

# **Debates Over Women's Autonomy**

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# Rights and Representation Debates over Women's Autonomy in India

Paula Banerjee

## I

Mary Wollstonecraft took England by storm when she published her *A Vindication of the Rights of Woman* in 1792. Her work was considered radical because she located notions of women's rights within the context of universal human rights. Within half a century this question of women's rights assumed centre stage in debates of social reform in both England and in India. It was recognised by social reformers that something needed to be done to improve the condition of women although often not with any notion of gender justice or equality. These debates led to some changes into the situation of women both in England and in India but more importantly it led to a specific social construction of women as more a member of a community than as an individual. This ensured that questions of women's autonomy were historically to be subsumed within questions of religion, community and personal law and hardly ever treated as a matter of either individual right or justice. It also ensured that women's autonomy would remain hostage to community rights. Any critique of women's situation would always be addressed as a critique of one particular group of women whose group affiliation would be either on lines of religion, ethnicity or race. Therefore such a critique would emerge as a critique of a specific community. Hence questions of women's rights was doomed to appear in a binary with community rights.

My paper will address questions of women's autonomy in the Indian context and analyse its location within different discourses of which the legal discourse is but one. Discourses on women's autonomy always remained subsumed within other discourses such as that on rights and representations because Indian society even until the recent past did not treat women as autonomous subjects. It was only after women successfully led autonomous movements in different parts of India from the 1980s until the present times that there emerged a growing realisation that women are autonomous subjects even when they represent their communities.

Women's movement has often put forth questions of women's autonomy through exploring women's position in law. Among other indicators women's position in society is traditionally analysed through marriage, divorce and property acts. This paper will address how questions of women's autonomy appeared and reappeared through different discourses in the Indian political scene. It will analyse the evolution of a number of Acts that has had tremendous impact on women's legal

position and try to understand whether that has led to women's autonomy or whether that has subsumed questions of autonomy leading to further marginalisation of women in polity. The paper begins with certain assumptions. It locates patriarchy not merely within the social realm but also the political realm. It assumes that patriarchal forces deny not just social rights to women but also political rights. It is assumed that location matter and that law affects different women differently. This is particularly true for women in India because Indian women are traditionally located within different communities. Yet an understanding of the evolution of different laws seems necessary because laws are often considered as markers of autonomy in modern democratic societies. This paper therefore, addresses the question as to whether legal changes have resulted in greater autonomy for women or is it merely a mirage. This paper also looks at practices of legal change in India. It is my contention that legal changes do not occur in vacuum and is often the result of women's own activism. Therefore, it is essential to analyse how activism for legal and political change has affected the women's movement and questions of women's autonomy in India.

In the Indian context women's demands for autonomy appeared as demands for rights. It began with the right to education and developed into demands for legal rights. Yet after culmination of every demand there was growing realisation that much more was left out. In the 1950s and 60s a number of legal reforms were initiated that was supposed to act as a necessary corrective to women's marginalisation in state and society. But by the 1970s it became clear that despite legal reforms the real situation of women did not change to any great extent. The Shah Bano case made it apparent that law affected different women differently and this was a legacy of situating women within a community rather than as individuals and citizens. The majoritarian women's movement tried to work against this closure through agitation for uniform civil code and through their fight for greater political representation of women. But both these initiatives brought its own closures. The fight for uniform civil code revealed that women's rights could easily be placed in opposition to community rights. Greater political representation for women raised the question of representation for which group of women? After all the women's movement had found it impossible to challenge the notion that women were part of their own communities. Also greater political representation could only come through parliamentary party politics and political parties had its own patriarchies that decided the party line. Women from within these parties failed to challenge their own patriarchies. The participants in the women's movement faced with these closures and found it necessary to distance themselves from accepted theories and practices. These led to rethinking and reconfigurations and from the ashes of the traditional women's movement grew a number of autonomous women's groups. These groups did not question women's positioning within communities but focussed on the issue of violence. Violence became the leitmotif and it was through activism against different forms of violence faced by women that these autonomous women's groups were able to question established paradigms of democracy and negotiate closures created by the binary of women's rights vis-à-vis community rights.

## II

The official discourse on Indian women in the post-colonial period is often shaped by the colonial discourse on Indian women and “the way it entered into the nationalist discourse in the pre-independence period.”<sup>1</sup> To understand the colonial discourse some of the “pro-women” enactment undertaken in the nineteenth century by social reformers, who were largely men, needs to be analysed here. In the nineteenth century gender was far from being marginal to the new world and was constantly being re-articulated through social reforms beginning with abolition of the Sati and not running its course until the age of consent bill in 1892. It was around the same time there was emerging a division between public law and personal law. It is said that “public law was designed to encourage and safeguard the freedom of the individual in the marketplace, and was established by statutes, personal law was intended to *limit* the extent of freedom.”<sup>2</sup> Where women’s issues were concerned even statutory Acts were considered to be part of the personal realm. This is clearly revealed by the passage of the Indian Marriages Act. In 1864 the Indian Marriages Act was enacted but it scrupulously avoided any modification of the Hindu and Muslim personal laws thereby creating procedures for only Christian marriages as the community leaders of the other two other communities were opposed to it. Other Acts such as the Hindu Widows Remarriage Act and the Age of Consent Act did effect notions of marriage at least among the Hindus but it made no effort to put issues of marriage within the realm of the civil. The Indian Succession Act of 1865 was one of the first efforts to systematise civil law in India. It declared that no person “shall by marriage acquire any interest in the property of the person that he or she marries,” thereby challenging husbands right over their wives property but it did not stipulate any maintenance for the wives, which would later lead to destitution of many women. Even this Act was not applicable to the Hindus, Muslims or even the Parsis who had a separate legislation for their community.

In the 1850s the first divorce Acts came into legal usage in England. Although the bill was introduced because of pressures from women’s groups yet it treated men and women differently as women could obtain divorce only on grounds of aggravated adultery and men needed to prove only simple adultery. The first Indian Divorce Act came into effect in 1869. The underlying reason for the enactment of this act was not to ensure equality of sexes but to make provisions so that marriages legalised in England can be dissolved in India if needed. But it also needs to be said here that notions of equality of sexes had already appeared in political and legal discourses of the time. For example Sir Henry Maine, who was one of the chief architects of these Acts, was said to have commented rather sarcastically of the Parsis partial civil code that allowed their daughters to inherit only one fourth of what they allowed their sons to inherit. However, no effort was made to translate these sentiments into legal provisions for any communities in India. Even the Age of Consent bill that raised marriage age for women from 10 to 12 was

severely criticised by Hindu leaders who considered it as a severe encroachment into their “personal” domain thereby relegating questions of women’s autonomy into the domain of the personal that later came to be defined as group rights.

There are powerful voices that argue that in the late nineteenth century the nationalists resolved the women’s question by creating the binary of material and spiritual realms and relegating questions of women’s rights into the realm of the spiritual. Indian nationalism was built on the plank that in the spiritual realm the East was far superior to the West so that the inner sanctity of the spiritual realm was protected at any cost (even at the cost of women’s autonomy) from western gaze. Since women’s questions fell within the spiritual realm it became imperative to protect it from any changes that did not reassert the spiritual purity of Indian women. As a result women could take part in public life only when they were able to adequately demonstrate their purity. Such an argument assumes that nationalist voice was actually a male voice and ignores the materiality and material practices in the lives of women where women’s question was never resolved. It also ignores how women subverted notions of spirituality to create spaces for themselves in the realm of the public. Hence even though proscriptive literature of the time seemed to be obsessed with the theme of western influence in education that seemed to threaten the spirituality in the lives of women, middle-class women were constantly reclaiming education as an essential aspect of their training as nationalist and autonomous beings. Writings by women such as Rashundari reveal that one cannot unproblematically argue that women had to assert their spirituality to legitimise their aspirations to be literate and consider it exhausted of any other possibility.<sup>3</sup> One has to consider how through such writings she reclaims her right to be an individual who is over and above an autonomous being rather than a wife or a mother. Therefore within women’s own politics of protest education assumed the centre stage for a short while.

That women embraced education even at the cost of displeasing others in the family was clear from many autobiographies written at the time. Rashundari learnt how to read secretly without anyone knowing that she could do so. Ramabai Ranade learnt how to read even after facing stiff opposition from older women in her family. In her autobiography she wrote that although her husband was in favour of her learning the other women within her family hated it. Ramabai wrote of her experiences:

...some woman or the other in the house was bound to be eavesdropping, standing either on the staircase or at the door. They use to memorize the tunes and stanzas I had sung at night and mimic my singing the next day. They use to make faces at me, mock me, and put me to shame in front of the other women in the house. But I never retaliated....I knew they had the secret support of the elders. But neither did I agree with them nor did I argue back. *I just quietly did what I wanted to.*<sup>4</sup>

Little wonder then that education became a priority for some of the first women’s groups that were formed. In 1926 Margaret Cousins gathered together

some eminent Indian women such as Sarojini Naidu, Kamaladevi Chattopadhyay, Begum Sheba of Bhopal, Rajkumari Amrit Kaur, Muthulakshmi Reddy etc. to discuss the problems faced by Indian women at that time. They formed the All India Women's Conference (AIWC) in 1927. AIWC began as an organisation for promoting women's education as education was considered as the most important means for improving the status of women. Educational league was formed in various provinces such as Gujarat, Bengal, Hyderabad, Indore etc. In 1928 the All India Fund for Women's Education (AIFWE) was set up. In the first meeting of the AIWC women such as Gool Bahadur opposed the resolution "teaching in the ideals of motherhood." But the proposed amendment that teaching for men should therefore be in the ideals of fatherhood got only 3 votes. What is important is not that there were only three women who questioned the notion that women's education should be geared towards making women better mothers but the understanding that even in these early times there were three women who were thinking of equity. However, there were other resolutions that worked beyond constructing women's roles as that of being only a good wife and a mother. Among such resolutions was the one demanding compulsory physical training in all girls' schools. Therefore, although the overarching stereotype for educating women was the "ideals of motherhood," or "making a beautiful home," a few women had already started to subvert that stereotype through education.<sup>5</sup>

One of the landmarks in the incipient women's movement in India happened when the AIWC took up questions other than those dealing only with women's education. This happened quite soon after its inception. In the third day of its first conference there was a proposal to raise the age of consent for women to 16 years. According to Nivedita Menon from here, "came the realisation that these questions could not be separated from India's political subjection. Thus, the AIWC came to a point where it stressed the political goal of national self-government as a means to achieve women's aspirations."<sup>6</sup> Women participated in the anti-colonial movement in huge numbers. Although that story of women's participation in large numbers has been repeated innumerable times only recently feminists scholars have explored the ambivalence of women's responses to the movement. Thanks to the writings of feminists such as Madhu Kishwar it was made clear that although nationalist leaders such as Gandhi encouraged women's participation in the movement in large numbers they did almost nothing to help women liberate themselves from the patriarchal strangle hold or question their position within their communities. That women did exert some autonomy of action was made clear in a number of ways and not least by members of AIWC who negotiated with state to come up with a new curriculum for women at the time of the Quit India movement when the rest of the Congress leaders urged them repeatedly to boycott the government.

In the official realm too any changes favouring women's position in society was few and far between and there was no question as to whether women could be treated as individuals and not as members of a particular community. *Legislative Assembly Debates* during the first half of the twentieth century also concerned itself

with discussions over the position of women. Both during the 1920s and 30s there were heated discussions over the situation of Hindu women in the assembly debates. In 1939 two crucial bills in this regard was introduced. One of these was the “Hindu Women’s Right to Divorce Bill” and the other was the resolution to set up a committee to investigate the position of women under existing laws. Discussions over both these resolutions portrayed how questions of women’s autonomy were addressed. G.V. Deshmukh, who introduced both resolutions, was often at pains to explain that he had consulted the orthodox religious opinion. No one challenged the concept that for any legislation on women’s position in society, the orthodox religious opinion needed to be not just consulted but addressed as well. There were others belonging to the orthodox opinion such as M. Ananthasayanam Ayyangar, who were totally against encouraging any changes in the lives of women. He opposed wives receiving maintenance in the case of divorce because that meant they would be provided for even when they lived away from their husbands. In fact he even said that if they lived away from their husbands even when their husbands meted out “ill-treatment” he saw no reason for women being allowed to claim maintenance. He loudly complained that:

So far as the wife is concerned, when does her right of maintenance accrue? It is only when she wants to live away from her husband that the question of maintenance comes in. Is there any Member of this House including the Leader of the House who is unconditionally prepared to allow any woman to live separately from her husband even though there may have been ill-treatment?....Therefore, all this is moonshine and let no ladies be tempted by it.<sup>7</sup>

There were some members even in the Congress party such as Bhulabhai Desai who showed concern that if position of women changed to any great extent it will result in chaos as among the Parsi community. He said that “recently, my friends, the Parsis, have gone just as far as they could and some 300 odd Parsi ladies who were waiting for it, got themselves divorced as soon as the Bill was passed.”<sup>8</sup> Therefore, most of the members were against any large-scale changes that might have substantive effects in the lives of women as individuals. Herein was the crux of the problem. Women were to be treated as part of their family or community but not as individuals.

Debates over the resolution for appointment of a committee that was meant to investigate the position of women soon changed the terms of reference and became a debate on the formation of a committee that would investigate only the legal position of women. And only Hindu women were to be their focus of investigation. These debates portrayed that any change in the situation of women could only be possible through legal means. That there can be other ways of addressing questions of women’s position in society was never even considered. Also such changes were never considered as part of women’s right. Further the right to discuss changes in women’s position hardly ever included women’s own voices but rather was a matter for community leaders to debate upon. Thus in the official discourse women’s



autonomy was hardly ever discussed. If at all it was subsumed within questions of legal change. But such changes were imagined after keeping intact the sanctity of marriage, integrity of religion and what was perceived of as the stability of society.

### III

In another quarter however, there were new and unprecedented developments. But that was largely outside the purview of middle and upper class/ caste women who were agitating for educational reforms or lobbying for legislative reforms. Women's activism was noticeable among the working class during their strikes in 1928 and 1929. In an article Tanika Sarkar describes these actions as sporadic and violent. It was around that time that there were efforts to organise these women. For example during the scavenger's strike in Calcutta it was the women who were most violent in their protests confronting the police and attacking them with buckets of excretion. Their strategies were so novel and actions so violent that for a while the administration was at a loss as to how to confront them. Even in jute mill strikes of the period women's activism was noticeable. Sarkar attributes it to the presence of a large number of migrant women within the working class population. However, the fledgling women's movement of the time did little to encourage conversations with the working class women.

Even among rural women from the peasantry there was emerging protests on various questions including that of land revenue. These culminated in the Tebhaga and the Telengana movements. Again, within these movements women were very visible. Although both these movements had left leanings and women leaders from the left were in leadership roles the mainstream women's movement could not in any way establish strong linkages with these movements. These were not feminist movements in so far as there were no conscious attempts to provide an alternative gendered framework. As Bina Agarwal comments women either within or outside these movements did not think it feasible or possible to claim for their individual land rights. They participated because as Kavita Panjabi comments they were claiming their "*bhalobashar jami*".<sup>9</sup> But this did not translate into a demand for their own land. However, alternative gendered frameworks were established nevertheless as a result of these movements. In Tebhaga for example "urban middle class women within MARS (Mahila Atmaraksha Samity) and the Communist Party united with village women as activists in an anti-imperialist and class struggle," thereby challenging the patriarchal paradigm of *bhadramahila*. Also women did not participate as appendages of men but as individual activists thereby portraying the limitations in the Gandhian construction of *sahadhormini* (helpmate).<sup>10</sup> In the late forties, however, both these movements had run its course and the emerging Indian State was no more sympathetic of these movements than the colonial state portraying that the new state was no less patriarchal.

Meanwhile debates on Indian women's status were taking place in another site. The *Constituent Assembly Debates* inevitably had to address this issue. It is

interesting to note that debate on status of women appeared in unprecedented forms such as during the debate on Article 31, which was centred on the question of people's right to livelihood. Article 31, clause (i) as proposed read "the citizens, men and women equally (should), have an adequate means of livelihood." The first amendment that was suggested was that "men and women equally are unnecessary and redundant." When the member proposing this amendment was questioned as to why he thought the clause was unnecessary he replied "the masculine, as it is well known, embraces the feminine." He went on to explain that "if we are to make it clear that any law shall apply to men and women equally and if we are forced to declare it everywhere, then this expression has got to be used unnecessarily in many places."<sup>11</sup> In answer to such declarations even well known leaders such as Mahavir Tyagi said that what the amendment proposed was merely an "improvement in language or change in words."<sup>12</sup> Although Ambedkar opposed the amendment Tyagi asserted that the amendment was actually about semantics thus disregarding the politics involved in the usage of such language. Such a disregard about issues central to women often cut across religious and ethnic lines. This was clear during the debate on Uniform Civil Code when it was decided to be placed in the list of Directive Principles making it sure that it would probably never see the light of the day even though Rajkumari Amrit Kaur and Hansa Mehta opposed it. According to Aparna Mahanta the "failure of the Indian state to provide a uniform civil code, consistent with its democratic secular and socialist declarations, further illustrates the modern state's accommodation of the traditional interests of a patriarchal society."<sup>13</sup>

The Indian State's attitude to women was further revealed over the question of abducted women. The partition of the Indian subcontinent in 1947 witnessed probably the largest refugee movement in modern history. About 8 million Hindus and Sikhs left Pakistan to resettle in India while about 6-7 million Muslims went to Pakistan. Such transfer of population was accompanied by horrific violence. Some 50,000 Muslim women in India and 33,000 non-Muslim women in Pakistan were abducted abandoned or separated from their families.<sup>14</sup> Women's experiences of migration, abduction and destitution during partition and State's responses to it is a pointer to the relationship between women's position as marginal participants in state politics and gender subordination as perpetrated by the State. In this context the experiences of abducted women and their often forcible repatriation by the State assumes enormous importance today.

The two states of India and Pakistan embarked on a massive Central Recovery Project during which some 30,000 women were recovered by their respective states. Some incidents relating to these abducted women exemplify the politics of gender during partition. Even when the two countries decided on little else they decided that the abducted women must be restored to their families. Problems arose over the process and progress of recovery. An Abducted Persons (Recovery and Restoration) Bill was brought in the Indian Parliament. Boys below the age of 16 and women of all ages were brought under this bill that gave unlimited power to

police officers regarding abducted persons. If a police officer detained any women under this bill they could not be questioned in any court of law. In fact the women themselves lost agency over their own person. Their voices were often not heard and when heard then not taken into cognizance. Although numerous amendments were proposed in the House the bill passed unchanged on 19 December 1949.<sup>15</sup>

According to Rameshwari Nehru, adviser to GOI, Ministry of Rehabilitation, many abducted women showed extreme unwillingness to leave their “captors.”<sup>16</sup> Ritu Menon and Kamla Bhasin observes that women were:

abducted as Hindus, converted and married as Muslims, recovered as Hindus but required to relinquish their children because they were born of Muslim fathers, and disowned as ‘unpure’ and ineligible for marriage within their erstwhile family and community, their identities were in a continuous state of construction and reconstruction, making of them... ‘permanent refugees’.<sup>17</sup>

These women were forcibly repatriated though refused rehabilitation by their families. The reason for such forcible repatriation lies in the attitude of the young Indian State towards its women.

Many explanations are given for this forcible repatriation of women. Menon and Bhasin point out how national honour was bound to women’s bodies. According to Jan Jindy Pettman repatriation was made a nationalist project because women’s bodies became markers of male honour. As in any other nationalisms, women’s bodies became “part of other people’s agendas.”<sup>18</sup> India made claims of moral superiority over Pakistan or the *other* and this claim was based on the State’s ability to protect/control female bodies. This control was essential for the self-definition of the male identity that was in a state of crisis.

Abducted women were not considered as legal entities with political and constitutional rights. All choices were denied to them and while the state patronised them verbally by portraying their “need” for protection it also infantilised them by giving decision making power to their guardians who were defined in the Act by the male pronoun “he”. By insisting that the abducted women could not represent themselves and had to be represented, the State marginalised them from the decision making process and made them non-participants. For the abducted it was their sexuality that threatened their security and the honour of the nation. Thus, their vulnerability was focused on their body. This made all women susceptible to such threats and so had to be protected/controlled. By denying agency to the abducted women the State made it conceivable to deny agency to all women under the guise of protecting them. This Act therefore, frontally challenged notions of women’s autonomy. It has to be remembered that the Act was passed in 1949 by when the needs of designing correctives for women’s vulnerability to abduction had all but disappeared. This Act therefore was more a mechanism to control women rather than

to protect them. In fact their own family often refused to accept forcibly repatriated women but still they had to be brought back. Because what needed to be stressed was that women belonged to their family, the kin, and the nation and never to her own person. In the context of increasing women's militancy and activism in Tebhaga, Telengana and their further assertions of person-hood in the *Constituent Assembly Debates* this Act was necessary to symbolise their subject-hood and challenge their growing expectations of autonomy.

#### IV

The Abducted Persons Act remained in operation until 1956. The States' initial actions against any recognition of women as equal partners in state formation and then granting these women some legal correctives seem to have contained women's activism for a long time. The militancy that was visible in the working women's movement and the Tebhaga and Telengana movements remained a thing of the past and the legal correctives reiterated women's social positioning as wives and mothers. These legal correctives or measures did not go beyond what one analyst calls the "typecasting women as wombs to bring forth babies, lips to utter sweet nothings, and laps to cuddle infants."<sup>19</sup> *The Hindu Law Code* contained in it the *Hindu Succession Act* came into force in 1954-56. But immediately motions were on to curtail women's right to inherit agricultural land. Many women leaders met the Chief Minister of Punjab to press their views against such a measure. Likewise the *Hindu Marriage Act, 1955* gave women and men equal right to divorce on such grounds, as adultery but the implementation of this Act remained skewed. Also not all Indian women were beneficiaries of this Act and women from other communities remained under their own personal law. For example, Muslim women continued to be guided by Shariat laws that decreed that women may not inherit agricultural land. Even legal correctives could not change women's marginal position in society and there was rampant social discrimination. For example in *The Special Marriage Act, 1956* both husbands and wives were given equal rights to divorce on the ground of cruelty but in its implementation the courts did nothing to revise the patriarchal paradigm of a "good wife." According to one observer:

The recognition of cruelty as a grounds for divorce was significant as it expanded the grounds on which women and men could exit from a difficult marriage. However, the courts have interpreted this ground against the norm of familial ideology. When applied to women, this amounts to a moral evaluation of her conduct, and whether it conforms to the norm of a good mother and wife. A wife who fails to perform her marital obligations, which are primarily concerned with caring for and obliging her husband, is vulnerable to a charge of cruelty.<sup>20</sup>

Women also could not effectively challenge the paradigm created by the state of a *good woman* until a much later time. That *The Hindu Law Code* did not in any way challenge that paradigm is evident from the new educational policy set up by the Government of India under a national committee on women's education in 1959.

This committee argued that the courses likely to interest women were home science, music, drawing, painting and nursing etc. As such these were no different from the courses stressed in the 1930s when the main role for women was seen to be makers of good homes by the colonialists and helpmates to their husbands by the nationalists. The new laws in no way gave women equity. Their skewed implementation also portrayed that as long as women's rights remained hostage to community rights it could easily be subverted. The only way out was to rescue women's rights from being placed in opposition to group rights but as yet women's groups had not developed strategies whereby women's rights could be negotiated not in opposition but in tandem with other rights such as minority rights or ethnic rights.

The male centrism of Indian project of state formation was dramatically reiterated by the Citizenship Act of 1955. As its title suggests the Act dealt with modes of acquiring, renunciation, termination and deprivation of citizenship. Although the Act was meant to give rise to the category of universal citizen in actuality it did not. It continued the gender dichotomy evolved by the colonial state. The section on citizenship by registration stated that "women who are, or have been, married to citizens of India;" were to given citizenship if they applied for it. No such stipulations were made for men marrying women who were Indian citizens. Thus citizenship by registration was largely transferred through the male line. In the section on the termination of citizenship it was stated that where a male person "ceases to be a citizen of India under sub-section (1), every minor child of that person shall thereupon cease to be a citizen of India."<sup>21</sup> This portrayed once again that citizenship was transferable largely through the male line giving women a second class citizenship. Although in later Acts women could transfer citizenship rights to their spouses and to their children it did not alter the maleness of Indian State as conceived in the formative years. This Act too entrenched women's location within essentially patriarchal sites such as the family or the community. The one thing that the state consistently refused to consider was a Uniform Civil Code that could have challenged women's location within a kin and a community. Therefore, demands for women's autonomy were successfully contained by the state until the 1970s when these demands resurfaced. The context was both internal and international.

The United Nations declared 1975-1985 as the decade for women and Indian women activists found the occasion to explore the actual situation of women in India. They soon confronted the fact that despite legal victories over the years political, economic and social disparities between men and women continued. There was extensive evidence of increasing violence against women despite such measures as the amended *Factory and Mines Act of 1953* and *The Dowry Prohibition Act, 1961* and its amendment in 1964. These gaps between women's formal legal rights and their substantive inequality in practice could no longer remain unnoticed. Dowry deaths continued unabated and there was no evidence that violence against women had in any way diminished. The *Towards Equality Report* of 1975 dramatically brought women's marginalisation in society to popular perception. It was made clear that women's political and socio-economic inequalities persisted in face of broad

range of legislation intended to improve women's status. That women were slowly becoming aware of their lack of control over resources and their distance from the trade union movements largely led by men is clear by some of their initiatives that they undertook in the 1970's of which the Self-Employed Women's Association (SEWA) is but one. SEWA, a women's trade union movement started in 1972 with the objective of making it possible for poor women to have access to and ownership of economic resources. Their intention was "overcoming exploitation by men, society and state policies."<sup>22</sup> As a result of these developments the *Equal Remuneration Act, 1976* was passed. But even these legislations proved that it could bring changes in women's lives only up to a point. It seemed that for more substantive changes in women's social and political lives newer initiatives were necessary both in the field of legislation and in other forms of politics. That legislation might also be a double-edged sword was further portrayed by events following the Shah Bano case.

Her husband divorced Shah Bano, a Muslim woman of seventy-three years after forty years of their marriage. She brought a petition for maintenance from her husband under section 125 of the *Criminal Procedure Code of 1973*. In April 1985 the Supreme Court held that she was entitled to maintenance of Rs. 179.20 per month. This judgement created a furore in the country. For Shah Bano victory came after ten long years of struggle. Shah Bano was not the first Muslim woman to apply for and be granted maintenance under the 1973 Criminal Code. But the repercussions of this judgement surpassed any other perhaps because the Supreme Court called for the enactment of a Uniform Civil Code. When some by-elections took place in December 1985 a sizeable Muslim vote that traditionally voted in favour of Congress-I, turned against it. From Kishengunj constituency the opposition Muslim candidate Syed Shahbuddin came to power. Soon an independent Muslim Member of Parliament introduced a bill to "save Muslim personal law."<sup>23</sup> The Congress-I, which was the ruling party, issued a whip to ensure the passage of the bill. The women's movement and a section of Muslim organisation vigorously campaigned against the bill. The Hindu Right also campaigned against it. "The government, initially supportive of the Supreme Court decisions, reversed its position, and supported the enactment of *the Muslim Women's (Protection of Rights on Divorce) Act* in May 1986, which provides that section 125 of the *Criminal Procedure Code* does not apply to divorced Muslim women."<sup>24</sup>

The Shah Bano case strongly brought forth the question of the sanctity of personal law. A Member of Parliament in the Lok Sabha during the initial debate argued that since this issue pertains to Muslim religion, "only a Muslim judge should decide such cases because in such cases only a Muslim got the right to do *iztihad*, i.e. right to give opinion where there is a conflict between the order of the law and that of the Prophet."<sup>25</sup> Such claims asserted that the right of the cultural community was greater than the political community. Meanwhile in a dramatic turn around even Shah Bano dissociated herself from this judgement. She said "I, Shah Bano, being a Muslim reject it (the SC judgement) and dissociate myself from every judgement

which is contrary to the Islamic shariat.”<sup>26</sup> Her rejection of the Supreme Court judgement symbolised women’s capitulation to the cultural community when arrayed against patriarchal forces that work across cultural and political communities. In a recent interview Sona Khan who acted as Shah Bano’s lawyer commented that “one cannot make a Shah Bano of a rich woman. It is only the poor and uneducated who get taken in by what religious fundamentalists say. Also, it is not fair to criticise the discriminatory personal laws of one community while discriminatory laws of other communities are not paid attention to.”<sup>27</sup> Women’s apprehensions that the new law was retrogressive proved correct the next year. The Minister for Social Welfare, Rajendra Kumari Bajpai reported in March 1987, that not a single woman in India was granted maintenance by the Wakf Board in 1986.<sup>28</sup> But yet the controversy helped women to organise themselves into a movement as never before. The motion that was started by the *Towards Equality* report gathered momentum because of the Shah Bano case. This can be gleaned from debates led by women Members of Parliaments exactly at the time when the Shah Bano case was on.

It all started with the *Lok Sabha Debates* on “Progress of Indian Women in Social, Educational, Political and Economic Fields in the International Women’s Decade.” This debate made an occasion for the women members to place before the apex law making body of the state the situation of women in India. It was revealed that the number of illiterate women in India increased from 215.3 million in 1971 to 241.6 million in 1981.<sup>29</sup> The number of women cultivators are in the decline and women agricultural labourers on the increase proving that land is progressively being taken away from the hands of women. In India although “more boys are born than girls but more girls die than boys and the expectation of life is lower for girls. The death rates of females particularly in the age group of 0 to 4 is much higher.”<sup>30</sup> More girls suffer from malnutrition than boys. Members also pointed out that the “number of women workers is decreasing every year,” even in traditionally women dominated industries such as cashew, tobacco, bidi, matches, tea etc.<sup>31</sup> In jute and textile industries 30 to 60 per cent women workers were displaced.<sup>32</sup> In India it was said 43.5% of all marriages were marriages of girl children. Also members reported the link between “commercialisation of agriculture and nutrition deprivation of females.”<sup>33</sup> This was perhaps the first time there was an effort to make a holistic audit of women’s position in society in the Indian Parliament. Even the legal status of women came under fire. Women activists felt that within the Indian context the “main problem is that there (are) many laws but women are dominated not by secular laws, not by uniform civil laws but by religious laws.”<sup>34</sup> Thus even before the controversy over the *Muslim Women’s (Protection of Rights on Divorce) Act, 1986* women had identified personal laws as a problem for women’s empowerment.

But with the Shah Bano case another insidious trend was noticeable that entrenched women within their own communities. While the debate over Muslim personal law was on there were calls from some women candidates such as Abida

Ahmed who argued that the “Government should frame a law which should prohibit interference with Personal Law time and again and may end the disturbed atmosphere that has been created in various quarters as a result of the Shah Bano case.”<sup>35</sup> Leaders such as Jaffar Sharief even argued that “today, in the Shah Bano’s case, I am finding that many people are more sympathetic towards Muslim women than *their own women*. This is very very strange.”<sup>36</sup> The whole question of women’s rights was subsumed within the question of group rights. It became question of our women and their women. Once again the State failed to protect women’s rights and capitulated to the patriarchal definition of women being part of their communities. The politicisation of the question led to a realignment of politics. The left and the Hindu right were aligned together and the Congress and the Muslim conservatives were on the other side. No one paid heed to what the women’s movement was saying. Maintenance became a matter of compensation and not part of women’s rights. Gender justice and equal rights for women once again became a victim to rights of communities where women were placed by the state. The new political realignments reflected that patriarchal forces cut across party politics where women’s self definition was consistently marginalised. Movements for women’s autonomy once again centred on parliamentary reforms, which due to a number of new legislation had become one of the most contested sites for the issue of women’s rights.

Demands for reservation of seats for women began in the early 1970s and culminated in the 1980s. According to one observer “Ramkrishna Hegde’s government in Karnataka started the process in 1983 before Central legislation mandating representation for women was passed. It provided for 25 per cent reservation for women at village panchayat levels. This was before any powerful women’s lobby emerged in Karnataka to press for this move.”<sup>37</sup> After the Shah Bano case women within political parties ceased on the issue of representation as the only way to change the situation of women. This was followed by the 73<sup>rd</sup> amendment of 1992 that reserved thirty-three per cent seats for women in Panchayat level. This led to the introduction of September 1996 bill in the Parliament that called for reservation of one-third seats for women in the Parliament. Debate over this issue continues till today.

Women’s demand for equitable representation started with the *Towards Equality* report. The Nairobi declarations in 1985 also called for increased representation for women. The 73<sup>rd</sup> amendment therefore responded to women’s long standing demands for representation. Question of representation became one of the important demands for the women’s movement too. Once the 73<sup>rd</sup> amendment was passed however women movement felt a backlash because it was considered that only the female relatives of political leaders could benefit from such reservations. This backlash caused the majoritarian women’s movement that was substantially weakened by legislative reversals due to the controversy generated by the Uniform Civil Code to all but dissipate. But women’s activism did not. Women’s movement



found new defenders of women's rights from a number of autonomous women's group that emerged in the 1980s.

The 1980s witnessed unprecedented women's activism both on party and non-party lines. While political parties were concerned about the issue of representation there were other women's groups emerging that concentrated on other issues such as on violence. These autonomous women's groups emerged because it was felt that most political organisations gave minimal attention to women's questions and relegated what they considered women's issues to women cadres. Although many of these autonomous women's groups largely supported the 73<sup>rd</sup> amendment as it gave space to more women to come to the political forefront their own agenda was often different. These women's groups were separate from either the state or political parties and according to some observers this was "a statement about their desire to remain independent."<sup>38</sup> It all started with the protest against rape and violence faced by many Indian women even in the eighties. The Mathura rape case brought forward such an alliance in Mumbai. Soon there were a number of women's autonomous groups such as Stri Shakti Sangathan of Hyderabad, Nari Nirjatan Pratirodh Mancha in Kolkata, Meira Paibies in Manipur, Naga Mother's Association (NMA) in Nagaland etc that brought to the political forefront how pervasive marginalisation of women is in India. These women's groups revealed that the more marginalised among all women are the tribal and dalit women. Ideologically heterogeneous these women's groups did not have to tow the party lines and could have new kinds of debate. That most of the recent creative political responses have been undertaken by these groups of women is made clear by their performance in Northeast India particularly in their fight against laws such as *Armed Forces Special Powers Act* (AFSPA) as is clearly revealed by the situation in Nagaland and Manipur.

## V

Despite the 73<sup>rd</sup> amendment it became clear in the 1990s that situation of scheduled caste and schedule tribe women remained extremely precarious. Among the tribal people who are giving up *jhum* cultivation women are the poorest of the lot. We find differing opinions regarding the relative position of women in tribal India. Some say that women here enjoy much higher status in this region while others call them "primitive". Verrier Elwin is said to have commented that tribal women in Northeast India "is in herself exactly the same as any other women".<sup>39</sup> Although there are great disparities among women's status in Northeast India due to their different historical experiences and hence different social construction of their roles recent researches show that since most of these women practiced *jhum* or shifting cultivation they enjoyed a better position in society. A noted woman scholar's of Assam is of the opinion that, "because of the practice of shifting cultivation, women are considered as assets to the families and partners of men in *jhum* cultivation."<sup>40</sup> Population movements and pressure on lands have impacted heavily in areas where

people practised *jhum* cultivation before. Now that the tribal people are forced to give up *jhum* cultivation the situation of women who were the majority among the cultivators is becoming worse as is the case of Naga women or Reang women in Tripura. Both their social and economic position are affected by this transition yet there are hardly any programme to retrain them for income generation leading to pauperisation of tribal women. The situation of most of these tribal women is further exacerbated by the political climate that they live in. Often their communities are living under siege because many of them are embroiled in state verses community conflicts and are therefore forced to live under the *Armed Forces Special Powers Act of 1958* (AFSPA amended in 1972).

In terms of creative political actions those undertaken by autonomous women's groups against AFSPA have been perhaps most significant. The best known among these organisations for peace is the Naga Mother's Association (NMA). The head office of the NMA is in the largely Angami city of Kohima. It came into existence on February 14, 1984, with a preamble that stated, "Naga mothers of Nagaland shall express the need of conscientizing citizens toward more responsible living and human development through the voluntary organisation of the Naga Mother's Association."<sup>41</sup> Membership of NMA is open to any adult Naga women irrespective of whether she is married or single.<sup>42</sup> Members can join through the women's organisations of their own tribes. The organisation encourages human development through education and it efforts to eradicate social evils and economic exploitations and work towards peace and progress.

The NMA has rendered valuable service for the cause of peace. It mediated between the Government of Nagaland and the Naga Student's Federation over age limit for jobs and came to an equitable settlement. . An achievement of NMA is the formation of the Peace Team in October 1994 to confront the deteriorating political situation. Their theme was "Shed No More Blood." The NMA spoke against killings not only by the army but also by the militants. In a pamphlet released on 25<sup>th</sup> May 1995 the representatives of NMA wrote that "the way in which our society is being run whether by the overground government or the underground government, have become simply intolerable." The NMA celebrates the 12<sup>th</sup> of May each year as the Mother's Day and renew their appeal for peace.

Apart from peace initiatives the NMA has worked for social regeneration. In Nagaland there is rampant abuse of alcohol and drug. The NMA provides facilities for de-addiction. They collaborate with the Kripa foundation of Mumbai for rehabilitation of drug doers. The NMA has also started anonymous HIV testing. They are probably the first women's organisation in the Northeast to test pregnant women for HIV virus. The NMA is providing pioneering service for care of patients afflicted with Aids. An important issue that is preoccupying the doctors of NMA is the increase in HIV positive cases among pregnant women. An NMA spokesperson is of the opinion that conflict in Nagaland is a result of chronic underdevelopment.

Therefore the NMA believes that without addressing developmental issues there cannot be any peace in Nagaland.<sup>43</sup>

NMA's greatest achievement is that most Naga women's organisations are its collaborators. The members of NMA also collaborate with the Naga Women's Union of Manipur. The rallies organised by NMA are always well attended by other Naga women's organisations. The NMA work very closely with the Naga *Hohos*. That the NMA has assumed enormous influence in Naga politics is borne out by the fact that they are the only women's group in South Asia who has participated in a cease-fire negotiation. In 1997 they mediated between the GOI and the NSCN (IM) faction and facilitated a cease-fire.

The other group that has shown tremendous political initiatives are the Meira Paibies of Manipur. In Manipur valley women's activism is symbolised by the activities of Meira Paibies, or the torchbearers. Manipuri women today eulogise trace their origin from the military deeds of Linthoingambi of Ningthou Khomba, who was known to have saved her palace from attacks by the enemy. During the last century there were two women led uprisings in Manipur known as the Nupi Lal. These were against the British. Today, there is a women's bazaar in Manipur known as Nupi Keithel where women meet, sell their ware and discuss problems of the day including politics. This bazaar has served as a launching pad for collective revolt by women. The Meira Paibies also trace their origin from such organised women's activism in Manipur. According to Yumnam Rupachandra of the *North-East Sun* the Maira Paibies have become an institution in their own rights today. They started as *nasha bandis* or combat groups for the ever-increasing consumption of alcohol by the men. Slowly they captured the imagination of the Peoples Liberation Army (PLA). The PLA imposed a ban on bootlegging and booze in January 1990. Two months later, succumbing to this pressure the United Legislative Front government declared Manipur a dry state. This was a victory for the Meira Paibies. The social cleansing drive it is said, evoked popular support. According to some critics Meitei militants actively support these women's groups. But recent events portray that Meira Paibies enjoy the support of most of the civil society in Manipur. In the last two years the Meira Paibies have expanded their area of action. Now they campaign against atrocities by the security forces. They also keep nightlong watches to foil raids. They dialogue with security forces and convince them from picking up innocent bystanders for questioning as part of counter insurgency operations. From the month of July of this year they have begun an unprecedented movement against the AFSPA that has captured the imagination of all civil society groups working on peace. They are in the forefront of protest against violence and it is being extremely difficult for the state to ignore their demands. In July 2004 a group of Manipuri women protested in the nude in front of Assam Rifles headquarters in Imphal. The event that triggered this protest was the rape and killing of a thirty-two year old Manipuri woman called Manorama who was in the custody of Assam Rifles. When Manipuri women protested in the nude they said, "the silence of the State authorities and negligence in redressing their woes forced them to go beyond shame."<sup>44</sup> Their protest touched the

core of male centrism of the Indian state structure that has unleashed unprecedented violence against women. Their activism resulted in the formation of Apunba Lup, a coalition of civil society groups in Manipur against the AFSPA. Their success is portrayed by the Prime Ministers assurances to them that more humane laws will replace the AFSPA.

The actions of the Maira Paibies and the NMA portray that they have mastered the art of creating a common platform for all civil society groups thereby producing an alternate vision of peace. The naked protests of the Maira Paibies show that they are acting not just against the AFSPA but also against the masculinist militarised machinery that has been unleashed against them in the process of the conflict. Through such a process these women have successfully created their own space in the politics for peace. The Naga women also did the same through their *Shed No More Blood* campaign. These protests show that women's negotiations for peace have the potential to change the situation of women even in traditional societies. It also leads to a democratisation of society in as much as democracy can be equated with social justice. Therefore my contention is that these autonomous women's groups have not only redefined peace but their own situation is also redefined by the politics of peace. They have also enlarged the space for democratic actions. Also they have worked against the binary that women's rights is always in contention with group rights. They have portrayed that increasing the space for women's action also means an increase in the democratic space for communities. They have successfully presented an alternate vision of women's autonomy by creating the space for equal participation of women in struggles for autonomies of their own groups. This has transformed mainstream politics to a certain extent. Even allegations of foreign hand did not deter participants of these movements.

## VI

Women's demands for autonomy have taken different forms from the colonial period onwards. It had different focal points at different times. At times it centred on questions of education and at other times on legislative reforms. With every achievement it was revealed that something yet was left to be done. The legal reforms of 1960s led to the *Towards Equality Report* that portrayed that if there are Acts there are facts too. In the 1970s the institutionalised marginalisation of women came to the political forefront. This led to women's militant activism in the 1980s. The 1980s activism centred on questions of Uniform Civil Code. The impossibility of the project made the issue seem like a chimera. When it became more and more apparent that Uniform Civil Code would remain distant dream participants in the women's movement then focussed on adequate representation of women in the legislature as the panacea. This was considered the only substantial way to empower women by giving her the power to participate in the decision-making process in institutional politics. But for this women needed the support of political parties that were guided by their own patriarchies. These patriarchies would support the question of equitable women's representation up to a point and no more. They would

definitely not support women's increased representation if it encroached on their space. No wonder then that after the 73<sup>rd</sup> amendment was passed there was an effort by these men to keep the reigns of decision-making in their hands. Hence, tremendous criticism that women did not assert their autonomy in the panchayats and let their men rule from behind. It was ironical that all those who were criticising women for not exerting their autonomy had traditionally challenged the autonomous persona of women and tried to niche them within their family, kin and communities. Even women's rights activists themselves embarked on a bout of self-criticism because they felt that such reservations benefited men who used the names of their wives or daughters and actually administered from behind. Hence they felt increased representation in panchayats did not resolve problems of women's marginalisation in politics and society.

Later evidences from places such as Kultikri in West Bengal and Vitner in Maharashtra suggest that all women's Panchayat have often led to success stories. Yet opposition to reservation for women in the parliament continued. Many participants in the women's movement therefore transferred their initiatives from efforts to bring in reservation for women in parliamentary politics to supporting women's autonomous group for furthering the question of women's autonomy.<sup>45</sup> This does not mean that support for reservation of seats for women was abandoned but it means that many women decided to expand the movement for autonomy by looking at other avenues. They decided to make further demands for equity not just in the Parliament but in other political milieus as well.

In the Parliament women continued to be viewed as being different from men and therefore justifying different treatment to them even legally. The last Prime Minister of India Atal Bihari Vajpayee himself although at times reiterating that men and women are equal has often made statements with the implicit assumption that there is natural difference between them. His statement that "women who want to become men and want to make other women men are worthy of ridicule," is particularly revealing.<sup>46</sup> Such sentiments foreground the justification that women can be treated differently from men and all their affairs can be relegated to the domain of 'personal'. Debates in Parliament over the 85<sup>th</sup> amendment bill portray similar attitude that shows in institutional politics women could not remove themselves from being considered merely as representative of their community or family. Women leaders appealed the Parliament to pass the 85<sup>th</sup> amendment bill on the grounds that it would lead to political peace in the family, community and country. Girija Vyas, while arguing for the bill stated that "women is also mother and her home is temple, mosque, gurduwara and church for her and she prays for welfare and well being of entire family. She would never wish that her children husband or brother should die." Hence giving into women's demands for 33 per cent would lead to peace and so it should be supported and passed.<sup>47</sup> Thus, even in women's self-assertions in the Parliament she remains an integral part of her community. As for those who opposed the bill in its present format did so again by situating women

within their communities be it that of caste, class or religion. One such person has argued, “today women too are known by their castes as who is a Brahman, who is a dalit and who belongs to the backward class. Therefore, in view of this fact if we are really concerned about the upliftment of women then there should be reservation for women of every class for strengthening their position.”<sup>48</sup> Neither could they oppose the primacy of personal law in guiding women’s lives. Parliamentary debates portray that even recently while introducing amendments to marriage and divorce Acts all efforts were made to follow the guidance of personal law. Arun Jaitley, the Minister of Law, while discussing one such amendment on maintenance highlighted the importance of personal laws by stating that although it was decided that the maximum amount of maintenance “that could be given to a wife would be capped to one-fifth of the husband’s income. This is not the position with regard to the other personal laws and, therefore, there was a demand that this one-fifth cap should be removed. This has also been sought to be removed.”<sup>49</sup> Such decisions portray that in institutional politics women are still hostages to personal law. In areas where there are no personal laws there are customary laws. For examples Autonomous District Council that came into being under the Sixth Schedule of the Indian constitution have made no special provisions for women who are often living under repressive customary laws.<sup>50</sup> These are the laws that guide women’s participation in institutional politics. Therefore, when women’s participation in institutional politics seemed to have reached a dead end autonomous women’s group took up the issue of women’s autonomy.

Agitation for representation therefore created closures in women’s movement for autonomy. Autonomous women’s groups in some parts of Northeast India seem to be showing the way out of such closures. They have created an alternative to mainstream politics that had traditionally posited women’s rights in opposition to group rights. They have challenged the notion that women’s autonomy can only be achieved in contradiction to group autonomy. They have portrayed that women’s activism against violence creates more space for other civil society groups and for democracy. This does not mean that their politics is in opposition to parliamentary politics and against questions of representations. Their agenda is merely different. They feel that for any substantial changes in women’s lives women need to embark on a politics for justice rather than parliamentary politics of representation. By focussing on justice they expanded both the scope of civil society movements and women’s movements.

This is not to say that by focussing on violence and justice women’s movements for autonomy could address all challenges. According to Gabriele Dietrich such a focus did not help the women’s movement to build bridges with caste based movements. She is of the opinion that in the women’s movement there is a tendency to “play down the caste factor”.<sup>51</sup> There might be many other lacunas but one thing can be said with certainty that is the autonomous women’s movements could make spaces for raising questions of women’s autonomy within different kinds

of politics of which the politics of peace is one. True that these collectives did not question women's group identities but they rather fought against closures that were created by putting women's rights in opposition to group rights. These groups also expanded the scope of women's movements from its limited focus on questions of representation. However, the effects of such initiatives are still emerging and it is early days to figure out the full impact of such movements. It would suffice to say for now that autonomous women's groups were able to raise debates on women's autonomy from paying attention to only issues of women's representation in parliamentary politics to a larger focus on women's interventions in the politics for justice. In this manner women's autonomous groups created greater space for women's voices in political decision-making and greater scope for women's participation and activism in different modes of politics. Thereby these groups both problematised and diversified questions of autonomy. They also made space for women's participation in different kinds of politics thereby diversifying movements for women's autonomy and raising it from questions of rights and representation to that of justice.

## Notes

<sup>1</sup> Aparna Mahanta, "The Indian State and Patriarchy," in T.V. Sathyamurthy ed., *State and Nation in the Context of Social Change* (OUP, New Delhi, 1994) p. 88.

<sup>2</sup> Italics in the original. Susie Tharu & K. Lalita eds., *Women Writing in India: 600 B.C. to the Present, Vol. 1* (OUP, New Delhi, 1991) p. 157.

<sup>3</sup> Refer to Tanika Sarkar, "A Book of Her Own," in Kumkum Sangari and Uma Chakravarti eds., *From Myths to Markets: Essays on Gender* (Manohar, New Delhi, 2001) pp. 85-124.

<sup>4</sup> Ramabai Ranade, excerpts from "Memoirs of our Life Together," in Susie Tharu & K. Lalita eds., *Women Writing in India: 600 B.C. to the Present, Vol. 1* (OUP, New Delhi, 1991) pp. 283-284. Italics added.

<sup>5</sup> Aparna Basu and Bharati Ray, *Women's Struggle: A History of the All India Women's Conference 1927-1990* (Manohar, New Delhi, 1990) p. 8.

<sup>6</sup> Nivedita Menon, *Gender and Politics in India* (OUP, New Delhi, 1999) p. 8.

<sup>7</sup> M. Ananthasayanam Ayyangar, "Resolution Regarding Position of Women Under the Existing Laws," *Legislative Assembly Debates*, 12 April 1939, p. 3674.

<sup>8</sup> Bhulabhai Desai, "Resolution Regarding Position of Women Under the Existing Laws," *Legislative Assembly Debates*, 12 April 1939, p. 3662.

<sup>9</sup> Literally translated as terrain of love in Kavita Panjabi, "before nation, after partition," presented in the seminar entitled *The Line Between: The Experience of Partitions and Borders*, Seagull Arts and Media Resource Centre, Calcutta, 10 April 2004.

<sup>10</sup> Ibid.

<sup>11</sup> Naziruddin Ahmad, *Constituent Assembly Debates*, Vol. VII, 22 November 1948.

<sup>12</sup> Mahavir Tyagi, *Constituent Assembly Debates*, Vol. VII, 22 November 1948.

<sup>13</sup> Aparna Mahanta, "The Indian State and Patriarchy," in T.V. Sathyamurthy edited *State and Nation in the Context of Social Change*, Vol -I (OUP, New Delhi, 1994) p. 95.

- <sup>14</sup> For a scholarly account of gender in the politics of partition refer to Ritu Menon and Kamla Bhasin, *Borders and Boundaries: Women in India's Partition* (Delhi: 1998) and Urvashi Bhutalia, *The Other Side of Silence: Voices from the Partition of India* (Delhi: 1998).
- <sup>15</sup> Paula Banerjee, "Refugee Repatriation: A Politics of Gender," *Refugee Watch No 1* (January, 1998) pp. 8-9.
- <sup>16</sup> *Rameshwari Nehru Papers*, Speeches and Writings, Sub. File no. 25, Nehru Memorial Museum and Library (NMML), Delhi.
- <sup>17</sup> Ritu Menon and Kamla Bhasin, "Abducted women, the State and questions of Honour," *Gender Relations Project Paper 1* (Canberra: 1993) p. 13.
- <sup>18</sup> Jan Jindy Pettman, "Boundary Politics: Women, Nationalism and Danger," in *New Frontiers in Women's Studies: Knowledge, Identity and Nationalism*, Mary Maynard and June Purvis, eds. (London: 1996) p. 194.
- <sup>19</sup> Aparna Mahanta, "The Indian State and Patriarchy," in T.V. Sathyamurthy edited *State and Nation in the Context of Social Change*, Vol -I (OUP, New Delhi, 1994) p. 94.
- <sup>20</sup> Ratna Kapur and Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* (Sage Publications, New Delhi, 1996) pp. 110-111.
- <sup>21</sup> S.C. Consul, Citizenship Act, 1955, *The Law of Foreigners, Citizenship and Passport* (Allahabad: 1962) pp. 179-185.
- <sup>22</sup> Ela R. Bhatt, "Towards the Second Freedom," in Bharati Ray and Aparna Basu eds., *From Independence Towards Freedom*, p. 34.
- <sup>23</sup> This phrase was used by a number of scholars writing on the Shah Bano case including Zakia Pathak and Rajeswari Sunder Rajan, "Shahbano", Judith Butler and Joan W. Scott eds., *Feminists Theorize the Political* (Routledge, New York/London, 1992) p. 257.
- <sup>24</sup> Ratna Kapur and Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* (Sage Publications, New Delhi, 1996) p. 63.
- <sup>25</sup> Abdulwahed Owaisi, *Lok Sabha Debates*, 23 August 1985, p. 399.
- <sup>26</sup> Shah Bano's open letter of 2 November 1985, quoted in Niraja Gopal Jayal, *Democracy and the State: Welfare, Secularism and Development in Contemporary India* (OUP, Delhi, 1999) p. 120.
- <sup>27</sup> Interview of Sona Khan with Deepti Mahajan, 6 July 2004, New Delhi.
- <sup>28</sup> Niraja Gopal Jayal, *Democracy and the State: Welfare, Secularism and Development in Contemporary India* (OUP, Delhi, 1999) p. 135.
- <sup>29</sup> Geeta Mukherjee, "Progress of Indian Women in Social, Educational, Political and Economic Fields in the International Women's Decade" in *Lok Sabha Debates*, 24 April 1985, p. 288.
- <sup>30</sup> Jayanti Patnaik, "Progress of Indian Women in Social, Educational, Political and Economic Fields in the International Women's Decade" in *Lok Sabha Debates*, 24 April 1985, p. 307.
- <sup>31</sup> Hannah Mollah, "Progress of Indian Women in Social, Educational, Political and Economic Fields in the International Women's Decade" in *Lok Sabha Debates*, 24 April 1985, p. 312.
- <sup>32</sup> Ibid.
- <sup>33</sup> Kishori Sinha, "Progress of Indian Women in Social, Educational, Political and Economic Fields in the International Women's Decade" in *Lok Sabha Debates*, 24 April 1985, p. 318.
- <sup>34</sup> Hannah Mollah, *ibid*, p. 314.



- <sup>35</sup> Abida Ahmed, Code of Criminal Procedure (Amendment) Bill, *Lok Sabha Debates*, 9 August 1984, p. 333.
- <sup>36</sup> Jafar Sharief, *Lok Sabha Debates*, 19 November 1985. P. 7. Italics added.
- <sup>37</sup> Madhu Kishwar, *Off the Beaten Track* (OUP, Delhi, 1999) p. 135.
- <sup>38</sup> Nandita Gandhi and Nandita Shah, "Organizations and Autonomy," in Nivedita Menon, *Gender and Politics in India* (OUP, New Delhi, 1999) p. 337.
- <sup>39</sup> Verrier Elwin quoted in Lucy Zehol (ed.), *Women in Naga Society* (Regency Publications, New Delhi, 1998) p. 1.
- <sup>40</sup> Renu Debi (ed.), *Women of Assam* (Omsons Publications, New Delhi, 1994) p. 2.
- <sup>41</sup> *Constitution of the Naga Mother's Association*, Reprinted in Kohima, 1992.
- <sup>42</sup> Statement made by Neidonuo Angami, President NMA, in Second Civil Society Dialogue on Peace, organised by Calcutta Research Group, Shantiniketan, 14 July 2002.
- <sup>43</sup> Interview with Ms. Kheseli, Secretary NMA, 27 January 1999 and 10 October 1999, Kohima and Calcutta.
- <sup>44</sup> "Nude protesters blame it on Manipur Govt.," *The Sentinel*, 17 July 2004.
- <sup>45</sup> For an analysis of women's representation in panchayats see Bidyut Mohanty, "Panchayat Raj Institutions and Women," in Bharati Ray and Aparna Basu eds., *From Independence Towards Freedom* (OUP, Delhi, 1999) pp. 19-33.
- <sup>46</sup> Atal Bihari Vajpayee quoted in Ratna Kapur and Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* (Sage Publications, New Delhi, 1996) p. 246.
- <sup>47</sup> Girija Vyas, *Lok Sabha Debates*, 8 March 2000, p. 709.
- <sup>48</sup> Reena Choudhury, *Lok Sabha Debates*, 8 March 2000, p. 712.
- <sup>49</sup> Arun Jaitley, *Lok Sabha Debates*, 30 August 2001, p. 392.
- <sup>50</sup> In present day an initiative is on to codify these laws. That customary laws are discriminatory becomes clear when one sees how it deals with the issue of rape. Perpetrators of rape often get away by paying a minimal fine of about Rs. 500 after raping women.
- <sup>51</sup> Gabriele Dietrich, "Dalit Movements and Women's Movements," in Anupama Rao ed., *Issues in Contemporary Indian Feminism: Gender and Caste* (Kali for women, New Delhi, 2003) p. 57.