her femininity were now clearly marked – in her dress, her eating habits, her social demeanor, her religiosity”. (1993, p. 130)

While this observation was in regard to the nationalist struggle for independence where the Indian [Hindu] woman’s identity was used to assert the spiritual superiority and sanctity of what Chatterjee identifies as the “inner domain” of “Indianness” against the British political rule, the current assertion of “Hindu woman” identity is used to assert more explicitly the “Hinduness” of India against the threat of Muslims to the realization of the ideal of Hindu nation. I will discuss such deployment of an image of ideal woman, including its manifestation in case of the Muslim Right discourse, in more detail in the last chapter.

As mentioned earlier in this chapter, the Hindu Right’s propagandist literature claims that every year 500,000 Hindu women are abducted and forcibly married to Muslim men [TH: 16-Dec-2000]. This propaganda feeds into the enduring theme of abduction and violence against Hindu women at the hands of Muslim men and sanctions violence against women, both Hindu and Muslim.

Besides leading to regulatory sanctions on women, this all consuming concern with the protection of “our” women’s honor from the enemy men also pushes into the background other issues that are not associated with “honor”. As Brinda Karat suggests in her article, “[t]o bring communal overtones to gender violence is to protect the real perpetrators of violence”. She further says:

The VHP and the *Bajrang Dal* concoct figures of crimes against women to cause hatred against minority communities even while ignoring the real increase in crimes against women registered by the Government. About 1.3 lakh crimes were registered in a single year against women ranging from dowry deaths to child rape. But these organisations have not a word to say about this since it does not fit in with their plans of demonising minority communities.

False accusations of abductions made by the VHP also impact on the security of minority women as it incites "revenge" crimes against them. [TH: 16-Dec-2000]

With a clear distinction between "our" and "their" women, assault on "their" women, becomes a fair tactic in settling the score in the war of "honor". In her analysis of the 2003 Gujarat violence,³⁷ Sarkar (2002) observes: "The pattern of cruelty suggests [o]ne, the woman's body was a site of almost inexhaustible violence, with infinitely plural and innovative forms of torture. Second, their sexual and reproductive organs were attacked with a special savagery" (p.28). Sexual violence against women of "other" community gets sanctioned and indeed is seen as necessary not only to settle a score but also as a show of strength and masculine prowess conveying men's ability to protect and avenge "their own" women's and community's honor (Sarkar).

The women's right and secular discourse counters the specificity of "Hindu woman" as constructed by the Hindu Right discourse by not making any distinction between Hindu women marrying Muslim men and Muslim women marrying Hindu men or any other kind of inter-religious marriages for that matter. The cases of Hindu women marrying Muslim men are referred to as different only to criticize and/or acknowledge the success of Hindu Right in bringing, what an interviewee called, "a false issue" in the mainstream [I: 8-M-7/03]. An interviewee, for instance, refers to such marriages to discuss how the communal propaganda works. She says:

Comments like 'why do only Hindu women marry Muslim men' when made on panels in TV programs and people who know better don't counter, it becomes a fact. Even people like us

³⁷ About two thousand people were killed and 100,000 fled their homes in violence lasting several days. Police and State administration is believed to have colluded with the mob in targeting the Muslim population as retaliation for an incident where allegedly a group of Muslim men had put a train compartment on fire, burning to death over 50 kar sevaks (Hindu volunteers).

start thinking that way. We stop seeing instances that go against these. But all this is so carefully manufactured, it is utter propaganda. [I: 11-W-7/06]

It is telling that almost all articles that related specific stories of couples facing public and institutional opposition over their marriage involved Hindu women and Muslim men. Other articles that discussed the issue of inter-religious marriages in general dealt with varied religious and gender combinations. These articles largely illustrated the discourse that is supportive of inter-religious marriages. By not making distinctions between marriages of Hindu women to Muslim men and other inter-religious marriages, the secular discourse, in a way, dismisses the specificity of the master signifier “Hindu woman” that the Hindu Right discourse constructs. It delinks the signs “Hindu” and “woman” and invests meaning instead in the sign “woman” whether Hindu, Muslim or those belonging to other religious communities. The master signifiers “Hindu” and “Muslim” are also invested with different (though not necessarily antagonistic) meanings than those invested with by the HR discourse. This discourse may not question the essentialness of the identities “Hindu” and “Muslim” but counters the HR discourse’s ascription of the former as the legitimate Indian and the later as the enemy.

Further, by not distinguishing marriages between Hindu women and Muslim men from any other kind of inter-religious marriages, this discourse counters the framing of inter-religious marriages as only taking place between Hindu women and Muslim men and as a conspiracy against the Hindu community. In the wake of the release of BJP’s election VCD that depicted scenes of Muslim youth sabotaging Hindus, including the scene of abduction of a Hindu girl, a citizen’s group that included social activists, filmmakers and a Board member demanded de-recognition of the BJP by the Election Commission. In a joint statement to press, the group said, “[w]hat the BJP did through anonymous pamphlets before the Gujarat

genocide of 2002 has today become the official party propaganda sanctioned by its top leadership” [HT: 6-Apr-07].

While both the key signifiers are clearly used to counter the Hindu Right discourse, in using “national integration”, the secular discourse corresponds with the Hindu Right discourse in its underlying premise: the notion that individuals in inter-religious marriages represent or belong to their respective religious communities and that, consequently, their marriages represent an exchange between the two communities. The discourse thus ends up conforming to the notion of essential religious identities. The difference is that while the HR discourse casts a marriage between people from different communities as a conquest of the man’s religious community over the woman’s, the S/W discourse sees it as an example of co-existence between the two religious communities.

This essentialization of religious identities by both the HR and the MR discourses and the difficulty that the S/W discourse faces in countering it without, wittingly or unwittingly, getting trapped in reinforcing those very identities is insightfully explained by an interviewee relating the dilemma of women’s movement. She says:

...during the Shahbano movement and during the movement against Sati a lot of activists were accused of being ...not in touch with Indian realities and by that it is roughly meant not being in touch with their identity or religious identity. If you are not a Muslim woman how can you protest for Shahbano’s right or if you are not a believing Hindu how can you say Sati is not a custom in Hinduism. Many women did feel they should respond in those terms, for example in the Shahbano demonstration it became important to show that the feminist movement has the support of Muslim women and that was made evident by having women in burqa leading demonstration. In a sense [it is] like you fall into the trap; the only legitimate Muslim woman is a burqa clad woman ... Similarly in the Sati discourse it became necessary

to show that you are a believing Hindu and know the scriptures and so on and so forth [I: 19-W-8/09].

Similarly, the arguments in favor of inter-religious marriages, casting them as examples of and means to national integration, often depict the observation of respective rituals, customs and prayers of both religious communities by the couple, reassuring that their, specifically the woman's, religious identity is intact.

The second key signifier "right to choice" used by the S/W rights discourse focuses on individual's, particularly woman's freedom, choice and happiness. In doing so it re-frames the debate on inter-religious marriages and breaks out from the premise of essential religious identities constructed by the HR discourse. The deployment of this signifier articulates the issue as that of infringement of legally granted woman's right to choose a partner. This re-framing of the issue, though, does not contest the notion of essential religious identities directly but, by not engaging with it, does dismiss it as irrelevant. The legal and constitutional provisions with regard to inter-religious marriages are in line with the S/W discourse's appeal to right to choice. In countering the HR discourse, therefore, it repeatedly brings into focus the illegality of the actions that can be recognized as a direct result of the HR discourse. It thus, repeatedly asserts women's subject position as citizens and beneficiaries of rights granted by the Indian state and constitution.

In conclusion while the key signifier "national integration", despite countering the HR discourse, traps the women back in the religious identity constructed for them by the HR discourse, the key signifier "right to choice" offers them a subject position of an individual who can think and act outside the boundaries of religious identity. It is however, a fact that with religious identities established firmly in the mainstream political and social discourse of

India, reassurance that that identity is intact becomes a more practical and immediate strategy for many couples, as illustrated by Mohita's personal story.

CHAPTER VI

SUMMARY

This chapter, on the basis of chapters IV and V, summarizes how the religious nationalist discourses are constructing women's identity in present day India and how the secular/women rights discourse is negotiating with them. The chapter also highlights the traps and opportunities revealed by the struggle between these discourses. Finally, it discusses the implications of the struggle between different discourses for women's citizenship rights.

Different Understandings of "Reality"

I have organized my discussion here by answering the fundamental questions that the discourse theory deals with: what different understandings of reality are at stake; where are they in antagonistic opposition to one another; and what are the social consequences of one or the other winning out and hegemonically pinning down the meaning of the floating signifiers?

Secular nationalist ideology, nurtured during the struggle for freedom, has been India's dominant ideology – from Independence in 1947 until the 1980s – though it was never unchallenged enough to be identified as a sedimented discourse. In terms of the discourse theory, it will not be incorrect to say that it was the discourse of secular nationalism that had hegemonically established the meaning of the "myth" India. However, the fixation of that meaning was always precarious and with the developments in 1980s, which led to the meaning getting more and more destabilized by competing religious nationalist discourses. Secular nationalism continues to be the official ideology but is being

fiercely contested by the different religious discourses. The contest manifests differently in case of the majoritarian Hindu nationalist discourse and the minority Muslim nationalist discourse. As Sunder Rajan (2003) explains:

the mobilization of the majoritarian religious community, organized around Hindutva or Hinduness as a claim of cultural nationalism, is of course a direct challenge to constitutional secularism and the state's secular authority. The problem posed by the minority communities is different: it takes the form primarily of intransigence to state-led change in an attempt to preserve their religious identities". (p. 152)

However, together the antagonisms posed by the Hindu and the Muslim nationalist discourses have rendered the "moments" of the secular discourse open. This, in the sense that the religious discourses are contesting the many ideas (or signs) like the MPL, Article 44, the UCC and their relationships to one another, as they have been articulated by the secular discourse. Displacing, the secular discourse, the religious nationalist discourses are now firmly established as competing discourses and can no more be regarded as just a presence of *potential* threat at the margins.

Antagonistic Positions

It will be better, for the sake of clarity, to map these antagonistic discourses in relation to one another before moving any further. India as a nation, a social space or - in terms of the discourse theory - a myth, is imagined in antagonistic terms by all the three discourses in the sense that these imaginings are mutually exclusive of each other. The ultimate goal of the Hindu nationalist discourse is the establishment of a Hindu *Rashtra* or a Hindu nation - a space that can accommodate non-Hindus (including Muslims) on the condition that they assimilate "Hindu values" and "culture" (Varshney, 2002; Chatterjee,

1993, Juergensmeyer, 1993). Any assertion of Muslim identity and constitutional provisions that recognize or protect actions / institutions expressing that identity go against the ideal of Hindu *Rashtra*. As evident from the analysis carried out in chapters IV and V, the “othering” of Muslims is a critical aspect of the “myth” of Hindu nation. Chapter IV illustrates that MPL, cast as a symbol of Muslim identity, is employed to underscore the essential alienness of Muslims while chapter V illustrates how the signifier, inter-religious marriages is employed to highlight the actual physical threat they pose to the “Hindu community” and by extension the “Hindu nation”. The contemporary Muslim nationalist discourse is, obviously, opposite of this. The projected threat to Muslim identity and assimilation into Hinduism is what this discourse is anchored on. Chapter IV illustrates that the Muslim right discourse also uses MPL as the symbol of Muslim identity and any opinion that does not coincide with their position on MPL becomes a reason for rallying around MPL. In doing so they highlighting the “threat” that Muslim community has to deal with at all times due to its minority status. The “otherness” of the other group for both the discourses is therefore constitutive of their group identity. The nodal point, MPL, in relationship with other signs – “Islam / Islamic principles”, “secularism”, and “Equality / Justice” – have fixed and stable meanings within both the Hindu and the Muslim nationalist discourses. However, except for the recognition of MPL as a symbol of Muslim identity, where the two discourses coincide, there is no congruency between the meanings that these floating signifiers get in relation to each other within these two discourses. The secular nationalist discourse, on the other hand, despite being antagonistic in its imagining of “India” to both the other discourses, has overlapping meanings with both. This is because its imagining is more complex and diverse; it has to deal with many contradictory concepts, the balance between whom has been very precarious.

The ideal of Indian secularism - that posits neutrality towards all religions (unlike the Western notion of separation between the State and the Church) - together with its liberal democratic framework, has rendered the relationship between the individual subject, State and religious community complicated. The secular/women rights discourse has often been engaged in a paradoxical exercise of both affirming this complicated relationship and challenging it on different occasions. With the contesting religious nationalist discourses gaining strength, therefore, the precariously stabilized “moments” within this discourse are readily susceptible to slip and revert back to being “elements”. I will unpack this complicated relationship further, in relation to the master signifier (Hindu and Muslim) woman, a little later in this chapter.

In the case of the other nodal point, “marriages between Hindu women and Muslim men”, and its relationship with the signs “Hindu honor”, “national integration” and “right to choice”, the meanings are fixed more stably within not only the Hindu nationalist but also the secular discourse. As discussed elsewhere, the emergence of “marriages between Hindu women and Muslim men” as a nodal point (that is one of the prominent issues which is becoming increasingly important and around which the Hindu nationalist discourse is being organized) is a relatively recent development. Therefore, the process of instituting this discourse is very visible and makes it easier to differentiate the sedimented and the political.

What are the different understandings of reality at stake then? Let me encapsulate the Hindu and Muslim discourses and the subject positions they are constructing for Muslim women and then move on to the secular discourse. The Hindu nationalist discourse’s ideal of the Hindu nation is aimed at restoring India to its “original” Hindu roots. The “othering” of Muslims is constitutive of this ideal. But, in drawing its frontiers, it categorizes all the

discourses that are deemed to be threats to the realization of the Hindu nation, through the logic of equivalence, as belonging to or supportive of the “other” – be it the feminist claims asserting women’s right to choice or the secular groups appeal to the Constitution’s secular provisions for asserting the minority rights. Definition of being a Hindu is produced by conflation of not only cultural and religious but political meanings of Hinduism or “Hindutva”, as termed by Savarkar (Varshney, 2002). This all-embracing structure then fixes the meaning of what being a “real” Hindu means and women, bearing the burden of representation, are particularly called upon to live up to that meaning.

The Muslim nationalist discourse invokes the secular ideal of India but fills it with a meaning that is specific to their understanding. It implies recognizing religious identity over and above all other identities. Any other value or right, if in conflict with the understanding of what being a Muslim means according to this discourse, should give way in favor of the Muslim identity. Here again, in drawing their frontiers, all discourses that disagree with their understanding of minority rights are treated, through the logic of equivalence, as one category.

In this context, the MPL – established as the most prominent symbol of Muslim identity – becomes, for the Hindu nationalist discourse, an object of attack, and for the Muslim nationalist discourse, an object that is sacrosanct and outside the realm of influence of any entity, including the State.

Muslim Woman

The approach of Muslims to “their” women, in regard to the fixing of the “reality” of India in the current political struggle, bears remarkable similarities to the treatment of Indian/Hindu women during the anti-colonial struggle by nationalists, seeking to gain and

secure sovereignty over the personal sphere. Seeking to maintain Muslim community's sovereignty over their personal affairs, the Muslim Right discourse resists any "interference" from, what it sees as, the Hindu majoritarian state. This is manifested in the form of regulations as to how Muslim women should lead their lives. While uniform laws are accepted in all other realms, the "personal", that is the domain where women are seen as rightfully belonging to, is to be governed strictly by Islamic religious principles (as understood by the Muslim leaders, i.e. the All India Muslim Personal Law Board). As discussed in chapter IV, the existence of Muslim women is conceptualized, by this discourse, only in relation to the MPL. This makes them first and foremost the members of the Muslim community. Further, since their lives are not constructed as meaningful beyond the domestic sphere, their membership of the community (as against subjects of the state), becomes their only identity; rendering their citizenship status almost meaningless.

Just as the status of women and the traditional practices determining it were deployed by the British to legitimize their rule over the natives, the Hindu Right discourse casts the status of Muslim women as a reason for dominating Muslims and giving primacy to (progressive) Hindu values in the functioning of the state in general, and for replacing the MPL with the UCC (modeled on Hindu Code Bill) in particular. I am not arguing here that the equation between the Muslim Right and the Hindu Right is the same as that between the anti-colonial nationalists and the colonial power. Rather, my argument underscores the symbolic value of women as "subjects of community / religious tradition" (Zacharias, 2001, p. 33) and the consequential reduction of any debate on women rights to a debate on community identity and rights.

The subject position constructed by the Muslim nationalist discourse for “Muslim women” assigns them a position that is unequal and limited to their role in the patriarchal family structure. Further, the identity “Muslim woman”, due to the fixed essentiality of both gender and the religious community, is a fixed and inescapable one within this discourse. The essentiality of gender and religious community and their specific combination is, of course, fixed within the Hindu nationalist discourse, too, as is manifested in its construction of the subject-position of victims for the “Muslim women” and that of Hindu honor for the “Hindu women”.

Hindu Woman

The abstract notion of “Hindu honor” is not only a key sign in relationship to which the “Hindu woman” is articulated but the two terms are often used synonymously. Moreover, the imagery of Mother India and the emphasis on women’s role as mothers of Hindu sons puts them under the double burden of embodying the community’s “honor” and reproducing – both physically and culturally – the community. These stipulations for “Hindu women” are not regarded in conflict with any notion of individual freedom. In fact, implicit in the Hindu nationalist discourse – as it highlights the victimhood of “Muslim women” – is the idea of freedom that Hindu women enjoy by virtue of being “Hindu women”. The articulation of the nodal point “marriages between Hindu women and Muslim men” in relation to the myth Hindu nation / India and the sign Hindu honor, thus, constructs a subject position for “Hindu women” that assumes essentiality of “Hindu” and “woman”. This essentiality renders certain aspects of “Hindu women’s” life outside the ambit of any discussion on freedom and choice.

The Secular Discourse: Slipping “Moments”

The secular and women rights discourse competes with the religious nationalist discourses to counter the two specific meanings that these discourses have constructed. One, the notion of Hindu nation, inherent in which is the opposition to a secular constitution that postulates the principle of equality of all religions. Two, the notion that religious laws (that retain the patriarchal norms in governing the “personal” sphere of respective communities) should be privileged when in conflict – as they often are – with fundamental rights and the promise of equal citizenship granted under the Constitution. The former challenge is obviously posed by the Hindu nationalist discourse and the latter by the Muslim nationalist discourse. Unlike these two discourses, however, the secular/women rights discourse is so positioned vis-à-vis the two that it cannot draw on the logic of equivalence and create a single frontier dividing itself from the other two.

As discussed in chapter IV, the secular/women rights discourse has to simultaneously juggle several positions that appear paradoxical. The challenge to the MPL, for its blatantly discriminatory position vis-à-vis Muslim women, goes along with affirming the minority rights that, in the case of Muslims, manifest themselves in terms of the protection of MPL. With the increasing strength of religious nationalist discourses, two related developments are occurring with an ever increasing fervor: on the one hand, there is the persecution and marginalization of minorities, particularly the Muslims, and on the other, there is the increasing assertion of Muslim identity by rallying around the MPL. It is in this context that the “moments” of secular/women rights discourse have become destabilized and there is a certain amount of struggle within this discourse in terms of (re)fixing the meanings of signs.

The inherent ambiguity in the constitutional framework and in the gap between the constitutional provisions and state practices reinforces the dilemma of the secular/women rights discourse. The Constitution of India guarantees equality and freedom from discrimination on the basis of sex or religion. Article 14 guarantees equality before the law. Article 15 clearly prohibits “discrimination on the grounds of religion, race, caste, sex, or place of birth”. Article 25, that upholds the “Freedom of conscience and free profession, practice and propagation of religion” also subjects this freedom “to public order, morality and health and to other provisions of this [the Fundamental Rights] Part”. The article further qualifies this freedom in clause (2): “Nothing in this article shall affect the operation of any existing law or prevent the State from making any law – (a) regulating or restricting any economic, financial, political, or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform....” (The Constitution of India, p.13).

The existence of Personal Laws that obviously discriminate on the basis of religion and sex confounds the relationship between the right to equality and freedom and the right to the practice of religion as spelled out by the two above mentioned articles. While the constitutional framework clearly privileges the former over the latter, the existence of personal laws reverses this relationship. The justification of the system of personal laws on the basis of article 25 is critiqued by legal experts and feminist scholars on several grounds: (1) the provision of the Constitution relating to the right to religious freedom does not include right to be governed by religion-based laws (Iyer, 1987,p.26; Mahmood, 2002); (2) personal laws are the only system of laws in India today that discriminate between individuals on the basis of religion and sex, flouting the promise of fundamental rights

(Narain, 2008; Nussbaum, 2007; Sunder Rajan, 2003); and (3) the system of personal laws is a colonial legacy that categorized people on the basis of ascriptive belonging and adopted the policy of “non-interference” specifically for administrative reasons with no pretensions towards democracy (William, 2006).

Existence of Article 44, as a Directive Principle, stating “The state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India” indicates the recognition of these critiques. However, the nature of Directive Principles of Policy is such that the provisions under it are not enforceable “by any court” although the principles contained in it are “fundamental in the governance of the country” making it “the duty of the State to apply these principles in making laws”. It has caused a lot of confusion with regard to the Personal Laws. As discussed in chapter III, the expectation that the demand for dissolution of Personal Laws will emerge from within the community was the basis of this article. However, inherent in this expectation were the same assumptions and principles that led to the retention of Personal laws. In William’s (2006) words this “made ‘communities’ the basic unit of politics” (p. 13). Although the liberal democratic framework on which the Indian State had modeled itself takes individual citizens and political groupings based on interests to be the key actors, the provision of “Personal Laws” essentialized groups based on “ascriptive characteristics such as religion”. Further, William says:

noninterference was premised on the assumption that some issues concerned one group more than the others. Each community’s personal laws came to be identified as the primary concern of that community, rather than the concern of other communities, the government, or ‘the nation’ as a whole. (p. 13)

The existence of personal laws, thus, privileges community rights over individual rights at two levels. At one level, there is the legal acceptance of the “Personal Laws” and at

another – despite propounding the value of uniform laws for all citizens – there exists the assumption in the very framework of the Constitution that a religious community is the mediating unit between the individual and the State.

The secular/women rights discourse initially supported the Uniform Civil Code to secure equality under law for all, irrespective of religion and sex, as a matter of fundamental rights and questioned the very assumptions on which the personal laws are based. The MPL, as were the other personal laws including the Hindu Law, were cast incongruent with the democratic framework of independent India. However, with the strengthening of religious nationalist discourses that have made minorities – particularly Muslims – vulnerable and, at the same time, created heightened awareness about religious identities, questioning community identity has become problematic for the secular/women rights discourse.

In this context, the somewhat contradictory stances of secular/women rights groups, as discussed in chapter IV, illustrate the efforts to re-articulate the relationship between the various signs like UCC, MPL, Islam (Muslim community) and their relationship with the master signifier woman. In doing so, this discourse has kept the issue of women's discrimination, inherent in the MPL (and other personal laws) alive. However, in dealing with the various dilemmas, this discourse can be seen as moving towards accepting the essentiality of religious communities. In this scenario, the discourse of women's rights is getting narrower, "displacing issues of women's rights onto discussions of what women may be privileged to have for the moment, within the rhetoric of 'community interest'" (Narain, 2008, p. 90). The effort at negotiating with the Board not only reinforces the Board's "representativeness" of the community but also the community's authority over "its" women.

This fixed essentiality of religious communities is manifested in the discourse around marriages between Hindu women and Muslim men as well. While, this is obvious in the case of Hindu nationalist discourse, it is implicit in the secular discourse's use of the sign "national integration". The trapping of women within their religious identities, however, doesn't have the same consequence for Hindu women as it has for the Muslim women. Being the members of majority community, the identification as subjects of a community does not block their identity as subjects of the State as completely as it does for the Muslim women. Nonetheless, the act of choosing a partner, if cast – whether positively or negatively – as an act implicating the entire community, does have its consequences. The rhetoric of "community interest" may and does work to constrain the rights that women have been granted formally, as is obvious from the accounts of the involvement of state and non-state organizations' in preventing women from exercising their right to choice.

Implications for Women's Citizenship

Further, women's struggle for securing equal citizenship rights – formal and substantive – includes a constant process of engagement with the State. Sunder Rajan (2003) identifies the following ways in which women can engage with the state:

- As electoral subjects, a constituency that can be identified, or projects itself, as having special interests as women;
- As litigants, individually or collectively petitioning the state for their entitlements, in matters of inheritance claims, maintenance, compensation, restitution of rights, employment, fair wages, usually in the court of law;
- As supplicants, usually individually petitioning the state for their protection, welfare, compensation, or rehabilitation, especially when victims of societal violence (rape, dowry-murder, communal riots) or natural disaster;

- As activists in an organized collectivity, such as autonomous women's groups or other social movements... (pp. 28-29).

The State's response to these ways of engagement, obviously, has the potential of constraining or advancing women's citizenship rights. How the state actually responds, however, depends on how it constructs "woman" (Sunder Rajan, 2003) which is undeniably linked to the discourses under discussion here. The construction of women as subjects of a community is, in any case, manifested in State's sanctioning of patriarchal laws in the "personal sphere". Further, communitarianism, understood as "a group defined by a single identity" (Sunder Rajan, 2003, p. 15) seems to be more or less getting sedimented in not only the religious nationalist discourses, the State's actions, but the discourse that challenges and engages with these two to ensure equal rights to women and to maintain secular values.

Although the secular and women rights discourse offers women a subject position with more agency as compared to the religious nationalist discourses, nonetheless, the naturalization of religious communities as essential and negotiating for women's rights within that space is highly problematic. If this construction (women as subjects of community) gets reinforced rather than challenged by the women's rights discourse, it may work to the further disadvantage of women in terms of securing equal citizenship status and ability to practice it.

That these constructions can perpetuate inequalities, over and above the existing equations is evident by several examples. The Shahbano case, of course, embodies this danger in very clear terms. It established that in the case of the conflict between women's identity as citizens and women as subjects of a community, the State recognizes the latter.

Another similar potential conflict exists in relation to the Child Marriage (Prohibition) Act 2006 (earlier Child Marriage Restraint Act [CMRA] 1929. The act

stipulates the minimum legal age of marriage as 18 years for women and 21 years for men. It is a civil law that is applicable to all Indian citizens. But many Muslim leaders argue that, since the issue of marriage is governed by the Muslim Personal Law, it should not apply to Muslim child marriages if they are performed according to the *shariah* (Islamic law). This conflict was poised to turn into a Shahbano like situation in the case of Ameena, an underage girl married to an elderly Arab Muslim in 1991, but did not for various political and contextual reasons at that point of time (Sunder Rajan, 2003). The ambiguity surrounding it has been left unchallenged by the secular/women rights discourse, as illustrated by the prologue of chapter IV, precisely because it can potentially turn into another issue that pits community interests against women / child rights.

At another front, the intervention of State institutions to prevent inter-religious marriages has been limited till now to actions at an informal level. However, in July 2009, a minister of state in the state of Maharashtra, reportedly ordered the Criminal Investigation Department to probe all marriages between Hindu girls and Muslim boys. The action was ordered after a BJP member raised the issue in the legislative assembly that young Muslim men were wooing and marrying Hindu girls in the rural areas as part of a conspiracy to increase the community's strength. The minister belonging to the Indian National Congress, dominant partner in the ruling secular alliance, apparently accepted that "such incidences" were taking place and promised to initiate the inquiry [TOI: 3-Jul-09]. While the minister later denied ever ordering such a probe, the incidence indicates the prevalence of this discourse and its potential for constraining women's rights (as also for, intensifying the "othering" of Muslims).

It is evident that women's citizenship rights are mediated to a significant extent by constructing them as "subjects of religious community". However, the broader discourse of citizenship still regards them as individuals and equal citizens. In countering the Hindu nationalist discourse on inter-religious marriages, the second sign that the secular/women rights discourse deploys - "right to choice" - is located, unambiguously, in the discourse of liberal citizenship rights. However, in the case of the MPL, the aspect of community interest is implicated implicitly or explicitly in most of the arguments pertaining to the rights of Muslim women. The communitarian notions that seem more or less sedimented in discussions around the MPL and Muslim women are thus being actively contested in the debate around inter-religious marriages and Hindu women, by the secular / nationalist discourse. Whether this is because the location of this issue is in the discourse of majority community, or because the nature of issue (which is fundamentally different from the issue of personal laws), or the fact that this issue has emerged as a nodal point in the Hindu religious nationalist discourse recently, it nonetheless points to the "political" moment where subordination of women's identity as citizens to the notion of women as subjects of community, is being contested. To not let the signs in secular/women rights discourse be fixed by the religious nationalist discourse, "political" moments like these have to be built upon and extended to other signifiers too (those concerning the MPL and Muslim women) to challenge the naturalized meanings of community rights.

The liberal pluralist notions of citizenship need to replace the communitarian notions so that, rather than maneuvering to extend women's agency within the limited space that the religious nationalist discourses offer them, women are articulated as equal and autonomous individuals.

While it is essential to recognize minority rights particularly in the event of a majoritarian nationalist discourse constructing religious minorities as “outsiders”, it does not have to translate into communitarian notion of citizenship that permits ‘minority groups’ to impose restrictions on their own members, particularly women, in the name of traditional laws and practices (Kymlika, 1995). Mouffe says that “the way we define citizenship is intimately linked to the kind of society and political community we want” (Mouffe, 1992, p.25). It is in this sense that a liberal Marshallian notion of an image of ideal citizenship can be used “against which achievement can be measured and towards which aspirations can be directed” (Lister, 1997, p. 5) to demand full, formal and substantive citizenship for women. The pluralistic casting of the concept needs to be geared towards countering its exclusionary tendencies and recognizing difference – of religion or gender – without essentializing it and making it a criterion for restricting rights.

What is at stake then are the two different understandings of reality: one, that freezes individuals as members of religious communities and engenders discrimination and hierarchies between them as well as within them; and two, that recognizes plurality and identifies groups or categories on the basis of similarity of interests, not ascriptive belonging. If the former gets fixed hegemonically, as represented by religious nationalist discourses in India, women will get constructed as non-citizen members of the community or victims, as is the case for Muslim women; or a symbol of community honor, as is the case for Hindu women. The latter notion of reality will recognize their identities as Muslim or Hindu and as women but only as one of many. Priming of these identities, separately or in combination, needs to occur only for the purpose of enhancing their interests.

In this study, I have attempted to understand the construction of subject-positions for women by the Hindu and Muslim nationalist and the secular/women rights discourses. By juxtaposing these discourses, I have pointed towards assumptions that mediate the relationship between women, religious communities and the State and their potential for restricting or enhancing women's citizenship rights. Further, by briefly discussing the current status of women's citizenship in India, I have suggested that the secular /women rights discourse needs to break the boundaries set by religious nationalist discourses and deploy a pluralist notion of liberal citizenship to change the current course that has more or less naturalized communitarianism. The study does not purport to provide a solution to the complex question of women's citizenship in the even more complex social and political post-colonial Indian context. It is only an effort to locate discourses that are setting the direction of India's polity and the construction of women's subject positions within these discourses.

Future Direction

In the course of this study I wondered if discourse analysis can help us understand the specific moments and/or strategies within the discourses that lead to their marginalization or movement towards hegemonic establishment over the other competing discourses. This study shows the movement within the three delineated discourses but the answers to the questions how and why the specific nature of movement is occurring can, at best, be speculative. From the point of view of future research, therefore, it is these questions that can be explored. While there is no clear path that can be followed in search of the answers, a deeper analysis of the question "how religious nationalist discourses are constructing the identities of Hindu and Muslim women" may lead towards an understanding of the "how" and "why" of the movement of these discourses. Ainsworth and Hardy (2004) discuss "four sites of discourse

research –language, talk, narrative and interdiscursivity – [as ways to explore]...the construction of identities” (p. 154). An application of these “sites” to the various spaces where religious nationalist discourses unfold can, therefore, be a fruitful exercise. It can be so in terms of understanding the strengths and utility of the four specified research sites in studying identity construction as well as understanding the strategic convergence of discursive and social practices occurring in varied spaces, levels and times. For instance, an analysis of the discourses operating at small and big organizations representing the three distinct discourses identified in this study; exchange between members of such organizations and; different categories of print and electronic media can be some of the spaces that can be focused on for a more holistic picture. This can be done using the appropriate site(s) from among language, talk, narrative and interdiscursivity and applying the appropriate method from the array of discourse analysis methods that the field offers.

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APPENDIX I

Glossary of Terms Used in the Discourse Theory

Articulation	Any practice establishing a relation among nodal points such that their identity is modified as a result of the articulatory practice.
Chains of equivalence	Investment of key signifiers with meaning by combining them relationally with other signs e.g. “the West” is linked with “civilization”, “white people”, “the Christian church” etc.
Contingent	Refers to the philosophical foundation of the theory that any articulation and everything social is possible but not necessary.
Discourse	Partial fixation of meaning around a certain nodal points within a particular domain, for e.g. relationship with God, a set of practices, a group identity are different meanings that can be assigned to “Hinduism” in the domain of religion.
Field of discursivity	All the possible meaning of a sign that a discourse excludes.
Floating signifiers	Signs that different discourses struggle to invest meaning in their own particular way
Hegemonic intervention	An articulation that by means of force reconstitutes ambiguity when discourses collide antagonistically. Hegemonic intervention has succeeded if one discourse comes to dominate alone, where before there was a conflict, and the antagonism is dissolved
Key signifier	A privileged sign in a discourse around which other signs are ordered
Master signifier	A key signifier that organizes identity e.g. “woman”, “man”, “African- American” etc.
Myth	A key signifier that organizes social space e.g. “West”, “society”, “Hindu nation” etc.
Nodal point	A key signifier that organizes discourse e.g. “liberal democracy”
Social Antagonism	It occurs when different identities mutually exclude each other. Although a subject has different identities, these do not have to relate antagonistically to each other.

APPENDIX II

Interview Protocol

1. Do you think religious nationalist discourse is affecting women (and the women's movement) in India?
2. What are some important issues in regard to women that are a direct manifestation of discourse of religious nationalism
3. Which of these are most critical for women's movement?
4. Do you think women from different religious community face different problems to realize their human rights? Historically and in the present times.
5. How do you think the Personal laws provided in the constitution of India affect women?
6. What are the enabling factors for the women rights movement in India? Are they affected by this discourse of religious nationalism/communalism in any way?
7. What are constraining factors for the women rights movement in India? Have they changed due to the discourse of religious nationalism?
8. Have these discourses affected the police and judiciary's interaction with women/ Or is there a potential of such an influence
9. What issues have gained political visibility in regard to women issues in last couple of decades?
10. What are the positive and negative aspects of that visibility?
11. How are women responding to the construction of women identities within this discourse
12. How is the religion-based women's movement affecting the feminist movement/ how important are they?

13. If you have to list in order of importance what are the two issues that are the biggest challenges for women rights currently?

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