

*Mengia Hong Tschalaer*, **Muslim Women's Quest for Justice: Gender, Law and Activism in India**, Cambridge University Press, Cambridge, 2017, 272 pages, £ 85, ISBN-13: 9781107155770

Three women stand at the centre of this ethnographic study: Shaista Amber, Naish Hasan and Shehnaz Sidrat. Each of them is the head of a Muslim women's rights organisation based in the Indian city of Lucknow: the reformist *All India Muslim Women's Personal Law Board* (AIMWPLB), founded in 2005, the secular *Bharatiya Muslim Mahila Andolan* (BMMA, translated as Indian Muslim Women's Movement), established in 2007, and the rather conservative *Bazme Khawateen* (Women's Club), in place since 1937. All three women are controversial figures in their home town as their activism - in some way or the other - challenges the authority of the Muslim leadership represented by the *All India Muslim Personal Law Board* (AIMPLB). Mengia Hong Tschalaer skilfully uses the stories of these three women and their respective organisations in order to portray Muslim women's rights activism in India - a country where the state "never had and most probably never will have a legal monopoly in the area of family laws," but where its "fractured" and "partial" sovereignty (as described by Shalini Randaria) allows societal institutions to claim authority over adjudication and lawmaking (p. 52).

While none of the three women's organisations calls itself explicitly feminist, their work can nevertheless be seen as part of the global phenomenon of "Islamic feminism".<sup>1</sup> They contest monolithic, orthodox and misogynistic interpretations of the *Quran* and other religious texts. But unlike Western liberal feminists, they do not reject religion as a framework through which change can be achieved; rather, they use "appropriate religious language and practice to establish a women-friendly consciousness of gender relations in Islam" (p. 98).

With her portrayal of the activism of these three organisations, Tschalaer seeks to disrupt the notion that the relationship between gender justice and Islam is one of conflict in which women's rights activists confront the state on the one hand and the (male dominated) Muslim leadership on the other. Instead, the author advances three key arguments: Firstly, as indicated above, "the production of ideas and discourses on women's rights is not restricted to the state and its legal system," but the state's autonomy is *de facto* shared with non-state bodies (p. 2). Secondly, through their engagement with state and non-state legal institutions, their interpretation of Muslim women's rights and their transgression of legal and moral borders, "Muslim women's rights activists contribute to the pluralisation of the meaning of gender and sexuality in Islam" and "produce alternative formulations of women's rights" (p. 3). And thirdly, "subjectivities predicated on a discursive Islamic tradition do not necessarily strip women of their agency" (p. 3).

1 *Silvia Vatuk*, *Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law*, *Modern Asian Studies* 42 (2008).

The study is embedded in a broader set of scholarship that engages with the struggle for gender equality in plurilegal systems and is critical towards adoptions of Western or liberal feminist notions of gender equality and so-called universalist principles. Tschalaer's work takes a similar stance to ethnographic studies that have engaged with Muslim women's rights activism in other parts of the world<sup>2</sup> or that have elaborated on how Indian women litigants navigate between state and non-state dispute settlement mechanisms by way of "forum shopping".<sup>3</sup>

The book is divided into six chapters. Tschalaer begins by depicting the legal and socio-political framework against which her study is based: the emergence of so-called Anglo-Mohammedan law during colonial India and the further development of Muslim personal law since then (especially through the Supreme Courts' rulings in the *Shah Bano* and *Daniyal Latifi* cases) as well as the rise of Muslim women's rights activism in India and South Asia more broadly. Against this backdrop, Chapter Two then describes the complex "legal landscape of the city of Lucknow", where Shia and Sunni Muslims constitute about 20 per cent of the overall population of 2.8 million inhabitants and a variety of Islamic non-state legal bodies as well as a large number of Muslim women's organisations coexist.

Chapters Three, Four and Five then provide an in-depth analysis of the interplay of the distinct institutions that shape the discourse of Islam and gender: The Family Court, the *darul qaza* ("house of adjudication"), which provides an alternative dispute resolution mechanism according to Islamic law as well as the different women's organisations. Tschalaer depicts the activists' attempts to foster "Muslim women's visibility within the public sphere" (Ch. 3) through, for instance, collective prayers in the park or the construction of a women's mosque - activities that "contest the widely accepted notions of Muslim women as relegated to the private sphere and with no political agency" (p. 82). She engages with the drafting of "gender just Islamic marriage contracts" (so called *nikahnamas*) (Ch. 4). And she focuses on the manner in which female litigants and activists, by using the different dispute settlement fora, are "doing gender justice from below" (Ch. 5). The book's last chapter provides "theoretical implementations and policy suggestions". Here the author relates her findings to Boaventura De Sousa Santos' concept of "interlegality", Sally Engle Merry's concept of "vernacularization" and Gopika Solanki's "shared adjudication model".

Tschalaer's study is based on material that the author obtained during nine months of fieldwork in Lucknow, where she accessed women's organisations, Muslim orthodox institutions and the local Family Court. She conducted interviews with representatives of these institutions as well as with the litigants that appeared before them to settle their disputes. It is a strength of the book that she looks at the interplay of law, Islam and gender from different angles by not only giving the women's rights activists a voice, but also letting the "oth-

2 For instance, *Amy Young Evrard*, *The Moroccan Women's Rights Movement*, New York 2014; *Mulki Al-Sharmani* (ed), *Feminist Activism, Women's Rights and Legal Reform*, London and New York 2013.

3 *Gopika Solanki*, *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India*, Cambridge 2011.

er" side speak - Muslim men who are part of a dispute or the *qazi* (a Muslim judge) in one of the local *Shariat* courts.

The three women's organisations at the centre of this book work on multiple levels. They provide legal and literary trainings, offer legal counselling, mediate family-disputes, organise religious activities or simply provide a public "comfort zone" for Muslim women. One organisation even runs a "match-making bureau" for young Muslims seeking a marriage partner. Furthermore, they lobby the state to secure the rights of Muslim women, to enhance their political representation and to restrict the legal power of the *darul qazas*. In many of these activities the activists skilfully involve the media - especially the English press, which tend to depict their work as "modern," and "provocative" (p. 97). The activists regularly transgress boundaries by challenging "the authority of the orthodox clergy" and their "hegemonic ideas on gender" (p. 97). But they also face limits and often find themselves in situations where they have to "bargain with patriarchy" (a term shaped by Deniz Kandiyoti), meaning that they conform with patriarchal ideas of women's modesty and purity in order to secure their own legitimacy (p. 86).

A central endeavour of the Muslim women's organisations and focus of Tschalaer's book is the drafting of gender just Islamic marriage contracts (*nikahnamas*). The model-*nikahnama* of the AIMWPLB, for instance, clings to rather conservative understandings of marriage, but differs from standard contracts, in so far as it shifts away from a focus on the woman's duty to obey her husband and towards a focus on mutual respect. It "advises" against polygamy and "reminds" the husband that he should only take a second wife if he is financially able to afford her and if the first wife agrees (p. 125). This model-contract also declares the registration of marriage as mandatory and thus challenges the clergy's stance of strict separation between the state and the Muslim community. The BMMA's model-*nikahnama* goes much further than that: it prohibits polygamy, fixes an age of consent and makes divorce valid only with the agreement of both parties. This contract also focuses on the financial rights of the wife (property and maintenance) and declares that the *nikahnama* is subject to the exclusive jurisdiction of state courts. While the two model-*nikahnamas* "have been successful in shaping discourses around marriage and Islam," the author notes that so far they have rarely been used in Lucknow and are thus "not yet a part of legal reality" (p. 131).

How "female litigants and activists navigate legal realities on the ground" (p. 133), is shown in Tschalaer's "ethnographic snapshot" (p. 143) of the process of dispute settlement in different institutions. Tschalaer shows that both the *darul qaza* and the Family Court are far from value free. The author's analysis of Family Court rulings shows that "Muslim women were most likely to obtain a judgment in their favour if they could successfully reiterate their subjectivity as a 'good wife,' 'good mother' and 'good daughter-in-law" (p. 150). In a similar vein, Tschalaer concludes in regard to the *darul qaza*, that "only obedient, moral, battered, and materially neglected women are deemed worthy of the *qazi's* support" (p. 158). "In both institutions [...] it is the women who tend to be blamed for the breakdown of the marriage" (p. 171). Despite these problematic perceptions, the author states that both

the Family Court and the *darul qaza* also have an important function as fora where Muslim women "have the authority to speak and to narrate their experiences around expectations around marriage and their family" (p. 159).

Dispute settlement mechanisms are also provided by the women's organisations. Women litigants may make strategic use of these mechanisms, either instead of the state and religious fora or in addition to those, "so as to maximise their chances for justice" (p. 190). But the effectiveness of these mechanisms finds its limits in their societal context. Knowing that divorce leaves many women destitute and publicly shamed, the activists frequently encourage their litigants to seek reconciliation and give their marriage "one more chance" (p. 163) - a phenomenon that has also been described by Srimati Basu.<sup>4</sup> Here again, "bargaining with patriarchy" plays a central role (p. 163).

Tschalaer describes the women's rights activists as what Sally Engle Merry has termed "knowledge-brokers" (p. 169). Being "fluent in a variety of legal languages" - Islamic laws, state-governed Muslim personal law, constitutional rights, criminal law and international human rights law - their role is to "translate" and form a bridge between these different legal worlds (p. 169). The *Quran* and the Indian constitution are thereby not perceived as opposites, but rather in terms of their synergies. And Islam is neither understood as an archaic and unchangeable set of beliefs nor as generally incompatible with women's rights.

From her findings the author derives a number of policy suggestions. While these remain rather general and might not include too many new insights for scholars who have previously engaged with legal pluralism or activists who are familiar with the situation on the ground, they certainly form a valuable set of tools for legal practitioners, policymakers and staff of international NGOs, who might not be as familiar with the complexity of the Indian legal landscape. The author recommends "adopt[ing] a perspective that acknowledges the plurality of legal orders and institutions" (p. 194), questioning the assumption that the state is "the only dispenser of justice" (p. 194), and recognising that the implementation of "universal principles" of equality "can be problematic" and that "[g]ender reforms are more meaningful when linked to individuals' everyday experiences" (p. 195). Scholars, policymakers and practitioners should learn from women's organisations and feminist networks how to "creatively merge and translate secular and non-secular state law" and how to "offer novel interpretations and narratives of gender justice" (p. 195-196). Ultimately, however, it must be the state's role to "assure and control the effective implementation of gender equality at a policy level in areas where its influence is absent by working hand in hand with local NGOs" (p. 196).

Not only is Tschalaer's study very interesting to read, as she has a clear, concise and informative way of writing, skilfully combining descriptions of the case studies at hand with broader theory on legal pluralism or feminist and critical legal studies, it is also highly relevant, especially against the backdrop of the Supreme Court's recent verdict on triple

4 Srimati Basu, *The Trouble with Marriage: Feminists Confront Law and Violence in India*, Oakland 2015.

*talaq* (which has interestingly received a very similar title to that of Tschalaer's book: "Muslim Women's Quest For Equality vs Jamiat Ulma-I-Hind") and the ongoing debate around a Uniform Civil Code. In some aspects it would have been interesting to get an even more intersectional picture. Indeed, "notions of womanhood" are not only constructed with regard to religion, but also in terms of other social categories, such as class, race, age, socio-economic status, and citizenship status.<sup>5</sup> In any case, Tschalaer's book will prove very valuable for scholars in legal anthropology and the law, South Asia Studies and Gender Studies. The book will also be useful for practitioners, such as women's rights activists and politicians concerned with the improvement of Muslim women's lives both in India and elsewhere. Ideally, her work will broaden the spectrum of possible ways to engage with the interplay between law, gender and religion in theory and practice.

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5 *Betty de Hart, Nadia Sonneveld and Iris Sportel*, *New Perspectives on Gender in Shari'a-Based Family Law Studies: Moving beyond the Women's Issue, Religion and Gender*, 7(1) (2017), p. 47.