World Academy of Science, Engineering and Technology
International Journal of Law and Political Sciences
Vol:7, No:6, 2013

Understanding the Silence: When Courts Don't Speak About Religion

Kalindi Kokal

Abstract**—**India recognizes the personal laws of the various religious communities that reside in the country. At the same time all the institutions of the state in India are committed to the value of secularism. This paper has been developed on the basis of a case study that indicates the dynamics of religion in the working of the lower judiciary in India. Majority of the commentary on religion and the judiciary has focused on debates surrounding the existence and application of personal laws. This paper, through a case study in the lower judiciary, makes an attempt to examine whether the interface between religion and the judiciary goes beyond personal laws.

The first part of this paper explains the history and application of personal laws in social, political and legal contexts in India. The second part examines the case study located in two courts of first instance, following into the third part which provides an analysis of the empirical evidence. The fourth part focuses on preliminary observations about why there is a hesitancy to speak about religion in relation to the working of the judicial system.

Keywords**—**Lower Courts, India, Legal Pluralism, Personal Law.

Open Science Index, Law and Political Sciences Vol:7, No:6, 2013 publications.waset.org/10449/pdf

I. Introduction

*Personal Laws in India***:**

THE recognition of difference appeared crucial in India after independence due to the complex and cross-cutting variations along the lines of religion, language and caste. The main ways in which cultural specificity was accommodated in India were through the formation of states primarily along linguistic lines; recognition of different officials languages by the national and state governments, the introduction and later expansion of preferential policies (and in some states through affirmative action extended even to religious minorities) in higher education and government employment largely based on caste membership (perhaps suggested by income), the provision of political representation and special civil rights protections to the lower castes and tribal groups, the restriction of land rights to the members of certain tribal groups in the regions of their prolonged habitation, and the continued use of distinct personal laws governing the major religious groups [1].

India recognizes the personal laws of the various religious communities that reside in the country. Consequently, each individual has a right to be governed by his/her personal law in matters of marriage and divorce, infants and minors, adoptions, wills, intestacy and succession. Personal laws reflect a multicultural rule of law giving religious/cultural minorities an opportunity to be governed by their own customs, norms and religious laws. Minorities, defined either numerically or from the point of view of power, stand in special need of having their cultures affirmed by the state. Their sense of worth may be fragile and, understandably, they may be skeptical of the ordinary political process. A system of personal laws helps to affirm the distinct identities of cultural and religious groups, and this is a positive advantage. It is an advantage because in affirming the identities of these groups, the state contributes to the well being of the individuals who compose them [2]. According to Mansfield, the argument that 'pluralism' is the best antidote to alienation and secessionist tendencies may be especially persuasive in the case of minorities [3].

The Constitution in Article 44 directs the state to secure a uniform civil code for the citizens throughout the territory of India[4]. A review of the debates of the Constituent Assembly reveals that there was no intention to force a uniform civil code upon any community that was opposed to it. The hope was rather that change would take place within communities, particularly the Muslim community that would bring the members to feel that their own interests would best be served by a uniform civil code. Consequently, the Constitution did not abolish the system of personal laws, but only held forth a uniform civil code as an ideal towards which this state should strive [5]. As it stands today, the Constitution recognizes the existence and permits the continuation of the various personal laws, pending the realization of the goal of uniform civil code, for which it does not prescribe any time limit.

Many of these personal laws are also state made in the sense that modern state institutions, mainly legislatures and courts, have been responsible for the codification of these laws out of a diversity of religious practices and their application to the different communities. In India and elsewhere, personal laws have both historically facilitated the consolidation of religious groups, and come to be an important component of their identities [6].

II. Religion and Legal Education

Personal laws as they are recognized and applied for religious minority groups emanate primarily from the religious traditions of these groups. Personal laws are taught as a part of the syllabi comprising legal education and may be applied by

Kalindi Kokal is a Research Officer on Law and Society at the BHaratiya Jain Sanghata, Institute of Education and Social Research, BJS-WERC Campus, Bakori Phata, Nagar Road,Wagholi, Pune, Maharashtra, India. The author would like to thank Dr. Shirish N. Kavadi for his constant support and encouragement in developing this paper.

Open Science Index, Law and Political Sciences Vol:7, No:6, 2013 publications.waset.org/10449/pdf

all the courts of India, right from the Taluka level – the court of first instance in India – up to the Supreme Court.

Interestingly, however, while a substantial portion of legal education focuses on personal laws and their implementation in various spheres, no part of this syllabus either lays any emphasis on or talks about the relationship between law and religion or any debate surrounding it [7]. The impact of such lacunae in legal education becomes obvious at much later stages when these law students – now lawyers and judges – are in the thick of their careers. Glimpses of this impact were noticeable in preliminary interviews with lower court judges, who were not even willing to speak of religion, and dismissed any question relating to religion and the judiciary saying: "Everyone is equal before the law and the judiciary is not concerned with external factors such as religion." To admit that religion may have a role to play in the manner of decision making, method of pleading or that it may impact judge-lawyer, lawyer-litigant or litigant-court relations, is considered almost blasphemous and is alleged to reflect merely the bias of the court. If nothing else, the judge might just be admitting to his being 'human'. And this he cannot afford, as for when he is in the chair of a judge, s/he must set aside his/her personal beliefs and opinions, be objective, impartial and impersonal. In a very strict sense, he is to obey the law and see to its enforcement [8].

III. Religion and the Lower Courts

Institutions of the state in India hold on to the value of secularism very dearly. The word secular was even added to the Preamble of the Indian constitution in 1976. But as Marc Galanter observes in India: there is disagreement about what exactly the concept of secularism implies - whether it implies sever aloofness from the religion, a benign impartiality towards religion, a corrective oversight of it or a fond and equal indulgence of all religions. But there seems to be a general agreement that public life is not be guided by religious doctrines or institutions [9]. Speaking about secularism in India, already in the 1960s, even Donald E. Smith remarked: "The indifference to religion which characterises the contemporary western outlook has already made a powerful impact on certain sections of Indian society, and the process is a continuing one."[10] Common assessments of secularism in India often rely on an overstated contrast between a 'Western' model of separation between State and religion and a distinctively 'Indian' model of equal respect for all religions. The notion of equal respect for all religions, however, has manifestly involved some forms of separation between religion and state [11]. Popularly, as is quoted by Sinha in an article, 'The word 'secular' is commonly understood in contradistinction to the word 'religious' '. Therefore, the separation of State and religion is considered 'ideal'; as part of which even courts, and particularly the lower courts, seek to be minimally impacted by influence of religion. Secularism in India has attempted to make religion more invisible. In the context of the lower courts in India, while this might be true on the surface, there are several factors that indicate that a plurality of elements, including religion and custom, may be playing a role in the working of the judicial system. These factors include:

1. The extent to which the judiciary is accessed by persons from religious minorities,
2. The nature of decisions by the judges,
3. The extent to which these decisions are perceived as 'just'/fair by different communities,
4. Lawyer-litigant/judge-lawyer/lawyer-lawyer relations
5. And opinions on religion-based discrimination by persons connected to the judicial system.

IV. Case Study

Observations on the basis of empirical evidence collected in two talukas (administrative blocks) in Maharashtra indicate that the application of laws, including personal laws, alone do not define the judiciary's relationship with religion and customs. Literature review reveals that very little research concerning the lower courts of India has been carried out till date. As a result, while these findings in a sense are very preliminary in nature, they reveal complexities that signify the need for more research in this direction.

The talukas in which the study was conducted have a substantial Muslim population. However, the number of Muslim lawyers in each of the taluka courts was not more than 5, and more importantly, the number of cases brought by Muslim litigants to each of these courts is only 10-15% of the total number of cases in court.

To understand the experience of Muslim litigants in these courts in order to gauge the dynamics of religion in the overall working and impact of the judicial system, qualitative interviews were conducted with the judges, Muslim lawyers and Muslim litigants in these courts. The reason for interacting primarily with Muslim lawyers was because it was observed and understood from interviews with several lawyers, both Hindu and Muslim, that majority Muslim litigants tend to approach Muslim lawyers alone. Muslim lawyers expressed that this choice was determined on the basis of the fact that since the Muslim community is governed in all respects by its religion, litigants feel more secure and comfortable discussing their dispute with a lawyer from their community. The lawyers further explained: a Muslim lawyer is likely to be more familiar with the nature of the dispute brought forth by a Muslim litigant, certain terminology that the litigant is likely to use, the socio-cultural situation in which the dispute arose and the influence of the dynamics of the Muslim society. Interestingly though, as we shall see, in a later part of this paper, the everyday lives of these litigants have been observed to be quite accommodative of the local cultural environment, which is a product of Hindu and Muslim communities living in a close quarters.

The questionnaire contained questions aimed at understanding perceptions of accessibility to judicial forums in addition to those focused on gathering the respondents'

Open Science Index, Law and Political Sciences Vol:7, No:6, 2013 publications.waset.org/10449/pdf

views on religion, custom and caste, and their relationship with litigation and the working of the judiciary. Litigants and judges, it was found, did not comment on the subject of religion and its impact on the judiciary.

Muslim litigants, like other litigants in these courts, comprise a rural population and are largely illiterate and/or ignorant of the law. They have very little or no interaction with the judges, and mostly hold the local popular perception of the 'judiciary' and 'judges' being fair and unbiased. To some extent, the practical state of affairs in the courtroom enables contextualizing this perception of the litigants. At the taluka level, it was observed that litigants are wholly dependent on their lawyers for the pursuit of their case, understand the progress of their case through their lawyers and interact with judges very rarely – only maybe during cross examinations. It would also be important to note that litigants were interviewed in court premises, discussions between the researcher and respondent often being interrupted by comments and suggestions from those litigants and even lawyers who happened to be present at that time. Therefore, while the interviewees did not shy away from relating the facts of their case and their experience in the court, they may have been cautious while talking about issues of religion and caste in the court premises - these being particularly socially sensitive subjects to discuss in the presence of other people from diverse backgrounds and that too in the premises of the court – an institution and system that we learn, from education and shared social assumption, is 'independent' and therefore 'secular'.

The physical context of interviews with judges was however very different. Judges interacted with the researchers in their chambers usually after court hours. But they too refused to comment on the influence of religion on the courts. "How can we say anything 'bad' about the system; we are part of this system," said one judge in a taluka court in response to a question regarding whether he felt caste/religion of litigants and lawyers had an impact on the extent to which a litigant could access justice. Incidentally, all four judges in the two taluka courts we visited were Hindu. When asked about the extent to which they applied personal laws other than the Hindu law, the responses of the judges were based mostly on their experience in their courtrooms. "Very rarely" was the common response we got from all four judges in both the courts. Since judges are posted to different jurisdictions every three years, the responses of these judges were also determined by the limited time period for which they had been posted in the said taluka court.

Amongst the target respondents it was only in the group of lawyers that many were vocal in describing whether and how they thought the impact of religion played out in the judicial system. Interestingly, a large portion of their articulation rested on explaining the application, non-application and misapplication of personal laws in the taluka courts.

Lawyers tended to say that judges have very limited or absolutely no knowledge of the Muslim personal law. This was so, even while judges are posted to areas having large Muslim populations.

Consequently, lawyers felt that in deciding cases involving Muslim litigants and their personal law, the judges tend to approach such cases "in the 'same manner' that they handle cases of Hindu law." As an explanation, an example of succession cases was offered. Under the Muslim personal law, a son of a predeceased son has no share in the grandfather's property, in that he is not an heir to the grandfather's property. A case that was related concerned the dispute of a Muslim man (X) with his son (Y). It was a property dispute, between the man - X and his son - Y. The son Y died while the case was still pending and the court while processing the application for bringing on record his (Y's) heirs, insisted on adding Y's son Z as an heir, even though a son (in this case Z) does not remain an heir since his father (in this case Y) predeceased his grandfather (in this case X). Lawyers explained that even though this might have been a very technical error and that adding the son's name in the suit would not automatically entitle him to a share, such actions create confusion in further proceedings; parties may take advantage of the larger public's ignorance of Muslim law; tahsildars and revenue officers who tend to work very bureaucratically and mindlessly follow the steps of the court, find a reason to add the son's name in the mutation register (similar to the way in which it is done in the majority Hindu cases); and there is general misapplication of the law.

When lawyers were asked to explain the possible cause for this misapplication of the law, the common remarks made were: 'Their interpretation and appreciation of the law is not clear', 'inadequate knowledge of the Muslim personal law', 'reluctance to accept that the Muslim minority, unlike the Hindu majority, is governed in all aspects by the personal law' and 'confusion about how to apply the Muslim law'.

Information about the induction and refresher trainings for judges corroborates the statements of the lawyers. It is found that there is no emphasis:

i) On judges or other quasi-judicial authorities to take more care while deciding disputes between religious minorities;
ii) To ensure that they are governed by their law and that it is rightfully applied,
iii) On sensitivity towards 'religious' differences or on efforts to adopt plurality-sensitive approaches.

Lawyers expressed particularly strong opinions on:

- Lack of representation of the Muslim community in the Bar Associations,
- How Muslim judges were often being alleged of being bias in cases where they decided in favour of the party being represented by a Muslim lawyer. The Muslim lawyers termed this tactic of allegation as "politics of the majority"; and
- The reluctance of judges to accept that the same disputes may yield different decisions for Hindu litigants and Muslim litigants, particularly in matrimonial matters, because "marriage among Muhammedans is a contract and is not considered a 'sacrament' as amongst Hindus or

Open Science Index, Law and Political Sciences Vol:7, No:6, 2013 publications.waset.org/10449/pdf

Christians; there being no bar on a Muslim woman to remarry."

Interestingly, however, the researchers found that these lawyers, very much a part of the working of the system, did not reveal equal persistence in ensuring that Muslim litigants be governed by their personal law in these same instances. An example concerning the application of The Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWA, 1986) will provide more clarity.

Enactment of the Muslim Women (Protection of Rights upon Divorce) Act, 1986

In the talukas that were studied, Muslim litigants primarily file cases concerning declaration of their shares in inherited property and maintenance claims. Most maintenance claims are filed under section 125 of The Code of Criminal Procedure, 1983 (CrPC). A decision of the Supreme Court on this very section and its application to Muslim women had met with resistance in the Shah Bano case [12] in the 1980s. The Shah Bano judgment states that the religion professed by the parties or the personal law by which they were governed cannot have any repercussion on the applicability of the law [that is Section 125]. The provisions of the CrPC applied to all citizens irrespective of their religion; and it was emphasized that 'S. 125 overrides the personal law, if there is any conflict between the two'. The judges also rebuked the legislature for its lack of initiative with regard to a uniform civil code (UCC) for all its citizens. This judgment unleashed what has been described as the biggest agitation launched by Muslims in post independence India. A substantial section of Muslim opinion perceived the judgment and the demand for a UCC as a threat to the religious identity of Muslims and an attempt at assimilation [13]. Ultimately this led to passing of the MWA in 1986. This Act, in its time then, put to rest the huge uproar from the Muslim community over the decision of the Supreme Court in the Shah Bano case. The Act prima facie seemed to nullify the effect of the decision in this case. However, as scholars such as Flavia Agnes, Gopika Solanki and Werner Menski have pointed out, the Act since then along with the judgment delivered in the Shah Bano case has been creatively interpreted by many High Courts and even the Supreme Court to protect the rights of Muslim women, whilst remaining within the confines of Muslim personal law [14]. As several decisions of the High Courts and various research studies have shown, it has been the innovative approach towards applying Section 3 of this Act, that has brought about equilibrium between the personal law and the secular law of women's right to maintenance. The law concerning Muslim women's right to maintenance as it stands today, entitles a woman to continue getting maintenance u/s 125 CrPC until an application under section 3 of the MWA is disposed of [15].

Section 3, MWA 1986 and Taluka Courts

However, field work in the taluka courts showed that applications under section 3 of the MWA are very rare, ranging from only 4 – 5 in the last ten years! Since the level of legal awareness amongst litigants is very low, one wonders why the lawyers, who articulated and sometimes aggressively so - that the judges seemed to be inclined to understand cases involving Muslim litigants in the same way as cases involving litigants from other religions [16] - did not promote Muslim women's maintenance applications to be disposed off under the MWA in accordance with their personal laws. When the lawyers who represent the wives were asked about the reasons for this, they said, "We ensure that the *talaq* never gets proved." As a result, the women continue to remain 'married' and the husbands remain obligated (under secular and personal law) to maintain the wife. While all the lawyers that we interacted with seemed to be aware of the MWA, literature review reveals that despite the plethora of judgments, many lawyers and even some trial court judges continue to endorse the view that on *talaq* being proved, Muslim women can be deprived of their legal right of maintenance from their husbands [17]. This, too, could be another reason for why maximum efforts are made to ensure that the *talaq* does not get proved.

V. An Analysis

This empirical evidence suggests that religion definitely features in the dynamics of the working of the judicial system. Although it never surfaces since most members of the judiciary choose to keep mum about it, the undercurrents are significant indicators of religion at play. While we cannot state conclusively on the basis of this evidence the exact nature of the relationship of religion with the working of the lower judiciary and why there is hesitancy to speak about religion, some preliminary observations can be made on the basis of the ethnographic data and fieldwork experiences.

Interpreting the Silence

Based on the socio-political circumstances in India and the structure and working of the lower judiciary, there could be two observations made as to why the responses of the judges and litigants did not provide an exploratory insight. The first: knowledge that religion constitutes a threat to the independence of the judiciary, in the sense that even discussing it or acknowledging its impact, could interfere with the *dejure* secular nature of the court. The second: Customs and religion, as they are lived, possibly in a syncretistic form, do impact the working of the judiciary. The emphasis on absolute conformity to an authentic and idealized form of religion surfaces only as a part of identity politics, which fact the judges and litigants are well aware of.

The first observation has been discussed earlier in this paper in the section Religion and the Lower Courts. This section will largely focus on the second observation. To explain the position of religion in the day-to-day lives of the people in the talukas studied, I will draw upon the observations made by Tundawala with respect to Bengali Muslims [18]. Tundawala's study focuses on a comparison of literature by writers from the *ashraf* (Urd-speaking urban Muslim aristocrats with foreign provenance and sometimes upper caste Hindu converts) and *astraf* (largely Bengali speaking indigenous rural Muslim middle and lower

Open Science Index, Law and Political Sciences Vol:7, No:6, 2013 publications.waset.org/10449/pdf

occupational class) through an observation of the role of religion in their literature. About the latter, she observes:

"…the Bengali Muslims could not completely distance themselves from the socio-territorial realities of their life."[19]

This she says on the basis of:

"… This can be seen from the literature produced by the Bengali Muslims which eschews the religious questions altogether and is certainly not Islamic in character, whether in idea or terminology. Their writing also refuses to reckon normative Islam as a powerful force in rural Bengal and allow religious dogmatism and strict discipline to dominate rural life."[20]

Tundawala further observes that as Islam's growth in Bengal progressed gradually, it took various forms and assimilated values and symbols not always in conformity with the scriptures. Its historical and cultural accommodation and integration with the local milieu brought about profound changes in the practices and modes of thinking of its adherents [21]. As a result, the ways of living of the *astraf* - that is the Bengali Muslims - as is evident from their literature, is more assimilatory than subversive of Hindu ideas, beliefs, customs and practices [22].

The lives of the Bengali Muslims, a largely agrarian community, who is mostly located in rural areas are comparable to the lives of the litigants in this study. While this remains to be verified through extensive fieldwork, prima facie, it is observed that religious dogmatism and strict discipline does not dominate the rural life in these areas. At the ground level Muslim and Hindu communities live in close surroundings and sometimes community practices merge and there may not be significant differences among the practices of Hindus and Muslims; the customs of the majority may also have their impact and influence on the living of the minority community. Therefore, while religions may differ, the ways of living and norms governing such ways of life may be quite similar between Hindus and Muslims. Therefore, even though *talaq* may be accommodated in societal ways in the local Muslim communities, Muslim women like their Hindu counterparts may still be bearing the brunt of social, financial and emotional consequences of divorce [23]. The ways of life of these Muslim litigants seem more accommodative of local cultural environment, which fact the taluka court judges, who themselves often come with first hand experiences of rural ways of life, may be well aware of. As a result, the judges may be (and as can be seen) deciding, even the disputes of Muslims litigants, on the basis and in the context of the local culture, customs and ways of life, without laying much stress on application of personal laws. Law in everyday praxis is not only linked to the amendable mechanisms of the state recognition and interpretation by the judiciary, but is also entrenched within people's intersubjectivities, defined as the shared representations and stereotypes that impact how social actors (judges included) make sense of facts and develop arguments in the legal process [24].

Identity Politics?

In post independence India, where Muslims have been reduced to a minority, issues of identity politics *have* surfaced and the community has made personal law an important marker of its identity. The community has thereby become increasingly resistant to any change within the Muslim law [25].

The lawyers in these talukas were politically active. While they clarified that they did not bring their political standings and opinions to courts, they shared experiences of standing for local elections and campaigning for political parties. In a way the nature of the lawyers' responses could be a reflection of Alam's observation:

"Although different religions in India have coexisted and created for themselves cultural niches within shared space since time immemorial, the modern history of communal relations in India, especially between Hindus and Muslims, is marked by … contestation for greater shares in socio-economic and power structures."[26]

The history of the Muslim minority in India combined with the political engagements of the lawyers, may clarify to some extent the vocality of the Muslim lawyers on the subject of their religion. The process of identity politics, particularly in the context of legal practitioners, tends to elevate the doctrinal elements of Islam, which then consequently have an effect of suffocating an understanding of other legal elements. As has been pointed out in the English context, prioritization of the doctrines of *shari'a* tends to lead to marginalization of customary practices and conventional understandings [27].

VI. Conclusion

Laws are for people, even if they are about subject matters, and when the commitments and sentiments of people go as deep as they sometimes do over questions of religion, one cannot restrict one's perspective to just the subject matter of the law in question and what is right for that subject matter [28]. Judges are well aware of this fact and possibly therefore go about the process decision making in a complex manner, yet balancing manner. They probably know, as they may have learnt from experience that state law (defined as inclusive of codified personal law) is not a self-sustaining system [29]. The lawyers too are equally alert. Even though they may have been very articulate in their responses concerning the role of religion in the working of the judiciary, through examples of application and non-application of personal law, closer observation of successful court practices, litigation strategies and arguments in court, reveals the use of not one but a combination of sources of law drawing on state law, codified personal law, and customs. And custom is often overlapping but also exceeding the personal laws recognized by the state [30]. It has been abundantly reported by the socio-legal

scholarship focusing on South Asia and social activists alike, state law does not always make sense for the social actors. While several scholars have successfully argued for the independence of the judiciary in India from the religion, it seems that much more is yet to be discovered when one is ready to accept that everyday litigation is impacted by factors that are not necessarily classifiable as belonging to one domain only.

REFERENCES

[1] N. Subramanian, "Myths of the Nation, Cultural Recognition and Personal Law in India", Paper presented at the Harvard Conference on National Myths, May 2009, pp 9 – 11
[2] J. H. Mansfield, "Personal Laws or a Uniform Civil Code?" in *Sociology of Law*, Indra Deva Ed., New Delhi, Oxford University Press, 2005, pp 180
[3] Mansfield supra, pp 182
[4] T. Mahmood, *Muslim Personal Law: Role of the State in the Subcontinent* New Delhi, Vikas Publication House, 1977, Chapter 1
[5] Mansfield supra, pp 175
[6] R. Bajpai, *Debating Difference: Group Rights and Liberal Democracy in India*, New Delhi, Oxford University Press, 2011, pp 182
[7] W. Menski, "Flying Kites in a Global Sky" *Socio-legal Review*, Vol 7, pp 1 – 22, 2011
[8] S.N. Balagangadhara, "Religion, Secularism and Law', platform paper presented at Rethinking Religion in India IV Conference. Also available at http://www.rethinkingreligion.org/files/downloads/RRI_IV_platform_paper.pdf
[9] M.Galanter, "Hinduism, Secularism and the Indian Judiciary" *Philosophy East and West*, Vol. 21, No. 4, Symposium on Law and Morality: East and West, pp. 467-487, Oct., 1971
[10] M. Mohsin Alam, "Constructing Secularism: Separating 'Religion' and 'State' under the Indian Constitution", *Australian Journal of Asian Law*, Vol. 11, pp 29 - 55, 2007, pp 39
[11] Bajpai supra, pp 179
[12] Mohd. Ahmed Khan vs Shah Bano Begum And Ors, 1985 SCR (3) 844
[13] Bajpai supra, pp 180 – 181
[14] Majlis, Defending Muslim Women's Rights: Bridging Muslim Personal Law and Court Judgments, Mumbai, Published by Majlis, 2012 ; Solanki G., *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism and Gender Equality in India*, New York, Cambridge University Press, 2011
[15] Shabana Bano v. Imran Khan; AIR 2010 SC 305
[16] Lawyers explained how marriage among Muhammedans is a contract and is not considered a 'sacrament' as amongst Hindus or Christians. "There is no bar on a Muslim woman to remarry. Therefore, even though Talaq may hamper her reputation to a certain extent; it does not curb the probability of her being remarried." They further expressed: "They don't understand that we are governed in all aspects by our personal law and therefore the same disputes yield different decisions for Hindu litigants and Muslim litigants."
[17] Majlis supra, pp 66.
[18] A.Tundawala, "Multiple Representations of Muslimhood in West Bengal", *South Asia Research*, Vol. 32, No. 2, pp 139 – 163, July 2012
[19] Tundawala supra, pp 142
[20] Tundawala supra, pp 144
[21] Tundawala supra, pp 140 – 141
[22] Tundawala supra, pp 156
[23] Solanki G. supra, pp 132
[24] L. Holden and A. Chaudhary, "Daughters' Inheritance, Legal Pluralism and Governance in Pakistan", *The Journal of Legal Pluralism and Unofficial Law*, Vol. 45, No.1, pp 114 – 115
[25] Majlis supra, pp 7.
[26] M.S. Alam, "Social Exclusion of Muslims in India and Deficient Debates about Affirmative Action: Suggestions for a New Approach", *South Asia Research*, Vol. 30, No. 1, pp 33 – 65, February 2010, pp 44
[27] P. Shah, 'In Pursuit of the Pagans: Muslim Law in the English Context', Journal of Legal Pluralism and Unofficial Law, Vol. 45, No. 1, pp 58 – 75, Published online March 2013
[28] A. Bilgrami, "Secularism and the Very Concept of Law" in *The Crisis of Secularism in India*, A. Needham and R. Rajan (ed), Ranikhet, Permanent Black, 2009, pp 316 – 330
[29] Holden and Chaudhary supra, pp 118
[30] Holden and Chaudhary supra, pp 112

Open Science Index, Law and Political Sciences Vol:7, No:6, 2013 publications.waset.org/10449/pdf