

## Introduction

In a small, rectangular dimly lit room, Khatun Shaikh, a female *qazi* (Islamic judge) in a women's *sharia* court, lent a patient ear to women who approached her with complaints of marital discord and violence. The *sharia* court is an alternative dispute resolution forum run by members of the Bharatiya Muslim Mahila Andolan (Indian Muslim Women's Movement, henceforth BMMA), a social movement led by Muslim women aimed at achieving equality and justice in the adjudication of Muslim family law in India.<sup>1</sup> These alternative forums were frequented by women from poor neighbourhoods in Mumbai who did not have the wherewithal to access the formal justice system. As cases of marriage, divorce, maintenance and domestic violence were discussed and debated in these forums, quarrels broke out between the spouses and their relatives. Allegations of abuse and counter-allegations flew thick and fast. In the midst of these heated exchanges between spouses, Shaikh often emphasised the importance of *raham* (compassion) as an everyday, lived ethical ideal that both the spouses ought to practice. While the disputes revolved around women claiming specific rights during and after the breakdown of their marriage, Shaikh insisted on how both men and women needed to be compassionate. According to Shaikh, one could display compassion in moments of crisis in the marriage by avoiding the use of harsh words, refraining from overt displays of anger and addressing each other respectfully. This practice of compassion thus entailed using the body in specific ways while claiming one's rights. Shaikh construed compassion as a lived ideal that resonated with the teachings of the Quran and the life of the Prophet. The pursuit of this ideal was closely tethered to the realisation of equality (*barabari*) and justice (*insaf*) in the domain of the family.

The *sharia* court emerged as a space of self-making for both the activists of the BMMA and the women visiting the court. Women spoke their mind. They spoke about the violence and injustice in the family. Interactions between activists, lawyers and the women who visited these forums helped in creating a supportive community space for women who faced injustice in their marital homes. On some days, the court room also doubled as a space where activists of the BMMA conducted training sessions on Muslim family law, the Quran and the Constitution for women of the neighbourhood. Activists conceptualised the right to freedom of religion guaranteed under the Indian Constitution as the right to collectively fight for a just community space for Muslim women. This space nurtured an ethical life according to the tenets of the Quran. These interactions in alternative dispute resolution forums and activist spaces played out against the backdrop of shrill debates on the criminalisation of some aspects of Muslim family law and the codification of Muslim law in the public forum in India. Drawing out these myriad moments helps us understand how the body, everyday lived ethical commitments and particular ways of inhabiting space shaped the everyday life of Muslim family law and minority rights in India.

This book is based upon ethnographic research in Mumbai on the activism, pedagogy and alternative dispute resolution activities of the BMMA, a social movement that works for justice and equality in the adjudication of Muslim family law in India. It also explores the legal aid work carried out by members of the Mohalla Committee Movement Trust (MCMT), a citizenship initiative in Mumbai, in Muslim neighbourhoods in the city. The BMMA is a movement inspired by transnational Islamic feminist networks and activists in the Middle East, Southeast Asia and the United States that challenges gender inequality in the practice of Muslim family law on marriage, divorce and maintenance in both state and non-state forums in India.<sup>2</sup> The MCMT is a citizen's initiative aimed at enhancing access to public services for citizens, especially those belonging to minority religious groups, following the communal riots in Mumbai in 1992–1993.<sup>3</sup>

My analytical labour in this book is to draw out myriad moments of gendered ethical self-fashioning that take place in alternative dispute resolution forums and activist spaces of Muslim family law. These embodied, everyday engagements with the law and the notions of rights are left out in the public discourse on family law, gender and minority rights in India. The framework of Muslim family law that regulates marriage, divorce and maintenance of Muslim minorities in India has often been analysed by

scholars vis-à-vis the relationship between minority rights and the liberal, secular state. In public debates on minority rights, the adjudication of Muslim family law in India is taken to represent the guarantee of minority rights by the Indian state, even though religious family laws are not formally recognised as laws by the Constitution.<sup>4</sup>

Public debates are fixated on putative conflicts between the individual and community, constitutionalism and religion, uniformity and minority accommodation to the neglect of the rich, sophisticated ways in which Muslim minorities inhabit the domain of minority rights and religion. Building upon participant observation in multiple spaces of the BMMA and the MCMT, this book makes some key arguments that help us reconceptualise the study of minority rights, liberalism and gender in political theory. First, I show how the practice of minority rights and related liberal guarantees such as the right to religious freedom and gender equality are constituted by conceptions of duty and compassion in Islamic feminist ethics. These registers and conceptions of ethics are not merely a means to a liberal end. They entail particular embodied and everyday practices of ethics that mediate the construction of minority rights and associated liberal categories by Muslim minorities. These ethical commitments shape and come into conversation with local struggles for gender equality within the framework of Muslim law and minority rights. Second, spatial and material ways of engaging the city and everyday interactions with the state constitute the practice and meaning of minority rights. Hence, we can understand the politics of minority rights as conceptually linked to processes of ghettoisation and communalisation of minorities in the city as well as a range of affective registers that constitute everyday negotiations with the state.

Drawing upon this ethnographic material, I make a larger contribution to debates on minority rights, gender and liberalism in political theory. The two key contributions of this book are (a) to show how non-textual sources and grounded methods such as ethnography can reconstitute existing conceptualisations and questions in political theory, in this case debates on minority rights, and (b) contribute to a project of decolonising political theory by exploring minority rights, liberalism and gender in ways that challenge colonial epistemologies and reified categories of minority rights, gender, liberalism and religion. The ethnographic approach of this book contributes to its decolonial aims. The use of ethnographic methods expands our understanding of minority rights, the law, community and religion beyond the reified, textual ways of understanding these categories. Reified

categories of religion and community only concretise neo-colonial and neo-imperialist conceptions of minorities as a religious ‘other’ different than the ethnic majority of a nation state. This book aims to critique and thereby decolonise this politics of ‘difference’. The title of the book *In the Shadow of Minority Rights* underscores this project of understanding how the everyday life of minority rights plays out in the shadow of dominant public discourses of minority rights and liberalism that privilege presumed tensions between individual and community and reified conceptions of religion, liberalism and the state.

### **A critical, decolonial theory of minority rights**

My aim in this book is to chart new ways of theorising minority rights that move beyond the preoccupation with normative liberal goods. I aim to decolonise predominant ways of conceptualising minority rights and religious difference by drawing attention to the everyday, lived life of minority rights conceptualised by religious minorities. In doing so, we can transcend neo-colonial, reified ways of conceptualising minority rights and a static minority community. It is possible to present a very different narrative and conception of minority rights and liberalism if we move beyond our preoccupation with standard, normative liberal arguments for justification. This can be achieved by paying attention to non-textual, everyday ways in which religious minorities engage the framework of liberalism and minority rights as well as by being alive to the particularities of minority rights and liberalism in a non-Western context that decentres a Western European conception of the liberal state.

Political theorists have predominantly conceptualised the relationship between minority rights and gender using the framework of liberal multiculturalism. The key question that animates liberal approaches to minority rights and gender is how a balance might be achieved between women’s individual rights and autonomy and the rights of minority cultural and ethnic groups, especially in the domain of the family.<sup>5</sup> In these theories, the liberal state is often the arbiter of the project of ‘accommodation’ of minority rights. Since the publication of Susan Moller Okin’s provocatively titled essay ‘Is Multiculturalism Bad for Women?’ approaches to minority rights and gender have been informed by the theme of accommodation of minority rights by the liberal state.

The secular, liberal state's normative aims are to apportion rights to communities as well as to protect the individual rights and liberties of their members, especially women. Ayelet Shachar notes that the basic dilemma that the 'multicultural' state needs to resolve is the tension between the rights of individual citizens and the 'accommodation' of minority group traditions. While multicultural policies might ensure the decentralisation of power and promote diversity in the public sphere, they do not benefit all group members equally. In fact, they might work to the detriment of certain group members.<sup>6</sup> Therefore, she proposes a concept of citizenship that enhances justice between groups as well as within members of a group.<sup>7</sup> She advocates for state multicultural policies based upon a joint governance model that balances minority group traditions and individuals' citizenship rights.<sup>8</sup>

Benhabib proposes a model of accommodation of cultures based on democratic deliberation. This model ultimately privileges an individual's right to voluntary self-ascription into cultures, freedom of exit and association, and egalitarian reciprocity between members of cultures.<sup>9</sup> Benhabib's model is based upon a dynamic conception of group identity premised upon an understanding of cultures as 'internally riven and contested'.<sup>10</sup> Her conception of voluntary self-ascription and the freedom of exit and association is premised upon a particular understanding of individuals and individual autonomy putatively in conflict with group identity. Hence, she argues that the state should ensure an individual's freedom to self-ascription and self-identification in a group and not allow the group the right to 'define and control membership at the expense of the individual'.<sup>11</sup> Individuals should have unrestricted freedom to exit a group.<sup>12</sup>

These approaches draw from and build on Okin's work on gender equality and cultural accommodation, where she argued that some non-negotiable rights of individuals must be respected even within a paradigm of multiculturalism.<sup>13</sup> The tensions that animate these approaches reflect the wider discussions in scholarship on multiculturalism regarding minority group rights within a liberal framework. Kymlicka argued that minority rights were compatible with liberal concerns of individual autonomy as cultural practices shaped individual capacities and thereby enhanced individual autonomy.<sup>14</sup> But minority cultures had to be amenable to the liberal value of individual autonomy for a liberal justification of minority rights to work.<sup>15</sup> Theorists have defended group rights on the grounds of individual autonomy,<sup>16</sup> limitations on state power,<sup>17</sup> recognition of difference<sup>18</sup> and regard for various cultures.<sup>19</sup>

An important body of scholarship foregrounds a contested, anti-essentialist view of cultures and analyses the politics of multicultural accommodation in a more nuanced way. This includes the work of Anne Phillips, Uma Narayan and Chandra Talpade Mohanty.<sup>20</sup> Narayan critiques the neo-imperial framing of certain cultures that leads to an exaggerated emphasis on saving women belonging to minority cultural groups from their cultures.<sup>21</sup> Similarly, Mohanty critiques the image of the impoverished and exploited Third World woman in feminist literature.<sup>22</sup>

Yet this body of scholarship glosses the liberal state's historical complicity in consolidating a minority identity. Much of this scholarship also fails to take into account the specificities of the liberal state and minority rights in a postcolonial context. The liberal state, far from being a neutral arbiter of minority rights, has been actively involved in processes of minoritisation. Existing liberal ways of conceptualising the relationship between minority rights, the liberal state and gender fall short of analysing the notion of the liberal state itself and its historical entanglements with colonialism and empire.<sup>23</sup> As a result, the liberal state's historical complicity in forging the category of the minority remains undertheorised.

This is especially true when we conceptualise the relationship between minority rights and gender. Debates on minority rights and gender are often premised on reified conceptions of culture, religion and religious law. This is an outcome of a presumption that the liberal state is the neutral arbiter of rights that regulates the rights of individuals and balances sets of rights between individuals and communities. When it comes to questions of regulation of religion, the liberal state is construed as defining the limits of religion, especially religion-based personal laws and their potential impact on gender equality. In working with a reified category of the minority and legal, juridical concepts of minority rights, liberal theory reproduces colonial conceptions of religion.

My ethnographic and theoretical exploration of minority rights in this book is inspired by a rich body of scholarship on the anthropology of secularism and religion. Inspired by the pioneering work of Talal Asad, this body of scholarship has been particularly attentive to the generative and disciplinary powers of political secularism and its ability to define and reconstitute religion.<sup>24</sup> In Mahmood's work on minority rights, secularism and Islamic reformists, she explores how the disciplinary power of political secularism constitutes minority rights. Minority rights, especially in their iteration as religion-based personal laws, are framed as a function of the

sovereign power of the secular state and understood within a framework of secular governmentality.<sup>25</sup> In her ethnographic study of secularism and religious minorities in nineteenth-century and contemporary Egypt, Mahmood argues that political secularism is entangled with the modern state's sovereign power to 'reorganise substantial features of religious life' as it regulates religion and stipulates what religion ought to be.<sup>26</sup> This is symptomatic of what Mahmood calls the 'double movement' of political secularism, as it relegates religion to the private domain while amplifying religious difference.<sup>27</sup>

Minority rights are instruments of secular governance aimed at managing religious, racial, ethnic and cultural differences. The category of the minority comes into being when the 'transformation of the state from an instrument of the law to an instrument of the nation had been completed'.<sup>28</sup> To that extent, the framework of minority rights connotes 'hierarchised difference' even as the state claims to stand for equality of all citizens.<sup>29</sup> Family law that relates to the governance of minority communities is one iteration of this politics of difference. Family law based on religion becomes a technique of modern governance and sexual regulation of the family.<sup>30</sup> Family law amplifies jurisprudential dimensions of religion while marginalising its 'moral and ethical concerns'.<sup>31</sup>

Mahmood's critical exploration of minority rights provides useful insights for new ways of conceptualising minority rights in political theory. Her approach throws light on the constructed category of the religious minority. It expands our domain of theorising beyond standard liberal normative approaches that justify the rights of minorities and purported special legal protections for minorities.

We can develop Mahmood's insights on minority rights in novel directions through explorations of minority rights and liberalism in India. In narrating an account of minority rights in India, it is indeed helpful to bear in mind the constructed character of minority rights as emphasised by Mahmood. Minority rights are tethered to the liberal state's project of imagining the Muslim citizen in legal, juridical terms. Yet the story of minority rights and liberalism in India also provides a fertile ground for exploring the creative ways in which the legal domain of minority rights or group-differentiated rights might be engaged by a range of social movements, subaltern groups and everyday political protests. To that extent, this book will argue that minority rights are constituted in the everyday life of Muslim communities in India through a range of discursive, ethical, embodied and

spatial ways. These engagements with the legal domain of minority rights are reducible neither to abstract, liberal normative goods nor to the sovereign power of the secular state. And this, I argue, is the complex story of minority rights in India, which enhances our existing theorisations of minority rights and gender in political theory.

I embark upon a project of decolonising minority rights by focusing on ethics, embodiment, lived everyday experiences and spaces where minority rights are reconstituted in creative ways by religious minorities. This book is not fixated merely on adjudication of family law but on questions of how minority rights are claimed and reconstituted. To that extent, the analytical labour and theoretical contribution of this book are significantly different from empirical and conceptual analyses of the adjudication of family law in India.<sup>32</sup> In fact, the book aims to move beyond the question of ‘adjudication’ of minority rights and regulation of religious difference, which are moored in neo-colonial ways of understanding religion, minority rights and nationalism. It presents thick descriptions of interactions between transnational Islamic feminist ethics and ethical moorings of everyday local activism. The book also draws out how the process of claiming rights is tethered to particular ways of inhabiting and embodying ethical ways of being and the politics of occupying and renegotiating spaces in gendered ways. The empirical moments in the book recreate a universe where religious minorities are creating consciousness about rights and activism. The book’s contribution, hence, is to think about the politics and ethics of engaging family law over and beyond mere questions of ‘adjudication’ of family law disputes.

Recent work on liberalism in India shows how the story of liberalism in India is one of creative interpretations rather than merely one of appropriation of a Western discourse.<sup>33</sup> The recognition of group-differentiated rights is at the heart of this story. Rochana Bajpai emphasises a long tradition of liberalism in late nineteenth- and early twentieth-century India, focusing specifically on strong state intervention to address social inequality and a recognition of group-differentiated rights.<sup>34</sup> Anupama Rao traces Ambedkar’s engagement with ‘liberal thought and democratic discourse’ to position the Dalit ‘as a unique cultural and political subject of historic suffering’.<sup>35</sup> Chetan notes how women members of the Constituent Assembly introduced a ‘feminist authorial voice’ and gendered debates that helped in shaping the Constitution of India. Women made important contributions to debates on rights, state, federalism, secularism and education and heralded the emergence of ‘the new woman’ as a ‘rights-bearing citizen in the Constituent Assembly’.<sup>36</sup>

This scholarship on India gestures towards the creative reconstitution of liberal categories in postcolonial contexts. My book echoes Menon's recent important intervention on secularism, where she argues for thinking from the Global South. The Global South, however, is not imagined as a monolithic geographical region but rather in terms of 'a space of thought' which offers the possibility of learning from 'speech that exists in the margin' and of freeing ourselves from both the hegemony of Eurocentric universalising narratives and the 'East–West' distinction that shaped discussions in political theory and social sciences at large.<sup>37</sup>

We can expand this domain of enquiry considerably by looking beyond abstract liberal ideas, texts and institutions. In understanding this story of minority rights, we cannot merely reduce it to abstract, liberal goods. Hence, I focus on the entanglement of ethics, ethical self-fashioning and everyday gendered spatial negotiations with rights in moments when Muslim women engage the legal framework of minority rights in India.

Recent approaches in feminist political theory and anthropology have paid particular attention to the vernacularisation of rights.<sup>38</sup> Abu-Lughod, for instance, explores the active social life of Muslim women's rights in Egypt as a counter to neo-colonial, Eurocentric discourses of saving Muslim women. The discourse of saving Muslim women has gained ground globally since 9/11. Sumi Madhok's recent work makes an important contribution to our understanding of vernacularisation of human rights. Madhok traces subaltern negotiations with rights discourses and entitlements in rural Rajasthan to enhance our knowledge of 'political imaginaries, gendered subjectivities and critical vocabularies of rights and political agency' that inform these struggles.<sup>39</sup> Inspired by these recent approaches, my book theorises minority rights, gender and liberalism in India beyond institutional and textual approaches. In focusing excessively on institutions and texts, we risk merely replicating canonical approaches to political theory in a non-Western context. This will only impoverish our imagination of what political theory can do or what forms it can take beyond the bounds of the text.

## Decolonising political theory

At this stage, a few comments are in order about how my project is tied to an epistemological commitment to decolonising political theory. To my mind, the project of decolonisation needs to be carefully distinguished from

mere nativism or a critique of the 'West'. This is particularly significant in the context of the appropriation of the decolonial paradigm by authoritarian states and right-wing ethnonationalist leaders in many postcolonial contexts.<sup>40</sup> Decolonisation is different from a temporal project of anticolonial nationalism as it entails a more thoroughgoing critique of Western modes of knowledge production and Eurocentric knowledge itself. My book is an attempt to contribute to a project of decolonising political theory. I do so by challenging the standard ways of theorising minority rights in liberal political theory, which I discussed earlier. These methods of understanding minority rights within a framework of liberal multiculturalism and liberal nationalism, despite their universal pretensions, draw upon a long tradition in European political thought of viewing religious difference as a 'problem' to be solved, tolerated or accommodated by the liberal state.<sup>41</sup> Liberalism and nationalism had a co-constitutive relationship in nineteenth-century Europe as romantic ideas of 'national identity and solidarity' developed along with ideas of political liberty, individual freedom and constitutional government.<sup>42</sup> This narrative of liberal nationalism was also tethered to notions of racial, religious and cultural others.<sup>43</sup> In fact, Mamdani casts a critical glance at the notion of tolerance that shaped the relationship between national majorities and national minorities during the consolidation of nation states in Western Europe. He observes that the relationship between the national majority and minority was consolidated based on the regime of tolerance.<sup>44</sup> Minorities were tolerated to the extent that they were perceived to be non-threatening by the national majority.<sup>45</sup>

In the colonies, the creation of minorities under colonial rule preserved the power of the native elite. Though the native elite's power was said to be derived from custom, the support of the coloniser consolidated their authority. The emergence of violent nationalisms in postcolonial contexts was a function of the creation of minorities under indirect rule.<sup>46</sup> According to Mamdani, postcolonial nationalists struggled to consolidate their power in the face of the upsurge of minorities claiming multiple homogeneous nationality status.

In non-Western contexts such as South Asia, societies were explicitly multi-ethnic and multi-religious.<sup>47</sup> We risk losing sight of the rich discursive, ideational, life and practices of minority rights and minority communities in these contexts if we merely import the standard theoretical frameworks of liberal multiculturalism. By paying attention to the everyday life of minority rights in an Indian context, we can move beyond some of the standard theoretical premises and assumptions of liberal multiculturalism – such as