

## **Competing Model–*Nikahnamas*: Muslim Women’s Spaces within the Legal Landscape in Lucknow<sup>1</sup>**

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### **Abstract**

*This paper delineates the growing women’s spaces within the legally pluralistic landscape of postcolonial India. Based on empirical data gathered in the city of Lucknow, Northern India, it explores the ways in which (i) Muslim women’s activists seek to carve out space for the creation of gender-just laws within a religious framework, and (ii) how within these women’s legal spaces, orthodox demarcations between secular and religious practice and legal authority become blurred. At the centre of my analysis are two women-friendly versions of the *nikahnama* (marriage contract), which stipulate conjugal rights and duties as well as conditions of divorce and financial support. This paper will contextualise and analyse these counter-hegemonic voices that address matrimonial rights - brought forth by two ideologically different Muslim women’s organisations in Lucknow. In so doing, this paper challenges simplified modernist accounts that depict secular conceptions of state law as incompatible with non-state religious law and norms. Conversely, this paper will demonstrate that current attempts by Muslim women’s rights activists to formulate gender-justice within the domestic sphere in fact, contribute to an emerging legal landscape of interlegality (Santos 1987/2002) - a field characterised by legal entanglements rather than parallel systems of law and morals.*

### **I. Introduction**

Within the last decade, India has witnessed a considerable proliferation of Muslim women’s activists and Muslim women-led organisations and networks that struggle for gender-justice and women’s rights within the framework of Islam. In the context of postcolonial India, little academic attention has been paid to these current efforts. Such a focus, however, would be an important contribution to scholarly debates on women’s rights and gender equality in India. Then within these debates, formal religion, and especially Islam, are invoked as barriers to modernisation and as institutional and ideological obstructions to gender-just legal reform.

This article challenges such simplified modernist accounts of gender equality and Islam that stress the dichotomy of non-state law versus state law, by highlighting recently renewed endeavours of Muslim women’s rights activists to re-articulate gender-justice within the framework of Islam. Based upon empirical material collected over the course of eight months of fieldwork in Lucknow,<sup>2</sup> northern India, this paper analyses attempts of two ideologically diverse Muslim women’s organisations, namely the All India Muslim Women’s Personal Law Board

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<sup>2</sup> The city of Lucknow, with its sizeable Muslim population, features a variety of Muslim societal organisations ranging from orthodox men-dominated institutions such as the All India Muslim Personal Law Board or the conservative All India Shia Personal Law Board to recently established Muslim women’s rights organisations. The latter category includes the progressive All India Muslim Women’s Personal Law Board and the secular Indian Muslim Women’s Movement (*Bharatiya Muslim Mahila Andolan*). Given this diversity of religious institutions concerned with questions around law, the city of Lucknow hence features a rich and complex legal pluralistic landscape that is ideal for the study of competing versions of Muslim family laws in terms of interlegality.

(AIMWPLB hereafter) and the *Bharatiya Muslim Mahila Andolan* (BMMA hereafter), to publicly contest the parameters of women's subjectivity within marriage under Islamic law through the release of their own Islamic marriage contracts (*nikahnama*).<sup>3</sup> In India, an official and recognised form of the *nikahnama* does not exist therefore there is no consensus on its stipulations. Muslim women's organisations have made use of this legislative void. In 2008 they have challenged orthodox and conservative discourses on matrimony brought forth by the religious clergy, which, they argue, deny Muslim women numerous rights inherently granted to them by Islam, with the proposal of a women-friendly model-*nikahnama*. These middle-class activists justify their demands for gender-justice by referring to both the Indian Constitution and the *Quran* in order to claim their rights as Muslim women as well as citizens of India. In doing so, they create a necessarily plural legal space that allows for the conceptualisation of the *Quran*, as well as state administered religious law and the Indian Constitution not as conflicting but as synergetic and as conducive to gender-justice (e.g. equality, dignity, equal legal protection by the state and anti-discrimination on the grounds of sex).

This struggle of Muslim women's activists for gender-justice in the domestic sphere reflects an increasing heterogenisation of Islamic ideology and practice underway within the Muslim community of postcolonial India. Gender equality in this context is uneven and complex, indicative of a multilayered process of negotiation within the broader, legally pluralistic landscape. The spaces being carved out by Muslim women's activists in Lucknow who employ their own model-marriage contracts arise from the momentum of the multilayered, trans-local struggles between a variety of societal actors on the question of 'what' is the correct interpretation of Islamic laws and on 'who' is authorised and legitimised to set the parameters of the conjugal relationship in Islam. This paper will provide insight into a small part of these institutional struggles concerning concepts of 'correct' and 'Islamic' interpretations of women's matrimonial rights. It intends to analyse the means by which Muslim women's activists challenge the concept of gender inequality as grounded in non-state legal practice and ideology. It will be illustrated that these particular female legal spaces are characterised by a cross-fertilisation of state-led and societal discourses on gender-justice within the domestic sphere. In this respect, the legal mobilisation of Muslim women in Lucknow contributes to a more openly emerging landscape of interlegality. This is a landscape where legal as well as social boundaries are porous and in flux, and where legal authority is constantly contested.<sup>4</sup>

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<sup>3</sup> The author has collected all versions of the model-*nikahnama* discussed in this paper. A *nikahnama* is a religious contract that can be oral or written. The written form of the contract becomes valid with the signature of the groom, of the bride, the bride's guardian and of the witnesses to the wedding. So, marriage (*nikah*) in Islam is viewed as the contractual agreement between the groom, the bride and the bride's guardian. For a Muslim wedding to take place, the bride and her guardian must both agree on the marriage. From a jurist perspective, the Islamic marriage contract has a rich socio-legal life. The Islamic marriage contract can be amended and altered as according to Islamic school, religious practice, individual needs and expectations, time and space. For instance, the law of countries such as Bangladesh, Pakistan, Sudan, Algeria, Iran or Tunisia recognises the right of the spouses to negotiate the terms of the marriage as long as they are not contrary to the textual sources of Islam, or, to the very meaning of marriage. There, couples have the option to negotiate and include a wide range of conditions to the marriage in their marriage contract (e.g. maintenance, employment options, place of residence, educational options, freedom to travel or visit relatives, division of household responsibilities etc.) In the city of Lucknow, as elsewhere in India, the most widely used form of the marriage contract is simple and contains no more than the name and the signature of the couple and the guardian of the bride, the witnesses to the ceremony and the *qazi* who has solemnised the marriage. In some cases, it lists the amount of money (*mehar*) awarded to the bride at the time of the marriage. This form of the written marriage contract can be purchased in the markets of old Lucknow for Rs. 10-50.

<sup>4</sup> The concept of interlegality, as conceptualised by Boaventura de Sousa Santos (1987/2002) defies legal centralistic approaches that assume the state's monopoly of the production of law. Interlegality also speaks against classic legal pluralism, which although it acknowledges various socio-legal systems, conceptualises state and non-state law as parallel systems of ethics and moral (1987: 280-281). Unlike these static approaches, interlegality stresses the porosity and fluidity of legal (and social) boundaries that results in the entanglement of legal codes and morals among the different legal systems. It promotes a view of law as fragmented and of normative orders as overlapping and competing rather than distinct (1987: 298).

In what follows, this paper first situates the two female versions of the model-*nikahnama* within the broader institutional context, and highlights some earlier efforts by Muslim women and men to change the legal and ideological practices of gender within conjugality by means of the formulation of a *nikahnama*. Second, it analyses in depth the two women versions of the marriage contract. It explores the ways in which Muslim women's legal and hermeneutical intervention challenges and fragments normative and patriarchal discourses on Islamic practice and ideology in order to create a female space of autonomy.

## II. Contextualisation of the female versions of the gender-just model-*nikahnama*

Muslim women's public struggles and contestations around the formulation of an appropriate and Islamic version of the Islamic marriage contract (*nikahnama*) are not recent phenomena but can be traced back to colonial times. Already at the beginning of the 20<sup>th</sup> century, upper class Muslim women's activists in India sought to challenge orthodox interpretations of the Islamic marriage by reinterpreting the religious parameters of female subjectivity within conjugality. In so doing, they felt that the written *nikahnama* offered a viable avenue through which problems of unilateral divorce, maintenance, polygamy and property could be tackled (Kirmani 2011b). Later, in the 1930's, Muslim women's activists in India argued for the expansion of women's options for divorce, and for the curtailment of the husband's unilateral right to divorce. For instance, the non-sectarian All India Women's Conference, spearheaded by its Muslim President Mrs. Sharifa Hamid Ali, prepared a draft of a Muslim marriage contract containing stipulations that allowed women to divorce under certain conditions (Minault 1998: 150). Such early legal mobilisation by women's activists in colonial India failed, however, to garner support for actual 'legal consciousness'.<sup>5</sup>

In the 1990s, the growing Hindu-Muslim communalism propelled a political approach by the state to locate family laws within the private sphere of religious and ethnic communities and hence rendering it unreachable for legal reform by the state.<sup>6</sup> In other words, it appeared that the state complied with the claims of the Muslim representatives who lobbied the government for a protected legal space of Muslim Personal Law that is excluded from state interference (Hasan 2000: 132). In this context, the figure of the Muslim woman as a pious and undecayed symbol of authentic Islam became generalised instead as a symbol of the Muslim community and of the Muslim family (Sarkar 2004:238–239). Struck by the continuing desolate legal and social status of Muslim women in postcolonial India, Muslim women's rights activists began to amplify their voices for legal reform and gender-just interpretation of the Islamic laws in the area of the family in the 1990s and demanded further protective measures for Muslim women. For example, urban Muslim women's organisations and networks, such as the Muslim Women's Rights Network, the Muslim Women's Forum, the *Awaaz-e-Niswan*, and STEPS Women's Development to name a

<sup>5</sup> Merry (1990: 5) understands legal consciousness as "the way people conceive of the "natural" and normal way of doing things, their habitual patterns of talk and action and, their common-sense understanding of the world".

<sup>6</sup> The political debates that have surrounded the famous Shah Bano case have among others contributed to the political polarisation of Hindus and Muslims. The Shah Bano case is about a Muslim woman has been granted maintenance from her ex-husband as according to the secular Section 125 of the Criminal Procedure Code. The judgment has outraged the Muslim clergy, or more precisely the AIMPLB, who felt that the court has interfered in Muslim Personal Laws by making a decision, which is not according to Islam. The ensuing political debates and controversies around the judgement, which resulted in the enactment of the Muslim Women (Protection of Rights on Divorce) Act in 1986, centred on the question of whether or not the court has the authority and jurisdiction to determine rights in the area of family in regard to the Muslim community. Thereby, the question of women's rights and women's citizenship has been completely sidelined. The Muslim leadership has deployed the Shah Bano case to couch the issue of Muslim Personal Law in a rhetoric that stresses the need to protect Islamic tradition and culture from state interference. This is in a politically charged context, where the Hindu nationalist increasingly emphasised the need for a Uniform Civil Code, which the clergy felt, was just a strategy to bring the Muslims into the Hindu fold and deny their separate cultural and religious identity (Hasan 1998: 74). The fact that the state has acquired partial control over the adjudication of Muslim with the pronouncement of the Muslim Women (Protection of Rights on Divorce) Act in 1986 has become an established interpretation after the Danial Latifi case of 2001. There, the Supreme Court ruled that Muslim women are entitled to maintenance until she remarries. This stands in contrast to the original wording of the 1986 Act, where maintenance was restricted to the period of *iddat* as according to the *Shariat*.

few, have demanded extensive changes in Muslim Personal Laws on the one hand, and appropriate gendered practices on the other. One of their strategies was to demonstrate that they could engage in processes of *ijtihad* (legal reasoning) regarding textual sources of Islam such as the *Quran*, *Hadith* and the *Sunnah*. The act of *ijtihad*, which is legal reasoning with the aim to reform religious thought and practices, is central to women's claim to authorisation of law-making. Under this respect, Muslim women's activists publicly reasoned that *nikha* is not an act of worship (*'ibadat*) where the scope of interpretation and rationalisation is limited. Rather, they argue, marriage falls into the realm of the private (*mu'amalat*) within which the relationship between humans is regulated and not between them and God. The realm of the private, Muslim women's activists assert, remains open, almost with no restriction, to rational consideration. The textual sources of Islam are hence subject to interpretation and are changeable rather than absolute (Kirmani 2011b: 58, Vatuk 2008: 490, Subramanian 2008: 656, Mir-Hosseini 2003: 11). In extrapolation, they demonstrated their right to engage in law-making itself, through the formulation of their own *nikahnama*.

In the early 1990s, a Mumbai group that includes lawyers, academics and NGO representatives made the attempt to draft and disseminate a women friendly model-*nikahnama*. The new model contract, which tackled problems such as polygamy, maintenance and divorce, was presented to the All India Muslim Personal Law Board (AIMPLB hereafter) in 1994 but without success (Vatuk 2008: 505–506, Hussain 2006: 4, Subramanian 2008: 658, Kirmani 2011b: 58). The AIMPLB did not embrace the document due to internal discrepancies regarding the interpretation of *triple talaq* (Hussain 2006: 4). Despite the AIMPLB's rejection of this women-friendly contract, however, the clerics began to acknowledge the nascent legal mobilisation of Muslim women and their growing engagement in the area of law-making. So as not to forfeit its legal authority and monopoly of religious interpretation, the AIMPLB started to pay more attention to reforms in the area of Muslim family law. For instance, the AIMPLB began to demand that all Muslim women be given inheritance rights involving agricultural land, as well as a share in agricultural income. The Board also published a booklet specifying the forms of Islamic family life (Subramanian 2008: 658). So, as part of the AIMPLB's effort to minimise the legal mobilisation and intervention by the fast-growing urban Muslim women's organisations and networks, the Board published a model-marriage contract in 2005. Whereas the initial draft of this contract followed some of the suggestions made by Muslim activists and gave women a number of rights, such as the right to unilateral divorce (*khul*)<sup>7</sup>, the right to live separately if the husband marries someone else, the right to retain all gifts that the couple received during marriage, and a voice in regard to polygamy, the final document does not include these stipulations, due to internal discrepancies in the Board (Subramanian 2008: 658).

The model-*nikahnama* that was finally released by the AIMPLB in 2005 is a small document of four pages in Urdu. Like all the other *nikahnama*, this document consists of multiple sections. One section is the actual *nikahnama* that mandates the signature of the bride, the groom, and the father or guardian of the bride. The second part of the marriage contract is called the *iqrarnama* or agreement, whereby stipulations regarding the process of dispute settlement,

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<sup>7</sup> *Khul* is an extra-judicial initiated divorce by the woman, in which she asks her husband to release her from the marriage in return for some 'payment. In most cases, a woman has to forfeit the *mehar* (also spelled as *mahr* or *mehr*), or whatever of its payment is outstanding, and her right to maintenance during the time of *iddat*. Additionally, the husband may urge her to waive her rights to retain custody of the children if they are over four years of age. The negotiations over whether or not the wife is granted the right to *khul* usually take place in presence of a *qazi* as per example in the *Shariat*-court. Usually, the *qazi* would try to reconcile the couple and only if it appears clear that there is no chance of reconciliation he advises the husband to accede to his wife's request. The statistics from the *Shariat*-court in Lucknow show, that Muslim women do not opt easily for *khul*. Of the 512 cases that have come to the *Shariat*-court within the last five years, only 16 cases have been filed by women under *khul*. Most cases (353) have been filed under *faskh* (nullification of marriage by the *qazi* and without the consent of the husband). In this case, a man admits that he mistreats his wife but he does not want to divorce her, so the *qazi* can end the marriage. Whether or not the woman gets her *mehar* and the maintenance during *iddat* depends upon the husband. (Interview with the secretary at the *dar-ul-qaza* in Lucknow, January 13, 2010).

financial transactions at the time of the wedding, property, inheritance, divorce etc., can be made. The third section, called the *hidayatnama*, lists the guidelines for the marriage under *Shariat*-law. The document prepared by the AIMPLB adopts a view on law that is strongly image-based, and that depicts the matrimonial relationship in terms of metaphors.<sup>8</sup> Drawing on the textual sources of Islam, this *nikhanama* describes marriage as a 'gift from God' or a 'service to God'. It holds that the conjugal relationship rests 'on mutual love, mercy and respect' and that the spouses are 'each other's garments'. This contract stresses the difference in nature between women and men and their respective and specific duties and responsibilities, and attaches importance to the wife's moral behaviour and sexual conduct.<sup>9</sup> For example, the *hidayatnama*, which sketches the guidelines of a Muslim marriage, declares that it is the wife's duty to duly 'obey' and 'honour' her husband. It requires that the wife seeks her husband's permission to step out of the matrimonial home, though it 'allows' the wife to visit her parents and relatives and holding that the husband should safeguard her 'honour' and 'respectability' when the 'need' arises. He, on the other hand has to assure financial security for his wife and it is his responsibility to provide food, clothes and shelter.

The AIMPLB's version of the *nikahnama* only introduces minor reforms. For example, it mandates: a strict procedure of dispute settlement to prevent rushed divorces, the requirement of a written record of all marriages and their copies to be given to the bride, the groom and the office at the *Shariat*-court, and the mandatory presence of parents and guardians at the marriage in order to prevent forced and clandestine marriages. Nevertheless, this *nikahnama* does put forward some reformist features. It requires the husband to give the *mehar* to the bride in tangible assets such as jewellery, gold or silver at the time of the wedding so as to avoid inflation.<sup>10</sup> It does not provide any safeguards against men leaving their wives without sufficient maintenance, and has ignored issues such as marriage of minors, polygamy and the woman's right to divorce either by *khul* or by the delegated right to divorce (*talaq-e-tafweez*). It only mentions that the *triple talaq* is 'avoidable'. Moreover, the *iqarnama* says that in case of conjugal infringements, the couple is subject to the exclusive arbitration of the *dar-ul-qaza*. In other words, this section seeks to foreclose the couple's option to address the state courts if a dispute arises. This contract is hence a reflection of the clergy's current efforts to keep state law out of Muslim law regulation and an indication of their preference for informal self-regulation of family law matters. In this respect, this contract re-establishes the authority of the AIMPLB for the administration of the family hence strengthening the legal and moral boundaries between Muslims and the state.

Other men-dominated religious establishments have also supported gender reforms by means of the *nikahnama*. In November 2006, the All India Shia Personal Law Board (AISPLB hereafter) released its own version of the model-*nikahnama*, as formulated according to the Shia-school of jurisprudence. The result is a ten-page document available in Urdu and in English. Apart from a statement by the AIMPLB in the media that declares this version as 'irrelevant', the release of this *nikahnama* has otherwise been received quietly. The most important advancement made by this *nikahnama* was to delegate the right to divorce to the wife under certain

<sup>8</sup> Such a rich and metaphoric legal language has been termed by Santos as the 'biblical style of law' (Santos 1987: 295). Santos (1987: 295) explains the concept of the biblical style of law as an approach to law, which "presupposes an image-based legality characterised by preoccupation with inscribing the discontinuities of legal interaction into the multilayered contexts in which they occur, and with describing them in figurative and informal terms, and through iconic, emotive and expressive signs".

<sup>9</sup> In this spirit, the feminist Carol Pateman (1988) speaks of the marriage contract as a sexual contract, which establishes men's access to women's bodies. She argues that the marriage contract is not an agreement between two individuals, as theorised in liberal theory, but the marriage contract implicitly and explicitly stresses the differences of the sexes.

<sup>10</sup> However, the stipulation about the *mehar* has to be read carefully. Then it does not say anything about the amount that has to be paid as dower. The judge of the *Shariat*-court in Lucknow, for example, has told me in an interview that he had paid his wife a *mehar* of one hundred and seven rupees. This amount was fixed according to the amount that was given to Mohammed's daughter, Fatima at the time of the Islamic revelation. This amount, however, does not protect a woman from financial despair after divorce.

circumstances. (*talaq-e-tafweez*). These are: if the husband fails to provide maintenance for longer than four months during the subsistence of the marriage, if his whereabouts are unknown over a time-period of four years, if he mentally and physically tortures his wife, or if he forces her into sexual relations with other men. Moreover, this Shia version further curtails the husband's right to unilateral triple *talaq* in one sitting, a practice that the Shia consider un-Islamic and unconstitutional due to its discriminatory effect on women. It also advocates that divorced women should receive alimony beyond the period of *iddat*, until they are able to support themselves. *Maulana* Athar, the president of the AISPLB and the author of this *nikahnama* explains in an interview that although the latter stipulation corresponds with the contested Section 125 of the Criminal Procedure Code wherein the woman is entitled to maintenance even beyond the period of *iddat*, it has also been brought into accordance with the Islamic concept of humanity by appealing to the husband's humanitarian responsibility toward his former wife.<sup>11</sup> This way, Athar says, he could avoid the critics of the clergy who reject state-regulated Muslim Personal Law as the official legal position.<sup>12</sup> Here, the Shia-*nikahnama* cautiously softens the boundary between secular state and informal law by dragging state law into societal laws. However, the gender-friendly advancements brought forward in this *nikahnama* are not binding. The *nikahnama* declares that it is not mandatory for the parties to accept the conditions laid down for the groom and bride in this model-*nikahnama*. This stipulation is not only a reflection of the absence of an authority to actually enforce the stipulations made in the contract, but, moreover, indicates the political implications of this marriage contract. From a perspective of politics, the question of whether or not the stipulations made in the contract are actually enforceable might be less pertinent than the fact that the contract constitutes an inherent part of the political debates around marriage and the family in Islam.

Disappointed by these male versions of the model-*nikahnama*, and in particular by the one drafted by the AIMPLB, these Muslim women's organisations challenged the clergy's interpretation of the religious texts as well as their authority of law-making with the release of their own model-*nikahnama*. In their view, these documents fail to address such issues as: the exclusive right of the husband to ex-judicially divorce his wife by simply uttering the word '*talaq*' three times in one sitting, the prohibition of polygamy, and verification of the couple's age at the time of marriage for prevention of child-marriage (Vatuk 2008: 505-507, Hussain 2006: 4).<sup>13</sup> Moreover, Muslim women's activists in Lucknow felt that their identities and rights as citizens were seriously jeopardised by such patriarchal interpretations of matrimony. In this regard, they claim that their activism is crucial for awareness building among Muslim women and men, which, they hope, would eventually result in socio-legal change.

### III. Muslim Women's Interpretations of the Muslim Marriage Contract

Against the backdrop of such patriarchal constructions of conjugality, the question of how Muslim women's activists square entrenched patterns of gender hierarchy with principles of gender-justice comes to the fore, and will be discussed in the following.

Muslim women's-rights activists in Lucknow contend that a model-*nikahnama* drafted entirely by women was necessary in order to question the clergy's discriminatory interpretation

<sup>11</sup> Though not mentioned by *maulana* Athar, this stipulation of the *nikahnama* also corresponds with the Muslim Women (Protection of Rights and Divorce) Act of 1986. Recently in 2001, the Supreme Court has read Section 3(1)(a) stipulating the ex-husband's responsibility to pay his former wife a 'fair' and 'reasonable' provision of maintenance in terms of Article 14 and 15 of the Indian Constitution. There the Supreme Court held that a fair and reasonable provision extends the period of *iddat* and applies until she remarries. See Danial Latifi vs. Union of India: <http://www.legalserviceindia.com/article/1141-Danial-Latifi-v.-Union-of-India.html> (accessed August 23, 2012)

<sup>12</sup> Interview with *maulana* Athar in Lucknow, February 24, 2011.

<sup>13</sup> For the reactions of Muslim women's groups and women's networks on the release and content of the AIMPLB's *nikahnama* see: <http://www.frontlineonnet.com/fl2211/stories/20050603003303600.htm> (accessed April 30, 2012)

of the textual sources of Islam and hence challenge their authority of interpreting religious texts. In their own interpretation of the conjugal relationship, they posit their quest for gender-justice neither within an orthodox Islamic nor a Western liberal discourse of marriage and gender. Rather, they exhibit an approach that strives to maintain the balance of their identity as ‘good Muslims’ on the one hand and Indian citizens on the other. These Muslim women’s activists command an eloquent knowledge of Islamic laws as well as state-governed Muslim Personal Law, Criminal Law, the Indian Penal Code and transnational human and women’s rights. The latter often appear, although to a different extent, in Muslim women’s progressive discourses on gender-justice. Muslim women’s rights activists in Lucknow, as elsewhere, are eager to be consonant with transnational human and women’s rights as well as secular state law. Integrating discourses on human rights and equality in a liberal sense is thus a common feature in the practice of Muslim activists. This happens in most cases not in terms of a juxtaposition but in terms of the synergies and the potential of power that are inherent in the combination and vernacularisation<sup>14</sup> of these different legalities. These activists are hence fluent in a variety of legal languages, which they combine as well as fragment in order to challenge or even subvert hegemonic legal discourses on gender. Doing so, they create a legal space that allows for a conceptualisation of the *Quran*, the state administered religious laws, and the Indian Constitution as synergistic rather than conflicting, and conducive to the accomplishment of gender-justice (e.g. equality, dignity, equal legal protection by the state and anti-discrimination on the grounds of sex). In their opinion, these legal frameworks are not mutually exclusive but viably complementary. Rather than opting for one or for the other, both Muslim Women’s organisations, the AIMWPLB and the BMMA, view the *Quran* and the Indian Constitution as two different expressions of the same object - human dignity. The only notable difference between these two representations of human dignity is, in their view, language and not content. Such an approach renders the distinction between state and non-state, or religious and secular laws, as often stressed in liberal discourse fuzzy and unclear, and subject to different legal perspectives.

### 3.1. The All India Muslim Women’s Personal Law Board’s Version of the Islamic Marriage Contract

In March 2008, the AIMWPLB released its own model-*nikahnama*, a seven-page document available in Hindi and Urdu.<sup>15</sup> Shaista Amber, the president of the AIMWPLB and author of the document argues that in India, where most women remain uneducated and ignorant about their rights, a number of ‘un-Islamic’ and gender-unjust practices have been established as law within conservative religious circles. Therefore, a *nikahnama* that stipulates the rights and duties of husband and wife according to the *Quran* and the *Hadith* is needed. In order to ensure that women can legally enforce the rights set forth in this *nikahnama*, Amber lobbies the state to recognise this document.

The release of a model-marriage contract entirely drafted by lay-women and not clergy has created much controversy among the Muslim community in Lucknow. Whereas the

<sup>14</sup> In the context of global women’s human rights, Sally Engle Merry (2006) explains vernacularisation as a process that entails the extraction of the human rights language and its adaptation in the local context. Crucial to such a process are ‘knowledge-brokers’, who operate in the ‘middle’ or, in between the local and the global, such as rights activists, lawyers, policy makers, who ‘[...] refashion global rights agendas for local contexts and reframe local grievances in terms of global human rights principles and activities’ (2006: 39).

<sup>15</sup> The AIMWPLB was founded by middle-class Muslim activists in March 2005 as a response to the Muslim clergy’s patriarchal and essentialist interpretation of Islamic ideology and law regarding marriage and divorce. The AIMWPLB is constituted of a 50-member committee and a loose network of several thousand members spread over different states in north India. The number of members, however cannot be verified as the AIMWPLB does not have them on file. The sphere of its activities ranges from spiritual gatherings and religious education over legal advocacy to the mediation of family disputes. As a part of their strategy, the AIMWPLB lobbies the state to secure Muslim women’s rights as citizens under the Constitution, as Muslims under Islamic laws within MPL, and to enhance women’s political representation. See their website: <http://www.muslimwomenpersonallaw.com/index.html> (accessed August 24, 2012)

*nikahnama* was welcomed by women's rights organisations all over the country, the clergy has deemed the document a 'joke' and a 'public stunt'. They have publicly defamed Amber as a *kafir* or non-believer who lacks the religious knowledge and authority to formulate a *nikahnama* in accordance with *Shariat*-laws. Moreover, conservative religious scholars condemned the AIMWPLB's claim to state authorisation of their proposal as an attempt to curtail and further fragment their legal authority.<sup>16</sup> Considering this harsh public critique, the dissemination of this women-friendly document turned out to be difficult. Amber's attempts to have her *Shariat-nikahnama* sold in local stores in the old part of Lucknow failed. As she stated, the vendors were afraid that the Muslim clergy would exercise repression. So for now, the Hindi-version of the *nikahnama* can be downloaded from the Board's website, and is distributed randomly amongst members of the AIMWPLB.

This reactionary stance of the *ulema* toward alternative formulations of the model-*nikahnama* poses a great challenge for Muslim women's activists, who have entered and operate within a socio-legal space hitherto reserved exclusively for men.<sup>17</sup> The AIMWPLB has been wary not to step outside the line of 'the acceptable' with their own formulation of the model-contract. Their strategy was not to directly confront the dominant discourse on gender and Islam, but rather to gain recognition and acceptance within existing constraints. Amber believes that working for gender-justice from within an Islamic framework is indispensable. Stepping out of the framework of Islam would, according to her, render their efforts for legal mobilisation irrelevant to the majority of the Muslim community and lay them open to the alleged charges of being 'irreligious' and of 'undermining Islam'.

This *nikahnama* therefore cannot be understood simply as an open claim for secular women's rights, but as Amber has put it, the contract instead 'cunningly hides' the fundamental Constitutional rights it confers (e.g. age of consent, her right to legal protection and to live in dignity). What Amber refers to as 'hiding' is actually a process of vernacularisation wherein constitutional values are combined and merged with religious knowledge, idioms and practices. This allows Amber to minimise the critics of the conservative religious representatives, who draw a sharp line between secular and religious laws. So, in a context within which women's legal mobilisation is constrained, the conceptualisation of gender-justice as brought forward in this *nikahnama* cannot be understood against Western, liberal parameters. Rather, the analytical eye has to adopt what Santos (1987: 288) has called, a 'large-scale' or microscopic view of the law in order to appreciate the subtle advancements concealed within seemingly normative formulations of Muslim women's rights. The fabric of Muslim women's rights, woven in this *nikahnama*, displays fine patterns of interlegality where secular and religious conceptions of women's rights are combined and vernacularised. Such processes of interlegality render visible the actual working of the state and non-state dimensions of law on a trans-local level.

In its introduction, the *nikahnama* advises the couple on how to lead their conjugal lives, and encourages Muslims to duly follow the rules as set forth in the *Shariat*, listing crucial *Quranic* textual sources in regard to the woman's right to *mehar*, property, maintenance during *iddat*, polygamy and divorce. At first glance, Amber's vision of the conjugal relationship as set forth in this *nikahnama* does not seem to substantially differ from conservative conceptions that

<sup>16</sup> For an in depth discussion of the responses that have surrounded the release of the AIMWPLB's version of the *Nikahnama* see: Venkitesh Ramakrishnan, *Frontline*, April 11, 2008. <http://pay.hindu.com/ebook%20-%ebf120080411part2.pdf> (accessed April 19, 2011)

<sup>17</sup> Among Muslim communities in India, the public space is highly men-dominated. Muslim women are not only underrepresented in political and legal positions, they are also kept back from praying in public *mosques*. Given these circumstances, Muslim women's activists have been persistent in pushing the boundaries of the highly gendered public space that circumscribes the radius of women's activities. For instance, the Shaista Amber, the president of the AIMWPLB, has built a women's only *mosque* near Lucknow and a female *qazi* solemnised the marriage of the Naish Hasan, a co-founder of the BMMA. These advances into otherwise traditionally strongly male-dominated arena have attracted considerable media attention both nationally and internationally.



emphasise conjugal duties over rights. Similar to the conservative versions of the marriage contract, this *nikahnama* adopts an approach, which stresses two separate sets of rights for men and women in marriage. Women are prompted to create a domestic environment of love and harmony while men are responsible for their wife's financial welfare. However, contrary to the male-formulated versions, in this *nikahnama* women's subjectivity is not conceptualised in terms of her duty to obey her husband. Rather, this document appeals to the bridal couple to respect and honour each other. The discourse on respect and honour, as employed in this *nikahnama*, allows the woman to demand certain obligations from her husband as well. For example, that he refrains from forcing her into domestic labour, that he provides for her financial maintenance, that he upholds his own fidelity and that he psychologically supports his wife. In this respect, Amber is in line with the epistemology used by many Muslim women's activists in Africa, Malaysia, Iran, Egypt and the US, who see no contradiction in fighting for gender-justice outside the realm of the state within a discourse that stresses biological and social differences between the genders (Mir-Hosseini 2003, Tripp 2003, Foley 2004, Badran 1991, Hatem 1998, Moghadam 2002, Wadud 2009, Hassan 1995).

This discourse on mutual respect and honour mentioned above penetrates the socio-legal imagery of the conjugal relationship throughout the whole document. For instance, the section that lays down the conditions under which a woman has the right to initiate a divorce reflects such a discourse. Since husbands often divorce their wives over trivial matters and even while physically absent from them, the AIMWPLB has included a clause in the section on *talaq* that prohibits *triple talaq* through e-mail, SMS (short message service), phone and videoconferencing. In case the husband divorces his wife in such a disrespectful manner, the *nikahnama* stipulates the wife's right to take *khul*. *Khul* means the extra-judicial separation initiated by the wife where she asks her husband to release her from the marriage in return for some form of payment. Furthermore, the *nikahnama* asserts that divorce is only valid after it has gone through a mandatory process of arbitration over the time-period of three months, as per *Shariat*.<sup>18</sup> This includes the practice of *talaq-e-bain*, a term delineating that if the husband has pronounced *talaq* twice-only before deciding to remain in the marriage, the couple can be remarried in the presence of a *maulana*. This requirement aims to prevent the desertion of women, and to give the couple a chance to reconcile. The third *talaq*, however, is final. Once the divorce is pronounced, the husband is obliged to give his ex-wife 'a warm farewell' and the *talaqnama* (decree of divorce) must be read aloud by a *maulana* or scholar in the presence of two witnesses.<sup>19</sup> In the absence of divorce, any woman can opt for separation if the whereabouts of her husband are unknown for the duration of four years, if he tortures her, if he commits adultery or if he refused to disclose human immunodeficiency virus (HIV) status at the time of the marriage.

Furthermore, the section that stipulates the financial rights of the wife is couched within a language that stresses the notion of respect. This section mandates the husband to treat his former wife kindly and respectfully after divorce. In this manner, the husband cannot deny shelter to his ex-wife in the matrimonial home during the period of *iddat*, nor has he the right to claim her property. Conversely, it is the husband's duty to pay her *mehar* to the best of his abilities. Although the *nikahnama* encourages the husband to financially support his wife beyond the *iddat* period in order to protect her from destitution, it is not a declared mandate. This also reflects the common practice of the High Courts in India that tend to interpret the terms 'fair' and 'reasonable' provision of the Muslim Women (Protection of Rights on Divorce) Act of 1986 very

<sup>18</sup> The law in India does, contrary to other South Asian countries like Bangladesh or Pakistan, not regulate the process of men-initiated unilateral divorce.

<sup>19</sup> As in contrary to the Shia-practice, Sunni jurisprudence does not declare the presence of witnesses as mandatory for a divorce to become valid. This way of interpreting *Shariat*-laws facilitate the husband to divorce his wife anytime and anywhere. In many cases, women do not even know about the divorce divorced and might come to know about it through a third person.

broadly. Due to such an interpretation Muslim women are entitled a one-time payment from their husbands during and beyond the time of *iddat* that could be worth *lakhs* (hundreds of thousands) of rupees. These amounts clearly exceed the meager amount of money women tend to get under Section 125 of the Cr.Pr.C. However, in cases where the ex-husband cannot financially afford to support his ex-wife after a divorce ‘fair’ and ‘reasonable’ means that the wife is only eligible for a minimal amount of lump sum payment – if at all.<sup>20</sup> Hence, the terms ‘fair’ and ‘reasonable’ mentioned in this *nikahnama* have to be understood against the backdrop of these current court practices.

This *nikahnama* advises against polygamy and reminds the husband only to take a second wife if he is able to afford her. Further, this *nikahnama* includes two important stipulations which, as Amber explained in an interview, both reflect the endeavour of the AIMWPLB to harmonise with secular state laws and to bring marriage and the family under the legal auspices of the state. The first one prohibits the marriage of juveniles. This *nikahnama* is the first to mention the age of consent otherwise not codified in Islam. Traditionally, women are considered ready for marriage once they have reached so called ‘physically maturity’. This leaves ample space for misuse and clashes with the formal state law that suggests a minimum female age at marriage of 18 years. The second stipulation declares the registration of marriage as mandatory. International policy makers and modernist thinkers have considered registration as most important in order to end discrimination against women and prevent forced child marriages. Registration of marriages grants legal approval to the marriage and further authorises the bride or the groom to claim the property and investments of the spouse in the case of his or her death or disappearance. Both stipulations regarding the age of consent and registration are in accordance with the secular Special Marriage Act of 1954.<sup>21</sup> In order to facilitate registration, the *nikahnama* suggests: Photos of the bride and the groom, their registered address, date of birth, occupation and nationality. Three forms of the *nikahnama* should be completed, one for the couple, one for the state marriage bureau<sup>22</sup> and one for the *qazi* who has solemnised the marriage.<sup>23</sup>

<sup>20</sup> In legal practice Muslim women are often granted substantially more money under the Muslim Women (Protection of Rights on Divorce) Act of 1986 than under Section 125 of the Cr. Pr. C. A female advocate at the Criminal Court in Lucknow explained to me that it is generally more difficult to demand monthly payment, as granted under Section 125 Cr.Pr.C., than the one-time lump-sum payment Muslim women are entitled to under the Muslim Women (Protection of Rights on Divorce) Act of 1986. (Interview with the Risha Syedi, advocate at the Criminal Court in Luknow, January 20, 2010)

<sup>21</sup> The Special Marriage Act from 1954 is a secular piece of legislation that is not a part of the personal laws. It is applicable on all Indian citizens irrespective of their religion, but is hardly used by anyone. The Special Marriage Act, 1954 provides for inter-religious marriages, the formal registration of marriages and, nullity of marriage and divorce. The marriage performed under this Act is a civil contract and there is no need of rites or a ceremony. This Act considers a couple as eligible for marriage who have reached the age of consent (groom 21 and bride 18), who are monogamous, who are mentally competent to be able to give valid consent to the marriage and, who are not within the degree of prohibited relationship. However, the Special Marriage Act, 1954 conflicts with the Prohibition of Child Marriages Act from 2006 and Muslim Law as it considers marriages that have been solemnised between two parties, who have not reached the age of consent as void. Under the Prohibition of Child Marriages Act of 2006, however, all child marriages are although voidable and punishable, still not void. The *Shariat* recognises all marriages contracted with the consent of two parties who have reached puberty as valid. The stipulations set forth in this version of the *nikahnama* are further congruent with CEDAW, a transnational piece of legislation. As an attempt to end discrimination against women, CEDAW stipulates the right of women and men to choose their spouse, to share the same responsibility within matrimony and to decide on the number of children as well as the spacing between them (Article 16). This convention states that child marriages should not have legal effect and that all marriages must be put into a register. India signed the convention on July 30, 1980. However, the Indian state made a declaration saying that given its vast population the registration of marriages was not a viable practice. Considering registration of marriages as the best strategy to prove that the marriage as valid this *nikahnama* overturns the state’s reservation toward registration and aligns its wording with secular national and transnational legislation.

<sup>22</sup> Marriage bureau is the term Shaista Amber uses for the state registrar office.

<sup>23</sup> Here it is important to note, that these stipulations are idealised expectations and not actually letters of the law. In India, the law declares the customary ceremony, here the *nikah*, and not the actual act of registration is the dominant piece of evidence for the marriage. Although the spouses could register their marriage with the district registrar, most marriages in India remain unregistered.

This *nikahnama*, which has received considerable media attention, constitutes a crucial counter-hegemonic voice in the debates on women's rights in South Asian Islam. It clearly challenges the clergy's stance of strict separation between the state and the Muslim community, and respectively, of secular state law and religious family laws, by creatively vernacularising state law with religious idioms and language. This Muslim marriage contract facilitates a space of women's autonomy in the shadow of the state within which normative discourses on the ideology and practice of the conjugal relationship are challenged and the legal authority of the Muslim leadership is fractured. Asking the state to support this version of the Muslim marriage contract, it seems that the AIMWPLB seeks to produce a hybrid form of legal authority through which women, backed by the state, could become 'authorised' to interpret Islamic texts in order to define new rights for women within Muslim family law.

### 3.3. A Secular Reading of the Islamic Marriage by the Bharatiya Muslim Mahila Andolan

In an effort to further stretch this space of legal autonomy *vis-à-vis* the Muslim leadership, the BMMA released a so-called 'secular' version of the Islamic marriage contract in November 2008, which is subject to the exclusive jurisdiction of the court – and hence render Muslim marriage subject to state control.<sup>24</sup> This *nikahnama* was drafted as a part of a larger project of the BMMA that seeks to codify Muslim Personal Law, which is then entirely administered by the state.<sup>25</sup>

This version of the contract is grounded in a discourse that envisions women's rights in terms of equality of the sexes in all areas. Such an interpretation vehemently rejects concepts of biologically-based character differences between men and women, and holds that they are equal. Equal here means that men and women share the same rights and duties and are valued equally in all areas of life. Contrary to all other versions, the *Quranic* stances which establish the wife as the embodiment of love and honour and the husband as her 'provider' and 'protector' are nowhere mentioned in this *nikahnama*. Instead, Naish Hasan, the co-founder of the BMMA and co-drafter of the contract, explains that their interpretation of the *Quran* takes into account the situation of men and women in contemporary India. From such a perspective, Islam itself is not rejected but is reinterpreted in a manner that fits the contemporary daily realities of Muslim women. Nevertheless, due to their engagement with the Islamic texts and to their own faith, the BMMA does not see themselves as falling out of the Islamic framework with the formulation of a secular marriage contract.

This *nikahnama* focuses especially on the financial rights of the wife with regard to *mehar*, marital property, gifts and maintenance. As Hasan explains, these financial rights are formulated in accordance with state regulated Muslim Personal Laws such as the Dissolution of Muslim Marriages Act of 1939 and the Muslim Women (Protection of Rights on Divorce) Act of 1986, as well as with secular provisions such as Section 125 of the Criminal Procedure Code. The *nikahnama* itemises and registers the amount of *mehar* in cash or kind, such as gold, silver, fixed deposits, land or cheques, and stipulates them as the sole property of the wife. As announced on their website, the *mehar* amount stipulated for marriages performed under this

<sup>24</sup> The BMMA is intended as an alternative progressive voice for change and democracy that comes from within the Muslim community. The BMMA works for the amelioration of the political, educational, social, political and legal backwardness of Muslims and fights for justice. In order to achieve these goals they work towards developing leadership qualities among Muslim women, especially belonging to the lower strata, lobby the state for reforms of Muslim Personal Law and political inclusion. Moreover the BMMA works hand in hand with grassroots organisations, and networks with (trans)national development agencies such as for example UNICEF, USAID and UNIFEM. The BMMA is organised as a network and is comprised of local groups organised on the state level. According to their promotional material, the BMMA counts 20'000 members dispersed in 15 states. The BMMA mobilises and organises Muslim women on the grassroots where it fosters leadership qualities among women who in turn advocate for change.

<sup>25</sup> This project of the codification of Muslim Personal Law is supported by a variety of secular Muslim women's groups all over India and organised under the auspices of the eminent scholar Ali Asghar Engineer. Interview with Naish Hasan in Luknow, January 22, 2010.

*nikahnama* ranged from Rs. 5000 (US\$ 97) up to Rs. 100'000 (US\$ 2000).<sup>26</sup> This stands in sharp contrast with the majority of Muslim marriages, whereby women either 'forgive' (*maph karna*) their *mehar* and receive nothing, or receive only a minimal amount, since *mehar* is considered more a symbolic than a real matrimonial right.<sup>27</sup> In a separate annexure, the *nikahnama* lists the financial and material transactions that have taken place at the time of the wedding. This includes gifts received by the bride from her parents and relatives or by the bride's groom's parents and relatives, as well as the articles received by the groom from the bride, his relatives and friends. Both the bride and the groom sign the annexure. The BMMA states on their website that, based on their *nikahnama*, 40 marriages have been performed in Mumbai and 200 group marriages in Juhapura district, Gujarat.<sup>28</sup> These numbers are considerably small and reflect the (so far) scarce use of the contract.

The *nikahnama* further insists on women's right to equal share in all property acquired during the time of the marriage. In case of a divorce, the husband is obliged to financially maintain his former wife with a reasonable and fair provision (*mattaa*) that equals the amount of a ten-year maintenance. *Mattaa*, as referred to in the *Quran*, delineates that maintenance for divorced women should be provided on a reasonable scale. This stipulation reflects the wording of the Muslim Women (Protection of Rights on Divorce) Act 1986, according to which Muslim women are entitled to a 'fair' and 'reasonable' provision by their ex-husbands. Given that the amount of *mattaa* remains unspecified in the *Quran*, the Indian Muslim women's movement interpret the line so as to give adequate maintenance for the divorced woman even after the period of *iddat*. The activists involved in the drafting process of this *nikahnama* have hence decided the ten-year limit – an interpretation, which stands in clear opposition to orthodox interpretations of the term. This provision, Hasan states, aligns the (ex-)husband's duty to pay maintenance with the Muslim Women (Protection of Rights on Divorce) Act 1986 as well as with the secular Section 125 Cr. Pr. C., from which Muslim women are theoretically exempt. Further, the woman is now granted the right to reside in the matrimonial home during the subsistence of the marriage as well as after a divorce. This is in accordance with one of the most important features of the more recent Protection of Women from Domestic Violence Act 2005. This Act, which is a general law and thus also applies to Muslim couples in India, provides for women's right to reside in the matrimonial or shared household, whether or not she has any titles in the household. This right is secured by a residence order, which is passed by the court.

Within the paradigm of gender equality, this *nikahnama* dismisses all kind of unilateral and ex-judicial divorces, including the husband's rights to *triple talaq* and the wife's right to *khul* and *talaq-e-tafweez*. In so doing, the *nikahnama* establishes divorce as a right that is shared equally and only becomes valid with the agreement of both parties (*mubarat*). Polygamy, according to this *nikahnama*, is prohibited. The age of consent is 18 for the bride and 21 for the groom.

In order to ensure the implementation of the financial rights and to prevent unilateral and instant divorces, this *nikahnama* provides for all the necessary documentation needed for governmental registration as per the Special Marriage Act of 1954. It mandates photographs of

<sup>26</sup> <http://bhartiyaMuslimmahilaandolan.blogspot.com/> (accessed December 8, 2011)

<sup>27</sup> In practice, *mehar* is rarely given to the woman at the time of the marriage. Most of my female informants, belonging to a variety of educational and economical groups, have stated that they have not received any amount of *mehar*, even after having been in the marriage for decades. Whereas women from a privileged background have felt that the *mehar* was an outdated and old-fashioned practice that reduces woman to mere objects of trade, women from less privileged backgrounds often found it as disturbing to ask for their dower. Moreover, it is common sense among Muslims in Lucknow that *mehar* is not a financial right that becomes effective at the time of the marriage but at the time of divorce. For example, at the Family Court in Lucknow I have interviewed fifteen Muslim women who have all approached the state legal system to make effective their financial rights as according to the *Shariat* and Muslim Personal Law. All of them were either separated or divorced from their husband and none of them had received their *mehar*.

<sup>28</sup> See their website: <http://bhartiyaMuslimmahilaandolan.blogspot.com/> (accessed May 29, 2012)

the bride and groom, a wedding invitation card (if available), a copy of the passport or any other identity card, a copy of the ration card, proof of employment, and in case of an earlier divorce or a widowhood, a divorce decree or death certificate. Apart from the address, date of birth and marital status, the bridegroom is obliged to give information about his current occupation, his income and the particulars of his property (self-acquired and inherited). Three forms have to be completed, one for the bride, one for the bridegroom and one for the marriage solemniser. Moreover, this *nikahnama* affords the couple with the opportunity to add further stipulations, as long as they do not violate the provisions of the *nikahnama*.

This *nikahnama* marks not only a change in the discourse of the conjugal relationship, but an important shift in terms of the language - a shift away from a religious cadence toward a judicial one. For instance, indications to religious sources in the contractual language, as well as metaphor, have been omitted, while the phrasing has been brought into accordance with the judiciary style common to state law. It is only the after word of the document that contains a set of *Quranic* stances on maintenance, polygamy, *mehar* and the ideal of a matrimonial relationship. The BMMA hence places its own formulations of gender equality and justice within this highly competitive legal and political landscape by appropriating the legal jargon of the state legal system. In doing so, the BMMA seeks to remove the regulation of Muslim marriages from the penumbra of the state by asking the state to integrate their proposal into its legal apparatus so as to create a democratic legal space within which Muslim women's rights are articulated on the premises of the secular values of the Constitution and human rights.

Both *nikahnamas*, formulated by Muslim women's organisations in Lucknow, exemplify the fact that religious and secular state led discourses of gender-justice stand not in opposition, but merge within the localised discourses on women's rights and Islam - creating new forms of law within newly designed legal spaces. Rather than being caught between the discursive strategies of a liberal versus religious discourse on women's rights, both organisations claim that the Indian Constitution, the state administered Muslim Personal Law, secular laws and the *Quran* are all sources of synergy and not conflict. It is thus the *inclusion* rather than *exclusion* of modern secular legality, within local interpretations of Islamic laws, by which Muslim women's organisations stake their claim for participation in the law-making process. This allows for the creation of a non-antinomic legal space of new interpretation and production of Islamic laws within the context of Indian citizenship and the specific ground realities of Muslim women in India.

#### IV. Conclusions

This article has illustrated the ways that Muslim women's activists in India currently seek to define and expand the legal space within which gender-just reinterpretations of the textual sources of Islam become possible. In so doing, they creatively adapt, merge and vernacularise secular and non-secular state law with religious idioms, ideologies and experiences. This gives rise to a complex legal landscape, where different legalities not merely co-exist but entangle and overlap in the sense of interlegality (Santos 1987/2002). Drawing on these two women-friendly model-*nikahnamas*, it appears to be precisely the complexity and competitive nature of the legal field by which room and possibilities open up for Muslim women's rights activists to work toward gender-justice beyond the normative dichotomies of state versus community and women's rights versus religion. While it is important to note that the two *nikahnamas* have not (yet) penetrated legal reality due to the opposition of the religious leadership and/or objections raised by the contracting families (their scope of implementation is restricted to the areas where the AIMWPLB and the BMMA are currently active),<sup>29</sup> they yet proffer insight into an emerging mixed legal space of hermeneutical flexibility. Within this space Muslim women's activists are

<sup>29</sup>

See also: Kirmani 2011b, Lemons 2012, Suneetha 2011

afforded room for the formulation of other positions on religion and gender taking into account both their identity as Muslims, mothers and wives as well as their rights as Indian citizens. Moreover, it is a legal space that furthers participation and inclusion beyond the politics of identity and monolithic ideology, and hence offers room for the articulation of alternative experiences and conceptions of religion and justice. In this regard, Muslim women's rights activists' strategies for gender-justice and equality create a non-antinomic discursive space in the sense of interlegality. Interlegality consequently facilitates women's activism, enhances their public visibility and allows for a reconfiguration of religious power and legal authority.

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