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At the Margins of Law: Adjudicating Muslim Families in Contemporary Delhi

By

Katherine Lemons

A dissertation submitted in partial satisfaction of the

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in

Anthropology

in the

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University of California, Berkeley

Committee in charge:

Professor Saba Mahmood, Co-Chair

Professor Lawrence Cohen, Co-Chair

Professor Marianne Constable

Fall 2010

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Abstract

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Doctor of Philosophy in Anthropology

University of California, Berkeley

Professor Saba Mahmood, Co-Chair

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This dissertation explores questions of religion, law and gender in contemporary Delhi. The dissertation is based on eighteen months of fieldwork I conducted in four types of Muslim family law institutions: *sharia* courts (*dar ul qaza* institutions), women's arbitration centers (*mahila panchayats*), a *mufti*'s authoritative legal advice (*fatawa*), and a *mufti*'s healing practice. All of these institutions adjudicate cases and attend to problems that fall under the definition of "Personal Law."

According to the Indian legal system, Personal Law covers matters of marriage, divorce, maintenance, inheritance, succession, and adoption. Within the state's legal system, secular judges adjudicate Personal Law cases according to a codified version of the religious law of the disputants. Although the institutions I studied hear cases that fall within the sphere of Personal Law, and are thereby shaped by the Indian state's legal structure, they are run by Muslim clerics and lay Muslims rather than by lawyers, and their judgments are not considered binding by the state. Their judgments cannot be appealed in the state's courts nor can they be enforced by the coercive arm of the state. Detailing the methods of hearing and responding to cases particular to each of these institutions, I show that each draws on and refigures a broader discursive Islamic legal tradition even as it works within and in dialogue with state law. The first major argument of the dissertation emerges from this analysis: although these institutions are technically extra-legal, together with the state institutions they constitute a form of legal pluralism and are, therefore, a significant part of the legal landscape for Delhi Muslims.

For historical and structural reasons I analyze in the dissertation, the institutions I studied primarily adjudicate Personal Law matters. Women and men both approach these institutions with complaints, but women in particular have a high success rate. Women's presentations of their cases and their troubles demonstrate that they approach these institutions for a variety of legal, religious, and strategic reasons with the specific aim of reconfiguring their domestic arrangements. The second argument I make in the dissertation draws on this observation. I show that these particularly Indian Islamic legal institutions are significant sites at which men and women negotiate domestic expectations and marital disputes. As in the state courts, the processes and outcomes of these

discussions are rife with tensions and contradictions, but the modes and logics of mediation offer notably different possibilities than state courts can.

Together, these three main arguments—that these institutions constitute a single legal landscape along with the state’s courts even as they draw on and reconfigure Islamic traditions of dispute; that Muslim men and women approach these institutions for a variety of legal, religious, and strategic reasons; and that the organization of gender is central to the work of these courts—open up new ways of thinking about the ways in which law is constituted through religious and gendered norms in the context of postcolonial India.

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Chapter One: Introduction

“*Sharia* has become optional,” Mufti Kazmi told me as we sat together in his office in the Old Delhi mosque where he has served as a jurist (*mufti*) since he was in his late teens. The comment, which I contextualize and discuss at some length in Chapter Four, caught me off guard. The idea that *sharia*, which is usually translated as “Islamic law” and which I understood to be “the totality of God’s will as revealed to the Prophet Muhammad” available for interpretation by trained individuals such as Mufti Kazmi to show ordinary Muslims how to conduct themselves in every part of their lives, could become optional surprised me (Mir-Hosseini 2006, 632). That interpretations of *sharia* would change, that “while the *sharia* is sacred, universal, and eternal, *fiqh* is human and—like any other system of jurisprudence—subject to change” made sense (Mir-Hosseini 2006, 632). But that the *mufti* would argue that *sharia* itself had become optional puzzled me. By way, seemingly, of explanation, Mufti Kazmi continued: “What has changed over time is the way people are Muslim.” In the context of Indian laws governing family matters, he told me, Muslims could choose whether to approach Islamic institutions of adjudication or the state’s civil courts. As this new path to adjudication became available, Muslims’ relationship to Islamic law and to its practitioners changed. But so, he suggested, did Muslims’ relationships to themselves *as Muslims*. Significantly, though, he did not tell me that these Muslims had ceased to be Muslims or that *sharia* had ceased to be *sharia*. He simply argued that both had changed, that neither are stable and unchanging entities or objects of analysis, but that they exist in dynamic relation to the broader social and legal world of which they are a part. This is a vastly more complex view of *sharia* than we get in popular discussions about it.

I begin with this anecdote because it captures the complex field of legal practice that I set out to explore in and through this dissertation. In the dissertation, I analyze four types of institutions that adjudicate Muslim family disputes in contemporary Delhi: *sharia* courts (*dar ul qaza* institutions), women’s arbitration centers (*mahila panchayats*), and a jurist (*mufti*)’s legal advice (*fatawa*) and healing practice. I conducted the fieldwork upon which this dissertation is based between the end of 2005 and mid-2007. Through my analysis of the troubles, disputes, negotiations, and settlements staged in and around these institutions, I show the complexities and tensions at play in the legal landscape available to Delhi Muslims and look at how different institutions are involved in renegotiating and building the Indian Muslim legal tradition. For historical and structural reasons, gendered domestic relationships emerge as the primary site at which this particular form of legal pluralism is produced and contested, making questions of marriage, divorce, and gendered divisions of property crucial to these institutions’ reworking of Islamic law.

Courting Geography

During my year and a half of fieldwork, I spent my time digging a triangular groove in Delhi. The three points to this triangle lay in South Delhi, in North Delhi, and East Delhi, which meant that the perimeter of my triangle almost framed the city, or some version of it. At each of the triangle’s three points several of my research sites congregated. In the south was Okhla, a neighborhood that housed a university, a busy market, and residences for families whose economic situations ranged from very poor to

wealthy, whose occupations ranged from washerwomen (*dhobhis*) to university professors and doctors. What united the vast majority of the residents of this neighborhood was that they were Muslim. I frequented the neighborhood because I had friends there, my Urdu teacher and his family lived there, and one of the *sharia* courts (*dar ul qaza* institutions) in which I did research was located there, tucked away at a busy intersection. I usually arrived at this *dar ul qaza* by rickshaw.

The second point of my Delhi triangle lay in Old Delhi. There were, in reality, two places where I did fieldwork in Old Delhi: one a mosque off the busiest shopping street in that part of the city, and the other a *madrassa* in a quieter street lively with mechanic shops and book vendors. The *mufti* of the mosque shared with me the legal advice he gave to people who had questions about how to live their way through various tangles. These written words of advice are called *fatawa* (*fatwa*, sing.). I spent long hours in the *mufti*'s large office, because it was there that he also met with people in need of his spiritual healing. At the *madrassa* I sat on the floor with my compatriots, two young jurisconsults (*muftis*) who gave me tea to drink and snacks to eat as I read through court records of cases that had been adjudicated at this second *dar ul qaza*.

I was among the myriad people gleeful over the opening of Delhi's shiny new metro partly for selfish reasons: its tracks reached from my Old Delhi field sites east across the Yamuna river and stopped in Seelampur, the final point on my triangle. Seelampur was also the location of two field sites. The first was the third *dar ul qaza* which I visited frequently to talk to the *qazi*. Like the Old Delhi *dar ul qaza*, this one was located in a *madrassa*. Across the busy four-lane street on which the *dar ul qaza* was located and across a small city park was my final field site: the women's arbitration center or *mahila panchayat*. I went to the *mahila panchayat* each Wednesday afternoon to talk to the "sisters" who were in charge of its meetings and to follow the cases they were hearing that day. These three points mark out one map of Muslim Delhi, from the Mughal architecture of Old Delhi to the postcolonial neighborhood of Okhla to the resettlement colony of Seelampur, these neighborhoods are all largely Muslim.

While these institutions were united by the common labor of mediating disputes that arose within and among (mostly) Muslim families, each addressed different types of cases, adjudicated them according to its own methods, and aimed for its own outcomes. Each of the institutions has its own method of adjudication. Women often approached *dar ul qaza* to secure divorces from husbands who had abandoned them, either physically or monetarily; they also brought cases to the *dar ul qaza* institutions about dowry demands, domestic violence, and marital disputes. Even these, though, often came up in the context of requests for divorce. Fewer men approached the *dar ul qaza*, and when they did, it was with cases of marital distress, in search of mediation. In what will emerge as a central question and problem in what follows, women and men almost never raised questions about property distribution in the wake of divorce, even when they had approached the *mufti* for the express purpose of securing a divorce because they were in financially dire straits. I will suggest that this has less to do with the *qazis* and the *dar ul qaza* than it has to do with the place the *dar ul qaza* institutions occupy in the plurality of legal institutions available to Muslims in Delhi. The practice of adjudication in the *dar ul qaza* institutions involved meetings between disputing parties and the *qazi* during which the *qazi* worked to find a solution to the problem at hand. These cases were supported by a vast infrastructure of files filled with written testimonies, records from other courts,

fatawa, and most centrally, letters written by the disputing parties. Cases in the *dar ul qaza* culminated in judgments written by the *qazi*. Both parties, if they were present, had to agree to a judgment, as this agreement was the only enforcement mechanism available to the *qazi*.

If the *qazis* mostly heard divorce cases and cases of marital distress, the *mahila panchayats* cases focused nearly exclusively on domestic violence and financial insecurity. Women brought most cases to the *mahila panchayats* where their troubles were discussed with the *panchayat* members and their adversaries. Discussions in the *mahila panchayat* were often heated, and the *mahila panchayat* sisters pushed the disputants to explore their problem from every angle before together they settled on an amicable agreement to their dispute. Like the *dar ul qaza*, the *mahila panchayat* was awash with files. The leaders of the *mahila panchayat* kept careful records of everything from attendance in the meetings to the cases discussed at each meeting to resolutions. Some of these records remained in the *mahila panchayat* and some of them were copied for the Non-Governmental Organization that founded, funds, and oversees the *mahila panchayat*.

The *mufti* responds to questions about marriage, divorce by unilateral male repudiation (*talaq*), property division following divorce, and inheritance. The *fatwa* form dictates that the process of mediation through *fatawa* is in the form of a question and an answer. A person writes down a question for the *mufti* and he responds with authoritative legal advice. The *mufti's fatawa* do not offer resolution in the form of judgments or compromises as in the case of the *dar ul qaza* institutions and the *mahila panchayats*. Instead, his advice becomes part of the dispute or conundrum to which it responds: it offers one way to approach or navigate the problem rather than a prescription. This method of adjudication is linked to the form of the *fatwa* in a second way: *fatawa* as a form of legal intervention are not binding. They are legal opinions offered by scholars of Islamic law to give the best possible opinion in a given situation. The people who ask for and receive *fatawa* are entitled to ask for another *fatwa* on the same topic from another *mufti*, to follow the *fatwa* or to reject it. Thus, *fatawa* offer interventions rather than resolutions.

Finally, the *mufti* mediates a broad range of problems in his spiritual healing practice. Many men, women, and children ask for their physical ailments to be cured. Adolescents and their parents come to have mental illnesses or illnesses of love healed. Women ask for remedies for marital disputes and family arguments, while men ask for amulets to help them find work or to prevail in court cases. The method by which the *mufti* mediates these troubles involves a complex process of Islamic healing using amulets containing Quran verses, blessed chilies, dried bones, and other media. Like the *fatawa*, healing does not yield verdicts or judgments. Instead, visits to the *mufti* provide a forum for discussing everyday ailments and wearing his amulets integrates the remedy of the problem into the everyday life from which it grew.

Each institution's adjudication process is influenced both by its place in the larger legal context and by the training and approach of the authority. Whereas the *dar ul qaza* and the *dar ul ifta* are both run by trained Muslim clerics, the *mahila panchayat* was founded by an NGO whose aim is women's empowerment. Thus, the *qazi* in the *dar ul qaza* was trained in a *madrassa* where he learned to read and interpret the sources of the law and to adjudicate cases according to Islamic strictures. The *mufti* learned to write

fatawa in *madrassa* and apprenticed with his father, from whom he inherited his post, before he himself began giving advice. This same *mufti* learned to heal disputes through a practice he learned from his father. The *mufti*'s healing practice was a popular destination for Delhi Muslims suffering from wounded relationships, physical ailments, or anything in between. The members and leaders of the *mahila panchayat* are a group of literate and illiterate Muslim women who were trained to adjudicate cases by the NGO, and who learned to interpret the Quran with their families or through Quran lessons as children. Although some of them know the Quran extremely well and have outspoken interpretive positions, they do not have the training to qualify as clerics.

Each of these institutions provided dispute mediation in environments dramatically different from the state courts'. Delhi's three *dar ul qaza* institutions were housed in quiet offices. Two were located in *madrassas* and one in the offices of a high-profile Muslim organization, the All India Muslim Personal Law Board. The offices were located in three different predominantly Muslim neighborhoods. All three offices were staffed only by the judge (*qazi*) and one assistant; they contrast sharply with Delhi's district courts where secular judges hear similar cases in packed courtrooms kept in order by clerks. The *mahila panchayat* was overseen by a non-governmental organization and run by two women from the neighborhood in which it operated. In the *panchayat* meetings, the group heard cases, but they also talked about a range of other issues, such as household dynamics and employment. The *mufti* met individually with each person who came to see him. He listened to their stories and offered guidance often leavened by humor.

The dissertation is comprised of four ethnographic chapters, which I present in two parts. The first part (chapters two and three) examines two different dispute adjudication institutions that Muslim women approach primarily with marital problems. These two chapters look at the relationship between these two institutions—*dar ul qaza* institutions and *mahila panchayats*—and the state's courts. The state courts are inscribed into the non-state institutions and Muslim women's use of all three institutions suggests that rather than constituting separate legal spheres, all three are part of the legal landscape available to and strategically approached by Muslim women. I argue that the kinds of cases women bring to each institution, as well as the *dar ul qaza* institutions' and the *mahila panchayats*' approaches to adjudication are shaped by the limits placed by the state on each institution's capacity to enforce its judgments. The conflicts between formal and informal law and between state and religious law make both of these institutions interesting places to examine the subject-positions of the women whose disputes I studied.

The second part of the dissertation begins with an introduction to the Muslim jurist (*mufti*) whose two modes of mediation I examine in the last two chapters of the dissertation (chapters four and five). In chapter four, I analyze the *mufti*'s written legal advice (*fatawa*) with which he responds to questions posed to him by lay Muslims. In chapter five, I turn to the *mufti*'s practice of spiritual healing, which is a non-legal mode of mediating problems. *Fatawa* provide guidance to questioners, but leave the questioner to decide on what action to take in response to them. In this way, they constitute authoritative intervention into a negotiation rather than a resolution. Through spiritual healing, the *mufti* addresses the world of spirits who sometimes cause problems that range from physical illness to marital disputes to mental instability. In this practice, as in

fatwa-writing, the *mufti* acts as a privileged intercessor rather than as a judge. It is the difference between the *mufti*'s relationship to the outcome of the mediation on the one hand and the *qazi*'s and *mahila panchayat* leaders' on the other that analytically separates the mediation practiced in the first half of the dissertation from that practiced in the second half.

My argument rests on the premise that the institutions in which I conducted my fieldwork comprise, along with the state courts and numerous other non-state institutions of adjudication, a complex and power-soaked legal pluralism. Therefore, to understand Delhi's *dar ul qaza* or *dar ul ifta* or healing practices *only* in relation to an Islamic tradition of law would be just as skewed as to understand them as *not at all* Islamic in their practices and principles. The particularity of this legal pluralism is conditioned both by the history of law governing family matters (Personal Law) in colonial and postcolonial India and by the ongoing and sometimes conflicting legal practices in the present. The introduction therefore looks at how the history of Muslim family law in India has been negotiated around and through questions about the relationship between public and private, and civil and criminal law with the effect of placing religiously marked women and their property claims at the center of this history. I then look at the concept of legal pluralism to show how and why this is a useful way to think about the institutions I analyze in the dissertation. I then discuss the specific ways in which gender has been discussed in ethnographic scholarship on Islamic legal practice, asking what it means to look at the ways in which women make claims in these institutions.

Historical Context: A Brief Genealogy of Islamic Law in India

The Islamic legal institutions in which I conducted fieldwork cannot be engaged fully without an analysis of the legal tradition of which they are a part. The story of Islamic legal practice in Delhi is a story of struggles for hegemony over interpretation, and of dialogue and tension between state and non-state figures of authority. The story is often told as one of Muslim clerics and Islamic law displaced and ostracized by rising power of centralized states, both in the colonial and post-colonial periods. Here, though, I approach it as the history of interpretation based in a past, and building a future trajectory by grappling with the pressures and changes of a constantly mobile present. In so-doing, I rely on the extensive literature on the interpretation and codification of Muslim Law during the colonial period even as I reframe the story as a genealogy rather than as a history of interests. By this I mean that I focus not only on continuities, but also on breaks and ruptures that disrupt the idea that history is the willed effects of powerful actors (Foucault 1995). I do this because while the colonial state played a significant role in the transformation of Muslim Law in India—indeed while colonialism marks a significant epistemological break—changes to law during British colonialism were also the product of negotiations among Muslim leaders and 'ulama and between these groups and state functionaries and apparatuses (Agnes 1999, Cohn 1989, Jalal 2000, Kugle 2001, Nair 1998, Williams 2006).

My attempt to give a genealogy of colonial Anglo-Muhammadan Law and postcolonial MPL springs in part from the challenge presented by Talal Asad (1986) and Brinkley Messick (1998), among others, to think about Islam as a discursive tradition. In his 1986 essay "The Idea of an Anthropology of Islam," Talal Asad argues that "an Islamic discursive tradition is simply a tradition of Muslim discourse that addresses itself

to conceptions of the Islamic past and future, with reference to a particular Islamic practice in the present” (14). An Islamic discursive tradition is a systematic set of statements and practices upheld by institutions and grounded in foundational texts (the Quran, the Hadith, and juristic arguments). In the Indian context, this discursive tradition is constituted through Muslims’ engagements with their roles in an Indian past and future.¹ Asad concludes his article with a set of suggestions for the anthropologist of Islam. He suggests that an Islamic institution is one in which a Muslim is addressed *as a Muslim*. The institutions that I analyze in this dissertation actively negotiate an Islamic present with and for the Muslims who approach them. Thus, they are part of this discursive Islamic tradition not because they provide Islamic spaces of legal dispute that are separate from the secular courts, but because their acts of mediation address Muslims as Muslims, and enable them to grapple with the mutually-constituting categories of piety and pragmatics, everyday and legal life, and moral and legal norms. These negotiations make possible certain kinds of gendered Muslim subjects.

Elsewhere, Asad examines the transformation of Muslim law in colonial Egypt, showing how this shift reflects changes in the way that Muslims in Egypt viewed the relationship between law, ethics, and religious authority (2003, 209). Rather than reading the history of changing legal codes, Asad poses the question of how Muslims viewed the idea of secularism, and how their ideas of secularism changed as culturally distinct ideas came into contact with one another through colonialism. He does not tell a story of competing interests but of co-articulated concepts. Following his lead, I look at the history of Muslim Personal Law (hereafter “MPL”) in India as part of a discursive tradition of Islam. Members of the Muslim community negotiated with British magistrates and colonial administrators. The changing terms through which Muslim leaders had to communicate and negotiate with state functionaries also affected the terms of debates about Islamic law within the community.

This approach to colonial history is also made possible by analyses of colonial state projects that suggest that these were never monolithic takeovers of monolithic entities, but that dominance was instead secured through negotiations, knowledge production, and collaboration with local elites (Dirks 2001, Guha 1997, Mamdani 1999, Mitchell 1991, Merry 2000, Oldenburg 2002). In India, as in other British colonies, legal codification and reconfiguration was one of the central media through which the colonial regime achieved dominance (Hussin 2007, Cohn 1989, Williams 2006).² Tracing the

¹ As Khaled Abou el-Fadl shows, debates about the legal and ethical requirements of Muslims living under non-Muslim governments and polities have a long and various history (1994). India is but one of many contexts in which an Islamic discursive tradition critically engages with and grows through such questions.

² In the context of Malaya, Iza Hussin has taken a similar approach to reading colonial law and legal codes not “...simply as written documents, but as performances of values and authority, aimed at particular audiences. Legal development is seen as the development of discourses as well as a negotiated institutional outcome among elites, British and native, within the inequalities of the colonial state” (2007: 769). Muslim law in Malaya changed during the colonial period in much the same way as Indian Muslim law. Indeed, they took what they had learned in India and applied it in Malaya as well. Hussin draws on scholarship that challenges the notion of the state and state law as monolithic and perfectly centralized to show that colonial-era law emerged through a series of (power-infused) negotiations between local elites and the colonial power. In other words, she argues that the new Muslim law in Malaya was not produced and imposed solely by the British, but was the product of British interventions and Malay responses. Neither of these two broad parties—British and elite Malay—constitutes a unity for Hussin, but both are instead broad coalitions of individuals and groups with their own aims and agendas.

contingent formations through which this discourse is shaped in colonial and postcolonial India proves an important backdrop to my ethnography.

Gender, Religion, and Colonial Law

The institutions I study in this dissertation have arrived at their positions of official legal marginality through a series of historical changes that have affected not only their relationships to the state, but also the context within which their leaders work. Historical scholarship suggests that through their legal interventions, the colonial British governors defined the family as both private and religious, participating thereby in a project of secularization (Asad 2003). Women's bodies and sexualities were central to this process of secularization and became the boundary at which the colonial state demonstrated its ambivalence about the strong separation it heralded between private and public and between civil and criminal law.

Eighty-five years before the British officially established administrative rule in India, the British East India Company began to reconfigure the legal system (Bose & Jalal 2003). The process of codifying and reforming the legal system entailed two spheres of law: criminal and civil. In the pre-colonial period, under Mughal rule, all criminal disputes were adjudicated according to Muslim law, regardless of the religion of the disputing parties (Fisch 1983, 5).³ Historians argue that both criminal and civil infractions were administered under the Mughals primarily as individual injuries (Singha 1998, 9). Thus, even offenses like robbery and murder carried varied punishments dependent upon how the injured party or parties wished to proceed. As Radhika Singha documents, in the case of murder “the heirs of the deceased could commute capital punishment to blood-money, or even pardon the slayer entirely” (1998, 9). In this context, the ideal *qazi*, or Muslim judge, was one who successfully “encouraged contending parties to come to a compromise, not one who only decided on responsibility and awarded punishment” (Singha 1998, 9). Sudipta Sen has documented a similar phenomenon, noting that *qazis* were able to adjudicate every case on its own merits, enabling greater possibility of compromise than was available in the context of British courts (2005, 454). This suggests that the 21st century Delhi *qazis*' emphasis on reconciliation or compromise over punishment may have less to do with their current legal impotence vis-à-vis the state and more to do with Islamic tradition of jurisprudence.⁴ Both Singha and Joerg Fisch argue that the Company slowly centralized and took over criminal law in the 18th and 19th centuries. Unlike in the case of civil law, which I will discuss below, “the Company took the administration of criminal justice into its own hands, from the highest to the lowest level, without a single Indian agency having power of its own” (Fisch 1983, 5). By 1862, the Indian Penal Code was put into place, officially subjecting all Indian subjects to the same, British, criminal law (Fisch 1983, 5).

³ The complexity of legal practice in precolonial India was much greater than I am able to elaborate here. As Sudipta Sen has argued, *qazis* were both powerful intermediaries in pre-colonial Bengal and were at the same time objects of joking and ridicule (2005). Sen writes: “Moving beyond moments of insurgency and radical inversions of authority, we are confronted by an immense problematic relating to the terms along which a relatively undifferentiated common-folk comprising both the dispossessed and those of humble means acquiesced and participated in the maintenance of the social order” (2005, 455).

⁴ I will address this in greater detail in Chapter 2.

Women were the sticking point in this neat division between civil and criminal law from the outset. Singha argues that throughout the early 19th century, British legal regulations “sought to domesticate patriarchal authority, [and] to reconstitute the boundaries between household, state, and market” (1998, 122). Regulations put in place in 1817, 1819, and 1822, Singha shows, reveal a tacit agreement on the part of magistrates that male heads of households had a right of restraint over the women, children, and slaves, further isolating the private sphere of the household from the public sphere of criminal law (1998, chapter 4).

This work required that the colonial government draw boundaries between criminal acts, such as rape and private matters, such as adultery (Singha 1998). Slavery was one of the legal problems that confronted the British governors of India: on the one hand, the public traffic in human beings was losing favor globally, but on the other hand the British argued that in the Indian case, slavery was a domestic matter, and therefore not properly regulated by criminal law (Singha 1998, 127).⁵ Once slavery was abolished, and the domestic sphere was defined exclusively as the realm of kinship ties, “male guardianship over the women could be endorsed with the proper paternalistic overtones” (128). Singha gives the example of one British official who argued that the sale of children should be prohibited because it encouraged kidnapping and other undesirable uses of children, but that enticement and adultery should remain criminal in order to uphold the authority of the father and husband. The process Singha describes is one of de-linking the jurisdiction of criminal law from the sphere of the family except where family matters clearly impacted the public sphere (as is the case with vagrancy and the traffic in slaves). This process of de-linking personal from criminal law remains the site of controversy and ambivalence in recent jurisprudence.

Simultaneous to their project of disconnecting the domain of domestic patriarchy from that of state patriarchy, the colonial administrators legally coded the domestic sphere as religious. The most famous, and least satisfactorily theorized, moment in this process was Governor-General Warren Hastings’ 1772 declaration that with regard to “inheritance, marriage, cast [*sic*] and other religious usages, or institutions, the laws of the Koran with respect to the Mussalmans, and those of the Shasters with respect to the Hindoos, shall be invariably adhered to,” (quoted in Kugle 2001, and Williams 2006). This brief sentence declares inheritance, marriage, and social status (caste) to be religious institutions. As Archana Parashar and Amita Dhanda argue, this was part of a process of creating a new sphere of law, personal law (2008). Ignoring that both Hindu and Muslim “world-views” considered “all aspects of life [to be] equally subject to religious rules,” the colonial government produced a distinction between “a religious/private sphere and a secular/political sphere” (Parashar and Dhanda 2008, xi and Parashar 1992, 23-45). Hastings’ statement seems simultaneously to declare what religious matters are and how they are to be managed and to remove the government from religious matters.⁶ This quintessentially secular move—to deny that the state is involved in religion even as the state defines what religion is and how it is to be recognized (Asad 2003)—also marks

⁵ For another excellent account of gender and slavery, see Indrani Chatterjee (1999).

⁶ Riyad Koya has pointed out that there appears to be a complex relationship between religion, economics, and the secular in Hastings’ overall project (personal correspondence). Further historical work is required to parse out these distinctions and to further nuance the account I am able to give here of the colonial origins of personal law.

articulates ambivalence about the state's relationship to and role in personal life that continues to mark contemporary legal debates about Personal Law. The landmark cases about Muslim Personal Law in the postcolonial state have continued to mark this contested boundary, as I will discuss in relation to the *Shahbano* case of the mid-1980s.

The shifts that ensued from Hastings' statement and subsequent interventions were once legal, political and religious. The courts were reconfigured in ways that gradually eased the Indian *qazis* and *pandits* out of their positions as judges and replaced them with English-speaking British officials. In 1794, Lord Cornwallis established a criminal court run by British magistrates who relied on "indigenous court officers" (Kugle 2001, 268). This displacement was made possible through a process of defining and codifying Muslim law. The British first selected the texts that they thought represented the authentic source of Muslim law and translated them into statutory language.⁷ Administrative officials focused on the *Hedaya*, a conservative interpretation of Sunni law, rendering it the textual basis of Muslim law. It is important to note that the British did not *invent* Muslim and Hindu family laws from nothing—as I have mentioned, both communities were governed according to religious norms prior to British colonialism. The British changed the mode and structure of adjudication, altering both the roles of *qazis* and *pandits* and introducing new distinctions between various spheres of adjudication. Once the British had translated the source texts into English, the indigenous religious judges were removed from their roles as legal interpreters and were asked to translate the disputants' claims for the British judges. Simultaneously, the British were training Indians in English case law so that they could replace the *qazis* and the *pandits*. First displaced by the British determination to base judgments on "authentic" source texts and codes, and then by the establishment of English-language case law, Muslim judges were finally banned from their position as court assistants in 1864.

Other changes had accompanied the restrictions on the *qazi*'s role in the courtroom. The courts themselves shifted from their location in small villages, where the *qazi* held court in any open public space to court buildings in larger towns, requiring Muslims to travel to the *qazi* for adjudication of disputes (Kugle 2002, 284).⁸ In 1877, introducing a theme that was to become central not only in the history of Anglo-Muhammadan law, as the British called the law they had produced, but in the history of Muslim Personal Law in the postcolonial period, a high court judge noted that one British aim had been to centralize and unify the law, so that it could be consistently applied to a singular community. Legal progress in this context was marked by centralization, which was to overcome the caprices of what Weber called "kadi justice" (1968).⁹

⁷ The British also approached Hindu law in this way. They assumed that the true and valid Hindu law lay in the scriptures not in practice, and therefore based Hindu Personal Law on them (Agnes 1999, Nair 1996, Dalmia & Von Steitencron 1995). This had a profoundly detrimental effect on many Hindu women as well (Agnes 1999, Nair 1996).

⁸ This shift is also noted by Brinkely Messick in his study of changes in the practice of *sharia* adjudication in the modern state of Yemen (1993, 174-75).

⁹ This process was not unique to India. There is a robust literature on such processes of legal centralization and codification in many colonized countries. To name a few: Sally Moore's study of customary law on Kilimanjaro shows that "customary" law is as much a colonial product as it is a remnant of an established approach to the law (1986); Iza Hussin argues that the British remade law in Malaya, Egypt, and India in strikingly similar ways (forthcoming); several scholars have looked at this process in Egypt, among them Talal Asad (2003) and Skovgaard-Petersen (1997). Sally Engle Merry has looked at this process in Hawai'i (1999).

Despite the widespread replacement of *qazis* in the British run legal system in the late 19th century, there were exceptions. In Bengal, *qazis* continued to be employed as registrars (Singha 2003). There were several attempts in the late 19th century to circumvent the British court system. An Islamic court was established in Deoband, which called upon Muslims to bring their disputes before a Muslim court rather than to the British magistrate (Metcalf 1982, 146-47, Zaman 2002, 31). In 1882, the National Muhammedan Association called for the restoration of official *qazis* (Jalal 2000, 150). These efforts were largely relinquished for what proved to be the more successful political tactic of legislative pressure and intervention.¹⁰

These changes in the structure of the court had implications for *muftis*, Islamic jurists, as well. When the British displaced the *qazis* from the courts, they effectively stifled the possibility that new and innovative interpretations of the law could be put in place. The only people authorized in the Islamic tradition to produce new interpretations and to implement them madrasa-trained ‘ulama (Zaman 2002, 30). The British magistrates who replaced *qazis* had no madrasa training, and were therefore not authorized to judge whether new interpretations of the law should be accepted or rejected. Without *qazis* in the courts to perform the work of judging, *muftis* were reluctant to suggest flexible interpretations of the texts. During the Mughal period, it had been common for *muftis* to come up with innovative interpretations by drawing on multiple schools of law (*madhab*). Deprived of structure of Islamic authority that also had political power, they instead produced increasingly conservative interpretations.

Muhammad Qasim Zaman reprints a *fatwa* that illustrates the increasingly rigid positions adopted by the ‘ulama during this period. The question to which the *fatwa* is a response came from a woman who had been divorced by her husband, but who had stopped menstruating. She wanted to know how long she should wait to remarry, given that she could no longer count the three menstrual cycles that mark this waiting period (*iddat*). The response she received was that according to Hanafi law, she would have to wait “until she has despaired of further menstruation by reason of age” and then count three months, while Maliki law would stipulate that she wait one year from the divorce. The *mufti* wrote that it was impossible to seek recourse in the Maliki principle because there was no *qazi* available to make the decision to appeal to it. Zaman argues that this is typical of legal opinions given during the British period, when there were no official *qazis* available to make such crucial decisions as when it is reasonable to appeal to alternative schools of law (Zaman 2002, 26-27).

While Zaman’s argument points out the effect of political changes to Islamic legal practice, it forecloses the possibility of reading the ‘ulama’s legal interventions and legal innovations as part of an ongoing legal tradition. Two significant examples of just such intervention are the *Shariat Application Act* of 1937 and the *Dissolution of Muslim Marriages Act* of 1939. These two bills were the culmination of a longer process of establishing the precedence of Muslim personal law over local customary law,¹¹ which

¹⁰ As I have noted above, the *dar ul qaza* system in Bihar was, according to Hussain’s and other accounts, founded in 1917, and has persisted to this day, suggesting that while most histories assume the complete disappearance and of alternative Muslim forums for dispute adjudication, such alternatives did persist, at least in one place (Hussain 2008).

¹¹ This legal process includes primarily the 1918 Mapillah Succession Act, the 1920 Cutchi Memon Act and another bill passed in the Punjab in 1935 establishing Muslim personal law over customary law in the Punjab (Williams 2006, 84).

created a legally unified Muslim community (Jalal 2000, Zaman 2002). Many scholars of personal law have argued that in the late colonial period, Muslim leaders shared a unified goal of uniting Muslims into a single Muslim community (Agnes 1999, Jalal 2000, Williams 2006, Zaman 2002).¹² They suggest that the two acts passed in 1930s with the strong support of Muslim leadership employed a rhetoric of women's rights in order to secure Muslim unity. Flavia Agnes argues that the *Shariat Application Act* and the *Dissolution of Muslim Marriages Act* were presented in a rhetoric of women's rights while these rights were undermined by the final form that the bills took (1999, 69-71).

The *Shariat Application Act* placed Muslims under the jurisdiction of the *shari'a* in matters of marriage, divorce, and inheritance; this was considered a pro-woman change as the Muslim laws of inheritance were far more favorable to women than the customary laws according to which they were otherwise governed. However, as Agnes and others have noted, in order to pass the bill, Jinnah ultimately introduced an amendment exempting agricultural land, thereby easing the concerns of land-holding Muslims in the Punjab for whom governance by Muslim law would mean fragmentation of their land holdings (Agnes 1999, 70). There are also historical and political reasons to read this bill as primarily about establishing a unified community: it was put forward as the two-nation theory was also being developed, and it was, therefore, an important statement of unity (Agnes 1999, Jalal 2000, Williams 2006). However, it was also a legal innovation on the part of the 'ulama involved in its passage. If the British intervened in the law by claiming non-intervention, the 'ulama intervened by contributing to the definition of this newly centralized law.

The *Dissolution of Muslim Marriages Act*, which expanded the grounds on which a Muslim women could seek divorce was the work of the Deobandi Maulana Ashraf Ali Thanawi. The law is usually analyzed by feminist legal scholars in three ways: as a strategy of the Muslim leadership to unify the community; as a measure to increase and ensure women's rights; and as a strategy on the part of the 'ulama to reestablish authority in this seemingly impossible context (Agnes 1999, Nair 1996). The first two arguments rely on the same logic as the reading I have given of the *Shariat Application Act*: in unifying all Indian Muslims under one legal code, it was another way of positing them as a single community, a strategy the British also used in consolidating their rule (Agnes 1999). Prior to this law, the only way a Muslim woman in India could successfully divorce at her own initiative was through apostasy, as divorce laws established during British rule were based on the strict Hanafi guidelines. The bill drew on a Maliki legal principle to grant women the right to initiate and attain a divorce under certain conditions such as desertion, financial neglect, a husband's imprisonment, impotence or insanity (Fyzee 1964).¹³ This had two consequences: it made the law significantly more hospitable to women in unsatisfactory marriages and, importantly from the perspective of

¹² Ayesha Jalal's *Self and Sovereignty* establishes in great detail the disagreement that persisted among the Muslim leadership until the partition of India. She makes it clear that the establishment of Pakistan was in no way a foregone conclusion (Jalal 2000).

¹³ This act has had an impact on the work performed in the *dar ul qaza* in Delhi, where I found that a moderate number of cases were entered in which women were demanding a *faskh*, or judicial annulment, along these lines. Rather than suggesting that the 'ulama are in fact influenced by the court and legislature's decisions regarding personal law, it implies that the clergy are compelled by and supportive of this argument.

forging a unified community of Muslims, it offered Muslim women a way out of marriage that was not simultaneously an exit from the community.

These two purposes and effects of the bill are firmly entwined with a third. The bill emerged from a theological argument, put forward by the Deobandi Mawlana Ashraf ‘Ali Thanawi, about the problem, within the current political circumstances, of the current practice of divorce by apostasy (Zaman 2002, 29). While such a divorce was recognized according to Hanafi law, Thanawi argued that the dominant Hanafi view held that subsequently, a woman who had divorced by apostasy should be forced to reconvert to Islam and to remarry her husband. Thanawi cited two other views on apostasy and marriage. The first was that apostasy did not affect a woman’s marital status, and the second was that apostasy would result in the woman’s enslavement to her husband. Given that in colonial India, there were no *qazis* empowered to order a woman to reconvert to Islam, Thanawi argued that it would be best if apostasy did not affect her marital status, so that women would no longer commit apostasy in such large numbers. Thanawi also assembled Maliki rules for divorce, and suggested that in the interest of women’s well-being they ought to be adopted into the law; further, he suggested that “in the absence of a qadi, as in British India, a committee of righteous Muslims could exercise some of the qadi’s functions, including dissolution of the marriage of a missing person” (Zaman 2002, 30). Zaman reads this as a major appeal for the establishment of Muslim clerics in positions of legal authority over personal law matters. It was not incorporated into the bill that followed from Thanawi’s treatise on the issue. However, Thanawi and the ‘ulama drew on their own learned opinions of *sharia* and on *fatawa* and on requested that Maliki jurists in Medina formulate theologically acceptable alterations in Muslim personal law as it has been laid down by the British. Therefore, the *Dissolution of Muslim Marriages Act* is usually read as a re-assertion by the ‘ulama of their legal and religious authority over Indian Muslims not by skirting the legal system, but by strategically engaging it.

A recent dissertation by Fareeha Khan suggests a new way to think about Thanawi’s interest in the DMMA (2008). She argues that long before he began publishing on the issue, Thanawi had been issuing carefully argued *fatawa* demonstrating that if there were properly trained *qazis* available, women would have ample ways to divorce their husbands. However, since the British had rid the courts of Muslim judges, he argued, the women who approached *muftis* seeking recourse through Islamic law were unsuccessful (Khan 2008). Khan argues that it was only when it became clear that women were increasingly forced to commit apostasy as a way out of their marriages that he sought the *fatwa* from Medina upon which he based the DMMA (2008, 12). Thanawi’s text was able both to give Muslim women new opportunities and to “simultaneously reclaim the authority of the ‘ulama by making *ijtihad* through a collaborative effort at legal reform” (Khan 2008, 12). Khan’s dissertation therefore suggests that the DMMA introduces a new approach to *ijtihad* and to the law. In the terms I have been using, the DMMA appears through Khan’s material to be a new moment in the discursive tradition of Islamic law, one that allows (or requires) the ‘ulama to practice interpretation through the medium of state law. The inability to enforce *sharia* through the *qazi* that led Thanawi to address the state foreshadows the lack of enforcement capacity also evident in the *dar ul qaza* institutions I analyze in chapter two.

Postcolonial Law: Gender, Religion, and the Private Sphere

The two tropes through which I have looked at colonial legal change are the movement of women's bodies onto the boundary that claims to separate public from private and criminal from civil law, a boundary about which the state shows continual ambivalence; and the *'ulama's* changing practices of Islamic law in the face of British legal codification and centralization. These tropes continue into the postcolonial period even as the question of women's legal subjectivity and agency takes on new force. Since India attained independence in 1947, there have been several landmark cases and statutes that have come to define debates about Muslim Personal Law. Indira Gandhi's amendment of Criminal Procedure Code 125, the *Shahbano* case, the Muslim Women's (Protection of Rights in Divorce) Act, and two recent Supreme Court decisions that continue to define the implications of the latter—the 2001 Daniel Latifi case and the 2007 *Iqbal Bano* case. The first event in this lineage occurred in 1973 when then-Prime Minister Indira Gandhi proposed to amend Section 125 Criminal Procedure Code (S. 125 Cr.P.C.). Notably, the intervention that Gandhi made was not into Muslim Personal Law, but into the criminal law, which has applied equally to all citizens regardless of religion since before the British period. S 125 Cr.P.C. "allowed destitute and abandoned or deserted wives or children to claim maintenance from their husbands or children, respectively" (Williams 2006, 128). The purpose of this section of the criminal code was to prevent vagrancy. The government had found that Muslim husbands could avoid paying maintenance for destitute wives by divorcing them. As long as "wife" referred to a woman who was currently married to the man from whom she demanded maintenance, the defendant could evade the request for payment by terminating the marriage. Under Muslim Personal Law in India, Muslim men are entitled to unilaterally divorce their wives, making it relatively easy to dodge a *criminal* proceeding for maintenance. Indira Gandhi sought to close this loop-hole by redefining "wife" to "include any woman who had been divorced and not remarried" (Williams 2006, 128). This change reinforced the notion that a woman is dependent upon her husband, and that once married she has a right to being cared for by the man who married her. It also suggested that until a woman became the responsibility of another man by remarrying, she would remain reliant upon her first husband.

This act initiated a discourse about religion, gender, and law that has defined available discourses until the present moment. One voice in particular joined the older conversation, sparking controversy. This was a group of Muslim clerics drawn from each of India's main Muslim schools who called themselves the "All India Muslim Personal Law Board." The group picked up the discursive approach that Thanawi had taken in the *Dissolution of Muslim Marriages Act*, petitioning the government to heed concerns about laws affecting Muslims. They argued that changing the criminal code in this way had the effect of changing personal law because it dictated how property should be distributed upon termination of a marriage. Ultimately, Gandhi amended Section 127 Cr.P.C. so that a judge could free a husband of paying further maintenance if he or she felt that the husband had given his wife what she was due according to the relevant personal law. This meant that it was up to the judge's discretion to decide on an equitable settlement and on what counted as the wife's due under her personal law. This is also significant because it once again makes religion a marker in the *criminal* code.

The question suggested by the AIMPLB's founding is not, as is usually implied, that the minority community wanted to keep the state out of its affairs because it would disadvantage Muslim men. Whether or not this is a component of the issue is an unanswerable question with the material at hand. However, the AIMPLB's actions in this and later moments, challenges the state to clarify its relationship to a split between public and private. An ambivalence about this question runs through the history of personal law in South Asia from the colonial through the contemporary period. The colonial governors initiated personal law as that domain of law marked off as private, adopting a liberal narrative about private life as beyond the reach of the state. Yet from the beginning, the state sought to regulate and define the parameters of that private space. It is the state's configuration of gender and religion as two essentially private matters in the law that has the effect of making the domains appear to be significantly related to one another.

According to the AIMPLB's web site, the "All India Muslim Personal Law Board was established at a time when then Government of India was trying to subvert Shariah law applicable to Indian Muslims through parallel legislation... It was a historic moment. This was the first time in the history of India after Khilafat Movement¹⁴ that people and organisations of the Indian Muslim community belonging to various schools of thought came together on a common platform to defend Muslim Personal Law."¹⁵ There seem to be two things that, from the perspective of the AIMPLB, make it both unusual and important. The first is that its platform presents a unified set of claims. The statement both acknowledges and reinforces the plurality of belief and belonging characteristic of Indian Muslims while making it clear that this diverse group has come together to present a unified front. The second crucial thing about the organization is that this unity has been forged in the face of a threat, specifically a threat by the Indian government to "Shariah law applicable to Indian Muslims". The statement posits this version of "Shariah", which in the next sentence is glossed as "Muslim personal law," as the rallying point of all Indian Muslims as one single community. These two short sentences sum up much of the predicament of Muslim personal law. The statement posits the government as separate from the Muslim community; it renders Muslim personal law the constitutive element of *the* Muslim community; it makes the rescue of personal law the vehicle for maintaining that community. The version of *sharia*, transmogrified into Muslim personal law through the machinations of the colonial and postcolonial states, has as a byproduct *one* singular Muslim community. Thus, this newly created singular Muslim community and its leaders look to the law forcibly given to them as the source of their solidarity and therefore as necessary for their preservation. The irony of this situation has not been lost on critics of the 'ulama, but what has, perhaps, been lost is an interest in the multiplicity of practical

¹⁴ The *Khilafat* Movement, 1919-1924, was a movement among various Muslim leaders in India to support the Ottoman caliphate. The movement consisted of two major organizations, the Khilafat Conference, founded by Muhammad 'Ali to "press for the restoration of the Ottoman empire" and Jami'at al-*ulama*-I Hind "to fight for Muslim religious interests and for the preservation of the caliphate" (Lapidus 2002, 634). Much has been written about the *Khilafat* Movement, which was for a time allied with Gandhi's non-cooperation movement, but soon fell apart. The invocation of the movement by the AIMPLB is a way of remembering another moment of joint Muslim action against leadership that threatened to impinge upon their leadership. For more detailed accounts, see Jalal 2000, 187-262, Minault 1982, Robinson 1975.

¹⁵ www.Aimplboard.org, accessed October 30, 2008.

significations of the “Shariah law applicable to Indian Muslims” to which the AIMPLB website refers.¹⁶

The new organization’s agenda was multi-faceted: on the one hand to “defend Muslim personal law” from threats by the state, and on the other to create spaces outside the purview of the state to which disputing Muslims could choose to seek recourse. These two aims point to a tension within Muslim personal law more generally. In other words, Thanawi’s strategy of convincing the court to incorporate changes into the state’s enforced Muslim personal law was coupled with a new strategy, drawing on a different Deobandi tradition: abdication from state control by establishing alternative Islamic dispute institutions.

This is a strategy that is most familiar in the context of the *Shahbano* decision of 1985, which is a landmark in any discussion of Muslim Personal Law in India. In the case of *Mohd. Ahmed Khan v. Shahbano*, Shahbano, the destitute ex-wife of Ahmed Khan, sued for maintenance beyond the three-month period of *iddat* during which the *Quran* explicitly states that a husband must support his ex-wife. The Supreme Court ruled in her favor, provoking opposition from members of the ‘ulama who argued that this constituted indefensible intervention into Muslim personal law. When the ruling came down, Shahbano announced that she would not accept it, but would instead drop her charges as the ‘ulama were arguing Muslim law required. Rajeswari Sunder Rajan and Zakia Pathak have argued that the question raised by *Shahbano* was where and how to understand Shahbano’s decision (1992). Was she duped? Was it impossible for her to claim rights as a Muslim woman, caught as she seemed to be between the ‘ulama and the state courts? Sunder Rajan and Pathak argue that Shahbano is a “fragmented subject” who refuses both the state’s offer of protection, instead pushing the state to see the contradictions in its own discourses (1992, 274).

The Shahbano controversy culminated in parliament’s decision to pass the Muslim Women (Protection of Rights in Divorce) Act, which “exclude[d] divorced Muslim women from the purview of S. 125 Cr.P.C.” (Agnes 1999, 102). Section three of the Muslim Women’s Act holds that: “...a divorced woman shall be entitled to: a reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period by her former husband” (reprinted in Mahmood 2002, 260). Section three also clarifies that if a woman maintains her children, she has a right to “a reasonable and fair provision and maintenance” from her husband for two years in addition to her mehr and any property she received at the time of her marriage. In 1998, Maithrayee Mukhopadhyay argued on the basis of ethnographic research about the implementation of the MWA that new ways of discussing Muslim women’s identities following MWA hurt their material interests

...not, as others have argued, because the new act has changed Muslim women’s access to section 125, but because Muslim women’s entitlement under the MWA act is being structured at the point of adjudication by communal discourses. In other words, as in the case of Section 125, the legal establishment has used ‘commonsense’ knowledges about Muslim ‘tradition’ to interpret the tenets of the act” (77).

¹⁶ Sabiha Hussein and Yoginder Sikand are among those who have noted the irony of the ‘ulama expending energy to defend a legal system that bears so little resemblance to classical Islamic jurisprudence and legal practice.

Mukhopadhyay argues that as lawyers urged their male clients to have their cases heard under Section 3 of the MWA, a new tradition was being forged: a tradition that stated that Muslim women are under no religious obligation to support their wives after a divorce (89). Mukhopadhyay shows that in cases where Hindu lower court advocates ignored the “fair provision and maintenance” clause, it was often because they thought that “for Muslims” a divorcee was to remarry and to be cared for by her new husband. Thus, although some judges did hand down sizable “fair provision and maintenance” requirements, many advocates did not even ask for this money, which they had decided was not expected according to “Muslim tradition.” Fathers of divorcees, to the contrary, argued that their daughters were entitled to maintenance by their husbands following divorce. At issue, then, is whether the damage done to women’s claims in the wake of MWA was due to the letter of the law or to lawyers’ and judges’ expectations of “the Muslim community”. The act itself, Mukhopadhyay argues, was proven to provide for women when certain judges interpreted it. She and Zakia Pathak and Rajeswari Sunder Rajan all point to several cases in which Rekha Dixit of the Lucknow Court awarded several women large sums of money from their husbands (1992, 274-75).

In 2001, Daniel Latifi successfully argued this point before the Supreme Court. He told the Court that although it seems ironic, “the enactment intended to reverse the decision in Shahbano’s case, actually codifies the very rationale contained therein” (SC 3959). In other words, like Mukhopadhyay and Pathak and Sunder Rajan, Latifi saw in the MWA’s provision of “fair and reasonable maintenance” an explicit entitlement to post-divorce maintenance for Muslim women. Latifi argued that the Act stipulates that a husband is “1) to make a ‘reasonable and fair provision’ to his divorced wife and 2) to provide ‘maintenance’ for her.” Rather than denying women a right to maintenance, then, the MWA provides the ground upon which to ensure that right. The 2007 *Iqbal Bano* case further opened up the possibilities available to divorced Muslim women. In the case, Iqbal Bano sued her husband for maintenance after he deserted her. He claimed in court that he had divorced her by triple *talaq* and that he therefore had to sue under MWA, not CrPC 125. Iqbal Bano appealed the decision, and ultimately the Supreme Court ruled that a divorced Muslim woman could sue under CrPC 125 and that this suit could be considered an appeal under the MWA. This decision explicitly removed the MWA as an obstacle for Muslim women seeking maintenance, even after divorce.

The history of MPL as I have told it here is not about a battle of wills and interests in which the beleaguered leaders of the beleaguered minority thrash their limbs as they are thrown from the halls of power. Instead, I have tried to tell this history with an emphasis on the often unexpected ways in which relations of power and interpretations of norms are negotiated. Rather than seeing the AIMPLB as an abdication from the state, I have read it as one of two different strategies of negotiating with the state and with the Islamic legal tradition. In his book *Defining Muslim Law for the Egyptian State*, Skovgaard-Petersen traces another instance of such a negotiation (1997). Skovgaard-Petersen argues that the shifting place of *sharia* so that eventually it only governed matters of personal status is a discursive shift. He writes that “if...Islamism is ‘the choice of a new generation,’ the content of this choice should neither be sought in a ‘response to the West,’ nor in an eternal Islamic revolutionary message, but in the gradual contest and bargaining over an Islamic discourse in Egypt during the last century and a half” (1997, 27). Skovgaard-Petersen’s point is that a shifting Islamic discourse, one that engages

theology, law, and the state in new ways, should not be understood as either a radical break with and reaction to western secular discourses or as the re-emergence of an unchanging Islamic tradition. Instead, he argues that Islamic discourses, and discourses about Islam, are themselves part of an Islamic discursive tradition that establishes and reestablishes itself through negotiations with changing political, social, and legal conditions. This parallels my argument about the AIMPLB and other 'ulama in India. The 'ulama are neither engaged in a reactionary separatism spurred by "the west" trampling on their interests, nor are they heralding a timeless tradition. Instead, through legislative interventions and their own lobbying efforts, they are contributing to the debate about Islam and Islamic discourses.

Perfected Personal Law or a Uniform Civil Code?

For Indian feminists, the challenge presented by cases such as Shahano's is part of a larger discussion about the law's systematic enforcement of gender hierarchies. The primary debate is between those who support a Uniform Civil Code (UCC) as promised in India's constitution, and those who argue that a UCC would merely force a rule of the majority in personal law matters.¹⁷ Article 44 of the Indian constitution states that "the State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India". The code is a directive principle, meaning that it was placed in the Constitution to mark the state's aspiration to a legal system in which all would be governed by the same civil law.

Participants in the Personal Law v. UCC debate include feminist scholars, Islamic legal scholars, Muslim organizations unaffiliated with the state, Muslim clergy, the Hindu Right, and ordinary Indians, Muslim and non-Muslim alike. Feminist positions have ranged from straight-forward appeals to abolish Personal Law on grounds that religious law as a whole is contrary to women's rights (Dhagamwar 1989) to a position that advocates reform within religious Personal Law and an optional Civil Code (Agnes 1999, 177-78, Sunder Rajan 2003, 160-61). The Hindu Right has consistently opposed Personal Law for fear that it gives Muslims too much autonomy (Agnes 1999, Williams 2006). Muslim scholars and clerics have a wide range of views, from the argument that the abolition of personal law would be the death knell of the constitutional freedom of religious practice (AIMPLB 2001) to the claim that the UCC need not contradict Islamic Law and would promote national unity (Mahmood 1995). Through an analysis of the existing forums in which Muslim women seek to have their cases adjudicated, I hope not to take sides in this debate, but to explore some of the issues of religiosity, agency, and pragmatics at stake in it.

Alternative Dispute Resolution: Lok Adalats

Like other states (Canada, England, the United States to name several), India has introduced new Alternative Dispute Resolution Institutions (ADR) in recent years.¹⁸ The

¹⁷ Flavia Agnes is among the feminist legal scholars who has voiced concerns about this, especially in the wake of the rise of Hindu nationalism.

¹⁸ Laura Nader and others have argued that ADR operates under the false pretense that it offers legal access to the poor and disenfranchised, and that it promotes welfare by aiming to produce harmony rather than disagreement, a process Nader called "harmony ideology" (1991 & 2002). Nader, one of ADR's most vocal critics writes:

institutions I studied are technically located outside of the state court systems even as they are a crucial part of the legal landscape available for Delhi Muslims. When I have presented material from this dissertation at conferences, I have often been asked why I do not look at them as ADR institutions. India's ADR institutions aim to keep cases out of court and to provide speedier, non-adversarial justice, especially in matrimonial matters; they are run and funded by the state. These ADR institutions offer "real" verdicts in the matters they hear: their judgments are binding and final, meaning that they cannot be appealed. The institutions in which I conducted my fieldwork, on the other hand, are not recognized by the state as part of its legal apparatus and their decisions are not considered binding in the eyes of the court. In this section, I discuss one of the state's ADR institutions to situate the institutions I studied in the context of other non-state legal institutions.

Both my informants in the institutions where I did fieldwork and lawyers in the civil court system repeatedly insisted that India has a justice problem. Different people had different views of the problem, however. One woman whom I met at the *mahila panchayat* and who had taken her divorce case to the local *dar ul qaza* as well, told me that she had been waiting for a divorce in the district court for eight years. She had finally given up, convinced that her husband's lawyer would figure out how to stall the case indefinitely. For her, the civil courts represented inefficiency so great that it more threatened insolvency than promised justice. Parveez Mody's ethnography of couples seeking to marry under the Special Marriage Act at Tis Hazari, the Delhi District court, corroborates the view that courts are necessary evils rather than sites of justice. She writes: "Courts in India are liminal spaces. Mostly, people feel that the courts are traps into which they fall, and until they have not money left to bribe a judge or pay the lawyer, the court will continue to wreck their lives" (2008, 114). Touts, who make their livelihood off this inefficiency, argue that people only approach the courts out of compulsion, and that when they do they will fail to achieve their aims without the help of an intermediary. Lawyers with whom I spoke sneered that Indians are simply "too litigious" and that they clog the courts with cases that would be best settled by other means. This resembles the rhetoric that brought about ADR in the United States, according to Nader. In the U.S. as well, ADR were designed to solve the problem of excessive litigation throughout and following the 1960s.

Relationships, not root causes, and interpersonal conflict resolution skills not power inequities or injustice, were, and still are, at the heart of ADR. In ADR, civil plaintiffs are perceived as 'patients' needing treatment... There was a movement from an interest in social justice to primary concerns over harmony, consensus and efficiency (2002, 141).

Nader notices here that ADR in the United States, which imagines itself to be about efficiency and harmony, in fact transforms a legal scene into a therapeutic one. Her point is that when the primary aim of the interaction following an altercation is to create harmony by quelling dispute, the mode of this interaction necessarily shifts from being adversarial to being therapeutic. When relationships are ailing, psychoanalytic intervention helps to find and resolve individual issues. The other effect of removing legal debate from the public sphere of the courts and rendering it a matter of confidential analysis, disputes take on a private significance. Within these terms, it is no longer possible to consider structural conditions that produce problems. Instead, these problems must be viewed as a failure of individuals to get along, blinding them to individual or social power differentials. Further, Nader argues, since ADR institutions are located outside the purview of the state as offering private solutions, they are not subject to the same conditions of transparency as court proceedings.

Among the ADR institutions that the Delhi government has begun to introduce are Delhi's, "Lok Adalats" or "People's Courts." These institutions were becoming popular during the time that I conducted my fieldwork. The Lok Adalats were founded by the Delhi Legal Services Authority under the Legal Services Authorities Act of 1987.¹⁹ The purpose of the Legal Services Authorities Act, which was not enacted until 1994 and which was amended in 2002, is to ensure that poor and otherwise marginalized Indian citizens have access to the courts. Lok adalats have been convened to hear cases of traffic violations,²⁰ of energy theft,²¹ and of accidents, rent disputes, and general civil matters.²² The Lok Adalat that I attended was held monthly on Sunday morning at the Patiala Court House in central Delhi to hear matrimonial cases. The Delhi Legal Services Authority lays out the purposes of these Parivarik-Mahila Lok Adalats as follows:

... It has been the priority of this Authority to settle the disputes between the parties particularly in matrimonial and family matters at pre-litigative stage itself. *Considering the huge backlog of the cases in the courts, it is the endeavour of the Authority to minimize the litigation so as to lessen the burden of the courts and also to save the time and money of the parties involved...* (my emphasis).²³

The Lok Adalats appear to be a boon for everyone involved: the courts' burden of hearing adversarial cases will decrease because litigation will be limited, and litigants will save time and money. It is not worth dragging family matters through the court, this statement suggests. Matters concerning family and marriage are better dealt with before litigation even has a chance to begin. These institutions once again reiterate the state's ambivalence toward the family as a domain. Setting up Lok Adalats both relieves the courts of the burden of time and money imposed by cases, and keeps the private affairs of the family out of the public arena of the court while still claiming to provide justice, specifically for women.

The ambivalence runs deep: the National Commission for Women, whose mandate is to uphold the rights granted to women under the Indian Constitution, to advise the legislature on how to improve women's well-being, and to study women's situations in India with an eye to how they can be improved,²⁴ developed the idea of the Mahila Lok Adalat. The NCW proposed the Mahila Lok Adalats so that destitute women would be able to receive settlements more quickly.

¹⁹ <http://www.legalserviceindia.com/article/l390-Lok-Adalat-&-Perspective-of-Paribarik-Mahila-Lok-Adalat.html> (accessed 3/14/10).

²⁰ The Hindu reports that 17,000 people came to the "Mega Traffic Lok Adalat" held in Delhi on September 9, 2007 (<http://www.hinduonnet.com/2007/09/09/stories/2007090954310400.htm> accessed on 3/14/10).

²¹ On February 10, 2010, The Hindu reports that the Delhi Legal Services Authority held a paperless Lok Adalat for energy customers. The paper reports: "The Lok Adalat will offer an opportunity to BRPL customers, litigants residing in South Delhi and West Delhi, to go for an amicable on-the-spot settlement of their power theft cases related to both direct theft and dishonest abstraction of energy." This Lok Adalat was especially noteworthy, according to the paper, because it was paperless, and therefore "green." The Hindu reports that, "According to a company spokesperson, there will be no physical movement of files." (<http://www.thehindu.com/2010/02/10/stories/2010021057220400.htm>, accessed 3/14/10).

²² <http://dlsa.nic.in/lokadalat.html#la> (accessed 3/14/10).

²³ <http://dlsa.nic.in/lokadalat.html#la> (accessed 3/14/10).

²⁴ <http://ncw.nic.in/frmABTMandate.aspx> (accessed 3/14/10)

However, the decisions rendered in Lok Adalats are legally binding and they cannot be appealed. On the Sunday that I spent observing the Lok Adalat at the Patiala House, the judge heard fifteen cases. She held the hearings *in camera* with the doors closed. The atmosphere was thus notably quieter than the general hubbub in the regular hearing rooms where people came and went as they pleased. The cases were all marital disputes, and the matter at hand ranged from the divorce itself to settlement of custody, maintenance, or alimony. The judge's tone throughout the cases was moralizing. She regularly chastised the husbands for inadequately protecting their wives, for failing to recognize the work their wives put into keeping their households running and their children fed. Although she granted all of the divorces that were requested of her, she usually delivered her divorce order along with a lecture about the importance of marriage and the problems with divorce.

Although the Lok Adalats' purpose is to provide legal access especially to the poor, the women and men who attended these hearings were notably better off than those who came to the *mufti* or the *mahila panchayat*. The judge did little to disguise her view that the value of bourgeois marriage was more or less lost on the poor, and in the one case involving a destitute family, she was abrupt and demeaning. This case involved a young couple who had been married only briefly when the wife left her husband without having consummated the marriage. The wife had left because her sister-in-law (her husband's brother's wife) had died in a kitchen accident that the wife said was a murder. Although the judge granted the divorce, she first commented to the mediators involved that it was silly even to get information like whether the marriage had been consummated, given that for people of "that class" it didn't really matter. She implied that for the poor, marriage is less a matter of family, alliance, and trust than it is for the professional classes.

The Lok Adalats are flourishing in Delhi. They do keep cases out of the courts, and they do provide a space for non-adversarial dispute mediation. But they are also strongly marked by class, norms of appropriate gendered behavior and obligations, and moral aspersions. Their decisions are enforced by the state's coercive apparatus. Unlike the institutions in which I conducted my field research, the state courts consider Lok Adalats to be their own invention—an internal mechanism to increase efficiency and decrease cost. Lok Adalats do not pluralize the legal *system*, but only the modes in which disputants can approach it.

Legal Pluralism in Postcolonial India

Rather than working as ADR, the institutions I studied comprise a particular kind of legal pluralism. This legal pluralism is complex and shot through with relations of power. While some anthropologists of law have turned away from the term "legal pluralism" because it fails to adequately capture the power relations inhering in coexisting institutions (Moore 2007),²⁵ I use the term to emphasize that although the institutions I study are not recognized by the state, they are in fact intimately related to it.

²⁵ John Griffiths' influential argument about legal pluralism is an excellent example of how the concept has been evacuated of power. Griffiths opposed legal pluralism to an "ideology of legal centralism" that defines law as "an exclusive, systematic and unified hierarchical ordering of normative propositions" whose basis and authority lies in the state (1986, 3). Legal pluralism, he argues, is not ideological but real; he defines the reality of legal pluralism as a situation "in which law and legal institutions are not all subsumable

Kamari Maxine Clarke argues that the trouble with the concept of legal pluralism has historically been its focus on documenting diversity (2009). The consequence of this focus is that: “Such pluralist theories of coexistence do not reflect the real-world effects of hegemony in which competing senses of law are embedded in competing moralities of personhood or religiosities that continue to shape other traditions and be transformed in the process” (2009, 24).²⁶ In the context where Clarke works, the traditions in question are on the one hand a European conception of human rights (assumed to be universal) and on the other a renewed emphasis on shari’a. She argues that these two conceptions of law entail different ideas about justice and are embedded in different moral logics. Clarke’s analysis of the problem with pluralism is instructive: it highlights the dual problems of power and interaction that legal pluralist analyses have sometimes elided (Griffiths 1986). Further, Clarke’s account suggests that legal pluralism is intimately related to *moral* pluralism. Different legal systems are grounded in different moral systems that must negotiate in a plural legal space.

My analysis of dispute adjudication in the legally plural context of Delhi relies on arguments made by two anthropologists who refuse the term “legal pluralism” as a description of their field sites.²⁷ Elizabeth Povinelli explicitly engages with the problem

within one ‘system’ but have their sources in the self-regulatory activities of all the multifarious social fields present...” (1986, 39). Law and legal institutions are not only those institutions that the state sets up to issue and enforce norms. Rather, any institution involved in producing, reproducing or enforcing social norms is legal in Griffiths’ view.

Sally Falk Moore, whom Griffiths accuses of falling into the ideology of legal centralism in her analysis of law and social change (1978), has recently argued that Griffiths’ approach to legal pluralism fails to account for the specificity of different “rule-making entities” in its enthusiasm to include state *and* non-state entities within its purview (2007). Moore argues instead that “it is not only analytically useful but a practical necessity to emphasize the particular sites from which norms and mandatory rules emanate” (2007, 106-107). In other words, it matters whether the state enforces a law or a non-state entity does so.

²⁶ Clarke is not the first anthropologist to make this point. June Starr and Jane Collier note that “the recognition that inequality inheres in legal systems, in combination with the idea of continuously evolving cultural traditions, has led the contributors [to the volume] to think beyond the concepts of legal pluralism and dual legal orders” (1989, 9). Starr and Collier clarify that “pluralism” and “dual legal orders” both imply equality, which describes neither colonial nor postcolonial legal configurations. The second problem with “pluralism” and “duality” for the contributors to the volume lies in their implication that in contexts with multiple legal systems, each legal system has developed independently of the others so that together they share a national space, but without having impacted one another. Instead of this claim, Starr and Collier propose that “legal orders should not be treated as closed cultural systems that one group can impose on another, but rather as ‘codes,’ discourses, and languages in which people pursue their varying and often antagonistic interests” (1989, 9). Different legal institutions change through interactions with one another rather than through complete imposition of one legal system over others.

²⁷ There would of course be other studies to examine. Sally Moore’s argument about legal change among the Chagga of Mount Kilimanjaro provides a rich account of negotiations with power entailed in a legally plural context without using the term “legal pluralism” (1986 & 1989). Moore argues that “customary law” is as much a product of colonial encounters as of cultural heritage (1986 & 1989). For the Chagga of Mouth Kilimanjaro, it is sometimes useful to appeal to the state using the language of tradition; using such language is both a matter of individual strategy and of structural conditions within which it is the only vocabulary legible to the state. “Customary law” is only a useful category for contesting a certain number of issues, as defined by the state. In the postcolonial context, local courts have jurisdiction over customary law, which is to be discovered and defined on a case-by-case basis (1989, 299). Moore concludes that “the unit of analysis in the study of such interdigitations must encompass both local and supralocal entities, and it must do so within a historically conceived framework” (1989, 300). The context required to analyze legally plural contexts includes economics and politics rather than simply “local legal culture” in Geertz’s

of power in the process of defining the space of “customary law” within the modern liberal state (2002). The state Povinelli analyzes is Australia, and the customs those of Australian aboriginals who need to make their land claims legible to the state. Through two important Australian court cases, *Eddie Mabo v. The State of Queensland* and *Wik Peoples v. the State of Queensland*, Povinelli argues that the multicultural Australian state seeks to overcome its shameful past by recognizing native title. In the *Mabo* case, the Australian courts decided that aboriginals did maintain title of the land if “claimants [could] establish their descent from the original inhabitants of the land under claim, the nature of customary law for that land, their continued allegiance to that customary law, and their continued occupation of the land” (2002, 157). In other words, the law cunningly recognizes native title by demanding that only native subjects who remain properly “traditional” are native enough to claim an historical connection to the land. In so-doing, the courts arrogate to themselves the right to rule on culture’s boundaries and on the limits of acceptable cultural difference (2002, 185). Ultimately, then, *Mabo* is not about “Aboriginal people, their laws, or their experiences of injustice, corporeal trauma, and genocide” but are instead about “the continual coercions of liberal law” and advancing Australian common law principles (2002, 185). The Aboriginal citizens of Australia become the ground upon which common law can advance, and their culture becomes a vehicle of state power.

While Povinelli exposes the janus-face of laws granting recognition and the violence of liberal law, she depicts liberal law as a hegemonic monolith capable of completely absorbing indigenous laws and norms. Justin Richland fleshes out this critique of Povinelli, asking “are we really prepared to suggest that indigenous political activists and legal actors affirming their nations’ cultural sovereignty are just dupes of the hegemonic maneuverings of non-Indian business and government interest?” (2008, 156). Through his own analysis of narrative in Hopi courts, Richland argues that in spite of the Anglo-American conventions of legal narrative that characterize Hopi courts, Hopi disputants nonetheless articulate their arguments through a different tradition of norms. In this process, Hopi narratives sometimes rupture the Anglo-American search for coherence and sincerity. Even as the Hopi court is conducted according to Anglo-American legal rules, Hopi narratives of moral norms and justice are neither overtaken nor fused with them. Instead, what Richland calls a “conarrative” emerges, one that holds dissonant claims and modes of argument together in a single courtroom. Through a close analysis of a case in which a sister and brother struggled over who was the rightful owner of their deceased mother’s house in which the plaintiff appeals to Hopi matrilineal property norms, Richland shows that the interaction between her narrative and that of the Anglo-American court,

...is a story of law that is being produced by the participants to this hearing interaction in ways that navigate the tensions between their need to tell a coherent ‘public story’ that can (re)order the Hopi lives affected by this dispute and their need for an authentic rendering of their stories of personal suffering within a Hopi

sense. Moore’s argument introduces a strategy for thinking about legal pluralism that at once locates and analyzes state power and refuses to elide negotiations between state law and other sources of norms and codes.

normative universe that, at least in part, operates ‘outside’ the Anglo-style procedures of Hopi jurisprudence (2008, 140).

State power, and the power of the Anglo-style procedures imposed on the Hopi, is ever present in Richland’s analysis. In the narratives he analyzes Anglo-American norms of legal procedure and judgment conflict with the “Hopi normative universe” with its distinct concepts of property, of gendered roles, and of kinship. Indeed, for Richland, the mutual illegibility of these two kinds of narrative to one another *on the record* makes the tension between these two sets of norms part of the “public story” of Hopi law. It is useful to think of the scenario Richland analyzes as a power-laden legal pluralism characterized by simultaneous interaction and incomprehension.

Numerous legal anthropologists whose work analyzes human rights in local settings and transitional justice have found the idea of legal pluralism useful to explore the uneven methods and norms through which affected groups pursue justice (Wilson 2000, Clarke 2008). Richard Wilson develops a concept of legal pluralism in the context of post-apartheid South Africa that denies neither the importance of state power nor the counter-hegemonic discourses that seek justice in terms other than the state’s. He therefore argues for a revised legal pluralism “of action, movement, and interaction between legal orders in the context of state hegemonic projects” (2000, 78).

Wilson proposes that anthropologists of law look at the ways in which individuals and groups influence adjudication even within the context of state hegemony. In Wilson’s case, the relevant category of centralization is reconciliation and pluralization of vengeance (78). The state courts’ attempt to rewrite personal narratives of suffering as collective narratives of nation-building are interrupted by local courts’ emphasis on justice as vengeance for wrong-doing. Ironically, Wilson shows, while the local courts scorn the TRC’s conception of justice as reconciliation, within their jurisdictions “apartheid collaborators” who have been punished remain in their original homes, unharmed by their neighbors. In other words, it is “tribal” vengeance that produces reconciliation and reconciliation that produces vengeance. A concept of legal pluralism adequate to this context therefore must recognize “shifting patterns of dominance, resistance, and acquiescence” to state power (86).

I turn to the analytic of legal pluralism because it describes a legal condition in which multiple norm generating institutions occupy the same polity, interacting with and influencing one another but without fusing into a new, hybrid, legal form. The *dar ul qaza* institutions and the *mufti*’s practices are considered to be legal according to Islamic tradition, although their decisions are not recognized as binding by the state. The *mahila panchayat* finds its place simultaneously in neither and in both of these legal traditions: the state’s and Islam’s. Together these institutions provide a portrait of “reglementary control” as “temporary, incomplete” and without predictable consequences (Moore 1978, 30). Although laws and orders issued by the state have a particular impact on the society, these laws always enter a social world in which “contradictory possibilities” of “domination/autonomy, hierarchy/equivalence, proliferation/reduction, amalgamation/division, replication/diversification” conflict and act in tension with one another (1978, 28). Law and other efforts at social regulation can never be complete, so in spite of their best efforts, they are mobilized and transformed in shifting relations of power with other reglementary social institutions. In the case of the institutions I analyze

here, the state court's incompleteness emerges in their work even as their incompleteness is reflected in the state legal system's presence in their records and narratives.

Gendered Subjectivities, Dispute, & the Problem of Agency

Drawing on the idea of legal pluralism enables me to situate the institutions I study in a dynamic relationship to each other and to the state. However, the substance of this legal pluralism emerges through adjudication practices. Both the kinds of cases people bring to these institutions and the ways in which the cases are adjudicated are effects of the tensions and contradictions in the many levels of the law. For the historical and jurisprudential reasons I have discussed, at issue in these institutions are matters of marriage, divorce, maintenance and inheritance. The ways in which various levels of the law intersect at these issues of gendered power relations enable some claims and foreclose others. One aim of this dissertation is to analyze how Muslim women make claims in these institutions.

Several feminist theorists have analyzed the ways in which Muslim women engage with Islamic legal institutions (Tucker 1998, Hirsch 2009, Osanloo 2009). These scholars explore the ways in which women, and *qazis* and *muftis* find spaces of maneuver within the strongly gendered domain of Islamic legal practice.²⁸ Judith Tucker's study of seventeenth and eighteenth century *fatawa* on gender-related questions in Syria and Palestine showed how *muftis* read the law "against the grain" to enable women to work with and within the patriarchal legal system to resist certain conditions of their lives (1998).²⁹ Susan Hirsch's study of gendered dispute narratives in Kenyan *kadhi* courts argues that women present themselves and their stories in deeply gendered narratives even as they challenge the conditions of their married and family lives in these courts (usually successfully) (1998).³⁰ Sylvia Vatuk contests Tucker's argument that women are able to consistently achieve their ends through Islamic legal means, at least in Chennai and Hyderabad where she conducted her research (2007, 203). Vatuk looks specifically at *khul'* or woman initiated divorce, in this article, and argues that it is an overstatement to

²⁸ It is not only in the context of Islamic law that scholars have explored women's legal agency and their capacity to resist *through* their engagement with patriarchal legal orders. Hirsch and Lazarus-Black's edited volume gives numerous accounts of women approaching and using legal institutions as a resource for resistance (1994).

²⁹ For example, Tucker shows that women, who were not able to unilaterally divorce their husbands, would approach the *mufti* to receive confirmation that her husband had divorced her even if he regretted having done so. One woman came to the *mufti* because she said that her husband had uttered a divorce several years earlier and had not reconciled with her since but now wanted her back. The *mufti* ruled, in her favor, that the divorce was irrevocable (1998, 91).

³⁰ Hirsch shows that Swahili people frame their disputes through four different discourses: Islamic law, Swahili ethics, spiritual health, and Kenyan law. Women and men draw on these various discourses as they present their sides of the conflict (1998, 83). The discourses they use position women and men as "gendered subjects who possess different (gendered) relations to legal (or moral) claims" (1998, 83). Men and women have different discourses available to them, and these discourses are relevant and powerful in some contexts more than in others. The availability of certain discourses and the subject position from which a person uses that discourse effect how different disputants present themselves. Hirsch writes that her analysis of narrative in the *kadhi* courts "demonstrates that men and women turn their stories into texts in gender-patterned ways. Specifically, women entextualize their stories by embedding many features of narrative performance, while men frame their accounts through metalinguistic statements. The significance of this is that a particular kind of narrative—the performed story—becomes an index of gender through its production by women" (30).

claim that the availability of *khul'* is evidence of women's good standing in the law (2007, 203).³¹ Also in the context of India, Sabiha Hussain has argued that unlike in the coastal Kenyan case, women who approached *dar ul qaza* institutions in eastern India felt that "they could not express themselves or explain their problems to the Qazi as they had no female member who would understand their problems" (2006, 22). These scholars disagree about whether local level Islamic institutions are productive spaces of maneuver for women. However, what they share is an interest in indentifying resistance as a sign of agency. For Tucker and Hirsch, the Islamic legal institutions they study are promising because the scholars find evidence that women can challenge the aspects of patriarchal power structures that they wish to subvert. For Vatuk and Hussain, the absence of such evidence is grounds to condemn the *dar ul qaza* institutions.

Saba Mahmood's study of women participants in the Egyptian Islamic piety movement challenged scholarship focused on women's agency to ask what kind of subject such a search for agency through resistance assumed (2005). Mahmood poses the question: "does the category of resistance impose a teleology of progressive politics on the analytics of power—a teleology that makes it hard for us to see and understand forms of being and action that are not necessarily encapsulated by the narrative of subversion and reinscription of norms?" (2005, 9). Mahmood draws on the Foucaultian concept of subjectivation: the idea that subjectivity and agency are produced through the very power relations that also constrain. If this is the case, agency is not only to be found in resisting norms, but also in "inhabiting them" (15).

Arzoo Osanloo's analysis of Islamic and liberal rights discourses in Iranian family courts begins to take up Mahmood's challenge in the context of law (2009). As Arzoo Osanloo's text implies, it is a challenge to untangle the implications of Mahmood's account of subjectivation through the virtuous work of self-making within the explicitly normative domain of the law. Osanloo asks how resistance *and* subordination may comingle in the subjectivities and projects of Iranian women who approach the courts with marital and other complaints. Iranian women who use the courts "bear a legal subjectivity of a rights-bearing entitled citizen" while they "perform as Muslims as well," Osanloo argues (110). The legal hybridity Osanloo posits enables women to express legal claims in terms of liberal rights while maintaining a "Muslim" presentation. Her approach works against a search for resistance, instead identifying the discourses through which Iranian women come to be claims-making subjects. The problem with her argument is that Osanloo sneaks a search for agency in through the back door; only the agency she finds is located exclusively in liberal rights.³² She thus implies that there is no

³¹ I certainly agree with Vatuk that *khul'* is not the same as *talaq*, but would suggest that the way it is used in the courts I studied suggests that it does open up avenues for negotiation and leverage.

³² One problem with Osanloo's argument is that she does not make a strong argument for what it means to have an "Islamic persona" other than by being "covered in a chador from head to toe, every bit fulfilling her gendered role" (99). Osanloo implies throughout the book that it is the women's dress habits that define them as Islamic subjects, as the bearers of Islamic subjectivity. She sees the other aspect of their hybrid identity emerging from discussions about "individual will and responsibility" in which women come to think of themselves "as beings independent of their roles in relation to their husbands, children families, and so on" (99). In all of the examples she gives, in discussions during the Quran sessions as well as in the courts, the demands that women make are relational demands: they are precisely about their roles as wives and mothers. Osanloo seems to assume that if it weren't for liberalism and its conception of the autonomous rights-bearing individual, women would not argue with their husbands or demand that they be treated respectfully. To the contrary, her own material suggests that when the women read the Quran, they

place in Islamic law for the kind of individuated demands that legal claims require. My fieldwork suggests otherwise.

Perhaps one thing Osanloo's text shows is that law is a tricky place to explore agency precisely because legal success, in any context, requires the litigants' ability to express and explain their claims in the normative language of the particular legal space in which they negotiate. Consider, for example, the many cases before Delhi's *dar ul qaza* institutions in which women and men framed their complaints in terms of violated rights before the civil courts and in terms of failure to live up to Islamic norms of family life in the *dar ul qaza*. This is not a new argument. Conley and O'Barr found a similar issue in their analysis of litigants' narratives in small claims courts in the United States (1996). In that context, litigants who were able to frame their claims in terms of legal rules were more successful than those who discussed their problems as violations of the norms governing relationships. In the legal context, it seems, subordination to the norms of institutional rhetoric and self-presentation are the condition for the possibility of resistance or subversion. In the *dar ul qaza* and the *dar ul ifta* institutions, these norms are themselves Islamic.

Law and Healing

Negotiation with legal traditions and principles of women's rights does not exhaust the field of approaches that the Muslims I talked to in Delhi took to managing their disputes. With the same sensitivity to forum that appears in *dar ul qaza* records and *fatwa* requests, women sometimes decided that what was needed was strictly spiritual intervention. For this, they did not go to courts or legal figures of any kind, but instead made their way to the *mufti's* office where he offered them charms, amulets, and blessings to remedy their troubles. Why include a chapter on spiritual healing, as the *mufti* called this practice, in a dissertation on legal pluralism in contemporary Delhi?

In Laura Nader's film *To Make the Balance* and her essay by the same title (1969), she argues that in the Zapotec village she studied justice was understood as a restoration of balance. The processes involved in restoring balance included courts, families, and super-natural appeals (1969, 71). Susan Hirsch mentions in passing that the spirits were often blamed for marital trouble in the Swahili Coast context in which she worked (1998, 89). Many people, therefore, sought out spiritual medicine when they were experiencing marital difficulties (1989, 89). Likewise, the institutions I studied drew on an Islamic moral and legal tradition that focused on process over rules and on reconciliation over retaliation. In the *dar ul qaza* the *qazi* exhausts every possibility of reconciliation before he turns to divorce or annulment even as the *mufti's fatawa* offer moral and legal guidance rather than injunctions. The *mahila panchayats*, which emerge from a different lineage of mediation emphasize women's rights to freedom from violence on one hand and continually produce reconciliation agreements on the other. Each of these three

do so in a way that attends to their moral capacities and responsibilities as humans rather than as women (93) and when they discuss the demands they will make in court, they need to consider themselves in the gendered terms of wife, mother, daughter. So is it the "Islamic" or the "civil" aspect of the Islamico-civil courts that push them to claim their rights *as women* rather than *as human beings*? Is the highly gendered language of the courts, in which judges try to make their decisions in part by asking women whether or not they are virgins, or second-guessing the motives of women asking for divorces.

institutions drew on norms derived from *sharia* or, in the case of the *mahila panchayat*, from a combination of principles of equality and of uplift.

The *mufti*'s healing practice makes the balance in another medium, which he calls spiritual. Analyzing his healing practice enables me to look from a different angle at the various meaningful ways in which Muslims participate in Islamic traditions when they encounter disputes and other pragmatic and worldly problems. Different kinds of problems are suited to different kinds of interventions, so that some require legal intervention in the *dar ul qaza* or the *dar ul ifta* or the *mahila panchayat*, while others require “spiritual” intervention. Each of these institutions exists with in a dynamic field of options and the people who approach each institution may also approach the others as they seek remedies for their troubles that are both strategically useful, morally sound, and legally supported.

Conclusion

Through the ethnographic accounts of *dar ul qaza* institutions, *mahila panchayats*, *dar ul iftas*, and spiritual healing, the following chapters present the complex landscape of mediation options sought out by some of Delhi's Muslims. Together, they provide a portrait of the layers of law applicable to and strategically engaged by Muslims who encounter problems they are unable to resolve through family negotiation. My interest, given the prevalent view that Muslim women are especially vulnerable to *Islamic* forms of justice, is to look especially closely at how Muslim women engage with these institutions. I ask how they present themselves and their cases in these institutions and explore the ways in which their successes and frustrations are circumscribed not only by patriarchal norms in the civil, criminal, and Islamic institutions but also by the very legal structure in which these institutions are embedded. In the context of the ongoing debate about whether Muslim women are best served by a Uniform Civil Code or an improved system of personal law, my research seeks to lay out the legal landscape as it now stands. In the conclusion to the dissertation, I give an account of one burgeoning Islamic feminist organization and ask about how their interventions into law, both state and non-state, offers an additional response to the current legal predicament.

Chapter Two

Divorce and Property: Between Judge and *Qazi*

Introduction: A Parallel Legal System?

In 2005, a lawyer filed a public interest petition with the Supreme Court of India in which he claimed that the growing *sharia* court (*dar ul qaza*) system constituted a parallel legal system.³³ This, he submitted, was a violation of the constitution which only recognizes one law: that of the state. The petitioner also claimed that the *dar ul qaza* system “forced” poor and illiterate Muslims to “submit” to them instead of approaching the state’s courts.³⁴ His concern was both that these *dar ul qaza* institutions undermined the sovereignty of the Indian legal system and that they trapped poor and illiterate Muslims to whom they also failed to provide justice.

The petition was submitted in August 2005, fast on the heels of another debate about Islamic legal institutions: the so-called Imrana affair, which I discuss at length in chapter four. The case concerned a married woman who accused her father-in-law of raping her; in the wake of the alleged rape, the seminary at Deoband issued a *fatwa* stating that Imrana was no longer rightfully married to her husband. The Imrana case received broad media attention, and was read as an example of how *fatawa* (authoritative legal advice) written by Islamic jurisconsults (*muftis*) undermined the rights guaranteed to women under Indian law. Vishwa Lochan Madan, the petitioner in the Supreme Court case erroneously linked this *fatwa* to Indian *dar ul qaza* institutions and argued that the Imrana case was evidence that Islamic institutions of dispute impede justice. The petition was a significant topic of discussion throughout the time that I was conducting my fieldwork. *Madrassa* students, *qazis*, and lawyers in the civil courts would raise the petition when I told them I was studying Islamic institutions of adjudication. Both supporters and detractors of the *dar ul qaza* institutions asked two questions in relation to the petition: Are *dar ul qaza* institutions legal? And do *dar ul qaza* institutions stand in the way of justice for poor, illiterate, and female Indian citizens?

The case is ongoing, but the court’s first response to the petition has been to argue for the legitimacy of the *dar ul qaza* institutions on the ground that they do not and have never issued binding judgments and therefore do not pose a threat to the judicial system. The role of the system of *dar ul qaza* institutions (*nizam ul qaza*) is advisory, the Courts argued.³⁵ For the Supreme Court thus far, the question of what the *dar ul qaza* institutions rule or advise is immaterial because they do not technically have legal standing and therefore cannot challenge either the legitimacy or the efficacy of the state judiciary. Both the petition and the response position the *dar ul qaza* institutions outside of the state courts. However, the petitioner argues that this formal position external to the law affects the law’s efficacy *in practice* while the court argues that advisory boards do not have a bearing on the state judiciary, either in theory or in practice.

This chapter analyzes dispute mediation in Delhi’s three *dar ul qaza* institutions. The questions that guide the chapter are: what happens in these institutions? How do

³³ <http://www.indianexpress.com/news/shariat-courts-no-threat-to-judiciary/15886/> (accessed 3/15/10). The case is still in process, so documentation is not yet available to the public. I am working on getting some of the documentation through the lawyer representing the AIMPLB in the case.

³⁴ <http://www.hindu.com/2005/08/17/stories/2005081703311300.htm> (accessed 3/14/10).

³⁵ <http://ibnlive.in.com/news/sc-admits-pil-against-islamic-courts/37832-3.html>. (accessed 3/15/10).

women frame their claims, and what kinds of claims do they bring? How do they engage with Islamic moral norms and law? Through an analysis of the cases that come before the *dar ul qaza* institutions and their outcomes, I argue that these courts are ambivalent spaces. On the one hand, the *qazis* who hear the cases are attentive to moral and emotional as well as to legal arguments, making them often effective places for women to secure divorces. On the other hand, the rhetoric of dispute in these courts is strongly gendered, and women's successful arguments often rely on their ability to present themselves as good persevering wives, mothers, and daughters-in-law in much the same way as in the civil courts (Mukhopadhyay 1998). Finally, the *dar ul qaza* often fail to stand up for women's property rights in divorce.

However, rather than suggesting that the *dar ul qaza* institutions' failure to support women's property entitlements reflects a problem with Islamic legal practice or with the *qazis* in these *dar ul qaza* institutions, I argue that this may be an effect of these institutions' marginal juridical status. That is, because they cannot enforce property decisions and because the state courts themselves are negligent at awarding property to Muslim women upon divorce, Muslim women in Delhi approach the *dar ul qaza* institutions strategically for specific kinds of divorces and for other kinds of marital troubles but *not* for property settlements.³⁶ Women tended to bring their cases to the *dar ul qaza* either when they had exhausted the legal avenues provided by the state's courts or when they had other means of income and securing a divorce was more important to them than securing maintenance payments. There are other reasons for which women bring cases to the *dar ul qaza* institutions as well. Each of the cases I analyze foregrounds one aspect of mediation in the *dar ul qaza* and together they show that women approach them for a combination of strategic, moral, and legal reasons.

Delhi's Dar ul Qaza Institutions

Delhi's *dar ul qaza* institutions occupy an ambiguous place in the legal system: they are technically neither part of civil and criminal law in general, nor are they part of the state's apparatus of Personal Law adjudication, as the Supreme Court's response to the Vishwa Lochan Madan petition implies. Their decisions are non-binding, cannot be appealed in the civil courts, and the *dar ul qaza* institutions do not have to follow the state courts' legal precedent. Tahir Mahmood, a scholar of Muslim Personal Law and the former head of the Minorities Commission, has argued that this gives *dar ul qaza* institutions the liberty to more fully explore the resources of *sharia* in their practice of adjudication (2002). The judges (*qazis*) in these *dar ul qaza* institutions are equipped for this exploration: they are trained in Islamic law, and the texts to which they refer in making their judgments are the *Quran*, *Hadith*, and interpretations by other Islamic religious scholars (*ulama*). In this way, they are not practitioners of Muslim Personal

³⁶ Srimati Basu's ethnography of Muslim divorce cases Kolkata family courts shows that even when the courts grant maintenance and/or *mahr*, they rarely enforce payment, leaving women just as destitute as before they one their cases (2008). Basu argues that because Muslim women have greater ground to claim maintenance while they are still married, regardless of whether they are living with their husbands, it is to their benefit to show up in civil or family courts before they have divorced (2008, 506-507). Basu found that judges in the family courts were keenly aware of this, and would encourage couples to remain married if the woman needed to be financially supported by her husband (2008, 507). This, along with class, may be one of the reasons that the women whose cases I read in the *dar ul qaza* had either exhausted the state courts without achieving financial settlements or had other means of income.

Law. nonetheless, the cases they hear fall exclusively within the parameters of Personal Law.

The AIMPLB modeled Delhi's *dar ul qaza* institutions on the system of *dar ul qaza* institutions that were established in the eastern Indian state of Bihar in 1921. Sabiha Hussain has recently published an article on this extensive *dar ul qaza* system called the *imarat-e-sharia* (2006).³⁷ The twenty-six *dar ul qaza* institutions that make up the *imarat-e-sharia* have decided 31,775 cases since their founding. The *imarat-e-sharia* also runs a system of 83 courts in the northwestern states. The AIMPLB, for its part, runs one court in Tamil Nadu, four in Andhra Pradesh, five in Uttar Pradesh, five in Karnataka, and eleven in Maharashtra (2005). There is also a *dar ul qaza* in Bhopal, Madhya Pradesh that has been hearing cases since the nineteenth century, and which is the only such court to receive funding from the Indian government (Hussain 2006, 7). The *imarat e sharia* was founded with five main objectives: 1) To ensure "applications of Islamic laws, as far as possible, particularly laws relating to marriage, divorce, inheritance, khula, etc., in their original Islamic form"; 2) Support Islamic sharia as a way of life; 3) Safeguard Muslim interests; 4) Unite all Muslims even if they adhere to different schools of law" (2006, 16).

The *dar ul qaza* institutions in which I conducted my research were located in three Delhi neighborhoods: Jamia Nagar, Seelampur, and Kashmiri Gate. The history of each neighborhood evokes a particular moment of Muslim life in Delhi. The first, in Jamia Nagar, carries with it a history of late 19th century and post-independence struggles among Muslim community leaders to produce a comfortable place in the national imaginary and the national landscape for India's large Muslim minority. The second, in Seelampur, is built on the history of Indira Gandhi's 1970s evictions of large numbers of Muslims from the old city during the Emergency (Tarlo 2003). Finally, the *dar ul qaza* at Kashmiri gate is at the heart of the part of Delhi built by the Mughal ruler Shah Jahan. Jamia Nagar and Kashmiri Gate are both mixed in terms of socio-economic class. Both neighborhoods are home to professional and to working-class families. Both are predominantly Muslim, and there is traffic between them: the *mufti* whose work I look at in the second half of the dissertation lived in Old Delhi but had a house in an un-zoned area of Okhla, where Jamia Nagar is also located. He was as much a presence in that neighborhood as in Old Delhi. Seelampur, unlike the other two neighborhoods, with their long histories and inhabitants who trace their families back to the Middle East, is a newer neighborhood of the working poor. It is the poorest constituency in Delhi, and while I was doing my fieldwork, it was hard hit by the Delhi municipal government's efforts to clean up the city by separating residential from commercial neighborhoods (Tarlo 2003).

In spite of these differences, the kinds of cases that appeared in the three institutions, and the protocols that were following in adjudicating them, were strikingly similar. Each of the three *dar ul qaza* institutions was run by a single *qazi* who mediated debates, kept records, compiled case files, and issued notices when people had to appear in court. Each *qazi* had an assistant whom he asked to retrieve books, to usher disputants into and out of the hearing room, and to bring *chai* to anyone assembled in the room at tea-time. This allocation of labor differs from that described by Brinkley Messick in the context of Yemen (1993) and by Lawrence Rosen in the context of Morocco (2000). Both Messick and Rosen found that the *qazi's* assistant was responsible for keeping records in

³⁷ I take the following information from Hussain's article.

addition to performing menial tasks. In the context of the kadhi courts in Kenya that Susan Hirsch studied, the kadhi is assisted by a clerk who talks to disputants before they approach the kadhi and decides whether their cases are worth the kadhi's time (1998). The clerk in that context closely resembles the local court clerks that Barbara Yngvesson has studied in the United States (1988). The absence of a mediating figure in Delhi's *dar ul qaza* meant that approaching the *qazi* required as little (or as much) as arriving at the *dar ul qaza* office while the *qazi* was present. Unless they had meetings to attend elsewhere, the *qazis* in all three of Delhi's *dar ul qaza* institutions were available in their offices from eight or nine in the morning until early afternoon. It was therefore relatively uncomplicated to get an initial audience with the *qazi* to explain a case or to request his help.

I learned that although the *dar ul qaza* institutions are accessible and far less bureaucratic than the civil courts, they are not universally available to Muslims experiencing family trouble.³⁸ One day as I sat in the *dar ul qaza* in South Delhi talking to the *qazi* about his work, a poor, illiterate Muslim woman approached him. She requested that he open a case on behalf of her daughter, who was physically abused by her husband. The first time this woman approached the *qazi*, he gave her a claim form and asked her to fill it out and return it to him. When she told the *qazi* that she could not write, he sent her off to have someone else write it for her. She returned a week later bringing her daughter and the filled-out form. When the *qazi* saw that the form had been completed in the devanagri (Hindi) script rather than in Urdu, he abruptly and impatiently told her that she had not listened to his instructions and that she had to have the form filled out in Urdu or he would not entertain it. Before she left the office, the woman pleaded with the *qazi* to examine her daughter's bruises as evidence that she was being mistreated by her husband. The *qazi* remained unmoved and insisted that the only route to a *dar ul qaza* case was through an Urdu-language paper trail.

This exchange highlights the importance of writing and documentation to the process of the *dar ul qaza* institutions, a requirement that can be daunting and that favors the educated.³⁹ It also shows that *dar ul qaza* institutions are not, in spite of assumptions about Islamic legal institutions, mainly frequented by the destitute. Most disputants in the *dar ul qaza* institutions were professional, educated Muslims. The requirement that the records be submitted in writing was therefore not only a defining feature of the form the cases take but also a condition for entry into the *dar ul qaza*. Last, but certainly not least, this exchange showed that in the *dar ul qaza* institutions, as in the state's civil and criminal courts, the temperament and personality of the *qazi* or judge could have a

³⁸ Parveez Mody shows that simply getting in to talk to a judge in the Delhi district courts can be a daunting task (2008). The corridors of the district court brim with touts who are both necessary because they know how to navigate the court system and frustrating because they demand payment for their services.

³⁹ Sabiha Hussain writes that the women who brought their cases to the *imarat e sharia* in Bihar were of "lower economic class," although she adds that their fathers "either had petty businesses or were in government service" (2006, 19). The woman whom I describe here appeared to be quite destitute, and while I do not know how her family earns a living, it seems likely that they were of a still lower economic status than the women whose cases Hussain discusses. Most of the disputants whose cases went through Delhi's *dar ul qaza* institutions were from families that worked in small business, universities, or who were overseas.

significant impact on an individual plaintiff's success.⁴⁰ Although there is an entire genre of scholarly literature that first emerged in the eighth century dedicated to describing the attributes a *qazi* must possess, individual *qazis* may fail to live up to these ideals, just as British judges may fail to live up to the standards of etiquette by which they are bound (Fyze 1964).⁴¹

In spite of this woman's difficulty submitting her case in the *dar ul qaza*, for many women, these institutions were both more accessible and more effective than the civil courts. In only one of the cases I analyze below did the woman, who was the plaintiff, fail to achieve her aim in the *dar ul qaza*. In all of the other cases, the plaintiffs (all women but one) strategically approached the *dar ul qaza* with cases that could be engaged and won in this context. Women's success in *qazi* courts is not limited to the case of Delhi. In her account of kadhi courts in coastal Kenya, Susan Hirsch shows that women increasingly bring cases to the kadhi courts and that women rarely lose cases, even when the plaintiffs are men (1998, 127). In this context, Hirsch argues that women tend to win cases in these courts because they bring good claims, because kadhis take women's claims seriously (in part by recognizing their perseverance), and because aiding women in their claims is one way in which kadhis vie with other Muslim men and elders for authority (1998, 129). In the cases that follow, women bring well-defined cases to the *qazi*, usually already having gathered the evidence and materials necessary for the *qazi* to make his judgment.⁴²

In what follows, I analyze six cases that were adjudicated in Delhi's *dar ul qaza*. Unlike many of the cases that are opened in *dar ul qaza* institutions, all of these cases culminated in judgments.⁴³ The plaintiffs requested a limited number of things in these cases: divorce on the grounds of abandonment, dowry demands, or domestic violence, resolution to marital arguments, and in one case reunion between spouses. The claims and processes of adjudication suggest both the various ways in which law and morality are bound together in these institutions and people's expectations of them and also the ways in which gender is central to claims, adjudication and to outcomes in this context.

Because divorce was a frequent issue in the *dar ul qaza* cases I analyze here, before turning to the court cases I will introduce the several ways that Indian Muslims

⁴⁰ Parveez Mody documents that judges' own prejudices and moral views have a significant impact on their willingness to fulfill the demands placed on them by the law to perform inter-community marriages under the Special Marriage Act (2008).

⁴¹ A.A.A. Fyze argues that the *adab al-qadi* literature, which lays out the proper comportment and qualifications of a *qadi*, is similar to the "British etiquette of Bar and Profession" (1964, 406). Literature on *adab* includes notes on procedure, process and judicial administration, Fyze shows, but the *qadi*'s etiquette and professional comportment also contribute to the *dar ul qaza*'s atmosphere and to the qualities of the hearing itself.

⁴² As I will discuss in Chapter Four, one reason that women were able to bring successfully framed claims to the *dar ul qaza* was because they had received guidance from *muftis'* *fatawa* about the kinds of claims they were eligible to make.

⁴³ Many of the case files I read petered out in the middle. Either there would only be a claim, after which there was no further evidence that the case had continued, or else there would be a claim, several notices calling the defendant to court, documentation suggesting that mediation had begun, after which there would be no resolution. The *muftis* who kept the files told me that this was common. People frequently opened cases that they later dropped. The *muftis'* analysis of this was that once a claim was made in court and mediation had begun, the defendant would take the plaintiff's complaint more seriously and they would find a resolution on their own.

can divorce. There are three kinds of property relevant to divorce in every form: *mahr*, *iddat* allowance, and maintenance. *Mahr* is “a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage, and even where no dower is expressly fixed or mentioned in the marriage ceremony, the law confers the right of dower upon the wife” (Fyzee 1964,133). Feminist legal scholars in India have argued that the right to *mahr* means that Muslim women are at least theoretically been more secure than Hindu women at the time of divorce (Agnes 1999). The *mahr* can be given in full or in part at the time of the marriage, although usually it becomes an issue upon divorce. *Iddat* allowance is money to which a wife is entitled upon divorce. *Iddat* is the three month (or three menstrual cycle) period following a divorce or the death of a husband during which a woman is not permitted to remarry (Fyzee 1974, 107). According to Fyzee, the reason for *iddat* is to ensure the paternity of any child whom the woman may have conceived before her marriage ended (1974, 108). *Iddat* allowance is therefore an allowance sufficient to support the wife during the *iddat* period. Maintenance refers to financial support in general, and as I discussed in relation to the *Shahbano* case, it has been a matter of some debate for how long a husband is required to provide his wife with maintenance after a divorce. During a marriage, it is his responsibility to maintain his wife.

The most contested form of divorce, and one that I will discuss at length in Chapter Four, is *talaq*, often referred to as unilateral male repudiation. This form of divorce is carried out when a man says to his wife “I divorce you” three times in a particular context. It does not require judicial intervention (Fyzee 1974, 152). If a husband divorces his wife by *talaq*, she is always entitled to her *mahr* and to *iddat* allowance for herself and any dependent children.

Another form of divorce is *khul'*. *Khul'* is a type of woman-initiated divorce available to Muslim woman both under the Hanafi school of Islamic law and under Indian Muslim Personal Law. Islamic law scholar A.A. Fyzee defines *khul'* as it applies in India as follows:

...when married parties disagree and are apprehensive that they cannot observe the bounds prescribed by the divine laws, that is, cannot perform the duties imposed on them by the conjugal relationship, the woman can release herself from the tie by giving up some property in return in consideration of which the husband is to give her a *khula*, and when they have done this a *talak-ul-bain* would take place (2005, 163).

The wife's offer to give up her *mahr* and her maintenance payments in exchange for a *khul'* is common practice, although it is not required. In her recent article on *khul'* cases in Hyderabad, Sylvia Vatuk argues that while the right to *khul'* is actively pursued by Indian Muslim women in family courts, this does not put them on equal footing with their male counterparts who can unilaterally divorce their wives by *talaq* (2008, 202). Vatuk found, as did I, that it is common for men to grant a *khul'* on the condition that the wife give up her *mahr* (which she often has never received) in addition to her right to maintenance payments during the separation period (*iddat*) (2008, 211-12).

The most common type of divorce in Delhi's *dar ul qaza* institutions was *faskh nikah*. *Faskh* means “an annulment or abrogation” (Fyzee 1964, 168). Fyzee writes that

the term means to rescind or to annul a deed and that “it refers to the power of the Muslim *qazi* to annul a marriage on the application of the wife. It may be defined as ‘The dissolution or rescission of the contract of marriage by judicial decree’ (1964, 168). As I discussed in Chapter One, the accepted grounds for this kind of divorce in Indian state courts changed significantly with the passage of Thanawi’s Dissolution of Muslim Marriages Act of 1938. As will become clear in the cases I analyze in this chapter, the *qazis* in Delhi’s *dar ul qaza* institutions grant *fakh nikah* divorces to women for the same reasons that the state courts do, among them abandonment and a husband’s sterility or chronic illness. *Faskh* does not negate a woman’s right to *mahr* (Fyzee 1974, 186).

Several of the cases I look at here are applications for *faskh*. Of the court records I read, in the majority of cases women were asking for *faskh* as opposed to other forms of divorce, notably *khul’*. Sabiha Hussain found a similar tendency—of the cases she followed, four were requests for *khul’* and forty for *faskh*. Hussain asked the *qazi* at the *imarat e sharia* why this was the case, and he responded that “women are becoming aware of their rights and are not ready to forgo or compromise their rights on *mahr* or maintenance” (2006, 18). When a woman receives a *faskh*, she is entitled to her *mahr* and to maintenance and does not have to negotiate for them, as in the case of *khul’*. However, Hussain found that when women are granted *faskhs*, they usually do not actually receive either *mahr* or maintenance although the *qazi* may have awarded it to them. This is largely because the *qazi* has no capacity to enforce such payments. I found that *mahr* and maintenance often do not even come up as issues in the *faskh* cases I studied, raising the question of whether seeking a *faskh* is really about the financial settlement in most cases. The cases I look at below suggest that this problem is not remedied in the civil courts, leaving women with little recourse.

Mehndi: *Marriage as a Negotiated Terrain*

The one case I was able to observe at the All India Muslim Personal Law Board’s *dar ul qaza* demonstrates the *qazi*’s approach to mediation and his role as guide. In this case as in the last, the *qazi* demonstrates his attentiveness to the unspoken aspects of the dispute, working to draw out the concerns of the individuals involved. The case is a conflict between spouses who have been married for about a year. The plaintiff in the case is the husband, who wishes to have his wife return to the marital home. The plaintiff explained to those assembled that his wife, the defendant, had left her marital home and gone back to her parents’ house after the two of them had had a fight. The plaintiff and the defendant agreed on the basic account of the argument: the plaintiff had given some of the defendant’s henna (*mehndi*) to his sisters without her permission, and she was enraged. The couple had argued about this, and the plaintiff “slapped” the defendant. The plaintiff and his father told the *qazi* that he recognizes that physical violence is unacceptable, and that he will not hit her again. The defendant’s father argued back that this kind of abuse would not be tolerated and that he required further proof that his daughter was safe in her marital home. As the defendant’s husband and father spoke, the defendant herself remained silent.

When, after significant prodding, the defendant would not speak, the *qazi* sent her father and her father-in-law out of the hearing room, leaving only the couple, the *qazi*, myself, and one other observer. The *qazi* again asked the defendant to tell her side of the story. She refused, and as he continued to push her, saying that it was insufficient to rely

on what she had written in her statement, she began to cry. In a voice thick with frustration, she told the *qazi* that she did not see why she should have to repeat what she had already written for him. As she began to cry, the *qazi* turned to me and to the other Ph.D. student who was observing and asked us to leave the hearing room so that he could speak with the couple alone.

The *qazi*'s conduct implied that he was aware that parental pressure could influence a couple's ability to negotiate on their own terms. By the time I observed this case, I had spent several months speaking with the *qazi* of this *dar ul qaza* about its procedures and about his role as a *qazi*. The *qazi* had told me that it was important to the process of hearing cases in the *dar ul qaza* that the environment be peaceful and quiet. He also needed to be able to configure the proceedings in part by deciding when different parties to the dispute should share the hearing room. For, he told me, in order to judge a case, he needed to be able to get a sense of what everyone in the room was thinking, and sometimes that required speaking to parties individually. Especially in cases of marital problems it could be difficult to tell whether the primary problem was between the couple or whether the parents were involved in provoking trouble.

The choreography of this session suggests one reason that women may find *dar ul qaza* institutions helpful. First, the *qazi* bases his judgments on "practical information (*hijaj*)" placed within a "framework of doctrine as its point of reference" (Messick 1993, 146). This means that he must carefully attend to the disputants' accounts of the problem. Second, as in the kadhi court where Hirsch conducted her research, the *qazi* works to create a space within which the more vulnerable parties can air their grievances (1998). He thereby encouraged the wife, whose comportment suggested distress, to voice her aims, desires, and grievances. Voicing conflict, he suggests, enables resolution.

When he called everyone back into the room, the *qazi* announced that the defendant would return to her husband's home. Her father immediately responded to this news, arguing that his daughter could not possibly have agreed freely to this, as she was terrified to return; further, he as her father would not allow her to go somewhere that he was convinced was unsafe. The hearing that day ended in a stalemate; the parties were again sent home, and asked to return in several weeks. After several months of *dar ul qaza* dates in which only one or the other of the parties would appear, the wife finally agreed to return to her marital home.

As with the other cases I will look at, the silences in this one are telling.⁴⁴ We know that the plaintiff "slapped" the defendant, but do not know exactly what this means. Did he give her one slap across the cheek, or did he beat her? Would one slap, humiliating

⁴⁴ The *qazi*'s silence, and the silence produced in my own account when he sent me out of the room, the plaintiff's silence in response to an injunction to speak mark another aspect of the institutions I analyze here. As Marianne Constable has argued, modern law is replete with silences about justice (2005). Constable's provocation is that: "The call to justice today takes place in silence. Voices call out of and to an unsayable silence. Law issues from silence as the necessity of claims and responses and as a calling that both binds earthbound persons to a world and frees them to be and to act in that world... Modern law, with its language of sociology and of power, fails to acknowledge any debt to what is unsayable. In this failure lies the particularity of the silence of modern law: it is a silence in which justice threatens to disappear" (177). Might appeals to or reverence for sources of justice lie within the *qazi*'s silences? Is the plaintiff's refusal to speak itself an acknowledgment of the justice that is beyond language? Although I am not yet able to answer these questions, in a dissertation dense with voices and narratives and linguistic appeals, it seems necessary to mark the silences that accompany the audible.

and inappropriate as it is, be sufficient for a young, newly married women to leave her home? Scholars have documented women's reticence to admit that their marriages are unhappy or abusive, and it therefore seems unlikely that the defendant would have brought her own family into the disagreement without cause (Hirsch 1998, Jeffrey 1979, Oldenburg 2002). It seems just as unlikely that a father would mount such strong resistance to returning this daughter to her marital home if he did not think her situation was serious. Whatever the exact nature of the violence, it is evident that the *qazi* did not spend much of the hearing investigating it. Instead, he emphasized the dialogue necessary to let everyone feel comfortable with the defendant returning to her marital home.

If the *qazi* appeared to be relatively inattentive to the potential seriousness of the defendant's position vis-à-vis her husband, he was more attuned to another important and related feature of marriage evident in all of the cases I studied: family. While I observed the *mehndi* case, there was another non-participant in attendance, a Ph.D student in the sociology department at Jamia Milia University. He identified himself to me as Muslim and as a resident of Okhla, and offered to give me his analysis of the case. His gloss on the unfolding dispute and mediation focused on the role of family in marital disputes. When the fathers and we were sent out of the room during the negotiation, the student interpreted this as the *qazi*'s way of simultaneously acknowledging the power of the couple's family to create or perpetuate disputes and communicating to the couple that their relationship was separate from these forces. My counterpart said to me, "in Indian families the in-laws can cause a lot of problems. Sometimes what seems to be a disagreement between the newly married couple is actually the result of the mother-in-law's complaints or of a dispute between the couple's parents." The comment struck me as simultaneously a truism, one that I hear repeatedly during my fieldwork, and as important to the choreography I had just observed.

Zakiya Rafat gives a similar analysis in her study of divorce in western Uttar Pradesh. She notes that divorces "do not take place because of a single quarrel," but that they are instead one possible end result of quarrels involving the couple and their families (2003, 83). She and others have established that far more relevant to the outcome of marital disagreement than the disagreement itself, or even than the couple, is the family's reaction, and the resources available to the couple and their families to deal with it (Rafat 2003, Bano 2003, Rasheed 2003). Given that permanent separation or divorce never came up during this proceeding, what it highlights are the negotiations, which usually remain within the sphere of the family, entailed in marriage.

Because this case focused on mediation and because neither party raised the issue of divorce or permanent separation, it raises different questions than the previous cases. The absence of a debate about property in the form of *mahr* or maintenance seem irrelevant as the wife did not complain of financial constraints. But the *mehndi* at the narrative heart of the dispute raises its own questions about the property and subjectivity of the wife. Could it be that the husband's decision to give away her property suggested more loss to come? Did it suggest that marriages could be debated and settled, but that property would remain out of reach? The question of property is central to the next four cases I analyze, which all concern divorce and foreshadow its aftermath.

Faskh Nikah: *Perseverance & Property*

In this section, I analyze four cases that involved claims to *faskh nikah*. The plaintiff in each case was a woman, and the plaintiff prevailed in three out of four cases.⁴⁵ In three of these cases, the ground for requesting a *faskh* was abandonment; in one case it was incompatibility and moral vulnerability. These four cases show how women made claims in the *dar ul qaza* institutions, the ways in which they appealed to law, to morality, and to prevailing gender norms in constructing their cases, and the role that property plays in these divorce disputes.

Case 1 was filed in *dar ul qaza* at Kashmiri Gate by a woman who had been married for seven years before bringing her case to the *qazi*. The plaintiff sought a *faskh nikah* on the grounds that her husband had abandoned her and did not financially support her. The first document in the case record was a typed request for a *fatwa* dated two days before the case opened in the *dar ul qaza* institution. The request was addressed to a *mufti* at the same *madrassa* in which the *dar ul qaza* was located. The request lays out the skeleton of the case and its claims; it also demonstrates the gendered terms in which women often make their cases in this, as in other legal forums. The request states: I, B, request that having read the following details about my rights and my situation you give me your opinion and your *fatwa*.

1. I was married to N, son of M, of [address] on the 12th of August 1995 and I went to live with my husband (*rukhsati hui hai*) on the 13th of August, 1996.
2. N, who works in America, returned to America in 1995 after the *Nikah* and he was to bring me along to America a year later after my *rukhsati*, but six years after our marriage, he still had not brought me there, rather, he and his family have kept my dowry which includes gold and silver whose value is about 18 lakh rupees (1,800,000 rupees, or at the current exchange rate about 40,000USD).
3. N gave me \$25,000, saying take this allowance; he also told her to go to his parents' house and live there with them. And when I went to my husband's rented flat, suffered much cruelty (*zulm*). They forcibly took 51,000 rupees from my account, and when I did not give them \$25,000 they beat me and sent me out of the house.
4. March 2000, my husband came back from America and spent a week with his parents. He even brought them back to America with him. I was only informed of this later. Because in this time N did not meet with me or his daughter, nor did he phone.
5. In the mean time, N's sister S sent the announcement from America that all relations between me and my husband had been severed (*sare rishte tut gaye hain*). N's brother also told me this, and that I should stay with my parents have have no further relationship with N. Because we did not have his phone number in

⁴⁵ The translation of *muda'a* as "plaintiff" and *muda'aliya* as "defendant" is not entirely satisfactory. While the application form (*darkhwast dene ka form*) which holds the initial petition of any case begins with blank lines to be filled with the name, parentage, and address of two people, connected by the word "versus", and therefore sets the case up in an adversarial form, as this chapter seeks to show, this is not the same kind of adversarial relationship that characterizes civil courts. However, inasmuch as the presence of two parties specifies a particular kind of court case, which Messick describes as "complex," rather than simple, in which there is a petitioner or complainant, a defendant, and a final judgment given in response to the dialogue of complaints, I will use the language of plaintiff and defendant to differentiate the petitioner from the defendant.

America, we could not get in touch and he did not call here. But he has our address and phone number. From all of these things it is clear that N does not want to maintain a relationship with me, and in addition to this he has not given me my expenses (*ikhrajat*) for six years. Nor has he had any marital relations with me (*izdawaji taluq*). We have tried with all our might (*behud*) to keep this relationship going, but they are in no way ready to maintain a relationship. Please, in view of the above mentioned details about my entitlements, my plea to you is that once you have issued a *fatwa* you grant me a *faskh nikah* to save me and my child from having our lives destroyed. I will be forever grateful for this.

There is no response to this request, which could be because it has been lost or was simply not included in the case record, or could be because rather than responding with a *fatwa*, the *mufti* transferred this document, as a claim petition, to the *dar ul qaza*. The request establishes the terms upon which the plaintiff makes her claim. It begins with the details of her marriage: when it took place, that it had been consummated, and that it had involved a large exchange of property in the form of dowry. Woven throughout the request is evidence of the plaintiff's condition in her marriage. It suggests that not only was she subjected to dowry demands, but she was beaten and treated cruelly in her marital home. She tells us that she was finally thrown out of her marital home, suggesting that in spite of the cruelty that defined her life there, she persevered rather than leaving for her parents' home. In other words, the document makes the argument that she and her family had kept up their end of the marriage bargain while her husband and in-laws had failed at every turn. Before making her final request for a *faskh*, the plaintiff once again expresses how hard she and her family have persevered in the face of her husband's abandonment. She argues that in spite of years of neglect, they had continued to hope and to strive for reconciliation. In spite of the implications of these details, the plaintiff makes it clear that her husband's abandonment is the central issue and that it has been complete: he has not sent her money, he has not called or written, the couple have not had a sexual relationship in six years, and all of her and her family's attempts to renew ties to the marital family have failed. In light of the details her request shares, it is surprising that her final request is for one thing—*faskh*—and that it does not include requests for the *mahr* and maintenance to which she is entitled.

Other documents from the court record further detail the claims laid out in the request. The plaintiff and her family had been under the impression that the defendant ran a successful business in the United States. At the time of the marriage, the families had agreed that the husband would return to the United States after the marriage but would immediately apply for his wife's visa and arrange for her to join him there. According to the petition, her husband returned to the U.S., taking the marriage contract (*nikahnama*) with him. He returned to Delhi a year later, without her visa, for a month-long visit during which the wife moved in with her husband's family and the marriage was consummated. This would, it turns out, be the last time she would hear directly from her husband.

The defendant returned to the U.S. after his brief visit without leaving the plaintiff any contact information, as she reiterates throughout her claim and testimony. While she waited for her visa, her in-laws began demanding money from her, stating that if she wouldn't pay them \$25,000, she was no longer welcome in their home. At this point, she

returned to her natal home, where she gave birth to a daughter whom her husband neither saw nor supported. After her in-laws asked her for one *lakh* rupees (100,000 rupees, or about \$2200 USD) for her visa which never appeared, the wife came to the *qazi* requesting a *faskh*.

After a painstaking process of gathering witness accounts, placing advertisements in the newspaper and issuing notice after notice for the defendant to appear in the *dar ul qaza*, the *qazi* grants the *faskh*. The case file includes written testimonies from five witnesses who support some or all of the plaintiff's claims. The five points that the *qazi* established were the date of the plaintiff's marriage, the date when she moved in with her husband, the existence of her child, the husband's false promise of a visa, and the husband's neglect.⁴⁶ The *qazi*'s ruling (*hukum*) states:

I have annulled the marriage of the plaintiff B, daughter of C to the defendant, N, son of the late M because of the pain he has caused her and his neglect of his responsibilities. Now, the plaintiff is no longer the wife of the defendant. She is now authorized to perform *iddat*. After this, she can get married again.

Signed, Qazi Shariat

The *qazi* thereby suggests that pain and neglect of responsibility are the primary reasons for which he grants the *faskh*. The decision is telling, both for what it says and for its silences. It implies that the husband has responsibilities to financially support his wife and he is also enjoined from causing her pain. Her emotional, physical, and financial well-being are all his responsibility. Just as the wife has emphasized her perseverance in the face of abandonment, the *qazi* emphasizes the husband's duties to his wife. In this way, both the claim and the judgment are framed within gendered terms of persevering wife and responsible husband. The *qazi* anticipates that the plaintiff will marry again in his decision, which further develops the gendered terms within which the case has been framed. The formulation of the ruling flows from the first husband's neglect to the wife's release, to the wife's responsibility to perform *iddat* to the wife's availability for remarriage. It makes no mention of the extensive financial losses the plaintiff has incurred throughout her marriage nor of any right she might have to financial compensation regardless of remarriage. The *qazi*'s decision to comment on the plaintiff's ability to remarry and his failure to bring up matters of property suggest that he sees his role as supporting the plaintiff's search for a more prosperous future through her ability

⁴⁶ It is striking that in Judith Tucker's account of 17th and 18th century Ottoman *fatawa*, Hanafi *muftis* enabled annulments on the ground of abandonment by asking their Shafi'i or Hanbali assistants to preside over the cases (1999, 84). Tucker reproduces a *fatwa* in which a woman comes with three witnesses to testify that her husband married her and then left for four years, leaving her "without *nafaqa* and without a legal provider" and without news of his whereabouts (1999, 85). The judge gave the *faskh* to the woman. Tucker writes: "This document contains the essential minimum information for a *faskh*: the husband is absent and his absence is attested; the wife has been left without sufficient support for more than a year; the woman swears that her husband has left no support (or insufficient support), and that she has not received news of him" (1999, 85). In the *dar ul qaza* institutions in Delhi, the *muftis* and *qazis* do not give annulments by relying on assistants from other schools of thought, but instead implicitly refer to the Dissolution of Muslim Marriages Act which is based on a Maliki ruling, as I discussed in the introduction).

to be supported by a second husband. For this, the decision implies, it is not necessary to struggle for *mahr* or unpaid maintenance from the family.

When I presented an early version of this material at a conference in Delhi, the discussant, an advocate in personal law cases in the Supreme Court, was appalled. She took issue with the lengthy evidence-gathering process in which the *qazi* engaged. She argued that in an abandonment case brought to state courts under the Dissolution of Muslim Marriages Act, the wife would not have had to provide extensive evidence of her husband's disappearance. The advocate's view was that the *qazi* had placed unnecessary obstacles in the way of the divorce by demanding so much proof of the husband's disappearance.

Hers was a salient critique given the *dar ul qaza* institution's claim to offer speedier resolutions to disputes than the civil courts. In retrospect, though, I am more curious about the question of *mahr* and other property. There is ample evidence provided throughout the case record that the plaintiff had suffered financial as well as emotional, moral, and legal injury during her marriage. *Faskh* does not require a woman to give up her *mahr* or maintenance—as Sabiha Hussain has pointed out—and yet the *qazi* did not bring property up at any point in the case. The *qazi* decided in favor of the plaintiff, but granted her just the bare minimum of what would have been possible: a divorce. Silence on the matter of property turns out to be a theme in the *faskh* cases I read.

Case Number Two

The *dar ul qaza* at the All India Muslim Personal Law Board heard a similar case to the one above in which a woman sued for *faskh* after seven years of marriage. The defendant, the plaintiff's husband, is a researcher in Unani medicine⁴⁷ at a major Muslim university in north India. After her marriage, the plaintiff moved to Delhi to live with her husband and his family. Two years later, her husband left and never returned. The wife and her in-laws did not know where he had gone. The wife continued to live with her in-laws, but complained in her petition that they did not treat her well. The entire family was distressed about her husband's disappearance. The plaintiff's opening petition to the *dar ul qaza* stated, "If my husband returned, I would happily go back to him, but if he does not, I would like a *faskh nikah*. I would like to have a peaceful life." This case file resembles the other petition *faskh nikah* on the ground of abandonment: it contains not only the petitions and letters typical of all *dar ul qaza* records, but depositions of witnesses who can attest to the husband's disappearance, and notices from the local Urdu newspaper, *Nayi Duniya*, requesting the husband's presence at the *dar ul qaza*.

The newspaper notice, which is written by the wife as a public summons, states: "Since you left, I have not heard anything from you. Your brother told me you never arrived in Aligarh. We are all in a bad way, your parents, your brother, and I, and we do not know where you have gone." The notice includes a telephone number where the family can be reached and a photograph of the missing husband. The notice is followed in the case file by another letter from the wife restating her situation. This time she adds, "I have waited for him at the house, as have his parents. I have put an announcement in the paper. I have no idea where he is, and I do not receive any *kharch* (allowance) from him or from his family." Her brother-in-law corroborated her claim in his testimony. He wrote

⁴⁷ Unani medicine is a "system of Greek medicine that has evolved within the Muslim world" (Fleuckiger 2006).

that he knew the couple was married six years earlier but he did not recall the exact date. He also confirmed that since the husband's disappearance no one had heard from him, and that he had not sent any money in maintenance. No one, he wrote, knew whether his brother was alive or dead, and his sister-in-law needed some kind of financial support. All of the letters attest to the plaintiff's parents-in-law's support of her *faskh nikah*.

The petition in this case bears some resemblance to Case One. As in that petition, here the plaintiff presented herself on numerous occasions as a persevering and dedicated wife. In spite of having been abandoned, she wrote that were her husband to return, she would remain dedicated to living with him. She also emphasized that she had remained in her in-law's home although they had treated her poorly. As the case went on and her newspaper announcement went unanswered, her rhetoric became stronger as she emphasized that she and his parents had been waiting for him for some time and she had begun to lose patience. Her claim is thus predicated on her testament to her patience and her dedication to her husband.

The claim is also predicated on something else: financial insecurity. As in Case One, the plaintiff weaves indications of her financially precarious position throughout her claim. One of her letters stated that she had been without any allowance since her husband had left since neither her nor his family were providing for her. Yet when she formulates her divorce claim, she makes no mention either of *mahr* or of maintenance. Indeed, her brother-in-law's testimony strategically drives a wedge between the husband's responsibility to maintain his wife and the husband's family's responsibilities to her. This is all the more notable given her argument that she has persevered in her in-laws' household—that she has tried to be a good family member, and that she understands that her duties as a wife extend into her duties to her affinal kin. Her brother-in-law instead insists that if the plaintiff's husband is not available to support her, she should be given a *faskh* so that she no longer remains under the in-laws' roof but can find other means of support. In this case, the plaintiff appears to seek a divorce not for financial reasons but as a way to leave her in-laws' home gracefully and with approval from the *qazi*. Once the case has run its course and all the relevant documents were assembled, the *qazi* granted the annulment without mentioning either *mahr* or maintenance.

Case Number Three

In Case Number Three, the plaintiff sought an annulment *not* because her husband has failed to maintain her or has disappeared in the same way as in the first two cases, but because her in-laws violently demand money from her and otherwise make her life miserable. In her petition, the plaintiff wrote that ever since her marriage, her husband and his family repeatedly demanded money from her and that they finally threw her out of the house when she was unable to produce it. According to the wife, after a brief period of marriage, her in-laws and her husband began asking her for money and sabotaged her ability to do the household labor expected of her. When she did not pay the money they demanded, her husband would beat her. Finally, when she became weary of trying to fight her in-laws' demands on her own, she asked her father for the 15,000 rupees her in-laws demanded in the presence of her father. Her parents did not have the money, and when it became clear that she would not be the source of more income, her

husband began to beat her even more frequently. In the petition, the plaintiff wrote that she told her mother, sisters, and brothers that she felt disgraced (*hud se zaleel kiya gaya*).

As time went on, her in-laws demanded that she do more and more of the household labor, and they continued to ask her for large amounts of money. One evening in 2001, six months after her marriage, her in-laws sent her from the house telling her that until she came up with 25,000 rupees, she should not bother returning. Since that evening, she had been living with her mother and her brothers, who provided for her and took care of her expenses. Almost a year to the day after her marriage, the plaintiff gave birth to a son. No one from her marital home came to see the boy, and they had not provided any money to support mother or child. Since her husband had not sent her any support, she requested a *faskh* on the ground of abandonment. However, as in the previous two cases her only claim was for divorce: she did not ask for her *mahr* or for any maintenance.

In a pattern by now evident in the *dar ul qaza* cases, the plaintiff had brought her case to a number of other legal institutions before approaching the *qazi*. Her account states that she brought her case both before the Women's Crime Cell, a division of the police whose aim is to intervene in cases of domestic violence and dowry demands, and before a municipal court judge. Although the judge in the Municipal Court determined that she should receive *mahr fatimi*⁴⁸ and an annulment, there is no evidence that the courts enforced this token financial compensation. The courts' unresponsiveness is not surprising because, as scholars have shown, it is common for cases of domestic violence and dowry abuse filed with the police to go for long periods of time without conclusion.⁴⁹

In addition to this complaint, the *dar ul qaza*'s record shows that notices were sent to the husband informing him that his wife had brought a case against him and that if he wished to contest the charges and to avoid having his marriage annulled, he should appear at the *dar ul qaza* at the specified date and time. The file also contained a letter stating that the husband did not even speak to his family or his neighbors for reasons that are not given. Finally, with no trace of the husband ever having appeared to make his case before the *qazi*, the *dar ul qaza* issued the *faskh nikah* that the wife had been seeking. Glaringly absent from this case, as from the previous ones, are negotiations about the *mahr* and about maintenance payments.

As in the previous two cases, the petition is built around financial difficulty, domestic abuse, and the plaintiff's perseverance. The wife's complaint in this case was about ill-treatment and dowry demands. Yet the increasing dowry demands do not exhaustively account for the marital trouble. The wife's petition suggested that she persevered in the face of an increasingly hostile home life, in which the labor expected of her as a daughter-in-law was sabotaged and in which she describes being treated

⁴⁸ *Mahr Fatimi* is the amount of *mahr* offered by the Prophet Muhammad for his favorite daughter, Fatima—500 dirhams Fyzee (1964, 135). This is approximately 100 rupees (Rashid 2004, 88) or \$2.19.

⁴⁹ In several of the cases I studied, complaints with the Women's Cell did little more than throw the husband in prison for a day. In a case I will turn to later, the wife reported that her husband had stolen her jewelry, the state arrested and held him for a day, and then the case initiated by the state against the husband languished in court for six years until the wife finally brought another case to the *dar ul qaza*. Like the plaintiff in this case, the slothful judicial system seemed to make compromise, not pursuit of justice, her only real option. Flavia Agnes (1992) and Maithrayee Mukhopadhyay (1998) have both shown the difficulty of pursuing a case filed under CrPC 498A. In her recent article, Srimati Basu also notices that the courts often do a poor job of enforcing the payment of rewards (2008, 509).

disgracefully. The husband and wife are not the only, and in some ways not even the central, characters in the story. Instead, the marital relationship is embedded in the family. Likewise, after being thrown out of the house, and giving birth to a son whom the in-laws do not acknowledge, the wife appears to have been abandoned by the entire family, not only by her husband.

Veena Oldenburg's account of dowry murder in north India, which includes her own story of life-threatening marital conflict, argues that dowry demands rarely occur independently of other strains and violences within the marital home (2002). While it is unclear in the court record what all the elements of this particular marital and family conflict are, it does seem that dowry demands are only one among several issues.

Dowry has a double face in the *dar ul qaza*'s cases. It appears in numerous cases; however, it is only rarely cited as the source of conflict. Some cases contain lists of items that were given as dowry at the time of the marriage. Others describe arguments over whether certain property is to be distributed between a husband and a wife who are in the process of divorcing, or whether it belongs to their daughter's dowry (*jahez*). However, dowry becomes something quite different in the context of dowry demands, introducing a particular kind of financial and emotional exploitation into the scene.

Srimati Basu has analyzed the double character of dowry as sometimes acceptable and sometimes scorned (2005). Basu differentiates between the giving of a dowry, which most participants in the marriage scene deem acceptable, and demands for dowry that are considered crass and unacceptable (2005, xix-xx). She cites her own and Ranjana Kumari's studies, arguing that "These findings correspond with those of many others who report that it is the demand that is the focus of ire; otherwise women are interested in dowries, especially in items for themselves and the conjugal home, reading it most often as a transfer of resources rather than a marker of hypergamy or gender subordination" (2005, xx). In this case, the plaintiff's ire over the dowry demands did not diminish once the civil courts had failed to adequately respond to her complaint. However, by the time she brought the case to the *dar ul qaza*, her priority appears to be the *faskh* rather than maintenance or other financial compensation. Once again the wife as plaintiff appears to approach the *dar ul qaza* strategically as a place to be freed of her marital obligations in the face of the courts' failure to provide her with financial support.

These three cases are united by the claims that their plaintiffs make, but also, and perhaps more profoundly, by the issues that bring them to ask for annulments and by the strategies they use to present their cases. All three cases involve financial demands, although only the last concerns dowry. All three chronicle abandonment by husbands and cruelty perpetrated by in-laws. All three cases are framed around and through the trope of perseverance on the part of the wives. These claims to perseverance form a moral groundwork from which each plaintiff makes her case for divorce, arguing thereby that her claim is not frivolous and that she does not make it because she has been unwilling to try to make her marriage work. The next case shows, by way of contrast, just how important this trope of perseverance may be as a means of persuasion.⁵⁰

Case Number Four

⁵⁰ As I will elaborate later in the chapter, perseverance is also one of the significant tropes through which proceedings in the kadhi courts that Susan Hirsch studies are gendered.

In Case Number Four, a woman entered a complaint with the *dar ul qaza* after three years of marriage. Her aim was to receive a *faskh*, and her reason was that this divorce was necessary to “protect my religion and my life.” Her complaint paints a portrait of an unhappy marriage rife with demands for money, conflict, and insecurity. She writes that she moved out of her marital home because she did not know how her husband would be able to support her and because she feared that he earned his living by *haram* (unlawful) means. The complaint culminates with a dramatic anecdote: after she moved back in with her parents for the last time, her husband came to the house repeatedly, begging her to return. When she and her parents refused, her husband took a piece of glass and cut his hand, saying that he was unable to live without his wife. “From that day until this,” the complaint states, “the defendant has not come to our house and has not given anything for food money, nor has he come again to ask me to come to his parents’ house.” She wanted him to divorce her by *talaq*, she writes, but he refused both that and a *khul’*.

In the defendant’s reply to these accusations, he denies having made any demands on the plaintiff. Further, he argues, he is a “courteous/polite/virtuous (*sharif*) man, and the atmosphere (*mahaul*) in [his] house is very clean/chaste (*pakeez*).” He argues that when his wife returned to her parents’ house it was because she was not well, and that from that time forward she and her relatives treated him poorly. He writes that his wife made him so miserable that his relatives told him he should pronounce a divorce (*talaq*), but that he felt this would be wrong so he persevered. In this case, which includes little more than these two mutually contradictory letters, the *qazi* rules that the couple should try to work things out by going together to speak with a cleric. “I refuse to give the plaintiff a *faskh nikah*,” he writes. Instead, the couple should try for three more months to work out their differences after which they should send a report to the *dar ul qaza*.

Notably, this is the only case I read in which a woman’s plea for a *faskh* was denied. It is also the only case I read in which the plaintiff, rather than making a clear argument about her perseverance in the face of a difficult marriage writes that she left her husband because she was ill-treated. She instead focuses on her husband’s and in-law’s abuses and on the allegation that her husband is in a *haram* line of work. In this way, she draws on tropes similar to those presented in the first three cases. But here, there is no thread of perseverance, only an elaborate account of woes and of concerns about her moral well-being. In this case, it is the defendant who claims to have the qualities that give him moral superiority: he is polite, he is courteous, and his home is peaceful. It was his wife, he argues, who made life difficult; but in spite of her bad temper and his relatives advice that he divorce her, he persevered.

The final difference between this and the first three *faskh* cases is that here the husband is available to tell his side of the story, and he claims that he wishes to remain married. There is no evidence that she is financially in need or that the couple has reached the limits of negotiation. In showing the limits of a *faskh* demand, this case demonstrates that success in the *dar ul qaza*, as in other adjudication institutions, depends significantly on the way in which the disputants frame their claims.⁵¹ Whereas the plaintiffs in the first

⁵¹ The kinds of claims that are successful here demonstrate these courts’ differences from those analyzed in the context of the United States. Anthropologists of law have long argued that the rhetorical framing of claims has a significant impact on their success. Conley and O’Barr make this argument by identifying two different types of litigants, “*relational* litigants” and “*rule-oriented* litigants” (1990, 58). The former tend to tell the court in detail about their social lives; “their accounts emphasize the social networks in which

three cases presented petitions that combined the moral and legal means to persuade the *qazi* of the need for divorce, in this case the plaintiff misfires on both fronts. Her situation does not legally call for a *faskh* and her moral argumentation fails to convince the *qazi* of her position. As the next case suggests, when a case has run its course and a couple demonstrate that perseverance has yielded no marital stability, the *qazi* does recommend divorce, even when it is not in the initial claim.

Morality and Law in the Dar ul Qaza

If the female plaintiffs who approach the *dar ul qaza* usually show keen strategy and realistic assessments of what these courts can provide, the *qazi* provides mediation proceedings that can hear and make recommendations based on silences in the petitions. In one case whose record I studied, the husband was the plaintiff, and his claim was that his wife continuously ran away from her marital home, where she lived with him and his family, to her natal home. The complaint states that the plaintiff has been trying to convince his wife to live in her marital home ever since their wedding celebration, but that through three years of marriage she has consistently refused. The husband constantly called the wife's natal home, trying to convince her to return to him, in response to which the wife's family filed a complaint with the police. The husband, who argued that he was only trying to fulfill his duty of living with his wife, retained a lawyer in response to the police report. Finally the couple, with the wife's father, went before the neighborhood organization (*mohalla society*) to discuss their problems.

None of these measures resulted in the wife's happy return to her husband's home, although after each confrontation, she would move to her marital home for several days before leaving again. At some point during the negotiations, the wife became pregnant, and she gave birth to a daughter, information that her husband omits from his account of the story. The defendant was treated so poorly at her marital home during her pregnancy that her father brought her back again to her natal home. According to the defendant's father, the child was 13 months old at the time of the *dar ul qaza* hearing and the plaintiff has not seen his daughter in a full year. The husband's complaint focused on his wife's failures. He claimed that she is obstinate, rude, and disrespectful towards him and his family. Throughout the case, no clear aim ever emerged from either the plaintiff or the defendant. Instead, both appeal to the *qazi* as a moral guide, asking for advice about what he ought to do.

Concomitant with the parties' view that the *qazi* could offer moral guidance, the discussion in this case focused on norms of marital and familial behavior, suppressing the undercurrent of tension that suggests that "incompatibility" between the spouses may serve here as a euphemism for abuse. The husband's central argument was that as a

they are situated, often to the exclusion of the contractual, financial, and property issues that re typically of greater interest to the court" (1990, 58). They understand the law to be "empowered to assign rewards and punishments according to broad notions of social need and entitlement" (1990, 58). Rule-oriented litigants, by contrast, "interpret disputes in terms of rules and principles...They see the law as a system of precise rules for assessing responsibility, and reject as irrelevant everything not circumscribed within these rules" (1990, 58-59). These litigants tend to think like the court, and as Conley and O'Barr note, the court usually decides in favor of the rule-oriented litigant. In this context, the relevant distinction seems to be between morally grounded arguments and non-morally grounded arguments. Legal claims are intimately bound up with moral qualities in this context.

husband, he ought to live with his wife. He argued that the wife has from the beginning been obstinate, picking fights with him and on one occasion tearing his undershirt. He further accuses his in-laws of insufficiently supporting his marriage and trying to keep his bride from him. His complaint states that when he had to move to another city for work his in-laws “forbade [him] to bring [his] spouse with [him].” He argues, by contrast, that he is flexible and has made every attempt to make his wife happy. He writes that he will even work to procure a home separate from his parents for the two of them if that will make her feel better. Along with offering to make his wife more comfortable, though, the husband accuses her of having a “bad character,” a common euphemism for being unfaithful, and of avoiding him when she is in her marital home. By contrasting his patience with his wife’s misbehavior, the husband seems to demand assurance that he is doing what a husband ought.

The wife’s side of the dispute, which is wholly submitted to the court in letters written by her father, includes explorations of piety, morality, and the requirements of a dutiful husband. Her father’s narrative about himself, his daughter and the story of her marriage takes shape through a set of contrasts he sets up between himself and his family as pious and moral, and the plaintiff as immoral, inverting the husband’s claims along the same moral axis. In the opening paragraph of the defendant’s father’s first letter to the court, he states:

My son-in-law and his parents are liars and dishonest people. They make extreme statements all the time. There is no honesty in their petition. They don’t differentiate between the men of the family and men who are not of the family (*mehram* and *gher-mehram* people)...Since they are such un-Islamic people, how can they come before an Islamic *adalat* and tell the truth? God knows how my daughter and I got stuck with these people. We are working hard to sort this out, and may God grant these people some wisdom so that my daughter can settle into her marital home. If I didn’t think this way, I would have gone to the Women’s Cell.

In this emblematic paragraph, the defendant’s father presents himself to the *dar ul qaza* as a religious and morally-upstanding man by contrasting himself to the plaintiff, whom he accuses of failing on both counts. To make his point, the defendant’s father lists several traits that characterize the plaintiff and his family. They are, he tells the qazi, dishonest and extreme in their statements. He does not stop at this, however, and his opening lines crescendo to the final point: that the plaintiff’s family does not discriminate between men who are part of the family and those who are not (*mehram* and *gher-mehram*). The statement comes as a surprise in the context of this letter, which is for the most part focused on elaborating the specifics of the case. This particular accusation, though, appears to be a general commentary on the way in which the family members comport themselves: unlike the preceding allegations, this one pinpoints the family’s *religiosity*. Not to discriminate between men related to the family and unrelated men *in general*, the respondent suggests, reflects badly on the plaintiff’s religious character and, more specifically, on his qualifications to testify truthfully in the *dar ul qaza*. If the family does not abide by Islamic social strictures, such as the separation of women from unrelated men, in the course of their daily lives, how can they be expected to be honest in

an Islamic court? This appeal suggests the relevance of daily practices that accord with moral norms in arguments before the *dar ul qaza*.

The undercurrent of the father's insistence on his son-in-law's insufficient religiosity is more sinister. In the quotation above, the father culminates with a thinly veiled threat to take the case to the "women's cell," which is a special branch of the police dedicated to taking complaints of domestic violence and dowry threats under 498A, which I have discussed above. The allegation is one of reportable and actionable violence. The suggestion of violence is laced throughout the case's silences. In response to the husband's allegation that the wife and her family have asked for a *talaq*, the father writes: "A husband ought to provide his wife with serenity and security, and she is supposed to be able to talk to him. If she cannot, then she has two choices, she can kill herself, which is very bad (in a religious sense), or she can go to her parents and think how to separate herself from her husband." He quickly adds that the girl and her family are not asking for a divorce, but that in this situation it would be called for. The violation he explicitly claims is a violation of serenity and security as well as of the capacity of communication. But if the options presented to the woman are suicide and divorce, the former illegal and immoral and the latter immoral, the lack of serenity likely indexes the presence of violence.

Both husband and father emphasize that their primary aim is to find a resolution to the marital strife. The husband focuses on painting a picture of himself as a morally upright man and a dedicated husband deserving of his wife's dedication, while the father simultaneously questions the husband's character and articulates his own hope that the marriage can be salvaged. Both parties emphasize their dedication to a resolution by elaborating the number of remedies they have tried before seeking recourse with the *qazi*. Patricia Jeffrey has argued that in the Indian context, there is a strong taboo against bringing one's private disputes into the public, and that women especially are more likely to live with an unhappy marriage than to try to get out of it (1979). Sabiha Hussain also found that for all their problems, *dar ul qaza* institutions do provide Muslim women with a face-saving option (2006). She recounts one case in particular in which a woman who was regularly abused by her husband finally told her father about her situation (23). Her father filed a police report (FIR). The woman then decided to file for a *faskh nikah* at the *dar ul qaza* "as going to the civil court would bring dishonor on the family, and make it difficult for her two sisters to get married" (2006, 23). The *dar ul qaza* presents not only a pragmatic option for women in such situations, but also an honorable option.

Susan Hirsch documents a similar phenomenon in Kenya (1998). Hirsch tells the story of one woman who told her that she had been reluctant to bring her case to the *kadhi* court because of the shame it might bring on her family (82). Hirsch's informant argues that "before" it was shameful to bring one's family's private matters into the public realm of the court. Hirsch describes the process which *kadhis* in the Islamic courts she studied instruct disputants to follow: first a husband should talk to his wife, then he should withhold sex; if this still does not convince the wife to reconcile, he can use mild physical force; this can be followed by another period of withheld sex, and finally consultation with a third party about the dispute (91). The point is that prior to seeking legal counsel about such a personal conflict, the couple ought to try to resolve the problem, albeit through a particularly gendered form of sanction. Hirsch notes that since women do not have the same capacity under Islamic law to sanction their husbands in

this way, they often “persevere” and then seek recourse in the *kadhi*’s court, where they feel they receive a good hearing.⁵²

The *qazi*’s role in the case file suggests that as a mediator he is responsible for guiding relationships into morally normative order. The deluge of arguments on both sides of the dispute are uninterrupted by editorial comments in the file. However, the *qazi* intervenes with his final decision. The decision, which is more of a recommendation than a judgment, focuses on the unspoken tension underlying the appeals to moral uprightness and religious dedication. He writes:

Looking at this with great thought and attention, I have found that the girl is responsible and that she does not want to live with the husband. Nothing in Islamic law is holding him down. The shariat has allowed him to divorce his wife whether the girl and her family want it or not, because the problem started with her. For this reason, the shariat gives him the right to divorce. After the divorce, he has to give her the *mahr*, but for the next seven years she will have custody of the child unless she remarries in which case the husband will be responsible for her care.

While at first glance the *qazi* blames the wife for the marriage’s failure, the focus of his judgment is not on penalizing wrongdoing, but on laying a legal and moral foundation for the husband to do what the wife needs him to: divorce her. Throughout the case, the wife’s father has raised the idea of separation, while the husband consistently insists that he wishes to live with his wife. Divorce is legal under Islamic law, but it is considered to be morally undesirable. By suggesting to the husband that “nothing is holding him down” and that according to *sharia* the husband is entitled to divorce his wife, the *qazi* implies that he recommends a divorce. The *qazi* does not mete out judgments of guilt and innocence, but engages in a practice of narrative and affective engagement designed to reorder the intimate lives of the disputants in accordance with conditions for living moral lives.

This mode of engagement resembles the spaces of maneuver Ottoman *muftis* opened for women through their *fatawa* (Tucker 1999). Judith Tucker found that although women in this other Hanafi context had more limited access to divorce than their husbands, the *muftis* whom they approached for advice often supported them by upholding divorces that their husbands denied having given. The possibilities that Tucker notices are made possible through a collaborative effort of *mufti* and *mustafti*

⁵² This predicament is not limited to Muslim women. Srimati Basu shows that Indian women who belong to various communities face significant impediments to “taking their rights” (1999). The phrase that serves as the title for her book, “she comes to take her rights” (*wo aye haq lene*), captures the problem of women and property, or the troubles women have gaining property. Basu analyzes the phrase as follows: “Even while *hak lena* or “taking rights” has a strong pejorative connotation in this context, implying greed, a selfish focus on individual rights, and a monetization of family relations, ironically the notion that availing of one’s “rights” is the right or correct thing to do by standards of legal equality cannot be erased” (1999, 118). Taking one’s rightful property can be considered greedy and selfish, an act that disrupts the affective economy of which women are part as wives, daughters, daughters-in-law, and mothers. But taking one’s rightful property is also the aim of legal equality. While Basu looks at the impediments to taking a property dispute to court, in this chapter I am concerned to think about the various ways in which divorce and related property issues do and do not appear in the civil courts and the *dar ul qaza* institutions.

(questioner). While *muftis* would sometimes send *mustaftis* to *muftis* practicing another school of law when it would benefit the *mustafti*, *mustafti* also demonstrated their legal acumen through the questions they asked. In one case, a wife went to a *mufti* to tell him that her husband had divorced her two years earlier but that he wanted to take her back. She produced witnesses to the fact of his having divorced her, and the *mufti* declared that the divorce was irrevocable. Although the wife did not have the ability to divorce her husband, she was able to appeal to the *mufti* for his authorization, thereby getting her way. This seems to be what happened in the case above. Both parties oscillate in their claims and in their stated aims. However, it becomes apparent to the *qazi* that if the wife were able to live in her husband's home and to maintain a marriage with him, she would not have left him regularly over a three year period. Thus, without being explicitly asked either by the husband or the wife, he declared that the pair would be better off if they separated. Further, the couple had exhausted the remedies available to them without success.

This case is interesting for another reason as well: although there is no mention of financial concern in the claim or in any of the other documents, the *qazi* writes into his decision: "after the divorce, he [the husband] has to give her the *mahr*". The statement is unusual in the *dar ul qaza* institution, as most judgments avoid the question of property in divorce. Instead it resembles the formulations in *fatawa*, which regularly reminded the questioner of his responsibilities to his wife in divorce. The resemblance may have more to do with the kind of divorce in question than with the forum: in both cases the kind of divorce at issue is a *talaq*, which does not require judicial involvement. Further, in the case of *talaq*, the mufti's role is to remind the husband of his moral and legal responsibilities, not to enforce them. In this case as well, the judge delivers advice rather than a judgment and it is within the husband's ability to follow that advice if he deems it useful. Ironically, it is in case like this where the *qazi* addresses the party in control of the property that he remarks on the wife's right to it; in cases like the three *faskh* cases with which I began, in which the *qazi* addresses the wife, who is economically the weaker party and not in a position to demand property from her husband or in-laws, he does not mention property at all. As I will elaborate later, this ironic pattern of silence and outspokenness reflects the *qazi*'s position in the Indian legal system: unable to enforce his judgments about property, he avoids making them.

Before the Dar ul Qaza—Beyond the Law?

The cases I have examined thus far highlight various aspects of the *dar ul qaza* institutions' proceedings, the *qazi*'s methods of adjudication, and the gendered dynamics of marital dispute mediation in the *dar ul qaza* institutions. In these cases, the *qazi* usually grants the divorce that women, and on occasion men, request. However, neither the plaintiffs nor the *qazi* mentions the financial arrangements and negotiations that a divorce might unleash. The plaintiffs in these cases also have not attempted to hold onto their marriages in order to be more eligible for maintenance (Basu 2008). In some of the cases it seems that the women have exhausted the other remedies available to them and therefore turn to the *qazi* as a reliable way to receive a divorce, if not maintenance payments. In other cases, women appear desperate to find a way out of violent or demanding marital homes through divorce. The case that follows throws into relief the relationship between state courts and *dar ul qaza* institutions; it suggests that state courts

are implicated in the *dar ul qaza* institutions' seeming avoidance of post-divorce property division.

This case is among the first that I read in the archives of the *dar ul qaza* at Kashmiri Gate in Old Delhi. When I read it, I assumed that the separation between state courts and *dar ul qaza* institutions about which I had read and been told was relatively strict. The Vishwa Lochan Madan petition had recently been submitted to the Supreme Court, a motion I took as further evidence that the *dar ul qaza* institutions operated far from the jurisdiction of the state courts. This case posed a problem for this view: replete with documents from other courts, it staged a dialogue not only between a husband and wife but also between the *qazi* and a judge in the Delhi district court. This case more than any of the preceding ones lays bare the problem of enforcement and the relationship between civil courts and *dar ul qaza* institutions whose effect is to limit *dar ul qaza* cases to divorce apart from the property implications of it.

The case was filed at the Kashmiri Gate *dar ul qaza* in January of 1994 by a woman who wanted divorce (*khul'*) after seven years of marriage. The complaint she submitted to the *dar ul qaza* included that her married life had been ridden with violence and cruelty (*zulm*). She wrote that her in-laws spat on her, hit her, and told her that she was not worthy of her husband. They called her a *tawaiif*.⁵³ The defendant (her husband) she alleged, had threatened that he would "neither keep her nor leave her," implying that he would neither treat her as a wife and therefore member of his natal household nor grant her the divorce that would enable her to remarry. She recalled the defendant saying to her: "I will make you sick of your life, I will torture you, I will ruin you...I will take you somewhere for an hour and I will ruin your face." Further, she argued, her husband was seeing other women. She had left her marital home after the first year of her marriage from 1987 to 1988, unwilling to put up with further abuse from her in-laws or her husband. At the time of this petition, the plaintiff was asking for a *khul'*. At the outset of her opening petition, the plaintiff offered to forgive her *mahr* and the payment of 200 rupees per month that she had been receiving from her husband because of another settlement in exchange for the divorce. The case had arrived at the *dar ul qaza* after making its way for six years through the civil and criminal courts. The plaintiff ultimately forfeited her property and received her divorce a year after she first brought her case to the *dar ul qaza*.

In her initial petition, the plaintiff established herself as a persevering wife. She lived with her husband and her in-laws through a full year of physical and verbal abuse. By framing her situation in these highly moral terms that focus on her in-laws' attempts to hinder her from living productively in her marital home, the plaintiff's rhetoric suggests that certain kinds of arguments are audible within the *dar ul qaza*. She has a strong aim: to receive a divorce. But she introduces her argument for divorce through a description of a marriage that has failed, and not because she has been an errant wife but because her husband has not lived up to his obligations as a husband.

The plaintiff's rhetorical emphasis on perseverance as the ground for her argument renders her approach similar to that of Muslim women in other contexts and

⁵³ *Tawaiif* is sometimes translated as prostitute, although historically, it refers to the courtesans of the Mughal courts who were dancers and poets and entertainers. While these women did not marry, and were the sexual consorts of the men who attended their performances, they were engaged in a kind of sex work not described by the term prostitution (Oldenburg 1990).

also of Indian women in the civil courts.⁵⁴ Susan Hirsch argues that in coastal Kenya where she conducted research on *sharia* courts, women were “counseled to persevere when they encounter domestic problems. A wife is said to be more loved when her husband knows that she is keeping quiet about a problem” (1998, 91). However, Hirsch found that this idea of perseverance was relatively circumscribed: women who tried to persevere through serious abuse were considered to be stupid (1998, 92). Not only does this very logic undergird this complaint, but it is one that I repeatedly encountered when doing my fieldwork. Women, one informant told me, have a primary responsibility to care for the household and for their husbands and children. But if their husbands, children, and in-laws, who equally have a responsibility to them, do not reciprocate this care, women ought not bear the abuse silently. The theme is one that comes up repeatedly in the court cases I look at here perhaps because it is exactly in such dire situations that women decide to take their grievances to a third party.

The defendant’s petition took a similar approach to presenting his rebuttal, but suggested that he, not his wife, had suffered a moral affront. The defendant contested the plaintiff’s claims point-by-point in the petition, which is written in the form of a letter to the *qazi*. The defendant’s letter was peppered with unsavory characterizations of his wife and her family. Her complaint, he argued, did not suggest anything about *him*, but instead revealed his wife’s bad character. “She is ill-mannered and immoral (*bad chalan*)” he says; “she has lied to the *sharia adalat* (*sharia* court) which shows you what kind of woman she is.” The defendant further argued that the plaintiff’s statements to the court show “the shamelessness (*beniqab*)” of the wife and her family who “lie and give baseless accusations. This is a habit of these people (*in logon ka adat hai*)”. Like the plaintiff, the defendant presents his case in moral terms. Plaintiff and defendant appear to agree that the pertinent issue is whether the plaintiff was or was not a good wife, and whether the defendant was or was not a good husband. The defendant’s rebuttal implies that his wife’s immorality and bad behavior were to blame for her misery. He claims that he never threatened her and never harmed her. Instead, according to his account, he was the party who persevered. Indeed, he goes so far as to argue that he would like to retain the plaintiff as his wife, further emphasizing his patience and perseverance. Unlike in the cases the Hirsch studied in Kenya, in this case plaintiff and defendant, woman and man, deploy a shared language of morality to present their respective positions. Both men and women tell their stories with significant emotion, and they invoke morality rather than legal entitlements in the context of the *dar ul qaza*. However, men and women represented themselves and are addressed as different kinds of subjects: the plaintiff’s supposed transgressions included shamelessness and bad temper while the defendant’s include violence and excessive domination. This implies that the husband and wife ideally inhabit a relationship of obedience and protection rather than ill-temper and violence.

Because this case traveled through three other legal channels before arriving at the *dar ul qaza*, and because the records of these other channels have been integrated into the

⁵⁴ Among the excellent work on the social conditions undergirding and making possible legal claims in India’s civil and criminal courts is Maithrayee Mukhopadhyay’s research showing that in order to succeed in attaining divorces and/or financial support after a divorce, women had to prove that they had been good wives and mothers (1996). She argues that women can only effectively claim rights if and when they are first able to prove themselves to have properly performed the duties that fall upon them as women.

dar ul qaza case file, it enables a comparison between the rhetoric and claims in the *dar ul qaza* and in the civil and criminal law apparatuses of the state. The plaintiff's petition summarized the trajectory of the case. After enduring year of abuse from her in-laws and her husband, she returned to her natal home. However, she was unable to convince her in-laws to return her the jewelry and other property that she had been given at the time of her marriage. When she attempted to take it with her, her husband objected that it was for their daughter's *jahez* (dowry) and therefore no longer rightfully hers. In response to her husband's refusal, the plaintiff registered a complaint with the police who arrested the defendant under CrPC 498A/406 Indian Penal Code, the provision that protects women from dowry harassment and domestic violence.⁵⁵ The police report (FIR) states that the husband was arrested for stealing his wife's jewelry.

Shortly thereafter, the plaintiff sued her husband for maintenance under CrPC 125, which allows "destitute and abandoned or deserted wives or children to claim maintenance from their husbands or children, respectively" (Williams 2006, 128).⁵⁶ A

⁵⁵ As legal scholar Flavia Agnes succinctly states: "Three major acts govern criminal trials and punishment: The Indian Penal Code (IPC) lays down categories of offenses and stipulates punishment. The Criminal Procedure Code (CrPC) lays down procedural rules for investigation and trial and the Indian Evidence Act prescribes the rules of evidence to be followed during a trial" (1992, 25). The Criminal Acts were amended by the government in 1983 and 1986 "to create special categories of offences to deal with cruelty to wives, dowry harassment and dowry deaths" (Agnes 1992, 25). CrPC 498A was written to deal with dowry harassment and suicide, but its language makes it available for accusations of cruelty and domestic violence. Under CrPC 498A, the police are entitled to arrest and detain the defendant for up to twenty-four hours, following which the police file a case in court against the defendant (Mukhopadhyay 1998, 52). As this is a criminal matter, the state is the plaintiff ("through" the wife) in the case, and the husband the defendant.

498A states that: "Whoever, being husband or the relative of the husband of a woman, subject women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation—for the purposes of this section, 'Cruelty' means a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or death whether mental or physical of the woman; or b)harassment of the woman where such harassment is with a view to coercing her or any person related to her meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such a demand."

The FIR filed in the case we are looking at here was filed under CrPC 498A/406 IPC. Section 406 of the Indian Penal Code deals with criminal breach of trust, which can be punishable with up to three years' imprisonment and/or a fine. In this case, the husband took property that had been entrusted to him and refused to return it. As it turns out, the defendant's brother, who was jailed along with the defendant, testified to the police that the two had sold some of the jewelry. Since it was not legally theirs to begin with, this constitutes a further breach of trust.

⁵⁶ In 1973, then-Prime Minister Indira Gandhi proposed an amendment to Cr.P.C. 125, which "allowed destitute and abandoned or deserted wives or children to claim maintenance from their husbands or children, respectively" (Williams 2006, 128). The government had found that Muslim husbands could avoid paying maintenance for destitute wives by divorcing them. Under Muslim personal law, Muslim men were only responsible for supporting ex-wives for three months after a divorce (the *iddat* period). At that point, if the two had not reunited, the husband was no longer financially responsible to his ex-wife. Indira Gandhi sought to close this loop-hole by redefining "wife" to "include any woman who had been divorced and not remarried" (Williams 2006, 128). As I discuss in the introduction, the All India Muslim Personal Law Board (hereafter "AIMPLB"), which founded Delhi's *dar ul qaza* institutions, was born through the deliberation about these legislative changes. Ultimately, in response to opposition to the change, Gandhi also amended Cr.P.C. Section 127 so that a judge could free a husband of paying further maintenance if the judge felt that he had given his wife what she was due according to the relevant personal law. The All

letter from the defendant to the *dar ul qaza* is the first indication in the case file that a suit for maintenance has been in the courts for some time: the defendant asks to have the date of the *dar ul qaza* hearing changed because he has already been subpoenaed to Tis Hizari, one of Delhi's district courts, at the same time for a hearing about his wife's maintenance (*nan-o-nafqa*). The *dar ul qaza*'s file includes a copy of the suit's cover page, which clarifies that this is a "Petition u/s 125 Cr.P.C. for maintenance." The document speaks a different legal language than the *dar ul qaza* petition, not only because the former is in English and the latter in Urdu. Packed into this brief title is a legal history at once distinct from and intimately bound up with the *dar ul qaza* to which the criminal court complaint has migrated. This suit had yielded a small award of maintenance—200 rupees a month—that both plaintiff and defendant mention in their petitions to the *dar ul qaza*.⁵⁷ Case 124's file includes copies of documents from one more case: a suit for the Restitution of Conjugal Rights.⁵⁸

All three cases in which the disputants in the *dar ul qaza* case are involved—498A, CrPC 125, and RCR—lie at the epicenter of feminist concerns with women's status as women versus women's status as citizens. The history of all three provisions show the courts' significant ambivalence on the question of women's legal status and the state's right to intervene in the private sphere of marriage and family. If the histories of CrPC 125 and 498A demonstrate the state's halting efforts to interfere in the privacy of the home for the benefit of destitute and abused wives, RCR is an excellent example of the state's dedication to upholding the domains of marriage and family as sacred, private,

India Muslim Personal Law Board, who had founded the *dar ul qazi* institutions, came together in protest of this change in the law.

⁵⁷ As with many of the cases of maintenance that have been documented by lawyers and legal scholars, this award appears to be purely symbolic: Rs. 200 is the equivalent of \$4.32 at today's conversion rate. While this would have been worth somewhat more in 1988, it still does not approach the amount of money required to sustain a decent standard of living. Given the well documented assumption by the courts that a woman is either the ward of her husband or of her father/natal kin, it is perhaps not surprising that the size of the award goes unremarked (Basu 1990, Mukhopadhyay 1998, Vatuk 2001).

⁵⁸ RCR rests on the 18th century British legal view that marriage joins husband and wife, rendering them one legal person: the husband (Agnes 2008, 236). Under British law the "ecclesiastical courts had the power to bodily restore possession of an errant wife who had escaped from the conjugal bed and hearth to her husband, her Lord and Master" (Agnes 2008, 236). During the colonial period, RCR was introduced both into Hindu and Muslim marriage law as it was codified by the British. Although it has been regularly contested in the courts since the 19th century, RCR remains a legal means for spouses to demand the return of the sexual property that their spouse signifies under the provision.

The case law on this issue shows that it is a shifting terrain that demonstrates the ambivalence of the Indian courts not only on the question of a woman's status in marriage, but also on the question of what (Hindu) marriage is: contract or sacrament (see Uberoi 1995 and Agnes 2008). In a famous judgment on the matter, Justice Choudhury opined that RCR constitutes a violation of the wife's right to privacy and human dignity guaranteed to all citizens by Article 21 of the Constitution (*T. Sareetha v. Venkatasubbiah* AIR 1983 AP 356). This decision was challenged in 1984 by a Delhi High Court opinion that "Introduction of constitutional law in home is most inappropriate. It is like introducing a bull in a china shop" (*Harvinder Kaur v. Harjinder Singh* AIR 1984 Del 66). While the ruling menaces the well-being of women, it does raise a point critical to my own inquiry: bringing constitutional law into the marital relationship seems to pull the rug out from under the liberal legal split between the public and private upon which the entire Personal Law structure rests. The history of RCR is a controversial topic, and feminist scholars have long pointed out that the very notion of restitution of conjugal rights was foreign to both Hindu and Muslim norms of marriage until it was introduced into both personal laws by the British.

and therefore inaccessible by the universal rights of the citizen. What, though, is the significance of these legal battles as they are cited in the *dar ul qaza*'s records?

The complaint that opens the case at the *dar ul qaza* is perhaps most notable for what it does *not* mention. Unlike the two criminal cases in which the plaintiff is involved, which are based on the plaintiff's claims to property, here she immediately offers to give up her *mahr*, her maintenance, and the gifts she received from her husband at the time of their marriage. Once again, property does not make an appearance as something to which a woman has a right, although she does have this right, both under Islamic law and under Indian law.

In this case, unlike in the others, the civil court judge explicitly interfered in the progress of the property theft case under 498A *because* the couple were Muslims and could amicably settle their case under the *qazi*'s guidance. The judge's intervention required some creative argument. Technically, cases filed under CrPC 498A cannot be dropped without a hearing that results either in a conviction or an acquittal of the accused. However, the judge who heard the plaintiff's case went out of her way to argue that in this case justice and the well-being of the disputants demanded that the case be dropped. She argued that since the disputants were Muslim and had "sought the assistance of a Qazi and have been able to settle the matter amicably," dropping the property suit would be conducive to the couple's desire to "live peaceful lives". The judge writes in her argument that she relied for precedent on a series of cases brought to her attention by the defendant's mediator. None of these were cases that ended in divorce, but instead disputes that culminated in charges being dropped so that the couple could live in peace. The judge quotes at length from such a case in the Rajasthan High Court in which the judge opines: "...when husband and wife have patched up their differences and want to live peaceful marital life then technicalities should not be a hurdle for enjoyment of the marital relationship." In the case of reconciliation, it may make sense to argue that further litigation will "strain" the relationship between the spouses, making the marriage more difficult to repair, in turn straining "society," as the judge argues. However, in the context of preparing to order a divorce, which is what this judge is doing, the argument seems to do little more than suggest that the husband should no longer be bothered by his wife's demands for material compensation and maintenance. As Srimati Basu has argued, Muslim women stand to lose financially through divorce, as they are usually only successful at securing their *mahr* and maintenance for the three month *iddat* period upon divorce; if they remain married, their husbands remain responsible for their maintenance whether or not they reside together (2008, 507). It is, therefore, unclear why the judge would decide to drop this charge as well, eliminating one more potential avenue for material support.

By making this argument as part of her submission of the compromise deed, the judge requires that the plaintiff relinquish her unrecovered property in exchange a divorce. According to Flavia Agnes's study on the impact of 498A for abused women, this is no anomaly: "If she decided to opt for a divorce and the husband is willing for a settlement and a mutual consent divorce, again withdrawing the complaint would be a precondition for such a settlement" (1992, 26). The judge implicitly argues that the plaintiff had to choose between her divorce and her property. The judge ordered the *qazi* to give the divorce, and in the order she specified that all "articles" that the defendant gave to the plaintiff at the time of marriage will be returned to him, along with other

“articles mentioned on the list.” In other words, not only does she create the grounds for the plaintiff to give up her claims to property, but she order that the plaintiff give what she has received to the defendant.

The judge appears to throw the case out of court and into the *qazi*'s lap. In so doing, she undoes the boundary between between law and non-law and between religious and secular legal norms by interpellating the *qazi* as a resource for legal settlement. Further, drawing on a rhetoric of harmony and peace, the judge suggests that the state law also understands divorce and marital relationships in moral terms. The degree to which she bends over backward to argue that the property case be dropped raises questions about why the plaintiff never even made these claims to the *qazi*.

Under the Hanafi school of Islamic law, which this *qazi* practices, a divorce at the wife's initiative (*khul*) has two basic conditions: “common consent of the husband and wife” and “as a rule, some *iwad* (return, consideration) passing from the wife to the husband” (Fyzee 2005, 163). In terms of the property entailments of a *khul*, there is no requirement that the wife forgive her *mahr*, dowry, or other property she acquired during marriage (Fyzee 2005, 164-165). It is common practice in India that she do so, but it is not generally treated as a foregone conclusion. Rather, it is a component of the divorce negotiation.

The *dar ul qaza* file indicates that the *qazi* worked out the details of the case but did not contest the judge's decision, perhaps in part because it largely coincided with the agreement that the disputants' mediators had devised. One thing that sets this case apart from the others is that much of the dispute seems to have been carried out by mediators hired by the two parties. The mediators report their agreements to the *qazi* who helps them to communicate and negotiate with the disputing parties. The mediators arrived at a five point agreement after a great deal of negotiation and, according to the *dar ul qaza* records, some physical fighting. They agreed that: 1) The two parties will drop the other cases that they have open against one another; 2) If there are any additional belongings (*saman*) that have gone missing, they are to be returned to the husband; 3) Upon forgiveness of the *mahr*, a *talaq* will be granted; 4) The marriage contract (*nikahnama*), full allowance (*nan-o-nafqqa*), and the list of dowry items shall be returned to the husband; 5) The living stipend (*kharch*) that the court had ordered to be paid shall be returned.”

The *dar ul qaza* case file concludes with a judgment (*faisla*) by the *qazi* specifying that the divorce has been granted, and that the wife has given over all gifts she was given by her husband, plus 18,500 rupees (\$388.26) that she had accrued in maintenance payment, her *mahr*, and other debts she had incurred while married to her husband. Upon receiving this divorce, the *qazi* writes, she is “free” (*azad*) and neither party can make further claims over the other.

A case that began with a claim for financial support and divorce from an abusive husband has been reduced to a matter of future harmony at the expense of just property distribution by the time it arrived in the *qazi*'s court. The case that the judge hands to the *qazi* will decide the configuration of the parties' intimate lives. Further, it determines the financial footing upon which both parties will enter their newly configured lives. In this way, the case is fundamentally about gendered relations of power and of financial privilege, and about the norms and ideals that govern marriage and its breakdown. It is through questions about a married woman's real rights in divorce that the court negotiates

and alters the boundary between religious and secular law. What, then, are the implications of the court's unwillingness to support the wife's claims over the husband's? About its eagerness to compound the criminal claims and dispense with them? With these tactics, the court implies that even where criminal matters are concerned, domestic issues should be folded into personal law and dispensed with amicably. The *qazi*, who only enters his opinion in the final judgment, and the judge, whose lengthy arguments throw her weight behind the exchange of property for divorce, both seek expedience over justice.

On the other hand, the plaintiff approached the *dar ul qaza* when her property cases had been running their course in the courts for six years with no results. In the *dar ul qaza*, the *qazi* heard her appeal and acted quickly, securing for her the divorce that she requested. The plaintiff approached the *qazi* with the sole stated purpose of receiving a divorce, and she succeeded in that aim. This suggests a strategic use of the *dar ul qaza* when the state courts have failed to protect her financially.

Conclusion: Gender in the Dar ul Qaza

The cases I have analyzed in this chapter are without exception examples of the various ways in which Muslim women in Delhi persevere, not in their marriages (although they may persevere in that sphere first), but in their engagement with the court system. The women in these cases, whether plaintiffs or defendants, come to the *dar ul qaza* institutions strategically, knowledgeably, and with overwhelmingly accurate assessments of what these institutions can offer them. I am reminded, in reading and analyzing these cases, of Raka Ray's argument that female domestic servants in Kolkata actively and persistently seek out structures to protect them (2000). The female servants whom Ray interviews seek the bourgeois femininity claimed by their female employers or their male employers wives and daughters. Ironically securing the secluded femininity of the bourgeois upper middle classes requires that they navigate suitors and employers with careful savvy. Similarly, the plaintiffs in these cases use arguments that emphasize their perseverance as wives and daughters-in-law, as proper feminine subjects, to secure divorces. The *qazis*, in turn, listen to their complaints, gather case files, and issue the divorces and annulments they demand with notable expediency.

However, plaintiff and *qazi* are thwarted by the *dar ul qaza*'s lack of enforcement power. In the cases I have presented here, women never approached the *dar ul qaza* to ask for the property they were due, but instead come when they are ready to secure a divorce. My suspicion that this is because women know that the *qazi* cannot enforce such demands is born out by Sabiha Hussain's study (2006). Hussain gives one example of a woman who approached the courts for her maintenance and *mahr* was told by the *qazi* that he was "helpless" to settle her demand because "he did not have any force or agency to recover mehr/maintenance [sic]" so she would have to seek recourse in the civil court (2006, 24).

The civil courts see divorce cases only when a woman's marital status needs to be determined so that she can receive the relevant property allocation in the form of *mahr*, maintenance, or other moveable property that changed hands with the marriage. The *dar ul qaza* institutions give divorces with great predictability to women who want them, but

are almost never approached to settle post-divorce (or pre-divorce) property disputes.⁵⁹ Perhaps it is not a coincidence that the *dar ul qaza* institutions do not have the power to enforce property decisions but that their divorce documents are usually respected in a civil court. Women are strategic in their uses of the various legal apparatuses available to them and frequently come to the *dar ul qaza* institutions when they have already exhausted their attempts to secure property through the civil and criminal courts. These courts, even when they do award women property in the form of maintenance or *mahr* prove slow to enforce these awards, effectively leaving women trapped in the same bureaucratic tangle *after* their cases is over as before they entered the courtroom. Thus, property allocation and enforcement stays out of the more efficient *dar ul qaza* institutions, while divorces, which impede women's claims to property in the civil courts are readily available.

⁵⁹ Sabiha Hussein also found in her study of the *imarat e sharia* in Bihar that women almost always gave up their rights to *mahr* and maintenance (2006, 19). She asked the *qazi* why he did not press the husbands to give their wives their due, but the *qazi* simply replied that "it was not his responsibility because the *khul'* is initiated by women with mutual consent" (2006, 19).

Chapter Three

Feminist Aims and Legal Limits: Dispute Adjudication in a Muslim *Mahila Panchayat*

Introduction

Feminist legal scholarship about India has grappled in various ways with the limits and possibilities of law as a tool for the improvement of women's social and legal position. Some have argued that the law is resistant to such use. Janaki Nair argues that because of most women's lack of means—of education and of economic solvency in particular—the state's legal system remains opaque and distant to them (1996, 5). The legal system, she writes, “is more or less wholly constructed, interpreted and administered by men, and its underlying concern is primarily the protection of patriarchal privilege” (1996, 5). Nair ultimately argues that through a critical attention to law, it is possible to resist its patriarchal maneuvers (1996, 16). Several studies have shown that women's positions—as mothers, wives, daughters, and daughters-in-law—significantly affect their capacity to successfully reach and navigate the legal system, and that the law cannot be extricated from the social world in which it operates. Maithrayee Mukhopadhyay's ethnographic work with women seeking property or/and divorce in the court system suggests that their ability to win such cases is deeply contingent upon performing the role of the good wife in court (1996). Thus, *legal* barriers to justice appear to be social. Srimati Basu shows that the difficulty of reaching the law is not only about *legal* barriers, but also about stigmas attached to “taking rights” (1999). Basu argues that many women refuse to claim their rightful property because of the fear that “taking their rights” will disrupt the relations of affection that make the natal home a place of refuge—the economies of affect through which they live their lives stand in the way of seeking legal rights (1999, 130).⁶⁰ Each of these scholars, and many others, have offered critiques of the patriarchal commitments of law, while refusing to give up on its promise, however systematically betrayed, of substantive equality.

In this chapter, I look at one self-described feminist, atheist Non Governmental Organization (NGO) and the arbitration centers it has founded. As I will elaborate, these arbitration centers, called *mahila panchayats*, aim to produce a space of negotiation external to the court system, but also within its reach. The *mahila panchayat*'s decisions lie outside the purview of state law: they are not legally binding, they cannot be appealed in the civil courts, and although the *mahila panchayats* keep meticulous records, to my knowledge these are never presented in courts of law. Yet the NGO maintains affiliations with lawyers, and clearly states that while they provide a space for adjudication prior to the law, they are not an alternative to it (Action India 2001). “Cases” that require legal attention—which they specify as divorce and property disputes—are to be referred to the lawyer and the courts.

My inquiry pursues the following questions: How do the *mahila panchayats* practice arbitration? How do conflicts between the various levels of law—state and non-state, Islamic and non-religious—make possible certain claims and foreclose others? I argue that the kinds of cases women bring to the *mahila panchayat* are shaped by the conflicts between different legal orders and that this is evident in the cases and their adjudication. Because the *mahila panchayats* understand their mandate to be feminist, my

⁶⁰ Thanks to Janaki Nair for the formulation “economies of affect”.

analysis is haunted by the observation that in spite of producing more democratic, woman-centered spaces of adjudication, the *mahila panchayats* reinscribe certain gendered norms that they explicitly claim to combat.

The problem of law's emancipatory promise but constant failure to change women's daily living conditions was regularly made visible in the *mahila panchayats'* proceedings. Perhaps the best articulation of the problem was offered by Farida, one of the two leaders of the Muslim *mahila panchayat* in Welcome, which this chapter primarily analyzes. While she worked tirelessly at the *mahila panchayat*, giving pep talks and urging *mahila panchayat* members to speak in her own quiet but persistent way, in her private thoughts Farida had doubts about the success of the project. One day as we sat in the *mahila panchayat* office after everyone else had left, Farida sighed and told me that she did not know whether the change about which she so convincingly spoke to the *mahila panchayat* sisters was really possible. She said, "I know that even though I spend my time telling women that they should stand up for themselves, that they have rights and they don't need to be bossed around by anyone, when they go home, they say to their mothers-in-law, '*hanh-ji, hanh-ji*'⁶¹ and to their husbands they say the same." She told me that she believed this was a general social problem, not particular to any one group of people.

She continued to muse that in her own household, where violence was not a problem (where, as she said, they do not have a "*mar-peeet*" problem), she nonetheless did what her father instructed. Although free of violence, her home remained a patriarchal space. "I have been to so many gender trainings; my work is here in the *mahila panchayat*, and still in my own house these things have not changed. So how will they change anywhere else?" she asked me.

Farida names a significant problem for the *mahila panchayats* and other law-oriented organizations whose aim is to effect social change. What, she implicitly asks, is the relationship between knowing that one "has rights" and "taking rights" in the context of the family?⁶² The founders of the *mahila panchayat* network view these institutions as the key to bridging the divide between these two spheres because *mahila panchayats* aim to solve family disputes through legal-therapeutic practices of mediation. This approach, they argue, gives women a safe place to express their concerns even as it offers to broker workable agreements between the disputing parties. And yet Farida herself seems to reinscribe the norms against which she speaks in the *mahila panchayat* meetings.

In my analysis, I suggest that the remedy itself may be part of the problem, for mediations are settled through expressions of the existing gendered hierarchies in which disputants are mired. The form in which the *mahila panchayat* leaders are trained to record disputes further undermines such a project by refusing to recognize other, specifically Muslim, discourses through which cases are productively adjudicated, and subsuming the outcomes within a putatively "atheist" framework.

In what follows, I begin by introducing the *mahila panchayat*, foregrounding the way that its members and leaders explain it as a feminist project. I then give a brief analysis of the history of the NGO that founded the *mahila panchayat* network and of the

⁶¹ "yes ma'am," "yes ma'am." "Ji" is the honorific attached to the name of any person to whom you wish to show respect and deference.

⁶² Indeed, as Srimati Basu has showed, *haq lena*, taking rights, can undermine women's position in their families as it is viewed as selfish (1999).

form of adjudication—the *panchayat*—on which they chose to model their adjudication centers. I then look at two cases that came before the *mahila panchayat* in detail to draw out the two main points of the chapter: that the configuration of the *mahila panchayats* and their relationship to state courts enable certain kinds of solutions and foreclose others and that Action India’s view of feminism as secular forecloses a nascent discussion of Islamic feminism in the Muslim *mahila panchayat*.

Action India: From Exploitation to Dispute

Action India (*Action India*) was founded in 1974 by “a group of middle class citizens concerned about the deteriorating democratic and civil rights in India came together to seek the root causes for the growing poverty and to articulate the inequality and injustice in the system” (Action India 2001, 3). The organization was galvanized during the Emergency, declared in 1975 by then-Prime Minister Indira Gandhi. At the time, *Action India* became involved primarily in providing basic services and food to the roughly 700,000 people—fifteen percent of Delhi’s population at the time—displaced by Gandhi’s slum demolitions (Action India 2001, 3). The Action India network still works out of four resettlement colonies in which it was active in the 1970s: Jehangirpuri, Nandnagri-Sundernagri, New Seemapuri, and Dakshinpuri.⁶³

Action India is currently involved in six kinds of programs. These are campaigns for economic empowerment of women,⁶⁴ and health and reproductive rights, campaigns against domestic violence, and against female infanticide. *Action India* also runs a youth program. *Action India* recently became a member of Oxfam’s “We Can” campaign to end violence against women.⁶⁵ The order of emergence of these various projects is telling.

The organization began by fighting for basic services for Delhi’s poor. In the 1970s, *Action India*’s aim was “to organize women at the community level where their lives were enmeshed within a patriarchal family and community and were characterized by economic marginality” (Sekhon 1999, 28). *Action India* staff organized home-based workers to stand up for their rights. The *Action India* workers also saw that these women had trouble with health, to which they responded with the Community Health Worker

⁶³ It is notable that although Welcome colony was established when Indira Gandhi raised the Turkman Gate area in Old Delhi and sent its inhabitants to Welcome, across the Yamuna river, the *mahila panchayat* in the neighborhood was only founded three years ago. It is notable and surprising both that the *mahila panchayat* in Welcome is the only *mahila panchayat* in a resettlement colony largely inhabited by Muslims and that *Action India* only began to work in the neighborhood when the *mahila panchayat* opened three years ago. This is part of a story of unintentional but consequential selection processes that have led to the *mahila panchayats*’ disproportionately serving Hindus and Christians.

⁶⁴ I find it interesting that it is only in the context of economic uplift that *Action India* employs the language of empowerment. The web site states: “Women’s Economic Activity for Empowerment means a qualitatively conscious plan for facilitating women’s economic initiative and creative potential to enable her to pursue her own choice in producing, trading, or providing a service, to gain a sense of self worth, dignity and control over her own life.” (<http://actionindiaworld.org/pages/programs-campaigns/economic-activity-for-empowerment.php>, accessed 5/17/09). This particular formulation has a strikingly neoliberal overtone. As glossed by Aradhana Sharma, this neoliberal quality is one in which “the pursuit of self-interest, individual fulfillment, and self-government are viewed not only as personal goals but as social obligations practiced in the interest of political freedom, participatory democracy, and the free market” (2008, 17).

⁶⁵ <http://wecanendvaw.org/> (accessed 5/22/09).

project in 1984 (Sekhon 1999, 29). Domestic violence was also endemic to the homeworkers' precarious situation (Khan interview March 26, 2007). Naseem Khan, an *Action India* staff member, described the problem posed by violence as one of control. She put it this way: "As long as our lives are not in our hands, as long as our life decisions are not in our own hands, we cannot do anything," she told me (interview, March 26, 2007). It was with this observation about women's need to control their own lives that the Women, Law and Social Change project was developed in 1992. Through legal training and discussion, *Action India* hoped women would not only find new ways to resolve their conflicts, but would ultimately challenge prevailing "attitudes and values systems that oppress women" (Sekhon 1999, 30).

Although she differentiates between *Action India's* gender work and its legal trainings, her remarks highlight the intimate relationship between health, economic inequalities, violence, and negotiation.⁶⁶ She suggests that law, while it may have limitations, is a crucial site for the reorganization of unequal, gendered, distributions of power.⁶⁷ The domestic sphere becomes the locus, not only of relearning and alteration of gendered divisions of labor, but of the seeds of legal reform. Thus, like other branches of the women's movement, *Action India* positions itself at once outside the purview of the legal system and cultivates hope in its promise. Covering a range of terrains, of which I studied only one, *Action India* seeks to improve poor women's daily lives. It also hopes to intervene politically, but the link between grassroots empowerment and political involvement remains to be made in practice.⁶⁸

History of the Panchayat Form

Once the staff at *Action India* had decided that the appropriate mechanism for confronting domestic violence was a center for adjudication, they began to research various traditional systems of justice, particularly *panchayats* (Interview with N. Khan, March 26, 2007). *Action India's* documents note that "the concept of Mahila Panchayats is based on a traditional form of community organization for social justice. These women's courts have radically changed the caste, and gender discrimination found in the structures of our 'Biradari and Gram Panchayats' with a women's perspective" (*Action India* 2001, 28). The intervention that *Action India* makes in this system of "traditional justice" must be situated within the history of panchayat justice in India, for this is the

⁶⁶ In making these links, Khan closely echoes the organization's mission statement: "Action India believes in the right of all women and girls to live with dignity and self-esteem; We work to eliminate discrimination and stop violence against women and girls; We believe that women and girls should have control over their own bodies; We enhance women's and girls' access to economic rights; We work to advance women's and girls' participation in the development process; We improve quality of life for women and girls; We believe that women's rights are human rights." (<http://actionindiaworld.org/pages/about-us/mission.php>, accessed on 5/8/09).

⁶⁷ This optimism about the law reflects a general trend in the Indian women's movement in the 1970s and 1980s, one that is increasingly called into question by feminists in the 1990s and the beginning of the 21st century (Nair).

⁶⁸ Aradhana Sharma has shown how MS, which is also part-government, part-NGO, does have the effect of producing political subjects by involving the subaltern women it targets in grassroots level politics (2008). *Action India* instead accepts Delhi municipal funding to provide spaces of adjudication that have only highly ineffective relationships with the state's legal system. I will look at this issue further later in the paper.

attempt to radically remake an institution that has existed and that has been undergoing reforms since long before British colonial or Mughal rule.

Panchayat, which means a council or meeting of five in Sanskrit, have been a mainstay of local adjudication for over a thousand years (Galanter and Baxi 1989). During the colonial period, panchayats were active as local arbitration centers, but they were not part of the state's legal system.⁶⁹ The modern history of panchayats begins with Mahatma Gandhi, who felt that remaking what were typically caste or *biradiri panchayats* into village-level panchayats was crucial to the development of self-sufficient village life (Galanter and Baxi 1989). The presence of panchayats grew significantly in the period between 1920 and 1947 (Galanter and Baxi 1989, 58, quoting someone else). While the panchayati raj (regime of panchayats) was not given official standing in the independent state, they did make it into the constitution as a directive principle. Article 40 "obligates the state to 'take steps to reorganize village *panchayats* and endow them with such powers and functions as may be necessary to enable them to function as units of self-government'" (Galanter and Baxi 1989, 61). Both Gandhi's ideal of panchayati raj and the constitution's focus on "village panchayats" introduce the first of several shifts in the organization and constituency of this adjudication form. While panchayats adjudicated in various ways, some following customary codes and others negotiating independently of a fixed and shared conception of justice, they were usually constituted by members of the same caste group. Gandhi and the constitution shift that constituency to the village, thereby simultaneously drawing the benefits of local justice and trying to jettison the reproduction of caste boundaries.

In the independent state, the attempt to rewrite panchayats as local, democratic institutions has continued. After the adoption of the *Balwantray Mehta Committee Report* in 1958, a three-tier system of panchayats was created: *gram panchayat* (village), *panchayat samiti* (bloc), and *zilla parishad* (district) (Galanter and Baxi, 62). These panchayats were now part of the state apparatus, and their parameters were overseen by the state government. A fourth component of the panchayat system was also created at the time: whereas panchayats had formerly performed both administrative and judicial roles, *Nyaya* ("justice" in Sanskrit) *panchayats* were now separated from administrative panchayats. Galanter and Baxi argue that this served several purposes: to separate judicial from executive bodies as mandated by the constitution; to relieve the work load

⁶⁹ J.D.M. Derrett documents an early, and failed, attempt for panchayats to enter the civil court system. In 1838, Parsi Panchayat asked to be formalized by the Legislative council. In other words, the Parsi Panchayat, a religious body of local adjudication, sought to be integrated into the state's courts system, as part of its apparatus. The request was denied by the Bombay Supreme court on the grounds that since the Parsi court would probably refuse to have lawyers as assessors, they would be "greatly harassed by collision between that Court and the Supreme Court." Writs of *mandamus* (writs "issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly" according to Black's Legal Dictionary 2004) would be issued in the Supreme Court. If they were part of the same legal system, the Supreme Court could compel the Parsi Panchayats to do things in a certain way. This is the reason Derrett gives for the refusal of the British to give Hindu panchayats official jurisdiction. The outcome, he argues is that "no court has ever issued a prohibition against a panchayat's process or a *mandamus* to compel it to perform any function." We could, though, look at this from the other perspective and suggest that the panchayat has never had the chance to give a first judgment with equal force of law to those given by the British colonial court. This implies a strategy of producing legal difference in order to grant the state courts a monopoly on enforcement while avoiding the burden of taking over the most local of disputes. There is an echo of this here.

of the administrative *panchayats*; to provide villagers with legal access; and, “it also represents a massive attempt by the state to displace (as effectively as it could) the existing dispute processing institutions in village areas—be they *jati* (caste) institutions, territorially based secular institutions or special dispute processing institutions established under the auspices of social reformers (such as the Rangpur People’s Court).” (68). While the new Nyaya panchayats (NP) could levee fines, they could not enforce payment, and in their proceedings, there was a strong emphasis on amicable solutions.

The most recent era of state-linked panchayats began in the last decade of the 20th century. In 1992, parliament passed the 73rd amendment to the constitution of India, giving Panchayati Raj constitutional status. The amendment requires: “each state to establish gram sabhas, hold periodic elections, set up three tiers of Panchayati Raj...and establish a statutory State Finance Commission for these bodies” (Datta 1998, xii). There is a required 33% reservation for women in each of these bodies. This last change seems once again to push toward a simultaneously more official and more democratic *panchayati raj*, one that includes women as well as men, in addition to being open to people across caste lines. An already burgeoning literature on the panchayati raj after the 73rd amendment suggests its uneven achievements (Datta 1998, Rai et al 2001, Bandyopadhyay 2005, Ghatak and Ghatak 2002, Buch 2000, Pai 1998).

Action India fits its *mahila panchayat* network into this tradition of *panchayati raj* reform. However, *mahila panchayats* occupy an ambiguous position vis-à-vis the state courts and the government: unlike *nyaya panchayats*, their judgments are not binding. They are not part of the state’s court system. They are, however, funded in part by the Delhi Commission for Women, which is a municipal government commission. They are considered to be related to the civil court system, but not part of it. The records that *Action India* keeps give a clear sense of the particular qualities that a reformed panchayat ought to have. In the 2005-06 report, *Action India* summarizes the aims and objectives of the *mahila panchayat* as follows:

To build the capacity of grassroots women to become legally aware, gender sensitive, and non judgmental, to listen with empathy to victims of domestic violence. To provide a forum for conflict resolution to resolve family disputes and enable women to assert themselves and live with dignity and self esteem...

The focus of the synopsis is on gender sensitivity, non-judgment and empathy rather than on the usual markers of a functioning legal apparatus: judgment. Although one aim is to provide legal education and a “forum for conflict resolution,” it is to be of a kind that does not involve pre-judgment. This emphasis distances them from typical work of courts, which deliver judgments at the end of adversarial proceedings, and from the “traditional” panchayats in which, as Farida stated, women were unable to make their voices part of the deliberation.

Unity of Purpose and Procedure

The individual *mahila panchayats* that form the larger network displays notable unity of purpose and procedure. At the end of the first *mahila panchayat* I attended, this unity was exhibited to me in an unexpected form: song.

In the meeting, the Mahila Panchayat makes progress with cases on its own

*In the meeting, the Mahila Panchayat makes progress with cases on its own.
Don't go to the police station, the police are rascals
Don't go to the police station, the police are rascals.*

...

*Going to the court costs a lot of money;
Going to the court costs a lot of money;
Money is a big deal in the courts...
No women attended the men's panchayat meetings;
No women attended the men's panchayat meetings.
Sit in the mahila panchayat's meetings: come to everyone's meetings.
Sit in the mahila panchayat's meetings: come to everyone's meetings.⁷⁰*

At the end of this meeting, when the day's "cases" had left, I sat with the twenty-odd *panchayat* members in the close quarters of their meeting room. The walls were lively with posters decrying domestic violence, male-centric legal institutions, and other injustices against women. When all the *panchayat* sisters were in the room, it rang with imperatives: "meri bat sunno," "meri bat sunno," "ro mut!" ("Listen to what I have to say! Listen to what I have to say! Don't cry!") These exclamations, frequent refrains in the *mahila panchayat* meetings, were uttered in the most informal of Hindi's four registers, reflecting the sisterly relationship that the *mahila panchayat* leaders cultivated with the disputants. With the departure of the "case" the cascade of voices quieted and was replaced by an awkward silence. To break the ice when I demurred from performing a song, the *mahila panchayat* leader started up a round of the song I have transcribed above. I learned in the following weeks that the *mahila panchayat* members do not usually sing, this or any other song, when they meet, but everyone knew all of the words. The song is one of Action India's—the "mother NGO"—community- and group-building instruments. The song proved to be an apt introduction to the *mahila panchayat*, for it touches the major tropes in Action India's argument for the *mahila panchayat*: the police cause more problems than they resolve; the court is expensive; traditional *gram* and *biradiri panchayats* (community and caste mediation institutions) are run by and for men. Only the *mahila panchayat* welcomes everyone, only in the *mahila panchayat* do women work together to resolve their own problems.

This was also the story told pictorially by the series of posters that adorned one wall of the Welcome *mahila panchayat*. The first poster depicts a village, caste, or community (*biradiri*) *panchayat*. Five men sit in a line, while a sixth sits before them,

⁷⁰ *Baithak main mahila panchayat muqadamah khud se barh chalna
Baithak main mahila panchayat muqadamah khud se barh chalna;
Police thana tu mut jana, police hain bari badmash
Police thana tu mut jana, police hain bari badmash*

...

*Court par chalne se paisa ho bari bat
Paisa ho bari bat.
Mard ki panchayat main baithna mahila koi ne ayee
Mahila koi ne ayee
Mahila panchayat main baithna sub ki sadas ayee ho
Mahila panchayat main baithna sub ki sadas ayee ho*

facing the group. He appears to be undergoing questioning. The men wear *sherwani*⁷¹ coats and turbans. They have big black mustaches. They sit cross-legged on the ground under a *peepal* tree. With the *peepal* tree—a symbol in Indian literature of gathering that is often evoked as a traditional villages meeting-place—as the walls of the courtroom, the scene is of traditional justice in action. There are no women in the picture.

The second poster shows a courtroom in a building. Three desks face the viewer. Sitting behind the middle desk is a man, presumably a judge, wearing a button-down shirt. The judge's left arm is outstretched, pointing to the woman seated at the desk to his left. On the desk are several books and two fountain pens, upright in a pen stand. At the desk to his right sits a man in a *kurta*, and at the desk to his left sits a woman wearing a sari with a short-sleeved blouse, the *pallu*⁷² covering her head. The man is also pointing to the woman, who grips the edge of the witness box in which she sits and looks in the direction of the judge and the other man, who appears to accuse her of something. In the foreground, a policeman stands holding a billy club in one hand, his other arm outstretched in a pointing gesture, also pointing at the woman. Beside him, with his back to the viewer, stands another man, also raising his hand and pointing in the same direction as the police man and the judge. This is all the poster gives us: we do not know what the relationship is between the woman and the two men who seem to accuse her. However, the poster makes it clear that all four men in the room, including the arbiter of justice (the judge) and the enforcer of the law (the policeman) accuse the woman.

The third poster shows four women. They sit cross-legged on the floor, facing the viewer, but it is clear that three of them are comforting the fourth. It appears to be a commiseration session rather than any kind of serious adjudication. This, the poster suggests, is the woman's place of refuge: she does not find sympathy with the dispensers of justice, but with her female friends.

The last poster shows a large circle of women. One man also sits in the circle with them. Several of the women have notebooks in front of them, and the others sit cross-legged without paper or pencil. This is the depiction of the *mahila panchayat*. The space is casual, but orderly. By way of contrast to the informal gathering of women depicted in the previous poster, this group has a seriousness and formality of purpose evoked by pens and paper. The figures appear to be actively engaged in discussion. No figure stands above any other, and while there are some figures who appear to be in charge, the group includes the disputants rather than keeping them outside its fold.

The series of posters tells the story of a search for a woman-centered form of adjudication. It shows a shift in the institutions that provide justice. First, justice is meted out by a group of men sitting under the *peepul* tree, which evokes "tradition" and marks the indigeneity of the *panchayat* in contrast to the court room that takes the *peepul* tree's place in the next image. The courtroom scene of the second poster evokes a shift to formal justice evoked by the grates behind which disputants sit on hard chairs, and the judge who stands apart, seeming to declare rather than discuss his verdict (see chapter two). Women enter the scene in the third poster as participants in the process of discussion, although perhaps not yet the meting out of justice. In the last poster, the viewer reaches the end of a movement from indigenous male justice to colonial male justice to the segregated space of female debate and back to the first form. But in the new

⁷¹ This is a long coat worn by men in South Asia.

⁷² The *pallu* is the end of the *sari* that is usually worn over one shoulder.

panchayat circle, the judges are women. This suggests the source of the *mahila panchayat* in an older, *male* version of the process. The leader of the Welcome *mahila panchayat*, Farida,⁷³ explained the relationship between these sources and the *mahila panchayat* in this way:

In villages, and all over India, there are panchayats where five men sit, and they call women before them when the women are accused of doing something wrong. In these panchayats women are not allowed to speak, or else they are too afraid to do so. The idea of the Mahila Panchayats is that it gives women a place where they can speak from their hearts, where they can explain what is wrong, where they do not just have to suffer silently (Interview 8 March 2007).

The elements of adjudication that Farida singles out as central to the possibility of justice for women are speech and emotion. She emphasizes the need to “speak from the heart,” to describe in emotional terms the troubling situations in which women find themselves. The inability to speak, she suggests, obstructs the process of attaining justice. If a silent woman stands in a man’s court, she cannot defend herself. The woman, Farida suggests, will always stand accused in such a setting, and without recourse to self defense through speech rendered impossible by fear or edict.

Closely linked to the injustice of speechlessness is the problem of pace. The head of the Dakshinpuri *mahila panchayat*, a predominantly Hindu *mahila panchayat* in which I conducted some fieldwork,⁷⁴ told me that in courts, “people are not encouraged to take the time to think about the decisions they are taking: it is easy to break a household but it takes time to build one” (interview, 25 October 2006). For this reason, she told me, the *mahila panchayat* tries to change the way women approach marital strife. They teach women that thinking things over is crucial, and they are especially adamant about this when women come in wanting a divorce. Farida and Lakshmi each argues that the *mahila panchayat* provides the space and the time women need to articulate and to work through their troubles.

In a legal training at the Dakshinpuri *mahila panchayat*, the head of the *mahila panchayat*, Lakshmi, told the *mahila panchayat* sisters about a success story that illustrates another niche the *mahila panchayat* fills for Delhi’s poor. An old man and woman had approached the *mahila panchayat* because they were having trouble getting their maintenance payments (*kharch*) from their relatives. “The day they came to the panchayat,” Lakshmi told the group, “they were given this maintenance, while had they gone to the court, they would have had to pay money, the judge might not have shown up, the lawyer might not have shown up, and it would have taken forever for them to get a fair hearing” (meeting, 25 October 2006). Lakshmi emphasizes reliability and money—indeed given the difficulty that women face securing the maintenance payments awarded to them in court proceedings (see chapter two), the story is impressive. Time is also of the essence. I remembered this comment when, some time later, a woman in her forties approached the Welcome *mahila panchayat* for help: her husband had left her a decade earlier, and she had been fighting for maintenance in court for eight years. Out of

⁷³ All names have been changed to protect the anonymity of my informants.

⁷⁴ As I will discuss in detail later, Dakshinpuri is a resettlement colony in South Delhi where Action India has been running a *mahila panchayat* since the 1990s.

desperation at the court's inefficiency and expense, she had turned to the *mahila panchayat*. In other conversations, *mahila panchayat* leaders and *Action India* employees told me that cost was the other obstacle to justice alleviated by the *mahila panchayat*. While the *mahila panchayat* charges a nominal fee for its services, court and lawyer costs can quickly become prohibitive. The *Action India* Annual Report states that they charge Rs. 10 for the first consultation, Rs. 20 for the second, and that the cost continues to double for each subsequent visit.

Numerous studies have substantiated *Action India*'s and the *mahila panchayats*' criticisms both of the *panchayat* system and of the civil courts.⁷⁵ *Action India*'s workers are adamant that the *mahila panchayats* do not simply invert the gender bias of other adjudication institutions by favoring women's rather than men's positions. Rather, the *mahila panchayats* aim to change the conditions and procedures of judgment in an unbiased way. The director of *Action India* told me, "we didn't want men to feel that the *panchayat* was against them, because there would be a kind of backlash. So the concept of equality came up. Because in our society, both men and women contribute" (interview, 26 March 2007). The equitable treatment of men and women in the *mahila panchayat* is a rule of thumb taken seriously by *mahila panchayat* members.

I was only witness to one case initiated by the husband. In February, a man filed a case at the Welcome *mahila panchayat* because his wife had left him and he wanted her to return and to resolve their issues. Once the man had left, the leader of the *mahila panchayat* told the other members that it was imperative that they treat him with respect and clearly communicate their attention to his concerns. She stressed that when a man chose to approach the *mahila panchayat*, it was crucial that he be treated with respect and that his position be taken seriously. At the same time, I have witnessed numerous "cases" in which men are reduced to tears by the group of aunties chastising them for their wrong doings. Shalini Grover (2005) and Joti Sekhon (1999) note a similar phenomenon.

Unified by Training and Documents

Although, as I will discuss, there are differences between the various *mahila panchayats* in Delhi, the paralegal training workshops, which cover both gender sensitivity and legal education, are one of the mechanisms behind the *mahila panchayats*' unified approach. *Action India* also requires *mahila panchayat* paralegals to attend trainings in which they learn to keep formal records using *Action India*'s forms and

⁷⁵The scholarship on contemporary India is prolific. To name just a few relevant works, some of which I discuss at the outset of the chapter: Parveen Mody's ethnographic account of the difficulty of marrying under the Special Marriage Act because of the recalcitrance of judges who oppose inter-community marriages demonstrates the impediments of the civil court (2008). Flavia Agnes's work shows that the law reproduces gender inequalities in spite of its claims to undermine them (1999). Maithrayee Mukhopadhyay looks at the impossibility for women of claiming equal citizenship rights within the court system (1996). I have also already mentioned Srimati Basu's work on the affective impediments to approaching the court system (1999); Bina Agarwal provides an exhaustive account of the predominance of custom over law in securing rights (1994). Several texts have argued that while "law's patriarchy" is unavoidable (I borrow the term from Erin Moore), it nonetheless produces various possibilities of resistance. For example, in her study of a Meo village in Rajasthan, Erin Moore argues that the several institutions of adjudication available to Meo women are embedded in patriarchal norms *even as* they "simulate[s] discussion, challenge[s] prior understandings; and facilitate[s] future resistance" (1998, 46).

procedures.⁷⁶ *Action India*'s detailed record of the annual training provides a window on *Action India*'s approaches to and priorities for the *mahila panchayat*.⁷⁷ The training was on conflict resolution, and the *Action India* report describes its purpose as follows: "to train the Mahila Panchayat Network Staff regarding the strategies and steps to be followed in solving the cases coming in the Mahila Panchayat" (*Action India* report 2005). The first day of the workshop was largely theoretical: orienting the *mahila panchayat* staff to the expectations and procedures of the *mahila panchayats*, and the second day involved presentations by the different NGOs of sample cases.

The most striking aspect of the report is that it depicts *mahila panchayat* leadership as a practice between participant observation and negotiation. The training documents suggest that *mahila panchayat* staff are to counsel through "empathy" rather than through "sympathy," a distinction that the document only pursues by elaborating the former, desirable, approach to counseling. Counseling through empathy entails asking about the emotions of the women involved in the dispute, listening to disputants' "suffering" with "utmost concentration," and instilling confidence in women. Presenting a variety of common issues—conflict between mother-in-law, failure of the civil courts, indecision on the part of the complainant, divorce—the leader repeatedly highlighted the need for patience, and for counseling to the end of receiving the woman's consent. This empathetic counseling would be enabled by empathetic participant observation. The importance of observation was reinforced through an activity. The women were told to find people in the group with certain characteristics (long hair, long name, tall, short, etc.). The lesson was that observation, asking questions, and fully engaging disputants is crucial to guiding them to a good decision. In a final, familiar instruction, the report states that all reports produced by the *mahila panchayats* are to use pseudonyms for the disputants, a practice that to my knowledge was not carried out. As will become clear in the analyses of cases to follow, this central training project has conditioned the *mahila panchayat* disputants' approach to their work of counseling (and persuasion).

If the training procedures give *mahila panchayat* members a common approach to adjudication, their record-keeping practices give the network as a whole a court-like bureaucratic appearance. The *mahila panchayat* network's awkward position vis-a-vis the civil courts is articulated in *Action India*'s 25th anniversary report, which states:

⁷⁶ In addition to the training discussed above, *mahila panchayat* members and leaders participated the following trainings in the 2005-2006 year: a two day workshop on "History of the Women's Movement," led by the prominent feminist Uvrashi Butalia, as well as Guari Chaudhari and Bharti Chaudhir from *Action India*; a two day training on "Non-violence communication counseling" led by Kumar Jeev, a "certified trainer on non-violent communication;" a training on conflict resolution; and a training on the Protection of Women from Domestic Violence Act (PWDVA) 2005, led by Naseem Khan and Leena Prasad, of *Action India* (from the 2005-2006 *Action India* report). I will discuss *Action India*'s position on the PWDVA later in the chapter as it pertains to specific cases before the *mahila panchayat*.

⁷⁷ The question of documentation, and of what it means to make use of quasi-ethnographic documents such as this report has been the subject of some discussion (see Riles 2000 & 2006). As Annelis Riles notes in her edited volume, the documentary artifacts of modern bureaucratic apparatuses are increasingly important archives for ethnographers even as they induce rethinking about ethnographic texts. Although not my central concern in this chapter, the question of documents and of the differences in documentation practices in the several sites of my dissertation research is one that haunts this text. Here I try to read the reports, charts, and documentation produced by *Action India* and the *mahila panchayats* as texts that, in their writing, argumentation and material circulation, contribute to the larger analysis of dispute practices in the *mahila panchayat*, and the rationales behind them.

[The *mahila panchayat*] is not an alternative to the legal system.⁷⁸ It is an effective forum for dispute resolution preventing the need for legal intervention. In the case of divorce or property dispute, legal aid is needed to legalize the procedures. Only 5% of the cases require legal intervention, and we refer them to the legal aid cell at Patiala House or other organizations providing legal aid (*Action India* 2001, 28).

The statement situates the *mahila panchayat* as an asset to the legal system, arguing that although it provides overlapping services, they are not in competition with it. 95% of the time, the statement suggests, disputants are under the false impression that their complaint is suitable to adjudication in the courts. But these are the non-cases that unnecessarily clog the legal system. By handling such disputes, the *mahila panchayat* performs the kind of triage function that Barbara Yngvesson has attributed to the clerks of lower courts in the United States (1988). However, when a truly *legal* dispute does approach the *mahila panchayat*, it is shepherded to an appropriate legal institution or legal aid organization. The passage strikes a delicate rhetorical balance between the offer to ease the notorious overcrowding of Indian lower courts and the avoidance of impinging on the courts's proper domain. The *mahila panchayat* adjudicates within these parameters, miming court apparatuses but employing a vocabulary tailored to its non-legality.

One significant way in which the *mahila panchayats* mime the courts is through their practices of record keeping. There is a strong emphasis in the *mahila panchayat* on record-keeping. These records, which include minutes on individual meetings as well as case files for each case opened at the *mahila panchayat*, enable the work of the *mahila panchayats* to be tracked and to a certain extent quantified. Meeting minutes include a list of signatures of everyone at the meeting. Those who were illiterate stamp a thumbprint in the register and one of their colleagues draws a line around the thumbprint and writes the name of the person next to it. *mahila panchayat* members, leaders, visitors, and disputants their names in devnagri, urdu or latin script. The minutes themselves were meticulously kept by Farida, the panchayat's leader. She not only kept notes on each case that came to the *mahila panchayat*, but also on other issues that the group discussed between cases or during meetings in which no disputes were discussed. Where I had assumed that the sole mark of my own presence at the *mahila panchayat* was in my signature in the list of participants, upon reading through them, I discovered that I had been written into the notes themselves.

Reading these records suggests that the *mahila panchayat* project is not only about resolving disputes without the aid of the courts. The *mahila panchayats* emulate and mimic the courts through their documentation while explicitly distancing themselves from them. They also provide vital statistics to their funders. In this section, I turn to one case that I have been able to study both through observation and through its record. It is a case that pointedly raises questions about the *mahila panchayat*'s relationship to the

⁷⁸ In 2006, this question of parallel legal systems became a major topic of conversation when someone brought a petition before the Supreme Court demanding that India's *sharia* court (dar ul qaza) system be dismantled on these grounds. The court responded that since the dar ul qaza's decisions are not binding, they do not comprise a parallel legal system and are therefore in no way illegal. There is a strong echo of concern about such an accusation in the phrasing of this report.

civil courts, because after a few months of negotiation, a new domestic violence law was implemented, and the case was abruptly sent to the courts.

Beyond their unity of procedure, the *mahila panchayat* leaders and members with whom I spoke shared a strong sense of their purpose, which they viewed as feminist. The *mahila panchayats* overturn the gendered roles of authority predominance in civil courts and other non-state sites of adjudication: here women have the chance to stand in judgment of the intimate affairs of their own lives. The *mahila panchayats* provide mediation in an area of conflict in which the state has little interest or competence, and in which the state's interest in upholding women's rights has proven to be ambivalent at best.⁷⁹ The *mahila panchayats* offer to democratize justice.⁸⁰ That they offer a heavily utilized site for confronting domestic violence is itself a significant matter (Bhatla and Rajan 2003).⁸¹ As I will discuss, the *mahila panchayats'* form, which strikes a balance between formality and informality, and their flexibility with regard to outcome mean that they do not approach conflicts as necessarily adversarial. This flexibility has the capacity to allow different kinds of speech than official courts will entertain.⁸² *mahila panchayats* are quintessentially local, as most *panchayat* members and leaders live within walking distance of the *panchayat* in which they work. The presence of women at its helm makes it possible for those usually in a weaker position in the civil courts to speak to judges who identify with and know how to listen to them. As Farida says, in the *mahila panchayat*, women can "speak from their hearts." Who, though, is given this opportunity?

Atheism, Marriage, Feminism

My observations of the *mahila panchayat's* mediation practices suggest that they undermine the aims of equality and liberation from violence that Action India set out to accomplish in several ways. A middle class ideology of marriage is a theme in cases that come before the *mahila panchayats*, effectively standing in the way of women's attempts to seek divorces and thereby to get out of violent domestic arrangements. The *mahila panchayat's* emphasis on an alliance between atheism and feminism impedes the organization's ability to adjudicate cases meaningfully across religious communities.

The implications of Lakshmi's comment that it is easier to break a home than to build one punctuate my notes on *mahila panchayat* meetings and the court records and

⁷⁹ Flavia Agnes has exhaustively documented the history of legal production and reform, arguing that even in instances where the courts overtly claim to intervene to protect women's rights to dignity, bodily integrity, and financial solvency, their judgments have been used to subvert women's aims (1992, 1994, 1999).

⁸⁰ See also Shalini Grover (1995, 172) on the question of democratization of adjudication.

⁸¹ In their article on local dispute institutions like the *mahila panchayat* to combat domestic violence, Bhatla and Rajan note that one of the primary obstacles to combating domestic violence is the widespread view that violence is constitutive of marriage and the various relationships produced through it (2003, 1658). In their analysis of Mahila Samitis, they argue that shifting the discourse to one that condemns domestic violence is half the battle won.

⁸² Veena Oldenburg's account of the work of Saheli, a Delhi NGO dedicated to offering counseling to women who have experienced or continue to experience domestic violence, vividly renders the erasures of the court's version of dowry murder and domestic violence cases (2002, 219). Oldenburg argues that adequate engagement with domestic violence requires grappling with things—like sexuality—about which the court does not wish to speak.

documents I have photocopied and carried with me.⁸³ The determination not to break homes is so much a part of the *mahila panchayat*'s mission that even in instances of abuse, cases tend to culminate in an agreement to restore the home to its normatively gendered order rather than recommending divorce or separation. This does not mean that these relationships did not change throughout the process of mediation, but that the *mahila panchayats* tended to reconfigure relationships rather than suggesting separation or divorce. Wives promise obedience, and husbands promise to abstain from violence. Case closed.

This dedication to women as naturally and necessarily married was made strikingly clear in a teenage girl's appeal to the *mahila panchayat* in which I did my research. Mumtaz approached the *mahila panchayat* one afternoon, her hair, cropped just above her shoulders, loose, and her makeup prominent. Farida had already met her, and told the assembled members that Mumtaz was having trouble with her father. As Mumtaz began to tell her story, the *mahila panchayat* sisters seemed to grow skeptical. Mumtaz said that her father beats her, and that he is also mean to her mother, who is disabled. She announced a set of liberal feminist desires that fell flat in the room: rather than focus on marriage, she wanted a flat of her own where she and her mother could live; she wanted a government job, which would provide her with her own spending money and independence from her father. She told the *mahila panchayat* sisters that she likes fashion, and that her father unjustly disapproves. The *mahila panchayat* minutes from that day relate that she cried as she told her tale, and concluded that the girl had snuck away from home to attend the *mahila panchayat* meeting and did not want word to get back to her father that she had come.

When she had finished her account, the *mahila panchayat* members quickly jumped in to convince her that she should not refuse marriage so quickly. While it seemed to me that the desires she named fit well within the rubric of women's rights explicitly upheld by the *mahila panchayat*'s agenda, the *mahila panchayat* members argued against her position. Mumtaz never returned to the *mahila panchayat* during my time in Delhi, discouraged, I can imagine, by the coolness of the *mahila panchayat*'s reception. Nurturing marriage is important in all of the cases I observed, but the brevity of this encounter, and the clarity with which Mumtaz's appeals were dismissed make it exemplary of the ideology of marriage that undergirds the *mahila panchayats*' practice of adjudication.⁸⁴

Shalini Grover, who looks at the Mahila Panchayat in Mohini Nagar as part of her dissertation on love in a Delhi *basti*, takes up Kendiyotti's term "bargaining with patriarchy" to describe the *mahila panchayat*'s enforcement of domestic gender roles, including the subordination of women to their husbands (2005, 181). Grover attributes this bargain to the needs of the impoverished communities in which *mahila panchayats*

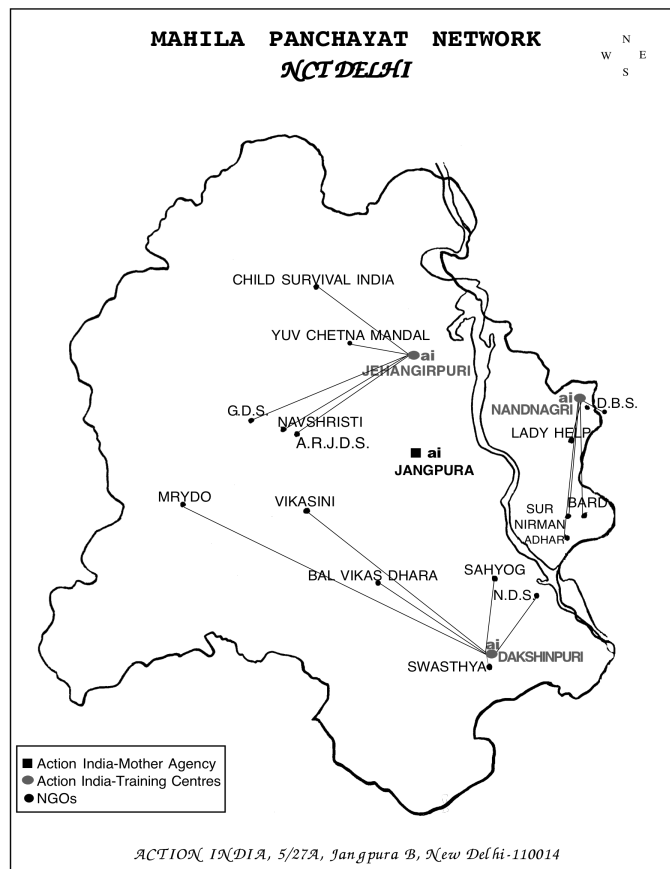
⁸³ This formulation is not only Lakshmi's. It is something I hear from members of the mother NGO, and in Shalini Grover's dissertation, she also mentions the formulation "to 'mend a home rather than break one (*ghar bhasana*),' (2005, 172).

⁸⁴ Mumtaz's situation, and her misplaced liberal longings raise the question that is rarely asked about marriage itself. Veena Talwar Oldenburg unabashedly puts it this way: "I am tempted to conclude that it is not dowry that endangers women's lives, but marriage itself. Much has always been said about the 'dangers' of marriage, and the position of potential bride and wife, but the institution itself remains robust—the ineluctable and unquestioned destination toward which all young women travel. It is this compulsive unitary vision that severely limits the choices of bridegivers." (213).

are located (2005, 196). She suggests that it is the low-income women and the *basti* context that makes a more radical feminist position impossible. I will argue, though, that the situation calls for a more complex analysis. Commenting on an earlier version of this chapter, Janaki Nair suggested to me that the troubling enforcement of marriage by explicitly feminist institutions like the *mahila panchayat* are part of a greater difficulty for contemporary Indian feminism. Even women who are able to earn their own keep, and who are overtly critical of bourgeois marriage, such as Nalini Jamila, a sex worker from Maharashtra who has published an autobiography, wish for the securities that marriage provides. The dedication to mending rather than breaking homes can be traced to the middle class ideology of marriage explicitly articulated and promoted by Action India, which oversees and funds the panchayats, and trains their members and leaders. But this emphasis on marriage is articulated here in the *mahila panchayat*, not in a civil court, and by *mahila panchayat* leaders who, though trained by Action India, are not themselves part of its bourgeois world. In what framework, then, might we think about the *mahila panchayat* leaders' ambivalence about marriage as simultaneously an impediment to women's aims and their greatest source of security?

The Muslim Mahila Panchayat

If an ideological attachment to marriage is one guiding force in the *mahila panchayat*'s proceedings, an explicit link between feminism and atheism is another. The latter has forceful effects on Muslim women's access to the *mahila panchayats*. The first surprise I encountered as I set out to do fieldwork in Delhi's *mahila panchayats* was that it took months to find one that served Muslim women. At the time of my fieldwork, Delhi boasted forty-four *mahila panchayats*. Action India, the Non-Governmental Organization (NGO) that founded and oversaw the *mahila panchayat* network, had opened its first *mahila panchayats* in the 1990s. The older *mahila panchayats* were well-developed and had strong reputations and concomitantly voluminous case loads. These *mahila panchayats* were run directly by Action India. The *mahila panchayats* in Dakshinpuri, in which I conducted some initial fieldwork, had been hearing cases for 15 years, and its two leaders had been there for twelve and fifteen years, respectively. The only *mahila panchayat* located in a Muslim neighborhood and primarily serving Muslim women had been founded after 2001 and its leaders had been working there for one and two years, respectively. Given the disproportionate impoverishment of Muslims in India, I was surprised that a feminist organization explicitly working to give poor women access to justice would be so under represented in Muslim communities.



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The *mahila panchayat* network expanded significantly in 2001, when the Delhi Commission for Women (DCW) recognized the *mahila panchayats* as effective mechanisms for promoting women’s safety. As part of its “Make Delhi Safe For Women” initiative, the DCW hired Action India to reproduce its *mahila panchayat* model by working with 13 NGOs and 16 CBOs (Community Based Organizations) (*Action India* 2001, 31). Action India worked with other, localized NGOs, which in turn found and “motivated” community leaders to begin running their own *mahila panchayats*.

The *mahila panchayat* in Welcome Colony is one of the *mahila panchayats* run by a CBO and overseen by Action India. A small CBO called Sur Nirman, whose main focus is on providing education to young children, runs the Welcome *mahila panchayat*. The head of Sur Nirman is an unmarried middle-aged Muslim woman from a working class family in Old Delhi. She told me that she was interested in starting up a *mahila panchayat* as a way to provide resources for women trapped in violent marriages. She came to meetings occasionally, but mainly viewed her role as one of oversight, checking

in with the leaders of the *mahila panchayat* from time to time to ensure that things were running smoothly.

The office of the Welcome *mahila panchayat* was located on the second and top floor of a cinderblock building in the Welcome resettlement colony in east Delhi. A steep staircase led up from the street to a concrete balcony from which one entered the one-room office. In the corner of the office there was a desk and chair, although neither was used. The sound of the squeaky ceiling fan provided a constant backdrop in my recordings of meeting and discussions in the Welcome *mahila panchayat* office. The two *mahila panchayat* leaders, Farida and Reshma, kept a small gas burner under the desk, which they used to heat their lunches. There was one shelf at shoulder level on three of the four walls of the room. It was full of copybooks holding the *mahila panchayat*'s logs and case files. The remainder of the wall space was covered with posters and with charts tracking the number of cases and the subjects of dispute that had appeared in the *mahila panchayat*. Between ten and twenty members attended the regular Wednesday meetings. Every day, Farida and Reshma opened the office at ten and remained there, on call, until four in the afternoon. Excluding Wednesdays, there was little traffic through the office, although occasionally several women would drop in to follow up on a case or to discuss difficult situations they were confronting at home.

The staff at Action India pointed out to me that the *mahila panchayat* in Welcome differed from the other *mahila panchayats*. They attributed many of these differences to the relative youth of this *mahila panchayat*: its leaders were newer and less experienced, and their *mahila panchayat* consequently had less clout in the local community. The leaders were also not as effective at following up on cases after a settlement had been written and signed as were their counterparts in other *mahila panchayats*. My conversations with Action India staff members about the Welcome *mahila panchayat* and Action India's records about it showed that this young *mahila panchayat* is considered to be "coming along," although it is still far from exhibiting the characteristics of the more established (Hindu) *mahila panchayats*.

Action India 2005-2006 report gives Action India's long running *mahila panchayat* in Dakshinpuri the following review, which suggests that youth may not be the only reason for Action India's critique of the Welcome *panchayat*:

mahila panchayat members are very active, bold, and atheistic about their work. They have good qualities in case handling. Office is decorated with some posters, newspapers clippings and chart papers. The members of *mahila panchayat* are 22 and they regularly attend the meeting and solve the cases perfectly. Coordinators and paralegal workers are very sincere. They are strong feminists. Good communication between staff and *panchayat* members. Documentation, file keeping and report writing process is good" (*Action India* 2005).

A *mahila panchayat* is not only to be located in a welcoming and educational space, but its members exhibit certain qualities: sincerity, boldness, activism, feminist commitments, and communicativeness. The *mahila panchayat* members are also praised as "atheistic," an adjective that some Action India staff members also used in interviews to describe the organization's commitment to keeping religion out of its proceedings. The *mahila panchayat* coordinators and paralegal workers have a specific set of skills in

addition to demonstrating a certain attitude to their work. They keep up with the “documentation, file keeping and report writing” required of the *mahila panchayat*.⁸⁵

The Welcome *mahila panchayat*, by way of contrast, received a more tentative assessment. According to the report, the Welcome *mahila panchayat* met regularly, and had been able to resolve some cases, but although “documentation is...improving,” the paralegal and coordinator still needed training. They are “working sincerely,” the short synopsis concluded, implying a sympathy vote. Even if they were not succeeding, they were trying. In my interview with Naseem Khan, she was eager to hear my assessment of the Welcome *mahila panchayat*, and offered her own, rather cutting, view of the *mahila panchayat* leaders and of the head of Sur Nirman (interview, March 26, 2006). Khan’s main criticisms of the Welcome *mahila panchayat* were directed at one of the leaders, Reshma, whom she described as a good worker, but too authoritarian in her style. Khan argued that Reshma’s bluntness prevented the *mahila panchayat* from being a space in which all voices are equality audible, a requirement of *mahila panchayats*. Reshma’s authoritarianism was also in evidence in her reticence to share responsibilities with the members. Khan had little to say about Farida, except to state that she should be more assertive. Further, she argued, the organization of the *mahila panchayat* was weak, and the record keeping not up to Action India’s standard. Action India was dedicated to helping the Welcome *mahila panchayat* to develop, she emphasized, but the organization was aware that this *mahila panchayat* was in need of work.

Khan may have had several reasons for expressing her concern about the Welcome *mahila panchayat* to me in such strong terms. The first, which she explicitly stated, was that as a Muslim she was interested in helping Muslim communities access justice especially given their economic disadvantage.⁸⁶ Secondly, I had been sitting in the Welcome *mahila panchayat* for the better part of the year, and Khan knew that I was making observations and judgments about the *mahila panchayat* network for a dissertation. She wanted to make it clear that she knew that the particular *mahila panchayat* I had been observing was weaker than the others by Action India standards but that it was not being left behind because it happened to be the Muslim *mahila panchayat*. Our interview ended with Khan’s optimistic projection that the Welcome *mahila panchayat* would eventually reach the levels of success enjoyed by the older *mahila panchayats* as their leaders were more thoroughly trained in *mahila panchayat* procedures and achieved the religion-blind feminism of Action India’s leaders. I will explore the role of “atheism” and its implications for the Muslim *mahila panchayat* through an analysis of one case I observed.

The cases that the *mahila panchayat* at Welcome heard were animated by tensions and conflicting discourses and aims. The ways in which these conflicts played out suggested that the assumed split between law and non-legal life and between Islamic norms and feminist aims upon which the Action India ideology relies acts more like a

⁸⁵ This set of skills and of institutional requirements is reiterated in the report’s section on “process of initiation of Mahila Panchayat Programme”: “Building relationship in the community/ Identifying members to strengthen Panchayat/ Formation of Mahila Panchayat at grass root level/ Institutionalize regular system of Mahila Panchayat meeting day on every Wednesday in a recognized community space/ Case Registration and investigation of cases/ Hearing and case resolution/ Documentation and follow up of the cases” (p. 1).

⁸⁶ Zoya Hasan and Ritu Menon’s book *Unequal Citizens* documents the Muslim community’s economic and political marginalization of Indian Muslims and its effect on women (2004).

constantly shifting set of tensions. I argue here that these tensions further show that the a-religious feminist space that the *mahila panchayat* aims to create blinds it to the tensions inherent in its project and mistakes these tensions in the Welcome *mahila panchayat* for incomplete training or expertise.

Saida's Case: Discussing Sharia and Writing Atheism

While my research shows that to a large extent the Welcome *mahila panchayat* was confronted with cases overwhelmingly similar to those brought to Hindu majority *mahila panchayats*, complaints about insufficient maintenance (what Shalini Grover calls the “*kharch-pani* complaint”) being the most common,⁸⁷ there were certain cases and approaches that reflected the Muslim character of leaders, members, and disputing parties in the Welcome *mahila panchayat*. The Hindu-dominated *mahila panchayats* often led negotiations in cases about bigamous marriages or men involved in relationships with women other than their wives, but in the Muslim *mahila panchayat*, there were also disputes that arose from polygynous arrangements. Naseem Khan pointed out that new statistics suggest that bigamy among Hindus is more common than polygyny among Muslims, although the former is illegal and the latter legal (interview 3/26/06). In a meeting of *mahila panchayat* leaders I attended at the DCW (Delhi Commission for Women), there was an overwhelming agreement that legal polygyny is preferable to illegal bigamy, because the second partner of a bigamous Hindu man has no legal rights to property, care, or allowance, whereas the rights of the second wife of a polygynous Muslim man are clear.

Further, in *Action India's* 2005 report, among their exemplary cases is one of “extra marital affairs” in which a husband has a second relationship, and one of “bigamy” involving a Muslim couple. In the first, the report states that when the wife accused her husband of having an affair he beat her, following which she came to the *mahila panchayat*. “After receiving the case, *Panchayat* members visited both house for know about reality. Then *Panchayat* send to notice both parties (her husband and another woman who have in this relation, her name is Manju) for hearing. *Mahila panchayat* members speak privately with each person. And also worn her husband then her he realize own mistakes and promised that, he will never repeat this mistake [sic].” In conclusion, the report states: “in follow-up *Mahila Panchayat* members found that Tanuja is happy with husband and children.” Polygyny is legal for Muslims under Indian Muslim Personal Law, so second relationships in the Welcome *mahila panchayat* are accompanied by a different set of legal and moral expectations from cases of multiple relationships in predominantly Hindu *mahila panchayats*. The case that follows is exemplary of the way in which this religious particularity is central to negotiations in the *mahila panchayat*, but leaves barely a trace in the written records produced by the *mahila panchayat* leader.

The Petition

⁸⁷ Grover has argued that this was overwhelmingly the most common issue to arise in the *Action India mahila panchayat* in which she conducted her research (2005). Likewise, in my observations of a Hindu *mahila panchayat*, I found this to be the most common concern; this was corroborated by my survey of the cases brought before a third Hindu *mahila panchayat* in another part of Delhi.

Saida's case summary (*wishye*) reads: "She is demanding her *kharch* and her rights from her husband; it is also about a deceptive wedding (*dhoke se shadi*)." The opening letter giving the facts of the appeal follows.

Description: The issue is that my name is Saida, and I am a resident of X, Seelampur. My wedding to Mohd. Javed was about seven months ago; he is a resident of X, Seelampur. My in-laws were all very strongly supporting the wedding because Mohd. Javed's first wife could not have children. Mohd. Javed's first wife threatened me (*dhoka diya*). A month ago my husband took a separate rental house for me and after that, he no longer comes to see me, and doesn't give me my full allowance. And for an entire month, my husband has kept me alone. He also doesn't come to see me at night, and he says to me, I married you to have kids, but you also haven't had any kids, so I am going to leave you. He beats me a lot, and is also very suspicious of me (*bahut shak karta hai*). My request to you is that you find a solution to this problem. –Saida

When the form later asks Saida to repeat her problem, she expands on certain aspects of her discontent:

My problem is that Mohd. Javed married me under false pretenses: he did not tell me that he had a first wife, but I kept quiet anyway. Now he also doesn't give me my allowance, and doesn't have wifely relations with me (*patni sa rishta nahin banate hain*), and tells me that if I don't have a child, he will leave me. My husband only married me so that I would have children; he doesn't have any children by his first wife—what am I going to do? In closing: My request is that you find a solution for my problem.

Saida's complaint, as she articulated it to the *mahila panchayat* orally and in this written appeal, is partly about her maintenance allowance (*kharch*), partly about proper marital relations, and partly about her marital and living conditions. When she told the *mahila panchayat* her story, she made it clear that she was living separately from her husband's first wife at her own initiative, but that she felt the accommodation was not in a safe part of the neighborhood. In addition, her husband rarely gave her the allowance to which she was entitled by their agreement, and he continued to spend most of his time at the first wife's house. She initially told the *mahila panchayat* members that she wanted a divorce. This, she argued, would allow her to accomplish several changes: she wanted the greater mobility that would be enabled by no longer needing her husband's permission to leave the house, by living in an area where the neighbors wouldn't look askance if she had people over or if she went out, and by having enough money; she didn't want to be married only to spend all her time alone, and she didn't want to be subordinated to her husband's first wife. By the time the *mahila panchayat* members opened the case file, the demand for a divorce has changed to a demand for different treatment from her husband.

The Negotiation: Pragmatics

Saida's articulation of what she wanted changed through a series of discussions. *Mahila panchayat* discussions, which are open-ended and often somewhat chaotic, are a hallmark of its proceedings. After the leader has opened the discussion, there is an impassioned exchange between the disputant and the *mahila panchayat* sisters. The *mahila panchayat* sisters are to provide counseling on the question of what the disputant ought to do in her situation. First the *mahila panchayat* sisters asked Saida, rhetorically, whether she thought she would have more mobility as an unmarried woman. Giving her little chance to respond, they told her that as a married woman, she would not be as frequently suspected of immodest or immoral behavior when she went out or when she entertained visitors as would a divorcee.

Secondly, if she divorced, they told her, it was unlikely that she would be able to get as much money from her husband as if she remained married to him and negotiated a certain amount of pocket money. This statement reflects the realities of divorce for Muslim women under Indian Muslim Personal Law. If a Muslim couple divorces at the husband's initiative (through a *talaq*) and the wife has not yet received her *mahr*, she is entitled to it at the time of divorce, and most judges, secular and Islamic, will award it to her—although most of these institutions fail to enforce that award (Hussain 2006, Vatak 2001 & 2007, Basu 2008). Saida's *mahr* was 15,000 rupees worth of silver (\$300). If the wife initiates the divorce through a *khul'*, she must negotiate with her husband in order to get either the entire *mahr* or part of it. It is not uncommon that she forfeits her *mahr* in order to convince her husband to divorce her.

The more significant issue has to do with maintenance payments after the divorce. Upon a divorce of any kind, the divorced wife is entitled to maintenance payments to support her for the three month waiting period before she is eligible to remarry (the *iddat* period). Under *mahila panchayat*, however, whether she is entitled to either a large enough maintenance to last her beyond the *iddat* period or to maintenance payments beyond that period depends a great deal on the judge who hears the case (Agnes 1999, Basu 2008, Mukhopadhyay 1996). As a wife, however, she is entitled to care, protection, and financial support whether or not she resides with her husband. This makes it financially expedient for Muslim women to seek maintenance instead of divorce (Basu 2008). The *mahila panchayat* therefore advised Saida that instead of asking for a divorce, she could arrange with her husband to stay with her natal family; she could train in a vocation which she could pursue at home, such as sewing, in order to earn additional spending money. This way, they suggested, she would have more independence from her parents, and they from her. The negotiation and advice are about Saida's relative bargaining position as wife, daughter, and divorcee.

The *mahila panchayat* records reveal that Saida was twenty at the time that she brought the case to the *mahila panchayat*, and her husband was 35. She had been educated through the tenth grade (10th pass), and her husband was uneducated. Both identify their *jati*⁸⁸ as *sheikh ansari*. Although Saida used to work, doing weaving, she no longer does. Her husband is a painter. Saida is one of six sisters, of whom three are married. Her one brother sews for a living. Her brothers-in-law all work as painters, and only one of the three is married.

Saida's case was with the Panchayat for two months, and although there were only two or three meetings at which both parties were present, she came every week

⁸⁸ *Jati* is usually translated as caste. It refers to a person's social status and often to their profession.

during this time. Through the discussions she had, formally and informally, with the Panchayat members, her own opinion about what she wanted changed significantly. In a private conversation, Farida, the *mahila panchayat* leader, told me that initially Saida had been a bit naïve (*kaccha*). In her assessment, though, through discussions at the *mahila panchayat*, Saida had been guided to a more mature position, one from which she was able to accommodate her husband and her marriage if her husband was willing to treat her equally to his other wife.

The Negotiation: Sharia

The additional layer of discussion, which does not appear in the record, was about polygyny. The Quranic injunction often cited in discussions of polygyny is that a man must “do justice between [his] wives.” During discussions of Saida’s case, Sufiya, the head of Sur Nirman, gave *mahila panchayat* members long lectures about the rights of married women according to the Quran. Sufiya understands “doing justice between wives” to mean seeking the permission of all the women involved for multiple marriages and providing for them equally. This provision, she argued, is not only about the material requirements for life: food, shelter, clothing, and the money required to care for the couple’s children. The husband, she insists, must also be able to provide emotionally for all of his wives, and he must not neglect any of them.

Although hers was an exegesis given without explicit reference to any text other than the Quran, and Sufiya, the woman who delivered it, felt no need to provide even the specific verses of the Quran to which she referred, her argument was both legal and theological.⁸⁹ She defined Saida’s complaint as a problem by referring to the Quran. The repetition of these entitlements and the constant intonation of *barabari*, equality, set the stage for further discussion. The requirement of equality between wives became the cornerstone of the conditions for reconciliation.

Sufiya’s argument and her decision to make it through this particular Quran verse brings her—consciously or otherwise—into a larger conversation about the possibility of Islamic feminism. Feminists in the Islamic republic have developed analyses of the Quran and Hadith that support a more egalitarian view of gender relations, thereby enabling them to make arguments for equality in Islamic terms (Najmabadi, Mir-Hosseini). There is also a growing number of Muslim women in India pursuing a Quran-based feminism, as Sylvia Vatuk documents (2008). Viewed through this more explicit Islamic feminist frame, Sufiya’s analysis seems to suggest a non-secular path to justice for women.

After the negotiations, the *mahila panchayat*’s ultimate decision, to which both Saida and her husband agreed, was that she would move into his house with him and his first wife again. Not only did Saida give up on the idea of a divorce at the beginning of the negotiations based on a financially savvy suggestion, but by the end, she agreed to move into her in-laws’s home and to be an obedient daughter-in-law. By agreeing to move in with her husband and his first wife, Saida gave up the possibility of independence coupled with financial support. The agreements of husband and wife state:

⁸⁹ As Wael B. Hallaq illustrates throughout his seminal account of the history of Islamic Law, this passage has been interpreted in many different ways, especially within modern Muslim states as they have sought to codify the sharia in order to render it the basis for state law (1997).

I, Saida, today, 27/12/06, before the Shakti Mahila Panchayat, and present before the head of the panchayat, I swear; without any pressure, and with pleasure, I am going to live with my husband, Mohd. Javed at my in-laws's. And I promise that in the future I will not fight with my husband or my in-laws, and in my husband's house, I will obey him. And I will follow the agreement from the Mahila panchayat. And I will live happily with my husband. If I have further problems with my husband, I will come to the panchayat. I will obey the panchayat's agreement. For this reason, I have given this decision in writing.

I, Mohd Javed, swear that I am bringing my wife, Saida, to my house to live with me, and from now on, there will be no more fighting with her. No one else in the house will give her further trouble either. If I do not follow the agreement of the panchayat, then I will come before the panchayat again. For this reason I have put this decision in writing.

True to *mahila panchayat* form, the case ends in an agreement by the wife and the husband to treat one another in a manner appropriate to their roles as husband and wife.⁹⁰ After several months of negotiation, Saida has capitulated to conditions within which she initially had no interest in following. While religious laws and moral strictures were an important part of the negotiation in the *mahila panchayat*, the *faisle* bear no trace of these discussions, which are subsumed under a seemingly monogamous marital dispute.

Saida's case, and the two stories told by the record and the discussion, compel me to ask another question: what is it that renders the *mahila panchayat* records unreceptive to the *Islamic* legal and moral arguments central to the negotiations? Why is the nascent Islamic feminist discourse articulated by Sufiya inadmissible into the *mahila panchayat's* record? This question raises a significant, and somewhat neglected conundrum for the *mahila panchayat* network: what is the relationship between feminism and religious practice?

Religion, Atheism, and the Mahila Panchayat Network

Long before observing this case, I had been struck by two related issues. First, it had taken me great effort to find the one *mahila panchayat* located in a predominantly Muslim neighborhood; second, I had been struck by the repeated insistence by *Action India* documents and staff, and by *mahila panchayat* staff that *mahila panchayat* members were "atheist." "Atheism" was among the accolades given to the *mahila panchayat* members of the *Action India* panchayat in the report quoted above. At the end of my fieldwork, I asked Naseem Khan, an *Action India* staff member, about religion and the *mahila panchayats*. She immediately responded that the refusal of religious categorization and the centrality of atheism as a virtue an element of the *mahila panchayat's* remaking of traditional panchayats. "The only thing we wanted [in founding the *mahila panchayats*]," she said, "was that an ordinary woman could have a bit of space; we didn't think about caste, class or anything like that. This is also because the traditional justice system is built around these divisions and we wanted to avoid that"

⁹⁰ The exemplary cases published in *Action India's* 2005 report end, without exception, with the description of the complainant as "happy," and with only a few exceptions as "happy with husband and children."

(interview 26 March 2007). What mattered to *Action India* was a reform of panchayat justice in which gender was the only consequential and recognized difference.

Khan suggests in her comment that divisive differences can only be overcome by producing a space within which they are irrelevant. However, when I pushed her about the incidental paucity of *mahila panchayats* in Muslim dominated neighborhoods, in spite of Muslims's notorious position of poverty,⁹¹ she offered another facet of the question.

The second thing was that we see the Muslim aspect is hard; we see that usually when a Muslim case comes, most of our staff is non-Muslim, so when a Muslim case comes, they are not in a position to handle that case. Because knowing personal law is necessary, knowing Sharia is also necessary. In our regular trainings, they are about law, but they are not about Muslim law (interview 26 March 2007).

Here she introduces a different level of argument. She no longer comments on the need to refuse difference to enable justice, but instead notes the impossibility of ignoring it. While she went on to tell me the Muslim Personal Law as codified by the Indian state was irrelevant to Indian Muslims, and that it was knowledge of the Quran and Hadith that were important to them, here she implies that it is precisely the legal structure that places Muslim women out of the reach of Hindu-dominated women's empowerment schemes. While Saida's case was discussed through the prism of *sharia*, the legality of polygyny under Indian Muslim Personal Law was an underlying basis for the negotiation. Khan's comment does more than identify a lacuna in the training of *mahila panchayat* members. Her statement normalizes Hindu Personal Law as commonsensical. It is *Muslim* not *Hindu* personal law that would require additional training. Thus, *mahila panchayat*L appears as the excess beyond the reach of a generic legal training. The erasure of Nahid's husband's first wife in the *mahila panchayat* decision in her case reflects *mahila panchayat*'s incapacity to reflect in writing the religious particularities of the case.

It is not only in reporting on cases that the Muslim *mahila panchayat* participants bear a disproportionate burden of religious unmarking. When the Welcome *mahila panchayat* leaders met other leaders, they consciously altered their comportment to match the "atheist" ideal understood by the *mahila panchayat* leadership to be central to feminism. The most striking example of this that I encountered was at the International Women's Day extravaganza in the spring of 2006. Farida, the leader of the Welcome *mahila panchayat*, usually wears a *burqa* in public. She always wears it when traveling to and from the *mahila panchayat*, although she takes it off as soon as she enters the *mahila panchayat* office. So when I met her at the International Women's Day celebration at Dilli Haat—a middle class market—to which the entire *mahila panchayat* network had been invited, I was surprised to see that she came sans *burqa*. After a while, I asked her why she was not wearing it. She responded that if she showed up at a gathering of mostly Hindu women wearing a *burqa*, they would wonder how she could possibly run an *mahila panchayat* if she wears one. "These women here are the only ones who know I wear a *burqa*," she said, indicating the members of the Welcome *mahila panchayat*, "No one else knows." She implied that wearing this visible marker of her

⁹¹ For an incisive assessment of Muslims' economic, educational, and employment disadvantage, see Hasan and Menon 2004 & 2005.

religiosity was incompatible with being taken seriously as a supporter of feminism and equality for women.⁹² The anecdote demonstrates the possibilities of local justice—in Welcome, Farida did not hesitate to wear her burqa—but also the difficulties of defining and implementing caste-less and religion-free justice beyond the immediate community. The burden of shedding religious markers rests on the Muslim woman who leads the predominantly Muslim *panchayat*, which suggests that Farida accepts the Hindu subject as the normative subject of rights, from which she as a marked pious Muslim subject is excluded.

Rehana's Case

Saida's case demonstrated the important role that Islamic arguments play in the Welcome *mahila panchayat*, making its negotiations illegible within the “atheist” feminist framework of Action India's training and procedures. Rehana's case shows that the *mahila panchayats'* position at the margin of Delhi's legal apparatus limits the remedies it can offer and offers women reconciliation rather than a viable exit from marriage, even in cases of domestic violence.⁹³

Each *mahila panchayat* case record begins with a statement by the complainant. Handwritten at the top of this first page is “*Shakti Mahila Panchayat Sangh*” followed by the *mahila panchayat's* address. There is a brief synopsis of the issue (*wishye*), and then a longer discussion of the relevant circumstances and facts (*prakriya*). Rehana's case was filed in the Welcome *mahila panchayat* in late July 2006. The decision (*faisla*) was written and signed in December of the same year. In her complaint she states that she left her marital home in an Uttar Pradesh village about 90 miles from Delhi because her husband and her mother-in-law were abusive. When Rehana first came to the *mahila panchayat* she asked for a divorce. However, the application bears no trace of this demand, and suggests that she is only asking for maintenance (*kharch*) and for a relief from domestic violence. She immediately, in her opening application, suggests that she would be willing to live with her husband if he would join her in Delhi, where her natal family lives. Her letter of application states:

The application (*sawinye nivedan*) is that my name is Rehana and I am a resident of X block, Seelampur. My husband's name is Ahmed, and he lives at X, Saharanpur. My marriage was one year ago, and now I am the mother of one son. My husband has been beating me for some time, and says, “you have come without bringing a dowry”. Asking me for the dowry, he beats me from the morning onward. He rails against me. He is suspicious of me (*mujhe shak karte hain*). He says, “you were involved with someone” (*kissi se phansi hui hai*). And

⁹² There is a long and varied literature on the question of Muslim women and veiling, exploring everything from its uptake in paternalistic and racist colonial discourses (Alloula, Fanon, Ahmed) to disdaining for and refusal of it in liberal contexts (Asad, Mahmood, Abu-Lughod, Scott, Deeb). Saba Mahmood explicitly grapples with the relationship between the practice of veiling as part of a religious comportment and feminist discourses on freedom and liberation in her important book (2005).

⁹³ The contrast with the *dar ul qaza* is interesting: whereas the *dar ul qaza's* divorces are accepted as legal by the Muslim community and usually accepted in courts of law, *mahila panchayats* do not attempt to grant divorces (and when they do, as Shalini Grover shows in her dissertation, they sometimes end up endorsing illegal bigamous marriages). If *dar ul qaza* institutions are handicapped by their inability to give out and enforce maintenance payments, *mahila panchayats* are only able to offer reconciliation.

my mother-in-law also torments me when we meet. And she threatens to beat me. If something happens to me tomorrow, whose responsibility is that? Now, I have left my in-law's house because they beat me. I request that you get justice for me. If my husband comes to Delhi to live, then I am ready to live with him here. If he does not come here, I want maintenance payments for myself and my child, because I am at my parents's own rented house, and we are poor people. If you cannot get my maintenance payments, then I ask that you reach my husband's parents.

Rehana and her infant son were staying at the time with three of her four siblings and her mother and father on the ground floor of the semi-*pukka* house⁹⁴ in which the *mahila panchayat* meets. One of Rehana's sisters was married and lived with her husband's family. Rehana's father works at a madrasa, and his is the family's only income. Rehana is 18 years old, and has a third grade education. Her husband is 30 and illiterate. By trade he is a Qawalli singer, and he makes about 1200 rs./month (\$24). Both husband and wife identify as being part of the *mirasi jati*.⁹⁵ Rehana is Ahmed's only wife.

During the three months that Rehana's case was open, she came into the *mahila panchayat* several times, and her husband was summoned twice. Sometimes, Rehana just came to chat, but in the instances when her husband came as well, debate about what should happen was lively. This case was my first at the Welcome *mahila panchayat*, so the dynamics of evasion, obstinacy and persuasion that constituted it were especially striking. I first attended the *mahila panchayat* in Welcome in October 2006. Rehana was there at my first meeting, and it was only later that I realized her case had been awaiting a decision for several months already. My recording of that day's proceedings suggest that, indeed, there was some way to go before her case would be settled, as I will show. A fragment of the transcript of that day's discussion gives a flavor of the discussion and negotiation that the *mahila panchayat* members practice.⁹⁶

The Discussion

During the discussion, we all sat in a circle. By the time the discussion began, the room was full of women, and my conversation with Farida, the *mahila panchayat* leader, about the mechanics of *mahila panchayat* adjudication had ended. Farida introduced the case.

Farida: This is the case. Her name is Rehana.⁹⁷ This is the one I had told you about: the Saharanpur case. This is it.

⁹⁴ "semi-pukka" literally means "half good," but in the context of bastis like this one, it refers to a building that is made of decent materials (in this case brick), but that does not have all the amenities of a complete building. It has rudimentary plumbing and running water, but no other amenities.

⁹⁵ Mirasis are a low caste Muslim group who are typically musicians by trade.

⁹⁶ In contrast to a court setting where the judge is the ultimate arbiter, as in the cases that Justin Richland analyzes in Hopi courts, the repetitious and unguided nature of the *mahila panchayat*'s discussions mean that the outcome as it is articulated in the final decision is more a culmination and accumulation of conversations than a decisive ruling based on a pivotal argument (2008).

⁹⁷ In casual conversation, the *mahila panchayat* leaders often discussed a single disputant as the "case". In this way, disputants seemed to stand in a metonymic relationship to the dispute of which they were a part.

Sufiya, the head of the NGO that runs this panchayat was there that day, and she intervened: Tell us, tell us!

Rehana protests.

Farida: You tell us. It is better that way.

Rehana, holding her five month old in her lap: I...there is a lot of beating (*mar-peet*) and he, I mean, he also doesn't earn anything, and my sister-in-law, my sister-in-law is no good. And I mean, the men give me a terrible time....There was so little to eat, and there weren't enough clothes, not enough money, he didn't give me any. And it has been a year since my wedding, I mean, I don't have any faith.

Sufiya: Does he have clothing made?

Rehana: No. I mean, at the time of my wedding I was given things, but afterward, he hasn't given me anything. And then he threatened to send for my mother, so I left to come...

Sufiya: How long have you been here?

Rehana: I came five months ago...

After a long discussion about how many siblings she has, and about her husband's accusations that she has been unfaithful, which got so loud that it was incomprehensible: each *mahila panchayat* sister turned to discuss the issue with the person sitting next to her, and the hubbub was overwhelming. Sufiya suggested that Rehana's husband was a bit dumb, and that should he ever show up at the panchayat, she should be called.

Rehana: Ok, so what if he leaves me? I'll just stay at my parents's house.

Sufiya: Where?

Other *mahila panchayat* members: your baby needs food, and clothing, he is five months old.

They continue: Why don't you show him; don't return to Delhi. Be quiet...

Rehana: Here there isn't much, but there isn't pressure...I'm not going there.

Mahila panchayat members: Does he have a lover?

Rehana: Yes.

Sufiya: When you need to force him, we can go to the police.

Rehana: No, no: I am not going there.

This is where that day's discussion ended. In it, the *mahila panchayat* members seemed to have trouble finding a direction: Rehana's initial depiction of her predicament was fragmentary at best, focusing as it did on the violence and on her will to stay at her parents' house rather than returning to her marital home. The other *mahila panchayat* members seemed eager to coach her in how to adjust to her marital home. They argued that if she were a little more agreeable and did not run away, she would find a way to work with her mother-in-law. Sufiya continually pushed Rehana to seek other means of redress: to go to the police, or to seek recourse to the domestic violence law. Rehana's hesitation about approaching the police reflects the view held by many Indians that it is better to solve family problems within the family than approaching a third party (Jeffrey 1996). It also suggests that Rehana viewed the *mahila panchayat* as something between family and the state: she was eager to seek their help even if she strongly objected to bringing her case to the police. Sufiya was frustrated that there was little to be done without the presence either of husband or in-laws, and she shifted the conversation to the topic of the new domestic violence law.

In Farida's notes for the day, she faithfully recorded the proceedings:

Rehana told the panchayat: my in-laws give me great problems. Today, Katerina Kemons (Katherine Lemons) came to the panchayat, and we discussed the case. Sufiya told Rehana: See what happens if you once approach your in-laws through the panchayat! If what your husband says is that "if I come to Delhi to stay, I won't have your parents visiting you," then what. To this Rehana replied: Anything can happen. I am never going back to that house. If my husband wants to live with me, he can come to Delhi.

Rehana adamantly insisted that she did not want to return to her in-laws's house and that she did not want to leave Delhi. During the conversation, it seemed that little had happened by way of persuasion.

The Protection of Women from Domestic Violence Act

Some time later, in the end of November, Rehana, who was still living with her mother, was back at the *mahila panchayat*. She repeated her complaint and the *mahila panchayat* women again asked why her husband was not there to discuss the issue. She told them he had too much work. Before the discussion developed further, Sufiya appeared, and announced that since the new domestic violence act had passed, they would begin referring cases to the civil courts for adjudication. She was thrilled, along with the *Action India* staff, who had put significant energy and hope into the act passing. She announced that she had already sent the case along to *Action India*, where a lawyer would be available to meet with Rehana, get the facts, and take it to court for a hearing. The final case file has a cover sheet with Sufiya's letter to Naseem Khan alerting her that the case was being referred. While her letter is dated 13 November, Khan's signature, verifying that she had received it, was dated a month later, 13 December, after the *mahila panchayat* had already written up a decision of their own.

Action India was supportive of the Prevention of Women from Domestic Violence Act (PWADVA) because it extends protection to “any woman who is, or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent” (2a). A “domestic relationship” includes “two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption, or are family members living together as a joint family” (2f). This new legislation offered increased protection for women in several ways. Its definition of “domestic relationship” now included husbands, other male “live-in” partners, as well as in-laws. Under the new act “violence” was also expanded to include the verbal threat of violence as well as physical violence. Women who claimed abuse under the new act were entitled to remain in their marital home, a right they had not previously enjoyed. The act offered relief in the form of damages, and promised that all hearings will be set within three days of the initial complaint and that some kind of legal relief would be in place within sixty days. The hope among the leaders of *Action India* and other NGOs whose work focused on women’s wellbeing was that the women they worked with would finally achieve access to the law through the new act.⁹⁸

Rehana’s was the first case that *Action India* planned to take to court under the new Act. *Action India*’s lawyer was to take on the case, and to bring it through the courts in a speedy manner. For several months, I asked the *panchayat* members what had become of Rehana. Each week they told me that she was still waiting to meet with the lawyer. At a certain point *mahila panchayat* members began to shrug their shoulders about it, suggesting that they, too, were impatient with the delay. Finally, one Wednesday in December, husband and wife came to the *mahila panchayat* and the group decided to settle the matter then and there.⁹⁹ The decisions (*faisla*) below mark the case’s culmination.

The Faisla

Farida’s notes from the 6th of December record what I remember: Rehana’s husband appeared in the *mahila panchayat* stating that he was ready to have her come back with him to Saharanpur. Rehana told the assembled *mahila panchayat* members that she was ready to go. It was Rehana’s mother, who was also at the *mahila panchayat* that day, who objected to the agreement that both parties ended up signing. She argued that if her daughter returned to her in-laws she would without doubt encounter problems. Rehana’s mother made a final pitch for her son-in-law to move to Delhi so that her daughter could be near by and she could keep an eye on things. Her protestations were to no avail, however, and the *panchayat* members agreed that if Rehana was ready to return to her husband’s family, that would be for the best. The two signed the following agreement:

⁹⁸ There has been some backlash against the bill in the form of men and men’s groups arguing that it targets innocent husbands, as reported in *The Hindu* in 2007 (<http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=2007122360050500.htm&date=2007/12/23/&pr d=th&>. Accessed on 3/16/10).

⁹⁹ Rehana was not the only woman to be disappointed by the lethargy of the bureaucracy. The *Hindu* reports that many women were left half-served by the act. (<http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=2009080250020100.htm&date=2009/08/02/&prd=mag&>. Accessed 3/15/10).

I, Ahmed, of Saharanpur, on this day, 9/12/06, declare before the Mahila Panchayat that I am going to go with my wife to Saharanpur, and that when she is there, I will not cause her any more sadness, and there will not be anymore fighting. And I will do everything that the Mahila Panchayat has ordered: I will give my wife and my child good and happy lives. And if anyone comes for her wedding gifts, I will not do the wrong thing. If any word gets to the panchayat that I am not doing what they say, they have the right to call me in again. If there is anything wrong, then it will be my responsibility. I make this decision with full consciousness (*hoshwiswas*). For this reason, I have had this decision written so that it will last for the coming time.

I, Rehana, wife of Ahmed, today, 9/12/06, before the Mahila Panchayat and others, declare that without any pressure or force but rather by my own free will, I am going with my husband Ahmed to my in-law's. And in the future, I will never argue with my husband or my in-laws. In my husband's and my in-laws's house, I will accept all things that are correct (*jo ki jaiz hogi*). I will go along with the entire house agreement from the Mahila Panchayat. I will happily lead my life with my husband and child. If I fight with my in-law's or my husband or my mother, the Mahila Panchayat will have the right to call me in. I am making this decision with full consciousness. I am having this decision written so that it will last for the coming time.

In the agreement, the husband offers to care for his wife and child, and the wife offers to behave properly, and not to pick fights. In other words, he offers to be a good husband and she a good wife.

This case, along with several other domestic violence cases that ended in a similar way, raise the question of the limits of local justice. Rehana was given time to speak, time to discuss her options with the *mahila panchayat*, and the chance to discuss her situation with her husband. However, the case fails the promise of court justice for those whom it would well serve. Rehana's case failed to reach the courts not because of crowding in the courts, but because of the failure of *Action India*'s lawyer to meet with her. Where justice was not served through the courts,¹⁰⁰ the *mahila panchayat* offered compromise. However, this compromise resulted in the case coming full circle: Rehana was returning to her in-laws in Saharanpur, whom she claimed beat her. She had received a written compromise from her husband, but Saharanpur is far beyond the *mahila panchayat*'s reach, and her mother was concerned about letting her go.

The trope of resolution is strong in the *mahila panchayat* cases. In other cases that involved domestic violence, similar resolutions were finally sought. Another woman, Reshma, brought a case against her husband in the *mahila panchayat* on allegations that he beat her. After some discussion in the *mahila panchayat*, though, she agrees to reconcile with her husband. In yet another case, Rubina's alleged that her husband beat

¹⁰⁰ I have not been able to find any studies of the 2006 law's implementation, probably because it is too soon to have a good read on how it is working. However, newspaper articles just after its passage suggested that the mainstream media backed the view that it would give women yet another way to frame their husbands and in-laws demanding money. This popular view does not bode well for the law's implementation.

her. After several meetings, she and her husband submitted statements to the *mahila panchayat* claiming that they were returning willingly to living together, and Rubina agreed to do a better job of maintaining peace in the household. In another case, in which the husband had thrown the wife out of the house after ten years, the marriage was similarly restored through compromise in which the wife apologized as profusely as her husband.

The interest in compromise, what Laura Nader calls “harmony ideology,” seems in all of these cases to undermine the aim of greater equality between men and women that Action India and the *mahila panchayats* explicitly espouse (1991). The *mahila panchayat* members argue on the grounds of security and wellbeing that marriage is Rehana’s best option, and they imply that what marriage offers her is security.

Conclusion

The *mahila panchayat*’s promise of equality and gender justice appears to be thwarted in both of the cases I have analyzed here. In Saida’s case, the parameters of Action India impede the larger organization from seeing the possibility of a nascent Islamic feminist discourse that could open up new and potentially effective ways for Muslim women to “take their rights.” Indeed, as Sylvia Vatuk has recently documented, a broad array of Muslim women’s organizations voicing an Islamic feminist agenda are beginning to emerge in Delhi and elsewhere in India (2007). In Rehana’s case, we see that the legal marginality of the *mahila panchayat* network severely limits its capacity to enact the change that Action India imagines and about which Farida mused at the beginning of the chapter. Action India and *mahila panchayat* members are keenly aware that mediation is only helpful to a certain extent, and that in cases of domestic violence, for example, plaintiffs like Rehana require the intervention of a judge who can grant them legal rights to residence, to maintenance, and to distance from those who abuse them. But the *mahila panchayat* network in its current configuration is unable to expedite these legal remedies and consequently remains stuck within a discourse of therapeutic remediation.

If Chapter Two showed how women strategically and piously engage *dar ul qaza* institutions to secure divorces that are difficult to attain in civil courts, this chapter shows how the methods and aims of adjudication change when they attend primarily to the question of what is good for women. In the *mahila panchayat*, practices of negotiation enact changes in and discussions of women’s lives that highlight the tensions and contradictions inherent in law while also suggesting that meeting articulated aims may not always lead to justice. In Chapters Four and Five we will see that the question of what is good for women may not be a matter for *sharia* law and may obscure what it does for women.

Interlude

Introduction to the Mufti

The first two chapters of the dissertation have examined legal and moral processes of adjudication carried out in two different institutions available to Muslims in Delhi. In these chapters, I have argued that from the perspective of women's claims, both the *dar ul qaza* institutions and the *mahila panchayats* are ambivalent spaces. Both institutions offer accessible and expedient hearings, but their outcomes often fail to support women's claims. *Dar ul qaza* institutions do not usually give financial awards in the context of divorce, and *mahila panchayats* shy away from pushing for divorce, even where women allege domestic violence. In looking at the kinds of cases women bring to each of these institutions and at the ways in which their claims are framed and adjudicated, I have argued that these failings must be situated in the context of the larger legal landscape of which the *dar ul qaza* institutions and the *mahila panchayats* are a part.

The *dar ul qaza* institutions adjudicated cases following a particular inquisitorial process: lawyers did not represent disputing parties, and the aims and outcomes of adjudication did not entail determining guilt and innocence, but instead parties submitted their claims directly to the *qazi*, who formulated a resolution. The process I observed in the *mahila panchayat* was also deeply process-oriented: plaintiffs detailed their concerns and complaints before a panel of their peers, and through negotiations between parties and the panel, both parties signed a compromise agreement. Although neither system is adversarial, both adjudicate cases with multiple parties with the aim of achieving a resolution to their problem.

In the second half of the dissertation, I turn to two practices of mediation distinct in form and in content from the adjudication processes discussed in Chapters Two and Three. The practices to which I now turn are both conducted by the *shahi imam* and *mufti* of a prominent Old Delhi mosque. Mufti Kazmi both writes *fatawa* (legal advice) and practices spiritual healing, two acts of mediation that he considers distinct orders of intervention into people's struggles. Each of the two following chapters is dedicated to one of these practices of mediation. The questions I ask of these practices are the same questions I asked of the *dar ul qaza* institutions and of the *mahila panchayats*: who brings problems to these institutions? How do they frame these problems? How do women in particular approach these institutions and frame their claims within them? In what ways do they draw on Islamic moral and legal norms? And finally: what is their relationship to the broader legal landscape of which they are a part? Before turning to analyses of these two practices, I introduce the *mufti* whose work I analyze.

The Mufti

Mufti Kazmi Ahmed is the head religious leader (*mufti* and *shahi imam*) of the Shahjahanabad Masjid in Old Delhi. He is popular both as a jurisconsult (*mufti*) who gives written legal advice (*fatawa*) and as a practitioner of spiritual healing. On a typical afternoon, the mufti entertains thirty to fifty people, and on a give week, he writes ten to fifteen fatwas.

Mufti Kazmi claims a lineage that is equal parts Afghan and Punjabi. He is a member of the Barelwi sect of Sunni Islam. The Barelwi movement took shape in the wake of, and some argue as a reaction to, two other reform movements in 19th century

India—the Deobandi and the Ahl-e-Hadith (Metcalf 1982, 296). Metcalf argues that they had in common with these other two groups a “popularly supported leadership, detached from political activity, offering social and religious guidance to their followers” and a commitment to “what they deemed a correct interpretation of the Law” (Metcalf 1982, 296). Barelwis differed from Deobandis and Ahl-e-Hadis in their use of their “position and legal scholarship to justify the mediational, custom-laden Islam, closely tied to the intercession of the *pirs* of the shrines” (Metcalf 1982, 296). Metcalf argues that this emphasis is accompanied by a diminished requirement of “individual responsibility,” and that the movement was as a consequence attractive to poorer and less educated Muslims (1982, 297).

Mufti Kazmi fits Metcalf’s description: he is very popular among the poor and uneducated as well as among middle class Muslims. He spends a great deal of his time giving out amulets, performing intercessions and giving out *taksir*, or number charts written on pieces of paper. For this practice, he receives a certain amount of criticism from other Muslims who otherwise respect him as an important political voice for the community as well as one of the city’s most popular clerics. Mufti Kazmi adheres to a strict interpretation of Hanafi law, as is clear from his fatwas. The major distinction between Metcalf’s analysis of the Barelwis who were part of the initial reform movement and Mufti Kazmi is that he actively disavows sectarianism (1982, 298). When he received a question from a lay Muslim about the validity of prayers recited when standing behind a Shia (“someone who believes in Hazrat Mohammad Ali”), he replied with a fatwa authorizing this prayer. His active work with the All India Muslim Personal Law Board and other non-Barelwi institutions suggests further that for him sectarian differences are not the most important current issues.

During the time I spent with him, I learned that Mufti Kazmi was educated not only in Islamic law but also in Unani medicine. He also holds a Ph.D. in Arabic literature from a university in Egypt. He has published a book in Arabic based on his dissertation. From time to time, the mufti teaches Arabic courses at a Muslim university in Delhi. Mufti Kazmi narrates the story of his official “mufti training,” as he calls it, without great detail. The training included a nine-year “maulvi course” and an additional two years of training specifically about writing fatwas. The part of his education in which he places greater stock, though, is his apprenticeship.

Mufti Kazmi’s father, grandfather, and great-grandfather served as imam and mufti at the Shahjahanabad Masjid, and he sees his own work as part of a family tradition. His father and grandfather taught him basic Persian and Arabic, and they trained him in the practice of writing *fatawa* and in the art of spiritual healing. Mufti Kazmi’s grandfather sometimes saved his *fatawa* for the *mufti* to read and to copy. As he learned more, the *mufti*’s father would have him read the questions that arrived at the mosque and write a fatwa in response. Before returning the *fatawa* to the questioner, his father would verify that Mufti Kazmi had responded correctly. If he had given the correct *fatawa*, his father would also sign the *fatawa* before returning it. I had noticed that some of the *fatawa* the mufti had photocopied bore two signatures rather than just one, which the mufti explained was the mark of his son’s apprenticeship. Just as his father had brought him into the profession through practice, he is training his son. Similarly, the *mufti* learned the art of healing with amulets and blessings by watching his father.

Apprenticeship was, for Mufti Kazmi, the centrally important tool for learning in general and not only for learning to give *fatawa*. One indication of this was the ease with which Mufti Kazmi incorporated me into his work at the mosque. In listing his many accomplishments for me, he surprised me by adding that he was also a dentist. I asked how he had also had time for dental school in the midst of all his training to become a qazi and a mufti and then taking over the obligations of running the mosque. He responded that his father had been a dentist, so he also had learned this set of skills by watching his father work. To my knowledge, Mufti Kazmi never practiced dentistry. That he would call himself a dentist without having received formal training reinforced my sense that for him, apprenticeship was the most indispensable source of knowledge.

The mufti entertained a broad range of people, from residents of the mosque's neighborhood to Indians living abroad, from illiterate to university educated. After some time sitting with Mufti Kazmi, I was responsible for picking up the phone and handing it to him when it rang, for cutting apart the Quran verses that he wrote in saffron water to give as amulets (*tawiz*) to people who came for healing (see chapter 4). One day as I sat there, someone asked the mufti if I was his daughter; he laughed, and replied that I was training to become a mufti, and that some day I would sit in his place. Through these practices, Mufti Kazmi drew me into the world of the mosque, and also taught me about his work by involving me in it.

Shahjahanabad Masjid Tradition

The glossy, English language brochure Mufti Kazmi gave me before I left Delhi lists the last *shahi imams* of the Shahjahanabad Masjid: Hazrat Mufti Mohd. Masood (d. 1309 AH/1891 CE), Hazrat Shah Mufti Mohd. Mazhar-ulla (d. 1386 AH/ 1966 CE), and Mufti Muhammed Ahmed (d. 1391 AH/ 1971 CE). These are Mufti Kazmi's great-grandfather, grandfather, and father, respectively. They are the three generations who constitute the family tradition Mufti Kazmi joined in becoming a mufti, which his son will continue.

The mosque and its Imams have a history of involvement with politics and with the broader social lives of Muslims in the city, as is evident even in the small amount of information I have managed to find about its history. The Shahjahanabad Masjid has been an important site of politics and religious practice from the late Mughal period through the colonial and into the postcolonial periods. Shahjahanabad Begum, one of Shah Jahan's wives, built the mosque in 1650 CE in the neighborhood called Shahjahanabad (Forbes et al 1992, 201). Warren Fustfeld recounts the history of Delhi during this period in his dissertation (1981). During the early 19th century, the British ruled Delhi through, and in the name of, the Mughal king, Shah Alam (Fustfeld 1981, 20-21). Shah Alam therefore maintained nominal legal authority. Further, "two courts of justice should be established for the administration of civil and criminal justice, according to Muhammadan Law, to the inhabitants of the city of Delhi" (quoted in Fustfeld 1981, 22). In Delhi, the British drew on Muslim law in the administration of both civil and criminal matters. In one of their many transgressions of their own principle on non-interference in religious issues, the British removed the ban on cow slaughter that had been put into place by the Hindu Marathas, who had preceded them (Fustfeld 1981, 23). So it seems that at this point, British interest was in maintaining stability by bolstering the Mughal ruler, making it expedient to privilege the Muslim character of Delhi. Over the course of

the first half the 19th century, this changed, and the British began to restrict the Shah's control; in 1854, the British considered a petition from Hindu residents of Delhi requesting that cow slaughter be banned (Fusfeld 1981, 41). By the time of the 1857 uprising, tensions between the Shah and British colonial government officials were notable, making the events in its aftermath an acceleration of prior trends rather than a break from them.

In the wake of the 1857 uprising, the British expelled all Muslims from the city, confiscated property, and killed Muslims they encountered with impunity (Fusfeld 1981, 52-53). At this time, Delhi was incorporated into the Province of Punjab, placing it under direct British rule (Fusfeld 1981, 52). The British moved troops into Shahjahanabad, where they seized and inhabited the Jama Masjid and the Shahjahanabad Masjid (Gupta 1981, 26-27). It was unclear for some time whether the Muslims would be able to return to the mosques. Narayani Gupta quotes A.A. Roberts, an official in Delhi, saying "Let us keep them [the Jama Masjid and the Shahjahanabad Masjid] as tokens of our displeasure towards the blinded fanatics..."(27). In 1862, the Shahjahanabad Masjid was sold to Chunna Mal, a Hindu banker (Gupta 1981, 27).

By the late 19th century, though, the tenor of the British relationship to Hindus and to Muslims in Delhi had changed. Whereas in the aftermath of the 1857 uprising, Muslims had been the objects of intense suspicion, in the following decades orthodox Hindus engaged in more public displays of religion (Fusfeld, 58). The British took this to be a sign of their ascendancy, and in an effort to control them, their attitude toward Delhi's Muslims began to thaw (Fusfeld 1981, 59). As part of this trend, the mosque was returned to Delhi's Muslims around 1877 (historians dispute the exact date). In exchange, four villages were given to Channa Mal's heirs (Gupta 1981, 169). Even then, the mosques were used and to some degree controlled by the British (Gupta 1981, 127). In the 1890s, there were debates about who should control the rules of conduct in both mosques, and Lord Curzon insisted that the government of India ought to remain in charge of this "great national monument," conceding only that the British could voluntarily cover their shoes when entering the mosque (Gupta 1981, 127).

There were differences between the two mosques, and according to Gupta, the Jama Masjid was more loyalist than the Shahjahanabad Masjid, which "was the venue of unorthodox religious sermons and animated politics, and was patronized generously by the Punjabi merchants of Sadar Bazaar" (1981, 128). The British worked to exploit this difference, suggesting to loyalist Muslims that they should increase the size of the governing board of the mosque in order to dilute the influence of the Punjabis. I have not been able to find out much about the mosque between its return in 1875 and the history that Mufti Kazmi recounted to me, but it seems that it was the site of some debate, both between the British and Muslims and between different groups of Muslims, and that it was important to the increasing sense of religiosity that Gupta argues was part of Delhi life in the late 19th century.

Mufti Kazmi continues this tradition of engagement.¹⁰¹ The mosque brochure that he gave me features a photograph of Mufti Kazmi with Abdul Kalam, the president of India, in 2007. His name also appears fairly regularly in English-language newspapers where he is quoted on issues relating to Muslims. On several occasions while I was in

¹⁰¹ The Mufti is also the founder of the Madrasa Jamiatul Uloom/Khanqah Aaliya Naqshbandiyah Mujeddidiya.

Delhi, television crews came to the mosque to interview him about issues affecting the Muslim community. Once, a group of men from a Muslim neighborhood in South Delhi that is built on land technically not zoned for residential building approached him for help in battling an upcoming round of evictions. The mufti also has a house in this neighborhood so on this occasion he was both a resident and the leader who negotiated with local authorities on their behalf.

In another type of political practice, Mufti Kazmi met with a group of ‘ulama at the office of the AIMPLB’s *qazi* to discuss a response to the courts’ review of the newly active network of *dar ul qaza* in the country. The court’s ruling that these *dar ul qaza* were not a threat to the Indian judiciary mooted the need for a critical response, but the meeting made it clear that Mufti Kazmi, like other members of the ‘ulama, actively followed Indian politics and its effects on Muslims. He was not cloistered in his mosque, but actively engaged with the various relations of power and structures of law within which the mosque and his work in it are situated.

Adab al-Mufti

Although Mufti Kazmi is involved in city and national politics and debates in spheres beyond the mosque, he spends six afternoons a week sitting in his office at the Shahjahanabad Masjid receiving lay Muslims, and sometimes Hindus, with questions about their physical ailments and their broken relationships. He enters his office by two o’clock in the afternoon every day except Friday. He would break for the afternoon prayer (*Maghrib*) and then return to finish his meetings if there were still people waiting to see him. While he met with people, the mufti wore a long indoor overcoat (*sherwani*) and a modest hat. When he got up to pray, he walked across the office to a small adjacent room to perform his ablutions. He also changed his headgear, replacing his hat with a turban, before he left his office to enter the prayer hall.

When I first arrived in Delhi, the *mufti* would sit along one wall of the room on a pillow, another bolster at his back. A few months later, he moved to a bench because he was having trouble with his knee, and the doctor told him that sitting on the floor made it worse. He was not happy with this change, because it meant that he was further from the people with whom he was speaking. He sat behind a low, legless desk. It had a slanted, hinged top under which he stored his papers. Perpendicular to his desk, on his right side, is another table that held a telephone and a pile of books. The office was replete with books: above the doors opposite the Imam’s desk, there were built-in bookshelves filled with volumes in Urdu, Farsi, and Arabic. The only other adornment in the office were a clock that struck on the half hour and on the hour and a poster of the Grand Mosque in Saudi Arabia. The office was located just next to the mosque’s main sanctuary and off the central courtyard, so it was quiet, sheltered from the activity of the commercial neighborhood just outside.

Not only was the *mufti*’s office a calm and quiet space conducive to the consultations with which it was filled, but the *mufti* conducted himself in a way that invited discussion—in a way befitting his position. Mufti Kazmi only let to being frustrated a handful of times during the dozens of afternoons I spent at the mosque. The rest of the time, his manner was gentle. Even when the room was crowded, with thirty people waiting to speak with him, Mufti Kazmi was able to create a certain privacy between himself and the person he was addressing. Each person would lean forward and

speak softly so that the only way to hear what was being said was to lean forward in a way that would make the eavesdropping obvious. Although he was soft-spoken, the mufti was also endowed with a sense of humor, and he often joked with people who had come for his help about their situations. A woman once came to ask for advice about her failing marriage. She wanted to make it work and wanted his help. Before giving her the *tawiz* she was asking for, the mufti said to her, “just leave him! Why stay married to such a man?” He said it with a big smile and a bit of a laugh, and she laughed too, in a nervous way that seemed to recognize a subversive possibility in what he said.

This particular example is notable to me both because of the humor it showed, but also because it was so unusual, in any of the legal spaces I studied, for the suggestion of separation or divorce to be raised by anyone but the petitioner. Marital discord was usually carefully recoded as a problem of adjustment, or solvable ill-treatment, but only very rarely and after much deliberation as a legitimate reason for divorce. The Mufti’s own approach to marriage in his fatwas, as well as his discussions with me about divorce suggest that he also is not interested in promoting divorce, and yet as a moment of comic relief, or even of irony, it enabled a certain relief or release of tension.

Khalid Masud argues that the *Fatawa Alamgiri*, a fatwa collection and compendium of Hanafi legal doctrine produced by the Mughal emperor Aurungzeb and closely consulted by Mufti Mukarram, distinguishes between professional and moral requirements of a Mufti. Required moral qualities included “manliness, soundness of mind, good conduct, humility, serenity, softness of speech, pleasant face, freedom from vanity, and emotional control” (Masud 1984, 130-31).¹⁰² Each of these adjectives characterizes Mufti Mukarram’s comportment in his exchanges with lay Muslims who approached him at the mosque. In a legal situation in which most questions concern the intimate lives and arrangements of petitioners, these qualities imparted trust in the mufti and a sense of finality to the fatwa.

Fatawa and Healing: Two Practices of Mediation

Mufti Kazmi’s work at the mosque entailed two very different forms of mediating conflict: giving *fatawa* and practicing spiritual healing. The former, the *mufti* told me, was strictly legal. As a trained *mufti*, Mufti Kazmi was obliged to answer any questions that people brought to him with a request for a *fatwa*. The obligation to respond to questions is one of the few shared characteristics of a *mufti*’s work across historical time and geographical and national space (Masud et al. 1996). A *fatwa* is a nonbinding piece of authoritative legal advice written by a qualified Muslim jurisconsult (*mufti*) in response to a specific question (*istifta*) posed by an individual questioner (*mustafti*) (Masud et al., 1996). As many scholars have argued, there is little one can say *in general* beyond this about the method of giving fatwas, the qualifications of the *muftis* who give them, or the topics they cover (Schacht 1950, Coulson 1964, Agrama 2005, Messick 1993, Skovgaard-Petersen 1997). The practice of fatwa-giving (*ifta*) has varied with historical, legal, and political contexts (Hallaq 1984). The requirements of the mufti have changed through the history of Islamic legal practice (Hallaq 1996, Masud et al, 1996). At certain historical moments, muftis have been employed by the state or attached to its courts, while at others they have given advice to private persons from positions outside

¹⁰² The *fatawa Alamgiri* is a compilation of Hanafi doctrine commissioned by the Mughal emperor Aurungzeb. The work was begun in 1667 and completed in 1675 (Guenther 2003, 212).

the state's legal apparatus (Masud, Messick and Powers 1996). Indeed, recent studies of *fatawa* have argued that although classically fatwas were points of doctrine (Messick 1993), in the context of some contemporary states they are more accurately understood as a mode of guidance (Agrama 2005).¹⁰³ Like other acts of Islamic jurisprudence, the *fatwa* is understood to be a human act of interpretation: it must be given by a knowledgeable cleric with the intention and exertion required to produce the best possible response. But it is fallible and contestable.

Chapter Four analyzes the *mufti's fatawa*, focusing on the three most common issues that people raised with him: unilateral male repudiation (triple *talaq*) women's property entitlements in the wake of divorce, and appropriate property distribution in inheritance. The chapter explores the seeming paradox that unlike in the *dar ul qaza* institutions, people *did* approach the *mufti* with property-related disputes in their *fatawa* requests. Given that *fatawa* have historically and in contemporary practice in India not been binding, although they are legally and morally authoritative, I ask why people would be more inclined to bring such questions to the *mufti* for a *fatwa* than to the *qazi* for a judgment.

Chapter Five analyzes the *mufti's* spiritual healing practice. This practice, in contrast to writing *fatawa*, is centered around discussions and encounters between the *mufti* and those who present him with their troubles. Although the Islamic status of this practice was contested by some Muslims in Delhi, it was extremely popular, and the *mufti* readily discussed its rules, system, and benefits. In Chapter Five, I explore the kinds of questions men and women bring to the *mufti* for healing, arguing that this mediation technique, which resides at the limits of legal practice, is important because it provides people with tools to work on their troubles in and through their daily lives. Unlike the

¹⁰³ Khalid Masud, Brinkley Messick and David Powers argue in the introduction to their edited volume on muftis and their *fatawa*, that muftis have played various roles in the history of Islamic law (1996). They argue that at its origin was the practice of *ifta* and the dialogical relationship between Muhammad, Allah, and those lay people who have questions about the revelation in the Quran itself (MMP 1996, 5). The Hadith, the authors note, contains a different type of question and advice-giving from that in the Quran. In the Hadith, Muhammad hears questions from lay people and responds without waiting for a response from Allah. He responds to these questions, usually about religious practice, in his own voice and does not simply relay God's answer (6). The authors argue that after the death of Muhammad in the 1st/7th c., the *fatwa* was most likely a means for preserving the Sunna (the Prophet's example) by the Companions, and was important as a vehicle for passing along the sayings and actions of the Prophet (7). *Fatawa* were initially privately issued. In this period, a *fatwa* is the answer to a question that a believing Muslim asks for the purpose of clarifying how to live a life consistent with the moral and legal precepts of Islam. In this sense, the believer chooses to approach Allah through the Prophet, the Companions, or a qualified interpreter of the holy texts for guidance. This choice to seek advice is predicated upon a commitment to submission to Allah.

However, the personal pursuit of a moral life was not, historically, the only end to which *fatawa* were requested. In the Umayyad period (661-750), *muftis* began acting in an official capacity. One significant aspect of their work during this period was to offer critical views on political issues (MMP 1996, 9). During the Mamluk period (1250-1516), muftis served both a private and a public function, and there is evidence that *fatawa* were privately given, and were independent of the state. Thus, muftis in this period gave opinions to parties in disputes adjudicated within qadi courts, but were not officially attached to them. The Mamluks did employ muftis as political advisors, and to bolster the legitimacy of their political decisions (MMP, 11). Although they were not part of the state apparatus, muftis served a crucial political and public role. In the Ottoman period, the position of *Shaykh ul-Islam* developed out of the position of the mufti as political advisor (11-12).

other institutions I have looked at in the dissertation, the healing practice yields prescriptions that patients bodily incorporate into their everyday lives.

The two types of mediation that the *mufti* practiced differed not only in their approach, but also in the kinds of issues they address. The problems people brought to the *mufti* with requests *fatawa* were distinct from those for which they approach him for healing. The *mufti*'s *fatawa* were exclusively about divorce, marital arrangements or strife, remarriage, inheritance, and occasionally of religious practice. As a *fatwa* was a specific form of Islamic law advice, only Muslims requested *fatawa*; they ranged in socio-economic status from poor to very wealthy. Those who came for religious healing had a much broader range of problems and represent a broader swath of Delhi lives. Their troubles ranged from physical ailments to abandonment issues to mental illness. People from many religious traditions came to the *mufti* for healing, and their socio-economic status ranged from destitute to wealthy. In each of these contexts, the *mufti* provided guidance and advice. But as a *fatwa*-giver, he approached people's problems through a moral and legal lens, suggesting to them what it was appropriate, proper, or legal for them to do in specific situations while as a healer, he prescribed ritual remedies aimed to ameliorate ordinary and extraordinary troubles.

Chapter 4

Gender and Property in One *Mufti's Fatawa*

The Fatwa: A Brief Introduction

In this chapter, I analyze one Islamic legal institution to which contemporary Indian Muslims turn in the face of dispute: the *dar ul ifta*. The literal translation of *dar ul ifta* is “house of *fatwa*-giving”. A *fatwa* (*fatawa*, pl.) is a nonbinding piece of authoritative legal advice written by a qualified Muslim jurisconsult (*mufti*) in response to a specific question (*istifta*) posed by an individual questioner (*mustafti*) (Masud, Messick and Powers 1996). As many scholars have argued, there is little one can say *in general* beyond this about the method of giving *fatawa*, the qualifications of the *muftis* who give them, or the topics they cover (Schacht 1950, Coulson 1964, Agrama 2005, Messick 1993, Skovgaard-Petersen 1997). The practice of *fatwa*-giving (*ifta*) has varied with historical, legal, and political contexts (Hallaq 1984). The requirements of the *mufti* have changed through the history of Islamic legal practice (Hallaq 1996, MMP 1996). At certain historical moments, *muftis* have been employed by the state or attached to its courts, while at others they have given advice to private persons from positions outside the state’s legal apparatus (Masud, Messick and Powers 1996). Indeed, recent studies of *fatawa* have argued that although classically *fatawa* were points of doctrine (Messick 1993), in the context of some contemporary states they are more accurately understood as a mode of guidance (Agrama 2005 & 2010).

In India, *muftis* and *fatawa* have had their own distinct history. At times they have had an official position in the state’s legal apparatus, and at others they constitute a domain of legal advice external to the state’s purview (Cohn 1989, Kugle 2001, Kozlowski 1995 & 1996, Qureishi 1966). For all the modulations of *ifta* and for the array of historical, political, and legal conditions within which *fatawa* have been given, there are several things upon which scholars agree. Those qualified as *muftis* are under an obligation to issue a *fatwa* if someone approaches them with a question (Hallaq 1997, 123).

In this chapter, I focus on *fatawa* written by one *mufti* in Old Delhi. The chapter begins, though, with an analysis of a publicly discussed *fatwa* that felt omnipresent as I conducted my fieldwork. The media representations of and constant discussions about this *fatwa* and the problem with which it was entangled suggested that *fatawa* were simply or mostly instruments that Islamic clerics used to oppress women. The very inescapability of the interest in this *fatwa* during my year and a half of fieldwork rendered it foil and challenge to my own research on the *fatwas* some Delhi Muslims requested in the course of their everyday lives. For this reason, critical engagement with the media scandal seems an appropriate place to begin.

In the second part of the chapter I analyze the *mufti's fatawa*. These *fatawa* raise a paradox for me vis-à-vis the *dar ul qaza* institutions analyzed in Chapter Two. There, I argued that women do not bring property claims to the *dar ul qaza* institutions *not* because Islamic law is less fair to them than state law but because these institutions have no enforcement power and are therefore helpless in the face of unyielding disputants. The *fatawa* that the *mufti* wrote addressed three primary concerns: the conditions within which unilateral male repudiation (triple *talaq*) is successful; the property entitlements

women have upon divorce; and how inheritance property ought to be divided. The two questions, then, that guide this chapter are how do these *fatawa* frame and respond to questions about divorce and property, and what does this suggest about enforcement and moral legal negotiations of gendered relationships? As in the other chapters, I am concerned here with the ways in which *fatawa* must be understood within a larger constellation of legal institutions. To separate them from their larger context is to misconstrue the work they do. Finally, I approach *fatawa* through the legal and relational work they perform. Unlike other recent contributions that elaborate *fatawa* as part of ethical self-making practices, I argue that in the context I studied they serve as strategic, legal, and moral avenues for negotiating human relationships (Agrama 2010). Both of these questions concern the relationship between gender, power, and property, and both seek to contribute to the dissertation's overall investigation of what non-state institutions of Islamic law adjudication do and with what gendered entailments.

The Public Life of Fatawa

In the summer of 2005, just before I began my fieldwork, the Indian media went wild over the story of a *fatwa*. Many major media outlets reported that a 28-year-old Muslim woman named Imrana was raped by her father-in-law on June 6, 2005 (Times of India 10/29/05; Outlook 7/6/05; Frontline 7/05). The story, though, was not primarily about the rape. Instead, it made headlines because of the Muslim clergy's response to the rape, especially about a *fatwa* that was issued shortly thereafter. The story was so widely broadcast and so readily described as the next *Shahbano* that it frequently introduced itself into conversations with friends, informants, and strangers. Whenever someone would ask about my research, they would bring up Imrana. Imrana began to feel like the shadow of my work on *fatawa*: inseparable from it but opaque and lingering. The endless conversations about Imrana seemed to insist that I answer questions I had not set out to engage: are *fatawa* bad for women? Why would women go for *fatawa*? Do they infringe on the state's ability to maintain order through the criminal law? What is a feminist position on *fatawa*. I therefore begin with Imrana, foregrounding the shadow, before I move to the body of the chapter and the *fatawa* I read and studied with the *mufti* which proved to be simultaneously less and more perplexing than the Imrana scandal. Sheela Reddy reported in the English language magazine *Outlook* that,

Within minutes [of word getting out about the rape], a customary caste panchayat—composed of all the available men in the village of their Ansari community—was called and the sentence passed: she was no longer the lawfully wedded wife of her husband, Noor, having slept with his father, however involuntarily (7/6/05).

Sayeeda Hameed, a member of the Planning Commission, founder of the Muslim Women's Forum, and a former member of the National Commission for Women, added in her recent article that the panchayat had ordered Imrana to marry her father-in-law (Boloji.com, May 3, 2009). Hameed and others note that the panchayat included a local Muslim cleric (*maulvi*) (Frontline, Tehelka 5/3/09). According to media coverage, the panchayat's verdict was only the beginning. Sheela Reddy of *Outlook* writes, "...disaster

struck again. The ulema at Deoband¹⁰⁴ formally stated the Shariat position: such a marriage is invalid.” Reddy refers here to a *fatwa* that was issued by the prominent seminary at Deoband corroborating the panchayat’s view that Imrana’s marriage was no longer acceptable, but dismissing the claim that Imrana should marry her alleged rapist. A reporter from the *Milli Gazette* translated and reprinted the *fatwa*, which had first appeared in the Urdu newspaper *Rastriya Sahara*.¹⁰⁵ This *fatwa* stated that in the situation described in the question, the husband was forbidden (*haram*) for his wife, but that:

The contention of the panchayat people that the wife of the son has now become wife of the father and her wifehood has changed is not correct, or to say that the wife of the son is divorced is also not correct. Neither can she be married to her father-in-law... The people of the village, because of their ignorance, have wrongly interpreted Quranic injunctions and have given a wrong judgment.”¹⁰⁶

The *fatwa* is clear both about the status of Imrana’s marriage to her husband: although the wife is now unclean for her husband, her marital status has not changed. The claim that she should marry her father-in-law is groundless. The mistaken judgment rendered by the panchayat is attributed to their ignorance. With the *fatwa*, the first layer of the scandal was put to rest: there was unanimous agreement about the ignorance and prejudice of the village panchayat.

But what of the *fatwa*? Responses to it varied. Some argued that the *fatwa* was wrong; some argued that it was misplaced in the contemporary Indian context; some argued that it was silly to worry about whether the *fatwa* was right or wrong given that

¹⁰⁴ The *madrasa* at Deoband, in Uttar Pradesh, was founded in 1867. Barbara Metcalf writes that the goal of the ‘ulema at the time “was now to create, in any sphere available, a community both observant of detailed religious law and, to the extent possible, committed to a spiritual life as well” (1982, 87). Deoband has, as Metcalf notes in the preface to the paperback edition of her book, attracted attention in the post 9/11 world because of its alleged links to the Taliban. Indeed, Salman Rushdie’s *New York Times* op-ed that touched on the Imrana affair glosses Deoband as, “the birthplace of the ultra-conservative Deobandi cult, in whose madrassas the Taliban were trained. It teaches the most fundamentalist, narrow, puritan, rigid, oppressive version of Islam that exists anywhere in the world today... Not only the Taliban but also the assassins of the Wall Street Journal reporter Daniel Pearl were followers of Deobandi teachings” (NYT July 10, 2005). Metcalf argues that there is nothing inherently militant about Deobandi scholarship, and that as a reform movement in British India, it was intent on withdrawing from the world of politics (Metcalf 1982, 2002 edition).

¹⁰⁵ The same reporter for the *Milli Gazette*, the self-described “Indian Muslims’s leading English language newspaper,” who reprinted the *fatwa* took it upon himself to find Imrana’s family, adding another layer to the scandal (*Milli Gazette* July 14, 2005). He reported that Imrana’s husband and mother-in-law did not believe that the rape had occurred, and that it had instead been fabricated as a way to remove the father-in-law from the scene. According to this account, Imrana’s husband and father-in-law had been involved in a land dispute that his arrest helped to resolve (*Milli Gazette* July 14, 2005). No other report either corroborated this story, although they did acknowledge it as one of the interpretations.

¹⁰⁶ The *Milli Gazette* journalist has not only offered a translation of the *fatwa*, from which I quote above, but scanned the original Urdu and posted it on the *Milli Gazette*’s web site (milligazette.com; accessed 5/3/09). Because, as I will discuss in detail below, *fatawa* do not bear the names of those involved, but offer advice in anonymized terms, it is not possible to know whether this *fatwa* was in fact issued in response to the Imrana case. As Tahir Mahmood, Sayeeda Hamid and others have based their responses on it, for the purposes of this argument, what matters is that this is the document upon which the controversy was based, whether or not it came to be in the manner described by those involved.

rape is a criminal matter making the ‘ulama’s view on the issue immaterial.

Several Muslim feminists wrote arguments about the fallacy of the opinion offered in the *fatwa* (Boloji.com July 10, 2005; Frontline July 2005). Syeeda Hamid wrote in boloji.com:

What does *shariat* enjoin for a woman who has been raped by the father of her husband? Does it say her marriage stands annulled?...These are some of the arguments advanced by the Deobandis and others in favor of annulment of this marriage. I want these ‘keepers of religion’ to point to the exact provision in the Quran from which this interpretation has been extrapolated.

Hamid’s point is that the *fatwa* issued by Deoband relies on contestable interpretations of the Quran. She raises the point that Islamic law is up for interpretation and that there is no reason that the *muftis* had to follow this rigid path whose basis in the Quran she contests. This is one strategy for contesting the anti-woman *fatwa* while refusing to let it stand for all of Islamic law.

The Islamic legal expert and former head of the Minorities Commission, Tahir Mahmood, took a different approach. He contextualized the opinion upon which the *fatwa* had been based. Mahmood writes that at the time the *Hadith* (hereafter “Hadis,” which is the Urdu pronunciation) was written,

Married women...invariably lived in their husbands’s joint families. If any among them, once in a blue moon, were to face sexual advances from any of her male in-laws and were thereby outraged, a remedy had to be kept ready for her...They ruled not that the marriage in such a case would be automatically dissolved—but that the couple should resort to what they called *mutarikat*—‘mutual release.’ To overrule an uncompromising husband’s refusal to do that despite the outraged wife’s insistence, they laid down what is known in modern legal terminology a ‘legal fiction’—that in such a case the wife would be deemed to be unlawful for him” (Tehelka 3 May 2009).

Mahmood both suggests that in its proper context, the Hadis was intended to ensure an opportunity for release even if the husband did not comply. He suggests that the moral obligation of the couple was to mutually dissolve their marriage. If a husband did not heed this obligation, a wife who wished to be separated from him could insist that she was no longer lawfully his wife. The Hadis opens up a set of possibilities for separation. Mahmood chastises the *mufti* who wrote the *fatwa* for having neglected to include this context when giving his advice. As Barbara Metcalf has noted, Mahmood’s “argument makes clear the classic link of *fatwas* to a contextual understanding of the *shari’ah*, dependant on conditions in the larger society as well as issues specific to the people involved” (2006, 401). Hameed and Mahmood are in agreement that the *fatwa* is misplaced in this context, although their rhetorical strategies differ.

Human rights lawyer Tulika Srivastava linked a rereading of the Hadis upon which the *mufti* based his *fatwa* with an argument about the miscategorization of the offense by media. The Hadis upon which the *mufti* drew, she writes, “actually creates the space for a woman to exercise choice, in case she has been violated by a relative of her

husband's, as she is not in her own home, and would need the right to divorce her husband if violated" (2005, 5). Srivastava shares Mahmood's central argument: the hadis in question is not oppressive, but enabling. She seeks to show the possibility of maneuver offered within the sources of Islamic law. Srivastava's second approach to the scandal raises the question of how to situate the *fatwa*. She argues that the whole debate is misplaced, given that the crime of which the father-in-law is accused is rape, which is a criminal offense. She suggests, therefore, that within the legal structure, what the *mufti* has to say about a criminal act is irrelevant. This argument raises a question that this chapter will pursue: is Islamic jurisprudence the most useful context within which to read the *fatawa* in relation to gendered relations of power and privilege, or might the context of the Indian legal system more broadly provide a different way of seeing Islamic law in contemporary India?

For most journalists, though, the primary question to be asked was what Imrana would do and the primary way to ask that question was through arguments about the 'ulama's power. Article after article echoed a response best summarized by Salman Rushdie in his July 10, 2005 Op-ed in the *New York Times*. Rushdie writes:

Darul-Uloom's [Deoband] rigid interpretations of Sharia law are notorious, and immensely influential—so much so that the victim, Imrana, a woman under unimaginable pressure, has said she will abide by the seminary's decision in spite of the widespread outcry in India against it. An innocent woman, she will leave her husband because of his father's crime.

The immense influence of the seminary, and of *fatawa* more generally, were what drew the focus of reporters.¹⁰⁷ Ashgar Ali Engineer added that for a poor, uneducated, Muslim woman "any pronouncement from even the imam of a mosque is divine law" (Secular Perspective, 1-5 September, 2005). *Frontline* reported that "Imrana's family members say belligerently that they will abide by the Shariat. If there is a *fatwa*, she will obey it and she cannot go against her Mazhab [sic] and Deen [sic], they say" (July 2005). *Outlook* adds its voice to the evaluation, stating that Deoband

formally stated the Shariat position: that such a marriage is invalid. As the media and the community went into overdrive, and it became a hot potato, Deoband retracted, saying it had only expressed a 'hypothetical' point of law. But in its effect, it had already assumed the force of a *fatwa*, taken as religious diktat. *One like Imrana could hardly dare flout it* (July 2005, emphasis mine).

Finally, Rasheeda Bhagat of *Business Line* give Imrana a voice: "...she has unequivocally said: 'Who am I to defy the Shariat?'" (July 8, 2005). I have quoted these passages at length to point out their common trope. Each article insists that "one like Imrana could hardly flout" a *fatwa*. Some imply that this inability to choose not to follow the *fatwa*

¹⁰⁷ Barbara Metcalf's insightful analysis of Rushdie's abominable op-ed points out that it not only implies that there is a single voice of Deoband, but that like other institutions and movements "its ideology changes over time and in different contexts" (2006, 397). She also point out that not only might many Muslims disagree with a given fatwa, they are entitled not to obey it, as many do, whether on sectarian or other grounds (2006, 397).

arises from the powers of religion, and others that it is a feature of the *mufti*'s power, and still others imply that a *fatwa* as a legal document must be obeyed. The point of each statement is that it is not possible to conceive of Imrana as an agent of choice. They imply that were she to be able to choose, or if we could conceive of the response to the *fatwa* to entail a choice, we could stop losing sleep over Imrana.

Rape is a criminal offense in India. According to the *Times of India* and other papers, a First Information Report¹⁰⁸ was filed against Imrana's father-in-law on June 13, 2005, a week after the alleged rape (October 19, 2006). In keeping with the Code of Criminal Procedure, he was arrested the same day and was kept in custody until his trial a year later. At his trial, he was convicted of rape and sentenced to ten years in prison. One belated article focused on this side of the case, heralding Imrana as a heroine for having insisted on submitting the criminal complaint (*Women's eNews* January 19, 2009). Rape legislation was one of the first major rallying points for the postcolonial Indian woman's movement, and in spite of changes in legislation, convictions in rape cases are at a lower rate than they were prior to the change in law (Agnes 1999). Feminist legal scholars have argued for decades about the difficulty of securing a rape condition in India's civil courts (Das 1996, Kannabiran 1996, Baxi 2005). Against this backdrop, the fact of the father-in-law's conviction could have been hailed as a legal victory. Instead, the media gave its undivided attention to the responses of the Muslim clergy.

Two days after the paper reported that the court had sentenced the accused to ten years in prison for rape, the *Times of India* published a story entitled, "Now, clergy adds to Imrana's woes" (October 21, 2006). In this article, the reporter writes: "In the face of Shariat-spouting [sic] maulvis, there are hardly any takers for Imrana's pleas that she would like to hold on to her marriage for the sake of her five children./ Abdul Mannan Karmi, a maulana of Bareilvi sect, said... 'After a sexual union between his wife and his father, Nur Ilahi simply cannot have a relationship with Imrana. The marriage is haram under Shariat law and is therefore null and void' (*TOI* October 21, 2005). This article, unusually, acknowledges that the dissolution of the marriage has effects not only on Imrana, but also her husband.

In spite of reports that Imrana and her husband continue to live in her natal village, and that her father-in-law is serving a ten-year prison term for rape, what remains news-worthy in most reports were the clergy's responses. The clergy's claims continued to be presented as unavoidable. In the face of statements from Muslim jurists, the articles continue to imply, Imrana is held captive. The *fatwa*, then, becomes symbolic of religious authority¹⁰⁹ that cannot be refused, and that therefore precludes free choice and female agency.

The argumentative ground shared by these disparate voices is that *fatawa* as they are now given are instruments for women's oppression. The reasons for this differ from article to article: some argue that the *muftis* are not properly contextualizing the Hadis on which they draw while others attribute a recalcitrant malevolence to the clergy. But every

¹⁰⁸ The First Information Report, usually referred to as an "FIR," is a police report.

¹⁰⁹ This authority is of the sort that Lingat argues is characteristic of pre-colonial India in general: Lingat writes, of the "classical system of India" that its precepts are "authority because in them was seen the expression of a law in the sense in which that word is used in the natural sciences, a law which rules human activity. Everyone knows that no one can escape from that law. As a result, one must try his utmost to conform to it. But it has no constraining power by itself..." (258).

last article situates the source of *fatawa* as instruments for the reproduction of male privilege in *Islam* or in *current practices of Indian Islam*. Through my analysis of the *fatawa* I studied in Old Delhi and my discussions about them with the *mufti* who wrote them, I argue in this chapter that the focus on Islam elides the larger legal condition within which many *fatawa* do uphold male privilege. I argue that the Indian legal system and its jurisprudence provide a more suitable context within which to analyze these *fatawa* than Islamic jurisprudence.

Giving Fatawa at the Dar ul Ifta

The form of the *fatwa*, and Kazmi's busy schedule, meant that *fatawa* were usually a written exchange. The questioner (*mustafti*) would drop off the question, and would be told to return for his or her *fatwa* the next day. In some cases, the exchange took place by mail. Mufti Kazmi usually did not keep any record of the *fatawa* he gave, with two exceptions: while I was working in Delhi, he photocopied many of his *fatawa* for me to study, and he regularly copied select *fatawa* for his son, who was in his early twenties, to study. He did not have a secretary or scribe, although his son would sometimes help by reading out *fatawa* for *mustafti* who could not read Urdu. During the course of the time that I was doing field work, the *mufti*'s son took on increasing responsibilities in the mosque: he began to write more *fatawa*, which were proofed by his father, and he did more and more managing of the *fatawa* that came to the *mufti*. Students from the madrasa housed in the mosque were also conscripted to help in the writing of questions (*istifta*) for *mustafti* illiterate in Urdu. Unlike in the Egyptian *dar ul ifta* described by Hussein Agrama, here the *istifta* and *fatwa* had a very limited circulation, and were rarely discussed within earshot of other *mustafti* (2005, chapter 3).

Because the preponderance of the *fatwa* exchange took place in writing, often with only a few words exchanged between *mufti* and *mustafti* when and if the question was presented in person, I work mostly with *fatawa* themselves and with my conversations with the *mufti* about them. There was, however, one occasion when the *mufti* directly entertained a *mustafti*, asked for elaboration on the question with which she had presented him, and wrote the *fatwa* immediately. This exchange, recorded in my field notes in November 2006, was highly emotional:

A rather young-looking woman wearing a yellow salwar-kameez came into the room and waited. I had just been given the task of cutting sheets of paper into small squares, separating the Quran verses written in saffron water from one another so they could be folded into *tawiz* for the *mufti*'s patients [see Chapter Five]. She asked me what I was doing, and I told her that I was a student doing research, and that part of my research entailed trying to understand different aspects of *sharia* practice... Then she approached Kazmi with a small piece of paper with something written on it in Hindi. He told her to write it on proper piece of paper in Urdu, and when she said that she didn't know Urdu, he told her to go find someone on the premises who does and to get them to write. She did this, and returned with the newly written questions. When she came back and handed the *mufti* her paper, he asked for clarification and she explained: ten years earlier her husband had said *talaq* twice. They had consulted a maulana who had said that it was fine for them to keep living together because he had only said it

twice. Then, just last week, he said *talaq* to her four times: twice and twice. Now, she said, that means he has said *talaq* to her six times and she didn't know what it meant. The *mufti* wrote his response and when she asked him to tell her what it said, he told her to go to his son, who does the formalities of the *fatawa*, stamping them and giving them to the *mustaftis*. I suspected that I knew already what he would have written, and when his son read it to her, I could see her face drop. She didn't cry, but I could see she was upset. She had already told the *mufti* that if the divorce had gone through she didn't know where she would go...¹¹⁰

The *mufti* confirmed to me once she had left the mosque that he had written that the utterance of four “*talaqs*” during this span of time constituted an irreconcilable divorce. The character and tone of the exchange between *mufti* and *mustafti* indicated to me the sensitivity and intimacy of the authoritative legal advice given in a *fatwa*. The encounter was emotional, although quiet. The *mufti* spoke about the situation and its necessary consequences with calm and equanimity. The *mustafti* was restrained in her response, and did not push for a different resolution. The interaction between *mufti* and *mustafti* was respectful. It both demonstrated the *mufti*'s *adab* and the *mustafti*'s respect for his authority.

Scholars have argued that in the modern period, the power relations between *mufti* and *mustafti* have shifted because of increasing literacy and increasingly widespread knowledge of sharia (Masud, Messick and Powers, 27). Widespread knowledge of *sharia* has, they argue, meant that Muslims who approach *muftis* with questions do so from an informed position. This woman had indeed approached the *mufti* with some knowledge of the law. She and her husband had already consulted another jurisconsult about a similar situation, and she was therefore aware of the response she might get to her question. However, her decision to approach the *mufti* suggests that she considered her own knowledge to be of a different order from that of the *mufti*. It was he, not she, who was in a position to give an authoritative opinion on the matter.

This *fatwa* scene taught me something about the moral entrenchment of the law. Mufti Kazmi has certain moral and legal expertise, and he delivered his *fatwa* with unflinching certainty. Although the divorce was affected when the husband uttered “*talaq*” four times, the *mustafti* only fully believes it through the *mufti*'s diagnosis. The question is only possible because of her general sense of the law, but it is the *mufti*'s legal and moral expertise that finally brings it into effect.

Circulating Disputes: The Place of Fatawa

The intimate relationship forged between *mufti* and *mustafti* in the scene above implies the *mufti*'s authority, but it does not convey any information about what the *mustafti* would do with the *fatwa* once she left.¹¹¹ It was clear from her question that she

¹¹⁰ This scene is illustrative of the difficulties of following *fatawa* once they leave the *mufti*'s hands and return to their questioners. The matters that came to Mufti Kazmi were so personal that it was inconceivable that I would follow this woman as she sorrowfully left the mosque in order to find out what she would do.

¹¹¹ Because my archive consists in *fatawa* I have read and in conversations with the *mufti* about these *fatawa*, I cannot speak to how women responded to such opinions. However, discussions with many Muslim women in Delhi suggests anecdotally that women and men often decide not to follow such advice,

knew the *fatwa* offered advice, not a judgment, and that it therefore contributed an opinion with which she could decide how to engage. Nonetheless, the question was one to which the *mufti* could reply with a straightforward answer. Sometimes, the *mufti* received questions that were not appropriate to the *fatwa* form, and he readily referred these cases to other legal forums. The *mufti* saw his *fatawa* as one among other avenues of legal advice and recourse available to Muslims in Delhi. He understood his *fatawa* to be located within the constellation both of the civil courts and of other Islamic dispute institutions, notably the *dar ul qaza* institutions. He inscribed his relationship to these other institutions in his *fatawa* and reads of them in *istifta*. Further, he has participated in state court cases as an Islamic legal authority.

The *mufti's fatawa* encourage cases to circulate between his *dar ul ifta* and the *dar ul qaza* institutions. When he receives a question that is unanswerable in the *fatwa* form, but requires judicial intervention, he sends the parties to the *dar ul qaza*. The following are three examples of *istifta* in response to which the *mufti* referred the *mustafti* to *dar ul qaza* institutions. In two of the three *fatawa*, the question is about a woman who wants to be able to remarry. In the third, a couple who have been married and divorced from one another wish to be reunited in accordance with the *sharia*. In addition to demonstrating the ties between Islamic legal institutions within contemporary Delhi, these *fatawa* indicate the kinds of questions that the *mufti* deems inappropriate to intervention through *fatawa*. Thus, they show that these institutions cannot be understood in isolation from one another, but instead offer complementary kinds of legal and moral intervention.¹¹²

Fatwa 24:

I, Rehana, have the following request: on June 23, 2000 I married Ali and I went to his house where I lived with him for six months. Then my husband married another girl and sent me to my mother's house. Since then he has neither called nor asked me to return to him.

The situation now is that I am with my widowed mother and my single brother. My brother is very poor as he works as a laborer, and my mother is also poor. I do not want to have to live with my brother anymore as I do not want to become a burden. I would like to remarry. For this reason, I am asking you for a *fatwa* in light of the *sharia*.

Al-Jawab:

which hinders their ability to live secure and happy lives. Shaista Amber, an Islamic feminist who took me under her wing in Lucknow did not hesitate when I asked her about this. She said that only under exceptional circumstances, such as when she was looking to get out of her marriage, would a woman follow such advice.

¹¹² Brinkely Messick refers to the relationship between *fatawa* and judgments as “interpretive reciprocals” (1993). He writes:

What is ‘constructed’ in a fatwa is an element of doctrine: a fatwa is concerned with and based on doctrinal texts (*adilla*), although it requires the specifics of an actual case as a point of departure. What is ‘constructed’ in a judgment is a segment of practice: a judgment is concerned with and based upon practical information (*hijaj*), although it requires a framework of doctrine as its point of reference” (1993, 146).

Either you should get a *khul'* from your husband or you should go to the *sharia* adalat for a decision (*faisle*).

In this question, the *mustafti* states that she wishes to remarry for financial security. Without her husband's support, she has once again become dependent on her natal family, and is worried about becoming a burden to them. There are two options available to her, according to the *mufti*, the first is that her husband can give her a *khul'*, and the second requires that the *dar ul qaza* grant her a divorce. More specifically, the *mustafti* asks for advice on how to go about achieving her aim: remarriage. She asks for the appropriate and permissible route to take in her undesirable situation. The *mufti* responds in kind, neither explicitly supporting nor undermining her aim to remarry. Instead, he offers her an indication of the instruments available to her to free herself from her marriage, the necessary precondition for marrying again. If her husband is unwilling to provide her with the first avenue, *khul'*, she will need the *dar ul qaza* to intervene with the alternative: a judicial divorce or *faskh nikah*. The following *fatwa* addresses a similar problem.

Fatwa 91

What do you say, learned and gracious learned *mufti*, about the following situation? Zayd married his daughter Hindhe to Umer and the daughter did not move to her husband's house (*rakhsat nahin hui*). Umer went to Gujarat after the marriage (*nikah*) and did not return from there. He has been gone for about five years. Now the search for him is hopeless. Now Zayd wants to have his daughter marry again. Please tell me what to do in this situation.

Al-jawab

After receiving a divorce (*faskh nikah*) from the sharia court (*dar ul qaza*), another marriage is possible.

This question is posed not by the woman who wishes to remarry, as in the previous *fatwa*, but by the abandoned wife's father. He makes it clear that although his daughter had been married, she had never consummated that marriage. Although he does not elaborate the conditions of his daughter's abandonment—the *istifta* does not clarify whether the husband has also financially abandoned the daughter—abandonment is the central complaint. Once again, a proper divorce is the precondition for remarriage, which in turn shifts the daughter's dependence from her father to her new husband. Once again, the *mufti* does not comment on the desirability of divorce, but instead offers a clear route to remarriage through divorce. In this case, the *mustafti* writes that the husband is physically absent, and the *fatwa's* corresponds to this predicament by mentioning only the judicial divorce, not the *khul'*, which would require the husband's presence and participation.

Fatwa 78

What do you say about the following problem: Zed wants to marry this girl; the girl was married 11 years ago to a man named Ali. The girl lived with this boy for two or three months and then sent her back to her natal home. They had a baby, but then he left. When he came back, he said I am not going to keep the baby with

me, nor am I going to stay in Delhi. Without saying *talaq*, he left. The girl's family waited for him to return for nearly a year without going to the *'ulama e deen* for a reunion and without getting a *fatwa*, they married the girl again. The girl's second husband, Sajid, kept her for eight or nine years during which time they had a boy and a girl. Once in the midst of this eight or nine year period, Sajid said *talaq* to his wife thrice in a state of anger. After begging his wife's forgiveness he lived with her again. But now the girl has been living away from Sajid for almost a year, and she says that their second marriage was not even conducted according to *sharia*. So she wants to know what the law (*hukm*) of the *shariat* is about this second marriage. She wants to live her life faithfully according to the *shariat* and wants to know whether she can marry for a third time because she is poor. She wants to know whether according to the Quran a third marriage can be corrected. In light of the Quran and Hadis, what will be the favor of your response?

Al-Jawab:

You can be reunited at the Islamic *dar ul qaza*. Without a *talaq*, marriage to Sajid is not lawful.

The *istifta* above comprises a long marital history. As is often, though not always, the case, this *istifta* is written anonymously: the reader does not know whose question this is. It could be the wife's if she wishes to know how to make her third marriage lawful and moral. She appears to have been with this third husband since her second husband divorced her, to his own chagrin. The *istifta* could also have been written by the second husband: if he regretted having divorced his wife, he could be hoping that the *mufti* would declare his wife's third marriage to be unlawful, giving him the opportunity to convince her to return to him. The *fatwa* takes a position with the same end: it states that it would be possible for the woman to be reunited with her second husband in the *dar ul qaza* if she is divorced by her third husband. The third marriage would, in this situation, constitute *halala*, making the woman again available to marry her second husband.

In each of these three cases, the *fatwa* does two things. It circumscribes its own legal domain by referring the *mustafti* to the *dar ul qaza* as the appropriate place to resolve the problem. Secondly, it offers a kind of legal guidance beyond explicit moral-legal guidance. Each *fatwa* tells the *mustafti* what the claim is that he or she would need to bring to the *dar ul qaza*, thereby preparing the *mustafti* to approach the *dar ul qaza* with a clear and relevant claim. In this way, the *dar ul ifta* does the preliminary work that might be correlated to that of the clerk: giving advice in cases that do not require adjudication, and honing the claims implicit in those that do. Given that each of these cases concern women who seek divorces, far from constraining women's actions, these *fatawa* enable them to find avenues of maneuver within Islamic legal interpretations and institutions.¹¹³

The *fatawa* only refer women to Islamic legal institutions, although these are but one of the routes women could pursue. The *mufti* told me that this is no coincidence: he sends cases to the *dar ul qaza* instead of to the state's courts because the latter are slow and "a nuisance." At one time, according to him, there was a judge at Tis Hizari, the

¹¹³ As I have argued in the introduction to this part of the dissertation, this particular kind of advice at once resembles other traditions of *fatwa* giving and is particular in other ways to the Indian context.

Delhi district court, who specialized in Muslim matrimonial matters. “These days are over,” though, he told me, and now he only sends disputants to *dar ul qaza* for personal matters. It seems to me that it is no coincidence that the claims for which the *mufti* recommends the *dar ul qaza* institutions involve divorce suits. As I have argued in chapter two, in spite of the *dar ul qaza* institutions failure and inability to pursue women’s property claims against their husbands, they are fair and expedient in granting divorces, an enterprise at which the state courts have proven themselves nearly useless.

Kazmi is not a stranger to the civil courts himself. He told me that a fair number of disputes go to the courts,¹¹⁴ and that when they are filed as cases, his *fatawa* are entered into the case file. Once, he said, he had been subpoenaed to answer questions about his *fatwa*:

The other advocate, looking at what I had written, asked me by what authority I had given that opinion. I told him it was by my own authority. The advocate did not believe me. In the court, I told him: I have taken this course, and that course, that I have degrees. Nonetheless, this is wrong (*ye ghalat hai*): one must give reasoning. It is absolutely necessary to write reasoning.

In this adversarial court setting, called in as an expert witness, the *mufti* is questioned about his adherence to the proper procedure of *fatwa*-giving. The advocate’s insistence on finding the authority behind the opinion is reminiscent of the British colonial judges’ skepticism about the *muftis* and *pandits* upon whom they relied as interpreters and translators in the court (Derrett 1968). In this case as in that one, the skepticism is about whether their views are properly backed up in textual sources, or are erroneous and sloppy statements of biased opinion (Derrett 1968). Mufti Kazmi could, presumably, have replied by recourse to consensus (*ijma*), especially as it became increasingly clear to me that in the matters on which he gives *fatawa*, consensus is well established. There is, thus, no requirement that he perform the independent reasoning called *ijtihad*, but the requirement is that he categorize the question and recite the applicable rule (Hallaq 1997). There is a strong historical precedent for *muftis* to give such *fatawa* through a simple statement of the decision without a lengthy account of the reasoning (Masud, Messick, and Powers 1996). But Mufti Kazmi instead responds that he ought to have given the reasoning in the *fatwa*. He thus capitulates to the court’s view of what makes a proper *fatwa*, and simultaneously suggests his own marginality to the court proceeding, as well as his *fatawa*’s incapacity to make a compelling case within its terms. The *mufti* thinks of the civil courts and the *dar ul qaza* as part of the same legal landscape in which he intervenes through his *fatawa*, although he also implies a disparity of power between them. *Fatawa* can and sometimes do make their way into courts, but their weight depends entirely upon the sitting judge’s discretion.

Mufti Kazmi frequently referred to this power disparity when discussing his *fatawa* with me. Exemplary of this view is the following statement he made to me during one of our interviews:

¹¹⁴ He told me that 5% of disputes end up in the civil courts, but this number was not based on any data. It was an estimate based on the number of people he sees who later go to court.

Nowadays people have the choice to follow *sharia* or not. They don't follow *sharia* in full. It is optional. After Article 125,¹¹⁵ it has become optional. If one party wants to file under 125, they can, which means that religious law is optional. There is no benefit to having the *sharia* be optional. What has changed over time is the way in which people are Muslim. The way women are has changed. For example, my wife is mine: if I want her to make food, she must make food. But this has changed. If they do not do this work...the husband cannot say, this is my wife. For this reason there are more problems.¹¹⁶

Mufti Kazmi describes the conditions within which *sharia* in general is situated in India. *Sharia* has become "optional." In this account, *sharia* has become "optional" because of the existence of another judicial possibility. Cr.P.C. 125 is enforceable by the state, and both parties to a dispute do not have to agree to seek recourse to it. It presents an adversarial option. Rather than being the primary, or even sole, resource for Muslims as they seek to negotiate the difficulties of ordinary life, *sharia* is now one among other options. The state courts have the power to enforce their rulings, which changes the status and power of the *mufti's fatawa*.¹¹⁷ The *mufti* suggests that because of this juridical structure, "what has changed over time is the way in which people are Muslim." In other words, the presence of a constellation of options reconfigures Islamic law by rendering it one among other options.

Mufti Kazmi cites the changed relationship between a husband and a wife as exemplary of the way in which "being Muslim" has changed. He draws a connection between the intervention of state law (in the form of Cr.P.C. 125) into family disputes and the husband's diminished authority vis-à-vis his wife. He suggests that if women can file cases demanding maintenance through the state, they will no longer seek to work these problems out within the family and failing that with the help of a Muslim judge or *mufti*. In noting this change, the *mufti* also makes the argument that *sharia* does not operate as a stable and unchanging set of rules. His observation demonstrates how significantly Islamic legal practices change in various contexts. None of the *fatawa* that I read while doing my fieldwork involved maintenance issues, suggesting that this is not the forum in which women and men seek resolution on this aspect of gendered property division. The following *fatwa*, though, responds to a man who has been arrested under Cr.P.C. 498A for stealing his wife's property. The *fatwa* demonstrates that the *dar ul ifta* is one of numerous institutions in which women and men pursue their disputes:

Fatwa 39

What do you say, religious ulama and mufitian karam, about the following situation? Z's marriage (*shadi*) to N took place on the 24th of April 2005. A boy was born on 14 February 2006. On 19 March 2006, N went with my agreement to

¹¹⁵ He refers here to the Criminal Procedure Code Article 125, discussed at some length in the previous chapter. Under this Article, women can sue for maintenance payments. The *mufti's* account is interesting, given the controversy over the *Shahbano* case that resulted in the passage of the Muslim Women's Protection of Rights in Divorce Act that many decried as a repeal of the promise of 125 for Muslim women.

¹¹⁶ Interview with *Mufti* Kazmi, 16 November 2006.

¹¹⁷ I discuss this in detail in the introduction: it is because *qazis* were displaced from their roles in the state that *muftis* were hesitant to give permissive *fatawa* without Muslim judges to enforce these decisions.

her parents' house. During this time she was happy. A few months before she had the baby, N's parents left the jewelry alone in the house. Z's sister and brother will keep this jewelry at their house. Now, after leaving, N went to the Women's Cell to complain of being beaten for her dowry. Then on 19 May 2006, she registered an FIR.¹¹⁸ The police arrested the in-laws and the husband's sister and ordered them to bring all of the jewelry to court. Those who were involved gave everything into the police's custody. The court's order was to offer 50 lakh in cash (5,000,000 rupees—\$100,000) this was the punishing of innocents. Now this [Z] person wants to give the other person a talaq. The child is three months old.

Al-jawab

If there is no possibility of compromise, then the boy can give a talaq. The boy has to give *iddat* allowance and allowance for the living expenses of the child until he is five years old. God knows best.

The *istifta* suggests that a year after the couple was married, and a month after their child was born, the wife left her husband's home to visit her parents. The statement that she went "with my agreement" implies that she received her husband's permission before going to her parents's home; it does not imply separation or divorce. The *fatwa* suggests that the wife's jewelry had been left unattended at her husband's house while she visited her in-laws. It is unclear what the *mustafti* means by "N's parents left the jewelry alone in the house." We assume the house in question is theirs, but this sits uncomfortably with the next sentence's declaration that Z's sisters are keeping the jewelry. The latter seems more to the point, as the wife could only file an FIR against her in-laws if she did not have the jewelry in her own possession. Fed up with the FIR and the court's determination of what he owes to his wife, the *mustafti*'s question is formulated as a statement: "this person wants to give the other person a *talaq*."

The *mufti* is not the only legal authority involved in this case. The disputing parties are aware of and actively utilizing other legal resources in their pursuit of justice. The question (*istifta*) introduces a situation in which the police and civil courts have already become involved.¹¹⁹ The questioner (*mustafti*) therefore asks whether, in the face of the disruption this represents, it would be acceptable for him to end his marriage. The *fatwa* suggests that the disputes about property have produced sufficient vitriol that the marriage may best be dissolved. The *fatwa* explicitly places a condition on the permission it grants: *if* the couple are unable to compromise, *then* the *talaq* is acceptable. In the context of a dispute bound so closely to money, it is significant that the *mufti* writes that the wife will be entitled to an allowance during *iddat* and an allowance to cover her son's living expenses. The divorce would limit the wife's chances of receiving a substantial award of maintenance in the civil courts, so the *mufti*'s insistence that the husband would owe his wife the enumerated payments is a materially weak if symbolically important addition to the *fatwa*.

¹¹⁸ A First Information Report (FIR) is the form that must be filed with the police within a certain period of time from when an alleged crime took place in order to launch an investigation.

¹¹⁹ In this situation, the FIR would have been filed under 498A, because it is an accusation of dowry harassment.

The scene created in this *fatwa* is one illustration of the *dar ul ifta*'s entanglement with criminal law and with the state's courts. In this *istifta*, the criminal courts are framed both as integral to the couple's problems and as its symptom. Seeking to escape the troubles brought on him by his wife's court success, the husband approaches the *mufti* for permission to sever his marital ties. He succeeds at this, although the *fatwa* will not eliminate his responsibility to pay his wife's award. This last aspect of the *fatwa* suggests that although *fatawa* are part of a larger legal landscape that also includes the *dar ul qaza* institutions and the courts, their process, parameters, and form affect the kinds of issues the *mufti* is asked to address and the potential outcomes of his advice.

The Mufti's Fatawa: Form & Mode

Just as the *mufti* follows certain procedures and responds to certain types of disputes through his *fatawa*, he also receives questions on a limited number of topics. These include marriage, divorce, remarriage, inheritance, and, occasionally, proper religious practice. Each of these topics concerns gendered relationships that are at once legal, moral, and financial; they are all Personal Law matters. The *mufti* photocopied many of the *fatawa* he gave during the time that I was in Delhi so that I could read and study them. The *mufti* collected 107 *fatawa* for me. About 60 of them related to divorce (including *talaq*, *khul'*, and *faskh nikah*, although the vast majority were about *talaq*), about 20 concerned property division as part of an inheritance, 13 were about marriage (including questions about inter-community marriage and remarriage to someone other than the first spouse). The rest of the *fatawa* are split between questions about religious practice, questions specifically about the waiting period following divorce (*iddat*), and divorce-related property division. All of these *fatawa*, save the few about religious practice, concern gender relations. In them, legal and moral norms crystallize in questions about the gendered organization of familial, sexual, and material relations.

Within the constraints of the *fatwa* as a legal form, there are significant variations in the *fatawa*'s *modality*. The *mufti* gives what I refer to as a *diagnostic response* to those queries that are about the status of a relationship, or agreement; he gives a *fatwa* of *settlement* in response to questions that clearly emerge from disputes; he gives *instrumental* responses to questions about how to achieve certain practical ends, such as an inter-community marriage; and finally, he gives a *fatwa* of *authorization* in response to questions about the validity of specific actions. While the distinction I am making is between statements of different formal types, the different types of *fatwa* tend to correspond to substantive topics.

Diagnostic *fatawa* tend to be given in response to questions about unilateral divorce, or *talaq*. Often, though not always, they entail elaborations of the consequences of the marital condition. While most of the diagnostic *fatawa* that the *mufti* writes concern triple *talaq*, which I will look at in depth below, others raise matters of correct procedure. For example, the *fatwa* below seeks to establish the validity of a marriage contract.

Fatwa 47

What do you command, learned *mufti*, about the following issue: Zayd married Umar about one year and three months ago. When their wedding took place, no one was aware that the girl had not signed the marriage contract (*nikahnama*). The

girl says that she did not agree to the wedding, and that she still does not agree to it. In this situation, is the girl still married or not? Please give a response to this question in light of the Quran and Hadis.

Al-Jawab

One year and three months later, the girl's refusal is not trustworthy. She has gone to her husband's home (*rukhsati ho gayi*) and she has lived with her husband. This is permissible. It is not necessary that the girl sign the marriage contract. Because of this, the marriage is correct (*darast*).

To respond to this query, the *mufti* draws on inferences he makes from the question. The diagnosis he offers is that the couple are properly married. The ground is that the girl's signature is not required on the marriage document to make it valid. However, the reasoning behind his argument actually has nothing to do with the marriage contract. Instead the *mufti* argues that if the girl had been married against her will, she would not have remained in her husband's home for over a year. This statement on the one hand it suggests that wives find ways to leave if they have been forced into a marriage; on the other hand it refuses to entertain the possibility that this question *is* such an attempt. The *fatwa* suggests that the more effective way to get out of an unhappy marriage is simply to leave it, rather than going through legal channels in an attempt to establish that it was never lawful.

Fatawa of settlement, which are also the most detailed and lengthy, tend to respond to questions about inheritance. The following is an example that I will analyze in detail later in the chapter.

Fatwa 81

What do you say, religious 'ulama, about the following: We have one house that is in our father's name. Our mother is living. Our father has passed away. There is one brother who has also died. He has two sons. Now, there are four brothers and one sister living. Now I just want to know what my share is. I wish to know, according to the *sharia*, what is my rightful share. Please tell me, what are the brothers' shares, and what is the sister's share.

Al-jawab

After having paid the funeral expenses, having paid the amount of the mahr...the deceased's entire property will be divided into 88 pieces. Eleven shares go to the wife, and to the each of the sons fourteen, and to the daughter seven. The shares of the dead son go to his progeny and to his wife. God knows best.

Instrumental and authorizing *fatawa* do not hew as closely to a specific subject matter. Both always refer to hypothetical situations, to events that have not yet taken place. Instrumental *fatawa* respond to questions that state an end and request an elaboration of the proper means to it. The three *fatawa* in which the *mufti* suggests that the *mustafti* take his or her case to the *dar ul qaza* are instrumental. In each case, the *mufti* provides information about the legal path that the *mustafti* should take in order to pursue his or her

claim. There are numerous other examples of instrumental *fatawa*, some of which I reproduce here.

Fatwa 11

A non-Muslim girl wishes to join the faith. What does she need to do to accomplish this? When is it permissible for her to marry a Muslim?

Al-Jawab

If a virgin (*kinwari ladki*) takes the faith, and having learned the rules of the religion (*deeni ahukm*), then it is permissible and proper (*jaiz aur darast*) for her to marry a Muslim boy.

The question and the answer in this case are straightforward. The question is both a matter of faith and of pragmatics. The questioner wishes to know how it is both lawful and correct, or moral, for him to marry a non-Muslim girl. The *fatwa* responds in kind, clearly stating the steps necessary to achieve this end. Some of the other instrumental *fatawa* involve questions about how couples can be reunited once they have divorced. The following is exemplary of such a *fatwa*.

Fatwa 18

What do you command learned *mufti* about the following issue: Muhammad said *talaq* thrice to his wife when he was drunk. Now he wants to live with his wife again. So in light of the Quran, what should he do? How many times can he say *talaq* to his wife? Please give an answer with all the details of the Quran.

Al-Jawab

When a man says *talaq* thrice, the divorce has gone through. The husband has divorced his wife. Now the wife must observe *iddat* and then she must marry another man. Without *halala* the couple cannot get married again.

I encountered several *fatawa* like this one, in which a husband expressed regret that he had divorced his wife, and approached the *mufti* to find out how to rectify the situation according to Islamic law. *Halala* was the standard procedure for this purpose, and the *mufti* prescribed it in any such situation. Although this *fatwa* does entail a diagnosis, the question to which the *mufti* has been asked to respond is *how* the couple can remarry, rather than *whether* they are divorced.

Fatawa of authorization tended to be given in response to questions about right practice. For example, in one *fatwa*, the *mufti* authorized a man to pray behind a Shi'a man. The man had been concerned that this would negate his prayers. One interesting example of this kind of *fatwa* is one in which a group of people seeks authorization to build a mosque and counsel about where to do so. A group of Muslims had set up a society and had decided to erect a mosque and a place to pray. They ran into many frustrations with the government zoning and with the neighbors and ask the *mufti* whether they should go ahead with the mosque. The *mufti* responded that there was no reason that they could not pray there, but that there was little reason for building a whole mosque in these conditions. The *fatwa* is not only about building a mosque; it is also about

negotiating Muslim space in the city, and the *mufti*'s response is interesting inasmuch as he supports the idea of the mosque but not at the expense of good relations with the neighbors.

Each *fatwa* articulates an injunction that corresponds in form and substance to the question posed. In every case, the question is posed from a position of partial knowledge of *sharia*, and acknowledges the incompleteness of that knowledge, and the need for the intervention of a moral expert. The questions bring the *mustafti* into the *mufti*'s world, authorizing him to give advice, and in some cases promising to follow it. Looking closely at several *fatawa* of each mode enables us to see the importance of the moral and legal framing of the question, and to ask about how this moral-legal framing crystallizes around gender relations.

Scholars of Islamic law in other modern state contexts have argued that one of the notable features of contemporary *fatawa* is that they tend to respond to questions concerning people's private lives (Messick 1993, Agrama 2005, Skovgaard-Petersen 1997, Masud, Messick and Powers 1995). In this, Mufti Kazmi's *dar ul ifta* is no exception. As I have argued, the structure of personal law in India, which leaves family law matters to religious jurisdiction, has had the effect of narrowing the scope of *sharia*. Although *fatawa*, like *dar ul qaza* judgments, are nonbinding and non-legal, *mustafti* do not ask questions that fall outside the boundaries of the state's designation of matters appropriate to personal law adjudication. The questions are further circumscribed within these boundaries.

Unlike other contemporary Muslim law contexts, in the *dar ul ifta* I studied *mustafti* rarely asked questions about religious practice. The questions posed by *mustafti* in other studies, ranging from those of colonial India to contemporary Egypt, include a significant number about religious practice, although family law issues are also prevalent (Agrama 2005, Metcalf 1982). Barbara Metcalf has expressed surprise in the scant appearance of questions about religious practices in Mufti Kazmi's *fatawa*, for in her study of the madrasa at Deoband, she found that the *fatawa* given in the late 19th century were "primarily limited to matters of belief, ritual, and relations to other religious groups" (1982, 147). She suggests in her book that there may have been *fatawa* issued on subjects such as family law, but that the emphasis in collecting *fatawa* into volumes was on "belief and ritual, 'aqa'id and 'ibadat, which they explored with remarkable depth and range" (1982, 148).

It seems, though, that the disproportionate focus on family matters in Mufti Kazmi's *dar ul ifta* is not anomalous, at least in the contemporary Indian context. In an anthropological study of *fatawa* in Hyderabad just a decade and a half ago, Gregory Kozlowski found a similarly dense focus on divorce and inheritance to what I saw in Mufti Kazmi's *fatawa* (1995). There are possible explanations for the differences between Metcalf's findings, and mine and Kozlowski's, besides the obvious difference in the historical periods about which each of us writes. The *fatawa* Metcalf studied are printed in *fatawa* collections. Thus, although these are collections of actual questions and responses, they have been chosen by an editor to make a point. As Metcalf notes, these collections were published by the seminary as part of a reform movement. The Deobandis were preoccupied with distinguishing themselves from other Islamic sects (1982).

Indian *fatwa* collections have a distinct history that may help to explain the well-rounded quality of the Deobandi *fatwa* collections. Although the practice of producing *fatawa* collections began in the 10th century, and continues in many places to the present, in India these collections had a distinctive character (Masud, Messick, and Powers 1995, 14). Rather than bound volumes in which questions and responses were listed, the *fatwa* collections of the Mughal period were compilations of Hanafi doctrine. The most relevant of these collections to this study, because it is referred to by all of the ‘ulama with whom I worked in Delhi, is the *Fatawa Alimgiri*, which was compiled at the behest of the emperor Aurangzeb. This compilation of doctrine (*fiqh*), has become a chief reference for *muftis* in India. This form of *fatawa* collection seems to have changed in the colonial period, however. Barbara Metcalf works from the published *fatwa* collections produced by the *dar ul ifta* at the influential Deoband madrasa (1982). She describes the aim of the Deobandi ‘ulama as “the compilation of a collection of *fatawa* as definitive as the famous compilation of the Emperor Aurangzeb” (1982, 146). The published collections were gleaned from the registry of *fatawa* kept by the ‘ulama of the *dar ul ifta* beginning in 1911 (Metcalf 1982, 146). Thus although this was a broad collection, it was a compilation of actual questions, rather a tome of doctrine in prose, as was the *Fatawa Alimgiri*. Likewise, the *fatawa* collection of Mufti Kazmi’s father is a compilation of questions and answers that was published in Pakistan by some of his followers. The *imarat-e-sharia*, whom I have discussed in the previous chapter, also maintain a *dar ul ifta*, and the three volume *fatawa* collection they have published is similarly structured around themes, but substantiated through actual questions and *fatawa* rather than prose commentary. They are both much more exhaustive and wide-ranging than the *fatwa* sample I copied from the *mufti*. This indicates that while collections reflect editorial decisions, the *fatawa* from which I work here reflect the scope of questions that people bring to the *mufti* on a regular basis.

Mufti Kazmi does not give lengthy elaborations of his reasoning. He rarely cites the sources on the basis of which he has given his advice. Instead, his *fatawa* diagnose a situation or recommend a course of action using the oppositional terms “permissible” and “impermissible” (*ja’iz* and *naja’iz*), or the designation of necessity (*zaroorat* or *zaroorat nahin*). To emphasize impermissibility, the *mufti* adds the word “forbidden” (*haram*) in certain *fatawa*. In several of his studies of *fatawa* in a Hyderabad mosque, Gregory Koslowski has also noted this tendency on the part of the *mufti* simply to declare a given situation *ja’iz* or *naja’iz* (1995). He argues that this is largely because most *fatawa* issued in the context of a mosque are given to individual people with specific problems. These are questions on which there is a clear consensus opinion within the Hanafi school of jurisprudence. The role of these *fatawa* is therefore not to supply elaborate doctrine.

Brinkley Messick has called this type of *fatwa*-giving “recitational” because it does not require complex analogical reasoning, but instead rests on the *mufti*’s ability to hear a question, quickly categorize it into an existing domain of legal ruling, and recite the relevant response (1993, 149). As Messick also notes, recitation is not antithetical to creativity, but is rather a different mode of interpretation. In offering this kind of an interpretation, a *mufti*,

Having identified the issue (itself an interpretive act based, in turn, on an initial construction on the part of the questioner), such a *mufti* essentially recites relevant

text. Although every recitation is an interpretation, when neither fact nor rule is taken to be new, a simple or associative type of reasoning is employed (Messick 1993, 149).

Recitational *fatwa*-giving, associated in the history of Islamic law as *taqlid* as opposed to independent reasoning (*ijtihad*), is an interpretive act. Whereas the practice of *ijtihad* “is the exertion of mental energy in search for a legal opinion to the extent that the faculties of the jurist become incapable of further effort,” *taqlid* is the invocation of an established legal opinion (Hallaq 1984, 3).¹²⁰ Scholars of Islam have argued over whether *ijtihad* is a practice that continues in Islamic jurisprudence. Some have argued that the practice of *ijtihad* no longer existed after the 3rd/9th century, and on that basis have claimed that after that date Islamic jurisprudence grew rigid (Schacht, Coulson). Along with this rigidity, these scholars argued, came an increasing rift between theory and practice. Another wave of scholarship has questioned the thesis that the “gates of *ijtihad*” closed in the 3rd/9th century, and argue instead that the practice continued, even if its forms changed (Hallaq 1984, Jackson 2001, Messick 1993). Hussein Agrama has argued that even these attempts to explain how *sharia* could continue to apply to changing times if *muftis* were stuck with the awkward tool of application remain unsatisfactory (2005). Agrama argues that the analyses offered by these scholars result in the suggestion that *muftis* are able to bring doctrine and practice together by manipulating the former to fit his views of what ought to happen (2005, 156-157).

Mufti Kazmi’s *fatawa* admit no such manipulation, as the questions to which he responds rarely reveal ambivalence. However, the knowledge of *sharia* revealed in the questions’ formulations and the relationship of these formulations to the *fatawa* that follow suggest that the condition of possibility of the exchange itself is a shared moral landscape that explicitly frames the *fatwa*, in addition to a search for doctrine or the addition of legitimacy to a legal endeavor (as in the *fatwa* reproduced above). In other words, while remaining aware of the important material issues at stake in these *fatawa*, a consideration of the moral landscape that makes this exchange possible pushes us beyond a theory of interests and to a more complex set of questions. If the continued viability of *fatawa* as a medium of legal advice suggests that *sharia* is among the subjectivating relations of power and knowledge for lay Muslims, we can think of the questions that prompt *fatawa* as both significantly defined by the state’s legal structure *and* by a moral domain that makes these questions appropriate to the *mufti*’s advice.

One *fatwa* that refers directly to the binding nature of the moral landscape within which *fatawa* are written concerns the status of oaths.

¹²⁰ Wael Halleq traces the history of *ifta* through a parallel set of questions. He asks, not about the role of the *mufti* in relation to temporal power and institutions of governance, but about the qualifications for giving legal advice (1996, 33-44). Halleq argues that while in the early period, the eighth to the eleventh century, a *mufti* was required to be a *mujtahid*, one capable of independent reasoning (1996, 34-35). However, by the mid-thirteenth century, Halleq argues that it was common for a *muqallid*, a jurisconsult capable of giving advice based on the established positions of a particular school of law (*taqlid*), but not of independent reasoning (*ijtihad*), to give *fatawa*. There was also a shift from the predominant view that a *mufti muqallid* could only give *fatawa* if there was no available *mufti mujtahid* to the view that even if the latter were available, the former was authorized to give *fatawa*.

Fatwa 25

What do you say, learned religious scholar, about this issue? In the presence of another person, Zayd wrote this information on a letter to his wife: if I drink alcohol, I will not maintain any relationship with you. This person understood that “no further relationship” means *talaq* and separation. This was very clear to both parties; this sentence was deeply understood. And it was well understood what the consequences of it would be. This person and Zayd both signed the letter. After this, Zayd left the house and when he returned, he was drunk. My request of you is that you tell me, in light of the Quran and Hadis, whether a *talaq* has occurred or not. Finis (*Faqat*).

Al-jawab

About this it is necessary for the husband to keep his oath. God knows best.

This *fatwa* closely follows Hanafi law. In other studies, from other times and places, of *fatawa* given by Hanafi *muftis*, the oath has a similarly uncompromising effect (Tucker 1999). Because of the nature of an oath, which always concerns something beyond itself, the specific question about whether or not the oath binds impacts a distinct substantive matter. The substantive impact of this *fatwa* is on the status of the marriage. It is not clear why the husband took the oath he did. Did he wish to place a check on his own drinking by giving it serious consequences? Did his wife ask him to take the oath so that if he kept drinking she would be able to leave? Was there another reason altogether? It is impossible to tell.¹²¹ What we can see, though, is that once again, when the *mufti* is asked to diagnose the effectiveness of a speech act, the status of a marriage hangs in the balance.

This *fatwa* once again opens up the question of what it means for something to bind. The oath is not binding in any standard legal sense. The state would not intervene to uphold a vow that a husband made to his wife. But within the sphere of the *fatwa*, where by asking the question the *mustafti* places him or herself within the *mufti*'s interpretive universe, this oath does bind. Again, the *mufti* will no more police the *mustafti* to find out whether the couple adhere to the divorce than will the state. But in asking the question, the *mustafti* implies that the *mufti*'s advice is important, if not necessary, to the resolution of the conundrum. The *mustafti* further implies that the taking of the oath was neither idle nor morally neutral, but that the *mustafti* suspects that it was a contract and that it therefore must be honored. Thus, the question and the *fatwa* together turn out to be less about the divorce, or even about the oath, and more about the conditions within which the question is possible: these include a reverence for the moral and legal weight of articulated promises. The weight of such promises is “private” in the sense that they concern only the individuals directly involved. However, their weight derives from a moral and legal relationship governed by the Quran and the Hadis as interpreted by the *mufti*. In this sense, the weight of the promises resides in a landscape of moral precepts

¹²¹ Arzoo Osanloo discusses one way that oaths are used in Iranian *sharia* courts. In the anecdote she recounts, the judge recommends that the husband add a written oath to the court record so that if he had not fulfilled the terms of his agreement within a specific time frame the couple would automatically be divorced (2009, 116). Osanloo argues that this is one way that women can put additional, believable, pressure on their husbands.

within which life is to be navigated. Again, then, this is not a question of choosing or not choosing, or of choosing freely or unfreely. It is a question of a subject constituted by and through moral-legal relations within which its decisions and actions have weight, legibility, and consequences.

The materials I have to work with mainly consist of the written questions and *fatawa*, because this was the medium in which *Mufti* Kazmi worked. I therefore cannot make arguments about whether these *fatawa* were followed or how they circulated in the world once they were written. I have only anecdotal evidence that questioners (*mustafti*) would keep *fatawa* they had received and that they were not, therefore, considered to be dispensable. I also did not know the *mustafti* who came to the *mufti*'s office, so I do not have any idea whether the questions accurately reflect the disputes and situations about which they seek advice. I am quite sure that sometimes they do and sometimes they do not; I am also quite sure that sometimes the discrepancy between what "really happened" and the framing of the question is purposeful and that sometimes it is not. However, I am in no position to judge which is which. Through analyses of the substance of the *fatawa*, however, I argue that gendered relationships are negotiated in nearly every *fatwa* in at least one of three primary ways: questions about *talaq*, about divorce and property allocation, and about inheritance.

Contested Divorce: Triple Talaq

Most of the diagnostic *fatawa* that I read were about unilateral male divorce, or triple *talaq*. In this section, I will look at a number of these *fatawa* and at how they relate to and differ from the Indian state's great ambivalence on the validity of this form of divorce. I argue here that the questions and the *fatawa* on this subject indicate that far from being a quick fix for pious Muslim men, the triple *talaq* is the source of significant consternation, confusion, and deliberation even as it is one tool for the reproduction of male privilege.

According to the Hanafi school of Islamic law, which Mufti Kazmi practices and which is considered normative by the Muslim Personal law of India, a Muslim man has the right to unilaterally divorce his wife by repeating "talaq" three times (Fyzee 1974, 150). Asaf Fyzee notes that the word *talaq* "comes from a root (*tallaqa*) which means 'to release' (an animal) from a tether"; whence, to repudiate the wife, or to free her from the bondage of marriage" (Fyzee 1974, 150). There are three different forms of divorce by *talaq*: the first is the *Ahsan* form, in which a husband pronounces "talaq" once, while a woman is pure (not menstruating), and refrains from having sexual intercourse with her until her next menstrual period and for the three menstrual cycles following (the *iddat* period) (Fyzee 1974, 152).

The second form is the *Hasan* form, in which a husband says "talaq" once during each of three consecutive menstrual cycles when the woman is not menstruating. He may pronounce "talaq" once, and then later have sexual intercourse with her or verbally revoke his divorce. He may then the next period of purity, before having sexual intercourse with his wife again pronounce "talaq". If he does this a third time in a third period of purity, without having sex with his wife, the divorce is irrevocable. These two forms of *talaq* are not desirable, but they are acceptable. However, the final form of *talaq*, *talaq al-bid'a* is disapproved. This form of *talaq* is executed one of two ways: either the husband states thrice in one period of purity that he divorces his wife, in the

form “I divorce you thrice” or “I divorce you, I divorce you, I divorce you” or he gives an irrevocable divorce in writing (Fyzee 1974, 153-155). These two forms of divorce are disapproved because they do not leave open the possibility of reconciliation through the intervention of friends, family, or others. Under the strict interpretation of Hanafi law to which Mufti Kazmi adheres, this utterance can take place under any conditions, including while the husband is drunk, or angry, or tired, or joking, and the wife does not need to be present when the words are uttered (Fyzee, Mahmood, Mulla). The flip side of the *mufti*’s strict interpretation of the rule governing *talaq* is that there are, equally, many inadequate ways to attempt a divorce.

In the following *fatwa*, for example, the *mufti* tells a man that he has not been divorced because of the *way* in which he issued the repudiation.

Fatwa 79

What do you command, *mufti* of the *sharia*, about the following issue which concerns a man and his wife. The husband’s mother and his wife used to fight. During one of these fights, the husband said to his wife, who has three children: I am going to divorce you (*main talaq de dunga*). And he said three times: “I have given it, I have given it, I have given it” (*de di, de di, de di*). Afterward, he felt terrible because he wants to spend his life with his wife and his children. Has his divorce happened or not?

Al-jawab

The words with which you gave *talaq* were not the words of *talaq*, so there has been no divorce. If you have said *talaq* once, you can take your wife back during the *iddat* period and you will be reunited.

This *fatwa* emphasizes the importance of pronouncing *talaq* in the proper way. Although the husband, in a fit of anger, announced that he *had* said *talaq* to his wife, he did not actually use the words “I divorce you.” Thus, even if he referred to such a statement, without making it explicit, it has no force. The first iteration (I will divorce you) *did* constitute a *talaq*, but of the revocable sort. Thus, if the couple recommence their sexual relationship within three months, they will be considered reconciled.

Triple *talaq* has been the focus of significant debate among the ‘ulama in India and elsewhere as well as within the Indian courts. The issue raised in the *fatwa* I have just quoted—namely *how* a triple *talaq* must be uttered in order to be binding—has been one central aspect of this debate. In a recent article, Narendra Subramanian notes that the courts have often ruled on unilateral male repudiation when cases about maintenance come before them (2008, 649).¹²² This is because until 1973, the courts only granted Muslim women maintenance for three months following a divorce (Subramanian 2008, 649). Subramanian argues that the courts continued this policy in most cases until recently. He is one of several scholars to point out that even where the courts ruled against triple *talaq* as binding, this did not necessarily help women. He cites *Furzud Hossein v. Janu Bibee*, 1878, “in which the man gained the right to his wife’s conjugal company (2008, 649). A 1905 judgment set the precedent that triple *talaq* was “good in law, bad in theology,” which would last until 1978 (*Sarabai v. Rabiabai* 1905, 537). In

¹²² The following account of triple *talaq* in the Indian courts relies heavily on this article.

the 1970s, Justices Krishna Iyer and Baharul Islam gave two separate rulings that declared triple *talaq* to be revocable (*A. Yousuf Rawther v. Sowramma* 1971, and *Jiauddin Ahmed v. Anwar Begum* 1978, respectively). These two cases established that a triple *talaq* was only irreconcilable if given with “reasonable cause” and after attempts at reconciliation had failed (Subramanian 2008, 651).

Over the last decades, there have been two significant judgments on triple *talaq*. In what is known as the Tilhari Judgment, Justice Hari Nath Tilhari of the Allahabad High Court, Lucknow Bench, ruled in 1994 that triple *talaq* is invalid (Agnes 1999, 112). The grounds for invalidating it was that it “denigrates women and it is violative of the Constitution” (Agnes 1992, 112). Ironically, this ruling had the effect of depriving the woman, who argued that she *had been* divorced, of the property she had hoped to secure. Under the Land Ceilings Act, her husband would have to give up some of his property if *her* property were legally *his*. In matter of fact, she owned the property since the couple had been divorced; however, when the court decided that the couple remained married, her portion of the property was confiscated by the state.¹²³

The most recent high court judgment on triple *talaq* was in the 2002 Shamim Ara case (*Shamim Ara v. State of U.P. and another* AIR 2002 Supreme Court 3551). In the case, judges reiterated that male repudiation is only successful if given for good reason and if attempts at reconciliation have failed. As Subramanian points out, the judgment did not elaborate how these parameters should be interpreted—what would be considered good reasons for divorce and how reconciliation attempts would be ensured (2008, 652). This as other judgments on the issue renders its decision dramatically. The judgment states:

Should Muslim wives suffer this tyranny for all times? Can it not be amended suitably to alleviate their sufferings? My judicial conscience is disturbed at this monstrosity. The question is whether the conscience of the leaders of public opinion of the community will also be disturbed (para 11).

The dramatic salvific language of the judgment belies its weak and undefined position on triple *talaq*. The court contests the interpretations of leading scholars of Hanafi law, while stopping short of refusing in all cases to recognize triple *talaq* as a legal divorce.¹²⁴

¹²³ The case began when the husband told the courts that his land should not be confiscated because some of it was owned by his ex-wife. While married, a husband and wife’s property is always understood to be common, and if both spouse’s land were taken into account, they would have to relinquish some of the property under the UP Land Ceilings Act of 1974. However, both husband and wife argued that they had been divorced eleven years prior to this date, and that neither therefore owed land to the government. When Tilhari held that the woman had not been divorced, in spite of her testimony that she had been, it made her property her ex-husband’s and deprived her of her land (Agnes 1999, 112-114).

¹²⁴ The Indian court’s unwillingness simply to outlaw triple *talaq* makes it an aberration. Tahir Mahmood writes that “the codified laws in Egypt, Iraq, Jordan, Kuwait, Morocco, North Yemen, Philippines, Sudan and Syria now derecognize” triple *talaq* (1995, 255). “In Afghanistan, Algeria, Indonesia, Malaysia, Somalia, South Yemen, Sri Lanka and Tunisia, a *talaq* can be effected by a husband only with the prior permission or through intervention of the court which must first try to effect a reconciliation, direct or through arbitrators—failing which only it can allow a *talaq*” (Mahmood 1995, 255). In Pakistan and Bangladesh, a *talaq* must be registered with the local government once it has been pronounced, and it remains ineffective for ninety days while the local government tries to effect a reconciliation (Mahmood 1995, 256).

The court's unwillingness to simply refuse to recognize triple *talaq* in any circumstance has been the source of frustration for many feminists and most recently for a broad range of groups who call themselves Islamic feminists (Vatuk 2007). These feminists argue that eliminating the triple *talaq* would dramatically improve women's lots both in marriage and in divorce.

The significant debate within the courts is also lively among 'ulama and ordinary Muslims, who come in significant numbers to ask the *mufti* whether or not they are in fact divorced following a *talaq*. What are in question, in *istifta* after *istifta*, are the felicity conditions of this utterance. Question after question seems to reiterate incredulity about the power of words to act even as the question can only be posed from a position of accepting this possibility. They ask whether passion undoes the performative, coming as it does from the disordered world of desire and not the ordered realm of law. And in *fatwa* after *fatwa*, the *mufti* affirms the capacity of the performative to act even through passion's disorder. The *fatawa* on *talaq* that I will translate and analyze in what follows highlight both the conditions within which this particular utterance is felicitous and the *mufti*'s role in clarifying a privately effected legal change. Marriage and divorce are both moral and legal relationships, and the *mufti* has the expertise required to pronounce on moral and legal status. The *fatwa* is not itself effect legal change, but it gives an authoritative interpretation of the status of such an act.

Fatwa 10

What do you command, learned *mufti* about the following issue about Zayd: Zayd had drunk so much alcohol (*sharab*) that he barely made it home. In this condition, Zayd acted in an extreme way, and said many words to Hind. There were people there who told Hind's family that Zayd gave Hind a *talaq*. But Zayd and other people who were there say that Zayd did not say any such thing to Hind. Hind wants to now according to the *sharia*, does she have to leave Zayd or no?

Al-Jawab

If he did not give a *talaq*, then there has been no divorce.

Fatwa 58

Bismillah al-rahman al-rahim. What do you command, learned *mufti*, about the issue that follows: Nazhe Khatun is always fighting with her husband Mohammad. One day, Nazhe Khatun said to her husband: "I divorce you, I divorce you, I divorce you." Upon hearing this, Mohammad said, "If a woman says 'I divorce you,' there has been no divorce. I divorce you, I divorce you, I divorce you, I divorce you." Now the question, in this situation, is whether Nazhe has really been divorced. This incident happened on 1 January 2005. The request is that you give us an answer in light of the Quran and Hadis. Finis (*Faqat*).

Al-jawab

If a woman gives a *talaq*, a divorce has not taken place. If a husband says *talaq* three times, then an irrevocable divorce has taken place. It is necessary for the woman to observe *iddat*. After the waiting period is over, she can marry another man.

Fatwa 43

What do you command, learned *mufti* about the following issue: Mohammad Salim, son of Mohd. Yasin was married to Shahjahan, daughter of Mohammad about five years ago. About two years ago, confused by another woman, I thought about divorcing my wife. Shahjahan has one boy who is about two years old. About one month ago, Mohammad Salim called the house and said that I have given one, two, three *talaqs*. And when my little sister, who is about eighteen years old heard this, she repeated that I had given one, two, three *talaqs*. When the neighbors heard, they also said, Mohd. Salim has given a *talaq*. When Salim learned of this, he said, no one has a witness. When they said that he had given *talaq* over the phone, he said, “I was joking!” In this situation, has there been a divorce, or not? Since then Salim has not spoken with his wife in person or over the phone. He has only been to see his wife’s sister (*sali*) and Mohammad’s people. So please give a detailed response to this question in light of the Quran and Hadis. Please say whether there has been a divorce or not and whether Salim can live with his wife or not.

Al-Jawab

In this situation, there has been a foul (*mughal’laz*) *talaq*. It is also an irrevocable *talaq*. Since the woman has been divorced, she must observe *iddat*.

Before looking at the substance of these *fatawa*, there are a few formal elements it is worth noting, given that they are common to most of the questions *Mufti* Kazmi receives and the *fatawa* he writes. The opening formulation: “*bismillah*”, followed by “what do you say, learned ‘ulama and *mufti*, about the following situation,” inaugurates many *fatawa* I have read. The formulation of the address varies slightly from *fatwa* to *fatwa*, but overall, it comes to read as a formulaic opening that places the problem within the *mufti*’s terrain, and that submits this problem to his judgment, respect for which is explicitly articulated. The “sound” of reading the *istifta*, then, is crucial to setting the terms of the interaction. *Kya farmate hai ‘ulama e deen sharia mateen masa’il zayl kay baray me*. This is not the language of everyday Hindustani dialogue. Rather, the combination of Farsi (*farmate*) and Arabic (*‘ulama e deen*) words brings the question into the register of the *mufti*’s learned language, which draws heavily on Farsi and Arabic. The Persian word “*farmana*,” used to ask the *mufti*, “what do you say,” is literally translated as “what do you order.” Thus the formula simultaneously renders the request formal, as “*farmana*” is a poetic and genteel formulation of “to say,” and it makes clear that the *mufti*’s words have a weight closer to that of an injunction than to that of ordinary speech. Whether or not his advice will be heeded, it is not requested idly, the formulation suggests. This is further suggested by the honorifics “‘ulama e deen wa sharia mateen,” which invoke the *mufti*’s credentials as a specialist in religious law.

Although the question that follows this opening is often written in layman’s language, the question also culminates with a reverential phrase. *Quran wa Hadis ki roshni me jawab farmae*. This means: “Please, give us an answer in light of the Quran and the Hadis.” The last line of each question is slightly different, but all employ the phrase, “in light of the Quran and Hadis,” emphasizing the appeal to the *mufti*’s expert

knowledge of the Quran and Hadis and the questioner's submission to its edicts. What I would like to suggest is that these are not empty formulations, but that they situate the question, phrased in layperson's terms, within the learned world of the *mufti*. The opening and closing lines suggest that the questioner constructs the question to be relevant both to the Quran and Hadis's teachings and to the *mufti*'s expertise. They also display a respect for the *mufti* himself as the interpreter of these texts, placing great emphasis on the words with which he will reply. As was the case in the dar ul qaza, Urdu is the acceptable script in which to request a *fatwa*.¹²⁵

Another way in which this *fatwa* is typical of *Mufti Kazmi's fatawa* is that it is not possible to ascertain the identity of the *mustafti*. The paper on which *istifta* and *fatwa* are written includes an address, but no name. Although the people concerned are named in the question, the situation is narrated in the third person without indication of whose version of events it presents. Scholars of *fatawa* in many parts of the world have noted that it is conventional for *fatawa* to employ the impersonal signifiers "Zayd" and "Umar" for the characters in the *istifta* (Hallaq 1997, Kozlowski 1996, Metcalf 1982, Masud, Messick, and Powers 1996, Skovgaard-Petersen 1997). Gregory Kozlowski found that at the mosque he studied in Hyderabad, it was typical for the *mufti* to write a rough copy of the *fatwa* which often included personal names, and for his copyists to create a final *fatwa* substituting proper names for "Zayd" and "Umar" (1996). However, the *mufti* with whom Kozlowski worked also kept a record of the *fatawa* he gave, assigning each a number as he received it. *Mufti Kazmi* neither keeps a record of his *fatawa* nor creates a final version. His *fatawa*, all of which address ordinary Muslims and their practical questions, are therefore uneven in their use of names and impersonal identifiers.

Beyond these formal features, each of these *fatawa* diagnoses the status of the marriage referred to in the question. The specific question differs in each case but each asks whether the utterance described in the question has resulted in a divorce. The circumstances are notably different: in the first, the question is ostensibly about drunkenness although the *fatwa* rests its weight on the drunken husband's inability to recall telling his wife that he had divorced her. This *fatwa* also reflects the *mufti's* ability to write ambiguity into the *fatwa*.

The second *fatwa* reinforces the man's privilege to unilaterally divorce his wife even as it affirms the divorce because the husband also uttered the words. The question recalls the *fatwa* scene I observed in the *mufti's* office. In this case, the *fatwa* states that the triple utterance of "talaq" by a woman is not a successful performative. The question being posed is whether in the repetition by her husband of the utterance, it did become a performative. The *fatwa* is a direct response to this question. The *mufti* clarifies both that the woman's utterance did not constitute a divorce, and that the husband's declaration did.¹²⁶ As in the earlier case, it is the *mufti's* diagnosis of the utterance that completes it.

¹²⁵ Out of the 107 *fatawa* that I have studied, there were two that were accepted in the devanagari script. The *fatwa* given in one case was written in Urdu, and in the other, it was also written in Hindi. These were notable exceptions to the norm, which I observed being enforced when questioners were ordered to have their questions transliterated by madrasa students before the *mufti* would answer them.

¹²⁶ Kozlowski has written about a *fatwa* scene in which a woman came in and said that she had uttered "talaq, talaq, talaq" to her husband. Her husband did not repeat the words. She wanted to know whether the divorce was binding. To Kozlowski's surprise, the *mufti* said that the marriage had been dissolved. Once the woman had left, the *mufti* confirmed Kozlowski's hunch that this was not strictly speaking the correct

The final *fatwa* insists that intention matters little to the divorce. This *istifta* suggests that the “*talaq*” was not initiated by the husband, although his utterance effected the divorce. The question suggests that the woman introduced the possibility of divorce into the argument, and that her husband followed suit. In her study of *fatawa* from 17th and 18th century Syria and Palestine, Judith Tucker has suggested that the triple *talaq* may in fact be one way that a resourceful woman could secure an escape from marriage *and* maintain her entitlement to *mahr* and maintenance payments (1991, 91-92). This could be such a case. The third *fatwa* both emphasizes the binding nature of the *talaq* and declares its reprehensible quality.

In *fatawa* 38 and 43, the *mufti* not only diagnoses the termination of the marriage, but also adds that the woman must observe *iddat*, and that she can thereafter marry someone else. There are numerous consequences, in Hanafi law, of uttering an irrevocable divorce, but he names only these two. The *mufti* does not, for example, elaborate the requirements for reconciliation between the divorced couple. He frequently gives this information in cases where the *istifta* directly addresses this issue of reunion. Here, though, he instead prescribes *iddat* both as necessary after the divorce and as the path toward marrying another man. The *mufti* also does not mention that the woman has a right to her *mahr* and to maintenance during the *iddat* period. Each of these *fatawa* show the ambiguity of the triple *talaq*: even those who participate in it are aware that they do not fully grasp the conditions within which it is effective, and what its consequences are.

Sometimes even the *fatwa* resists clearly diagnosing a divorce. When the situation to which the *mufti* is asked to respond leaves questions open, the *mufti* responds conditionally. The following *fatwa* is a good example:

Fatwa 49:

What do you have to say, learned religious ‘ulama about the following problem? Zayd’s relation Phul Babu, divorced his wife Rifaat Khatun when he was in a drunken state. Rifaat Khatun was even three months pregnant at the time. Now, after having given the divorce, Phul Babu is ashamed of his mistake, and he is ready to build a life with his wife (*shareek banaane kay liye tayaar hai*). So please tell us what we can do in the light of the Quran and the Hadis.

Al-Jawab

If “*talaq*” was given three times, then without observing *halala*,¹²⁷ it is not legal to remarry. If *talaq* was given one or two times, upon reconciling (*ruju karke*) he may live with his wife.

fatwa, but that it was clear to him that the couple didn’t want to be married, and that it would therefore be better to authorize the divorce (1995).

¹²⁷ Halala is the much-contested provision of Hanafi law that if a husband and wife have been irrevocably divorced, the only way for them to remarry is if the wife marries another man, consummates that marriage, and is then divorced by him. At that point, the original couple can marry one another again. Judith Tucker discusses some *fatawa* in which the *mufti* delineates what constitutes penetration for the purposes of consummating the intermediary marriage. This was an issue that was quite present in my own field work, as *Mufti* Kazmi explained to me that it was a punishment of both husband and wife for the husband’s immoral, though legal, act of unilaterally and irrevocably divorcing his wife. Shaista Amber, the founder of the All India Muslim Women’s Personal Law Board, vociferously condemned the injunction to perform

The mode of address in this question differs from the others I have reproduced above. The question is rife with affect: the questioner does not limit him or herself to describing the events or the situation, but depicts the emotional life of the husband. The husband is ashamed of what he has done. In his shame, he has decided that he is prepared to live with his wife. For this reason, he wants to know whether this is possible. This question shows that sometimes an appeal to the *mufti* attempts to draw him into the emotional repercussions of the act in question. In so doing, the questioner makes a rhetorical appeal to the *mufti*'s sympathies.

The *mufti*'s *fatwa*, however, addresses neither the husband's drunkenness nor his feeling of shame. He also does not address the implication of the question's last line that both husband and wife would like to be reconciled. The failure to address these issues, the former perhaps a mitigating circumstance, and the latter an admission of a change of heart as the condition for areadiness to return to the role of the husband, suggests that for the purposes of determining the situation, the issues of mitigating circumstances and change of heart are irrelevant. However, what does mitigate the *fatwa* is the lack of specificity about *how* the divorce was executed. The *mufti* does not assume that "Phul Babu divorced his wife Razaat Khatun" means "Phul Babu uttered *talaq, talaq, talaq* to his wife." Because he does not make this assumption, he leaves open the possibility that the conditions for a divorce have not been met. Once again, the limits and possibilities expressed in the *fatwa* are conditioned, within the legal and moral landscape of the *mufti*'s training and practice, by the question.

Gender and Property in Fatawa on Divorce and Inheritance

The focus of my analysis thus far has been on the *talaq* itself and the conditions within which it is and is not considered binding. I have argued that the questions and responses in the *dar ul ifta* indicate the ambiguity and uncertainty that surrounds the triple *talaq* as a method of divorce. But there is another aspect of some of the *fatawa* on *talaq* that differentiates them from the above *fatawa* and links them to the many questions about inheritance that the *mufti* receives: property. The following *fatwa*, which raises the same problem as the previous one, was dated 1 Jumada al-awwal, 1427 (May 29, 2006). This means that it was written just before the *fatwa* printed above, which the *mufti* dated 3/5 1427 and the *mustafti* dated May 30, 2006. This *istifta* appears to have been written by a different person, both because of the way the question is framed and because of the handwriting. Whereas the handwriting in the following *fatwa* (36) is shaky and loose, suggesting someone who is not used to writing much, the penmanship in the one above (49) is even and refined. The relationship between these two *fatawa* raises a number of questions about *talaq* and the *mufti*'s *fatawa* as sites where men's privileged access to property is reproduced.

Fatwa 36

What do you command, learned *mufti*, in the following situation: Phul Babu gave his wife Razaat Khatun a divorce while Razaat Khatun was three months pregnant. Now Phul Babu is no longer acting as a husband, and he does not give either

halala, claiming that it is against the spirit of Islam. She also contested, on empirical grounds, the efficacy of advising halala for, as she put it, no knowledgeable woman would actually go through with the practice.

allowance or any of the things that Rafaat Khatun was given at her wedding. According to the Quran and Hadis what is Rafaat Khatun entitled to.

Al-Jawab

In this situation, the husband said *talaq*. Therefore, there has been a divorce. *Iddat* will be performed once the child is born. Until that time, the husband must pay for living expenses. The wife is entitled to her *mahr* and to her dowry.

In terms of their content, *fatwa* 36 requests information about what a woman is due to receive in terms of property upon divorce. *Fatwa* 49, on the other hand, begs to know how and whether the couple can be reunited. *Fatwa* 36 neither challenges the divorce nor asks for reunion, while *fatwa* 49 makes no mention of property, either in the form of maintenance, *iddat* allowance, dowry, or *mahr*. While it is unclear who wrote which *istifta*, *fatwa* 49 appears to be addressed to the husband, because the last sentence states that "...having reunited he may live with his wife." If this is the case, these two *fatawa* together suggest that the wife first approached the *mufti* for advice on her property entitlements and that after he had told her that she is entitled to her *mahr* and her dowry, the husband approached the *mufti* to find out whether the two could reconcile.

Without knowing the backstory, it is hard to know how these *fatawa* play into the negotiations between husband and wife. But the *fatawa* do make it clear that the wife asks about property and the husband does not. This seems paradoxical, given the argument I have made in chapter two that women do not approach the *dar ul qaza* with property requests because these institutions have no capacity to enforce their decisions. As will become clear in the *fatawa* that follow, this is one among other *istiftas* that bring property-related questions before the *mufti*. The aim of this section is to ask what is happening in the *fatawa* and what they suggest about gender and property in this Islamic law institution.

Fatwa 20

25.5.2006. What do you say learned 'ulama about the following issue: Mohammad gave his wife Parveen three *talaqs* but Parveen's parents are not ready to obey the *talaq*. Parveen is also not ready to accept this *talaq*. But Mohammad explained that this is much better, and Parveen is ready to live on her own, and she has asked of Mohammad a house in which to live and an allowance for herself and her children. But Mohammad's father says that his son has divorced his wife and that according to the *shariat* once this act is done he has no further responsibility for his wife. In this situation, does Mohammad have to give Parveen a house and allowance or does he only have to give allowance for the children? Please give an answer in light of the Quran and Hadis. [As a seeming afterthought in the margin]: The divorce took place about fifteen days ago.

Al-Jawab

A place to live and an allowance during *iddat* is the husband's responsibility. The divorce has been completed. The relationship between the husband and wife is over.

This *fatwa* directs the questioner to provide a place for the ex-wife to stay and an allowance during the three-month period following the marriage. The conversation between the father and the *mufti* demonstrates the *mufti*'s role in upholding women's rights to property upon divorce. While the father is under the impression that his son no longer owes his wife anything, the *mufti* refutes this claim. The *fatwa* therefore provides moral and legal support for the son's hunch that he ought to provide his wife with housing.

Fatwa 38 is a question about a divorce and subsequent property division. The couple in question have several children, and they have a house that is in the wife's name. The *istifta* requests information about who ought to receive the house.

Al-Jawab

If three *talaqs* have been given, then a foul divorce has taken place. The wife is free of the marriage. It is necessary for her to observe *iddat*. The children are the father's responsibility. The two year old child can stay with the mother who will care for her. The father will provide for living expenses. The house is in the wife's name, but the father is now responsible for the children, so the house will be his. The wife is due her *mahr* and her *iddat* allowance.

If the former *fatwa* backed the woman's right at least to a place to stay and an allowance, this *fatwa* is more complicated. The wife is entitled to living expenses for herself and the child of whom she has custody, but she is not entitled to the house. This *fatwa*, though, appears to be anomalous. Many of the *fatwa* about *talaq* respond to questions posed *before* the *talaq* has taken place. The following *fatawa* indicate that another way to grapple with the triple *talaq*'s ambiguity is by approaching the *mufti* for what I have called a *fatwa* of authorization.

Fatwa 54

What do you command, learned religious leader, about the following issue: I, Mohd. Ifaq Khan was married to Shmail Sultan on December 20, 2003 according to Muslim rites and rituals. I have one daughter who is two and a half years old. My wife and I have been fighting for a year now, and during that time my wife has been living in her natal home. If I divorce my wife, what do I have to return to her?

- 1) *Mahr*
- 2) The things from her dowry
- 3) The gold and silver that came from my wife's family and that came from my family.
- 4) To what is my wife entitled? (*Larki kis cheez ki haqdar hai*)?
- 5) What are the rights (*haq*) of the child after a divorce?
- 6) In the light of the Quran, what should I do?

Al-Jawab

The woman (wife) is entitled to her *mahr*, her dowry, the jewelry that came from both sides of the family, and any clothing. After the divorce, it is the wife's responsibility to take care of the child for nine years. You must pay for living expenses. Afterward, you may take the girl.

Fatwa 64

Honored *mufti sahib*. *Asalam aleikum*. What do you command learned *mufti* about the following issue: Zayd was married four months ago. But the girl has not moved in with me (*rukhsati nahin hui*). The marriage was arranged by the parents and was happy. The girl and boy still have not seen one another. Now the girl is saying that she should annul her marriage (*nikah faskh kiya jaye*) because I was married against my will. The issues are:

- 1) Should I divorce the girl (*talaq*) or not?
- 2) Please also tell me about the *mahr*.
- 3) The man (husband)'s parents have a lot of financial responsibility: does his money have to returned or not?
- 4) Will the girl have to give back the jewelry and other things she received from the groom's family?

Please give an answer according to the Quran.

Al-Jawab

The girl herself wants a divorce so she can get a divorce upon the return of the jewelry and the forgiving of the *mahr*. It is not her responsibility to return the allowance she has received from the groom's family. If she demands her *mahr*, you should give her half of the *mahr* and she will get her jewelry.

Both *Fatwa 54* and *Fatwa 64* clearly state that the questioner is a man in a troubled marriage. The marriage in *fatwai 54* had lasted three years, during one of which the wife had lived in her natal home rather than with her husband. The marriage in *fatwa 64* has lasted only four months and it has never been consummated as the phrase "the girl and boy have not seen each other" indicates. Both questions indicate that the husbands are considering divorce, but that they are weighing the responsibilities that will devolve upon them if they do pronounce *talaq*. Far from assuming, like the father invoked in *fatwa 20*, that a divorced woman can no longer make demands on her husband, these husbands list the assets that the couple received at their wedding. In both *fatawa*, although in the first more strongly than in the second, the *mufti* supports the woman's entitlement to property in the form of *mahr*, dowry, and other wedding gifts. The next *fatwa* shows that sometimes *fatwa* provide several options for dividing property rather than insisting that there is only one way to divide it.

Fatwa 71

What do you command, learned 'ulama about the following issue: Khalid married his daughter to the son of Zayd. Now Zayd's son has decided to divorce Khalid's daughter. Zayd and Khalid are both in agreement with this. What should happen with the *mahr* and what should be given to whom? Please give an answer in light of the Quran and Hadis.

Al-Jawab

Mahr Fatimi is five hundred *darham* of silver, which is about one hundred thirty three *tole* of silver. According to the law of the land, one hundred *tole* of silver is

the *mahr fatimi* to which you are bound. You should divide things in amounts that are acceptable to both sides.

Here the bride's and groom's fathers are represented as communicative and interested in settling matters amicably. All parties involved are in agreement that a divorce is a good idea, and the only thing to be decided is how the property should be decided. Rather than taking a firm position, the *mufti* writes that the minimum *mahri* payment is *mahr fatimi*, but that the families should come up with a settlement with which they are all satisfied.

Responsibilities, rather than rights, appear to be central to the questions that men have as they contemplate divorcing their wives. The following *fatwa* makes this point even more starkly than the preceding examples.

Fatwa 75

What do you command, religious 'ulama and learned *mufti* about the following issue: My wife has been in a coma for eight years. Prior to the coma, she fell ill while she was pregnant during which time I treated her. *Alhumdulillah*, my wife gave birth to a child. Several days after the birth, she fell ill. I had her treated at a very good private hospital. A few days after being admitted, she fell into a coma. For about forty days she remained in this hospital and I covered all of the expenses. After the treatment, she still had no relief, so the doctors at the hospital said that either we should care for her at home or else she should be transferred to a government hospital. My in-laws said that government hospitals do not have sufficient facilities so we will bring her to our house where we can take good care of her. So according to their wishes they took my wife to their house and I took my children, one of whom is eight days old and the other of whom is one year old to my house. Now, eight years later, my in-laws are asking for me to return my wife's dowry to them. I have given them my wife's entire dowry along with the jewelry that she was given both by my parents and by her parents and the other things she was given at the wedding. I also gave them all the money I received on the occasion of my first child's '*aqiqah* (seventh day celebration). Now they are asking me to pay for all of the expenses they have incurred caring for her for the last eight years. Now please tell me, according to the Quran who is responsible for the cost of my wife's treatment? Is it the responsibility of the husband and his family, or the girl's family? (In view of the fact that against my feelings and wishes, they took her of their own will to care for her at home). The other issue under investigation is since the children have been cared for in the home of their mother's in-laws, but the girl's family has taken back all of the dowry. In this situation, who is responsible for the allowance? The final question is that now, since eight years have passed and my wife shows no sign of recovery and my in-laws do not maintain any relationship with me. In this situation, where Allah has not brought her to her senses and my in-laws will not send my wife to me, what should the husband do? If in this situation the husband must divorce his wife, how should he do it? Since my wife has not come to her senses. In the case of a divorce, what should happen with the *mahr* and with other valuables?

Al-Jawab

If the parents have taken their daughter home to care for her of their own free will, then they do not have the right to demand allowance from the husband. The husband should care for the children. In this situation it is not proper (*munasib*) to give a divorce. If a *talaq* is given then there will be a divorce. *Mahr* and *iddat* allowance are the husband's responsibility.

This *fatwa* suggests that even if the husband has no further role in his wife's life he retains responsibility for her, and divorce remains a legal but reprehensible option. Although he has substantially supported his in-laws for years while they have cared for his wife, and although she shows no signs of recovering, the *mufti* nonetheless recommends that he not divorce her. He emphasizes his point by reminding the husband that he will be responsible for her *iddat* allowance if he does decide to divorce her. In each of these *fatawa*, the *mufti* supports the wife's or the ex-wife's rights to property in divorce. Yet of all the *talaq* related questions that I read, there were but a few that were clearly brought to the *mufti* by the wife. I would like to suggest that this may be because men, not women, tend to be in control of the contested property. Thus, for men, a moral and legal opinion is a useful piece of guidance that they can put into effect or not at will. For women, a *fatwa* can bolster her claim to property, either in discussions with her husband or in the courts, but in a legal system where *dar ul qaza* institutions lack enforcement capacity these *fatawa* are of limited use. Civil court judges do not have the same respect for *fatawa* as *qazis*, while *qazis* lack the civil court judge's capacity to enforce their judgments.

However, some women did come for *fatwa* about property following divorce. Rifaat Khatun's question directly requested knowledge of her rights in divorce. In these cases, the *fatwa* offers authoritative moral backing as the woman argues her case. This may be insignificant in the civil courts but useful in the context of familial discussions. As in the *talaq* cases, the *mufti* generally supported the rights of the vulnerable party in questions involving inheritance.

Fatawa of Settlement; On Inheritance

The other subject that frequently appears in questions to the *mufti* is inheritance. Questioners want to know how property should be divided between brothers and sisters, between the two wives of one man, and about how to divide immovable property such as real estate. The questions themselves are of varying degrees of complexity, eliciting *fatawa* in kind. Because the questions are usually summaries of disputes, the *fatawa* offer a proposed settlement between disputing parties, rather than a diagnosis of what the situation means, as was the case in *fatawa* about *talaq*. Like the *fatawa* about *talaq*, these are concerned with the intricacies of gendered relations. Like some questions about *talaq*, these are not about permissible intimacy and alliance, but about recommended gendered divisions of property.

There is a clear pattern in the questions on inheritance of the *mustafti* asking the *mufti* for help in a situation that feels precarious. As feminists have been quick to point out, inheritance laws in Islam are better than those in Hindu law (Agnes 1999, Basu 2009). Scholars have also noted that under Hanafi law men and women do not receive equal shares. In this way, the division of property remains less favorable to women. In

spite of this fact, the *fatawa* that Mufti Kazmi gives on the subject of inheritance tend to defend the rights and property of the more vulnerable party.

The following *fatwa* is exemplary of this role. While the *mufti* does not defend the right of the widow to as much property as she would like, it does shift some of the financial burden onto the family of the deceased and offer her shoulders.

Fatwa 2

Honored, learned *Mufti* sahab. Asalamo aleikum.

The situation is that I am Farhana Ruf. My husband has passed away. I have four children: three girls and one boy. The boy is one year old. I also do not have parents-in-law (saas sassur). My husband had property. The property was in my father-in-law's name. After his death, the property was put into my mother-in-law's name. I have four siblings-in-law. My husband had three sisters and one brother. After the death of the brother, my sisters-in-law took all of the property into their own hands. My three sisters-in-law are married, and one of the sisters-in-law is divorced. My husband was unable to work. The space, therefore, was rented, and my allowance (*kharch*) came from this rent. Upon my husband's death, he also had some debt that he had incurred upon the marriages of his sisters. During my husband's life, I lived in a rented house, but upon my husband's death I left the house for lack of resources. Now I live with my parents in Delhi. I was hoping to sell this property and with the money to pay my husband's debts. After this, I would give my sisters-in-law and my children their portion of the property. But my sisters-in-law grabbed the property from under me and they have everything in their possession, and they just give me a fixed monthly rate. The property rents for 15,000 a month. Having gotten a *fatwa*, my sisters-in-law give me five thousand and keep 10,000 for themselves. My sisters-in-law only sent me my money for three months, after which it stopped coming, and they said that my money was going to pay the debt. I have small, small children. How am I supposed to care for them? My parents are also poor, and my sisters-in-law also have not paid back any of the debts, and my husband passed away a year ago. I have many troubles (*main bahut pareshan hun*), while my married sisters-in-law have their own houses and they also have renters in their houses; my divorced sister-in-law lived with her brother while he was living, and since his death, she has lived with one of her three sisters. My sisters-in-law have stopped giving me my money and they also have not repaid the debts, and they haven't sold the property. This is what I want: the rent to come into my hands, from the 15,000, I will keep five thousand for myself and my children's allowance, I would give two thousand to my divorced sister-in-law; with the other eight thousand, I would pay my husband's debt, and once the debt had been paid off in full, I would give my sisters-in-law their part. Whatever *fatwa* you give, I will agree to it. Thank you.

Al-jawab

After having paid for funeral expenses and other necessary expenses, your portion is one-eighth. That means, of your husband's entire property, 1/8. Your sisters-in-law and parents-in-law, having kept the property (*jaidad bachna*), need to pay

off the debt, so the deceased's burden will be significantly lightened. And you should do your part otherwise you will ultimately be a debtor.

The first notable thing about this question is its length: as in the questions about talaq, it demonstrates a sense of the law, but it includes a great deal more detail. The question also describes the emotional climate from which it is asked. The questioner makes clear that she has many troubles (*main bahut pareshan hun*), a formulation I often heard from people who wished to convey a kind of desperation. The details presented are more reminiscent of the “common knowledge” about the protection of women than of the *sharia*'s principles of inheritance. Inheritance is one of the explicitly detailed aspects of the law that appear in the Quran itself (Powers 1986). The division of property or, the “science of shares,” recognizes two categories of heirs (Powers 1986, 9). The first category of heirs are the male agnates (*asaba*), whom David Powers summarizes as follows: “(1) the son and his descendants, (2) the father and his ascendants, (3) the descendants of the father, (4) the descendants of the paternal grandfather, and (5) the descendants of the paternal great-grandfather and higher grandfathers in ascending order” (1986, 9). The second category is comprised of the sharers (*ahl al-fara'id*) who include daughters, father, mother, husband, wife, and consanguine sister (Powers 1986, 9).¹²⁸ David Powers' lucid explanation of the rule of inheritance is worth quoting at length:

The division of an estate typically proceeds in the following manner: (1) debts are paid of and bequests, if any, are distributed to the legatees; (2) whatever remains constitutes the ‘estate,’ which is divided up as follows: (a) the qualifying *ahl al-fara'id* take their shares ‘off the top;’ (b) the residue, if any, is taken by the closest surviving *asib*. Suppose, for example, that a man dies leaving his father, mother, wife, son, and brother... The father, mother, and wife, in their capacities as *ahl al-fara'id*, inherit one-sixth, one-sixth, and one-eighth of the estate, respectively. The son, as the closest surviving *asib*, inherits the remaining 13/24 of the estate, totally excluding the brother and all other male agnates from the inheritance (1986, 9-10).

In the Quran, and the Hanafi jurisprudential tradition, these inheritance rules do not change based on the marital status of the women (daughters, widows, mothers) in question. Tahir Mahmood writes that in the Indian courts, there are few cases dealing with Muslim inheritance law, and there is no codification thereof in Indian statute (2002, 211). In the few cases that have come before the courts, Mahmood notes that they have

¹²⁸ The Quran says: “God charges you, concerning your children: to the male the like of the portion of two females, and if they be women above two, then for them two-thirds of what he leaves, but if she be one then to her a half; and to his parents to each one of the two the sixth of what he leaves, if he has children; but if he has no children, and his heirs are his parents, a third to his mother, or, if he has brothers, to his mother a sixth, after any bequest he may bequeath, or any debt... And for you a half of what your wives leave, if they have no children; but if they have children, then for you of what they may leave a fourth, after any bequest they may bequeath, or any debt. And for them a fourth of what you leave, if you have no children; but if you have children, then for them of what you leave an eighth, after any bequest you may bequeath or any debt. If a man or a woman have no heir direct, but have a brother or a sister, to each of the two a sixth; but if they are more numerous than that, they share equally a third, after any bequest he may bequeath, or any debt not prejudicial” (4: 11-12).

usually upheld the Hanafi rules of inheritance outlined above in the quotation from David Powers (Mahmood 2002, 211-212).¹²⁹ Indeed there has been very little statutory interpretation or codification of Muslim laws of inheritance and succession, in stark contrast to Hindu law on these subjects.¹³⁰

For the *mustafti* asking this question, it is both relevant that the sisters-in-law are married, and therefore financially supported, and that the deceased incurred his debt arranging the marriages in which they are now securely situated. The *mustafti* therefore differentiates between the claimants based on their marital status and kin relations. She establishes a hierarchy, in which she is the most vulnerable, since her inheritance is under threat; her divorced sister-in-law is the slightly more secure because for the time being she lives with her natal kin; her married sisters-in-law are the most secure because they are married and therefore assumed to be financially supported by their husbands. The *mufti* does not acknowledge these extra details in his *fatwa*.

The *istifta* mentions that other parties to the dispute have sought their own *fatwa* on the matter. The *mustafti* refers to a *fatwa* that her sisters-in-law had received advising them to give her one third of the rent from the property, and to keep two-thirds for themselves. According to the *mustafti*, though, the sisters-in-law only followed this *fatwa* for a few months, after which her payments stopped coming. In her request, the *mustafti* is looking to recover the amount that she had been paid previously—one third of the rent, or 5,000 rupees. In other words, she was happy with the first *fatwa*, but not with her in-laws' failure to carry out its advice. The *mustafti* wants to use the rest of the money, after she has taken her share, to pay off her husband's debt. This suggests that she considers that debt to be their responsibility now that they are married and financially secure.

In spite of the long and richly detailed case that the *mustafti* has made for herself in the question, she ends by writing that whatever *fatwa* the *mufti* gives, she will obey. As in the *fatawa* on talaq, she takes the time to explicitly suggest that in asking her question, she is submitting to the *mufti*'s moral and legal expertise. Although she has a clear vested interest in a settlement that would take into account her financial needs and prioritize them over the claims of her in-laws, having formulated her case, she places her trust in the *mufti*'s advisory abilities. The question ends with a promise of obedience. Making such a promise simultaneously rhetorically invokes alternatives to the *fatwa* and

¹²⁹ Tahir Mahmood and other specialists on the Muslim Personal Law of India, such as M. Hidayatullah, note the significant differences between Hindu and Muslim laws of succession and inheritance (2002, 1990). Most relevant to the *fatawa* I will read below are the non-existence of a joint family or of joint family property in Muslim law (Hidayatullah 1990, 36). This is significant because it means that although a family may continue to live together once the father has died, any property acquired through the labor of one member of the household is his or hers alone, and not part of the family's joint holdings. Further, because Muslim laws of succession as interpreted by the Indian courts do not recognize the joint family, "heirship does not necessarily go with membership in the family" (Hidayatullah 1990, 36). Significantly, this means that although a daughter may be married and therefore no longer "part of the family," she continues to be entitled to the daughter's Quranically enjoined share of inheritance.

¹³⁰ The statutes on Hindu laws of inheritance and succession have ranged from the 1856 Widow Remarriage Act which, while allowing the remarriage of Hindu widows declared that they would be disinherited of their property from the previous marriage upon remarriage; this was reversed a century later in the 1956 Succession Act, which gave Hindu widows complete ownership of property inherited from a deceased husband (Carroll...). Another line of intervention in Hindu laws relating to inheritance is on the question of coparcenary and non-coparcenary property ownership.

refuses them. No promise of obedience would be necessary if the *fatwa* and the dar ul qaza were the only resources of adjudication available. But there are other courts, as we know. She conjures an image of these other institutions in the act of turning away from them and toward the *mufti*. Along with the mode of address with which the question begins, this promise produces a scene of reverence for and obedience to the *mufti*'s moral expertise.

The *mufti* does not approve the *mustafti*'s plan in full, but he writes a *fatwa* that closely follows the accepted rules on inheritance discussed above. Funeral expenses and other "necessary expenses" come out of the deceased's estate, and it is only once these things have been settled that the property can be divided. In accordance with the rules of inheritance, the widow should receive one eighth of the entire estate after the funeral expenses have been paid. He does not, however, argue that the husband's debt ought to be paid off before the estate is divided, but instead agrees with the *mustafti* that the in-laws are responsible for paying it. The widow is not excluded from this responsibility entirely, though, and is also to pay her part. This is also strictly in line with Hanafi laws of inheritance, which are that "each heir must pay a part of the debt proportionate to his share in the estate" (2002, 186).¹³¹ The *mustafti*'s suggestion that she take possession of the entire estate and pay the debt from it *before* settling the shares would be a violation of this rule, for "any heir of the deceased—though he may be in possession of the whole estate, or of a portion of the estate representing more than his own share in it—cannot, for the purpose of paying a debt of the deceased, alienate another heir's share" (Mahmood 2002, 186). Ultimately, the rich details provided by the *mustafti*—about the children in her care, the marital status of her in-laws, and the family members' living arrangements—are irrelevant to the *fatwa*.

One good example of the "science of the shares" is the following *fatwa*.

Fatwa 81

What do you say, religious 'ulama, about the following: We have one house that is in our father's name. Our mother is living. Our father has passed away. There is one brother who has also died. He has two sons. Now, there are four brothers and one sister living. Now I just want to know what my share is. I wish to know, according to the *sharia*, what is my rightful share. Please tell me, what are the brothers' shares, and what is the sister's share.

Al-jawab

After having paid the funeral expenses, having paid the amount of the mahr...the deceased's entire property will be divided into 88 pieces. Eleven shares go to the wife, and to the each of the sons fourteen, and to the daughter seven. The shares of the dead son go to his progeny and to his wife. God knows best.

As the next *fatwa* exemplifies, daughters sometimes seek a *fatwa* to authorize their claims to property. It is well accepted that daughters are generally in a more vulnerable position than sons, and given this social reality, the *mufti* provides an important defense of daughters' property rights.

¹³¹ Mahmood cites two civil court cases in which this matter has been discussed by the Indian courts. These are *Jan Mohammad v Karm Chand* AIR 1947 PC 99; *Gaya Imperial Bank v Sayeedan* AIR 1960 Pat 132 (cited in Mahmood 2002, 186).

Fatwa 42

What do you say, learned one, religious ‘ulama of the humble sharia?

1-When the parents die, the decision about the law over their property is that one part goes to the girls and two parts to the boys. The worth of the sisters’ property was 60,000 rupees, of which they took half. Our late parents had even said to give the girls 50,000 each. Now, after this has already been decided, and after having taken about half of the amount, do they still have a share of the property?

2-One brother, who was in possession of the property, took the house from the sisters’ names. Is this lawful (*ja’iz*) according to the sharia? Is this amount still lawfully the girls’? And is putting the house in their name lawful?

3- Now the brothers say, this is our possession, and we have gotten too much of a share. Now we will take the worth of (*qasm*) our own piece/share of this property. We will live on the property, and we will also keep the money. We will take the plot and keep it, and the price will increase. After five or six years, the property will be worth thirteen lakh rupees. Then we will give you your money. Is it lawful according to the sharia to give a piece of the property while there is enough room in it? Please, in the light of the Quran and Hadis, give us a step-by-step response, and we will be most thankful and grateful (*mamnun wa shakur*).
Finis, and salaam.

Al-jawab

1-2- the sisters exchanged a piece of their share and then without possessing their share, one brother put his name on the share; during the exchange, the brothers, having met, took the property. This method is not permissible. This piece belonged to all the brothers. Taking it for one brother is not permissible.

3- This method is also not permissible. Once the stolen house was taken, it was necessary to pay immediately, otherwise it is a sin against the right to keep it. It is not incumbent upon the inheritors to wait for years before they receive their piece. Finis.

In this *fatwa*, the daughters are not satisfied with the way in which their brothers have dealt with the division of the property. The two questions—whether it is legal for the brothers to take over the title of the property from the sisters even though the latter had only received half of their inheritance; and whether the brothers have the right to occupy the property until its value has increased and they can sell it at a profit, promising to give the daughters their share at that point—are both about the process and amount of inheritance. The unequal distribution of the property is not acceptable, according to the *mufiti*, and neither is the brothers’ attempt to hold onto the property until its value has increased. Rather, it is the right of the inheritors to receive their share swiftly.

Another question that arises among siblings concerns the division of property among the children of siblings. The following *fatawa* illustrates the strict rule that in order to inherit, the progeny must be living. This means that the children of deceased progeny also do not have the right to inherit property from their grandparents.

Fatwa 68

What do you say, religious ‘ulama and humble *mufti* about the following situation: A woman has three sons. This woman has a house in her name, and while this woman was living, one of her sons died. This son was married and had two daughters and one son. So now, does this son receive a share of this house or not? Please give an answer in light of the sharia and the sunna. Finis.

Al-jawab

If the inheritor dies while the progenitor is alive, then his offspring do not have any right to the property.

This is the briefest of the *fatawa* on property. As with the others it is unequivocal. What distinguishes it from them, though, is that rather than working to defend the party’s inheritance, it authorizes the disinheritance of the deceased son’s children.

As the following *fatawa* shows, the rules of property distribution do change when some of the property in question has been earned through the labor of someone entitled to inherit. Since there is no rule of community property in marriage, in other words, a distinction is maintained between property belonging to the husband, and that belonging to the wife or wives. This becomes an issue in the case of a polygynous marriage.

Fatwa 9

What do you say, learned ‘ulama about the following situation: My father married twice. On 25 May 2005, he passed away. We all lived in the Jama Masjid area. A little while earlier, my father financed (in English) a house in Ghaziabad, to which there are still installments owed. My father and mother, who was his other wife, were both in government service, so the house is registered in both of their names. Now the younger wife says that we have no right to this house. I would like to know whether according to the sharia we have no right to this house.

Al-jawab

The two wives have equal rights to the husband’s property, and the progeny of each wife also has a right to the property. That portion that comes only from the other wife’s money, that is not part of your share.

Both under Islamic law and under Muslim Personal Law in India, polygyny is legal. The question is about two aspects of the division of property between the wives of a single husband: the distribution of property between a first and a second wife, and the distribution of property earned by one of the wives. On the former point, the *mufti* is clear that both wives inherit equally, and therefore that the first wife/second wife distinction is irrelevant in death as in life.¹³² On the latter point, the *fatwa* states that a wife is entitled to keep any property she acquired through her own labor, in this case, a government job. The two wives, therefore, are financially bound to one another only through their husband and his property.

It is not always women who appeal to the *mufti* for support. In the following *fatwa*, it is the father of grown children whose property is under threat. He also writes a question framed as an appeal for information. In this, as in the other questions, while the situation

¹³² Note on the Quranic injunction that if a person has multiple wives, they are all to be treated equally.

is one in which the questioner feels vulnerable, the question is not framed as a way to win an argument. Rather, the direct question is about what the Quran and Hadis have to say about the situation. In other words, this is not an appeal for the *mufti* to support his position, but for the *mufti* to tell him whether his children act lawfully in their demand.

Fatwa 55

Bismillah al-rahman al-raheem. What do you say, learned religious scholar to the following situation: Zayd has one Delhi Development Authority house in which he is the tenant... Zayd has four daughters and five sons, and they are all demanding their shares. The daughters are all married, but they are also demanding their shares. Please, in the light of the Quran, give me an answer about whether the girls are entitled to the share that they are demanding. If a share is their right, then how much? Please give a detailed answer.

Al-jawab

While he is living, Zayd is in charge of his property (*mal ka malik hai*). His daughters and his sons have no right to his property, and what the daughters are saying is not permissible.

The *mustafti* asks whether his children have a right to his property now. The inclusion of the question about how much property they are owed suggests that it is his intention to do as they request if it is indeed lawful. The *mufti* responds that his property does not have to be divided until his death. While he is living, it remains his property, and does not belong to his children. Once again, the information about the marital status of the daughters is included in the question, but is deemed irrelevant to the *fatwa* issued in response. The reason this is irrelevant information here is that the question is about when progeny can make claims on property *at all*, and not about how much they can claim or how it should be divided.

Conclusion

This chapter began with the Imrana scandal, which accused *muftis* of using their authority to oppress poor and vulnerable women. The scandal also suggested that *mufti*'s *fatawa* do not respect the distinctions between personal law and criminal law upon which the state's legal system relies. Through analyses of three major topics that arise in the *fatawa* in an Old Delhi *mufti*'s *dar ul ifta*, I argued that the male privilege associated with *fatawa* does not emerge from Islamic law or from the *mufti*'s ideological power but from the role that Islamic law plays in relation to the state's courts. In *fatwa* after *fatwa*, the *mufti* defends vulnerable subjects' rights to property after divorce and in inheritance divisions. These divisions are not equal between men and women, but they are doggedly predictable.

Equally important to the strategic legal reasons for which people approach the *mufti* for *fatawa* are the moral reasons. Each and every *fatwa* asks for advice "in light of the Quran and Hadis" and addresses the *mufti* as learned and moral. Some women do approach the *mufti* with questions about property, either following divorce or in the form of inheritance. In these cases, the *mufti*'s *fatawa* offer morally authoritative evidence of

what *ought* to be done. Concern for the moral side of property division is evident in all of the questions I have reproduced in this chapter.

Finally, the *mufti* provides another kind of support for women. In one *fatwa* have not yet discussed, a young woman writes with the allegation that she was forced into a marriage that turned out not to have been a legal marriage at all but a ploy to get her to sleep with her supposed husband. The girl writes that her family is too honorable to bring her case before the police so she has come to the *mufti* to find out if this was really a marriage or if she is free. The *mufti* wrote that the marriage was not real so she is free to go her way. The *mufti* is a third party, but he is a more honorable, and private, third party than the police or a state court. In this way he is an important resource for women and other people in vulnerable positions.

Chapter Five

Fun Amliyat: Healing Disputes

Introduction

Mufti Kazmi sat along one wall of his office, a spacious room next to the sanctuary of the mosque. He sat on the floor behind a low desk in which he kept pens, paper, books, and questions in response to which he writes *fatawa*. To his right, perpendicular to his desk was a low table with a telephone and piles of books in Urdu and Arabic. His cell phone, on which he periodically received calls, lay on one of the two writing surfaces or in his breast pocket.

On this afternoon in May, a woman in her late thirties or early forties made her way to the front of the queue of people waiting to speak to Mufti Kazmi. She had been waiting for about twenty minutes by the time her turn came.

“I have an interview coming up,” she told the mufti. “Please give me something so that the interview will go well.”

“Where is the interview?” He asked.

“Islami University,” she replied.

“What kind of job?” he asked.

“It is a job in the library, as a librarian. I have an M.A. in Urdu literature, but I have not been able to get any work,” she explained. “So I would really like this interview to go well.”

“Did you already apply for the job?”

“Yes. And now I have an interview in two days, and I am very nervous. I really need to get this job.”

“Where do you live?”

“Nearby, in Old Delhi.”

“It is a long way from here to the university.”

“Yes, but I can take the bus there. I got my M.A. there.”

“What is your name?” the mufti asked.

“Rubina.”

“What is your mother’s name?”

“Kausar.”

Mufti Kazmi took out a small piece of paper, dipped his fountain pen in the pot of saffron ink on the desk in front of him, and wrote down her name and her mother’s name on the piece of paper. He had previously prepared the paper in bulk, writing down a *naksh*—a number grid whose rows, columns, and diagonals all added up to one of the ninety-nine names of God—on a piece of plain white paper. He had recently taken to writing out the *naksh* and then asking me to cut them apart, stacking them in piles for him to use. He folded the paper into a small square and gave it to Rubina.

“Wrap this in plastic, tie it with a red string, and wear it around your neck,” he advised.

“Thank you,” she responded as she took the *taw’iz* from his hand.

She shifted back on her heels, preparing to get up, but the mufti stopped her.

“Let me bless you,” he said.

Still kneeling, she bent forward slightly and bowed her head. The mufti placed his hand on her head and murmured a prayer, after which he blew on her thrice. She thanked

him again, and got up to leave, but not before she turned to me to find out what I was doing in the mosque.

Rubina was among the forty or fifty people with whom Mufti Kazmi consulted that afternoon. The *mufti* meets with between thirty and fifty people daily during his “public hours,” which he holds from 2p.m. until around 5p.m each afternoon other than Friday. As the days got shorter in the winter, the *mufti* would often speak with people until he excused himself to perform his ablutions in the small room adjacent to the office and walked to the sanctuary for the *maghrib* prayer. Occasionally people would come to his public hours to deliver a request for or to receive a *fatwa* that they had previously requested, but mostly they were at the mosque to receive the *mufti*’s spiritual healing of physical illnesses and troubled relationships. Spiritual healing as the *mufti* practiced it, unlike *fatwa* giving, requires that a troubled person or someone else on their behalf approach the *mufti* in person to explain the problem at hand and to receive an appropriate and personalized remedy. Each afternoon was suited to a particular kind of problem: on Saturdays and Tuesdays the *mufti* remedied “bad relations” and dislikes or aversions (*nafrat*), while Sundays, Mondays, and Wednesdays he offered cures for love (*muhabbat*), work problems, and physical ailments.

Some of the *mufti*’s patients, like Rubina, came from the Old Delhi neighborhood where the mosque is located, while others come from other neighborhoods, other Indian cities, and from as far away as Manchester, England. The patients ranged from nearly destitute to wealthy, and from illiterate to highly educated. Further, as the *mufti* pointed out to me on numerous occasions, these were not all Muslims: “men come, women come; people from all religions come. There are Hindus, there are Muslims, there are Sikhs, there are people from other religions (*dusre dharm ke log ate hain*); there are Indians, there are non-Indians, there are foreigners. All people come.”¹³³ Mufti Kazmi frequently emphasized to me the variety of people who sought his help. Although he made distinctions between the kind of faith that Muslims and non-Muslims had in the healing, he argued that if Hindus and other non-Muslims believed in the process, they too could benefit from it. The *mufti* emphasizes his own ecumenicism by using the Sanskrit derived word *dhar'm*. This stands out, as it was one of only a handful of times that the *mufti* chose a Sanskrit derived word instead of a noun derived from Persian or Arabic.

Indeed, I soon found that many of the people who consulted with the *mufti* had been coming to see him regularly for years, decades, and sometimes generations. There was one woman who had been coming to the *mufti* for twenty years. She first approached him because she had lost two children when she was eighteen years old. After losing the second child, she came to the *mufti* for help. Since that time, she told me, she has had three healthy children. She lived near the mosque with her family, and she came to consult the *mufti* whenever anyone in the family has a problem. Another woman, who had also been coming to the *mufti* for nearly two decades, consulted the *mufti* whenever she had trouble with her health. There were also people who were approaching the *mufti* for the first time. Among these was a young mother who had traveled to Delhi from Bombay with her seriously ill toddler. When Mufti Kazmi asked her why she had traveled such a long distance, she said that she had exhausted the possibilities in Bombay, and that someone had recommended him to her.

¹³³ *Yeh mard ate hain, auratain ate hain, sare mazhab ke log ate hain: Hindu ate hain, Musalman ate hain, Sikh hain, dusre dharam ki log hain, Indian hain, non-Indians hain, foreigners hain, sub log ate hain.* ”

I had been directed to Mufti Kazmi Ahmed's office in the Fatepuri Masjid by my Urdu teacher, a professor at Jamia Milia Islamia University. I had asked my teacher whom I might speak with about my research on Islamic legal practices in Delhi. Mufti Kazmi, my teacher told me, was well known and respected throughout Delhi as a jurisconsult and legal advisor. My teacher gave me Mufti Kazmi's telephone number, and I called. Gracious from the first, Mufti Kazmi suggested that I come by his office late one afternoon that week. At that first meeting, Mufti Kazmi confirmed that he wrote fatwas for lay Muslims who came to him with questions, and invited me to come to his office at 2pm any day other than Friday to observe his meetings with the public. "Public" was Mufti Kazmi's word. He used the English word whenever he talked in general about the people who came to see him for healing. His choice of word indicated that during these afternoon hours, the mosque was not a place apart, but was part of the city. The word also evoked images of a king holding court: entertaining the needs and concerns of the public.¹³⁴ The first time I visited Mufti Kazmi during these office hours, I was taken aback by the number of people waiting patiently to speak with him. Women sat on one side of the room and men on the other, and there were about twenty people there in all. Between 2pm and the dusk prayer (*Maghreb*), between 4pm and 5pm, there was never a quiet moment. As one family would leave after consulting with Mufti Kazmi, another would arrive.

It was not only the volume of people in the office that took me by surprise, but also the medium through which Mufti Kazmi was engaging the troubles (*paresani*) of the people who had come to see him. I had been directed to Mufti Kazmi because of his popularity as a Muslim jurisconsult who gave authoritative but non-binding legal advice, or *fatawa*. But on this and the many other afternoons I spent with him in his office, the vast majority of the people who came to see him were interested in his spiritual healing practice, not in his *fatawa*. For months, I simply sat with Mufti Kazmi while he listened to people's complaints and gave them amulets and blessings. When I began to ask him to explain to me what he was doing, he said:

This is about spiritual (*rohani*) healing. It is Allah's word/theology (*Allah ka kalam*) and the words and prayer (*dua*) of the prophet, Hazrat Muhammad, *salila salaam*. Having read the Quran *sharif's* verses, I blow over the person (*dum karte hain*), which is very beneficial (*faidemand*) for sending the illness away (*bimari ko dur karne ke liye*), or burning the evil eye (*nazar jelane ke liye*) or putting an end to magic (*jadoo ko khatam karne ke liye*).

The *mufti* first identifies this as "spiritual" work—healing that bears a relationship to the spiritual world. He immediately clarifies that he refers to Allah and the Prophet Muhammad's spiritual world. It is interesting, given that he describes this practice as spiritual that he does not mention jinn, spirits created by Allah discussed at length in the Quran.¹³⁵ Not only did he associate this healing practice with Islam, but he located the

¹³⁴ Carla Bellamy has noticed this double meaning in her work on pilgrims to a *sufi* shrine where people say that they are bringing their cases to "court" in the double sense of a court of law and a royal court (2008).

¹³⁵ Jinn play various roles in healing and ritual practices in other Muslim contexts. John Bowen notes that illness is usually diagnosed as coming from a "malevolent spirit" (1993, 136). "Gayo generally use the term *jin* to refer to one or more harmful spirits, or the entire category of such spirits... These 'Muslim jin' are the

power of the healing in Allah's *kalam* and in the words and prayers or blessings of the prophet. Katherine Ewing's account of the Pakistani *sufi* healer, Sufi Sahib, with whom she conducted fieldwork makes a useful distinction that may help clarify the point Mufti Kazmi is making here (1993). Sufi Sahib distinguishes between "*nuri ilm*" (luminous knowledge) and "*kala ilm*" (black knowledge); the former "is based on verses of the Quran and draws upon the power of the names of God and their associated spirits of deputies" and the latter "draws upon Satan, Hindu deities, the jinn, ghosts, in other words any spiritual being other than those directly under God's control" (1997, 135). For Sufi Sahib, it was important to identify with *nuri ilm* because this distinguished him from magicians (*jadugar*).¹³⁶ Although Mufti Kazmi never explicitly made such a distinction in our conversations, he did always emphasize the connection between his work and the words and prayers of the Prophet and of God. His silence on the role of either angels or *jinn* in his healing practice (which he nonetheless called "spiritual" and not "religious") works to distance himself and his work from the evil and magic with which his patients are afflicted. The *mufti* instead makes praying and "reading" verses of the Quran the necessary condition of his healing. To these words of God, he adds his own breath to send evil away, first by reciting (*parhna*) Quran verses and then by blowing over the person. The literal translation of *dam karna* is to "blow on someone after incantation." This definition assumes that *dam karna* is part of a magical act. It will be part of my argument here that the breath that the *mufti* breathes over his patients is not part of a magical act, but the completion of a moral legal speech act. This movement from God's revelation to written words to recitation to breath encapsulates the *mufti*'s healing practice.

Islamic Healing: Religion or Magic?

souls of people who had been extremely pious during their lives and were therefore spared death and were instead transmuted into spiritual beings" (1993, 137). Janice Boddy's work on the *Zar* spirit possession cult in the Sudan shows the spirits, called *zayran*, are understood to "comprise a distinct class of *jinn*" (1989, 143). Boddy elaborates the different kinds of *jinn* associated with different kinds of illness, and the differences between men's and women's beliefs about how to exorcise them (1989, 144). In South Asian Islamic healing traditions, *Jinn* are also referenced, but often through the term "*maukil* or *mu'akkal*". Amma, the healer with whom Joyce Fleuckiger worked in Hyderabad, "explained that through spiritual discipline and service she has garnered the authority to call upon a constellation of Allah's *maukil*...to come to her service and carry out her commands to facilitate healing" (2006, 69). With *maukil*, Amma refers to the archangels, but also to *jinn* (Flueckiger 2006, 237-38). Katherine Ewing's account of the Sufi *pir* with whom she did research in Pakistan explores the concept of the *mu'akkal*, arguing that they encompass both angels and *jinn* (1997, 135).

¹³⁶ Ewing quotes one of Sufi Sahib's accounts of becoming a *pir* as follows: "While doing these practices [ascetic exercises] over and over, I cried in the wilderness and they I got a 'law degree': I am the lawyer; God is the judge" (1993, 133). Ewing interprets the legal metaphor as Sufi Sahib's way of providing her with a comprehensible analogy by highlighting the learning process involved in attaining knowledge. He situates himself as God's intermediary, but also makes it clear that God makes decisions on the cases that he brings to the judge. Ewing argues that by describing his position in "learned" terms Sufi Sahib evened the power relation between her—American Ph.D. student—and him—Sufi practitioner. However, given my interest in the connections, biographical, topical, and metaphorical, between legal and spiritual practices of mediation, I am struck by the content of the metaphor. This metaphor implies that Sufi Sahib makes cases for God, arguing on behalf of the afflicted; it rationalizes this spiritual work in a way commensurate with the reformist pressures Ewing elsewhere elaborates.

Most scholarship on Islamic healing practices ponder the question of how or in what way such practices do (or do not) qualify as “Islamic”. So John Bowen sets out to “examine how the Gayo, a largely agrarian people, couch a wide variety of practice, from healing and rice ritual to sacrifice and prayer, in Islamic terms” (1993, 8). Bowen makes as part of his focus changing understandings of “what Islam is” in the context of religious reformism. He accepts Talal Asad’s suggestion that Islam ought to be understood as a discursive tradition and argues that Gayo healing practices and spells ought to be considered Islamic because they involve a “field of debate and discussion in which participants construct discursive linkages to texts, phrases, and ideas held to be part of the universal tradition of Islam” (1993, 8). Because Gayo practices are discursively linked to understandings of an Islamic tradition and of what it means to be Muslim, and because they address Muslims *as* Muslims, they qualify as Muslim.

Janice Boddy’s ethnography of the *zar* spirit possession cult in Sudan argues that *zar* and Islam are related but distinct worlds kept apart largely through gendered distinctions (1989, 6). While men have greater access to Islam, women have nearly exclusive access to *zar* (1989, 6). Boddy notes that local religious authorities determined that *zar* was “reprehensible and abhorrent—though not, strictly speaking, *haram* (forbidden) (1989, 142). *Zar* is, therefore, Islamic but gendered: it is the sphere within which women take up “instruments of their oppression to assert their value” (1989, 345). *Zar* appears, then, to be at once related to and distinct from Islam; it relies on Islamic cosmology, and the women who practice it consider themselves to be Muslim and yet they also think of themselves as distanced from Islam as men practice it. *Zar* is neither recommended nor forbidden by local authorities, making it a space within which women cultivate a sense of themselves and their worth.

Joyce Flueckiger’s study of a female healer in Hyderabad takes up gender and the question of Islam through the concept of the “vernacular”. Flueckiger defines vernacular Islam as “popular, non-institutionally based Islamic practice” (2006, 2). She argues that “to study vernacular Islam... is to identify sites of potential fluidity, flexibility, and innovation in a religious tradition that self-identifies as universal and is often perceived to be ideologically monolithic” (2006, 2). In the context of Flueckiger’s detailed ethnography of a female Muslim healer in Hyderabad, vernacular Islam is characterized by the healer’s multi-religious following and by the flexibility of gender roles in the context of her practice (2006, 8). Amma’s work is not institutionalized—it is not located in a mosque or shrine or other recognized Islamic venue—and yet she practices an art of healing that she identifies as both Islamic and as relevant to people across religious lines. For Flueckiger, Amma’s practice is Islamic because Amma’s view of Allah’s *tawhid*, or oneness precedes and encompasses her acceptance of Hindu deities. Religion as a category is left at the door of the healing room, Flueckiger argues, as patients approach Amma not because she is a *Muslim* healer but because of her reputation as a *successful* healer.

This contrasts with Carla Bellamy’s argument that *sufi* spirit possession in Madhya Pradesh, India is “ambiguously Muslim” (2008, 32). Bellamy accepts the religious reformist argument that *sufi* practices involving spirits are traceable to Hinduism and therefore not properly Muslim. Such a view was reflected in the thoughts that some Muslims in Delhi shared with me about Mufti Kazmi’s practice. I will argue in this chapter that his healing is indeed an Islamic practice, but one that is not accepted by

all Muslims as such. The following skeptical voices give a sense of critiques from within various Delhi Muslim communities.

One of these skeptical voices has already spoken. Rubina, with whom the chapter begins, recanted from her support of Mufti Kazmi's practice soon after she left his office. She and I became friendly in the months that followed our meeting at the Mufti's office, and a few weeks after we had met, she told me that she had not gotten the librarian job. I asked her whether she had worn the *taw'iz* that Mufti Kazmi had given her. She had not, she told me. The frustration was evident in her voice as she asked rhetorically what good it would have done. It was a silly idea she had to go see him in the first place, she suggested. She frequently voiced this incredulity when she introduced me to other friends and family members. The first time that I met her good friend Salma, Rubina introduced me as the "girl I met at that *mufti*'s office." Salma, not surprisingly perhaps, was curious to know why had been at Mufti Kazmi's office, and interested in my research. She and Rubina joked back and forth about how silly the *mufti*'s healing work is, and Salma offered that I should speak to her brothers, who were knowledgeable about Islam. The joking combined with the offer of an alternative source of information gently implied that the *mufti*'s healing practice was the wrong place to look for reliable information about everyday practices of Islamic mediation. On several other occasions when Rubina introduced me to friends at parties, she smiled in a mischievous way as she explained where she had "found" me. When this had happened several times, I asked Rubina why she had gone to see Mufti Kazmi at all if this was how she felt about his practice. Rubina explained the dissonance between this skepticism of the *mufti* and her decision to consult him before her interview by saying that she had been desperate for the job and therefore ready to try anything to secure it.

The ambivalence that Rubina exhibited in her oscillation between seeking help from the *mufti* in his office and her ridicule of his healing practice is reminiscent of Katherine Ewing's findings about middle class Pakistanis' relationships to local sufi *pirs*. One story in particular resembles Rubina's experience. Ewing recounts the story of Zahida, a middle class urban Pakistani who considers herself to be "modern" and proclaims her disbelief in and mistrust of *pirs* and their *taw'iz*. Once, when Zahida was very ill, she let a neighbor persuade her to go see a *pir* for help. When Zahida arrived at the *pir*'s room, though, she became angry with the *pir* and with her neighbor. Ewing analyzes this response as Zahida demonstrating "that, despite a moment of temptation, when she succumbed to the neighbor's influence, she was able to maintain her devotion to God as a proper Muslim" (1997, 122). Ewing argues "proper" Islam is an idea that has resulted from reformist activity that has designated *pirs* and *sufi* shrines and healing practices to fall outside the boundaries of true Islamic practice. While Rubina never spoke to me about "proper" Islam, her assessment of Mufti Kazmi did draw on a discourse of modernity that Ewing also found. Rubina considered herself to be a modern woman thwarted in her attempts to realize modern life and work: while Salma, who was divorced a year following her marriage, has a full time job at the Sports Authority of India, Rubina had been stopped at every turn in her attempt to find work. Without either the trappings of a family woman—she was not married and had no children—nor the privilege of a "modern" life of work outside the home, Rubina actively voiced what she called her

depression and her loneliness.¹³⁷ She explained her turn to Mufti Kazmi as a momentary failure of her “modern” aspirations in the interest of attaining the job that would fulfill them.

While Rubina and Salma’s jokes light-heartedly chided me for taking Mufti Kazmi’s healing too seriously, the Ahl-e-Hadith women with whom I studied the Quran had a sterner response to his work.¹³⁸ One morning when I sat down with the two middle aged women who met with me several times a week for my lesson in Quranic Arabic, which was also a forum in which they could explain to me the things they felt I should know about the Quran, the Islamic tradition, and their lives as pious Muslim women, I asked them what they thought of Mufti Kazmi. These women live in a small neighborhood in Old Delhi just down the road from Mufti Kazmi’s mosque. They know of him, and generally spoke of him with great respect, although he is a Barelwi. When I asked what my friends thought of Mufti Kazmi’s healing practice, they first responded that they did not think that what he did was ideal, but that for people who were illiterate or otherwise did not have access to the Quran he provided a way for them to learn from it. Poor and illiterate people, they told me, could benefit from his work.

¹³⁷ Rubina narrated the story of her growth into adulthood as a story of ill-fated attempts to achieve academic and professional success. One afternoon over tea and *namkeen*, Rubina told me the story of her post-high school life. Rubina’s family is an educated, “old” Old Delhi family, both men and women in the family hold college degrees and some of them have Ph.D.s. When Rubina was working on her B.A. in Delhi, her mother took her to Agra where she had an aunt. While they were there, her mother told her that she had planned Rubina’s marriage to a cousin in Agra. Rubina had dreams of becoming a professor, and wanted to get a doctorate. Her uncle, of whom she spoke fondly, told her that she should wait to get married until she had completed more of her education. She told her mother that she did not wish to marry yet, and her refusal sparked an argument between Rubina’s mother and the uncle who had given her this advice. In the mean-time, a friend advised Rubina to secretly contact her cousin to find out whether he would permit her to put off the marriage for two years so that she could write an M.A. However, before she could do this, her mother had called her aunt in Agra, an argument had ensued, and the wedding plans were called off. In frustration, her father then forbid her to go to Aligarh, where her advice-giving uncle lived and worked, to write her M.A. Instead, as she tells it, she stayed in Delhi and tried to write her M.A. while living at her parents’ house. She finished with only a B+ average, which she explains was a consequence of having to complete her studies while living with her parents where she had to perform daughterly household work and help with visitors.

Rubina’s other aspiration to marry and pursue a career also did not come to fruition. She had an aunt in Pakistan who told Rubina that in Pakistan, it was common for women to be educated, and to have a career. This aunt told Rubina that she thought Pakistan would be an easier place for her to find like-minded people. This aunt invited Rubina and her mother to another cousin’s wedding in Pakistan, suggesting that they would be able to find a match for Rubina so that she could stay in Pakistan. Although Rubina was thrilled by the idea, her mother forbade it, and nothing ever came of her Pakistani dreams.

After working for ten years at the Persian desk of All India Radio, Rubina left or lost that job for reasons she did not want to discuss, and ever since that time she has been looking for permanent work.¹³⁸ The *ahl-e-hadith*, which means “people of the Hadith,” is a group of Muslims who place greater emphasis on the Hadith, the sayings and actions of the Prophet as recorded by his followers, than other groups. This leads to several practical differences—for example, in Delhi *ahl-e-hadith* women have a section of the mosque in which they pray on Fridays. In Delhi there is notable tension between the *ahl-e-hadith* and the Barelwis and other Muslim groups living in the area. I never heard vitriolic comments, but was well aware that the family with whom I lived thought it strange and somewhat suspect that I went on Fridays and other days to visit with the *ahl-e-hadith* women. Katherine Ewing notes that in Pakistan, the Ahl-e-Hadith are among the Muslim groups who have been strictest about eliminating “local practices” like visiting *pirs* and seeking *taw’iz* in their pursuit of reform.

A few mornings later, though, my friends initiated another conversation on the topic. They had done some reading in the many volumes of Quranic and religious commentary that they had on their bookshelves, and became less certain that this was an innocent practice that simply did not relate to them. They had asked the *imam* at their mosque whether Mufti Kazmi's work was acceptable and had been told that this healing was nothing but magic (*jadu*), and therefore unacceptable and non-Islamic. My friends took a Quranic commentary down from the shelf and read from it, explaining to me that magic was unacceptable according to the Quran. For them, it was clear that the *taw'iz* that Mufti Kazmi were not the word of God transposed into a different form, but were rather a form of apostasy, a misuse of holy words for magical purposes.

Even within Mufti Kazmi's office, skeptical voices spoke up from time to time. For instance, one of the regulars at Mufti Kazmi's office often mocked the others for bringing their petty worries to the *mufti*'s office. Yet even as she criticized these complaints as nothing more than descriptions of how life is, this woman continued to regularly visit the *mufti* to discuss her troubles and to request remedies. Through the skeptical comments and performances of ambivalence I encountered at the mosque and in conversations with friends and other informants in Delhi, it became clear that this practice, whether approved of or not, was a popular and hearty institution of mediation and remedy. For those who visited the *mufti*, and even for the Ahl-e-Hadith women who ultimately declared that this was *jadu* and therefore un-Islamic, his remedies were interpretations of a specific life problems that could be engaged by reference to and work with the Islamic source text: the Quran. For the Muslims who saw the *mufti*, this was a way to bring the Quran and the power of its words to bear on the problems they encountered in their daily lives. The *mufti* served as the medium through which they could approach and draw on the Quran, God's words, as they struggled to live lives rid of *paesaniyan* and disordered relationships.

Even to his skeptics, Mufti Kazmi, on the other hand, is a *Muslim* healer. He practices in a mosque, and although he gladly gives remedies to Muslims and non-Muslims alike, he is clear that the healing practice is different for the two kinds of patients. Hindus, he told me, come to see him because of his reputation as a successful healer just as Amma's patients do. Muslim patients, he tells me, have faith not in him but in the Quran. They choose to come to him rather than another Muslim healer because of his success and his popularity, but it is neither his charisma nor his success in which they have faith. Flueckiger also found that Amma made a distinction between Muslims, who would get more benefit, and Hindus, who would benefit less because of their lack of Muslim faith.

The primary reason that I interpret the *mufti*'s healing practice as Islamic, and not ambiguously so, is that in his own conception of that practice, he seems himself as drawing on the central Islamic source, the Quran, to bring God's command to bear on the lives of those who come to see him. He does not discuss or dabble in Hindu cosmology, nor does he argue, as Amma does, that religion is irrelevant as a boundary marker. Rather, in deference to the all encompassing power of God, he treats both Hindus and Muslims through his own faithful engagement with God and with God's commands.

There is a second anthropological debate that the Ahl-e-Hadith women invoked in their comment that Mufti Kazmi's practice was "nothing but magic". The relationship

between religion and magic has plagued anthropologists in numerous ways since the discipline emerged in the nineteenth century. Stanley Tambiah argues that an

...emphasis on religion as a system of beliefs, and the distinction between prayer and spell, the former being associated with 'religious' behavior and the latter with 'magical' acts, was a Protestant legacy which was automatically taken over by later Victorian theorists like Tylor and Frazer, and given a universal significance as both historical and analytical categories useful in tracing the intellectual development of mankind from savagery to civilization (1990, 19).

Tambiah argues that the distinction between magic and religion emerged as part of a Protestant focus on God's sovereignty and presence in the world unmediated by Catholic saints and icons (1990, 18-19). Thus, the division becomes part of a Protestant story of progress from superstition and idolatry to religion as a matter of faith and belief. Victorian anthropologists, among them Tylor and Frazer, picked up this distinction to argue that magic was a pseudo-science and as superstition with no basis in truth (Tambiah 1990, 46).¹³⁹

The primary problem of magic for anthropologists, and the one relevant here, is that of causality. Tylor argued that magic was about the association of ideas, but that it involved a "mistaken application of the 'argument of analogy'" (Tambiah 1990, 45). The mistake in this argument "consists in contingent associative relations being taken for causal relations and then being inverted in the magical act" (Tambiah 1990, 45). This is Hume's problem of causation: if the cock crows at sunrise, the primitive magic-minded individual believes that the cock *causes* the sun to rise. Likewise, magic is understood to involve rituals that aim to achieve certain specific ends (often called 'spells') while religion communicates with the divine through prayer. Tambiah has elsewhere elaborated the kinds of analogical work that rituals do (2002).

While dispensing with a simplistic and progressivist distinction between religion and magic, Tambiah has offered several ways of thinking about ritual interventions such as those I explore in this chapter. Tambiah argues that rituals can be understood as performatives (2002 [1973]). Drawing on J.L. Austin's theory of performativity, Tambiah argues that ritual acts and magical rites are performative because they effect a "change of state or do something effective" simply by being enacted (2002, 352). Tambiah pushes Austin's acknowledgment that performatives require appropriate context in order to be felicitous or successful, to argue that in ritual acts, words and deeds are together required to produce a successful performative (2002, 352). This notion of embodied performatives enacted through the meeting of word and deed proves helpful in thinking through the *mufiti*'s healing practice as a form mediation.

¹³⁹ Another problem for anthropologists of religion has been that of morality. Thus, for Durkheim the distinction between magic and religion rests on a distinction between the collective character of religion and the private character of magic. He writes: "A society whose members are united because they share a common conception of the sacred world and its relation to the profane world, and who translate this common conception into identical practices, is what we call a church. Now historically, we find no religion without a church... When it comes to magic, the situation is different... *A church of magic does not exist*" (2001, 42-43, emphasis in original). For Durkheim, magic's orientation toward securing specific ends and its individual nature renders *its* rites and rituals different, and inferior, to those of religion.

In the forms of *taw'iz* and *fatawa*, written words embodied were the medium of the *mufti*'s work. Words bound in books and written on stacks of paper dominate the landscape of his office, and writing instruments—ballpoint pens, a fountain pen and saffron ink—were never far from his reach. “Reading” and “writing” (*pardhna and likhna*) were the primary verbs with which the *mufti* describes the actions that make up the practice of healing both in the quotation above and in other conversations I had with him. Flueckiger also notices that written words are central to Amma's diagnoses and prescriptions. She writes: “Amma writes all day long, opening the ‘mystery of numbers’ to diagnose the trouble of a patient and writing out prescriptions: slips of paper to be folded and worn around the neck, rolled and burned in oil, smashed with a sandal, or hung in a doorway to flutter in the wind...” (2006, 65). For Flueckiger, the centrality of writing to Amma's healing practice “helps to identify her healing practice as Islamic” (65). Interestingly, Abba, Amma's husband, tells Flueckiger gives the examples of writing in the police station and the collector's office to explain why writing is a more powerful medium than speech (66). As I will show later, for Mufti Kazmi, the power of words resides in an interplay between speech and writing.

In his healing practice, words were not confined to the page, but were delivered on the breath in blessings or in ink that was to be dissolved in liquid and drunk. The healing practice that I observed centered on a dialectic between embodied and written words that translated God's orders into remedies with observable effects. The *mufti*'s role in the healing process contained two moments: diagnosis and remedy. Through a dialogue with the patient, the *mufti* determined what the patient's trouble is. Once the *mufti* had diagnosed the ailment, he offered a remedy through which God's order would touch the afflicted body or mind, returning it to its normative state. In this chapter, I analyze the *mufti*'s healing practice as one forum for dispute resolution available to and utilized by Muslims men and women in Delhi. In so doing, I look at who brought problems to the *mufti*, as well as what kinds of problems they brought to him; I also attend to the role of embodiment in this healing practice. Through these explorations, I ask how this institution relates to the others I have studied and what it contributes to the field of religious law adjudication.

The Healer's Manual

Mufti Kazmi's always told me that he had learned the art of spiritual healing through apprenticeship. He also, though, told me that I should read some books on this art. To my surprise, the books were readily available in the Urdu Bazaar outside the gate of the large Old Delhi mosque, the Jama Masjid. These books suggest that this healing practice is both widespread and available to those who read Urdu. They also demonstrated to me that the systematicity of Mufti Kazmi's healing practice was not only a reflection of his own efforts but was also part of the practice of this healing art. *A'in'ah Amliyat* by Sufi Mohd. Ghareez al-rahman, for example, begins with an introduction to the art of healing which is followed by over 350 pages elaborating the *naksh*, *taw'iz*, *ayats* and names of God appropriate to solving problems that range from bad luck in love to losing a job. The preface and introduction to this volume establish that the art of is part of an authentic tradition and that it is systematic and rule-oriented.

The first sentence of the book reads: “These remedies that you hold in your fortunate hands are Sufi Ghariz Al-Rahman Sahib of Panipat's” (Rahman, 5). The preface narrates

the story of how these remedies were published and therefore became available to whoever might be reading them at the time. In the tale, Al-Rahman met Sufi Sahib when he was wandering as a *faqir*. After years in the company of Sufi Sahib, Al-Rahman received a post as a *mufti* in the *dar ul ifta* at Aligarh. He had been at his post in Aligarh for five years when one day he received a letter bearing Sufi Sahib's seal. Upon reading the letter, he was so overcome with joy that the people who were sitting with him asked from whom he had received the letter that made him so happy. He told them that it was a friend of his who was also an *amil*, someone who heals and writes amulets.

In the book's first account of the art of healing in action, the narrator tells us that someone sitting in the audience said: "Mufti sahib! I have a married daughter who has been possessed by a most wicked evil spirit (*larki par aseeb ka jberdast apr hai*). I have done much healing, but to no avail. If you would ask your friend for a *taw'iz* for her, it would be a great kindness (*bari meh'r-ba'ni hogi*)." I wrote to Sufi Sahib, the narrator continues. Sufi Sahib wrote on a few wicks (*fali'te*), and sent them to me. I called the man in and gave him the wicks, explaining to him how they should be used. He burned the wicks over his daughter, and the evil spirit departed, and she never again had any grievances (*shika'yat*). This girl's recovery became a matter of such great renown (*qad'r shoh'rat*) that crowds of people came to see me. And in relation to every kind of disease (*hir qa'sam ke marz*), upon complaining to me, they would ask me, "Sir, please order a *taw'iz* or a *gan'da* (a knotted string used in spells), or *fali'tah* (wick), etc., for this or that disease." Mostly this is what I did (10). Subsequently we learn that Al-Rahman learned to write *taw'iz* himself by apprenticing with Sufi Sahib in Delhi for several years. After acquiring this skill, Al-Rahman had the idea that publishing these remedies would be both a tribute to his teacher's generosity and a useful contribution to other Muslims. Once he obtained Sufi Sahib's permission, this is just what he did.

The preface gives an account of the growth of a tradition of healing through practice, apprenticeship, and popular demand. The printed volume available for sale at the Urdu bookstall is both the record and outgrowth of the author's apprenticeship. Al-Rahman gives the reader an in-depth account of his attempts to convince Sufi Sahib to allow him to publish the remedies, reminding the reader that the product of these labors are words authorized by their true author, the teacher. The second piece of evidence we have that the art of healing depicted here is authentic lies in the story of popular demand. The first success, and the source of Sufi Sahib's popularity, significantly concerns a married daughter possessed by an evil spirit. The reader does not know what the specific effects of the evil spirit's presence are, but does know that the possessed woman is married. The fact that her father and not her husband has come to ask for a remedy suggests either that she is newly married or that her husband (and perhaps his family) are not as concerned to find a cure as he is. There could be many reasons for this: her father may be afraid that failure to find a cure will result in his daughter being divorced and therefore without the shelter of a marital home or he could be worried about her ability to live fully. The *falite* and instructions that Sufi Sahib provided successfully cured the girl after many other attempts to do so had failed. With this concrete success, demand for Sufi Sahib's remedies convinced the author to learn the art of healing and ultimately to spread that art, through the pages of this book.

Not only is the book part of an apprenticeship relation, it is part of an ordered and rule-governed system. The introduction begins as follows:

Bismillah ar-rahman ar-raheem

Your lordship (*Hazrat*)! It is common knowledge that every worldly vocation (*kam*) has its principle (*usool*) and its system (*nizam*). A vocation will only be successful when it is subordinated (*matahet*) to this principle and to these rules. All art (*fun*) and all knowledge (*ilm*) works according to its grammar (*quva'id*) and laws (*quaneen*). Without law and system (*qa'id*), any attempt to gain knowledge or craft is unsuccessful (*nakamyabi hoti hai*).

This exact art of healing (*fun amaliyat*) also has certain rules and law. If any healer (*amil*) performs any healing without this rule and system, he will be entirely unsuccessful... (*A'in'ah Amliyat*, 13).

Al-Rahman begins with the general statement that all human vocations have an order and a principle. To succeed at a worldly task, one must subordinate oneself to its *usool* and *nizam*, to its order and system. This is a general condition of the world, the formulation suggests. As he develops his point, Al-Rahman becomes more specific turns more explicitly to legal metaphors. From “all worldly vocation” he moves to discuss “all art and all knowledge.” Rather than the broad condition of having rules and systems, art and knowledge have particular kinds of rules and systems: grammar and laws. Any attempt to attain knowledge or to master a craft requires adherence to the appropriate rules of grammar and the laws of the art. The art of healing falls into this latter category: it has laws and grammar. A healer will only be successful if he subordinates himself to these rules and this law. The last statement is posited in negative terms, as a warning: if someone tries to practice this art of healing without subordinating themselves to this rule and system, he will not succeed. If the origins of the art as it is presented in the book are carefully defined as emanating from a worthy practitioner, the rights to use the book are delimited by a willingness to follow its rules. Mufti Kazmi’s healing practice follows a similar set of procedures as outlined in this book, which therefore situates his work in a broader tradition.

Gender & Trouble in the Mufti’s Office

The *mufti*’s office was frequented nearly equally by men and by women, but the problems they presented to him and the language in which they presented these problems were distinctly gendered. This is different from what Janice Boddy found in her study of *zar* (1989), and from what Katherine Ewing and Carla Bellamy found in their studies of *sufi* healing and spirit possession practices in Pakistan and India, respectively (1993, 2008). Thus, my argument is not that this is a gendered space because it is more available to or suited to women than men. Rather, it is a space in which women and men present different problems and in which they do so using different language.

The patient’s presentation of his or her problem initiated the healing process. The patient, like Rubina, would come to the *mufti*’s office and wait among the other patients until it was their turn. Men sat on one side of the *mufti* and women on the other. When couples came together to consult with him, they would often sit at the boundary between the men’s side and the women’s side, which enabled them to approach the *mufti* together without undermining the separation between men and women that the *mufti* gently enforced. There were occasions when people would come to see the *mufti* and they would sit on the wrong side of the room, much as I did on my first visits. When that happened,

the *mufti* would gently, and with humor, inform the person that they ought to move to a seat on the other side. There were also times, though, when the *mufti* did not bother to enforce sex-segregation, and his good-humored approach suggested that this was not the most important issue on his agenda.

The short, broad, semi-private conversation the *mufti* had with Rubina is illustrative of his diagnostic approach. He requested the information that he needed to give her a *taw'iz* that she could keep with her for help on the interview, but he also asked about her life beyond the interview. As in his role as *fatwa*-writer, a disposition of care and patience created the conditions for his therapeutic action. He attended to most of his patients with this kind of care: when regular patients approached him, Mufti Kazmi always inquired about their families, often interrupting the patient's initial description of their problem with a question about their children or spouse or parents. As in his *fatwa* practice, the tone of the interaction was as significant as its content. Although it was extremely rare that the *mufti* spoke to someone when there was no one else in the room, he created a semi-private space through his body language. As each person approached him the *mufti* would turn his head toward them. Patients would often speak in such low tones that their words were inaudible for all but those sitting just next to them. This attention to privacy meant that it took some time for me to figure out how best to situate myself in the room. Initially, I sat among the patients, near the front of the group, and explained to people as they approached the *mufti* that I was a researcher, and not waiting on line to see the *mufti*. As time went on, Mufti Kazmi invited me to come sit next to him, on the women's side, so that my left side was toward the group of women and my right toward the *mufti*. In that position, I was better able to hear the *mufti*'s conversations with his patients and also to speak with them and with him. This new position facilitated conversation with people who had come to see the *mufti*, many of whom were equally as curious about my presence at the mosque as I was about theirs. Many women found it amusing that I sat with the *mufti* day after day, and those who came repeatedly asked more questions with every encounter.

Mufti Kazmi responded kindly to people's troubles, his voice soft. Through these modulations of body and voice, Mufti Kazmi and his patient would cordon off a space that no longer seemed part of the larger public gathering in the midst of which they carried on their conversation. The intimacy of this space did not necessarily mean that the relationship forged between the *mufti* and his patient would have longevity. Rubina, with whom I became friends over the months following our meeting, neither got the job for which she interviewed nor returned to see Mufti Kazmi. As she later told me, although without offering a reason, she never used the *taw'iz* as the *mufti* had instructed her to. Fleeting though this exchange may be, it nonetheless serves as the basis for the *mufti*'s diagnosis and treatment of his patients.

Although this kind of direct interaction was the *mufti*'s preferred setting for making a diagnosis, when this was impossible, he had other methods for connecting with and diagnosing patients. Once, a woman came to request the *mufti*'s help for her son who had recently begun to seem distracted and to wander around the neighborhood (*ghumna*). She could not convince her son to come with her to see the *mufti*, so instead she brought with her a photograph of her son. This also happened when the patient was too ill to come in person to see the *mufti*. Instead of consulting with the person in this situation, the *mufti* would study the photograph. He told me that he as he studied the image he prayed over it,

which allowed him to more accurately assess the condition of the patient and to provide a remedy for the problem. Looking at the image helped him to make a diagnosis, he told me, because it enabled him to concentrate on the photograph and therefore on the person, as he contemplated their ailment.

The *mufti* had other methods for arriving at diagnoses. One afternoon, a young woman came to the *mufti*'s office with her cousin and her aunt and a number of other female relatives. Each of them ultimately spoke to Mufti Kazmi about a problem they were having, but the primary reason they had come to the mosque was because the young woman was soon to be married. She told the *mufti* that her mother had died several years earlier and she and the family were concerned that there could still be spirits lingering from the death. They wanted to ensure that spirits would not interfere with the wedding. The *mufti* told the woman that she should bring him one of her *kameez* and *dupatta* to read and figure out what, if anything, she ought to worry about. The next day, the girl brought the *mufti* a plastic bag with a *kameez* and *dupatta* inside. The *mufti* asked for the girl's name and for her mother's name.¹⁴⁰ He wrote this information on a piece of paper and told her to return the following day for his response.

In a later discussion, I asked the *mufti* why he requested that this woman and others bring him her clothing. He told me that the person in question had to bring clothing that he or she had worn and that had not been washed in the mean-time. "Just by looking at it," he told me, "I can sometimes see something obvious in the clothing. Sometimes I look at the clothing while I recite verses. That way I can tell whether some *nazar* is there, or *jadoo*, or what it is... While I am reading over it, I think about it, and then an idea comes about what I should do about it and then I perform the healing (*ilaj karte hain*), and return the clothing." When the woman returned for her *kameez* and *dupatta* the next day, the *mufti* told her that everything was fine, and she could proceed with her wedding without worry.

In the diagnostic scene at the *mufti*'s office, patients' problems and their rhetorical presentations of those problems reflected differences of gender and age. Rubina was the only woman who came to ask for help finding work during the time that I was doing my research, while this was a common reason for men to consult the *mufti*. In the middle of the time that I was in Delhi doing fieldwork, the Delhi Municipal Government instituted a "sealing drive," meaning that there was an initiative to bring neighborhoods up to building code by eliminating mixed residential and commercial use of properties legally only approved for residence. The effect of the sealing drive disproportionately hit working class and poor Delhi-ites in neighborhoods such as Seelampur, where the *mahila panchayat* and one of the *dar ul qaza* institutions I studied were located. Around this time, there was a sharp increase in the number of men who approached Mufti Kazmi to ask for help finding work.

Children always exhibited physical symptoms, such as diarrhea, nausea, and fever. People often brought sickly babies to the *mufti*, and young fathers came on behalf

¹⁴⁰ Amma, the healer with whom Joyce Flueckiger studied healing in Hyderabad, used the numerical value of the names of the mother and the afflicted person to attain a diagnosis of the source of the problem. Although when he explained the system of numbers to me he also asked for my name and my mother's name and added together "Katherine" and "Mary" to arrive at a value of 910, he never mentioned using this value in a process of diagnosis. He did often ask patients for their names and the names of their mothers and of anyone else involved in the matter at hand. He would write these names on the *taw'iz* or *falita*, but did not to my knowledge incorporate them into the *naksh*.

of babies too sick to be brought to the mosque. In several cases, parents brought babies who would not eat. Children also had other problems: in one case, a mother came with her three year old who she said was unable to sit up properly. Teenagers often presented the *mufti* with psychic unrest: mothers came to ask for help with teenage sons who had become distracted and who wandered (*ghumna-pirdna*), about sons who had suddenly begun laughing uncontrollably and about boys and girls who were not doing well in school.¹⁴¹ One mother came to ask for help for her twenty-year-old daughter who was acting crazy. The mother attributed this behavior to love, explaining to the *mufti* that her daughter was out of her mind (*dimag kharab hai*), and she was constantly angry. Another mother came to the mosque because her daughter adamantly insisted that she did not want to marry. The mother wanted the *mufti*'s remedy to help convince her daughter to get married. Another mother came to see the *mufti* in distress because her daughter watched television excessively, to the exclusion of studying. Occasionally, adolescents would come with their peers to talk to the *mufti*. The most notable occasion for this was one afternoon when three teenagers came together because one of the youth was becoming "bad." The boy told the *mufti* that it was true: he had begun to steal. The *mufti* gave the young man a talking to, telling him that the last thing he would want was to be in trouble with the police. He told the youth to try harder to stay out of trouble and wrote a *taw'iz* for him.

Adult men came most frequently with work related problems. Sometimes they came because they had trouble finding employment, and sometimes with physical injuries incurred on the job. Other times, men came to ask whether a particular business decision was auspicious: for example, the brother-in-law of the woman with whom I lived in Old Delhi asked whether he should open a new shop. Men also occasionally came to ask for help with troubled marriages. In one case, a husband approached the *mufti* because his wife had left him. The couple had lived in a house that he had built for 25,000 rupees, but after a while, his wife had kicked him out of the house. The husband had gone to the police and filed a report (an FIR), but to no avail. So now the husband came to the *mufti* as another way to approach the problem.

Adult women, on the other hand, mostly came to the *mufti* to report physical ailments, troubled relationships with their husbands, or quarrels with their neighbors. In one case, a woman came accompanied by two male family members to ask the *mufti* for help because her husband had left her several months earlier and had refused to give her any maintenance money. Another woman came because she and her husband had been living separately for six months and she wished to be able to return to him. Yet another woman complained to the *mufti* that although she had been wearing a *taw'iz* he had given her around her arm, the husband who had left her had not returned. Another woman who came to complain that she and her husband were experiencing difficulties getting along was told by the *mufti* to read a particular *ayat* one hundred and one times morning and night. Once, rather than simply giving the patient a *taw'iz*, the *mufti* joked with a woman who came to him to talk about her deteriorating relationship with her husband. The couple fought frequently, she told the *mufti*, and her husband was constantly telling her what to do. Before giving her a *taw'iz*, Mufti Kazmi winked at her and the other women

¹⁴¹ Notably, Joyce Flueckiger documents exactly the same kinds of troubles, including wandering sons and laughing daughters, in her book on a Muslim healer in Hyderabad (2006).

sitting around and told her that if her husband talks too much and is too difficult, she should simply send him away.

A few women came to the *mufti* because they had had trouble conceiving. Several women approached the *mufti* to get his advice on what to name a child. The older sister of the family with whom I lived in Old Delhi, whom we called *Bauji*, wore a *taw'iz* and had consulted a *mufti* about what to name her child and whether to go on Hajj while she was pregnant (which she did). Men and women most frequently approached the *mufti* together when they had a concern about an infant or a young child.

General unrest in families was also a reason for which men and women approached the *mufti*. In one case, a young man came to see Mufti Kazmi because upon the death of his mother the other members of the household began to fight. *Bahut paresan hunh*, the young man said to the *mufti*. In another case, two women came to the mosque because the relatives in the house were constantly fighting. She came with a friend, and brought the *mufti* a shirt that had been worn by the brother-in-law, who was the source of much unrest, had worn.

The kinds of problems that people brought to the *mufti* therefore correlated with age and gender, reflecting the roles that men and women play in the daily lives from which these problems arise. The patterns of complaints imply that in infancy and youth, the primary dangers to human beings are health related. Infants and children, the *mufti* told me, suffer exclusively from physical ailments. It is only when children reach adolescence that their psyches become vulnerable. Most of the ailments manifested in adolescents were psychic, not physical, and all were ailments that had the effect of keeping the individual from behaving in a normatively acceptable way. Unlike with young children, in problems involving youth, the *mufti* talked about the problem with the person who had brought it to his attention in addition to giving out a remedy. Through these discussions, he encouraged his patients to pursue healthy paths, as in the case of the young man whom he told to stay out of trouble with the police.

In adult patients, relationships were the primary problem, with work a close second for men and physical illness for women. Both women and men came to the *mufti* to ask for help with stressed marriages, indicating that the work of maintaining a marital relationship is accepted and taken up by both men and women. On the other hand, men came with work-related injuries and in distress when they could not find work, while women's troubles manifested themselves physically. The implication of this gender divide is that for men, the inability to keep a job and therefore to provide for their families is a source of consternation. The masculinity that is expressed at the *mufti*'s office is closely tied to the role of breadwinner and provider. Women express their roles and their distress differently. For women, marital trouble, the death of a spouse, the illness of a child, or quarrels with the neighbors often manifested themselves through physical symptoms which could be remedied only by addressing the trouble relationships that were the source of these problems. For example, when one woman came to the *mufti* complaining of pain that needed to be "cut" out by his knife and blessed, the *mufti* told me that the source of the pain was the recent death of her husband. Physical and psychic ailments were often entangled in this way, and the *mufti* often treated them together.

The kinds of problems with which both men and women present the *mufti* and the ways in which they frame these problems imply the difference between this and the other forums of adjudication this dissertation has analyzed. While there are several problems

that could be legally mediated—the demand for maintenance payments and the husband’s loss of his house—most of these are not susceptible to legal argument. For example, while it is normative for girls to marry, they are not legally bound to do so. While it is good for husbands not to abandon or fight with their wives, these are only available for legal intervention if framed in terms of financial abandonment or physical violence. The *mufti*’s healing does not offer material legal remedies. Instead, it can cultivate the conditions within which husbands will treat their wives well and daughters will willingly marry. Sometimes this requires intervening in the spirit world, and sometimes in the individual’s psychic world.

In addition to bringing different kinds of problems to the *mufti*, men and women employed different rhetorics of trouble. Women nearly always began their requests for help with the general statement “*main pareshan hunh*”: I am troubled. They also used the phrase to emphasize the gravity of their problem, and to strengthen their appeal for help. It added emotional weight to their appeal. The adjective *paresan* means troubled, disturbed, or confused. *Paresani*, the noun form, is often translated as and used interchangeably with “tension,” an English word frequently integrated into Urdu and Hindi. Much has been written about “tension” as a concept in Urdu and Hindi-medium contexts and especially in urban South Asia. In her dissertation on gender and mental health in Mumbai, Shubhangi Raghunath Parkar discusses *paresani* and tension at length (2003). In focus groups, Parkar’s informants told her that 70-80% of people suffer either from daily tension or from its more acute form, tension illness. She writes:

Tension was associated with numerous symptoms, mainly, of the body and emotional. The common bodily symptoms identified were giddiness or *chakkar*, headache, general weakness, palpitation (*dhadkan*), chest pain, and pain in abdomen, loss of appetite and lack of sleep, lethargy, etc. Tension-related emotional disturbances reported were irritability (*chidchid*), sadness (*gum*, *dukhi*, and *udhas*), anger (*santap* and *ghussa*) and worry (*cinta*) (2003, 68).

These are the same issues with which women frequently came to see the *mufti*, symptoms that they prefaced and summarized with the phrase *main paresan hunh*. Women complained of generalized pain and weakness, which they attributed to their husbands drinking and to general disturbances at home. Among Parkar’s informants, both men and women called their problems “tension,” but identified different sources for it: “Women considered tensions related to marriage and having an alcoholic husband serious, and men perceived joblessness and financial difficulties as serious” (2003, 68). Parkar’s informants sought various kinds of help with their tension, including seeking out what she calls “faith healers,” among whom she would count Mufti Kazmi. While it was not a word deployed often in the context of *dar ul qaza* cases and rarely appeared in requests for *fatawa*, *Mahila Panchayat* discussions were regularly punctuated by it. In the MP as in the mosque, “*main bahut paresan hunh*,” emphasized the direness of a particular situation, and was usually uttered with physical indications of distress. There appears to be an intensely gendered quality to this particular type of trouble as I encountered it both in the *mufti*’s office and in the *mahila panchayat*.

Lawrence Cohen shows that for some aging middle class Indians, achieving balance is paramount, and its direct threat is “tension” (1998, 194). The elderly identify their

difficulties as the result of tension, which itself accompanies a life of privilege. The poor, according to one of Cohen's informants, "can stand any stress and strain" (194). On the other side of the class spectrum, the people who came to ask for Mufti Kazmi's help also felt the need to be rescued from tension and trouble.

Laura Ring discusses the role of "tension" in the multi-sect Karachi apartment building in which she conducted her research. She argues that tension is the state of active peace that enables neighbors to live together in spite of intermittent inter-sectarian violence in the city. Rather than a condition that should be cured, "tension" is the condition upon which peace is based. This idea that tension is usual, and perhaps even useful, unexpectedly emerged in the *mufti*'s office where women came to find a cure for their condition of tension. In one notable instance, a woman who frequently attends the *mufti*'s public hour to ask for help with aches and pains and general ill health, regularly mocked the appeals of her fellow patients, honing in on the normalcy, rather than the abnormality, of *paresani*. One day she turned to me and said quietly, but loudly enough so others could hear: "Trouble (*paresani*) is an ordinary thing. We all have troubles. He gives all these people *taw'iz*, chilies, and drinking paper."¹⁴² Her voice conveyed scorn for her fellow patients who had misdiagnosed their condition of troubles as anything other than the usual stuff of life. Her comment reflects the normality of *pareshaniyan*. It suggests that it is usual to be troubled, disturbed, and confused. She illustrated her point by concluding with a list of three of Mufti Kazmi's most common prescriptions. The list she recited captured the feeling of monotony by which I was occasionally overwhelmed as I sat, afternoon upon afternoon, listening to the *mufti* tell people to wrap the *taw'iz* he had given them in plastic, tie it with a red string and tie it around their neck or upper arm. Yet this frequent visitor to the mosque waited with the others for the *mufti* to give her an amulet or *taw'iz* that would alleviate her *pareshani*. *Paresani* may be the norm, but it was not normative, and the powerful words required to address it were not in a lay person's vocabulary.

An interplay of words, emotional appeals, and images made possible the diagnostic scene. As in the other institutions of adjudication I have examined in this dissertation, dialogue was central to the *mufti*'s diagnostic process. Also as in the other institutions, men and women approached the *mufti* with different kinds of problems and they framed these problems in distinct ways. These differences reflected and reiterated some effects of gendered difference in the patients' social worlds outside the mosque and their views about what ailments are appropriate to bring into the mosque. Finally, patients brought troubles to the *mufti* for healing, distinguishing them from the conundrums they brought for *fatawa* and the claims they brought for adjudication to the *dar ul qaza* institutions and the *mahila panchayat*. The patients did this framing: they did not come with a generic issue to have the *mufti* decide whether it was best dealt with through a *fatwa* or through healing. Rather, they presented their problem *either* as one in need of a *fatwa* or as one that required healing.

Mediating Trouble: The Remedies

If the problems patients brought to the *mufti* for healing were framed in distinctive ways, they were also attended to through different media. As I elaborate the different

¹⁴² "*Paresan to ek aam baat hai. Hum sub paresan hain...Wo sub logon ko taw'iz, mirch, peene ki kagaz dete hain.*"

remedies the *mufti* provided to his patients in this section, it will be useful to bear in mind Stanley Tambiah's argument that spells are performative utterances whose felicity resides in the correct combination of words and deeds. Mufti Kazmi delivered most of his remedies through the medium of his pen. While in some situations the *mufti* verbally blessed an ailing person, most of his remedies flowed through one or several of his ink pens. The *mufti*'s command of his pen enabled him to transform various objects—small pieces of paper, goat bones, or clothing—into vehicles for God's word. It is God's word, or his order (*huk'm*) to which Mufti Kazmi attributes the efficacy of his practice.

Bones

One middle aged woman came to see the *mufti* nearly on a daily basis while I was conducting my research. The problems she brought changed from visit to visit, but usually they blended in with the long series of requests for general relief. "*Main paresan hunh*," she would say, her troubles mixing with those of others in the mosque. But one day she came to the mosque with a plastic bag full of goat bones. The *mufti* had apparently asked her to bring these after she had recounted a family feud that had recently escalated. Everyone, she told him, was angry with everyone else, and the atmosphere in the household was deteriorating. On this particular afternoon, the *mufti* peered inside the plastic bag holding the bones and quickly returned it to her telling her that these were not properly prepared. When she asked him, perplexed, what the problem was, he told her that they were not thoroughly dried. She was to return another day with eight properly dried goat bones. When she returned several days later, the bones she carried were thoroughly dried. Mufti Kazmi wrote the names of her children and the other people involved in the scuffle on a piece of paper which he carefully added to the bones in the plastic bag. He told the woman that he would transfer the names from the paper onto the bones, keep them over night, and return them to her. She was to bring eight more bones the following day.

Mufti Kazmi asked for bones in cases of severely "bad relations." In these cases, he told me, there was a strong possibility that some magic (*jadu*) was involved; numerous Quran *ayats* had the potential to cure this magic. He took the bones, recited the relevant ayats and wrote them on the bones along with the names of everyone involved in the dispute. He then asked the person who had brought the bones to wrap them in plastic and to keep them for a period of time. The *mufti*'s refusal to take bones that were not properly dried was one among many examples of his fastidious attention to the procedures necessary for healing to be effective. When I asked him later why it was important that the bones be dried, he would give no answer other than that for the remedy to work, it was necessary.

Cutting Out Distress

By early December, it was cold in Delhi. While the temperatures were actually not alarmingly low, winter seems to take Delhi by surprise every year, and even those who equip their houses with powerful air conditioners in the summer do not have heating in the winter.¹⁴³ The various mosques in which I was conducting my research did not

¹⁴³ In his recent article in the New York Times, Jim Yardley notes that although the temperature rarely drops below fifty degrees Fahrenheit in Delhi, the winter feels very cold to Delhi residents, many of whom

have either air conditioners or heaters, so their internal temperatures fluctuated with the seasons and we all dressed accordingly. I had an old injury in one of my hips and found that sitting cross-legged on the floor in the mosque all day in the cold aggravated the injury. One day, when I got up to leave, Mufti Kazmi noticed that I limped a bit and asked what was wrong. I told him, and before I left, he said a *du'a* and blew on the injury three times. The next day when I arrived at the mosque, the *mufti* had brought a knife, a black string, and a bag full of dried red chilies. He asked me to show him the exact place where I felt pain. He then touched the knifepoint gently to that spot, and made cutting motions so that with each stroke, the knife passed over the injury. Next, he took the black thread, measured out a length that reached from the top of my head to the ground, rolled it into a ball and blessed the thread. He repeated this once more. Finally, he blessed me again. As I was leaving that afternoon, Mufti Kazmi gave me the bag of chilies he had shown me earlier, and told me that he had blessed them and that I should perform a ritual with the chilies, which I will explain below, once a day for as long as the chilies lasted.

I had seen Mufti Kazmi bring out this knife several times by the time he offered to help me with my injury. Once a man came in with a bad cut on his abdomen, and the *mufti* had performed the same “x” shaped cutting motion over the wound that he had in my case. Another time, a woman came in and told the *mufti* something I couldn't hear, to which he responded by performing once again the “x” shaped cutting motion with a knife. When I asked him later what had ailed the woman, he told me that her husband had recently passed away, and that she experienced significant pain as a consequence. “With my knife I cut out the pain, which is sometimes here, and here,” he said, indicating various parts of his torso. This can be very beneficial.”

There were two primary blessings that he recited while he cut a wound or injury out with his knife. He recited in Arabic, but translated into Urdu for me later. The first *du'a* he translated as: “In Allah's name, I heal you (*tera ilaj kar raha hunh*),” and the second as: “Through Allah's command (*huk'm*), I will heal everything that gives you trouble, be it some evil eye or the glance of some other being.” While reading the Quran *sharif*, he cut out the problem. He had many *ayats* to choose from while performing this ritual, he told me: there is one for problems with the boss at work, and there are others for illness, wounds, and the evil eye. “Whatever comes to my heart when I am listening to the stories. I give the *surat* that comes to my mind.”

Chilies

In addition to cutting out my injury with a knife, Mufti Kazmi gave me a bag of chilies that he had blessed. This was a common prescription for afflictions caused by the evil eye. I heard the *mufti* tell patients repeatedly that they should take one chili from the bag and circle it thrice around the head of the afflicted person. He instructed patients to repeat this routine twice more, each time with another chili. Following this ritual, they were to burn the three chilies in the fire. The ritual required a particular kind of dried red chili, and when patients arrived with the wrong kind of chili, the *mufti* sent them out to buy the correct kind. Mufti Kazmi explained to me that burning the chilies would also

do not own closed-toed shoes or a coat (<http://www.nytimes.com/2010/01/15/world/asia/15delhi.html>). Accessed 1/29/10).

burn any evil eye that was involved in the problem.¹⁴⁴ The *mufti* prayed over the chilies that people brought to him, and these prayers prepared the chilies to be efficacious when they were burned.

White Food, Birth, and Death

Occasionally, when people approached the *mufti* with troubling ailments, he told them that they should not eat white things and should not go where someone had been born or had died. These three instructions always came together. For example, when the young woman came with concerns about the spirit of her mother haunting her marriage, the *mufti* told her to avoid eating white things or going to places where someone had been born or had died. He said the same thing to a number of mothers whose sickly infants were still nursing. This instruction often sparked lengthy conversations about how a nursing mother could avoid white food when rice was such a staple of the diet. The *mufti* told his patients that they could add saffron or some other color to their rice to render it safe.

Mufti Kazmi told me that certain patients should not eat white things because sometimes eating white things can tempt the evil eye, bringing it closer. As for birth and death, Mufti Kazmi said that the afflicted person should avoid the sites of beginning and end of life scenes because both are dirty. While several scholars notice that Islamic healing practices associate places of birth and death with uncleanliness and evil spirits (Boddy 1989 and Bowen 1993), I have only come across an opposed view of the colors white and black. Janice Boddy shows that white foods are particularly conducive to fertility, healthy pregnancy, and are auspicious. John Bowen argues that white is considered to be the light of Muhammad, therefore sacred. However, Mufti Kazmi repeatedly told clients to avoid white foods because they attract the evil eye. Further, in the case of death, he told me that if there has been a murder, or an untimely death, then the evil eye will often come to the place of the death, and patients, who are in a vulnerable state, should therefore avoid them.

Taw'iz and Falita

When I first came to the Old Delhi mosque where the *mufti* lived and worked, I noticed that the tree in the part of the courtyard closest to his office shimmered. As I approached the tree, I saw that what had appeared to shimmer were many small pieces of paper folded into one inch squares. Each square of paper hung from a branch or leaf of the tree by a red thread. Upon leaving the mosque that first day, I noticed a woman tying one of these paper squares to a branch. It was only later that I put the fluttering beauty of this tree together with healing I watched the *mufti* perform each afternoon. These squares, I then realized, were *taw'iz*—pieces of paper on which the *mufti* had written a Quran ayat, or a special number grid representing one of the names of God, and given to a patient.

¹⁴⁴ When Mufti Kazmi prescribed this ritual to me for my hip injury, I decided to try it. My roommate, whose Italian American Catholic family practices strikingly similar exorcisms, helped me. We lived in an apartment that had an open air shaft running from our kitchen to our upstairs and downstairs neighbors' kitchens. When we burned the chilies, we had to run outside because the air was filled with unbreathable fumes. As I heard my neighbors start to sneeze and cough and run outside on *their* balcony, I wondered whether this particular cure might not *cause* as well as alleviate problems.

Just as the *mufti* gave different remedies for different problems, so too the generic form of the *taw'iz* could be used in a variety of ways to secure different results. The manual on spiritual healing by Al-Ghareez that Mufti Kazmi recommended to me gives several love-related *taw'iz* that had to be hung on the branches of a tree to be efficacious. One in particular is relevant to our discussion of marital relationships. Al-Ghareez writes: “If there is no accord or agreement (*mo'a'faqat*) between you and your wife, write this *naksh* and hang it on the branches of a tree. God willing, after a short period while, your wife will be so filled with love that people will be astonished (*ta'aj'jub karna*). This *naksh* holds the Arabic word *ya-aullu* at each corner of a rectangular box. Diagonal lines lead toward the center of the rectangle, but where they would touch, the space is filled with the names of husband and wife. This remedy and this mode of using it was but one of the many ways in which Mufti Kazmi instructed his patients to use the *taw'iz* he gave them.

Taw'iz were the most common remedy that the *mufti* gave to his patients. The *taw'iz* always contained holy words, and they could be used in numerous ways that the *mufti* specified to the patient when he wrote the *taw'iz*. The *taw'iz* consisted either of grids, called a *naksh*, each of whose fields had a number written in it, and whose rows and columns added up to one of the ninety-nine names of God or to a Quran verse. The *taw'iz* sometimes contained a relevant verse from the Quran. Some *taw'iz* had both a *naksh* and a Quran verse. Each letter of the Arabic alphabet has a value, beginning with *alif*, whose value is 1, and ending with *ghain*, whose value is 1000. Thus, any word written in Arabic also has a numeric value.¹⁴⁵ Each *naksh*, the *mufti* told me, has a different sum because each represents its own holy word. The *naksh* that the *mufti* wrote represented one of the names of God. The *mufti* did not give these *taw'iz* haphazardly, for each condition must be addressed by the ayat or name or attribute of God relevant to it. “Just like medicine that the doctor gives,” each *taw'iz* had a different purpose, and remedied a specific condition, the *mufti* told me. While some healers have elaborate systems of using the numerical value of these names to “read” or diagnose a problem, Mufti Kazmi used these values when he wrote his remedies.

Problems of love (*mohabbat*) required sura *ikhlas* (Quran 112), while illnesses were best responded to with the *fatiha* or with one of God’s names. *Al-ikhlas* is one of the shortest chapters of the Quran, and it is important because it affirms the one-ness (*tauhid*) of God:

In the Name of God, the Merciful, the Compassionate
 Say: ‘He is God, One,
 God, the Everlasting Refuge,
 Who has not begotten, and has not been begotten
 And equal to Him is not any one.’

Al-Ikhlas, the name of this sura, is translated into English as “The Sincerity,” or “Sincere Religion” (Arberry 1955, 353). The sura affirms God’s oneness, his eternal nature and his transcendence. It reminds the reader that God cannot be located in the genealogy of human kin relationships, because God was not begotten and will not beget, as John

¹⁴⁵ Annemarie Schimmel’s *The Mystery of Numbers* discusses various mystical number systems, including the Kabala and Islamic number systems.

Bowen has pointed out (1993). The *Ikhlas* also describes God as an “everlasting refuge”: a haven always available to the believer. In addition to meaning sincerity, *Ikhlas* means loyalty and attachment in Arabic, and it has the same meanings in Urdu. Thus, the qualities that the *Ikhlas* elaborates in relation to God are qualities shared in the love between human beings. The book that Mufti Kazmi recommended to me as a comprehensive explication of the art of spiritual healing (which I will discuss further below) prescribes the *naksh* of *Sura Ikhlas* in relation to love. In the book, *A'ine Amliyat*, the author Al-Ghareez, introduces the *naksh*: “This *naksh* is from *sura Ikhlas*. It is an elixer (*ikhsir*) of love and loyalty/sincerity/attachment (*ikhlas*).” The numerical value of *Ikhlas* is 786, and the book reproduces a grid to correspond with this sum (Al-Ghareez, 47). The *naksh* that Mufti Kazmi showed me with the sum of 786 for *Al-Ikhlas* differs significantly from the *naksh* reproduced in Al-Ghareez’s book, suggesting that although the two agree on the love-inducing and maintaining powers of the Sura, their approaches to writing *naksh* differ. *Al-Ikhlas* was also a central verse for John Bowen’s Isak informants, who told him that the Sura invests those who recite it with power because it contains “powerful meanings” (1993, 100).

For sickness, Mufti Kazmi often writes the *fatihah*, or confession of faith, which is the opening chapter of the Quran. The *fatihah* states:

In the Name of God, the Merciful, the Compassionate
 Praise belongs to God, the Lord of all Being,
 the All-merciful, the All-compassionate,
 the Master of the Day of Doom.
 Thee only we serve; to Thee alone we pray for succour.
 Guide us in the straight path,
 the path of those whom Thou hast blessed,
 not of those against whom Thou art wrathful,
 nor of those who are astray.

The confession of faith, with which a person of another faith can become a Muslim or a Muslim can declare his or her faith again, is powerful. The *fatihah* is a speech act: to recite it is to believe even as you declare belief, and to submit to Allah even as you declare your submission. When Mufti Kazmi refers to these ayats, he does so by writing *naksh* whose sums match those of the ayats. Sometimes, Mufti Kazmi writes *naksh* that reflect not *ayats* but names of God. Two examples Mufti Kazmi gave to me were *buduh* and *basita*. The letters in former have a sum of twenty, and the *naksh* he wrote out looks like this:

9	3	7	1
6	2	8	4
3	9	1	7
2	6	4	8

Basita, the appellation that means “giver of prosperity” has a sum of 72, and the corresponding *naksh* looks like this:

18	48	6
12	24	36
42		30

Not all *taw'iz* contain *naksh*. Sometimes, Mufti Kazmi wrote Quran *ayats* on the *taw'iz*. He wrote these *ayats* while he listened to the patient describe his or her troubles (*pareshaniyan*) so that the prescription would match the problem. He almost always completed the *taw'iz* by writing the names of the patient and his or her mother on the paper along with the *naksh* or Quran *ayat*.

Once Mufti Kazmi had written the *taw'iz*, it could be used in various ways. Most commonly, Mufti Kazmi folded the amulet into a small square and gave it to the patient whom he instructed to wrap it in plastic and to tie it with a red string. He instructed the patient either to tie the string around his or her neck like a necklace or around the upper arm. When children were sick—usually, the *mufti* told me, with diarrhea, fever, or vomiting—Mufti Kazmi wrote amulets that the children were to hang around their necks. The amulets' powerful words could also be effective in other ways: sometimes, especially when patients came with problems in love, the *mufti* gave them amulets to hang in the doorframe of the affected house. This way the words' effect permeated the household, rather than warding off the evil eye from one individual child or adult. Mufti Kazmi also instructed several patients to place amulets in strategic parts of the house to target particular troubles. A woman who was having trouble with her husband was told to place an amulet under his side of the mattress. Another was asked whether she would be able to slip an amulet into her husband's pocket without him knowing. These were both ways to harness and target the power of the words even without the knowledge or consent of the person to whom they were directed.

The amulets' words were often distributed among several people, as many of the problems that patients brought to the *mufti* were not personal health issues, but rather relationship troubles. Mufti Kazmi frequently prescribed ingesting the words on the amulet when patients approach him with ailments affecting a whole family or several neighbors. He told his patients to take the *taw'iz* and to steep it in a pot of tea or in a bottle of water. The holy words, which were written in saffron ink, dissolved into the liquid so they could be consumed by everyone involved in the problem. Once I asked the *mufti* why he had told a woman who came to see him about a difficult marital situation to dissolve an amulet's words in a bottle of water. He had told her that she and her husband should drink the water. Mufti Kazmi replied that through the amulet, love would enter the husband and wife, and "if there is love between them, and good behavior, then everything will be fine," he told me. Sometimes people involved in a quarrel would be told to drink from different bottles in which two different amulets had been dissolved. Thus, each of them would be impacted by the words required by his or her particular condition.

Although Mufti Kazmi frequently gave out *taw'iz*, he did not prescribe any of his healing remedies to the exclusion of allopathic treatment. When I asked him one day whether he ever sent people to the doctor, he told me in no uncertain terms that whenever someone came with an illness or a sick child, he always inquired into whether they had

brought the case to the doctor. Sometimes, he would refer people to specific doctors in the neighborhood. Once, when a desperately ill woman was carried in by relatives, the *mufti* blessed her, wrote a *ta'wiz*, and immediately asked his assistant to call a doctor to come see her at the mosque. Rather than arguing that his healing was always sufficient, Mufti Kazmi argued that sometimes it was only helpful in conjunction with an allopath, and that sometimes it was the only remedy that would be effective when allopathic medicine had failed to cure the ailment. For the many complaints that were social rather than medical in nature, allopathic care was irrelevant.

Circulations

The dialectic of writing and speech and the circulation of remedies that animated the healing practice at the mosque was accompanied by another set of circulations: money and documentation. Whenever the *mufti* saw a patient, the patient paid him a small amount of money. Usually, the payment was several rupees, which the patient would place in the *mufti's* hand and the *mufti* would store in his pocket. Occasionally, when the case was more difficult, more money was required. For example, the frequent visitor to the mosque who came with a bag full of bones for the *mufti* to read and work with was required to give the *mufti* fifty rupees. The girls who came to find out whether the upcoming wedding would be safe from spirits even though the bride-to-be's mother had just died were charged one hundred rupees. Several times a week, the *mufti* would have a quiet but firm dispute with one of his patients about the amount of money they had decided to offer him. This always happened in the case of repeat patients. One day a husband and wife arrived together because the wife was experiencing a lot of pain. After the *mufti* had performed his knife remedy and written a *taw'iz* for the wife to dissolve in tea and drink, the husband put some money in the *mufti's* hand as the *mufti* blessed him. When Mufti Kazmi looked at the few rupees he had been given, he objected, telling the husband that this was not enough compensation for the work he had performed. The husband hesitated, and looked imploringly at the *mufti*, but did not argue much before handing over a bit more money. Mufti Kazmi did not always take money. In one case in particular, a woman entered the mosque with a sickly looking baby. Near despair, the woman told Mufti Kazmi that her baby was not well, and that his health was deteriorating because he could not grip her nipple well enough to eat properly. Further, she told him, her husband had earned his living with a small store that had recently burned to the ground. Without this income, she had no money to buy milk for her baby and since he could not feed properly from her breast, she was at a loss of what to do. After blessing her and the child and giving her a *taw'iz*, Mufti Kazmi reached into his breast pocket and gave her a one hundred rupee note. "Take this," he said, and told her to go buy some food for herself. The financial transaction only happened in this direction on rare occasions like this one.

Although the *mufti* did not keep records of the meetings he held with patients, he did give each new patient a card. The front of the card was stamped with a rubber stamp bearing his name, the address and the mosque, the phone number in his office, his mobile phone number and his email address. His discussions with patients were interrupted at numerous times each afternoon by his mobile phone or his office phone. Usually the conversations he had over the phone were brief, and consisted of him telling the person on the other end of the line to come to the mosque to see him. He frequently asked

patients to return to follow up with him, and on the back of the card, he kept a log of when they came to see him, what remedies he had given them and for what problem. When a patient returned, the *mufti* asked for the card before anything else. When patients did not have the card with him, they had to endure a fairly firm talking to before the *mufti* would take out another card and begin the record again. Mufti Kazmi used this record to follow up with his patients about whether they had used the remedies he had given them, and if they had whether they had followed the whole course or had failed to complete the prescription. Thus, although there were no records of the Mufti's healing practice, patients carried with them an account of their trajectory through various stages of healing. Writing, which was the *mufti*'s primary medium for healing, and the command of which contributes both to his expertise and to his authority as a healer, also gave him the capacity to keep track of the remedies he gives and of the relationships he had with patients. His capacity to maintain a written account of his patients was another mode of writing that established the relation of authority and power between him and his patients.

Words ka Impact

If the diagnostic moment of the healing practice required that the *mufti* learn about his patients' complaints by speaking with them or by engaging in other kinds of sensory encounters with them, with the remedies I have described above, he selected, personalized, and transferred holy words into a mobile form. When Mufti Kazmi told me that, "It [my healing] is Allah's word/theology (*Allah ka kalam*) and the words and prayer (*dua*) of the prophet, Hazrat Muhammad, *salila salaam*," he implied that words in the form of theology and of prayer were central to his healing practice. He did not at that point elaborate *how* words were so centrally important. What makes these words powerful, and how does transferring them into a soluble medium give them the capacity to heal a particular injured relationship, mind, or body?

In one of our first formal conversations about his healing, Mufti Kazmi told me: "Reading the verses of the Quran Sharif while I bless someone is very beneficial for sending illness away, for burning the evil eye, and for putting an end to magic." He continued:

Having written the verses of the Quran *sharif* and having written the prayers (*dua*) from the Hadith that the Prophet Muhammad said (*farmana*), having written these words, tying them around the neck is very beneficial. And having written everything from the verses of the Quran *sharif*, maybe in saffron (*kesar se*), maybe with a pen and then putting it in water (*pani main dal-ke*), dipping it in water (*pani main dip kar-ke*), if you give this to someone to drink (*pilate hain*), it is very beneficial.

Words provide the center of gravity for the *mufti*'s description of his work. However, unlike in the description I quoted earlier, here the emphasis is on *writing* these words. The act of writing the Quran verses, or prayers and blessings, creates the conditions within which those words can be beneficial. The process of writing appears to be central for two reasons: first, the act of writing is the act through which words leave the pages of the Quran or the memory of the *mufti* and settle on an accessible surface. Second, the act of writing is performed in dialogue with the patient, and the *mufti* chooses the words to

write through the course of this conversation. The words he chooses are both God's and the patients': they are God's words selected for a specific person. The act of writing, then, is the act through which the remedy is personalized. It is the therapeutic act.

These words were available as remedies because they act. Mufti Kazmi called this action words' "impact" (*words ka impact*). The words that the *mufti* wrote on the *taw'iz* and *falita* were successful because they brought God's word to bear on the body or mind of the afflicted person. Mufti Kazmi explained the relationship like this: "Small words have an impact. When we say something good, we are happy. When we say something in anger, we see red. A person's whole body is angered: words have an impact. We read the mystery of Allah's word (the Quran) and people can benefit greatly from it."¹⁴⁶ The first notable thing about this explanation is that the operative act is the speaking, rather than the writing, of words. In translating the process of healing into language that I, an outsider to the tradition, could understand, the *mufti* removes us from the realm of professional writing into that of ordinary speech. Speech, embodied language, affects the bodies of speaker and recipient. When we speak or hear angry words our bodies become angry. We embody the anger in addition to feeling it change our emotional landscape.

The mystery of the Quran is also the source of benefit for people. The Quran is the word of Allah revealed to Muhammad and written down so that those who read Arabic have access to it. However, in spite of the written form that they now take, the words of the Quran are privileged and powerful because they originated in the mouth of God. Mufti Kazmi is able to read these words and to render them physically available to those who need them. These words pass with authority through the *mufti*'s pen to his patients. They do not reach a person through spoken communication but are transferred through writing into a digestible medium by an expert in the art of amulet giving (*fun amliyat*). God's word is the source of the remedies' power and God's order (*huk'm*) determines the effectiveness of the treatment. It is neither the *mufti* nor his writing that has the effect.

Mufti Kazmi's implicit argument that his *taw'iz*, *falita*, and other remedies spring directly from God's words and orders appears in other contexts where Muslim healing is practiced. In the discussion of what he calls "spells" in Gayo, Jonn Bowen writes that: "Following the dominant Isak view, one may consider a talisman fashioned from Qur'anic verses to be the written form of God's speech" (99). Bowen argues that healers and others who understand talisman's to be God's speech identify the Quran's origins in God's revelation as its source of religious as opposed to magical power. Bowen points out that the Quran itself contains a theory of language that is wary of writing but aware of its importance as a medium of preservation. He turns to the Quran chapter "Cattle" which states:

Had We sent down on thee a Book on parchment
and so they touched it with their hands, yet
the unbelievers would have said, 'This is naught but manifest sorcery.'
(Quran 6: 7).

¹⁴⁶ "Chota words ka impact pardhta hai. Jub hum koi acchi bat bolti hai to khushi hoti hai. Jub hum koi ghusse ki bat bolte hain to ankhe lal ho jati hai. Insaan ka jism pura ghusse main ho jata hai, to words ka upna alphaz hota hai, upne impact hai, aur jo Allah ka kalam hai, usko bhi asrar pardhte hain aur usse logon ko bahut faida hota hai."

Bowen notes that this passage elaborates a tension between writing and speech. Had a written book been sent down, the unbelievers would have been able to touch it and could not, therefore, deny it. Without an evident link to the revelation, anyone who did not already believe in their divinity would be able to dismiss them as magic. Transmitted through the body of the prophet, though, the origins of the Quran's words are more easily identified. Bowen reads this ayat as evidence of "...a tension between the Qur'an as oral revelation and recitation on the one hand, and the received, written form of the Qur'an on the other..." (1993, 98). This tension does not rest on a distinction between speech and writing, but on the distinction between writing grounded in revelation and writing without a connection to God's word. For the Gayo, as for Mufti Kazmi, the word of God can take the form of writing as long as this writing emerges through an authentic link to God's revelation.

Then tension between speech and writing that Bowen identifies in the Quran weaves through the Islamic discursive tradition. Brinkley Messick argues that the primary power and guarantee of authenticity in the Islamic tradition is not writing but speech (1993). In the traditions of the Hadith, the justness and authenticity of words can only be affirmed if they can be linked to the Prophet through a chain of recitation (Messick 1993, 212). Messick argues that the primacy of speech over writing is reflected in Yemeni court proceedings where oral testimony is given greater credence than written testimony. (1993, 212). The court's written records had to be written by a trustworthy Muslim to affirm its authenticity.

The trustworthy Muslim embodies a link in a chain of authenticity. Messick argues that in the Islamic tradition, textual authority is established through ancestry, authorship, dissemination and reputation (1993, 16). The origin of the chain rests in the Quran as the revealed word of God. So Messick writes that:

A genealogy of authoritative texts in Islam must begin with a consideration of the Quran as the authoritative original. The paradigmatic, Urtext qualities of the Quran concern both content and textual form. ...Just as Muhammad was the last, the 'seal,' of the Prophets, and also the first Muslim, the Quran was the definitive and final *kitab*, whose particular authority would initiate and delimit a discursive tradition" (1993, 16).

The Quran is the authoritative origin of the Islamic discursive tradition. Any text or testimony must have a reliable link to the Quran for it to be considered authentic and not "mere sorcery." In this way, the Quran is both the origin of the Islamic discursive tradition and it demarcates the tradition's boundaries. When Mufti Kazmi explains his work, he explicitly articulates a link to the Quran, which he always calls "Allah *ka kalam*." His *taw'iz* find their source, their origin, and their power in Allah *ka kalam*. In his healing practice, as in his *fatwa* practice, Mufti Kazmi is the trustworthy Muslim who has learned his art through apprenticeship with generations of trustworthy Muslims. He learned from his teachers how to read and to recite the Quran, both orally and in writing, so that the power of its words and of its law could guide those seeking to live the lives of good Muslims. In the face of disputes, people either approach the *mufti* for a *fatwa*, which provides them with suggestions about how to proceed in their negotiations or they

approach him to ask for spiritual healing as a mode of negotiating with jinns and other spirits who are causing trouble.

God's command acts as a speech act in this context: it is a command directed at the evil eye or the troubling spirits. The command can be given in multiple forms, and following Tambiah and Weiner, I argue that the word, the deed, and the object are all necessary to the felicity of this healing act (Tambiah 1968, Weiner 1983). The acrid, unbreathable air produced when blessed chilies burn in a gas flame enjoin lingering spirits to depart. Wearing a *taw'iz* with one of the names of God or with a verse of God's words on the upper arm or around the neck delivers an injunction to illness or to bad relations to depart. In the same way, drinking water or tea with holy words dissolved in it delivers a command to the agents that afflict a body or that build barriers in a relationship. Flueckiger writes that although words are the medium for Amma's healing, "the efficacy of the amulets does depend primarily upon the semantic content of their words but upon the spiritual authority they represent and embody and the authority with which they are dispensed" (2006, 68). This authority, Flueckiger elaborates, resides in the Arabic letters themselves, which are "powerful, filled with *barkat* [auspicious blessings.] As the channel through which the revelation was transmitted, they are experienced as the very word of God" (2006, 68). The spiritual authority that inheres in these words moves through a particular medium, one that Mufti Kazmi insisted must match the problem that needed resolution.

Conclusion

Annette Weiner has argued that spells are not only about words and deeds, as Tambiah has argued, but also require objects (1983). She agrees with Tambiah that metaphor and metonymy are the mechanisms through which spells work, so that the ritual object comes to stand for desired characteristics for which it also stands (Tambiah 1968, 189). Tambiah describes the process of magic in the Trobriand context as "contagious action" whereby the ritual object takes on desired characteristics and in turn passes them along to the person to whom the spell is directed. Weiner develops this intervention when she argues that not only are these linguistic aspects of ritual important, but that the right object must be chosen. These objects carry and transfer "hard words": words that if spoken would injure, so they must be appropriate to the task at hand (1983, 702). In this way, objects can do the work that direct discussion cannot. I would like to suggest that something similar is at work here.

In this chapter, I have argued that Mufti Kazmi's healing practice attends to problems that, differently formulated, could be the basis for legal disputes. In this way, his healing acts as one among other forums in which people can have their troubles addressed. However, unlike the other institutions I have looked at in this dissertation, the healing practice is explicitly *spiritual* and not legal. Although the power of the spiritual healing inheres in the powerful language of the Quran and the Prophet's prayers, it is enacted through spells that are at once embodied, spoken, and transferred onto ritual objects. It is not incidental that the troubles that come to the *mufti*'s office are everyday troubles. Rather than a court, which stands dramatically outside the family, or even a *dar ul qaza* institution or *mahila panchayat*, the *mufti*'s office and his healing practices were woven into people's lives. They wore *taw'iz* on their arms and around their necks, and came regularly to see the *mufti*. The practice and habit of visiting the *mufti* was a way for

people to explain and approach their troubles effectively. The space that the healing practice fills in the constellation of adjudication settings this dissertation has analyzed is the place of the ordinary: it is an ongoing practice of mediation through and in relation to which people live out and navigate their daily troubles. Through the objects the *mufti* provides, people seek resolution to their troubles not through “hard words” but through magical work undoing problems often caused by words of the wrong type or temperment or quantity through objects saturated by God’s command.

Conclusion

In this dissertation, I have argued that *dar ul qaza* institutions, *mahila panchayats*, *fatawa*, and healing all inhabit a broad legal landscape that they share with the state's courts. I have used the term "legal pluralism" to suggest that they share a legal terrain with the state. I have tried to show that legal pluralism in this context does not index a set of equally powerful institutions that reside together in a single polity without influencing or impacting one another. Instead, through my analyses of cases, discussions, and disputes in these nonlegal institutions, I have shown that they constitute a "non-legal" normative order shaped by state law and by an Islamic legal tradition. This normative order bears out contradictions and tensions characteristic of legal practice but in the absence of the capacity to bind or to enforce their judgments.

Through my analyses of these institutions, I found that although their decisions are neither binding nor obligatory, they nonetheless have a certain normative force. The normative force appears in the various forms of speech acts and modes of address that make up court cases, *fatawa*, *mahila panchayat* discussions, and healing rituals. As in the Hopi courts Justin Richland discusses, these institutions allow forms of speech and modes of argument illegible in civil courts (2008). Richland's text provides a useful point of comparison because he examines narratives of dispute in the context of tribal courts whose responsibility is to adjudicate cases among the minority native community. Richland shows that disputes in these courts are made up of forms of argument and reasoning that have no place in United States courts. Nonetheless, disputants are able to write their arguments into the court's records, making them part of its history, language, and precedent. As Richland argues, when a Hopi disputant has the chance to tell her story in "Hopi" terms to the court, "both Anglo-style law and the normative orders of Hopi tradition and culture are metadiscursively brought into conversation with one another" (2008, 141). Hopi traditions of arguing and Hopi norms make their way into this legal system. To put it another way, the non-legal normativity of Hopi traditions and customs, in this case around land division, intersect with the legal system but are not absorbed within it. This dissertation concerns a similarly nonlegal normative order—one that is not part of the state's legal apparatus and therefore does not qualify as positive law—that nonetheless constitutes an alternative normative order of religious law. Operating at the margins of state or positive law, these institutions' normative character contests the view that law can only be found in state-authorized courts or that it requires a recognizable site of centralized authority.

Men and women approach these institutions for authoritative advice, for judgments, and for healing. They discriminate between the institutions on the basis of their moral and legal aims, bringing different problems to different institutions. In the *dar ul qaza* institutions, disputants ask for divorces by *faskh* and *khul'* and for marital mediation rather than for inheritance settlements or judgments about maintenance. In these institutions, the state's presence and influence in the court is written into court records in the form of references to civil courts and police and sometimes through direct correspondence with civil court judges. The *dar ul qaza* institutions' inability to enforce property decisions appears to be implicated in women's focus on attaining divorces rather than property through these hearings. *Mahila panchayats* mainly hear disputes between spouses; often the complaints are of physical and psychological violence and the request

is for a divorce. Since domestic violence is a criminal offence and the *mahila panchayat* is not part of the criminal justice system, the *mahila panchayat* mediates disputes but only has the power to reconcile, not to divide, the disputants. Of all the institutions I studied, they are most explicitly caught between the state's universalizing aim to treat all citizens equally and to shield all citizens from violence and its particularizing reliance on a split between the public and the private, which renders certain forms of gendered violence beyond the reach of remedy.

The *mufti's* two practices of mediation answer two different sets of concerns. Men and women ask for *fatawa* to determine the moral and legal consequences of unilateral divorce, to find out how to achieve a desired end, or to learn about their duties and rights of inheritance. *Fatawa* are not legally binding, but offer moral and legal guidance. The *fatawa* bear out a strong relationship between the *mufti's* work and the *qazi's*: women who request *fatawa* about divorce are referred to the *dar ul qaza* institutions where the *qazi* can grant their dissolution, while questions about unilateral male repudiation are answered with *fatawa*. Different types of divorce are therefore handled by different institutions, and the two institutions are part of a shared network. In matters of inheritance, *fatawa* determine which parties are entitled to which property, a question that has rarely arisen in state courts, where the property disputes that have been publicized were about post-divorce property division.

Finally, I argue that the *mufti's* healing practice ought to be considered within the same landscape as the other mediation institutions because although its medium differs significantly from theirs, the problems people seek to have resolved through it fall within the same sphere as those mediated elsewhere. Women and men frequently seek to have personal and relationship problems resolved in addition to physical ailments and psychological disorders. Mediation by healing appeals to the world of spirits where the other institutions built their mediations and arguments primarily around texts and interpersonal negotiations. The healing practice is therefore separated by medium both from the other dispute mediation institutions I look at in the dissertation and from the state courts, with their exclusive focus on precedent, statutes, and textual sources. The kinds of relationship troubles addressed through healing were less conducive to being framed as legal problems than those brought to the *dar ul qaza* institutions or for *fatawa*: they were mostly about general disharmony or concern about family members' behavior. These institutions mediate disputes and troubles at the margins of the marital legal practices of the *dar ul qaza* institutions, *fatawa*, and *mahila panchayat* proceedings. They demonstrate the expansiveness of the normative order of which they are a part.

The specificity of the non-legal normative domain I encountered in Delhi lies in two significant characteristics: these institutions serve Muslims, members of India's largest minority, and they adjudicate disputes relating to marriage and divorce. The figure of the Muslim minority and the specter of marriage haunt the dissertation, perhaps without adequate analysis. In what follows, I offer one way of thinking through the ways in which marriage and Muslims' minority position in India shape the non-legal normative order I that is the explicit concern of this dissertation.

The Muslim minority in India comprises 13% of the population and is about one hundred fifty million strong.¹⁴⁷ It is the most numerically significant minority group in

¹⁴⁷ According to the Council on Foreign Relations (<http://www.cfr.org/publication/13659>. Accessed 5/14/10).

India, and the history of the nationalist movement and the creation of independent India are intimately entangled with its complicated and various political, legal and social positions. As I argue in the introduction, negotiations over Muslims' position in the Indian state significantly took place through discussions and constructions of law. Personal law, in India as in other postcolonial contexts, is the primary site at which the state recognizes Muslims as a single community. The personal law through which Muslims are identified by the state as a single community is limited to adjudicating matters of marriage, divorce, inheritance, succession, maintenance, and adoption—to family matters. These issues of gendered domestic relationships represent the uniqueness of the Muslim community from the legal perspective. The institutions I studied constitute an alternative normative order at this locus of identification. Men and women appeal to them for Personal Law matters, and their advice and judgments are limited to this domain.

For this among other reasons, marriage emerges as the second underlying theme of the dissertation. Marriage and its entailments are the sites of struggle in the institutions I write about. Critiques of marriage—feminist, queer, class—are manifold and some of them disrupt this dissertation, which turns to notice them without, perhaps, adequately addressing them. In the cases I have studied here, marriage is explicitly linked to questions of material life: property division after divorce, maintenance payments during marriage and after divorce, material support for children. Marriage appears as the site at which women can make claims for survival and divorce as the site at which women make claims for the ability to flourish by marrying again or by being released with dignity from their marital homes. Yet marriage is not only a matter of survival but also of social and religious significance. The trope of perseverance articulated both by men and by women when they made claims in the *dar ul qaza* institutions and in the *mahila panchayats* suggests that men and women expect that marriage should offer certain forms of stability and shelter. The complexity of marriage as a legal, religious, and social institution is crucial to the normative force of the nonlegal domain I analyze here.

Although the anthropological literature on the significance of marriage is much too expansive to review here, a brief overview of some contributions opens up a space of intervention. Drawing on Levi-Strauss's argument that marriage is an exchange of women (1969), Gayle Rubin argued that marriage as a "traffic in women" necessarily treats women as mere pawns in a male system of alliance (1975). The critique of marriage that arises from Rubin's argument is that inasmuch as women are mere objects of exchange in a series of transactions conducted by men who form relations with one another through women's bodies, marriage itself reproduces women as objects rather than subjects and thereby as inferior to men. Feminist anthropologists such as Marilyn Strathern have thought and rethought this analysis, asking whether women can and do exercise agency as they participate in this system of exchange (1990). As Lucinda Ramberg puts it, Strathern "shifts our attention from the properties of persons to the question of relations," (2006, 197), arguing that "women's value as wealth...does not denigrate their subjectivity" (331). Women, too, participate in producing networks of alliance through marriage.

In her dissertation on *devadasis* (male and female bodied women dedicated to the goddess Yellama), Lucinda Ramberg picks up on Strathern's and others' arguments about women as relational to show that certain forms of marriage enable women to enter into

relations of exchange and value otherwise unavailable to them (2006). Ramberg argues that dedication, or marriage, to the goddess enables *devadasis* to participate in forms of exchange usually barred to *dalit* women (2006). Marriage to the goddess enables women to procure and keep wealth in their natal families and to become “conduits of value” central to their natal families and to the villages in which they live (2006, 200). Marriage, or dedication to the goddess, refigures kinship and grants women ways of participating in circulations of wealth usually reserved for “male-bodied” people.

How might this insight challenge a rereading of marriage in the context of the institutions I analyze here? It suggests that marriage as a social and religious institution may work in unexpected ways to provide women with room for maneuver rather than simply robbing them of freedoms of movement. Does marriage to men potentially offer a similar possibility of maneuver as marriage to the goddess, or other forms of privilege otherwise unavailable to the women who approach these institutions?

In her *Autobiography of a Sex Worker*, Nalini Jamila touches on the question of marriage both as burden and as means of security and escape (2005). The quotation picked up on the back cover of the book states: “sex workers are free in four respects. We don’t have to cook for a husband; we don’t have to wash his dirty clothes; we don’t have to ask for his permission to raise our kids as we deem fit; we don’t have to run after a husband claiming up rights to his property.” This represents one facet of Jamila’s account: sex work is a form of labor that enables her to support her daughter and to live independently both of her natal family and of a husband. Jamila is explicitly critical of bourgeois forms of marriage. On the other hand, marriage is integral to Jamila’s account of her working life, and she desires the security it can provide, however ambivalently. Jamila first married “by chance” when she sought the help of a man to secure work that would take her out from under her father’s wing; she began to earn money through sex work when her husband died and her mother-in-law demanded money for the care of her two children. She subsequently married several times, and each time her husband provided some financial and social security for herself and her daughter and brought her into a kin network that offered her shelter and child-care. Each time her husband and his kin network abandoned her at some point. Marriage each time transforms Jamila’s networks of care, her access to financial support, and her sense of security even as it remains a precarious and ambivalent source of such support and security. Jamila’s account suggests that marriage as a social and financial institution is a site of ambivalence. Women engage it both strategically and out of necessity.

Marriage appears to be similarly complex in the cases and narratives I recount and analyze in this dissertation. Some feminists have shown that marriage produces and reproduces gender inequality through its oddity as a contract (Pateman 1988) or its tenuousness as a sacrament (Uberoi 1995). Yet the Muslim feminists with whom I discussed the cases and *fatawa* I observed and read located the trouble with marriage in faulty contracts, in economic and social conditions within which contracts are written, and in violations of expectations men and women have of marriage. For them, marriage itself does not represent a problem or an institution that must be abolished but instead one that needs revision, greater delineation, legal and social remaking.

This argument contrasts sharply with a conversation I was part of at the home of one of my good friends in Delhi, a middle class journalist. My friend had invited several of her friends over for drinks. Among them was a woman who works in a well-

established legal education NGO based in Delhi. This friend travels with the organization giving legal rights clinics in rural areas in north India. With glee she told us how one thing she regularly tells the women at her clinics is that they need not marry but can simply continue their romantic relationships without becoming engaged in the ties and expectations and in-law relationships that come with marriage. The women, she told us, regard this possibility with a mixture of excitement and disbelief. They like the idea, but are awed that it might be possible. At this, my friend turned to her and asked: “Do you tell them that you are married?” She looked at us for a moment and responded in the negative. Here lies the tension onto which this dissertation opens. The middle class feminist response to marriage is a strong and well-argued critique often coupled with active participation in the institution. Failure to escape from marriage is cast as a failure of liberation or of achieving feminist aims for lower class women, while participation in the institution of marriage is seemingly untroubled and untroubling in the context of middle class marriage. The questions raised by this interaction mark one arena onto which this dissertation opens and that it demands be further elaborated: how can we, feminist academics and activists, rethink the complexities of marriage, engaging it not as a litmus test of progress or regress, but as an institution in relation to which many women struggle to live their lives—material, social, religious, legal, and emotional? How can we maintain our critical relationship to marriage while examining the social, religious, and class positions that enable our particular form of critique and foreclose others? Marriage appears to be that socially, legally, and religiously marked institution that emerges at the intersection of legal, gendered, and religious norms, bolstering and securing the normative domain that this dissertation has analyzed.

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