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## *Women's Initiatives*

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## Book Review

*Marriage and its Discontents: Women, Islam and the Law in India*

by Sylvia Vatuk

New Delhi: Women Unlimited, 2017. 273 pp.

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“[W]hat happens if a [Muslim] marriage that was entered into hopefully ends in disarray, with the couple facing one another in a civil court, before a community council, the *jamaat* or the *imam* of their neighbourhood mosque or in the office of a local *qazi*?” (p. vii)

In a meticulous attempt to draw out the specificities of Muslim women’s experiences in the family in India, destabilising stereotypes in the process and “undermining some of the strength of the prevailing rhetoric” (p. viii), Sylvia Vatuk dwells on a range of concerns: different forms of divorce; dowry, kinship and marriage practices; the use of statutory protections in family law like the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWA) by women seeking to opt out of marriage; and Muslim women’s engagements with Muslim Personal Law (MPL). Much of the ethnographic and historical research on which these essays are based was conducted in Chennai and Hyderabad.

Family law regimes are rendered infinitely more complex through plural approaches to formal law and the existence of plural forums adjudicating on codified and uncodified aspects of law. Speaking of formal law for instance, the distinction between the law as written and the law as practiced is revealed to us in the widely divergent strategies in the use of formal law to secure protections for women in different locales.

In Delhi, for instance, Vatuk found that the MWA was being used only to defeat a divorced woman's claim to maintenance under Section 125 Criminal Procedure Code (125 CrPC). In Hyderabad on the other hand, MWA was being used by lawyers representing divorced Muslim women with a fair degree of success to claim "reasonable and fair provision" as a lump-sum payment by the husband (p. xiii), subverting the formal provisions of the MWA, which expressly denied the destitute, divorced Muslim woman the right to sue her ex-husband for maintenance under the relevant criminal code (p.9). An important point of course, as Vatuk observes, is the *class distinction* between women who sought protection under the MWA (usually from wealthy husbands) and those that 125 CrPC was meant to provide for (largely destitute women from poor families that could not even contemplate one time lumpsum payments) (p.xiii).

Uncodified law adjudicated through "qazis' offices, Shar'iat courts... panchayats and *jamaat* committees or councils of elders associated with local mosques" (pp. 8-9) provide the first stop for resolution in the case of Muslim women and men having trouble with marriage, with the family court being the last option, if at all. Notwithstanding this infrequent resort to family courts, with Muslim cases representing less than three percent of the Chennai family court's caseload in 1996, Vatuk's research shows that maintenance claims (filed by women) and restitution of conjugal rights (filed by men) were the two most common types of cases filed by Muslims in this family court between 1988 and 1997 (pp. 10-11). While divorce suits filed by women were only slightly lower in number than restitution of conjugal rights, half of these were dismissed because of some default or compromise on the part of the woman (p.12). As in the case of Hindu women complaining of domestic violence, Muslim women's accounts of marital conflict often named mothers-in-law, sisters-in law; the travails of Muslim women in their marital home (although Vatuk does not draw the parallel explicitly) are very similar to the troubles of Hindu women being harassed for dowry or subjected to physical and mental cruelty in the conjugal home: accusations of black magic, infidelity, disrespect, refusal to bear household responsibilities, and so on. While theoretically there is no stigma attached to divorce among Muslims, her interviewees "acknowledged that, whatever the Qur'an may say, in practice it is difficult to find a man willing to marry a divorced woman especially if she is no longer young or is the mother of children" (p.18). Vatuk begins her discussion with the making of marriage alliances in Muslim families, which helps us understand better the social, economic and cultural contexts of divorce. Interestingly while "arranged marriage"

is preponderant, a significant proportion (22 percent in her Chennai litigants' sample) reported love marriages. In many of these cases, one partner (usually the woman) was non-Muslim. The lack of family and community support and the stresses and strains of coping with life and relationship without such support, in her view, accounted for the breakdown of these marriages. A large number of couples encountered in court files – 57 percent – were childless, and most of them had separated soon after marriage. However, there is no evidence to argue that the rate of divorce among Muslims is high, as there are no figures that indicate for any section of the Indian population that a certain number of marriages were dissolved during a given time period (pp. 35-42).

As we have witnessed in the case of the public discussions and media reportage on the issue of “triple *talaq*,” Vatuk observes pertinently that much scholarly and activist energies are spent in highly polemical arguments supported at best by anecdotal evidence on the polygamous habits of Muslim men who desert wives on a whim. Contesting this rhetoric, she draws our attention to “[t]he absence of any solid data on the frequency of divorce... , on the actual prevalence of polygamy, or on the extent to which Muslim divorcees fall into destitution...[making] it especially difficult to make valid generalisations about the relative deprivation of Muslim versus Hindu or Christian women in terms of actual legal practice, today” (p. 30). Also, her data demonstrates that “most divorces are pronounced only after the couple is already living apart” with the wife being informed through a registered letter or by a qazi/advocate (p. 47) – not “in a fit of anger” always, as constructed in the popular imagination. In order to understand the lifeworlds of Muslim women better, Vatuk examines the operation of MPL in women’s lives at multiple sites – lower civil courts, Muslim dispute resolution bodies, mosque committees, qazis’ offices, for instance – with specific reference to three overrepresented issues, i.e., *talaq*, polygamy and the Shah Bano case.

Rather than focus on *talaq* exclusively, Vatuk takes a broad look at divorce among Muslims generally, looking carefully at practices around *khulc*. While under MPL, it is far from easy for a woman to initiate dissolution of marriage, the practice of *khulc* or divorce by mutual agreement enables the woman to negotiate a divorce with her husband, by releasing her from her marriage vows for a ‘consideration’ (p. 53). Vatuk finds that over half of all divorces registered in Hyderabad by the two qazis whose records she examined were *khulc*. However, cautioning us against a simplistic reading of this unexpected finding in terms of

divorces initiated by women and favouring their interests, she opens out to view the range of circumstances behind *khulc* citing as one extreme the experience of women's groups activists in Hyderabad for instance, who found this practice common in the Old City where "a man gets a blank piece of stamp paper, brings it home, writes up a *khulc* agreement and threatens the wife with a beating if she doesn't sign it" (p. 57). Notwithstanding the very real possibilities of women's vulnerability to coercion even in *khulc*, Vatuk's interviews do point to the fact that "Muslim women are generally aware that negotiating for *khulc* is an option for one wishing to escape from an unhappy marriage, and *many women do willingly, even eagerly, avail themselves of this provision*" (p. 59, emphasis added). Qazis interviewed in both Chennai and Hyderabad supported this finding that "a majority of the divorces they handle are initiated by the wife" (p. 138).

Apart from the value of the research findings presented in *Marriage and its Discontents*, there are two important aspects that this book opens out. The first is a sketch of the beginnings of an Islamic feminist movement in India, where a small group of relatively young Muslim women in different collectives spread across the country have begun to initiate collective action, dialogue and strategic litigation on MPL, with the explicit aim of "achieving a greater degree of parity for the sexes under the law" (p. 180). The second aspect is pedagogical. The methodological rigour and the pains to demonstrate/explain the divergences from popular rhetoric as also the pitfalls and limitations of the data available; the insistence on evidence based assertions/observations; and the demonstration of the lack of homogeneity within the community and across communities, serve an extremely valuable pedagogical purpose for conducting ethnographic research in deeply contested yet critical arenas of women's lifeworlds in India today.

The current debates on 'triple *talaq*' that have seen a rise of a range of voices (from within Muslim communities and without) against the arbitrariness and injustice of this form of divorce have been appropriated and absorbed into the sectarian, nationalist agenda of the ruling Bharatiya Janata Party and Hindutva groups, which have fused the debate on triple *talaq* with the demand for a uniform civil code within a larger scheme of an erosion of minority rights. There are, in this appropriation, several uninvestigated assumptions that remain outside the realm of critical enquiry, of which two especially, deserve special mention: first, that it is Muslim women who are at the most disadvantaged position in India

in relation to extremely patriarchal family law regimes; second that triple *talaq* is the only way that divorce takes place in the Muslim community, on the whim of men, denying women any agency or voice.

Sylvia Vatuk draws on her ethnographic and historical research on kinship and family among Muslims in India, conducted over two decades, to provide a rich and textured account of the complexities, choices, vulnerabilities, subversions and claims made by individual women and Muslim women's collectives over this period. It situates Muslim women within the larger and more pervasive patriarchal and paternalistic social and legal contexts in India that curtail the life choices of women across community. Importantly, this volume comes at a time when it is extremely critical to assert a reading of the status and position of Muslim women in India that ruptures and interrogates the homogenising, majoritarian construction of Muslim women's inescapable entrapment in Islamic fundamentalist patriarchy begging to be rescued by the forces of Hindutva. Whether or not this was intended, the volume could not have been better timed.