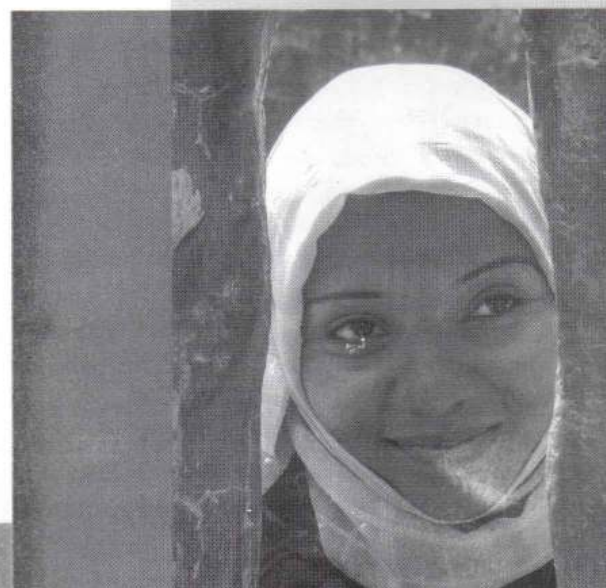


Muslim Women and Land Rights in Gujarat

WGWLO Experience

By
Members of
Working Group for Women and Land Ownership - Gujarat



■ Introduction

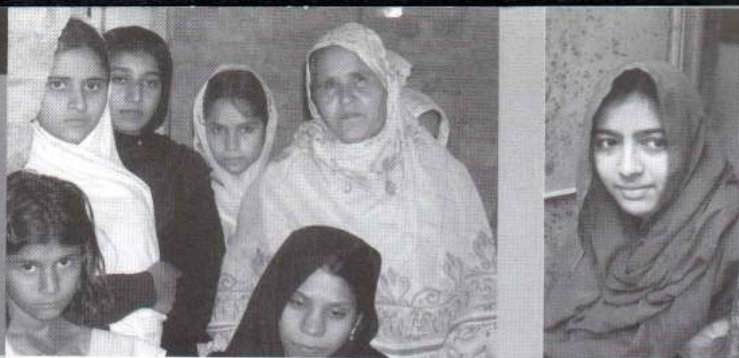
The debate in the Central Legislative Assembly around the Muslim Personal Law (Shariat) Application Act, 1937 addressed the legal rights of Muslim women to property and inheritance in India. The Act was justified on the grounds that customary law had a damaging impact on Muslim women's rights to inheritance and to seek divorce as guaranteed under Islamic law. It had the support of Muslim women's groups and generated a public dialogue on changes in Muslim personal law. This Act "aims at uniformity of law among Muslims...in all their social and personal relations. By doing so, it recognizes and does justice to the claims of women for inheriting family property who, under customary law, are debarred from succeeding to the same"¹ Since rights existed in the law, there was also room for negotiation.

The engagement with legal rights of women re-emerged in 1980s in the women's movement, both at national and international levels. This fueled academic research and law began to be addressed through varied disciplinary methods and paradigms. Transnational networks (both reform oriented and feminist organizations) such as Women Living Under Muslim

Laws & Sisters in Islam and national and international development agencies and the UN itself (through country studies) provided the impetus for not only the multi-faceted empirical studies on Muslim women that emerged but also interpretative engagement with sacred texts.²

In the Indian context, Muslim women fall under the Muslim Personal Law (Shariat) Application Act, 1937 and following the Shahbano case, the Muslim Women's (Protection of Rights on Divorce) Act, 1986, was enacted, thereby ending the option that Muslim women could avail of under Sec. 125 of the Cr. PC for maintenance. The 1986 law known more popularly as the Muslim women's Act, gave rise to intense debates on personal law, gender and identity and also highlighted the interaction between personal law and civil law. Within the women's movement, the engagement on legal rights of women has since mid 1980s, become more nuanced and in the present context, the challenge is one of finding a synergy between legal pluralism and women's rights and entitlements.





In the pluralistic system of Islamic law, Sunnis, a predominant section among the 135 million Muslims in India, follow the Hanafi and Shafei schools of law, while a group, Salafi or Ahle- Hadith do not follow any particular school of law in full. Among Shias, a large section belongs to Ithna Ashari (Jafari) division, whereas the Shias among Khoja and Bohra communities are Ismaili. The law in India recognizes the Shias and Sunnis, with all their internal variations, as equal followers of Islam and all are entitled to protection of their religious beliefs. In terms of inheritance rights, there is no restriction in Shia law on making a will in favour of a would be legal heir- a man can add to the share of his wife, daughter or any other heir in his property by means of a will, irrespective of how other co- heirs respond to it.³ In fact, within Islamic jurisprudence, the principles underlying inheritance have been spelt out in great detail. These are derived from verses in the Quran which state the categories of who can inherit and the proportion that each can receive. The heirs are mother, father, husband, widow, daughter, uterine brother, full sister, uterine sister, consanguine sister. They have fixed shares and being primary inheritors, cannot be excluded. The first principle of inheritance is about males and females of equal degree and class. Females inherit half the portion of males. Daughters get a specific share. In case of the existence of sons, the share of the daughter will depend on what share the sons receive. In case of single daughter, her share will be one half but if there are two or more daughters, the share is two thirds. The share of a wife is one quarter in the absence of child or agnatic grandchild and one eighth if there is a child or agnatic grandchild. Two or more wives share equally in this given share. Women can inherit in varied relationships as daughter, sister, wife, grand daughter, grand mother.⁴

For WGWLO, the recent amendments in the Hindu Succession Act (HSA), a change that took decades to come, and efforts at the national level for amendments in law concerning Muslim women's rights to agricultural land, provided the impetus to look at practices prevailing within Muslim communities. Besides, Muslim women had the right to inherit property according to the Shariat, the basis of the

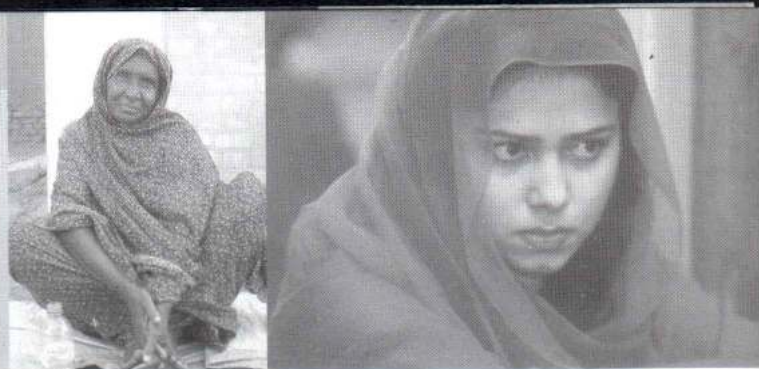
Muslim Personal Law (Shariat) Application Act of 1937.

Through this Act, the Shariat superceded "custom and usage to the contrary" for all property, except agricultural land, as the basis of personal law for Muslims, except in Jammu & Kashmir. Also under the Shariat, the daughter and widow could not be excluded by any other heir and are protected by the overall testamentary restrictions although their shares in practice are lower. Section (2) of the 1937 Act excluded a significant form of property, agricultural land. The section held that " Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift, or any other Provision of Personal Law, marriage, dissolution of marriage including Talaq, Ila, Zihar, Lian, Khula and Mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and Wakfs (other than charities and charitable institutions and religious endowments), the rule of decision in cases where the parties are Muslims shall be the Muslim personal Law(Shariat)". However, in the post independence period, some states extended the Act to include agricultural land. i.e. Tamilnadu, Karnataka and Andhra Pradesh in 1949, Kerala in 1963. For Gujarat, Maharashtra and Bengal, there was no strong presumption in favour of custom even before the 1937 Act, so the Shariat was presumed to cover agricultural land and the same was true for parts of Andhra, Karnataka which had earlier been part of the Hyderabad state . Succession to agricultural land continues to depend variously on customs, tenurial laws, etc., with differing implications across the states which have not made amendments.⁵

1. Legislative Assembly Debates quoted in S. Lateef (1994) " Defining women through legislation" in Zoya Hasan ed. Forging Identities: Gender, Communities & the State, Kali For Women Publications, Delhi
2. Women in Islamic Societies: A Selected Review of Social Science Literature. Report prepared by Federal research Division, Library Of Congress, November, 2005, USA.
3. Mahmood, Tahir: Reform Friendly, Times of India, 11Decembe, 2006, Ahmedabad
4. Nasreen Fazalbhoy (2005) Muslim women and inheritance in Zoya Hasan & Ritu Menon ed. In A Minority-Essays On Muslim Women in India, OUP, Delhi
5. Agarwal, Bina (2005): Women's Inheritance- Next Steps quoted in Widows Rights International Newsletter, No.5, December, 2005.

APPROACH:

Diversities & lived realities



Muslims constitute 9.1% of the population of Gujarat. The sex ratio stands at 937 females to 1000 males and 913 in the 0-6 age group. Literacy rates stand at 73.5%, with a female literacy rate at 63.5 %. The overall work participation rate for Muslims stands at 32.7%.⁶ Gujarat also has the largest number of Muslim communities in India, each having their own memories of their history, including mythical pasts. In fact, Gujarat consists of diverse communities and of the 289 communities in the state, 124 Hindu communities (out of total 186) hold that they migrated to Gujarat, as also 67 Muslim communities (out of 87). Twelve of 13 Jain communities, all hunter-gatherer communities, 70 % fishing communities and 50% of artisan communities, 70% of agricultural believe that they migrated to Gujarat. These migrations were inter-state, inter-regional and transnational.⁷

In September 2005, when WGWLO held the first workshop with Muslim women on land and property rights, the main objective, it was stated, was to work out issues of advocacy from Muslim women's perspective. However, as the review of first workshop suggested, for WGWLO and member NGOs, there was a parallel process involved of understanding what was Muslim women's perspective. Following a regional approach and this in itself being a significant recognition of the diversities of Muslim women's lives in Gujarat, the workshop in Bhuj (Kutch) involved 18 Muslim (Sunni) women from four sangathan (mass organizations of women) and from the community from Nakhatrana, Khavda, Mundra, Abdasa areas as well as representatives of member NGOs of WGWLO, women lawyers. The Muslim women belonged to different communities such as Sama, Hajam and other sub castes. A workshop involving rural Muslim women suggested an appreciation of looking at lived realities of Muslim women and in a variety of geographical and social settings. The cases selected looked at land & property rights from the framework of women's roles- as daughters, wives, and widows, divorced, since the focus of WGWLO at that stage was on private land.

6. First report on religion, Census of India, 2001

7. Achyut Yagnik, Suchitra Sheth (2005) The shaping of modern Gujarat, Penguin Books, Delhi. Data drawn from KS Singh (ed) People of India Series, Gujarat vol.22, Parts 1-3, Anthropological Survey of India, Popular Prakashan Publication, Mumbai, 2003

Kutch

The workshop findings indicated that land was divided with mutual consent within the family on the basis of both their understanding of the personal law as well as the information the family had about other laws. Law was only one of the mediating factors, other considerations came into play. For example, Niyamatben's family owned land, both agricultural and wasteland. The agricultural land was divided among the sons while the wasteland was given to the daughters who took care of their mother. A married daughter received monetary help at different points after marriage while another daughter married to what was considered a "well off" sahuakar (moneylender), did not receive any land. Widows received share in property as per revenue laws governed by the Bombay Land Revenue Code and if the case became complicated, it moved to the lower court. Mehr, is an amount the husband gives to his wife in consideration of marriage. It can be given at the time of marriage, according to the Shariat, or given whenever a wife asks for the same. Workshop participants held that cash, cattle or jewellery were promised as mehr, but not land. A wife had no share in the land/property during the lifetime of the husband. Among Muslims in pastoral communities, such as Maldharis, women used to receive about 20 cattle and a bullock if the household's herd size was about 400 but with decline in the herd size, women may receive about 5 cows at time of marriage. Among Gadvis, men sometimes had more than one wife and women too had more than one husband.

In cases relating to divorce, the cases which were discussed at the workshop dealt mainly with those that were taken to the court. Significantly, cases of Muslim women coming before the local court were not judged according to the personal law. According to the lawyers present, neither judges nor lawyers were familiar with the Muslim Personal Law. In complicated cases, the judges sometimes accept multiple marriages of Muslim men but decide on equal division of property among wives and children.⁸

8. WGWLO, Report on Muslim Women's Workshop, September 2005





Dahod-Tribal Belt

In the second workshop held August 2006, about a dozen Muslim women from different castes from Sukhsar and Gotip participated. Here, in cases of talaaq, mehr was either returned to the natal household through the community's panch (consisting of male members only), but there were cases of both mehr being returned to the wife directly and not being returned at all. Muslim women do not have ownership rights to house (residential property) and in many cases, are not even allowed to continue staying there even if they had children, both sons & daughters. On the other hand, there are cases of parents with larger landholdings giving land to both son and daughter. A case was highlighted of a male cousin taking away property and keeping it for his daughter. Sometimes, in larger holdings, land is collectively ploughed by sons while daughters receive share of the produce. Land is not divided so as to avoid giving share to the daughter. There was also a case of a mother giving away land to her daughter, the land having been given to the mother from her natal family.⁹

Bavla (near Ahmedabad)

The third workshop held at Bavla in November, 2006 involved participants that included 16 Muslim women from upper (Vora) and low (Sipahi, Sama) castes, a few owning agricultural land. A Mamlatdar, local revenue official, was also invited. Among the Voras, incidence of divorce was stated to be increasing and the Mehr amount too had increased from the customary Rs 50-500 to Rs 5000. Among Voras, with very large land holdings, there were cases of talaaq being given orally although the custom was that the talaaqnama had to be signed by both spouses. Among the poorer Sipahi and Sama castes, mehr remained at Rs. 500 and divorce cases too were stated to be lower. Among them, there were many cases of property being mortgaged. In some cases, widows were forced to wait for up to two years, for claiming their rights in marital property thereby increases their vulnerabilities. On the other hand, a case was cited of a widow receiving her share of property, despite having only a daughter as an heir. The Mamlatdar present held that the practice of polygamy complicated property distribution, with the

second wife receiving priority while the first wife was neglected. Also, revenue officials were predominantly Hindus and had no knowledge or experience of Muslim customs or law. Hence, these officials took decisions according to the Hindu Succession Act and their knowledge of the same.¹⁰

Emerging Issues

While the three workshops involving Muslim women from different regions, castes, class and communities are only preliminary steps towards developing an understanding, it is evident that the personal law is not the only factor mediating rights to land & other property. The workshops held suggested that notions of need, family responsibilities, duties, patriarchal ideas on gender roles, patrilineal system, etc. are implicated in decisions concerning inheritance rights for Muslim women. Most contemporary literature too rejects the idea of religion as the primary determinant of status and conditions of Muslim women. Social science literature not only point to the heterogeneity in socio-political and legal circumstances but also to women's agency, of Muslim women struggling for their rights, despite many barriers. Other studies state that Muslim women's legal and other status was linked more to ways in which kinship systems in societies affected, differentially, the process of state building. A recent urban case study in India held stated, "Property rights cannot be viewed apart from the various contexts in which its disbursement is located. When exploring into the questions of property entitlements, it became obvious that property was a site where various negotiations and adjustments occurred regarding family relationships, ideas of family obligations, rights & duties and gender ideologies".

However, more insights are needed about the dynamics that underlie variations in cultural practices on property rights and the sources of variations and how these play out in the lives of Muslim women. Since most of these decisions are taken at a family or community level, not only the role of informal institutions/actors- maulvi, jamaat, jati panch, are significant, but also the proceedings, the language used, how women and men narrate their claims, the modes of reasoning of those who take the decisions. This can also show how and to what extent the Shariat, custom, civil law are part of the discourse on inheritance & property rights in practice.

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15/12/2006

9. GWLO, Report of Workshop on Muslim Women & Land Rights in tribal Area, August, 2006.

10. GWLO, Insights from workshop with Muslim women at Bavla, near Ahmedabad, November 2006+