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‘Signs of churning’: Muslim Personal Law and public contestation in twenty-first century India*

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Abstract

For many Muslims, the preservation of Muslim Personal Law has become the touchstone of their capacity to defend their religious identity in modern India. This paper examines public debate over Muslim Personal Law, not as a site of consensus within the community, but rather as an arena in which a varied array of Muslim individuals, schools and organisations have sought to assert their own distinctiveness. This is done by discussing the evolution of the All India Muslim Personal Law Board, the most influential organisation to speak on such matters since the 1970s, with particular focus on its recent disintegration at the hands of a number of alternative legal councils formed by feminist, clerical and other groups. These organisations have justified their existence through criticism of the organisation’s alleged attempts to standardise Islamic law, and its perceived dominance by the Deobandi school of thought. In truth, however, this process of fragmentation results from a complex array of embryonic and interlinked personal, political and ideological competitions, indicative of the increasingly fraught process of consensus-building in contemporary Indian Muslim society.

Muslim personal laws and postcolonial identities

In a brief twelve-month period spanning 2004 and 2005, several protracted episodes of argument and contestation took place between

* This paper is based upon newspaper materials collected in India between 2004 and 2007, and on publications issued by the various *shari‘at* -councils discussed within. For facilitating my access to documentation, I owe thanks to Maulana Mirza Muhammad Athar, Maulana Naeem ur-Rehman, and Kazim Zaheer, and to the offices of the All India Muslim Personal Law Board (Delhi), the All India Shia Personal Law Board, and the Nadva’t ul-‘Ulama Madrasa (both Lucknow). For their insightful suggestions and comments on earlier drafts of this paper, I thank Nandini Chatterjee, Humeira Iqtidar, Werner Menski and Eleanor Newbigin, as well as its anonymous reviewer.

a number of Muslim representatives, schools and organisations in modern India. All were widely covered in the English and Urdu presses which perhaps predictably interpreted them, despite their particularity, as indicative of wider issues affecting the Indian Muslim community as a whole.

The first of these episodes was the enhanced profile suddenly gained by a number of organisations petitioning for the expansion of rights for Indian Muslim women. These included the renewal of established feminist groups like the *Awaz-i-Niswan* and the Women's Research and Action Group, both of Mumbai, which offered counselling and legal advice to women experiencing marital problems or divorce procedures.¹ Others were newly created associations such as the Muslim Women's Forum of Delhi, the *Huqooq-i-Niswah* and the Muslim Women's Youth of India, all of which began to establish a visible public role from around 2003. Early 2005 saw the foundation of one of the most significant of these organisations, the All India Muslim Women's Personal Law Board, which in its first *'adalat* (extra-judicial court) held in the city of Lucknow registered 166 cases of women seeking its advice on marital and divorce matters.² This combined array of organisations propounded a version of what has often been called 'Islamic feminism,' since they represented not a 'middle-class secular feminism' conveyed in a religious cloak, but actively grounded their advocacy of the expansion of women's rights in recourse to the Islamic scriptures and an egalitarian interpretation of the *shari'at* (Islamic law).³

The causes taken up by these organisations were numerous, and included ensuring the payment of maintenance to divorced women, granting more rights to women to obtain divorce or custody of children, and protecting women from mistreatments such as dowry offences. Most particularly, all engaged with the issue of triple-*talaq*—a form

¹ The *Awaz-i-Niswan* was founded in 1987, but has gained heightened fame and geographical reach in recent years. For a discussion of its activities, see Sylvia Vatuk, 'Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law', *Modern Asian Studies* (2008) 42-2/3: 497-499. The Women's Research and Action Group was founded in 1993 to speak for, in the organisation's own words, women who were 'subordinated by the politics of gender, identity and personal laws.' Yoginder Sikand, 'Listen to the Women', <http://www.outlookindia.com/article.aspx?227300> [posted 5 May, 2005].

² *The Pioneer* (Lucknow), 3 February, 2005; *The Indian Express* (Lucknow), 3 February, 2005; *The Hindu* (Delhi), 27 February, 2005; Vatuk, 'Islamic Feminism in India' (2008): 505-507.

³ Yoginder Sikand, 'Listen to the Women', *passim*; Vatuk, 'Islamic Feminism in India', *passim*.

of divorce enacted by verbal pronouncement unilaterally and instantaneously by the husband. The triple-*talaq* practice had long been a subject of contentious public debate, representing for many the excesses of the *shari'at* as implemented in postcolonial India. Yet, it elicited an enhanced level of attention in the first decade of the twenty-first century, with stories emerging in the press of men using the telephone, email or even mobile telephone text messages to divorce their wives.⁴ Much of the blame for the existence of this and other comparable practices was assigned to the established *'ulama* (Muslim clergy), especially those gathered in a body known as the All India Muslim Personal Law Board (henceforth AIMPLB). They were widely accused by Islamic feminists of fostering incorrect readings of particular injunctions of *shari'at*, and using them to perpetuate the denigration of women and suppression of their essential rights.

The second development in question was the formation of several new organisations and councils of Muslim *'ulama* seeking to express their own interpretations of the *shari'at*. While until 2004 the AIMPLB had been largely unrivalled as the dominant public forum for the discussion of such matters, now its hegemony over these issues was undermined by the attempted breakaway of several religious schools within Islam seeking to express their own autonomy of legal interpretation and leadership. In November 2004, Tauqeer Reza Khan of the Barelvi school of Sunni Islam deserted the AIMPLB to establish a separate and somewhat makeshift organisation known as the All India Muslim Personal Law Board (Jadid), representing a partial split from the original AIMPLB of one of the largest subdivisions with Indian Sunni Islam.⁵ Just two months later, and no doubt spurred by the former, a number of Shia *'ulama* of Lucknow and Hyderabad pledged to found an organisation known as the All India Shia Personal Law Board. It ultimately came into being later in 2005 under the stewardship of Mirza Muhammad Athar, a populist Shia preacher from outside Lucknow's main clerical establishment.⁶ The decision to form this organisation coincided with a series of violent clashes between Sunni and Shia Muslims in Lucknow during the 2005 Muharram festival, and the press widely held the formation of the

⁴ For one example of the latter, see the case of Sahaba Khaliq of Moradabad. *Times of India* (Lucknow), 21 November, 2005; *Qaumi Khabren* (Lucknow), 22 November, 2005.

⁵ *The Indian Express*, 24 January, 2005.

⁶ *Raport: Aal Indiya Shia Parsanal Laa Bord* (Lucknow, 2005), pp. 1–4; *The Yam Times* (Hyderabad), 19 November, 2005.

new Shia Board and its fierce defiance of the AIMPLB to be one of the causative factors.⁷

A few months later, a third incident of importance occurred on the other side of Uttar Pradesh in the small town of Charthawal near Muzaffarnagar. In June 2005, a controversy erupted in this town around the alleged rape of a married Muslim woman, Imrana, by her father-in-law. In response, a *panchayat* (local council) of *'ulama* and representatives of her *ansari* caste was convened to decide an appropriate response, declaring that she should leave her husband. Following Imrana's refusal to comply, opinion on the issue was requested from the nearby *madrasa* of Deoband, which issued an edict confirming the opinion that her marriage should be considered void.⁸ The verdict managed in one swoop to infuriate a vocal combination of the press, Islamic feminist organisations, the state government, and indeed the AIMPLB, the latter of whom mobilised to issue a counter-edict that the matter was a question for the criminal code rather than Muslim Personal Law and hence should be referred to the state courts.⁹

While none of these episodes is directly connected with another, many commentators were quick to note the impressions of linkage between them. They remarked on such events collectively as signs of a broadly conceived 'churning process' within Indian Islam,¹⁰ effectively a series of intertwined efforts to renovate structures of Muslim religious leadership and modes of legal understanding, with wide-ranging social and political ramifications. As encapsulated by the elements described above, this churning process has been primarily manifested through a series of very public arguments which relate in different ways to questions concerning the derivation and implementation of Muslim Personal Law (henceforth MPL), a subject which is at the heart of this paper and therefore needs some brief introduction.

⁷ *Qaumi Khabren*, 22 and 25 February, 2005.

⁸ *The Milli Gazette* (Delhi), 16–31 July, 2005; *The Telegraph* (Calcutta), 29 June, 2005. Critics of the edict said that it did not distinguish between rape and adultery. After the issuing of the edict and the furore it generated, the rectors of Deoband made some effort to retract it, saying that it had expressed only a hypothetical religious opinion and was not a *fatwa* intended to guide responses.

⁹ For more information on this widely covered and controversial case, see Barbara Metcalf, 'Imrana: Rape, Islam and Law in India', in *Islamic Studies* (2007), 45–3: 389–412; *Outlook* (Delhi), 18 July, 2005; *Rashtriya Sahara* (Noida), 3 July, 2005.

¹⁰ *The Hindu*, 29 January, 2005. Interestingly, similar language was even used by the BBC. http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/south_asia/4235999.stm [posted 9 February, 2005].

MPL, the legal system current in India which allows Muslims to be directed by a version of religious law in personal and family matters (marriage, divorce, guardianship, inheritance, etc.),¹¹ has continued to elicit a great deal of journalistic and academic attention. Some scholars have assessed modern MPL as the successor of the colonial system of Anglo-Muhammadan Law, a distinctive hybrid of a particular understanding of *shari'at* and English law grounded in an enduring policy of state 'non-interference' in religious affairs.¹² A large number of other studies have focused upon the political or constitutional ramifications of MPL, assessing the implications of religiously-derived systems of personal laws for the modern meanings of secularism and the attitudes of the state towards its religious minorities.¹³ But in particular, a large body of literature has discussed how an Indian Muslim identity has been cultivated around a historical trajectory which has conflated the Muslim community with its distinctive legal status.¹⁴ Such a notion began to crystallise during the colonial period when, according to one author, the collapse of Muslim political power incurred Muslim leaders to 'turn . . . increasingly to "law" as the sole pillar of their community,' or more specifically, Anglo-Muhammadan law, that particular rendition of *shari'at* cultivated through colonial court activity.¹⁵

Thereafter, a comparable discourse of Muslim identity has arguably continued to exist into the postcolonial period, with personal laws being similarly reified as the terrain upon which a distinctive Muslim identity can be preserved in spite of the community's numerical and political frailty. Like religious freedoms, the protection of Urdu, the distinctive status of Aligarh University, and so on, the preservation of MPL has become part of a 'symbolic vocabulary' of issues which

¹¹ Muslim Personal Law is a legal system based upon the presumption that Muslims should be governed in their personal and family affairs by a form of religious law, which can be administered in family courts. It exists both in statutory form (enshrined in statutes such as the Muslim Personal Law [*Shari'at*] Application Act of 1937 and the Dissolution of Muslim Marriages Act of 1939) and in case law, working on the basis of court precedent.

¹² For example, Rina Verma Williams, *Postcolonial Politics and Personal Laws: Colonial Legal Legacies and the Indian State* (Oxford: Delhi, 2006), passim.

¹³ For example, Gerald James Larson, ed., *Religion and Personal Law in Secular India: a Call to Judgment* (Social Science Press: Delhi, 2001), passim.

¹⁴ For reflection upon such themes, see Gail Minault, 'Women, Legal Reform and Muslim Identity in South Asia', <http://www.juragentium.unifi.it/en/surveys/rol/minault.htm> [posted 2005].

¹⁵ Scott Alan Kugle, 'Framed, Blamed and Renamed: the Recasting of Islamic Jurisprudence in Colonial South Asia', *Modern Asian Studies* (2001), 35-2: 302.

have come to represent the Muslim minority itself, a representational language perpetuated both by the state and by Muslim community leaders alike.¹⁶

Thus, studies of colonial and postcolonial settings have consistently been in agreement in situating the issue of the integrity of personal laws at the core of Indian Muslim identity politics. A further implication of this conflation of the Muslim community with its personal laws, of course, is its identification of the personal/private realm of individual and family transactions (known as *ma'malat*), rather than the public/political realms, as the natural core ground of the *shari'at*.¹⁷ This assumption underlay the colonial administration of Anglo-Muhammadan Law, and it has in effect been perpetuated into the postcolonial present by the language of both government and Muslim organisations, both of which have frequently articulated legal autonomy in the private sphere as an alleged means of accommodating the needs of the Muslim community within the modern secular state.

Many such analyses, however, have conveyed the impression of the successful confluence of a singular Muslim opinion around the issue of MPL. By primarily framing debates on MPL as discussions taking place between representatives of India's Muslim minority and an outside 'other' (be this the colonial or postcolonial state, or the Hindu majority), such studies unintentionally risk implying a somewhat homogenised Muslim public opinion, singular in perspective on personal laws and united in pursuing their protection.

This paper approaches the subject of MPL from the very different viewpoint of purely inner-Muslim dialogue. It examines MPL less as an issue around which a singular Muslim identity and policy has been expressed and harmonised, but instead as a site in which a growing range of Muslim voices have come to assert their individual identities and demand their own rights to self-determination. MPL, in effect, has become a platform for ongoing dispute and contestation within Indian Islam itself.

The next section of this paper introduces the AIMPLB—long the most high-profile participant in the cause of preserving MPL in India. It assesses how and why the organisation has in recent years attempted

¹⁶ Zoya Hasan, 'Minority Identity, State Policy and the Political Process', in Zoya Hasan, ed., *Forging Identities: Gender, Communities and the State in India* (Westview: Boulder, 1994), pp. 63–65.

¹⁷ Rina Verma Williams, *Postcolonial Politics and Personal Laws* (2006), pp. 6–7; c.f. Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (California: Berkeley, 1996), pp. 61–62.

to codify a more homogenous and standardised corpus of personal laws applicable to Indian Muslims. The subsequent two sections examine how this codification project has been contested by a growing number of voices from within India's notional Muslim community. The increasingly divisive nature of dialogues on personal law matters are located partly in the development of fresh manifestations of longstanding *maslaki* (sectarian) quarrels in Indian Islam, but also in terms of broader religious and social changes in modern India, which have had deep ramifications for the feasibility of public spokespersonship and representation in contemporary Muslim society.

From campaigns to codification: the changing role of the All India Muslim Personal Law Board

Despite having been one of the most important and influential Muslim religio-political organisations in India throughout the last 35 years, the historical development and organisational structure of the All India Muslim Personal Law Board have received scant detailed consideration by historians or political scientists. Too often, and for a variety of reasons that shall be described, it has been cursorily dismissed in academic and journalistic coverage alike as a 'fundamentalist and conservative force', or 'a phalanx of orthodoxy'.¹⁸ Such views have largely been predicated on the AIMPLB's periodic rows with the government, legal and its association with contentious legal practices such as male-initiated unilateral divorce. But these perspectives also carry within them the insinuation that the AIMPLB is a static, unflinching entity, having evolved little in purpose or perspective since its inception. However, a broader assessment of the Board's historical development reveals that its activities and aims have been subject to a constant process of amendment and modification. With them have been carried wider public debates on the meanings of MPL, and how it should be conceived and managed in modern India.

The AIMPLB was initially founded by Muhammad Taiyab, the *muhtamim* (director) of the famous *madrassa* at Deoband. An initial congregation of '*ulama* at Deoband, followed by a larger assembly at

¹⁸ Respectively, Kirti Singh, 'The Constitution and Muslim Personal Law', in Zoya Hasan, ed., *Forging Identities* (1994), p. 96; Mushirul Hasan, *Legacy of a Divided Nation: India's Muslims Since Independence* (Oxford: New Delhi, 1997), pp. 311–314.

Mumbai at the end of 1972, finally led to the formal establishment of the Board in Hyderabad four months later. The initial trigger for its foundation was its opposition to Union Law Minister H.R. Gokhale's tabling in parliament of an Adoption Bill that was seen as infringing upon Muslim religious laws on guardianship, and hence as being the precursor to the imposition of a Uniform Civil Code (henceforth UCC).¹⁹ The AIMPLB took as its central aims the preservation of MPL and the elimination of any apparent encroachment of the civil or criminal codes in its application. The AIMPLB holds no formal authority to determine the rulings or manner of implementation of MPL, but its vocal stand on particular issues, wide membership and status within a large network of eminent *'ulama* has meant that the organisation has exerted a great deal of public influence on matters relating to MPL and Indian Muslim society more generally.²⁰

In its early years, the AIMPLB held a number of sessions of relatively little impact, but it received more recognition through its strong stand on particular issues, including its opposition to the sterilisation campaigns of the Emergency period (a position which, it could be argued, has exerted a sustained influence over the Board's intermittently apprehensive attitudes towards family-planning²¹). However, its real evolution from small colloquium into pressure group of national prominence came with the famed Shah Bano controversy of 1985–1986. This protracted episode, infamous for its wide political ramifications, refers to a particular divorce case which ultimately prompted India's Supreme Court to rule that civil maintenance laws, allowing a divorced woman to claim maintenance indefinitely from her former husband, could be applied to Muslims without interfering with MPL. In response the Board, in league with other Muslim organisations, orchestrated a major and nationwide protest against this supposed foray by the state into the legal territory of personal laws. Ultimately, this prompted Rajiv Gandhi's government to overturn

¹⁹ The UCC is in official terms a Directive Principle of State Policy, outlined in Article 44 of the Indian Constitution. The underlying argument in its support remains that a cumbersome and regressive system of religiously-founded personal laws should be replaced with a single, secular and standardised system of family law for all citizens.

²⁰ For a history of the AIMPLB in its early years through its own eyes, see Muhammad Abdul Rahim Qureshi, *Aal Indiya Muslim Parsanal Laa Bord: Sargarmion ka Ek Khake* (Hyderabad, 2002).

²¹ Sayyid Shah Minnat-ullah Rehmani, *Tanqidi Ja'iza—Fikhri Mutali'a: Khandani Mansooba-Bandi* (Delhi, 1984), passim; Patricia Jeffery, Roger Jeffery and Craig Jeffery, 'Disputing Contraception: Muslim Reform, Secular Change and Fertility', *Modern Asian Studies* (2008) 42–2/3: 525, 540.

the ruling and introduce the misleadingly named 'Muslim Women's (Protection of Rights on Divorce) Bill', exempting Muslim women from the maintenance provisions enshrined in the civil code.²² This decision by an embattled Congress party to assent to the demands of the AIMPLB shows how the government itself gave credence to the organisation's profile and influence, thus facilitating its self-portrayal as an authoritative and representative organisation of the Muslims of India.

While the AIMPLB has been most renowned for these prominent and somewhat controversial single-issue campaigns, just as consequential have been its pastoral efforts in offering instruction on ethics and conduct to the Muslim population more widely. In recent years, it has published and disseminated a large number of booklets and tracts on a wide array of issues, primarily in Urdu but also in other South Asian languages, authored by its affiliated 'ulama. Many constitute a form of advice-literature, offering instruction to the Muslim population on a range of issues of personal and family comportment encompassing marriage, divorce, the making of wills and procedures of inheritance.²³ Other writings of the AIMPLB appear to be efforts to reach existing functionaries such as local 'ulama, imams and muftis, issuing standardised suggested *khutbat* (Friday sermons) and other such guidance,²⁴ opening yet another channel of communication with a public audience. Such activities, it could be argued, represent an attempt, in recent years especially, to establish a wider role in contemporary Muslim society, diffusing the AIMPLB's pronouncements among clergy and laity far beyond the confines of the organisation's offices in south-east Delhi.

On the broadest level, the AIMPLB's ascendancy into one of India's most influential Muslim public bodies has reinforced the centrality of MPL at the very heart of efforts to define and preserve a distinctive Muslim community identity in modern India. Indeed, while critics of the organisation have often described it as a reactionary and innovative

²² On the Shah Bano case, see especially Asghar Ali Engineer, *The Shah Bano Controversy* (Sangam: London, 1987).

²³ On marriage and divorce see, for example, Syed Minnat-ullah Rehmani, *Nikah aur Talaq* (Hyderabad, 2007); Zagher Ahmad Rehmani, *Talaq ke Iste'mal ka Tariqa* (Delhi, 2007). On bequests and inheritance issues, see Atiq Ahmad Bastvi, *Islam ka Nizam-i-Mirash* (Lucknow, 1999); for wider compendiums of general guidance on these and other issues, see Mujahid ul-Islam Qasmi, *Muslim Parsanal Laa ka Masla: Ta'aruf aur Tajziya* (Delhi, 2000); Muhammad Barhan ul-Din Simbhali, *Islah-i-Ma'ashra* (Delhi, 2007).

²⁴ AIMPLB, *Khutbat-i-Juma'* (Delhi, 2005).

influence in Muslim society, the AIMPLB has in fact essentially conformed to and further entrenched a discourse going back some 200 years which has conflated Muslim religious identity with the integrity of the community's distinctive legal status. The Board has been an active participant in the privatisation of *shari'at* discussed above, identifying Islamic law predominantly with the conjugal and domestic laws through which the conduct of Muslim individuals and families can be ordered and controlled.²⁵

One outcome of this has been an enduring preoccupation with the role and rights of women as a key site upon which the Muslim community itself is defined. Controlling women, whether in terms of regulating their behaviour, determining their duties or advising on their marital, financial or custodial rights, have consistently rested at the heart of the AIMPLB's attempts to order an idealised Muslim society.²⁶ As a wide body of literature has shown, such concerns among Muslim reformists with women's behaviour have a long history tracing back to the colonial period. Whether on account of the widening of ethics of personal responsibility, the expansion of the public sphere or the focus on the domestic arena as the centre of cultural resilience, it has generally been agreed that women were increasingly perceived as emblematic of the wider community of faith, and actively sharing in the burdensome task of its reform.²⁷ By extension, matters such as the behaviour of women or the rights afforded to them were reconstituted as pivotal issues in the definition and ordering of Muslim society. The recent activities of the AIMPLB therefore illustrate how an understanding dating from the colonial period of Muslim women as key symbols for defining wider ideals of Islamic behaviour has been perpetuated into the present.

Beneath these broader implications of the AIMPLB for the way in which Muslim identity in postcolonial India has been conceived and articulated, it is equally important to consider the recent shifts in its

²⁵ While its writings occasionally point out that personal law (*'a'ili nizam*) constitutes only a part of a wider *shari'at* with wide civil, criminal and political applications, in practice the AIMPLB uses the vocabulary of personal laws and *shari'at* virtually synonymously.

²⁶ For texts on the rights of women and their correct behaviour published by the AIMPLB, see Muhammad Barhan ul-Din Simbhali, *Junifarm Sivil Kod, Muslim Parsanal Laa aur 'Aurat ke Huqooq* (Lucknow, 1996); Muhammad Razi ul-Islam Nadvi, *Islami Purdah: Kya aur Kyon?* (New Delhi, 1999).

²⁷ For just two examples from a large genre, see Barbara Metcalf, 'Reading and Writing About Muslim Women in British India', in Hasan, ed., *Forging Identities* (1994), pp. 1–22; Gail Minault, *Secluded Scholars: Women's Education and Muslim Social Reform in Colonial India* (Oxford: Delhi, 1998), *passim*.

activities. As described above, the Board's endeavours during its first generation of existence, such as its responses to the Adoption Bill or the Shah Bano case, represented a series of single-issue mobilisations. It used these individual campaigns to communicate the inviolability of MPL and to demarcate the boundaries of personal law jurisdiction, but made minimal attempt to define the specific requirements of the *shari'at* or details of points of law themselves. However, in more recent times and in marked contrast to its earlier endeavours, the Board has come to attempt a partial codification of MPL in India, setting up specific guidance for decision on particular legal issues and affairs. This push by the AIMPLB for the codification of *shari'at* is a novel one, and the reasons for seeking it are in need of detailed interrogation.

Initial efforts at codification began in the aftermath of the Shah Bano episode. These efforts were perhaps prompted by nascent factors including the new attention conferred on MPL as an issue of public media and political debate, the wider Hindu-isation of the state (termed '*bhagwa-rang*' by the AIMPLB²⁸) and the Hindu right's renewal of the campaign for a UCC, not to mention the AIMPLB's own elevated profile. Far from simply defending the principle of personal laws, the AIMPLB now appeared to seek the reinforcement of MPL from within, by initiating fresh moves to define the nature of *shari'at* and its means of functioning. In 1989, while public memory of the Shah Bano fracas was still fresh, a council affiliated to the AIMPLB known as the Fiqhi Academy was founded by Mujahid al-Islam Qasimi (subsequently a president of the AIMPLB) with the aim of forming consensual opinions among Indian '*ulama*' on particular points of Islamic law.²⁹ As would often be the case with those seeking to mould the specific details of the *shari'at*, the focus fell especially on negotiating tenets of marriage and divorce laws. It was this that ultimately paved the way for the issuing of a standardised *nikahnama* (contract of marriage) by the AIMPLB in 1999–2000, which could be interpreted as an attempt to engrain a new level of uniformity and standardisation not simply into the marriage contract itself but also into associated behaviours such as dowry matters, divorce, custody of children and the rights of the wife.³⁰

²⁸ AIMPLB, *Majmu'a-i-Qawanan-i-Islami: Muslim Parsanal Laa se Muta'liq Ehkam-i-Shari'at-i-Islami ka Dafa' Var Murattab Mujmu'a* (reprint: New Delhi, 2007), pp. 27–31.

²⁹ Muhammad Qasim Zaman, *Ashraf 'Ali Thanawi: Islam in Modern South Asia* (Oneworld: Oxford, 2008), p. 112.

³⁰ See <http://www.aimplboard.org/madaris.html#nikahnama> [last accessed 24 July, 2008].

Yet perhaps the most striking manifestation of the codification project was the publication in 2001 of a large volume entitled *Majmu'a-i-Qawanen-i-Islami* ('A Compendium of Islamic Laws'), compiled by a number of clerics affiliated to the AIMPLB. In stark contrast with the Board's earlier and more piecemeal publications, the work was intended to offer complete and absolute guidance on an exhaustive list of subjects related to personal or family transactions as diverse as marriage, dowry, custody, various forms of divorce, gifts, bequests, inheritance, and religious endowments.³¹ The sources used included original Arabic scriptures such as the Qur'an and Traditions (*hadis*), but also incorporated later interpretative legal works from famed Indian jurists of recent centuries such as Abdul Hai Firangi Mahali, Aziz ul-Rehman Usmani and Ashraf Ali Thanawi.³² As such, the work staked claim to offering a full and distinctly South Asian digest of Islamic Law, condensing and synthesizing the opinions of original scriptures with later legal interpretations. The AIMPLB's professed aim for the Compendium was that it would be used as a guide by lawyers and judges, and thus influence decisions made in family courts.³³ Equally, we assume, it was intended to effect some influence upon a varied array of unofficial bodies such as the offices of *qazis*, *shari'at* courts, local *panchayats* and *baradari* (kinship) councils which in reality continue to handle a large bulk of Muslim family disputes in contemporary India.³⁴

The AIMPLB's modern strivings towards codification have tended to further criticisms propounded about the Board by its detractors.³⁵ Some, for instance, have viewed the AIMPLB's combative justification of the need for codification, as a necessary response to the encroachment of a UCC, as evidence of its own belief in the inherent incompatibility of Islamic and civil legal systems and their inability to share any point of contact. Certainly many of the Board's published writings, those that communicate the meanings of MPL and its

³¹ AIMPLB, *Majmu'a-i-Qawanen-i-Islami* (2007), *passim*.

³² For a comprehensive list of the sources used, see *ibid.*, pp. 23–26.

³³ *Ibid.*, p. 18.

³⁴ On this informal structure for implementing religious personal laws, see Sylvia Vatuk, "'Where Will She Go? What Will She Do?'" Paternalism Toward Women in the Administration of Muslim Personal Law in Contemporary India', in Larson, ed., *Religion and Personal Law* (2001), pp. 232, 240.

³⁵ Some of the most notable criticisms of the Board from an academic perspective are the various internet-published articles by Yoginder Sikand, many of which are cited in this paper.

contemporary importance to Indian Muslims, do imply the clear bifurcation of religious and civil law, and place MPL in unambiguous and clear opposition to any notion of a UCC.³⁶ Other observers have perceived the AIMPLB, as exemplified especially by its Compendium, as attempting to impose a rigid, unreformed and regressive version of *shari'at*, drawn from antiquated legal texts and insensitive to changing attitudes and the customary diversities of Indian Muslim society. One author, for instance, has described these efforts as conflating '*fiqh*', the various methods of Islamic jurisprudence, and '*shari'at*', the normative code of law itself.³⁷ In other words, the many interpretative tools available to the '*ulama* to synthesise Islamic ideals with evolving social realities have been replaced by a uniform corpus of law which is singular, absolute and immutable. This argument, of course, takes the process of legal codification to be akin to rigidifying and ossifying the *shari'at*, and it is this interpretation which has dominated many studies of the standardisation of Muslim personal laws in India.³⁸

Such beliefs that the process of codification of *shari'at* represents a consolidation of traditionalism or an impediment to modernisation, however, remain somewhat simplistic. Indeed, such views are contradicted by the AIMPLB's appropriation of reformist opinion on particular decisions. One example will here suffice: its inclusion of directives stipulating conditions in which a woman may seek divorce. Importantly, the Compendium grants Muslim women several grounds for initiating divorce, among them the cruelty, insanity, impotence, imprisonment or disappearance of the husband.³⁹ The origins of these directives lie in a formulation of 1932–1933 by the highly influential cleric, Ashraf Ali Thanawi, which was thereafter institutionalised in state legislation by the Dissolution of Muslim Marriages Act (DMMA) of 1939—the last piece of major social legislation enacted

³⁶ Examples include Syed Shah Minnat-ullah Rehmani, *Iunifarm Sivil Kod* (Delhi, undated); Muhammad Abdul Rahim Qureshi, *Dastoor-i-Hind aur Iunifarm Sivil Kod* (Delhi, 2007).

³⁷ Yoginder Sikand, 'The Fyzee Formula', <http://www.outlookindia.com/full.asp?fofname=20040705&fname=yogi&sid=1> [posted 5 July, 2004]; Yoginder Sikand, 'Patriarchy and Sectarianism: Explaining the Dissensions in the All India Muslim Personal Law Board', <http://www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-119978> [posted 11 February, 2005].

³⁸ Scott Alan Kugle, among others, has argued that the British preference for text-based pronouncements, and their subjugation of the interpretative role of Muslim jurists, engrained a greater degree of rigidity in personal laws and inflexibility in their implementation. Kugle, 'Framed, Blamed and Renamed' (2001): 297–300.

³⁹ AIMPLB, *Majmu'a-i-Qawanen-i-Islami* (2007), p. 237.

by the colonial state.⁴⁰ This example suggests, however quietly, that the codification of MPL, while conducted in the language of the immutability of *shari‘at* and justified through recourse to *hadis* literature, has entailed the appropriation of Islamic jurisprudence contemporary to the twentieth century.

Additionally, this example contradicts the notion that the AIMPLB has long backed a position of resistance to, rather than cooperation with, the civil code. It is true that the AIMPLB has verbally justified codification as a means of reinforcing MPL against directives towards a UCC, implying the shoring up of boundaries between civil law and *shari‘at*. But the fact that the Board’s Compendium has incorporated a major piece of state-led social legislation, in the form of the DMMA, instead suggests a partial accommodation between these allegedly polarised ‘Islamic’ and ‘civil’ legal systems.

Indeed, as noted above, the process of codification was intended to provide an easily distilled compendium of *shari‘at* suitable for accessible and convenient consultation within the structures of state courts. It could thus be argued that we should not see the AIMPLB’s codification project as simply an effort to bolster traditionalism or resist reform; rather, it constitutes an attempt at rationalising and modernising the *shari‘at*, facilitating its implementation within a legal and structural framework set by the state.⁴¹ Indeed, even some ‘liberal’ commentators have long argued in favour of the establishment of an authoritative code of MPL as a means of modernising the *shari‘at* and attuning the workings of personal laws to the realities of the modern legal machinery through which they are implemented. According to such interpretations, a partial codification of personal laws by respected clerics would streamline the making of court decisions on

⁴⁰ The work in question was *‘Al-Haila‘t al-Najiza li‘l-Halilat al-‘Ajiza*, a long *fatwa* intended to offer more means to Muslim women to escape oppressive marriages, and it was on account of a combination of Thanawi’s endeavours and British interventions into religious laws that such provisions were included in the DMMA. For more information, see Ashraf Ali Thanawi, *Al-Haila‘t al-Najiza Ya‘ni Mazloom-i-‘Auratun ki Muskilat ka Shari‘e-hal* (reprint: Delhi, 2006); Rohit De, ‘Mumtaz Bibi’s Broken Heart: The Many Lives of the Dissolution of Muslim Marriage’s Act’, in *Indian Economic and Social History Review* (2009), 46–1: 115–118; Gail Minault, ‘Women, Legal Reform and Muslim Identity’ [2005]; Zaman, *Ashraf‘Ali Thanawi* (2008), pp. 62–5. The *Majmu‘a* itself, and members and writings of the AIMPLB all reference *Al-Haila‘t al-Najiza* liberally, such has been its influence upon the Board’s stipulations on divorce law.

⁴¹ For an example from another context of the codification of *shari‘at* as a precursor to its smooth implementation in state courts, see Messick, *The Calligraphic State* (1996), pp. 54–55.

personal law matters and boost their public legitimacy.⁴² Similarly, it would guard against the initiation of future argument between the Muslim clergy and state courts, as was seen most prominently in 1985–1986, and in other cases against the issuing of arbitrary and often controversial *diktats* and *fatwas* in defiance of court jurisdiction, as exemplified by the Deobandi *fatwa* in the Imrana case some two decades later.

It is therefore clear that characterisations of the AIMPLB as an intransigent, reactionary and conservative entity have underestimated the extent to which the organisation has attempted to engage government and Muslim society on various levels, and to which its activities have evolved in its 30 years of existence. In effect, this elementary analysis demonstrates that in recent years the AIMPLB has found itself engaged in two simultaneous and somewhat contradictory activities. On the one hand, its recent efforts to codify a workable and consistent system of MPL represent part of an attempted modernisation and rationalisation of *shari'at*. Contrary to lines of criticism frequently used against the AIMPLB, this process of codification reveals moves to engrain some contextual adaptability of legal interpretation, and to pinpoint areas of dialogue between religious law and modern civil legislation. On the other hand, the Board's twin needs of asserting its public relevance and placing itself in opposition to a UCC have compelled it to speak publicly in a somewhat emblematic language which implies the polarisation of civil and Islamic law as binary opposites. The AIMPLB's attempts to balance this fragile double-language, at once finding avenues of compromise with the state's legal structures, and at the same time defining the *shari'at* as a timeless, immutable and text-based entity, have placed the organisation in recent years under increasing strain, not least from many within the notional Muslim community that it so often evokes and aspires to represent.

Muslim Personal Law and the 'Deobandisation' of Indian Islam?

The AIMPLB's recent efforts to codify a singular version of *shari'at* raise the resulting and important question of how the attempted consolidation of a standardised legal code relates to the religious and

⁴² Anees Ahmed, 'Reforming Muslim Personal Law', *Economic and Political Weekly*, 24 February, 2001, pp. 618–619.

doctrinal distinctions within Indian Islam. At least in rhetoric, the AIMPLB has been consistently at pains to encompass these diversities. After its foundation, it quickly developed an organisational structure designed to reflect its inclusive approach, its regulations stating that its 201 members should comprise ‘all the sects and organisations of Indian Muslims’.⁴³ Balancing its powers carefully between an executive committee and general body, the organisation was careful to ‘keep all the sects of Islam and the country in mind’, maintaining a series of posts of equal seniority and as such tacitly reserving space for female clergy (25 members), Shias, Khojas and representatives of all major Sunni legal schools.⁴⁴

Indeed, as far as can be ascertained, upon its foundation the AIMPLB received substantial support from Muslim representatives across sectarian and doctrinal boundaries. To take just one example, Sayyid Ali Naqi, the senior-most cleric of India’s Shia minority, offered a series of public sermons during the Shia Muharram festival in the year after the AIMPLB’s formation based around the theme of the ‘immutable’ (*na qabil tabdil*) essence of MPL. Having attended its founding session, he described how ‘such a gathering from so many schools of thought and factions was an amazing experience,’ noting with some wit the presence of an array of schools including Shias, Bareilvi Sunnis and Wahhabis who in other contexts ‘call each other disbelievers and cannot even look at each other’s faces, all standing together and gathered in one place’.⁴⁵

However, as in recent years the AIMPLB has moved beyond merely voicing opposition to encroachments on MPL, and attempted instead to articulate specific provisions of *shari‘at*, it has perhaps inevitably struggled to remain inclusive and representative of these manifold diversities. Specifically, it has fallen prey to the frequent accusation that it propounds one particular interpretation of Islam: that of the reform movement of Deoband. The Deobandi movement, centred upon its first *madrasa* established in western Uttar Pradesh in 1867, is known primarily for its wide propagation of scriptural Islamic knowledge and its revitalisation of scholarship in the Islamic sciences according to the Hanafi school of Sunni Islam.⁴⁶ By its detractors, it

⁴³ For this information on the AIMPLB’s structure and stated intentions, see the organisation’s website: <http://www.aimplboard.org> [last accessed: 24 July, 2008].

⁴⁴ *Ibid.*

⁴⁵ Sayyid Ali Naqi, *Muslim Parsanal Laa, Na Qabil Tabdil* (Lucknow, 1972–3), p. 14.

⁴⁶ Barbara Metcalf, *Islamic Revival in British India: Deoband, 1860–1900* (Oxford: New Delhi, 1982), *passim*.

is associated with a strong opposition towards anything regarded as 'customary' practice (*'urf*), and patriarchal attitudes towards women. And while the AIMPLB has sought to include a broad range of representatives and to distance itself from any particular legal school, the perception that the body is heavily informed personally and intellectually by Deoband has been enduring among its detractors.⁴⁷

How valid is this link frequently made between the AIMPLB and the Deobandi reform movement? It is true that the Board's *Majmu'a* has primarily sourced Hanafi texts, admitting in its introduction that it gives little formal space to works from other Islamic legal schools.⁴⁸ However, the argument that the AIMPLB propounds a distinctly Deobandi interpretation of *shari'at* is a fraught one. Indeed, it could be convincingly argued that on certain issues, especially its verdicts on a woman's right to obtaining a divorce, the Board has borrowed indirectly from the Maliki school of jurisprudence, one associated primarily with north African rather than South Asian Sunni Islam.⁴⁹ This example hints instead at a borrowing from and adaptation of other legal systems on particular issues (sometimes known as *takhayyur*) within the Compendium, rather than a stringent submission to one dominant school of thought.

However, the AIMPLB might be more justly tied to Deoband on the basis of its strong personal and institutional ties with the school. It was in Deoband that the decision to form the organisation was first made, and a quick review of the biographies of its presidents and secretaries reveals that a majority spent some time in Deoband, whether as students or as teachers. Indeed, some of its founders and highest profile members have been descendants of the landed gentry-families who first established the *madrassa* at Deoband in the 1860s.⁵⁰

The inference to be made here is that the AIMPLB has come to absorb anxieties widespread among many Muslims at the perception of what one scholar has described as a 'Deobandisation' of modern Indian

⁴⁷ For example, *Raport: Aal Indiya Shia Parsanal Laa Bord* (2005), pp. 1–2.

⁴⁸ AIMPLB, *Majmu'a-i-Qawanen-i-Islami* (2007), p. 24.

⁴⁹ It was Maliki rather than Hanafi jurisprudence to which Ashraf Ali Thanawi had turned on these issues in the 1930s, and that was institutionalised in the DMMA, and henceforth the AIMPLB's rulings. See above, footnote 40.

⁵⁰ Muhammad Taiyab (AIMPLB president 1973–1983) originated from the distinguished Nanautawi family of Deobandi *'ulama*, had been a student of Deoband and was the *madrassa*'s director for 58 years. Its third and fourth presidents, respectively Mujahid ul-Islam Qasmi (2000–2002) and Muhammad Rabi Hasni (since 2002), both received education in Deoband, as did both of the AIMPLB's General Secretaries to-date.

Islam.⁵¹ According to this argument, Deobandi norms and ideology have increasingly come to dominate in contemporary Muslim society, on account of the formation of numerous Deobandi *madrāsas*, the consolidation of Deobandi norms in urban arenas, and the suitability of its creed of personal accountability to modern lifestyles.⁵² Fears of Deobandi precedence may also have other roots, among them the consistent dominance of Deobandi *‘ulama* in campaigns of Muslim religious and political reform since the 1920s,⁵³ or the increased profile of political forms of Deobandism across India’s borders in Pakistan and Afghanistan.⁵⁴ In this sense, the AIMPLB has been construed as a component of a manifold Deobandi dominance in Muslim public life, one going back some eighty years but particularly acute in recent decades.

At the same time, the perception of the AIMPLB as a Deobandi body may have much to do with the way it has evoked the standard of MPL. As was demonstrated in the previous section, the organisation, albeit in a modest way, has attempted through its Compendium to consolidate legal space in which *shari‘at* could be accommodated with Indian social norms and civil law on certain issues. Yet, its simultaneous need to convey its cause in readily communicable terms has led the AIMPLB to vocally reify MPL as an inviolable and text-based entity. It has articulated MPL in opposition both to civil law and ‘native’ Indian customary practice, arguing that neither must be allowed to impact upon it. Indeed, some of the organisation’s published tracts convey a combative relationship between an authenticated, Arabic-medium

⁵¹ Arshad Alam, ‘From Custom to Scripture: Observations on the Direction of Indian Islam’, in Mushirul Hasan, ed., *Living with Secularism: the Destiny of India’s Muslims* (Manohar: New Delhi, 2007), p. 190.

⁵² *Ibid.*, pp. 178–90.

⁵³ Examples include the predominance of Deobandi *‘ulama* in the later stages of the Khilafat movement; the campaigns of the Jami‘at ul-‘Ulama-i-Hind, an organisation of Indian *‘ulama* which was overwhelmingly Deobandi in its membership; and the prominence of Deobandis on both sides of the debates around the creation of Pakistan. For example, Zia ul Hasan Faruqi, *The Deoband School and the Demand for Pakistan* (Asia Publishing House: New York, 1963); Yohanan Friedmann, ‘The Attitude of the Jam‘iyyat al-‘Ulama’-i-Hind to the Indian National Movement and the Establishment of Pakistan’, *Asian and African Studies* (1971), 7: 157–181.

⁵⁴ Sana Haroon, ‘The Rise of Deobandi Islam in the North-West Frontier Province and its Implications in Colonial India and Pakistan, 1914–1996’, *Journal of the Royal Asiatic Society* (2008), 18–1: 47–70; S.V.R. Nasr, ‘The Rise of Sunni Militancy in Pakistan: the Changing Role of Islamism and the Ulama in Society and Politics’, *Modern Asian Studies* (2000), 34–1: 139–180.

Islamic *shari'at* and pollutive native custom.⁵⁵ Such language, which somewhat belies the quieter efforts made by the AIMPLB in favour of accommodation, is resonant of that of which Deoband is often accused by its opponents.

The result of this is that, whatever its efforts to maintain a consensual and inclusive approach, Muslim individuals and bodies hostile to the AIMPLB have labelled the organisation as a participant in a wider and maligned consolidation of Deobandi influence within Islamic society. The perceived Deobandi specificity of the AIMPLB underlies the creation of those several new parallel law boards described at the beginning of this paper, all of which were established to contradict the Board's claims to hegemony over personal law issues. The Shia Personal Law Board, the Bareilvi equivalent and the All India Women's Personal Law Board all emerged as if in a synchronised manner within a rapid three-month period spanning the years 2004 and 2005. Further illustrating this somewhat farcical compartmentalisation of spokespersonship on Muslim marriage and divorce law, the Shia Women's Personal Law Board emerged just weeks later.⁵⁶ All have cast the AIMPLB as a puritanical Sunni or Deobandi organisation hostile to modernisation, sometimes even implying (quite tenuously) the existence of its ideological links with Sunni Islamist extremism.⁵⁷

An additional line of attack shared by these various councils against the AIMPLB has been its alleged hostility to women's rights, as enshrined in its legislation on marriage and divorce within the Compendium and standardised *nikahnama*. In particular, several of these groups have challenged the Board's perspective on women's rights to obtaining divorce. Predictably this was the case with Islamic feminist organisations, in particular the new Women's Personal Law Board, whose main accomplishment was to formulate a new *nikahnama*, one which endeavoured to protect women from *talaq* and dowry

⁵⁵ Some of the Board's publications guard against so-called 'excessively customary practice' in Islam. For example, Ubaidullah Asadi, *Taqribat ka Len-Den aur us ke Mufasid* (Delhi, 2004), passim.

⁵⁶ *The Hindu*, 6 February, 2005.

⁵⁷ One of the most pronounced subjects addressed in the early sessions of the Shia Personal Law Board was its frequent condemnation of Islamic terrorism, cited as a major issue of difference between Shias and radical Sunnis. For example, *Report: Aal Indiya Shia Parsanal Laa Bord* (2005), p. 14; *Nauroz* (Lucknow), 18 November, 2005. This was used as part of the justification for the Shia Board's existence, as a tacit allusion to the subversive character of the AIMPLB, and as a means of gaining a sympathetic ear from the state and media.

offences and to afford them more rights than the AIMPLB's existing equivalent.⁵⁸ Perhaps even more significant was that various clerical groups similarly focused upon issues of women's rights as a means of justifying their existence. One of the first actions of the Shia Personal Law Board was to declare that triple-*talaq* as understood by the AIMPLB was forbidden according to Shia jurisprudence, and to issue an alternative *nikahnama* which was generally seen as providing women with more marital rights. Even many liberal commentators lauded this as an encouraging egalitarian move on the part of the Shia clergy, and one that should be heeded by other Muslim schools.⁵⁹

The AIMPLB's attempts to pre-empt these criticisms actually came to assist further in its own disintegration. Before the spate of parallel law boards were officially formed, the combined attacks upon the AIMPLB for its alleged hostility towards women's rights prompted the organisation to reconsider afresh its rulings on triple-*talaq* in its 2004 session.⁶⁰ However, the Board's attempt to effect a compromise, reasserting that triple-*talaq* was inadvisable in practice but must remain technically legal, seemed to please no-one. In fact, it was this declaration that pushed certain Barelvi clerics to form their own separate organisation, holding to a stand of the legal validity of triple-*talaq* and so allowing them to claim to be truer defenders of authentic personal laws than even the AIMPLB itself.⁶¹

What this perhaps surprisingly indicates is that many of these parallel councils of '*ulama* have all borrowed extensively from a discourse of the emancipation of Muslim women. This appropriation by Muslim clerical groups of an avowedly secular or liberal rhetoric of human rights contradicts much scholarship which has seen the '*ulama* as inherently disinterested in such issues, or even openly hostile to them. It also contrasts with a body of literature which has tended to imply a clear separation of Muslim religious contestations, revolving around ritual and theological controversies, and movements for women's liberalisation in Islam, which have tended to transcend such

⁵⁸ The organisation was described as a 'joke' by the AIMPLB, who claimed that its members should have tried to work within the AIMPLB's remit to address such issues rather than breaking away from it. *The Hindu*, 27 February, 2005.

⁵⁹ 'Rights for Shia Women', editorial, *Economic and Political Weekly*, 2 December, 2006, p. 4928.

⁶⁰ Sikand, 'The Fyzee Formula' (2004).

⁶¹ Asghar Ali Engineer, 'Abolishing Triple Talaq: What Next?', *Economic and Political Weekly*, 10 July, 2004, pp. 3093–3094.

divisions.⁶² By contrast, these events suggest that this discourse on the rights afforded to women has recently become a key, and perhaps surprising, site of contestation between different Islamic schools.

As such, the last few years have seen perhaps unprecedented flux within debate over MPL in India. The AIMPLB's novel efforts to initiate a codification of personal laws have been accompanied by allegations of the organisation's Deobandi dominance, and clerical representatives and Islamic feminists alike have aspired to undermine the body through the formation of their own alternative legal organisations. Furthermore, these desertions from the AIMPLB came to stoke existing tensions within the organisation itself. Perhaps the final embarrassment to the AIMPLB came just a few months later, with the Imrana episode discussed at the beginning of this paper. The incident created a serious and protracted internal argument, between those members of the AIMPLB supporting the Deobandi *fatwa*, those voicing disagreement, and those demanding that the AIMPLB should take no stand in the case at all.⁶³ In other words, the formation of such a number of parallel legal councils ultimately destabilised the AIMPLB, and even caused a partial rift of the Board from Deoband, the institution often perceived to be its intellectual inspiration. In addition, this latter estrangement further indicates that the fragmentation of the AIMPLB cannot be solely understood as a simple result of the 'Deobandisation' of its agenda. Instead, it needs to be traced to a broader state of transition in Muslim organisational and public life more generally in contemporary India.

Muslim Personal Law and the fragmentation of religious authority in contemporary India

This paper has described how the All India Muslim Personal Law Board, for some 30 years after its formation in 1972 being perhaps the

⁶² Work on pioneers of Muslim women's educational reform and modernisation has generally portrayed such movements as crossing sectarian boundaries in Islam rather than working within them (e.g. Minault, *Secluded Scholars* (1998), *passim.*). Similarly, modern Muslim women's organisations are said to consider it 'antithetical to their purpose of promoting gender equality to make sectarian distinctions.' Vatuk, 'Islamic Feminism in India' (2008): 496.

⁶³ *The Telegraph*, 29 June, 2005; *Frontline* (Lucknow), 16–29 July, 2005. The Bareilly and Shia Boards both said that the woman should not be forced to separate from her husband, thus distancing themselves both from Deoband and the section of the AIMPLB that upheld this decision.

most influential and consensual 'Muslim' organisation of postcolonial India, has in recent years been the target of a series of confrontations not simply from the secular establishment or Hindu right, but from an amorphous and interlinked array of Islamic groups, among them clerical councils and Islamic feminist organisations. The roots of these changes lie in attempts by the AIMPLB to initiate a codification of Islamic law, beginning post-Shah Bano but accelerated during the last decade. These efforts had represented a will to formulate a more workable, accessible and modernised understanding of *shari'at*, one better able to function through the legal structures of the modern state. One of their consequences, however, has been that the AIMPLB has been widely accused of propounding an inflexible and heavily standardised understanding of *shari'at* closely bound to the Deobandi reform movement, prompting numerous Muslim groups and councils to criticise or separate from the Board. While the AIMPLB perhaps never gained the full representative status among Indian Muslims to which it aspired, the body has nevertheless been badly damaged by this series of challenges from within the community to its legislation and legitimacy.

This paper reveals that the single issue of Muslim Personal Law has become a site for the playing out of various factionalisms and anxieties within Indian Islam. Indeed, insofar as the existence of MPL has come to encapsulate and represent the condition of the Muslim minority as a whole in postcolonial India, so a diffuse array of debates over Indian Muslim leadership and representation have increasingly come to be expressed through arguments over issues related to personal laws. MPL has thereby come to appear less as an issue pitting a Muslim 'community' against outside others, but has evolved into a key site of debate between alternative Muslim actors and representatives, and a key source of anxiety and rupture itself. As indicated above, even debates taking place between religious schools within Islam have come to orient largely around questions of which religious laws should apply to Muslim individuals, and how Muslim families should be regulated and controlled.

We could conclude from these apparent divisions around the issue of MPL the vacuity of the twin fictions of the existence of a homogenous Indian Muslim 'community,' and of a singular *shari'at* around which all Muslims can unite. These two falsehoods have been consistently encouraged both by the state's abstraction of its Muslim minority, equating the 'Muslim' interest with personal laws, and of course by the AIMPLB itself, which has predicated its existence on this very same basis. Such an argument would suggest that the implosion of the

AIMPLB was in some sense preordained from the time of its foundation. However, the swiftness of its fragmentation, together with the recent acrimony of the debates between itself and numerous counterpart legal organisations, suggest that it is worth considering further some of the numerous factors informing these modern contestations.

Some observers have related the recent decline of the AIMPLB and corresponding emergence of these numerous alternative personal law councils to the uniquely fractious and volatile nature of twenty-first century politics in Uttar Pradesh and Bihar where the AIMPLB's support base is mainly located. It has often been remarked, for instance, that many of the key advocates of the Shia Personal Law Board were close to the Hindu nationalist Bharatiya Janata Party (BJP). A prominent Shia cleric opposed to the formation of the organisation described an alleged 'saffron conspiracy,' implying that certain Shia clerics attached to the BJP had been encouraged to create a separate Personal Law Board in order to split the Muslim 'vote-bank.'⁶⁴ In addition, the BJP's vocal rife against the treatment of Imrana, comparable with its response to the Shah Bano case 20 years earlier, elevated a specific local issue to a level of national and symbolic prominence and revealed the political capital to be made from the allegation that MPL was to blame for endemic misogyny.

Other observers have argued that the formation of parallel law boards was a means by which certain of their members were able to seek personal empowerment against the stranglehold of a perceived clerical establishment. The formation of the Bareilvi Law Board, for example, certainly enhanced the stature of the clerics who founded it, who were perhaps themselves encouraged by the increasing activity of other Bareilvi-leaning religious organisations such as Mumbai's Raza Academy. The formation of the Shia Personal Law Board, moreover, is perhaps explained not so much through united Shia opposition to the AIMPLB, but through pre-existing struggles for ascendancy within the complex Shia clerical order. The main founders of the Shia Personal Law Board, Mirza Muhammad Athar among them, were a group of *'ulama* of relatively recent ascendancy. Their motives were in part inspired by their ambitions to assert themselves against the long-established Khandan-i-Ijtihad clerical family of Lucknow, which had held authority over many of the city's Shia religious institutions for over 200 years. In recent times, representatives of this family

⁶⁴ *The Pioneer*, 25 February, 2005.

have been closely attached to the AIMPLB and have commanded a strong role within it.⁶⁵ As such, clerics attempting to undercut this family's hegemony found the alternative Shia Board an efficient mechanism for doing so; it was even reported that pamphlets defaming members of this family were being circulated at the time of the new Board's foundation.⁶⁶ Furthermore, it was widely argued in 2005 that this competition for influence and supremacy between different Shia factions within Lucknow was translating into sectarian violence, with each side aggressively rallying their own supporters. One *imam* of the city even vividly described the Shia-Sunni riots as 'a sequel to the internal strife among the Shia Ulema' following the foundation of the Shia Personal Law Board.⁶⁷ The alleged separation of Shias from the AIMPLB, then, illustrates how inner-Shia and Shia-Sunni conflicts could be deeply intertwined.

However, the multi-polar and decentred nature of the many arguments described in this paper implies that we may need to look beyond individual instances of personal or political competition to understand the fragmentation of the AIMPLB. Instead, the scale and speed of its recent dismemberment suggests that it needs to be understood within the parameters of those wider and transitional 'churning processes' in matters of Muslim leadership and influence in twenty-first century India alluded to at the beginning of this paper.

We could broadly relate the AIMPLB's deterioration to what has been referred to as the 'fragmentation of religious authority' in Muslim societies, on account of the impact of various facets of modernity. By this interpretation, a number of developments such as the expansion of education, the widening of public access to new technologies of communication, and the questioning of traditional sources of religious expertise, have encouraged a far wider array of voices to seek participation in debates in the modern public sphere from which they would previously have been excluded.⁶⁸ The

⁶⁵ This family included the *mujtahid* Sayyid Ali Naqi (d. 1988), and his successor Kalbe Sadiq, currently a Vice-President of the AIMPLB, who has been closely involved with the organisation for some 15 years.

⁶⁶ *The Pioneer*, 25 February, 2005.

⁶⁷ *The Hindustan Times* (Lucknow), 22 February, 2005. On the divisions erupting among the Shia clergy on account of the formation of the Shia Personal Law Board, and the political undertones associated with the divisions, see *The Indian Express*, 25 and 31 January, 2005; *The Pioneer*, 26 and 31 January, 2005; *The Hindustan Times*, 25, 30 and 31 January, 2005.

⁶⁸ Dale Eickelman and James Piscatori, *Muslim Politics* (Princeton: Princeton, 1996), pp. 68–79, 131–35; c.f. Vatak, 'Islamic Feminism in India' (2008): 514–516.

events described above all demonstrate that a multitude of freshly empowered actors have for these reasons recently sought to voice opinion on questions of MPL. They have all newly asserted their own rights to interpret Islamic scriptures, form *shari'at* councils and formulate legal decisions, refuting the right of a restricted clique of established *'ulama* to hold singular jurisdiction over such matters. Islamic feminist organisations, no doubt inspired by liberal discourses of women's rights as well as the expansion of women's education, have begun to look to the Qur'an themselves, effectively giving themselves the right to conduct their own interpretation of the sacred text (often known as *ijtihad*) in open defiance of what they consider the inflexible *hadis* scholarship of the AIMPLB. Meanwhile, certain Barelvi and Shia *'ulama* have made use of their dynamism, public popularity and relative detachment from established clerical hierarchies to challenge their older and more aloof predecessors.

The opening up of debate on MPL, and the emergence of more voices trying to speak on it, are therefore indicative of a deep turbulence in religious authority in contemporary India brought about by a combination of changing channels of communication, exposure to dialogues of women's rights, generational shifts and political turbulence. At the same time, these debates have given rise to a series of surprising alliances. Conservative *'ulama* of an array of religious affiliations, including Shias, Barelvi Sunnis and the Ahl-i-Hadis,⁶⁹ better known in other contexts for their acrimonious debates over particular points of Islamic history or practice, have been united in their criticism of the AIMPLB. The fact that all have launched their criticisms almost simultaneously suggests some form of direct or indirect cooperation between these notionally polarised participants in the debate.⁷⁰

At the same time, the fact that such clerical groups have largely condemned the AIMPLB in a 'liberal' discourse of women's rights reveals a perhaps surprising coalescence of rhetoric among an unlikely mixture of established Muslim clergy, women's activists, arch-secularists and Hindu communalists. The overall impression is one of considerable fluidity between religious, sectarian, feminist, secular, political and

⁶⁹ The Ahl-i-Hadis have long held, and reiterated in recent years, the view that *talaaq* cannot be said three times on the same occasion, contradicting the AIMPLB's understanding. For example, Hasan, *Legacy of a Divided Nation* (1997), p. 313.

⁷⁰ There were, for instance, occasional hints that the Barelvi and Shia Personal Law Boards even cooperated in their foundation and coordinated their activities. *Raport: Aal Indiya Shia Parsanal Laa Bord*, p. 2.

communal lines of debate on MPL, quite in contrast to the clear-cut boundaries within which such issues have often been analysed.

Equally, this paper demonstrates that debates on questions of MPL are not confined to the courtrooms, public forums and newspaper columns which have dominated scholarly analysis. It instead evokes a manifold series of unconnected and fragmentary arguments on personal law issues occurring at various societal and political levels, and in the diverse set of arenas discussed at the beginning of this paper, including women's counselling groups in Mumbai, Shia-Sunni quarrels in the neighbourhoods of Lucknow, or local machinations in the *panchayats* of small Muslim townships. This may make a case for further more localised and experiential studies of debates on the workings of MPL, assessing the part it plays in local formations of Muslim leadership and clerical influence, below the elevated political and constitutional levels towards which academic literature on the subject has so often been focused.⁷¹

If the contestations described above reflect a number of modern processes of flux and transition in religious and legal authority in Indian Islam, then one can only assume a continuation of this uneasy atmosphere of mutual antagonism. Responding to internal and external pressures, the AIMPLB has continued to modify its structure and commands and, since 2005, has even taken the decision from which it had previously shied of outlawing the practice of triple-*talaq*.⁷² This has, however, seemingly done little to reverse its organisational fragmentation, and the hostility shown to it by the selection of new Muslim legal councils described in this paper. At the same time, all of these alternative Personal Law Boards have continued to exist into the present, though without full success in attaining the consensual support of their respective communities or in convincing them to separate entirely from the AIMPLB. One might anticipate, then, the perpetuation of this churning process among Muslim leaders, schools and organisations in contemporary India, with little sign of imminent resolution.

⁷¹ C.f. Patricia Jeffery, 'A "Uniform Customary Code"? Marital Breakdown and Women's Entitlements in Rural Bijnor', in Imtiaz Ahmad, ed., *Divorce and Remarriage Among Muslims in India* (New Delhi, 2003) p. 104.

⁷² *The Telegraph*, 3 May, 2005.