

Accommodating Religious Demands and Gender-justice Concerns: Indian State Practices after the Shah Bano Judgment

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Summary

This paper is an examination of a new turn in the practice of multiculturalism in India observed by legal and political theorists who have challenged the long-standing argument of multiculturalists that personal laws in India inhibit “gender-equalizing” changes. Recent literature on Muslim Personal Law points out that the demand placed by religion on women through the promulgation of the Muslim Women (Protection of Rights on Divorce) Act, 1986 has not meant an abridgment of the democratic rights of Muslim women. In recent scholarship this impugned law has been viewed as more salutary for women, as this codified Islamic law has prevented destitution of women more effectively than secular state law. By making an analysis of case law on the maintenance of divorced Muslim women in the High Courts and the Supreme Court of India, this paper examines the claim that the Muslim Women’s Act is a gender-just personal law. It thereby examines how the Indian judiciary has balanced the demands of religion and gender justice in delivering judgments on maintenance for Muslim divorcees who are governed by their religious law after the enactment of the Muslim Women’s Act in 1986.

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Introduction

India’s cultural diversity is based on religion, language, caste, sect and region and is accommodated through various multicultural institutions and policies. One such institution is the personal-law system: the plural legal system in India recognizes the personal laws of Hindus, Muslims, Christians, Parsis and Jews.¹ It is one of the most criticized multicultural institutions in India, not only because personal laws are

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1 In India, for purposes of Personal Law, the Constitution recognizes four religious communities: Hindus, Muslims, Christians and Parsis. Sikhs and Buddhists are included within the fold of Hindus.