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The Legacy of Imperialism on Gender Law in India

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The Legacy of Imperialism on Gender Law in India
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The British Raj by the turn of the twentieth century governed an extensive territory that today forms the states of India, Pakistan, Myanmar (Burma) and Bangladesh (formerly East Pakistan), as well as Indian Ocean islands and the Colony of Aden in the Middle East (see Exhibit A). British rule had both positive and negative effects on the people and land they governed. The extent of each of these effects and the harms imposed by colonization continue to be a hotly debated topic in the former Raj and the United Kingdom.[1] While a broader discussion on the ethics of empire can be seen in existing scholarship, this paper focuses on the interplay between religion, gender, and custom that British rule in India caused. The effects of British divide and rule policies can be seen in the immediate aftermath of Partition, as well as in the long run through the prevalence of gendered discussions and outcomes in the legal and political sphere. An analytical look backwards and forwards from the Shah Bano court case of 1985 has important things to say about India's complex history with colonialism and the way the decisions of the past continue to affect the country today—particularly the destabilizing strength of communal politics and the ensuing subversion of gender equality to religious claims.[2]

Exhibit A: British Raj[1]

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[1] Bolton Doug, "''Dr Shashi Tharoor Tells the Oxford Union Why Britain Owes Reparations for Colonising India in Viral Speech," *The Independent*, July 2015.

[2] Siobhan Mullally, "Feminism and Multicultural Dilemmas in India: Revisiting the Shah Bano Case," *Oxford Journal of Legal Studies* 24, no. 4 (Dec. 2004): 671-92.

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Ahmed Khan v. Shah Bano:
A Case Study of the Post-Independence Gender Dynamic

A review of the Shah Bano court case of 1985 allows modern historians to analyze India's post-independence gender dynamics through the lens of religion and social tension. While criminal and civil law are uniform for all Indians, personal laws are not. India, unlike almost every other democracy in the world, operates under a legal framework where codified personal laws vary between Hindus, Muslims, and Christians.[3] Personal laws existed before British rule in India—the British codified and strengthened the institution for reasons that will be discussed in this paper. Personal status laws apply to issues of custom within a given religious group of people. In India, these issues typically revolve around marriage, adoption, kinship, succession, and religious law as it applies to families.[4] In the 1985 Shah Bano case (Mohd. Ahmed Khan v. Shah Bano Begum (1985 SCR (3) 844)) before the Supreme Court of India, plaintiff Shah Bano sued her former husband, Ahmed Khan, for alimony support under the Indian criminal code. Shah Bano and Khan, both Indian Muslims from the central state of Madhya Pradesh, had five surviving children together over the course of their marriage. Their status as Muslims would normally send the case to the personal status courts, but Shah Bano's suit fell under the criminal code. The Supreme Court ruled that Section 125 of India's criminal code, requiring the payment of maintenance money for former spouses, did not conflict with Muslim Personal Law. Thus, Khan would be required to pay alimony to Shah Bano—because the criminal code has a general applicability to all Indians.[5]

However, the Supreme Court's decision divided the government between the Indian National Congress (INC or Congress) and the Bharatiya Janata Party (BJP). Congress, having won a parliamentary majority in the general election of 1984, believed that the crucial support it received from India's largest minority—the Muslims—would decrease if it did not take action against the Court decision. For perspective, in 2010 the Muslim population of India reached nearly 180 million,

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[3] Mullally, "Feminism and Multicultural Dilemmas in India," 671-92.

[4] Elizabeth Kolsky, "The Colonial Rule of Law and the Legal Regime of Exception: Frontier Fanaticism and State Violence in British India," *The American Historical Review* 120, no. 4 (Oct. 2015): 1230.

[5] Vrinda Narain, "Postcolonial Constitutionalism in India: Complexities and Contradictions," *Southern California Interdisciplinary Law Journal*, January 2016: 107-35.

50

roughly equal to the entire population of India's post-independence rival Pakistan.[6] The BJP, as a Hindu nationalist party, neither needed the support of Muslims, nor would they ever be able to win it. They organized and protested against any potential move by the government to nullify or dilute the Court's decision. Muslim conservatives, led on this issue by the All India Personal Law Board, protested heavily against what they claimed would be a direct attack on the rights of Muslims in a Hindu-majority India. Hindu nationalists and Islamic conservatives filled the streets of major cities as this decision became less about the rights of Muslim women and more about the pride of Hindu and Muslim men. In the imperial period, scholars reason that women's bodies became the grounds on which the power struggles of colonization played out. The same holds true in the power struggle of post-independence Indian politics. In 1986 the Congress-controlled Parliament of India passed the Muslim Women Act, which reversed the gender-progressive decision of the Court. Specifically, the Act prevented the Courts from ordering alimony payments after the iddah period of separation. Iddah signifies the length of time a Muslim woman must wait before remarrying— normally a period of three to six months in India.[7] Muslim men have no such restriction as iddah law applies only to women, rendering its institutionalization in Indian law inherently gendered. Even more insulting to Indian feminists, Congress justified the act—as implied by the name itself—by claiming the purpose of legally protecting divorced Muslim women.[8]

The debate on personal status law in the context of the decision of the Court raised important questions in Indian society. For policymakers and citizens genuinely concerned with gender fairness, as well as maintaining stability between Hindus and Muslims, the question inevitably arose of whether gender equality was being compromised by "yielding to the dominant voices within a particular religion or cultural tradition."[9] Since independence, religious riots in India have had the potential to kill hundreds or even thousands, as in the case of the Gujarat riots of

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[6] "The Global Religious Landscape: Muslims," *Religion and Public Life*, 18 Dec. 2012, <http://www.pewforum.org/2012/12/18/global-religious-landscape-muslim/> (Dec. 2016).
[7] Mullally, "Feminism and Multicultural Dilemmas in India," 671-92.
[8] Avani Sood, "Gender Justice through Public Interest Litigation: Case Studies from India," *Vanderbilt Journal of Transnational Law* 41, no. 3 (May 2008): 833-906.
[9] Mullally, "Feminism and Multicultural Dilemmas in India," 672.

51

2002.[10] The ethical choice between maintaining stability and promoting gender equality is not a decision that most democracies have to make, at least with these stakes. Therefore, the argument goes that promotion of gender equality and the nurturing of a multicultural state stand at odds.[11]

Women in post-independence India are caught between the state's need to devolve communal authority and the paternalistic nature of the state, leaving them bereft—at least in the early period after independence. The Shah Bano case, and the public and political response to it, reveals three fundamental problems in post-independence India that were either shaped or created by the British imperial state. Firstly, the Shah Bano case demonstrates the divisiveness of communal politics in India—a phenomenon shaped by the legacy of British divide and rule policies. Secondly, the public reaction and political response to the Shah Bano case reflects the assumption of monolithic cultures—Hindus and Muslims—and ignores the plurality of voices and dissent within each respective community.[12] Thirdly, the Parliamentary intervention exposes the underlying paternalism in the Indian political system—an attitude shaped by the interaction between the independence movement and the imperial administration.

British Rule in India

The foundation of the Indian National Congress in 1885 marked the beginning of political reform efforts, but not the start of the independence effort. As one of the founders of Congress, Scotsman Allen Hume brought together a council of educated Indian elites and social reformers with the goal of creating a lasting dialogue between Indians and colonial leaders of the Raj. The approval of the charter in December of 1885 signaled that Hume and the reformers wanted to integrate Indian male elites rather than push them outside the system.[13] While the first congress had seventy-two delegates across the Raj, only two were Muslim and zero were women. In future years, leaders like Muhammad Ali Jinnah would criticize Congress for its inability to represent all Indians, leading to the creation of

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[10] Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights*. (Cambridge: Cambridge University Press, 2001).

[11] Mullally, "Feminism and Multicultural Dilemmas in India," 673.

[12] Ibid., 674.

[13] Mary Cumpston, "Some Early Indian Nationalists and Their Allies in the British Parliament, 1851-1906," *The English Historical Review* 76, no. 299 (1961): 281.

the Muslim League—which advocated for, and received, a separate state for the Muslims called Pakistan in 1947.

Some describe the Sepoy Revolt of 1857 as the first war of Independence. In the uprising, Indian armed forces under the command of the British East India Company revolted against Company rule. The conflict, lasting over two years, convinced Parliament to forcibly dissolve the East India Company and replace it with British direct rule in India—termed the British Raj, as a crown territory. Though the states of Oudh and Gwalior joined the revolting forces, the British were backed fully by their twenty-one other dependent Indian states. These states, called the princely states, functioned as protectorates of the British Empire until the time of independence in 1947. The government takeover of India ended the rule of the Company but not the social impacts of policies it enacted before 1857. One must remember, while most of the British Raj period was focused on maintaining the social and economic stability of an already-formed empire, the Company period was largely focused on creating footholds and expanding territorial holdings. The Company, often under-budget and under-staffed, ruled in a much scrappier manner than officials in the Raj.

The instability and uncertainty of the Company period led to several interesting racial, religious, and gender interplays. For instance, though Catholics faced discrimination, and in some cases outright persecution, in 18th and 19th century Britain they constituted a majority of the Company's Anglo-Indian military force.[14] This caused the Company's largely Protestant leadership to make the accommodation of difference a necessity, both internally and externally. Keep in mind, Company-led India was by no modern measure a pluralistic society, but differences between multiple power-holding populations made tolerance a strategic necessity for anyone to who wished to govern India. In the tradition of the British associational colonial model—where colonists preferred to leave local elites and local legal and cultural customs in place—the first Governor General of India, Warren Hastings, separated the administration of English civil and criminal law from that of personal law—left largely to individual communities across India.

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[14] Joseph Sramek, "Rethinking Britishness: Religion and Debates about the Nation among Britons in Company India, 1813 to 1857," *Journal of British Studies* 54, no. 04 (January 2015): 822-43.

This allowed native councils and judges to rule on matters of marriage, adoption, kinship, succession, and religious law.[15]

The complexity of the communal and gender interplay in British India has divided scholars on the topic of social progress during this period. Outside the major cities and cantonments, the Company realized it could never enforce personal law. Delegating this authority to native male elites stabilized their Indian territories and prevented revolt. Shruti Iyer makes the point that this power negotiation between colonial rulers and colonized men resulted in an institutional failure to protect the rights of women. This failure underlies what Iyer calls the traditional suspicion of state power within the Indian feminist movement, a fear that manifested itself as recently as the Delhi crisis of 2012-13.[16] In particular, the concessions of the Company, which continued under the Raj, allowed native elites a free hand in enforcing religious and marriage laws that severely limited the rights of women, largely relegating them to the domestic sphere. In the conservative Hindu and Islamic communities of the Raj, as in many other parts of the world, the domestic hearth was equated to the moral strength of a culture.[17] Control over women meant control over the success or failure of the community. Furthermore, dividing the country into different zones of control over personal status law resulted in a widening separation between the religious communities. The beginnings of the religio-cultural monoliths seen during the Shah Bano case have their roots in the divide and rule policies enacted in British India.

The division of the country into different personal status regions was intensified after the Sepoy Revolt of 1857. In policy, the British abandoned their expansionist mentality and instead decided to rely upon Indian princes and native elites to uphold their rule in the country. Most importantly, the British decided that the "existence side by side of hostile creeds" in India would be their strongest tool to maintaining their political position.[18] Believing that the revolt in Bengal during the Sepoy Rebellion was a direct cause of the unity among the native troops, the

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[15] Kolsky, "The Colonial Rule of Law and the Legal Regime of Exception," 1230.

[16] Shruti Iyer, "Taking a Break from the State: Indian Feminists in the Legal Reform Process," *Journal of International Women's Studies* 17, no.2 (2016), 25.

[17] Jaime Wadowiec, "Muslim Algerian Women and the Rights of Man: Islam and Gendered Citizenship at the End of Empire," *French Historical Studies* 36, no. 4 (2013): 649-676.

[18] Neil Stewart, "Divide and Rule: British Policy in Indian History," *Science & Society* 15, no. 1 (January 01, 1951): 49.

54

British decided that their military in each district would be divided among every possible combination of caste, religion, and nationality—the argument being that this would disallow unity among the native troops, thereby making the British position more secure.[19] The indiscriminate mixture of nationalities and castes into regiments deployed across the nation caused fear of the "other" and served the end goal of dividing the people of India against each other.[20] The military policy of splitting groups against each other to prevent unity—and therefore to prevent revolt—is reflective of the general strategy across the Raj. In policies deriving directly from Machiavelli's *The Prince*, in which the Italian diplomat advises a leader to divide the forces of his enemy by making them suspicious of one another, the British enacted communal elections and pitted Hindus and Muslims against each other in negotiations on Home rule. In communal elections, local regions would choose judges and local political leaders to administer laws that the Raj had delegated to them. The communal elections cemented the division between Hindu and Muslim law—in fact, these two terms did not exist as singular entities before the British took power—and created fear among both groups that, in the eventuality of Home rule, one would try to dominate and diminish the other. The fear was especially prevent among the Muslim community beginning in the early 1900s, because Jinnah and his supporters instilled the belief that a Hindu population majority would result in the imposition of Hindu government and Hindu law.[21]

Though the British allowed native customs to continue in personal status law, the British leadership, throughout their time in India, effectively linked their perceived view of Indian men as effeminate with the degeneracy of native leadership. The British dismissal of native leadership manifested itself during the debate on the treatment of Eunuchs. First, the British demanded that Awadhi rulers take action against eunuch men to make the princely state conform to Victorian ideals. When the rulers of Awadh expressed reluctance to do so, the British sought to equate Awadhi maladministration with the "gendered and sexual disorder" of

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[19] Stewart, "Divide and Rule: British Policy in Indian History," 53.
[20] Ibid., 57.
[21] David Gilmartin, "Partition, Pakistan, and South Asian History: In Search of a Narrative," *The Journal of Asian Studies* 57, no. 4 (1 Nov. 1998): 1068-095.

55

the eunuchs (British perception of the eunuchs, that is).[22] Eventually, the Company applied the doctrine of lapse to legalize a seizure of the state of Awadh (also spelled as Oudh). The British doctrine of lapse meant that the Company could seize any dependent (princely) Indian state that governed in an incompetent manner or was left with no suitable male heir after the death of the previous ruler.[23] These conditions for the seizure of a princely state were left up to the interpretation of the Governor General. In the case of Awadh, the presence of Eunuchs in the state allowed the Company to build a case for incompetent administration. Equating unmanly activities with Eastern government traditions allowed the colonists to make sweeping generalizations about the lack of competence of Indian leadership. In Bengal, the Raj pursued a similar approach.

In the middle of the 19th century, the Bengali middle class mounted a serious intellectual challenge to British rule. At first supporting the British administration during the debates on sati, Rah Mohan Roy and the reformers sought to modernize the outdated aspects of their cultural practices. Even advocating for the introduction of mandatory English courses in all schools—known as vernacular education—Roy and his reformers were seen as "clubbable" Indians. Empowering moderates like Roy helped the British claim the legitimacy of educated governors. However, allowing Indian men into the inner circle created a breadth and depth of policy alternatives, which were pursued further than the British conservatives hoped they would be. The 1884 Ilbert Bill—proposed by Courtenay Ilbert, an English advisor to the Council of India—was a partnership between Indian moderates and British pragmatic liberals which sought to empower Indian judges—in the British civil and criminal court system—to have the same legal authority as their European counterparts. Griffith Evans and planters in Bengal led the opposition to the bill.[24] Fearing that Indian judges would refuse to look past their abuses of Indian plantation workers, the planters framed their argument in terms of the effects that empowering Indian judges would have on European

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[22] Jessica Hinchy, "The Sexual Politics of Imperial Expansion: Eunuchs and Indirect Colonial Rule in Mid-Nineteenth-Century North India," *Gender & History* 26, no. 3 (November 2014): 414-37.

[23] Bhupen Qanungo, "A Study of British Relations with the Native States of India, 1858-62," *The Journal of Asian Studies* 26, no. 2 (1 Feb. 1967): 251-65.

[24] Ravi K. Raman, "Business, Ethnicity, Politics, and Imperial Interests: The United Planters' Association of Southern India, 1893-1950," *Business History Review* 88, no. 01 (2014): 73-95.

women.[25] In the end, the bill was signed by the viceroy but only after negotiating a compromise: that Europeans would have the right to demand a jury composed of at least half European members.

The Ilbert Bill demonstrated an effective ceiling on the upward mobility of native men. The argument formed that Bengali men mistreated Bengali women, as evidenced through the practice of child marriage, and hence, "the moral and physical effeminacy of" these men would compel them to mistreat European women too.[26] The grouping of all men into the effeminate category, even though most did not engage in child marriage, exacerbated the push and pull factors that drove Indian male elites to a form of hyper-masculinity to protect their image and reputation. Of course, the rhetoric among Indian male elites was that the British legal posturing was an attack on Hindu religion and Indian women. With this line of reasoning, it fell to the devout Indian male to uphold the honor of Hindu women. Women's reform "stemmed more from a desire to demonstrate the barbaric practices of the Hindu male than from a purely humanitarian concern for the plight of the Hindu female."[27] Indian women were a bargaining piece in the ongoing negotiation between British and Indian men over the power hierarchy. Because of women's significance without an actual voice in this—and many other—debates on power dynamics in the state, "Indian feminism has been traditionally suspicious of state power."[28]

The Partition of India

The Partition of India resulted in "the killing of an estimated one million people, hundreds of thousands of rapes and between six and fifteen million people who became refugees."[29] Two aspects of Partition that are especially pertinent to the points of this article are the honor killings of women and the paternal nature of Partition.

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[25] Mrinalini Sinha, "'Chatham, Pitts, and Gladstones in Petticoats': The Politics of Gender and Race in the Ilbert Bill Controversy, 1883-1884," in *Western Women and Imperialism: Complicity and Resistance*, ed. Nupur Chaudhuri and Margaret Strobel (Bloomington: Indiana University Press, 1992), 226.

[26] Ibid.

[27] Ibid., 221.

[28] Iyer, "Taking a Break from the State," 25.

[29] Mira Debs, "Using Cultural Trauma: Gandhi's Assassination, Partition and Secular Nationalism in Post-independence India," *Nations and Nationalism* 19, no. 4 (1 Oct. 2013): 635.

<div align="center">57</div>

After the partition of India, a mass migration of Hindus from Pakistan into India, and Muslims from India to Pakistan, occurred. This, combined with a territorial dispute in Jammu and Kashmir, resulted in an outbreak of violence that stranded many on the wrong side of the border. Scholars define honor killing in this context as the "premeditated killings of women perceived to have brought dishonor to their families, often by engaging in illicit relations with men."[30] Many Indian and Pakistani women were sexually assaulted in the course of the mass movement and violence of Partition. When these women were repatriated, many were not accepted back into their families. Many women, because of this and other factors, continued to live with the men that had taken them against their will. Rohimmi Noor makes the point that "the honor killing of women during Partition is due to the perception of the time, place and society that women, as well as their sexuality, are symbolic constructions of male honor."[31] Through no fault of her own, a woman could shame her family. Even as a victim, the responsibility for the engendered violence, and violations, of Partition fell on the affected woman. To many families, the assault committed against their wives and daughters made them physically and morally unfit to uphold the domestic hearth they had been bound to maintain.[32] Their assaults, deaths, and disappearances were often swept under the rug and written off as part of the nasty price of Partition. In contrast, the death of Gandhi was treated as a great national tragedy.

As the symbol of nonviolent resistance to imperialism, Gandhi's death was indeed a tragedy for the entire subcontinent. However, the causes of his death, according to Mira Debs, were explored immediately after Partition while the violence against women took a back seat until decades later in political and historical inquiry.[33] Gandhi's death was the death of a symbol of paternal renewal, whereas the mass death on the border was only a product of a long-standing internal tension. For many Indians, Gandhi gave them a way to reclaim their masculine prestige, which had been systematically attacked by the British. Though

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[30] Rohimmi Noor, "Honour Killing as Engendered Violence against Women in Amit Majmudar's Partitions (2011)," *Southeast Asian Journal of English Language Studies* 22, no. 1 (January 2016): 223.

[31] Ibid., 221.

[32] Urvashi Butalia, "Legacies of Departure: Decolonization, Nation-Making, and Gender," in *Gender and Empire*, ed. Philippa Levine (Oxford University Press, 2007), 203-219.

[33] Debs, "Using Cultural Trauma," 637.

58

perhaps unintentionally, Gandhi had stepped into the role of paternalistic leader of the new nation, according to contemporaries "still scolding his errant children in his feeble voice"[34] as the conflict between India and Pakistan raged on. While Gandhi gave Indian men a way to reclaim their manhood, the disappearance and sexual assaults of women in their family reminded them of their inability to protect the women.

Moving Forward: Multiculturalism, Feminism, and the Uniform Civil Code

The three fundamental flaws that imperialism left to the status of women: communal politics, the religious monolith, and the paternal state, were cemented through the Partition and the end of British rule. The debates over the multicultural nation and the status of women within it during the Shah Bano case, revealed deep tensions within India. To many observers, the discourse resulting in the Parliamentary action to reverse the Shah Bano decision through the passage of the Muslim Women Act of 1986 shows that multiculturalism in India is antithetical to the promotion of women's rights. Outside observer Susan Okin reasoned from these events that Indian "feminists should oppose the politics of multiculturalism" because it stands directly against their interests.[35] Okin's argument draws from the centuries-old fear that devolution of powers to communal authorities would inevitably lead to the subjugation of women—a fear somewhat grounded in historical facts. Seyla Benhabib further developed this idea in her book, *The Claims of Culture*, where, drawing on the ideas of Ayelet Shachar, she developed a framework for women to avoid the paradox of multicultural vulnerability.[36] Shachar's paradox tells of an ongoing structural cycle whereby women become the bearers of culture and the repository of tradition. According to Shachar, women must break this cycle, and the way they must break it is to stand against the devolution of national authority to communal male leaders.[37] Citing the cruel outcome of the Shah Bano case, feminist scholars (and many others) argued that further centralization of the legal system was necessary for the equality of Indian women.

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[34] Makarand R. Paranjape, *The Death and Afterlife of Mahatma Gandhi* (New York: Routledge, 2014), 126.
[35] Mullally, "Feminism and Multicultural Dilemmas in India," 686.
[36] Seyla Benhabib, *The Claims of Culture* (Princeton: Princeton University Press, 2002).
[37] Shachar, *Multicultural Jurisdictions*.

However, though this particular circumstance resulted in a political decision against the rights of divorced Muslim women and in favor of a legally devolved India, Siobhan Mullally makes the case that vilifying multiculturalism in the Indian women's rights debate prevents the chances of coming to a just multicultural arrangement.[38] While the Shah Bano case certainly reflects the three flaws prevalent in post-colonial India, it does not prove that feminism is doomed to take a back seat to India's primary concern of communal stability. Here's why:

Firstly, the Muslim Women Act of 1986, nullifying the Court's decision, was at least partially a product of circumstance. Two years after the assassination of Indira Gandhi, Congress, fearful of sliding electoral majorities, sought to appease its most vocal Muslim supporters. Of course, these voices were likely not representative of all Indian Muslims and certainly displayed a lack of recognition for the plurality of views within the Muslim community. Had the BJP held a governing majority in Parliament, the Act never would have passed, or even come to a vote.

Secondly, the Danial Latifi case of 2001 resulted in a judicial nullification of the Muslim Women Act. The alimony provision in Section 125 was brought back under the purview of criminal law, preventing the Muslim custom of iddat from interfering with any woman's right to spousal or child support.[39]

Lastly, the view that Indian multicultural politics stands at odds with feminism is premised on the belief of monolithic religious groups. Recent developments demonstrate that the full range of views within the Hindu and Muslim communities are starting to be seen. For instance, in the Danial Latifi decision, the All India Shia Board on Personal Law decided to support the Supreme Court's decision to nullify the Muslim Women Act—an act supposedly created at the behest of all Muslim Indians. Perhaps the religio-cultural monolith of the post-independence era has started to break apart, finally releasing the full riches of diversity within the different religions of India. However, while Parliament and the judiciary have taken steps to legally level the playing field for Indian women, many legal scholars point out that these laws and rulings have yet to benefit women in rural communities and autonomous areas.[40]

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[38] Mullally, "Feminism and Multicultural Dilemmas in India," 674.

[39] Avani Sood, "Gender Justice through Public Interest Litigation: Case Studies from India," *Vanderbilt Journal of Transnational Law* 41, no. 3 (May 2008): 833-906.

[40] Narain, "Postcolonial Constitutionalism in India," 107-35.

60

The legacy of British imperialism certainly feeds the three fundamental flaws in post-independence socio-political treatment of women's issues in India: communal politics, the belief in monolithic religio-cultural groups, and the paternalism inherent in the state system. After the Shah Bano verdict, the majority argued—in a rare occasion interjecting itself in politics—that a "common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies."[41] The proposal for a Uniform Civil Code in India seeks to eliminate the differential statuses accorded to communities in personal status law. This code itself is shaped by the communal politics between Hindus and Muslims. While the Hindu nationalist BJP sees the Uniform Code as a way to unite the country with one law, they also see it as a strategic policy to take long lasting legal autonomy away from Muslims. Much of the debate around the Uniform Code centers around the differential status specifically accorded to women in religious law. Once again, women's rights and bodies serve as the grounds on which the struggle and negotiation over state power occur. However, this time women have more of a voice in that contemporary discussion—serving as members of Parliament and in the judiciary at historic levels. Protecting multiculturalism and feminism in India may require a more dynamic solution than the Uniform Code.

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[41] Y. Chandrachud, 1985 AIR 945, 1985 SCR (3) 844. Mohd. Ahmed Khan vs. Shah Bano Begum And Ors on 23 April 1985.

61