Gendering ethnic conflicts: minority women in divided societies – the case of Muslim women in India

Ayelet Harel-Shalev

To cite this article: Ayelet Harel-Shalev (2017): Gendering ethnic conflicts: minority women in divided societies – the case of Muslim women in India, Ethnic and Racial Studies

To link to this article: http://dx.doi.org/10.1080/01419870.2017.1277028

Published online: 01 Feb 2017.
Gendering ethnic conflicts: minority women in divided societies – the case of Muslim women in India

Ayelet Harel-Shalev

The Conflict Management and Resolution Program, The Department of Politics and Government, The Center for the Study of Conversion and Inter-Religious Encounters, Ben-Gurion University of the Negev, Beer-Sheva, Israel

ABSTRACT
This article explores the practical and theoretical significance and long-term consequences of the failure to incorporate women’s interests in post-conflict negotiations by examining the case of Muslim women in India. Analyses of deeply divided societies must recognize that political competition and political violence do not affect all citizens equally. Also, the “larger picture” depicted by inter-community conflicts should not overshadow the effects of intra-community conflicts, which are no less important. Evident within each community conflict are the winners and the losers of the political accommodation process, in which the marginalized and weaker sections of each “side” of the conflict may be the real “losers”. Gendered analysis of ethnic conflicts and ethnic conflict resolution demands a reorientation of the concepts of conflict and security – Whose conflict is being solved and who is being secured?

ARTICLE HISTORY Received 1 October 2015; Accepted 21 September 2016

KEYWORDS Gendering conflict analysis; women; Muslim Women; India; family law; conflict resolution; minority rights

Introduction
A substantial number of studies have addressed the puzzle of the survivability of India’s democracy in light of the high incidence of ethnic and religious conflicts in the country. Scholars debate whether or not the Indian political system includes an effective mechanism of power-sharing between the country’s Hindu and Muslim citizens (see, for instance, Brass 1991; Lijphart 1996; Wilkinson 2000; Harel-Shalev 2010). Moreover, researchers have indicated that during post-conflict situations, the political space needed to change the balance of power between and within communities is available (Moran 2010). This paper will delve into these issues by focusing on the failure to incorporate women’s interests in formal and informal negotiations regarding
the ongoing Hindu–Muslim conflict in post-independence India and its long-term consequences.

The main argument in the current research is that a consideration of the gendered aspects of ethnic conflicts and ethnic conflict resolution is crucial to the understanding of ethnic conflicts – from their beginnings through their evolution and extending to their resolution. In deeply divided societies, the communities from the two (or more) sides of the division challenge each other, are involved in severe conflicts, and disagree on the main characteristics of the state (Harel-Shalev 2010; Guelke 2012), and the corresponding political competitiveness and violence that erupt do not affect all citizens equally. Moreover, communal competition and conflict have distributional consequences both within and between each community. Accordingly, the marginalized and weaker sections of each “side of the conflict” may be the real “losers” among the competing sides. In light of the earlier writings of scholars such as Tickner (1992), Yuval-Davis (1997), Enloe (2000), Hansen (2000b), Shachar (2001), and Sjoberg (2013), this research assumes that women and gender factors should not be invisible in conflict analysis and that, accordingly, the gendering of conflict analysis is called for.

To emphasize the significance of the “absence” of women’s interests, particularly those of minority women, from conflict analysis and the post-conflict negotiations over rights and to emphasize the necessity of incorporating gendered analysis into mainstream conflict studies, I will analyse the status of Muslim women in the post-independence environment of India from the perspectives of several schools of thought: (1) Studies associated with ethnic conflicts in deeply divided societies and proposals for ethnic conflict resolutions; (2) studies (based predominantly on law) that address multiculturalism, communities and the law; and (3) feminist theories in general, and feminist international relations (IR) and feminist security studies in particular, that aim to trace women’s agency and women’s voices in world politics and global conflicts. Although these academic approaches have evolved as separate disciplines, they must be combined to reorient the discussions of ethnic conflict and conflict resolution towards a discourse that is not gender-blind.

**Ethnic conflicts and their resolutions in deeply divided societies**

Destructive ethnic conflicts constitute a prominent feature of the post-cold-war world (Ross 2000, 1002). In fact, most political violence in the current global political environment is internal, and governments must cope with the inter-communal conflict that threatens both their internal political stability and their interstate relations. By dealing with minority communities, governments must, perforce, balance considerations of internal governance with
concerns about the international ramifications of their decisions (Stein and Harel-Shalev, *Introduction to the special issue*, 2017).

Deeply divided societies typically comprise several homeland communities (or communities that perceive themselves as such), each with its own inherent ethnic, national, and/or religious identity (Esman 1985; Kymlicka 2007; Harel-Shalev 2010). Homeland communities (also known as “old communities” or indigenous communities) view themselves as possessing rights to their country and homeland from time immemorial, and as such, they are inclined to demand a wide range of rights, including collective rights, from the governing state (Connor 1987; Peleg 2007). The constant exposure of minority communities in deeply divided societies to ethno-national discourses marred by the resistance of the majority to sharing power with the minority is likely to cultivate in the latter a collective, ethno-national consciousness that may subsequently help destabilize the existing political structures as the minority communities campaign for autonomy, regionalism, or sovereignty (Hechter and Levi 1979; Connor 1992). Moreover, homeland minorities often demand a status that reflects nothing less than an equal share in the majority community’s power (Harel-Shalev 2010). In the existing global socio-political reality, however, majority communities typically reject these demands, a scenario that can lead to violent conflicts.

A range of theories and practices designed to promote peaceful resolutions of internal ethno-national conflicts have been offered (Ramsbotham, Miall, and Woodhouse 2011). Power-sharing, considered one of the most viable and just solutions to internal conflict, delineates a political system in which communities formally or informally share power (Lijphart 1977, 1996). Key to power-sharing is acknowledgement that majority rule may not be the best governing solution for deeply divided societies and that minorities should have assured access to power and be able to influence public policy.

According to the theoretical literature, a conflict is considered resolved only after a ceasefire has been achieved, the incidence of direct violence declines, and an agreement (either formal or informal) has been reached. In some cases, normalization and reconciliation follow these phases (Ramsbotham, Miall, and Woodhouse 2011, 13–14). Galtung (1990) further distinguished between two categories of resolutions, negative and positive peace. The former is signified primarily by the cessation of direct violence without any substantial secondary gains, whereas the latter also entails the elimination of structural and cultural violence (Galtung 1990; Ramsbotham, Miall, and Woodhouse 2011). The current research aims to add significant nuances to the “positive peace” category and “power-sharing” by investigating conflicts through the prism of gendered analysis.
Multiculturalism, communities and the law

Historically, ethnic minority demands in post-conflict situations in deeply divided societies have involved not only the elimination of classic discrimination, to which minorities are often exposed, but also claims that their special needs be accommodated. The reasoning underlying the demands for special rights and accommodations for ethnic and religious minorities is that minority cultures are typically at a substantial disadvantage, in that all aspects of everyday life are dominated by the majority culture as reflected in, for example, the state’s official language, holidays, and symbols, all of which typically suppress the culture of the minority community whose members consequently suffer grievous harm (Kymlicka 1995; Stopler 2007, 323).

Over the last twenty years, interest in what is termed group-differentiated rights has grown steadily (Kymlicka 1995, 2012; Mahajan 2005; Shachar 2010; Bhargava 2011). Political theorists disagree about what defines the most appropriate policy, in terms of what is most just and ethical, for entitling individual and group rights in deeply divided societies. Communitarian scholars claim not only that minority communities should be protected, but also that the members of these communities themselves should take action to protect their group identity practices when the state attempts to marginalize them (Selznick 1992; Etzioni 1995). Liberal theoreticians (Kukathas 1995; Barry 2000), on the other hand, argue that whereas individuals in most communities usually enjoy some level of personal autonomy and protection, it is acceptable (and even advisable) that the state compel them to relinquish their collective identities (Harel-Shalev 2009).

Despite their belief in the indispensability of group rights, however, critical communitarian scholars acknowledge the dilemma inherent in the implementation of two sets of rights, namely, individual and group rights: when a state awards a community jurisdictional powers, it creates greater group autonomy and empowerment, but at the same time, it also exposes certain individuals within the group to systematic, in-group rights violations (Kymlicka and Norman 2000; Barzilai 2003; Harel-Shalev 2010). Indeed, critical communitarianism warns that the implementation of group-differentiated rights can potentially infringe on the rights of marginalized individuals and groups within the community. The current research follows critical communitarianism in analysing internal ethnic conflicts and focuses on the status of women. The granting of group rights can further deny the rights of women, and therefore, women’s voices should play a substantive part in the discourse regarding the implementation of group rights (Okin 1999; Shachar 2001; Benhabib 2002; Harel-Shalev 2013).
The contribution of gendered analyses of international and global politics

Feminist theorists such as Irigaray (1985) vigorously challenged patriarchal mythologies. MacKinnon (2006) produced gendered critique, then took it to the international plane and exposed the far-reaching consequences and significance of the systematic maltreatment of women and its systemic condonation. In Mackinnon’s view, the ability to see and really understand what a subordinated group of people is deprived of, subjected to, or delegitimized by first requires that these people be seen as real and important to those holding the positions of institutional power, including scholars. From MacKinnon’s perspective, the perception of gender equality could only be created if wrongs against women as women were forbidden by law and perpetrators were pursued, brought to justice, and punished accordingly in the same manner as other “human rights” are protected.

Consequently, gendered analysis forces scholars to re-evaluate traditional security politics and the framework of ethnic conflict analysis. Whereas security is traditionally understood to be at the top of the state’s list of priorities, and securitization is perceived as the domain of extraordinary measures defined by perceived threats to the state (Enloe 2000; Hoogensen and Vigeland Rottem 2004, 168), gendered analysis focuses on the meaning of security and asks who is being secured. And whose conflict is being solved? The inherently unfair phenomenon of discrimination against women, that is, gender inequality, should be perceived to be as unjust, severe, and devastating as discrimination on the basis of race, caste, ethnicity, or religion (Stopler 2003). Feminist theorists have repeatedly claimed that gender should be incorporated into studies of war and peace (Confortini 2006; Naraghi Anderlini 2006) and that gender-based security and insecurity (Hansen 2000a) should be taken into account in analyses of ethnic conflicts and ethnic conflict resolution.

Accordingly, feminist theorists have emphasized the need to deconstruct the categories of gender and to discuss the varied and multi-layered constructions of women’s citizenship (Yuval-Davis 1999, 120; Narayan 2013). Analyses of ethnic conflicts done without the gender lens may skew our understanding of the situation under study while neglecting critical societal elements (Yuval-Davis 1999; Naraghi Anderlini 2006). Feminist scholarship, then, looks at the world through “gender lenses” and aims to trace the ways in which gender is central to understanding international processes (Steans 1998; Sjoberg 2016) while sharing a normative and empirical interest in the gender-hierarchical nature of the international system (Sjoberg 2016).

Although post-war or post-conflict periods are perceived by many feminist scholars as times when gender, gender roles, and gendered power relations can be radically de/reconstructed (Moran 2010, 266; Speake 2013), women’s
involvement in formal missions and talks remains low (Diaz 2010, 1). Indeed, advocates of a transformative gendered approach to peacebuilding and conflict resolution have voiced their concerns that despite the opportunity afforded by negotiations to incorporate gender issues, formal peacebuilding, and conflict resolution initiatives continue to ignore or marginalize them (Strickland and Duvvury 2003). Those initiatives that do consider issues of gender scarcely address the structural inequalities and power dynamics that constitute the foundation of gender discrimination (Strickland and Duvvury 2003; Speake 2013). Applying gender analysis to the evaluation of the status of Muslim women in post-Independence India will assist us in reinterpreting Hindu–Muslim relations in India.

Uniting the three theoretical perspectives based in ethnicity, law and feminist IR in a single analysis can help elucidate the defining aspects of ethnic conflicts and ethnic conflict resolution. Moreover, as this study suggests, not only does the gender-skewed approach to post-conflict power-sharing and resolution have the potential to be detrimental to women’s status in society, its impact on the status of minority women may be even greater. As Okin claimed, “Unless women … are fully represented in negotiations about group rights, their interests may be harmed rather than promoted by the granting of such rights” (Okin 1999). The verity of this assertion will be emphasized by my analysis of the status of Muslim women in post-independence India.

Since conflict resolution affects different communities in varied ways, in fact, both the distinction by Galtung between negative and positive peace (Galtung 1990) and Lijphart’s (1977) notion of power-sharing can be interpreted differently. Although conflict resolution can solve problems of inter-community inequality, it may simultaneously promote inequality within certain communities. Ultimately, a solution perceived by the dominant parties of the communities involved in the conflict as peaceful may affect the marginalized groups within these communities, particularly minority women, in decidedly different ways.

**Ethnic conflicts and Muslim women in India**

The process of the partition of India and the creation of Pakistan uprooted entire communities and left unspeakable violence in its path (Talbot and Singh 2009). India was created in the midst of a violent partition characterized by acute conflict between Hindus and Muslims (Menon and Bhasin 1998). Uncompromising disagreements arose between the leaderships of the two groups in colonial India. During the 1940s, one of the main controversies that arose in the lead up to India’s independence surrounded the demand of the Muslim League, the dominant Muslim party in colonial India, for separate electorates and power-sharing as a form of government. Refusing to
acquiesce, the Congress Party rejected the demand for separate electorates and chose instead to institute the majority-rule system, a step that led the Muslim League to call for a separate independent Muslim state – Pakistan. The creation of independent India and Pakistan in August 1947 exacted a heavy price. The communal violence between Muslims, Hindus, and Sikhs led to one of the largest and most violent exchanges of population ever (Pandey 1994). The truly immeasurable extent of the violence is reflected in wide-ranging casualty estimates by historians, who put the number at between half a million and two million (Talbot and Singh 2009). The partition and the immediate attempts at conflict resolution continue to affect Indian citizens to this day.

The partition of the sub-continent created multi-layered conflicts at the international, national, and regional levels. Chief among these were the international conflict between the newly created states of India and Pakistan and the strife between India’s communities, particularly between Hindus and Muslims. The processes of negotiations and deliberations between Hindus and Muslims in India are well documented in the protocols of constituent assembly debates and of discussions between other formal committees, both before and after partition. The constitution of the newly formed Indian state was created in the midst of the severe conflict and ongoing violence associated with the partition.

Among the remaining citizens of post-colonial India, the struggle between Hindus and Muslims revolved around heated debates about rights. The most contentious discussions related to: (a) Representation of the Muslim population in politics and in the public sphere in the independent state; (b) official languages and the status of the Urdu language; and (c) cultural and religious rights of the Muslim community.

In the newly born Hindu-dominated nation-state, the leading elites of the Congress Party refused to create a political regime based on a power-sharing framework of proportional representation, preferring “one vote for one citizen” instead of a consociational regime. They also refused the demands of Muslim representatives for any kind of proportional representation mechanisms (e.g. quotas or affirmative action) for the Muslim community as a whole, although heated debates were held discussing appeals from the Muslim community to reserve seats for Muslim candidates (Constituent Assembly Debates (CAD) V, 294–297). Although affirmative action is extended in India to members of the lower caste Hindus, the Muslims – despite their collective status as a separate, weak, and underrepresented community – are ineligible for its benefits. Indeed, since India gained its independence and until today, every call that affirmative action be implemented for the entire Muslim community has been perceived as a demand to further partition India (Bhargava 2007). However, the minority representatives, who raised the issue of Muslim
representation on various occasions, did not initiate a fierce struggle at any time over the years (Wilkinson 2006).

The issue of language, another source of intense conflict, was among the other important struggles between Hindus and Muslims. In the early days of independence, debates raged over the future status of Urdu, which is spoken by half the Muslim citizens of India and considered a Muslim language (Wright 2002; Harel-Shalev 2006, 2009). Although Urdu and Hindi were supposed to be the official languages of the newly formed state, instead, Hindi received that status, and Urdu was stripped of the formal status that had initially been agreed upon. In the original plan, Hindustani (an oral tongue that combines Hindi and Urdu and is written in two different scripts, Devanagari and Arabic-Persian) was designated the national language. Following the confirmation of the partition in 1947, many Hindus felt the need to cancel the official status of Urdu. Members of the Constituent Assembly proposed deleting Urdu from the draft constitution. Although Muslim members of the assembly vigorously opposed this action (CAD; IX 34, 1339–458), an overwhelming majority of delegates voted in favour of legislation approving Hindi written in the Devanagari script as the sole official language of the union (CAD; IX 34, 1486–91; Schedule 343 (1)). Urdu was later acknowledged as one of the scheduled languages (minority languages), rather than an official national language, of the union.2 Again, as in the sphere of representation, minority representatives unsuccessfully challenged the relegation of the Urdu language to its inferior status (Farouqui 1994; Wright 2002), but their struggle proved fruitless.

The situation surrounding religious community rights was markedly different. In the country’s early days, in accordance with India’s principles of secularism and equality and with its self-definition as a civic nation, the Indian Constituent Assembly pushed for the legislation of “uniform personal laws” for all Indian citizens. The ultimate outcome of the discourse on religious community rights was Article 44 of the Indian constitution, “Uniform Civil Code for Citizens”: “The state shall endeavour to secure for citizens a uniform civil code throughout the territory of India.” Due to fierce conservative Muslim opposition to its implementation, however, this article was formulated as a recommendation and not as actual policy or law (CAD, VII, 303-782). In parallel with Article 44, Article 372 of the Indian constitution states that existing family laws for each religious community will remain intact until Parliament revises the original laws.

In later periods, several attempts by the state and its institutions to pass legislation that would promote a uniform civil code were adamantly rebuffed by the leading conservative Muslim representatives. One case in particular, commonly known as “The Shah Bano affair”, enraged the conservative Muslim leadership, which threatened that if the decision to intervene in Muslim religious autonomy and to force a husband to pay alimony to his
divorcee was not reversed, Muslims would treat the Indian Republic Day as a “black day” (Baxi 1994; Mullally 2004; Harel-Shalev 2010; Agnes 2012). In the aftermath of the Shah Bano affair, debate of the Uniform Civil Code not only became entangled in the wider political controversies between Hindus and Muslims, it also pitted conservative Muslims on the one side, against advocates of liberalism, a gender-just interpretation of Islam, and women’s rights, on the other.3

Like minority communities in other deeply divided societies, the elite of the Muslim community in India demanded numerous rights from the state, including group rights. Among these, language rights, rights to representation as a community, and religious and cultural group rights were the bases of some of the most important demands raised by the Muslim community in the newly founded state. The responses of the fledgling Indian state – which included, on the one hand, the cancellation of the national status of Urdu and a prohibition on quotas for proportional representation for Muslims, but, on the other, the granting of religious autonomy – raise several questions. Why did the Muslim community insist on these particular issues? Why was the state willing to “give up” its plan to institute a uniform civil code and at what cost? And what are the gendered implications of these decisions? A close reading of these processes indicates that the approach used to resolve the main conflicts between Hindus and Muslims has significant, lasting effects on the country’s gender power relations (Ganguly 2003).

Although the Indian Constitution guaranteed the equality of individuals before the law, regardless of their gender or religion (Article 14 of the constitution), it was summarily undercut by granting power to religious authorities in certain domains. A complicated system of parallel, personal laws was thus created. Intended to provide guidance specific to each religious community in the areas of marriage, divorce, and inheritance (Basu 2003; Jones 2010), it allocated different rights to different communities.

In addition to guaranteeing religious autonomy to its minorities (until Article 44 will be realized), the Indian Constitution also grants them the freedom to manage their religious affairs. For Hindus – the majority population – the state established a form of civil law that adapted Hinduism to democratic principles and that was applied to all castes (Galanter 1989, 1997; Weiner 1997; Jacobsohn 2003; Harel-Shalev 2009), despite resistance from conservative Hindus, which was disregarded. In contrast, Muslims live under a particular interpretation of Sharia law (known as Shariat in India), and despite sporadic efforts by the state and liberal Muslims, India’s legal and political institutions have thus far failed to similarly democratize Muslim marriage and religious laws (Raghubir 1986; Baxi 1994; Engineer 2009).4 This reality has cultured a potent source of ideological conflict that also drives resource competition between Hindus and Muslims in India. While
the Indian Constitution guarantees equality before the law, the Indian policy of differential religious group rights constitutes a barrier to that equality in Indian society. The debate over whether uniform vs. separate family laws should be implemented evolved to become one of the most contested issues in India (Hasan and Menon 2005).

Although women’s status in India has steadily improved over time (Hasan and Menon 2005), the traditional norms of Indian society continue to marginalize them, both in the private (within the family) and in the public spheres (Wolkowitz 1987). An examination of the policy decisions by the state in its early days shows that the status of Muslim women in India is even more troublesome than that of Hindu women. As will be illustrated below, Muslim women’s status and position in society are intrinsically linked not only with the sensitive, often volatile and politically contentious Hindu–Muslim relations (Basu 1993; Hasan 1993; Ganguly 2003), but also with internal conflicts of interests within the Muslim community (Rajgopal 1987; Varshney 2002; Brass 2005; Wilkinson 2006).

Gendering conflict analysis – bringing Muslim women’s interests back in

Lijphart (1977), a renowned political scientist, is an advocate of power-sharing in deeply divided societies. He strives to theorize a model, which is both stable and just for divided societies. He further suggested (1996) that the negotiation process between the Hindu and Muslim communities, which resulted in the granting of minority religious autonomy and the reversal of the Shah Bano verdict (which initially put state law above family religious laws), is a testimony of the successful implementation of power-sharing in India. In fact, according to Lijphart’s analysis, this move is an indication of at least one instance of successful conflict resolution in India. However, it also elicits several questions in the realm of gendered conflict analysis. What was the underlying matrix within which the courts made their decisions? Whose conflict was resolved? Whose security benefited? Who was disempowered by these processes? Who was empowered?

However, what Lijphart sees as successful power-sharing has adverse consequences. A close examination of the Hindu–Muslim negotiations over rights from the perspectives of critical communitarianism thinking and feminist theories suggests that the analysis by Lijphart (1996) does not focus on the hegemony and the exclusivity enjoyed by the conservative elite of the Muslim community in India. Likewise, it disregards the greater ramifications of the state’s preferential treatment of the Muslim conservative elite, which includes the marginalization of other groups within the community and the low status afforded Muslim women relative to other women in India. Whereas various Muslim groups within India were calling for a more
gender-just interpretation of Muslim personal law, the informal power-sharing arrangements conferred hegemony on the conservative elite, who were unwilling to implement any change to the benefit of Muslim women. This move was detrimental to the balance of power within the minority community. Perhaps from the perspective of the conservative Muslim elite in India, the negotiation process, which led to a “positive peace” and so-called “efficient power-sharing”, could be considered a success. For Muslim women, however, the outcome of these processes, far from positive, reflects their disempowerment (Alam 2008).

Religious and cultural norms continue to be the most prevalent and widely accepted justifications in India for discrimination based on sex/gender (Stopler 2003). An examination of family law policies should therefore not only focus on the myriad conflicts that have erupted between the state and its minority communities, but also highlight in-group rivalries and address the interests of the weaker groups among the minority denominations. India’s policies towards religious minorities have affected gendered categories among Indians. The government’s decision to grant religious rights to the communities at the expense of other rights and the state’s preference for “non-intervention” in religious affairs have been sustained for decades to the detriment of women’s rights, which have been sacrificed for so-called “inter-communal peace” (CAD VII, 550–552; Aslam 1989; Hasan 1993; Chatterjee 1995).

Indeed, current debates about legislative reform related to “personal status” in India cannot overlook the socio-political and legal dimensions of the Indian polity, which are expressed first and foremost by the fiery political conflict between Indian Hindus and Muslims. In addition, the dynamic struggle between Hindu right- and left-wing groups, which inevitably intensifies overall conflict levels in the country, must be taken into account (Asad 1999; Van Der Veer and Lehmann 1999). Likewise, the same can be said for the friction among India’s Muslim groups (Alam 2008; Shani 2010). The sustained acceptance, by the state and ruling Hindu elites, of conservative Muslims as the dominant voice of the community, however, continues to beget the outright neglect of Muslim women’s interests.

Many scholars (such as Moran 2010; Narayan 2013) perceive of post-conflict situations as windows of opportunity to change gender relations and gender hierarchies. In the case of India, however, this potential has not borne any fruit for Muslim women. Although India succeeded in democratizing Hindu Law in the early 1950s – a move that increased, to some extent, the rights granted to Hindu women (Newbigin 2009) – it was unable to institute a similar process within Islam. The informal compromise (i.e. preservation of the “status quo”) between the Hindu and Muslim elites, initially formulated during the early days of independence, has apparently been upheld to this day.6

Scholars who have investigated the initial negotiations between Muslims and Hindus have claimed that at the time of independence, Muslims were
in a position neither to demand representation nor to secure official status for the Urdu language. How then were they strong enough to insist on and obtain religious autonomy? And why has the conservative Muslim community been so stubborn and uncompromising in its fight to preserve Muslim religious autonomy? The staunchest opponents to a uniform civil code, Muslim conservatives (Hasan 2010), whose aims comprised the preservation of their position of power and the maintenance of limits on the rights of Muslim women, are considered by the Indian leadership to represent the voice of the Muslim community. Were the state and its judicial system willing to listen to the voices of Indian women, particularly those of Muslim Indian women, perhaps the outcomes of the Hindu–Muslim negotiation process would have been different.

The large and intriguing Indian democracy, however, has been characterized by a complex political game of “give and take”. In the spheres of language and minority representation, in particular, where the need for group rights is most prominent, the relevant community leaders stopped short of violating the “rules of the game” of the delicate Indian minority–majority relationship. It is precisely the sphere of religious autonomy on which the community leaders were not willing to compromise. For its part, the irresolute Indian state did not insist on implementing the principle of equality before the law for all its citizens, the result of which would have benefited Muslim women.

Although dissenting voices were silenced in the conflict surrounding the state’s failure to enforce the constitutionally guaranteed equality before the law of all its citizens, Muslim women in India did not wait for their elites to protect their rights. The more recent emergence of forums and associations of educated Muslim women marks an important step in facilitating a new public debate on women’s rights (Basu 1993; Menon 1998b; Vatuk 2008; Agnes 2012). In addition, the formation of alliances between the diverse Muslim women’s groups with the broader women’s movement in India has been crucial in widening the struggle for women’s rights in general and for Muslim women in particular (Sunder 1996; Basu 2003, 2008; Vatuk 2008; Hasan 2010). Indeed, several Muslim women’s organizations have as their aim to challenge the Muslim conservative elite (Jones 2010; WLUMIL 2011).

In the mid to late 1980s, Muslim-led women’s NGOs began to appear in India (Vatuk 2008; Harel-Shalev 2010; Jones 2010; Kirmani 2011), but they had very little influence on practical women’s issues. For example, in the wake of the Shah Bano affair, hundreds of women rallied in Delhi to protest the policy advanced by the Indian Parliament, which summarily ignored the rallying women (Pathak and Sunder Rajan 1989). More recently, civil society was strengthened by a rise in Muslim feminism reflected in the formation of new women’s groups (Jones 2010; Kirmani 2011), including, among others, the All-India Muslim Women’s Personal Law Board (2005), the Muslim Women’s Rights Network (1999), the Women’s Research and Action Group (1993), and the Bharatiya Muslim Mahila Andolan (2005).
Among the most important concerns of Muslim women have been physical security, the legal age of consent in marriage, the legality of polygamy within the Muslim community, divorce and custody rights, abortion rights, and inheritance rights (Vatuk 2001, 2008; Kirmani 2011; Women’s Research and Action Group 2008). However, negotiations over these issues have consistently been entangled with gendered elements. Common to feminist movements elsewhere, Muslim women’s groups in India struggle with the question of how to cooperate without being co-opted and to participate without stepping beyond the boundaries of compatible values (Yuval-Davis 1999, 133). This perceived incompatibility may lead women to relinquish their struggle or to come to the realization that they must prioritize the rights of their community over their own rights as women. Therefore, ever since the right-wing Hindu forces co-opted the issue of the Uniform Civil Code for their political agenda, some women’s movements have been rethinking the demand by Hindu groups for a Uniform Civil Code. But these movements have taken other actions to promote Muslim women, because demands for a Uniform Civil Code were perceived as supporting the Hindu nationalists’ agenda for a homogenous public sphere dominated by majoritarian values (Menon 1998a, 251–264; Hasan 2003; Rattan 2004; Subramanian 2008; Agnes 2011). Similar to conflicts involving minority women in other countries (Stopler 2003), however, their attempts to resist gender-specific oppression often agitate members of their own community, who then single them out as traitors. Such inconsistencies – the secular state’s decision to grant legal authority to the men “leaders” of a particular religious community despite the constitutionally guaranteed right to gender equality – are at the basis of gender relations in India. Not surprisingly, Muslim feminist objections were ignored.

The normalization of women’s identity and experience speaks directly to the decision-making involved in determining “who is secure and who is not” (Hoogensen and Vigeland Rottem 2004, 166), who is a legitimate “side” in the conflict and who is allegedly less important in the “general picture” of the conflict. The current research suggests that conflict studies and conflict resolutions – both in practice and in theory – should be sensitive to in-group inequalities, including gender, class, centre-periphery, and so on. Following the streams of studies in critical communitarian and feminist analyses, the current study further advocates the inclusion of marginalized voices and women’s perspectives at the negotiation table to promote just conflict resolutions. Given that cultures and communities are often internally torn by conflicts over their own rules (Benhabib 2002), a disaggregation of the varied preferences of the different players in the political game is called for. Additionally, the perspectives of marginalized groups, including various minorities, women, and others, should also be substantive elements of any mediation process. Indeed, as Narayan (2013) and Okin (1999) rightly stated, renegotiations over cultural religious legacies in post-colonial contexts should only take
place if women are assured an equal right to participate under the newly defined religious norms (Narayan 2013).

In claiming that gender-blind analyses may be misleading and false, therefore, the current analysis interprets the aforementioned political compromises in India in a different light from previous studies. What Lijphart (1996) sees as a success story of power-sharing between a Hindu majority and a Muslim minority would elicit a markedly different interpretation were issues of gender incorporated in the core of the analysis. Theoretically, communities are central to the formation of human identity and are prime agents for the fulfillment of human needs. The implementation of group rights and differentiated citizenship rights, however, should be balanced by the principle of equality, such that women’s rights and their preservation are understood to be equally essential to a just and democratic society.

Today, women and women’s issues are still invisible in most conflict resolutions. But gendered analyses from the critical communitarian perspective can extend the discussion about multicultural legal systems, women’s voices, and group-differentiated rights to ensure that these issues are acknowledged by the state. By their very nature, group-differentiated rights are sources of potential inequality that actually promote state-sanctioned discrimination against women due to group religious and cultural practices, making the state a willing accomplice in perpetuating inequality rather than a guardian of its weaker minorities. Feminist research and activism contribute both to people’s awareness of gender injustices and to directly combating those injustices (Jeffery and Basu 2011). Accordingly, the scholarly agenda should be challenged. Conflict analyses must ask at the outset who among the players is being empowered and who is being disempowered. Likewise, the effectivity of solutions that attempt to enhance and expand the meaning of equality within the multicultural framework of divided societies must first concede that the reduction of physical casualties is only one of several dimensions of just conflict resolution. Women’s voices should be brought into the main frame of conflict analysis (Harel-Shalev and Daphna-Tekoah 2016). The failure to incorporate women, particularly minority women, in conflict resolution and analysis is detrimental to women’s futures and to attempts to create egalitarian societies.

As Hutchings eloquently claimed,

Feminist scholars have long pointed out that the logic of masculinity, as a mechanism for framing our understanding of international politics, renders the thinking of the feminine and the feminized impossible other than in terms of lack or absence. Quite rightly, much feminist analysis has been devoted to tracing the practical effects of this logic for the ways in which international politics is practiced and understood and as a precursor to challenging masculine hegemony in its many different forms. (Hutchings 2008, 41)
In fact, not only is gender-blind analysis wrong and misleading, present-day academic analysis should do more than describe the social pitfalls of patriarchy and hegemony. One of the main purposes of this article, therefore, was to shed light on such blind spots in a way that links scholarly domains and that can lead to new and more fine-tuned interpretations of social life.

Notes

1. For a detailed description of Muslim representation in India and the limited Muslim eligibility for reservations, see The Sachar Report, 189–214.
2. The official languages of India are Hindi and English.
3. Although the main intercommunal conflict in India is between the Hindu majority (79.8 per cent) and the Muslim minority (14.2 per cent), there are other sizeable religious communities in India (Christians, Sikhs, Buddhists, Jains, etc.), all of whom enjoy the same legal rights as Hindus. Muslim women are the only group excluded from these constitutional rights.
4. The Hindu Code of 1955 introduced inconsistencies in the area of personal law by granting specific rights to Hindu women, which were denied to Muslim women on the grounds that Muslim personal laws are considered part of the religion of Islam.
5. Islamic family law is more often referred to as Muslim personal law in the South Asian context.
6. For a list of Supreme Court rulings pertaining to the Muslim personal law, including a description of the Shah Bano case, see Iyer 1986; Basu 2008. In fact, in response to the Shah Bano case, the Indian government enacted the Muslim Personal Law Bill, under which Muslims in India would continue to be governed by particular interpretations of Sharia law, thus reasserting Muslim women’s position of legal inequality.

Acknowledgements

The research was sponsored by the “Sol Leshin Program for Collaboration between BGU and UCLA.” The author wish to thank the Leshin program committee for their generous support, as well as the workshop participants for their feedback and constructive comments.

Disclosure statement

No potential conflict of interest was reported by the author.

References


