Shah Bano and India’s Postcolonial Predicament: Gender vs. Religion

Ishan Prasad
Senior Division
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“And for divorced women is a provision according to what is acceptable—a duty upon the righteous.”

- The Qur’an, 2:241

In April 1978, Shah Bano, a 62-year-old Muslim woman from the north Indian state of Madhya Pradesh, filed a suit demanding maintenance payments from her husband after he kicked her out of the family home. Little did she know that her small plea for gender justice would result in sectarian strife on a scale not seen since the birth of the nation. Neither communalism nor misogyny is new to India, but during the Shah Bano case, gender and religion briefly shared the same stage, each staking out competing claims.¹ For while Shah Bano petitioned the courts for legal rights promised to all female citizens, her ex-husband, Mohammad Ahmad Khan, asserted that Islamic law exempted him from providing for her. India, then, found itself between Scylla and Charybdis, as women clamored for gender rights and the Muslim minority fought to preserve its religious identity. Women’s rights advocates initially triumphed with a favorable Supreme Court ruling, but their victory was short-lived, as Parliament quickly passed legislation overturning the Court’s decision. Thus, political considerations, in concert with powerful colonial legacies, led to the triumph of religious rights over gender rights. Shah Bano’s loss was decried as a tragedy by women’s organizations, while Muslim leadership hailed triumphant in their quest to safeguard Muslim religious practice.

Shah Bano married Mohammad Ahmad Khan, a well-to-do lawyer, in 1932. Fourteen years and five children later, Khan took a second wife, as permitted by Islamic law, or Sharia. For the next thirty-odd years, the two women, their husband, and children shared the same household, with Khan purportedly trying to keep the peace. He recalls life with his wives, “I

bought them the same clothes and the same jewels...I took my evening meals with Shah Bano and my morning meals with my second wife.” Yet once Shah Bano’s children were grown, Khan removed her from the home, and failed to remit the 200 Rupees per month he’d promised her. The dispute then entered the courts, with Shah Bano using secular laws that apply to all Indians, and Khan grounding his defense in Muslim Personal Law (MPL), a separate legal code used to adjudicate family matters among the Muslim minority community.³

Shah Bano’s case relied on Section 125 of the Code of Criminal Procedure (CrPC), which requires that a husband pay maintenance to his wife or ex-wife if she is “unable to maintain herself.”⁴ Penniless and illiterate, Shah Bano sued her husband for 500 Rupees per month. Khan immediately divorced her by invoking “triple talaq” (MPL allowed a husband to dissolve his marriage by repeating “divorce” or “talaq,” three times).⁵ He then grounded his legal response in religious law, arguing that because Shah Bano was now his ex-wife, his only obligation was payment of mahr (bridal gift) and support for the period defined as “iddat.”⁶ After remitting this amount to Shah Bano, Khan claimed that, according to MPL, his obligations were met in their entirety.

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³ Although Muslim Personal Law is derived from Sharia law, the two are not identical; MPL selectively draws from Sharia family law. Dr. Adil Rasheed, “Email Interview by the Author,” Westport, Connecticut, U.S.A., April 10, 2019.
⁶ Mahr is a pre-determined amount of money/property promised to a woman for her financial security and specified in the marriage contract (in Shah Bano's case this amount was 5,400 Rupees). Iddat, a three-month period, is a waiting period of sorts: a divorced Muslim woman must wait for three months before entering another relationship, to ensure that she is not pregnant. Laura Dudley Jenkins, “Shah Bano: Muslim Women's Rights,” accessed March 25, 2019, https://homepages.uc.edu/thro/shahbano/allshahbano.htm; Chander Deo Sahay, “Email Interview by the Author,” Westport, Connecticut, U.S.A., March 24, 2019.
The courts, however, disagreed. Shah Bano was awarded 25 Rupees per month by the local court at Indore, a sum which increased to 179.20 when reviewed by the High Court of Madhya Pradesh. Khan then appealed to the Supreme Court of India, and again lost: on April 23, 1985, the all-Hindu bench unanimously upheld the lower court’s decision.\footnote{Saeed Naqvi, “Shah Bano Case: The Real Truth,” *Indian Express*, December 4, 1985, reprinted in Ashgar Ali Engineer ed., *The Shah Bano Controversy* (Mumbai: Orient Longman Limited, 1987), 69.}

In their decision, the Supreme Court saw no conflict between secular and religious law. Rather, the key issue was whether the divorced wife can support herself. If she can, MPL applies, but if she cannot, then Section 125 kicks in, which was specifically intended to prevent destitution without regard to religion.\footnote{Supreme Court of India, “Majority Opinion, Mohammad Ahmad Khan (appellant) v. Shah Bano Begum and others (respondents),” Criminal Appeal number 103 of 1981, paragraphs 7 and 14, accessed January 12, 2019, https://www.casemine.com/judgement/in/5609ac1fe4b014971140e15f.} The majority opinion goes on to cite several Qur’anic passages sympathetic to the needs of divorced women, thereby underscoring the compatibility of religious and secular law.\footnote{Supreme Court of India, “Majority Opinion,” paragraphs 15-24. The opening quote for this paper, Ayat 241, was one of the passages cited by the justices.} In closing, however, Chief Justice Chandrachud asserts that “Section 125 overrides the personal law, if there is any conflict between the two.”\footnote{Supreme Court of India, “Majority Opinion,” paragraph 10.}

Women’s organizations across India celebrated the decision, hailing it as a triumph for women’s rights. Simultaneously, large segments of the Indian Muslim community rose up in opposition, denouncing the judgement as a tragic attack on religious freedom. An all-India protest day in support of MPL, aptly called “Shariat day,” was organized immediately, and followed in quick succession by a series of strikes.\footnote{M.A. Latif, “Does the Judgement Justify Agitation?” *The Telegraph*, October 1, 1985, reprinted in Engineer.} Mass demonstrations rocked the country, the most violent in the northeastern states of Uttar Pradesh and Bihar, which both have large Muslim populations [Appendix A].\footnote{Mr. A.P. Varma, “Phone Interview by Author,” Westport, Connecticut, U.S.A., May 5, 2019. See also Bumiller, “Moslem Divorce”; Latif, “Does the Judgement Justify Agitation?”; Ajaz Ashraf, “Arif Mohammad Khan on Shah}
The Indian government, led by Prime Minister Rajiv Gandhi of the Congress Party, initially backed the Supreme Court judgement, but quickly backtracked for a number of reasons. First, Muslim protests across the country were growing in size and intensity, and showed no signs of abating. Second, the ruling Congress Party suffered significant electoral losses in states with large Muslim populations, as opposition parties exploited the verdict and its perceived threat to Muslim identity. In response to these pressures, Parliament passed the Muslim Women Bill in May 1986, effectively nullifying the Supreme Court decision. The Bill excluded Muslim women from Section 125, and reaffirmed MPL’s stipulations regarding divorced women. Thus, the government came down on the side of religion, and the subsequent passage of the Bill generated a fresh round of controversy.

Caption: Shah Bano, pictured here shortly after being divorced by triple *talaq*. She recalls, “I felt enormous relief, but I also hated him.”


The case for religious freedoms

From the outset, the fight for religious freedom was closely directed by Muslim leadership. Clerics and “communally-oriented political leaders” exercised enormous influence, successfully mobilizing immense crowds. They argued that the community was under siege, as Sharia, an innately just law, lies at the core of Muslim identity. For instance, the All-India Muslim Personal Law Board submitted the following memorandum to the Prime Minister:

The Muslim community regards this judgment of the Supreme Court as a clear interference with the Shariat (Muslim personal law) and their freedom of religion...To understand the enormity of the problem, one must restate that the Muslim community regards its personal law as an essential and inseparable part of its religion...The All-India Muslim Personal Law Board would like to clarify that Muslim personal law has adequate provisions for supporting indigent persons including a divorced woman.

These sentiments were echoed by countless clerics and members of Parliament. The verdict, then, made many Muslims feel threatened and vulnerable, in a country with an overwhelming

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16 Ashraf, “Arif Mohammad Khan.”
18 “Muslim Personal Law Board Submits Memorandum to Prime Minister Rajiv Gandhi on Supreme Court Judgement in Shah Bano Case,” Radiance, September 1, 1985, reprinted in A.G. Noorani, The Muslims of India: A Documentary Record (New Delhi: Oxford University Press, 2003), 227. The All-India Muslim Personal Law Board was formed in 1973 to protect and preserve Muslim law. Other groups at the forefront of this fight include the Muslim League and the Jamiat Islamia.
Hindu majority [Appendix B]. As a prominent Muslim scholar described, he felt “that the State of India… is working to ruin and destroy him and erase his religious identity.”

Muslim opinion, however, was by no means monolithic. While radical voices within the community were raised the loudest, multiple surveys demonstrate that the vast majority of Indian Muslims supported the verdict. Yet moderate Muslims exercised minimal influence, partially because they didn’t have the ear of the government. When moderate Muslim MP, Arif Mohammad Khan, resigned in protest over the Muslim Women Bill, he expressed regret that the government had “given credence to the views of only the conservatives and ignored the progressive and secular opinion within the community.” A leading Muslim intellectual even questioned the “religious authenticity” of MPL, calling for reform to make it “more humane and less hostile.” Hundreds of Muslims expressed similar views in a public declaration supporting the verdict, but to no avail.

The case for women’s rights

Women’s rights activists were just as impassioned as their religiously-minded counterparts. Although there were violent incidents on this side (Mohammad Khan, for example, was pelted with stones when spotted at the Hyderabad airport), the reaction was mainly confined

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20 Bumiller, “Moslem Divorce.”
24 Rasheed, “Email Interview.” Dr. Rasheed pointed out that rights granted to women in Muslim religious texts, such as the right to divorce (khula), were omitted from MPL, while triple talq, which is not supported in the Quran, was included. These precise sentiments were echoed in FactSheet News, “Arif Mohammad Khan: Interview,” trans. author and Pramila Verma, September 17, 2018, https://www.youtube.com/watch?v=J3Jy6E946Vs.
to articles and editorials, asserting that to exclude Muslim women from Section 125 was to deny them their basic political and human rights.\textsuperscript{26} An MP and activist writes:

Indian Muslim women are first and foremost Indian citizens…and in that capacity, are entitled to all legal rights and privileges granted to the citizens of India by the Constitution or by any other law of the land. An amendment in section 125 of the CrPC will be an open discrimination against them…They will become second grade citizens inferior to other women in the national and international community,…deprive[d] of their legal and constitutional rights.\textsuperscript{27}

The voluminous literature produced by women’s rights activists raises similar concerns, insisting that Muslim women be afforded the same rights as all citizens, and shouldn’t be forced to sacrifice them in the name of religion [Appendix C]. A leading female lawyer further specified that while women were indeed “brushed aside because religion came first,” said religion was being defined by men only.\textsuperscript{28} In other words, Indian Muslim men were “project[ing] their own sectarian interests as the interests of the entire community,” and pitting religion writ large against women.\textsuperscript{29}

The controversy thus shined a spotlight on the plight of Muslim women, and Indians were forced to consider the broader position of women in society. A high-ranking government...

\textsuperscript{29} Madhu Kishwar, “Pro Women or Anti Muslim? The Shahbano Controversy,” \textit{Manushi} 32 (1986), 4.
official, for instance, reports that many of his colleagues—none of whom championed gender justice—were nonetheless disturbed that “women’s rights ceded space to rights of religious minorities.” He remembers that in “informed and intellectual circles, there was serious concern over the fact that Muslim women were being denied something as basic as reasonable resources to survive with dignity.” This concern, however, was trumped by a vocal and well-organized religious minority.

A Constitutional Crisis?

Ironically, both sides grounded their arguments in the Constitution. Muslim leadership pointed to a cluster of articles in the Constitution that guarantee religious and minority rights. Article 25, for instance, promises “[f]reedom of conscience and free profession, practice, and propagation of religion,” while Article 26 grants every religious community the right to “manage its own affairs in matters of religion.” In a similar vein, Articles 29 recognizes that each minority community “having a distinct…culture of its own shall have the right to conserve the same.” Muslim leadership, then, claimed that the Constitution plainly supports the application of MPL in the Shah Bano case.

But women’s groups disagreed, asserting that both Articles 25 and 26 make the free practice of religion “[s]ubject to public order, morality, and health.” Denying a destitute woman maintenance, they insisted, is immoral. Moreover, they argued that excluding Muslim women from Section 125 strips them of rights guaranteed in Article 13, which renders null any

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30 Sahay, “Email Interview”; M.L. Varma, a retired New Delhi judge, makes the same argument, Mr. M.L. Varma, “Phone Interview by Author,” Westport, CT, U.S.A., May 9, 2019.
31 Sahay, “Email Interview”
34 Government of India, “Article 25” and “Article 26.”
“laws inconsistent with…fundamental rights”; Article 14, which guarantees equality before the law; and Article 15, which prohibits “discrimination on grounds of…sex.” The Supreme Court concurred, explaining that the Constitution specifies that “morality cannot be clubbed with religion,” and that the state must not “transgress what are the personal rights of Muslim women.”

Triumph and tragedy: the broader context

Despite this unambiguous declaration issued by the highest court in the land, the government sided with religion. To understand why, we must examine the socio-legal context for the controversy, extending back to the construction of communalism during the British colonial period. The first governor-general of India, Warren Hastings (r.1772-1784), laid the groundwork for the personal laws. He sought to govern Hindus and Muslims by their respective religious codes, due to a perceived, yet largely non-existent, communal hostility. By independence, however, Hastings’ policy had become a self-fulfilling prophecy: treated as separate and antagonistic groups for nearly two centuries, Hindus and Muslims were now embroiled in communal conflict. Fierce Hindu-Muslim violence rocked the subcontinent during and after Partition. In an effort to reassure its justifiably terrified Muslim minority, the young Indian state preserved the system of personal laws, essentially adopting Hastings’ policy. Today,

36 Supreme Court of India, “Majority Opinion,” paragraphs 7 and 27.
40 J.D.M. Derret, Religion, Law and the State in India (New York: The Free Press, 1968), 437-481. Hastings’ original policy was embodied in Regulation 11 of 1772, and was re-worked under Crown rule into the Shariat Application Act of 1937.
India’s religious communities continue to be adjudicated by separate legal codes, and the postcolonial state is caught up in a delicate balancing act that easily leads to communal strife.\(^{41}\) Indeed, shortly before the Muslim Women Bill was passed, a Muslim mosque in northern India was destroyed by riotous Hindu crowds; the Bill was partially an effort to appease Muslims outraged by this act [Appendix B].\(^{42}\) Thus, the government’s support for religious rights during the Shah Bano controversy was a reaction to decades of communal strife, in order to keep the peace and hold on to their parliamentary majority.\(^{43}\) In this context, it’s no wonder that Muslim leadership clung to their identity and autonomy.\(^{44}\) Freedom to apply their traditional law was a critical triumph in the face of sustained communal hostility.

Yet this triumph came at the expense of women’s rights: it radicalized the discourse on gender and religion, not only marginalizing the moderate Muslim majority, but Muslim women themselves. Many Muslim women who supported the verdict, and were fighting for their own rights, were coerced into silence. Shah Bano herself was one of these victims. Her daughter, Siddiqua Begum, recalls how her mother “face[d] all kind of pressures” from Muslim clerics, who eventually convinced her to reject the Supreme Court judgement.\(^{45}\) In an “Open Letter to the Muslims,” Shah Bano wrote:

After listening to [clerics]…I have come to the conclusion that the laws of Allah…are everything for me…Since this judgment…is an open interference in Muslim personal law, I, Shah Bano, being a Muslim, reject it…I demand of the Indian government (1) To withdraw the said judgment of the Supreme Court immediately; (2) That Muslim woman be kept out of the purview of section 125.46

Several months later, she revealed the motivation behind her letter: “My religious leaders forced me not to accept maintenance, because according to them, it is against the Shariat.”47 Scores of women were similarly pressured. For example, Nafessa Athania of Mumbai, who was suing her ex-husband for maintenance, describes how “The [clerics] stopped me from going to court. They said they would throw me out of the [community]…Take a lump sum and keep quiet.”48 Thus, Shah Bano’s loss was a two-fold tragedy, as Muslim women were forced to capitulate to the religious hierarchy, and progressive Muslim men who supported their cause were marginalized.

**Impacts and Concluding Thoughts**

After publishing her “Open Letter,” Shah Bano retreated to her son’s home, where she passed away in 1992, at the age of 76. She didn’t live to see the end of the story: in 2001, the constitutionality of the Muslim Women Bill was successfully challenged before the Supreme Court, and divorced Muslim women were finally granted protection under Section 125.49 The system of personal laws, however, persists to this day, and remains a major source of tension.

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between Hindus and Muslims.\textsuperscript{50} Indeed, the Hindu-nationalist Bharatiya Janata Party, currently in power, has controversially included the abolition of the personal laws in its 2019 manifesto, arguing that a uniform civil code will “ensure gender equality.”\textsuperscript{51}

India has a long history of sacrificing women’s interests in the name of religion; images of young widows committing \textit{sati} spring forcefully to mind. Shah Bano’s tragedy shifted the discourse on gender and religion, and compelled Muslim and Hindu alike to reexamine their priorities. While hers is an Indian story, the clash between gender and religion is not. Today, in the United States, similar battle lines are being drawn over the issue of abortion, while in Pakistan, religious leaders keep girls like Malala Yousafzai from pursuing an education.\textsuperscript{52} Hopefully, the concluding chapter in the struggle between gender and religion has yet to be written.

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\textsuperscript{50} M.L. Varma, “Phone Interview”; A.P. Varma, “Phone Interview.”
Pro-Sharia rallies, in Calicut, in the southern state of Kerala. Notice the large number of Muslim women who are participating.

Crowds protesting the Supreme Court judgement in the northeastern state of Patna, Bihar. Protests for religious freedoms during the Shah Bano controversy typically drew crowds as large as 300,000.
Postcolonial India has been plagued by clashes between the Hindu majority and minority religions. The Shah Bano controversy occurred in the midst of rising communal tensions: Hindu mobs had just demolished the Babri Masjid, one of the oldest Muslim mosques in India (below).


The Shah Bano controversy played out in the press; images like these flooded India’s print media for the better part of a year.

Primary Sources


Baxsuma was a Muslim feminist and women’s rights activist during the Shah Bano controversy. She describes her reaction to the controversy, providing insight into what educated Muslim women thought about the verdict. She also stayed in touch with Shah Bano after the controversy, and details how Shah Bano tried to gain an education in the last years of her life.


Bumiller provides a general overview of the controversy, but more importantly for my purposes, she reprints her interview with Mohammad Ahmad Khan, Shah Bano’s ex-husband. This allowed me to understand the circumstances that led to the divorce.


This is the most recent manifesto of the right-leaning Hindu nationalist party, better known as the BJP, which ousted the ruling Congress Party in 1996 and controls the government of India today. I paid particular attention to those parts of the platform that discussed the personal laws, and the necessity for a uniform civil code. This demonstrated that even though Section 125 now applies to Muslim women, the system of personal laws continues to disadvantage women.


Dhagamwar was a Hindu female attorney in New Delhi when the Shah Bano verdict was announced. She began actively publishing and speaking on the controversy to her fellow lawyers. I used this article to help me understand the details of how both gender rights and religious rights are embodied in the Constitution, and how they clash with each other.


Engineer was the head of the Institute of Islamic Studies and a social activist during the time of the Shah Bano controversy. He compiled an extensive collection of primary source documents which were reprinted in this volume. The documents include reaction to the Supreme Court judgement and the Muslim Women Bill, the Bill itself, in addition
to various petitions, memoranda, letters, and editorials written by key figures in the dispute. Many of these documents were delivered to members of the Indian government or printed in the media. I used these primary source documents to piece together the larger arguments put forth by those fighting for religious rights as well as those seeking gender justice. These documents also helped me understand the context in which government decisions were made. I could not have crafted my arguments without this book.


Arif Mohammad Khan was initially designated as the government spokesman in support of the Supreme Court verdict. He was a moderate Muslim MP, was at the heart of the controversy, and has extensive views on how and why the government handled the situation as it did. I used this interview to understand the exact nature of his grievances with Muslim leadership and their opposition to the verdict.


This magazine article details the debate surrounding the Supreme Court case that rendered triple talaq unconstitutional. It also gives details about Muslim Personal Law, specifically with respect to divorce. This article helped me understand the minutiae of MPL, and the rights that it gives a Muslim man seeking divorce.


Article 13 tries to prevent conflict from arising between fundamental rights of Indian citizens and other laws, whether they be secular or religious in nature. It gave me insight into the legal basis for the arguments put forth by women’s rights activists during the controversy.


Article 14 guarantees equality before the law for all Indian citizens. More than any other article of the Constitution, it is this one that directly supports the rights of Muslim women to be included within the purview of Section 125 of the Code of Criminal Procedure. It gave me insight into the legal basis for the arguments put forth by women’s rights activists during the controversy.

Article 15 prohibits discrimination based on sex, race, ethnicity, place of birth, and religion. It helped me comprehend the legal basis for the arguments put forth by both sides during the controversy. It also showed me how the framers of the Indian Constitution may have had the best of intentions, but nonetheless, some of the rights granted to individuals and groups are overlapping, and this ambiguity can lead to the very kinds of situations that arose during the Shah Bano affair.


Article 25 guarantees freedom of religion, subject to common sense and decency. This article helped me see how the very same evidence can be used to support two opposing arguments, as those fighting for religious rights pointed to one half of this article, while women’s rights activists pointed to the other.


Article 26 grants religious communities the right to manage their own religious affairs. It was used by religious clerics and conservative Muslim leaders to combat the Supreme Court ruling. It helped me understand how the Indian state used the law to protect their minority religious communities.


Article 29 specifically protects the rights of minorities, religious or otherwise. It was used by those seeking religious freedoms in the Shah Bano controversy, and gave me insight into the legal context in which minority communities had to operate in India.


This is the section of the Criminal Procedure Code, i.e. criminal law code, under which Shah Bano initially sued. It helped me understand the details of her legal grievance, as well as the way that the criminal codes in India were set up to apply to all citizens (yet they didn’t specify this). If separate personal laws existed under a civil code, and these could clash with criminal codes, why was priority not clearly designated to one or the other? I could really see how this dispute developed as I read Section 125.

This article described the many riots and protests that were organized by Muslim leadership during the controversy. I was able to understand the scale of the reaction to the verdict among the Muslim community.


Kishwar was the editor of Manushi, a women’s rights journal. Kishwar very clearly argued that it was not merely male Muslim leadership that was trampling upon women’s rights, but that male Hindu leadership, although they supported Shah Bano, did so more out of spite for Muslims than out of compassion for women. After reading this article, I was able to understand the complex context of communalism that animated this controversy.


This news story reprinted its interview with Shah Bano’s daughter, who described the pressures that her mother faced during the controversy. It highlighted the extent to which Muslim women were coerced into sacrificing their own needs for the larger group.


This book was written by the first prime minister of India, Nehru, who described the difficulties and decisions faced by the newly-forming state with respect to its Muslim minority. I used this book to understand how and why the Muslim Personal Laws were retained after independence.


This article allowed me to compare similar struggles between gender and religion that are occurring in different parts of the world today, showing me that Shah Bano’s problems are not peculiar to India.


This book contains articles, petitions, interviews, and memoranda that were written by interested parties during the controversy. I used it to reconstruct the government’s response to the communal strife engendered by the Supreme Court ruling. Specifically, it gave me insight into how the government was pressured into passing the Muslim Women Bill in order to retain power and restore peace.

This survey of Muslim public opinion was incredibly insightful; it clearly demonstrated how the majority of Muslims, particularly in rural areas located far away from New Delhi, did not support the Muslim Women Bill, and in fact preferred secular law to be applied in cases like Shah Bano’s. Of particular use to me was the data provided on the difference between Muslim men and Muslim women’s views of the verdict.


Dr. Rasheed is Senior Fellow at the Institute for Defence Studies and Analyses, New Delhi, and he is a practicing Muslim who lived through the Shah Bano controversy. He was able to provide me with insight into a Muslim’s opinion on the Shah Bano case and gave an in-depth view of the legal and religious issues surrounding the case. He was particularly helpful in his analysis of Muslim Personal Law, and how it was used by the different parties in the conflict. His opinion was very helpful and gave a unique perspective on the issues at hand.


Mr. Sahay is the former head of the Research and Analysis Wing (RAW) in India (the equivalent of the U.S. CIA). He is a Hindu who lived through the Shah Bano controversy. Due to his role in the Indian government, Mr. Sahay has a firm grasp on political issues in India. He gave me his interpretation of the Shah Bano case, with particular insight into the history behind the case, as well as its effects on Muslim Women, Muslim Men, and Hindus. This helped me understand the greater context of the case.


This article contains a lengthy interview with Shah Bano’s daughter, in which she details the decisions her mother made and the events that led up to the divorce. It also describes how Shah Bano wanted to be a good Muslim, but at the same time, felt that she must fight for her financial security. It helped me understand how Muslim women may have felt conflicted about the verdict.


This was the majority opinion issued by the Supreme Court in the case that challenged the constitutionality of the Muslim Women Bill. It detailed how the Court, even with a wholly different bench, still believed that to exclude Muslim women from Section 125 was to deny them equality before the law. It showed me how, in the end, Shah Bano’s fight was not in vain.


This is the majority opinion that was written by the Chief Justice of the Supreme Court of India in the matter of Mohammed Ahmad Khan v. Shah Bano. I used this to understand why the Supreme Court ruled the way it did, and specifically how it attempted to reconcile two seemingly contradictory codes of law. I concluded that the Supreme Court had the option to 1) follow secular law, 2) follow Muslim law, or 3) try to reconcile both. Interestingly, they chose the third path. This is partially what set off Muslim clerics: they felt that the Supreme Court had no business interpreting Muslim law. I could not have understood the crux of the controversy, nor the verdict itself, without this document.


Mr. Varma is the retired Chief Secretary of the state of Uttar Pradesh (this is the equivalent of “Governor” in the U.S.). Mr. Varma gave me much insight into how the Shah Bano controversy affected Uttar Pradesh, specifically how Hindu-Muslim relations deteriorated (Uttar Pradesh, with a large Muslim population, was one of the hot spots during the during the controversy). We discussed not only the Shah Bano case and the Muslim Women Bill, but the Babri Masjid controversy that occurred in 1986 as well. As Babri Masjid was located in Uttar Pradesh, this interview provided me with proof positive that in drafting and passing the Bill, the Indian government was largely reacting to what it saw as a communal crisis. It acted to appease those Muslims who were upset with the targeting of the Babri Masjid by Hindu crowds. He told me that the personal laws are still a big issue in Uttar Pradesh today.

Varma, M.L. “Phone Interview by Author,” Westport, CT, United States of America. May 9, 2019.

Mr. Varma is a retired judge, who sat on the High Court of New Delhi. We discussed the opinions among his colleagues on the Shah Bano case, with a specific focus on the challenges presented by the system of personal laws. I learned that most of the legal community in India agrees that a uniform civil code should be drafted and should replace the system of personal laws. Mr. Varma also gave me insight into how his colleagues reacted to the controversy; most of them were disturbed by what they saw as the denial of civil rights to Shah Bano.

Secondary Sources

Agnes examines gender rights as embodied in the legal framework of the Indian state, and shows how many fundamental inequalities are enshrined in law. This book helped me understand the how women like Shah Bano must fight for legal rights and recognition in India.


This article recapped the arguments advanced by both sides, and explained how the Shah Bano case fit into the larger trajectory of Indian history. I used this to help explain why the Indian government felt so hamstrung as communal tensions increased, and eventually came down on the side of religion.


This article contains substantial clips of an interview with moderate Muslim MP Arif Mohammad Kahn. It showed me how the discourse on gender and religion became radicalized, and how electoral politics pressured the government into recognizing religious rights over gender rights.


This book contains a series of articles on how law and the Constitution were developed in independent India. It helped me understand the origin of the MPL, and gave me insight into the many compromises that were made, especially with respect to religious minority rights, as the Indian state was forming.


This book looks at the clash between minority rights and liberal constitutionalism in India. It argues that democracies like India’s are put in a precarious position because they can’t enforce a secular vision of politics uniformly across all groups in society. It showed me how India’s democracy is different from ours, and why a case like Shah Bano’s was bound to arise.

Benton examines how colonialism affected and impacted the formation of law in postcolonial states. She shows how law was a continuous regime, practiced somewhat uniformly throughout the period of colonization, decolonization and independence. This book was critical to my understanding of how the British system of personal laws continued to operate in independent India.


This is a general survey of Indian history, beginning with the East India Company, and ending with the postcolonial state. It provided me with information on the colonization of India and the policies which led to increasing communal hostilities. Generally, this book was crucial in giving me a broad outline of Indian history.


Bumiller spent three years in India as a reporter for the Washington Post. In this book, she chronicles the diverse experiences of the women that she met. She interviewed Shah Bano and her family, and that information is contained in this book. It provided me with insight on what relations between Shah Bano and her husband were like.


This article informed me of the case that came before the Supreme Court challenging the constitutionality of the Muslim Women Bill. It outlines the highlights of the court case, and explained the legal basis for the decision.


This book details how the British developed legal codes in India, specifically the system of personal laws. It also explains how these legal codes were reworked and reused by the new Indian state. Because of this information, I was able to explain the historical roots of the Shah Bano controversy in my paper.


This article contains a photo that was taken of Shah Bano after her husband divorced her. This article, a secondary source, contained useful images that I used in the paper. This image helped me represent Shah Bano's voice in the paper.

This article compared a modern maintenance dispute with that of Shah Bano’s, demonstrating how Indian society has changed since the 1980s, and how it has remained the same. This article allowed me to highlight certain trends on gender and religion that have been around since the colonial era.


This article contains basic historical information of the Babri Masjid, located in Uttar Pradesh. I obtained a photograph of Hindu crowds destroying the mosque from this article. I also realized that the unrest over the mosque was on-going in the 1980s and 1990s.


This book takes an in-depth look at how the Shah Bano incident was portrayed in the press. Since many of the primary source documents that I used were newspaper articles, this book was instrumental in helping me understand the larger context in which these articles were written. It also gave me the foundation that I needed to read my primary sources with a critical eye.


This article interviews Shah Bano’s children, who remember their mother’s struggles and legal battle in an animated and personal way. It also describes what Shah Bano did after the controversy had died down, and how she lived out the last days of her life. Using this information, I was able to conclude Shah Bano’s personal story for the reader.


Laura Jenkins is a history professor at the University of Cincinnati. This is a secondary source that gave me insight into women’s rights and Personal Laws. This source contains an overview of the case as well as information about gender rights in Islam.

This article was written by a legal scholar, and thus described the nature of the legal dispute in great detail. I was able to understand how the two systems of law clashed with each other, and was given insight into how a legal scholar might solve this problem.


This book looks at the clash between the legal system and minority communities in India. It informed my analysis of Muslim leaders’ reactions to the Supreme Court verdict, because it contextualized the relationship between minority communities and the court system.


Pandey’s text was the single most important source that gave me an understanding of the legacy of communalism left behind by British colonial policy. It explained how “divide and rule” methods firmly planted sectarian strife in Indian politics. It also demonstrated why and how Muslim and Hindu communities initially fell under different systems of law. I would have been unable to understand the Indian government’s reaction to the Shah Bano case, the Muslim community’s reaction to the Shah Bano case, as well as the formation of the Indian Constitution, without this book.


This book examines different issues in the gender history of colonial India. It helped me contextualize the kinds of social reforms necessary in India, specifically with respect to marriage, divorce, and maintenance. I was able to better analyze the arguments advanced by gender right’s activists because of this book.


Sharma and Joseph take a critical look at how the press has reported women’s issues. I used this information to identify bias that was present in some of the primary source newspaper articles that I came across during my research.


This a general textbook on Indian history; as I have had no formal coursework in Indian history, I needed to read this to gain general historical literacy on India.

This book details the ways in which the colonial state curtailed women’s rights and freedoms. It gave me a sense of historical context on women’s issues and women’s struggles in India, which informed my analysis of the arguments forwarded by women’s rights activists.