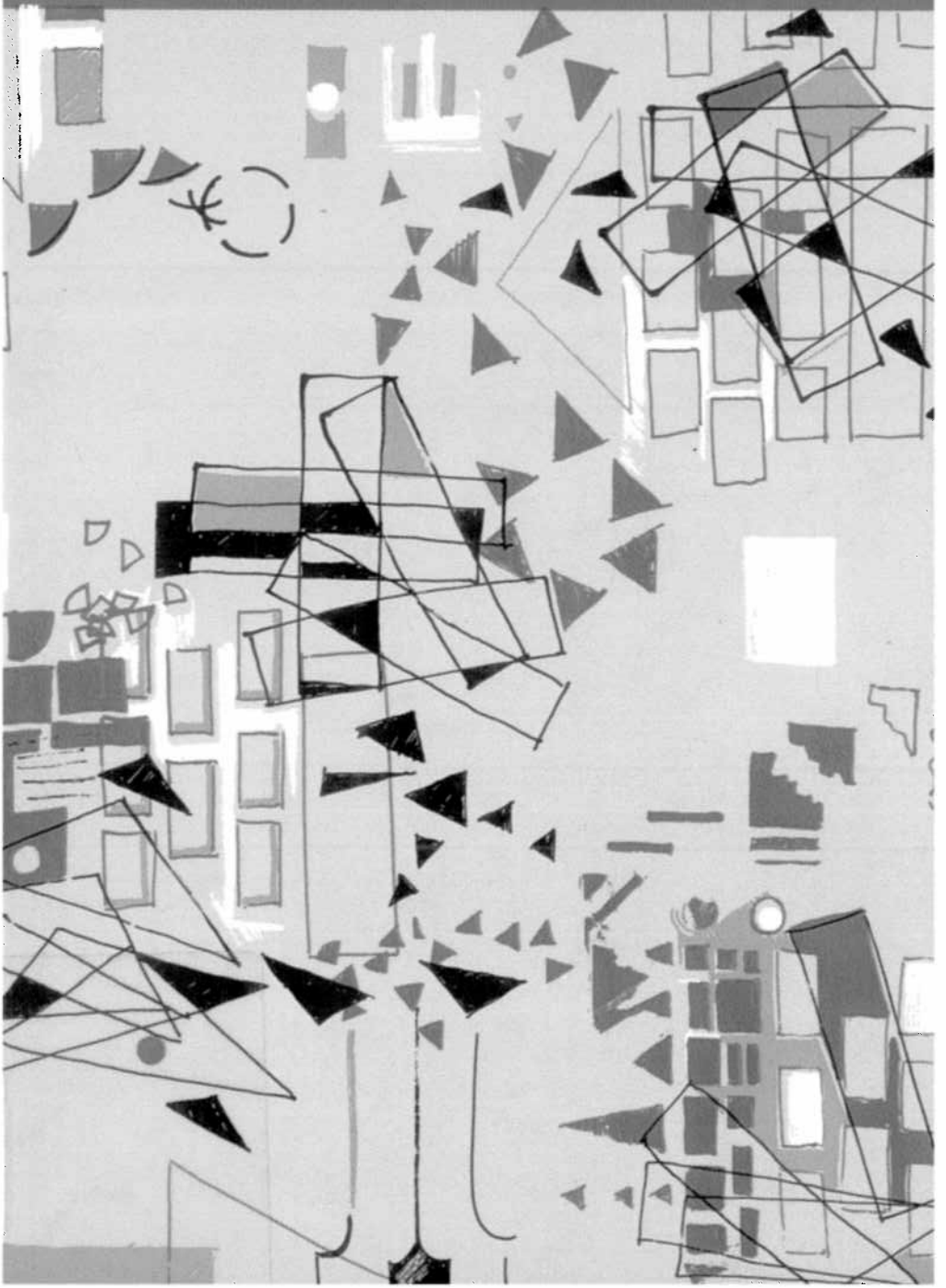
FEMINISTS THEORIZ THE POLITICAL ▸▸



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"Shahbano"

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In April 1985, the Supreme Court of India, the highest court of the land, passed a judgment in favor of Shahbano in the case of Mohammad Ahmed Khan, appellant, versus Shahbano and others, respondents.[1] The judgment created a furor unequaled, according to one journal, since "the great upheaval of 1857."[2]

The Supreme Court confirmed the judgment of the High Court awarding Shahbano, a divorced Muslim woman, maintenance of Rs 179.20 (approximately $14) per month from her husband, Mohammad Ahmed Khan, and dismissed the husband's appeal against the award of maintenance under section 125 of the 1973 Code of Criminal Procedure.[3]

For Shahbano this victory came after ten years of struggle. A lower court had awarded her only Rs 25 a month (the average daily wage of a laborer in India is Rs 11.50, or roughly a dollar). Shahbano was not the first Muslim woman to apply for (and be granted) maintenance under the 1973 Code of Criminal Procedure.[4] The repercussions of the Supreme Court judgment therefore took many, including the government, by surprise. When some by-elections fell due in December 1985, the sizable Muslim vote turned against the ruling party (the Congress-I) partly because it supported the judgment. Its candidate at Kishengunj, although a Muslim, was defeated by the opposition's Muslim candidate, Syed Shahabuddin, who would play a major role in the events that followed. When an independent member of Parliament, a Muslim, introduced a bill to save Muslim personal law (with the support of the Muslim Personal Law Board), the ruling party reversed its earlier position and resorted to a whip to ensure the bill's passage. The bill

was passed in May 1986 and became the Muslim Women (Protection of Rights in Divorce) Act.

The relationship of state or secular law to personal or religious law has always been a vexed one in India. Although Hinduism is the majority religion, there are sizable minority populations.[5] Most rulers, including the British, recognizing that interference in religious issues could be explosive in its consequences, respected the traditional laws of religious communities in personal matters relating to family and inheritance rights. As a result, matters relating to the family (such as marriage, divorce, maintenance, succession to property, inheritance, and custody and guardianship of children, as well as adoption), which came to be known as "personal laws" and would vary from one religious community to another, remained uncodified. During the nineteenth century, however, several British acts and legislative measures empowered the courts to recognize and apply local customs and usages; these often prevailed uniformly over an area, irrespective of religion. In fact, in some instances, they were less liberal than religious laws, as in the case of Muslim women and property inheritance. It was largely due to this conflict that the Shariat Law was passed in 1937. The Shariat Law provides that Muslims in India will be governed by Muslim religious laws in matters relating to the family.

In 1949, when the Constitution of Independent India was framed, the founding fathers saw the necessity of continuing to recognize personal law at the same time that, moved by the unifying secular impulse, they also declared as an objective of the state the adoption of a uniform civil code (art. 44). (Other articles of the constitution that relate to religious freedom are art. 14, which guarantees the right to equal protection of laws; art. 15, which forbids discrimination on grounds only of religion, race, caste, sex, place of birth, and so forth; art. 25, which guarantees freedom of religion and conscience; and art. 29, which guarantees to minorities the right to conserve their culture.)

The interests of women in this dual legal structure are particularly vulnerable to exploitation by alliance of religious and secular interests. Personal law concerns women intimately, pronouncing as it does on marriage, divorce, maintenance, adoption, succession, and inheritance. Women's-rights activists in India have long been protesting against the gender-discriminatory nature of the personal laws of all religious communities which regulate most spheres of women's activity. Under all personal laws, the male is the head of the family and succession is through the male line—women have no right to inherit an equal share of property, and the father is the natural guardian of minor children.[6] Since 1872, divorced and abandoned women of all faiths have been regularly applying for maintenance under the Criminal Procedure Code (which relates to "maintenance of wives, children and parents").[7]

The religion of the divorced woman seeking maintenance under section 488 of the 1872 code piloted by Sir James Fitzjames (forerunner to sec. 125 of the Code of Criminal Procedure, 1973) was immaterial. Since criminal-law procedures are quicker and more effective than civil-law procedures, many divorced women of all communities (by appealing under a legal provision intended primarily to prevent vagrancy) bypassed the personal law of their religions.

Muslim fundamentalists have been disturbed by what they perceive as a trend away from honoring religious law. The Shahbano judgment gave them an opportunity to mount an attack on what they perceived as the Hindus' homogenizing influence, an influence that would eventually lead to the assimilation and destruction of Muslim identity. The Muslim Personal Law Board intervened in the Shahbano case on behalf of the husband and, having been unsuccessful in the Supreme Court, carried the battle to Parliament.

Under the provisions of the Muslim Women (Protection of Rights in Divorce) Act, divorced Muslim women would fall outside the purview of section 125 of the Code of Criminal Procedure. According to this newly codified Muslim personal law, the divorced woman's husband is obliged only to return the *mehr* (dower, or marriage settlement) and pay her maintenance during the period of *iddat* (the period of three months following the divorce). If the divorced woman is not able to maintain herself after the *iddat* period, her maintenance will be the responsibility of her children, or parents, or those relatives who would be entitled to inherit her property upon her death; if she has no relatives or if they have no means to pay her maintenance, the magistrate may direct the State *Wakf* Boards (administrators of Muslim trust funds) to pay the maintenance determined by him.

This has not resolved the crisis sparked by the Supreme Court judgment in favor of Shahbano, however. The Muslim community continues to find itself divided into "progressives" (those supporting the judgment) and "fundamentalists" (those opposing it). The act has been challenged in the courts. The government of India, possibly in an attempt to appease feminists and Muslim progressives and to refurbish its secular image, is engaged in drafting a uniform civil code.

The terms "fundamentalist" and "progressive" have been used both descriptively and pejoratively in this debate when referring to the positions of Muslim groups on their personal law. Syed Shahabuddin, the acknowledged spokesman for the Muslim-fundamentalist position and president of the Muslim *Majlis-e-Mushawarat,* accepts the term "fundamentalist" as accurately descriptive of his allegiance to the Quran: "Historically, the Quran was revealed to the Prophet 1400 years ago but it is the final message of God to mankind. Not one syllable is subject to change. . . . It is in this sense that the Muslim is by definition a fundamentalist."[8]

Arif Mohammed Khan, Muslim minister in the government of India, who, at its behest, initially defended the Supreme Court judgment and subsequently refused to follow the government when it reversed its position, rejects such fundamentalism: "My faith has always been progressive on matters relating to women. . . . The Prophet's grandson gave his wife 10,000 *dirhams* while divorcing her. It was to clear doubts on this that God revealed verse 11.241 that says: 'And for the divorced women let there be a fair provision.'" He goes on to say: "Gandhi was shown black flags across the country when he spoke against untouchability. Any suggestion of change or reform upsets fundamentalists and that should not deter any progressive person, least of all a right thinking Muslim."[9] Thus the term "progressives" defines those Muslims who endorse reform in the personal law.

Some experts on Islamic law, however, deride those Muslims who demand the uniform civil code: "They want to project their image as progressives and support the demand without knowing what they are talking about."[10] The term "fundamentalist" is also applied to extremist members of the Hindu religious parties who, as part of a sustained anti-Muslim campaign, opposed the Muslim Women Bill.

In what follows, we explore the sense of crisis produced in a society through a women's issue and the possibilities for change that it may provoke. From the narrative of Shahbano we describe the formation of a discontinuous female subjectivity in response to the displacement of the Muslim woman question onto several discourses. These discourses are marked, and unified, by the assumptions of an ideology of protection. We explore the possibilities of resistance within such a discourse. Our notion of a "subaltern consciousness" assumes an operative "will" that functions as resistance; it destabilizes the family's ideology of protection and the law's ideology of evolution. Thus a space is created from which a woman can speak.

Discursive Displacements

To be framed by a certain kind of discourse is to be objectified as the "other," represented without the characteristic features of the "subject," sensibility and/or volition.[11] The Muslim woman, as subject, is either absent or fragmented in the various legal, religious, sexual, and political texts that develop into a discourse supposedly about her. Discourse, in this conceptual sense, works in fact only by significantly excluding certain possibilities (in this case full representation of the subject). It achieves its internal coherence by working within parameters which are ideologically fixed. The different textual strands achieve discursive coherence by these two related procedures, that is, exclusion and limitation within ideologically fixed boundaries. Working within the contours of a conceptually unified field, discourse seeks to produce knowledge. Such knowledge is implicated in the structures of power.

At this level, social action itself is textualized into legal, religious, political, and other texts. In any stable society, the texts must exist harmoniously. This harmony is disturbed and a crisis results when a proposition accommodated in one text is displaced onto another.

We do not want to invoke an actual Freudian/psychoanalytic narrative of history. But we do wish to suggest, analogically, that both the decentering and the substitution of the "truth" of a situation, which are characteristics of the "disguise" that the dream wears,[12] are diagnosable in the route traveled by the plea for maintenance initiated by Shahbano.

The narrative of displacement begins when this plea for maintenance moved out of domestic discourse into the realm of law and law courts, when Shahbano, a woman of seventy-three, after over forty years of marriage, was driven out of her house by the triple pronouncement of *talaq* (oral and unilateral divorce) by her husband.

The narrative intersects with religious discourse when the Muslim Personal Law Board intervenes for the husband in the Supreme Court. Daniel Latifi, counsel for Shahbano, located the significance of the case in the elevation of the Muslim Personal Law Board:

> Why was the Bill brought forward at all? . . . Some Machiavelli seems to have masterminded this entire operation. . . . The act that preceded the Bill, the recognition of the so-called Muslim Personal Law Board as a College of Cardinals for Indian Muslims is not only against Islam but is also the most flagrant exercise of a power-drunk autocracy since Caligula installed Incitatus, his favourite horse, as Governor of Rome. The Muslim intelligentsia who have opposed this Act will continue the struggle against this illegitimate Papacy.[13]

The discourse now appears in the area of electoral politics. A cover story of the influential magazine, *India Today,* traced the trajectory of the case: "[Shahbano's] search for a small sustenance has led to an unprecedented Islamic resurgence, not seen in the country for decades. . . . More vitally, it threatens to upset the very electoral equation on which the arithmetic of national political fortunes has been based since Independence." The article goes on to detail the reverses suffered by the Congress-I in the by-elections in Uttar Pradesh, Assam, and Gujarat.[14]

After the judgment, the battle is joined in Parliament. Reformists and activists continued the debate into the liberal discourse of secularism and constitutional rights. Kuldip Nayar, a leading journalist who pressed for a secular solution, asked: "Should the country join issue with the community on a point which is a non-issue? Some argue that one thing will lead to another; probably it will if we continue to concentrate our attention and energy on non-issues like maintenance of a divorced woman in Muslim society."[15]

Fundamentalists, both Muslim and Hindu, take up positions. Syed Shahabuddin, M. P., depersonalized Shahbano completely while relocating her predicament within a Muslim identity problematic:

> In the current turmoil, the Shahbano case, celebrated as it became, recedes into the background and pales into insignificance. Stripped to its bones, the case was no more than a conflict of opinion among the Muslims on whether what is desirable can be made obligatory, whether a recommendation [in the Quran] to treat the divorcees generously can be made into a legal mandate. Thus it was a very limited issue though the Muslim Indians saw it as the beginning of state interference with the Shariat.[16]

Once the disturbances of the peace break out, the discourses can no longer be kept clear of each other.

The displacements nonetheless continue. In an attempt to assert her faith and restore communal harmony, Shahbano is driven to announce her rejection of the Supreme Court's judgment, asserting her Muslim loyalty. (We see in this the attempt to highlight the Muslim identity problematic at the expense of all others.) The counterattempt to anchor the crisis in a limited legal discourse has resulted in a challenge to the Muslim Women Act in the Supreme Court. The drafting of a common civil code is promised by the government.

Where, in all these discursive displacements, is Shahbano the woman?[17] Has the discourse on the Muslim woman, torn away from its existential moorings, sucked her in and swallowed her up? Though, as the pronouncements above show, the several discourses attend to only one or the other dimension of her identity, the dominant consciousness tends to homogenize the subaltern subject for its purposes:[18] here as that which is to be "protected."

The Discourse of Protection

All the parties to the discourse share the common assumption that they are protecting the Muslim woman; but statements from the discourse reveal the ubiquity of this argument, either as a claim or as a rebuttal:

> This Government will never deviate from the path of protecting the legitimate interests of the minority. (Asoke Sen, law minister)

> The Bill intends to safeguard the majority voice of the community. (Syed Shahabuddin, Opposition Muslim member of Parliament)

> The Bill protects the husbands who would divorce their wives. (Zoya Hassan, Muslim women's-rights activists)

> We have to protect ourselves from such protection. (Justice Chowdhary, Supreme Court judge)[19]

"Protection" can confer upon the protector the right to interfere in areas hitherto out of bounds or the authority to speak for the silent victim; or it can serve as a camouflage for power politics. An alliance is formed between protector and protected against a common opponent from whom danger is perceived and protection offered or sought, and this alliance tends to efface the will to power exercised by the protector. Thus the term conceals the opposition between protector and protected, a hierarchical opposition that assigns higher value to the first term: strong/weak, man/woman, majority/minority, state/individual.

At the propositional level, we understand the discourse of protection as meaning-in-use. By this we mean language in a contextual frame, that is, as having a certain meaning in communication which cannot be accounted for by its grammatical or objective properties.[20] Considered thus, utterances are explicable only in terms of the activities in which they play a role and in the way they negotiate relationships (therefore, to ask whether these propositions are true or false is to miss the force which informs the sentences). Three such propositions from the discourse of protection that show sentential force are:

> Hindu men are saving Muslim women from Muslim men.
> Islam is in danger.
> The perceptions of the minority community must govern the pace of change.

The attack of Hindu fundamentalists (often members of communalist political parties like Shiv Sena, Vishwa Hindu Parishad, Rashtriya Swayam Sevak Sangh) upon the proposed Muslim Women Act, upon Muslim religious law in general, and upon the Muslim community at large on behalf of oppressed Muslim women translates into the proposition "Hindu men are saving Muslim women from Muslim men."[21] It is a bizarre as well as sinister claim. It invokes the stereotypes of the Muslim woman as invariably destitute, and the Muslim male as polygamous, callous, and barbaric. This scenario clears the way for Hindu intervention in the form of a demand for reform or outright removal of the Muslim personal law. The protection of women of a minority community thus emerges as the ploy of a majority community to repress the religious freedom of that minority and ensure its own dominance.

When the interventionary intentions of the protection of Muslim women became clear, the cry "Islam is in danger!" was sounded from within the community. Some Muslim women's organizations also opposed the judg-

ment for the same reason. The government gave primacy to the Muslims' perception that their community identity was threatened.[22]

When the government somersaulted and supported the bill that created the Muslim Women Act, it came under pressure to explain its *volte face,* which was widely seen as panicked capitulation to the fundamentalist lobby in order to ensure the ruling party's political future. Speaking on its behalf in Parliament, Minister K. C. Pant declared that what mattered was not whether the Supreme Court was right or wrong, but how the Muslims perceived it. Law Minister Sen also emphasized this.[23]

By adopting "perception theory," the government was able to present the situation as a conflict of two minority interests, that is, Muslim versus woman. Calling upon all the power of Solomon to adjudicate in the matter, it assumed its traditional benevolent role, its commitment to the protection of all minorities. The real exigencies of power struggles in party politics were successfully down-played in this deployment of the ideology of protection. When the government emerged to take up its role, it was as deus ex machina. In response to the accusation implicit in the Supreme Court judgment, as well as in Hindu-fundamentalist attacks, that Islam offered inadequate protection to women, influential members of Parliament argued that the provisions for women in Muslim religious laws were liberal and farsighted. The proposed Muslim Women Act was persuasively presented as a means of protecting women's rights: instead of being dependent on the whims of a recalcitrant and hostile ex-husband, the Muslim woman by the provisions of the new act would be able to fall back on the affection and duty of the natal family, and failing that, the *Wakf* Board. In this way her protection would be guaranteed. By passing the bill and foregrounding these arguments in favor of the progressiveness of the provisions for divorced women in Muslim religious law, the government successfully "protected" both Muslims in general and Muslim women in particular.[24]

The government's strategy of reconciling these conflicts is not one that liberal intellectuals have been able to adopt, since the act is clearly regressive. Yet, the sensitivity of the minority community to any form of interference in their personal law makes a primarily feminist position, that is, outright condemnation of the act, equally difficult to adopt. An article in *Manushi,* a leading feminist journal, expressed it this way:

> [A] minority community's reactions have a logic of their own and cannot be lightly dismissed, especially if the minority has been a disadvantaged community. . . .
>
> The most important task is to prevent the Hindu communalists from using what is essentially a women's rights issue for the purpose of stirring up communal hatred against the Muslims and other minorities.[25]

The indulgence toward a minority's insecurity cannot altogether avoid the aspect of liberal "protection." Feminist discourses have tried to steer clear of choosing between supporting a minority community or condemning them on feminist grounds by emphasizing the shared predicament of all Indian women within the personal laws of all religious communities—thus displacing the religious identity of Muslim women by highlighting their gender identity.

Shahbano's emergence from and retreat into the family suggest that the family is a site and an ideology that need to be considered in relation to the law and the state. The state is sensitive about issues relating to the family, first, because of their regulation by religious law (as we have already pointed out). For religion, too, is a "protected" sphere in India (the constitutional commitment to secularism does not imply, as in many western countries, a separation of church and state, or a state in which "religion or religious considerations are not only ignored but also purposely excluded from the sphere of State activities"; on the contrary, it has meant "the co-existence of various religions under the benevolent supervision of the State").[26] Second, the demarcation of the spheres of influence of family and state into the private and the public, respectively, enables them to work together in a collaborative hegemony. Since the entitlement of the family to privacy and autonomy is widely recognized and granted, any rights granted to the woman as an individual citizen by the state can only be imperfectly enforced within that state-within-a-state. When women become victimized within the family—and the most significant site of violence against women in India today is the household—the state (read: police) is reluctant to move in to prevent or punish the crime.[27] The conflict between the state and the patriarchal family over the rights of women is caught up in the problematic of "protection." In the Muslim woman's case, her legal right to maintenance from her estranged husband has resulted in an act that has not only taken away that right but driven her back to total dependence upon (the protection of) her natal family. The family has reclaimed the erstwhile "vagrant." Thus the discourse of women's rights becomes implicated in a discourse of protection, shifting imperceptibly from a question of establishing that to which women are entitled to that to which women have (for the moment) the privilege.

Protectionist arguments would then appear to be inherent in any women's issue. They are not altogether easy to avoid, as the predicament of women's groups outlined earlier suggests, nor are they invariably "insincere." We only argue that the will to power contaminates even the most sincere claims of protection. There are multifarious relations of dominance and subordination that circulate within the term "protection," so that its meaning is always deferred.

A protectionist argument succeeds in effacing the protector's will to power, but it also effaces the recalcitrant (nonsubmissive) will of the protected. The register of the discourse on Muslim women thus needs to be shifted to take into account the possibility of the operation of such a will.

Subjectivity

To counter a discourse about women that operates with the subtext "protection," we consider how a gendered subaltern subjectivity is constructed to express resistance. It is not our intention to recreate a "Shahbano" who is the origin and repository of her story, whose actions are interpretable through her motives, which in turn may be ascertained through interviews and other modes of transcription of her "inner" being. Nor do we wish to construct an individualized and individualistic "heroine" who single-handedly provoked a nation into crisis. Our mode of access to Shahbano will be through the actions she initiated in the law courts: these will be our text. Law, like language, "objectifies, typifies, anonymises."[28] Thus we move beyond a biographical dimension.

Shahbano gave two interviews, one to an Urdu newspaper *Inquilab* and the other on national television. We have not privileged these as sources of her subjectivity. Shahbano's multiple identities—as Muslim (a minority religious community), lower class (the daughter of a police constable), and woman—are severally and compositely subaltern and do not make for a symmetrical distribution of dialogue-constitutive universals.[29] In the best of circumstances, the notion of an ideal speech situation is contrafactual.[30] In the charged political and religious situation in which the media sought and were given the interviews, her freedom to apply regulative and representative speech acts was further and drastically curtailed. So that while we agree generally that speech provides an important access to self-representation, it is not always the case that "to speak is to become a subject."[31] Moreover, a direct interview with Shahbano would not have resolved this problem for us. Since she does not speak English, the politics of translation would, in any case, be deeply implicated in the "retrieval" of her speech.

In contrast, legal actions and other forms of social protest, while problematically subject to issues of mimeticism and referentiality, and still contained within discursive frames, are more "open" and recognizable as combative social action than are personal narratives. In broadly distinguishing between "speech" and "action" in this way, we hope to make the terms of our representation of Shahbano clearer. In what follows, we interpret Shahbano from the crises her legal actions produce. We create her subjectivity in terms of a series of discontinuous and exteriorized actions rather than, as in classic systems of representation, through "depth" characterization. We tentatively trace below the formation of a gendered subjectivity through its discontinuous actions and argue for a Foucaultian notion of resistance in this refusal of subjectification.

Primary socialization for an Indian is effected in terms of religion and class. Gender intersects this general ideological formation to articulate subjectivity. Shahbano's identity as Muslim and woman was gradually formed over a period of childhood. We need to distinguish this process from the violent constitution of the subject as it occurs later. Power is recognized as such only when it is exercised. When Shahbano was ejected from her home after forty years of marriage and several children, the ejection problematized the values that were embedded in the daily routines of life. And when this was followed by her husband's pronouncement of oral and unilateral divorce (as prevails in Islam), she moved to the courts. The ejection and divorce provided Shahbano with the lived experience that leads to a sharp consciousness of gender in a patriarchal culture. The litigant who approached the lower courts was a poor female Muslim subject made painfully aware of being disadvantaged by her religion and her sex and in need of economic assistance. The maintenance award of the lower court of a sum less than the daily wages of a laborer sharply constituted her economic-caste identity. She appealed to the High Court in protest against this meager award. Her upper-class Muslim sisters (coreligionists) accused her of a lack of self-respect in fighting for money from a man who, by viture of the divorce, had become a stranger. She was estranged by class division from women of her religion. We can see class and religion delicately poised in the struggle for dominance in her response. When Hindu fundamentalists offered to "protect" her from Muslim men, her religious identity won, as her subsequent action shows. In an open letter, she denounced the Supreme Court judgment

> which is apparently in my favour; but since this judgment is contrary to the Quran and the *hadith* and is an open interference in Muslim personal law, I, Shahbano, being a muslim, reject it and dissociate myself from every judgement which is contrary to the Islamic Shariat. I am aware of the agony and distress to which this judgment has subjected the muslims of India today.[32]

Her apparent inconstancy or changeability must be interpreted as her refusal to occupy the subject position offered to her. When the battle was carried to Parliament and the government of India passed the bill that threw her on the mercy of the male relatives of her natal family, her gender status was again activated. She became a Muslim woman pursuing the case for the return of her *mehr* (dower) under the provisions of the new act.

It is clear that every discursive displacement is matched by a violent movement of religion/class/gender attributes to the foreground of the identity. This process of writing and erasure cannot construct that specific [illegible]

freely choosing individual who is the normative male subject of Western bourgeois liberalism. The consciousness we have been describing that comes into being in response to and through the investments of a hegemonic or dominant consciousness can perhaps only be described as a subject-effect.[33] To live with what she cannot control, the female subaltern subject here responds with a discontinuous and apparently contradictory subjectivity. Shahbano's legal actions—her appeal for maintenance, her ten-year struggle in the courts, her victory, her denunciation of the judgment and renunciation of the compensation, her quest for restitution of the dower under the new act—may appear within the normative paradigm of subjectivity to conform to the male image of woman as inconstant. So deeply internalized is this notion that when Rajiv Gandhi veered around from acclaiming the judgment to supporting the Muslim Women Act, a member of the opposition attacking the bill in Parliament declaimed: "Frailty, thy name is Rajiv!"[34] But if the inconstancy that is proverbially ascribed to woman is deconstructed, we shall find not a unified, freely choosing, purposefully changing subject, but a palimpsest of identities, now constituted, now erased, by discursive displacements.[35]

The episodic narrative of Shahbano's actions we have traced has no center and no closure. If we retraverse its trajectory, we find that for every constituted "effect" there is a simultaneous act of resistance. This for us exemplifies that refusal of subjectification that Foucault recommends, the refusal of "the simultaneous individualization and totalization of the modern power structures."[36] Shabano's multiple identities must be read in a differential relation to each other. None of them is a positive term but exists in combination with other terms to produce meaning. We greet the resistance offered by this spacing, temporalizing self "with a certain laughter, a certain dance."[37]

The Subject in Law

Whether this spacing, temporalizing self is a deferral of the unified, freely choosing subject or whether the latter is itself only a metaphysic remains outside our concern here. Certainly the Constitution of India, following Western constitutional models, did envisage this unity of the Indian subject within the legal system.

While there was no specific reference to secularism in the Constitution in 1949, article 25(2) empowered the state to make laws "regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice."[38] So while the division into secular and personal law might seem to concede that the subject was split, at the time of the framing of the Constitution this division was only envisaged as a temporary accommodation of contemporary reality (the partition of the

country attended by large-scale communal riots). The Constitution signals the desired coexistence of secular and personal law; and, in the hierarchical relationship between the two, we are left in no doubt that "secular" is the upper term.

This was the narrative perspective which made the telos of an eventual uniform civil code "natural," a promised goal toward which the social and legal system would evolve. Until the goal was achieved, personal law would be temporarily harbored under the overarching secular law which promises this achievement: "The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India" (art. 44).

This assumption emerged unambiguously in the discussions about a comprehensive Criminal Procedure Code that was framed in 1974. When the question of the maintenance of Muslim women had similarly threatened to become an issue, the government was able to satisfy the objections of Muslims without unsettling the hierarchy of the law: "If post-divorce entitlement under personal law was realized by the divorced wife, this should be taken into account, and if maintenance had been granted earlier, it could be cancelled." In this way, Muslim personal law was given recognition at the same time that, by allowing Muslim women to have recourse to sections 125–28 of the Criminal Procedure Code, the economic, religious, and common secular identity of the female Indian subject was ensured in law.

However, with the passage of the Muslim Women Act, this ideology of the law has been jeopardized. An interesting concession in the act now makes possible the Muslim woman's continued recourse to section 125, but only with the consent of the husband:

> If a divorced woman and her former husband declare by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of Section 125 to Section 128 of the Code of Criminal Procedure, 1973, and file such affidavit or declaration in the court hearing the application, the magistrate shall dispose of such application accordingly.

That the husband's consent to such a declaration is unlikely is widely recognized. In a reversal of the previous legal hierarchy, the common Code of Criminal Procedure has now become merely an optional or special case of the personal law.

In any relationship of two terms, an implicit or explicit hierarchy prevails, where one of the terms is viewed as the "supplement," the marginal, extraneous, gratuitous, temporary, or subsidiary element—these approximate to the terms in which personal law was viewed in the Directive Principles. But the passing of the bill has sharply illustrated the workings of

space and deconstructs the uneasy hierarchy of the governing terms and the metaphysic of the unified subject of legal discourse that it supports. The intervention of religion in politics, or of politics in religion, exacerbates the conflict between the categories of secular and personal. Such exacerbation might eventually result in the translation of the legal division into a split in the psyche of the Indian subject.

In a climate of political and religious controversy, the progress toward a uniform civil code falters. There is a fear among minority communities that, instead of being uncompromisingly secular, a common code would only enshrine some form of codified personal law, most probably that of the majority.[40] Many conceptualizations of a common civil code are unproblematically based on a notion of modernization which, in its turn, is nothing more than a scenario of Westernization, out of keeping with the complex historical reality of the situation in India today.[41] The historical narrative of national evolution and progress, for which the uniform civil code has been projected as the "happy ending," over-simplifies. Under the pressures and exigencies of the times, we might even ask whether the attempt to exchange the present significatory function of the uniform civil code for textual status will block the accommodation of future changes.[42] The passage of the bill has vividly raised the ghosts who haunt attempts at codifications that historically have not necessarily benefited women.[43] In this case the passage of the bill has led to the collaborative hegemony of government and the Muslim Personal Law Board. For purposes of framing the law, stereotypes of the Muslim woman (and man) have been invoked and substituted for the actual socioeconomic reality of the situation of divorced Muslim women, the regional differences in *Wakf* funding, and the statistical variations in the rate of divorce. Therefore, the question of the ability of the Uniform Civil Code to (re-)construct the unified Indian subject in law is open to debate.

Nevertheless, the aim must be to close eventually the split between secular and religious law in the interests of legal equality (art. 14 of the Constitution). Perhaps reform of religious law would obviate the need for a uniform civil code.[44] Revisionary readings (similar to those already undertaken by feminist scholars in literature and the social sciences) and "interested" translations of religious texts are clearly needed. By these means, religious law may be creatively interpreted to accommodate the reality of women's contemporary situation. These are initiatives that have already begun in the wake of the Shahbano crisis. Until such a merging of the two systems takes place, the Uniform Civil Code must continue to function as the site of desire and the sign of the unified legal subject.

The identity of legal subjectivity for Indian women, even if a metaphysic, is necessary in order to counter their identity as the "protected" within the family. Accordingly, section 125 might be looked at as an en-

abling provision: ostensibly "negative" as to the subject position it offers, it is in practice one mode of access to a public space, a forum for combative legal action, a strategy for countering absorption and containment in the family. By being categorized as a vagrant, the destitute woman—widow, divorcee, or abandoned wife—is envisaged as a potential threat to the public peace. It would seem that ironically it is only when a woman threatens the public realm as an excluded figure, as criminal, prostitute, or vagrant, that she fulfills her (anti-)social role.[45] The psychological damage of potential vagrant status is partially minimized by the depersonalizing effects of legal action. Section 125 offers women a "negative" subjectivity: the new act responds by reinserting the divorcee within the family, this time as dependent on her natal family and sons.

In the ideal, subjects in law are undifferentiated, nondescript, equal, and singular. The Shahbano case points to the contradictions inherent in such "ideal" subjectification.

Resistance

Multiple intersections of power, discursive displacements, discontinuous identities refusing subjectification, the split legal subject: to read this multiple plot is to recognize that the space of the other has no permanent occupant. When translated into an oppositional strategy, this situation seems to lend itself to a free play of alliances between reformist groups, to a politics of association which is oriented to specific issues; and as one views the scene of resistance to the Muslim Women Bill, this possibility is confirmed. In the nationwide response first to the Supreme Court's judgment and then to the bill, the politics of coalition are most striking; there was no attempt by different groups to merge into a homogeneous oppositional identity. What one finds instead is a "multiplicity of voices of liberation [which] remain autonomous."[46]

A selective summary of events in 1985–86 shows a coming together of several feminist and reformist groups in spite of basic ideological differences among them, as well as differences on specific issues like the desirability of a common civil code, of foreign funding, of male participation, or of enactment of further reform (instead of implementing existing laws). That the groups shared a common platform which was open to women's wings of political parties, university teachers and lawyers' collectives, was significant.

> Five organizations presented a joint memorandum to the Prime Minister: "Given the fact that the dismally low status of women is a reality for all sections of women regardless of caste or community, the necessity for affording minimum legal protection to all women is self-evident. . . .

The unseemly controversy over Section 125 aims at excluding a large section of women from minimum legal protection in the name of religion." The organizations were the All India Democratic Women's Association, the National Federation of Indian Women, the All India Lawyers' Association, the Young Women's Christian Association, and the Mahila Dakshata Samiti.[47]

On January 30, 1986, the women's wing of the Rashtriya Ekjoot held a *dharna* (demonstration) in Bombay to demand a common civil code.

Between September 1985 and May 1986 Muslim women organized similar *dharnas* in all parts of the country from Darbhanga in Bihar to Pune in Maharashtra; outside the offices of the district magistrates and collectors, hundreds of Muslim divorcees supported by various organizations agitated against the bill.

A Muslim reformist organization of Maharashtra, the Muslim Satyashodak Mandal (some of whose programs are not popular with other Muslim reformists), brought a delegation of women, chiefly divorcees, to Delhi to plead their cause to the government on February 22, 1986.

About fifteen women's organizations, consisting of hundreds of women, held a rally in New Delhi on March 6, 1986, to protest the bill.

A statement published on March 8, 1986, in the journal *Mainstream* to protest the bill had 118 signatures from the Muslim intelligentsia, including eminent journalists, educationists, filmmakers, writers, and painters.

Thirty-five women's organizations joined together for a rally organized by the Women's Liberation Movement in Bombay on March 21, 1986, to demand a secular code.

Senior members of the legal profession took part in a public meeting in New Delhi in March 1986, organized by Karmikar, a women's organization.

In West Bengal, a seminar on Women's Right of Equality before the Law was held in April 1986 and was addressed by the Marxist chief minister of the state. The Socialist leader, Raj Narain, began a seventy-two hour hunger strike to protest the bill on May 3, 1986.

On May 5, 1986, while the bill was being passed, women's organizations in the capital protested outside Parliament, chaining themselves to the iron gates of the building to symbolize their plight. Over a hundred women courted arrest.[48]

Muslim women in Delhi, including university teachers and other professionals, formed the Committee for the Protection of Rights of Muslim Women and held a convention on April 26, 1986, in New Delhi. The speakers included Asghar Ali Engineer (who led a revolt against the leadership of the Muslim Bohra community); Saifuddin Chowdhry, Muslim and leftist member of Parliament; Reshma Arif, wife of Minister Arif Mohammed Khan and an advocate (lawyer) of the Supreme Court; Shahnaz Shaikh, who challenged the Muslim personal law to obtain her divorce; Zoya Hassan, professor at Jawaharlal Nehru University; Daniel Latifi, Shahbano's counsel; and Moonis Raza, vice-chancellor of Delhi University.

A group of young women students of the Mass Communication Centre at Jamia Milia University, New Delhi, made a video film called "In Secular India." The inaugural screening was held on September 14, 1986. Calling themselves Mediastorm, the group interviewed some major figures in the controversy and also poor Muslim divorcees, and wove these interviews into the film.

The tempo was kept up in the press by articles by well-known feminist journalists like Neeraja Chowdhury, Bacchi Karkaria, Nandita Haksar, Madhu Kishwar, Vasudha Dhagamvar, and so on.[49] Women's rights activists and women lawyers are actively engaged in drafting acceptable versions of a common civil code, keeping in mind the basic demand of women's equality with men.

In October 1986, the Third National Conference of Women's Studies held a session on the Shahbano case.[50]

In February 1987, the Joint Women's Programme, a national women's organization (which had earlier organized nationwide protests against the bill), collaborated with Asghar Ali Engineer, of the Institute of Islamic Studies, to publish a book, *The Shahbano Controversy*.[51]

We are well aware that the resistance initiated by the individual subject, as in Shahbano's case, can frequently move out of her control, and even out of the area of her concerns, so that any aggrandizement of her individual resistance would reduce her to a bone of contention among conflicting groups. The Shahbano crisis was not allowed to be defused in this fashion. The feminist collectivity, by embracing the individual woman's cause, converted her resistance into a significant operation within a (collective) feminist politics. We have noted how women's groups have been able to reconcile two contradictory aims: to attend to the specificity of the problem of Shahbano as a woman living in poverty, in order to focus on concrete, pragmatic, end-directed action; and also to subsume the specific issue in the larger context

of Indian women's secondary social and legal status, in order to avoid the danger of isolating women of the community, of targeting their religious identity as regressive, speaking therefore on their behalf, even usurping their victim status, and ending by offering "protection." As we have detailed above, not only have women's groups formed different alliances in response to such complexities, but they have also chosen varied strategies of protest and resistance. Some groups have resorted to active consciousness-raising programs, such as demonstrations, petition drives, signature campaigns, or courting arrest. Other women have been campaigning in the press, on cinema and television, as well as in legal, religious, and academic forums.

It will be clear by now that our decentered subject is not that "post-structuralist ideal . . . the 'man without qualities' (Musil), the Reichian subject without 'character armour,' the Deleuzian schizophrenic subject."[52] Instead, by allowing a strategic redefining of her subject position in accordance with the exigencies of the shifting political situation, she engages with the collectivity. The fragmented subject, refusing to be protected, seeks access to the public realm by erupting into its discourses, problematizing the shared assumptions across those discourses, and disrupting their harmony. "Shahbano" is to be found in the transformative power of gender operating in such analytic categories as "minorities," "citizens," and "working classes." The contradictions of the gendered situation cease to be socially inert at historical junctures. Shahbano activated these contradictions, even as other women have pushed them toward a crisis.

It is this view of gender as social force that allows us to express an "optimism of the will" that counters the "pessimism of the intelligence"[53] inevitable in tracing a narrative that concludes with the passage of a retrogressive law. Some developments following the passing of the bill further permit a certain cautious optimism.

> The act was challenged in the Supreme Court by the *Anjuman-e-Taraqqi Pasand* Muslim group on May 22, 1986.[54]

> The first two legal verdicts under the new act have gone in favor of the divorced women. In January 1988, Rekha Dixit, a woman magistrate in the Lucknow court, ordered Shafat Ahmed to pay his divorced wife Fahmida Sardar Rs 30,000 as "reasonable and fair provision" plus Rs 3,000 as *iddat* (maintenance) and Rs 52,000 as *mehr* (dower). Eight days later she directed Mohammed Khalid Ahmed to pay his divorced wife Shahida Khatoon Rs 11,000 (*mehr*), Rs 1,500 (*iddat*), and Rs 69,000 as "reasonable and fair provision." In making these generous settlements, Rekha Dixit was interpreting liberally the statutory provision regarding "reasonable and fair provision" as laid down in the act.[55]

> There is hope that the shape of new legislation relating to women's issues, including the drafting of a uniform civil code, may show a greater awareness of the interests of women.[56]

So we read deliberately against the grain: the narrative that concludes with the Muslim Women Act is also a beginning which has opened a space in the public realm for women. It is in our attempt to retain Shahbano within the concerns of a feminist project—to ensure that the crisis initiated by her does not move away from the issue of destitute women—that the question we posed at the beginning, Where is Shahbano the woman?, finds its tentative answer.

NOTES

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1. Mohd. Ahmed Khan, Appellant, v. Shah Bano and others, Respondents. The Supreme Court of India, Criminal Appellate Jurisdiction. Criminal Appeal No. 103 of 1981, D/-23.4.1985. A.I.R. 1985 Supreme Court 945 = 985 Cri.L.J. 875 = M.L.R. (1985) p. 202.

2. Shekhar Gupta with Farzand Ahmed and Inderjit Badhwar, "The Muslims, a Community in Turmoil," *India Today* 3 (January 1986), pp. 90–104, esp. 90.

3. Section 125 is an "order for maintenance of wives, children, and parents." "If any person having sufficient means neglects or refuses to maintain" his wife, children, or parents in need, a magistrate may "upon proof of such neglect, or refusal, order such person to make a monthly allowance for the maintenance . . . at such monthly rate not exceeding five hundred rupees in the whole"; see Ratanlal Ranchhoddas and Dhirajlal Keshavlal Thakore, *The Code of Criminal Procedure* (Nagpur: Wadwa, 1987), pp. 94–112, esp. 110.

4. The Supreme Court judgment (A.I.R. 1985 SC) quotes two earlier decisions of the Court confirming the applicability of sec. 125 of the code to Muslims: Bai Tahira v. Ali Hussain Fidaalli Chotia, 1979, and Fazlunbi v. V. Khader Vali, 1980 (946).

5. There are 75 million Muslims, forming 11.35 percent of India's population.

6. Some other examples of personal law relating to women, taken from Indira Jaisingh, "Personal Law: A Matter of Politics," *Bombay*, 7–21 March 1986, pp. 56–57. In spite of the Hindu Succession Act, 1956, Hindu daughters cannot be coparceners in a Hindu undivided family. The Travancore Christian Succession Act, 1916, totally disinherits a daughter who has received a dowry and limits her share to Rs 5,000. Under Parsi law, daughters get only half the share of a son in inheritance. Under Muslim law, a Muslim male can marry four

7. Vasudha Dhagamvar has described the code as one "whose universal applicability has never been challenged"; see "Uniform Civil Code: Don't We Have It Already?," *Mainstream* (6 July 1985), pp. 15–17, 34, esp. 16.

8. Syed Shahabuddin, "The Turmoil in the Muslim Mind," *Onlooker* (16–31 March 1986), pp. 32–37, esp. 36.

9. Arif Mohammed Khan in an interview with Shekhar Gupta, *India Today* (16–31 Januaary 1986), p. 94.

10. See, e.g., Tahir Mahmood's comments in an interview with Kuldeep Kumar, *Sunday Observer* (9 March 1986).

11. It seems to us that much historical as well as religious narrative represses the subject. For a discussion of the repression of female subjectivity in *Paradise Lost,* see Christine Froula, "When Eve Reads Milton: Undoing the Canonical Economy," *Critical Inquiry,* 10, 2 (December 1983), pp. 321–47.

12. Richard Wollheim explains the place of displacement in Freud's dream theory: "By 'displacement' . . . Freud meant two distinct but related processes. One is that whereby the dream is differently 'centered' from the dream thoughts, so that it does not reflect the relative importance of these thoughts. The other is that whereby elements in the dream do duty for elements in the dream thoughts, the substitution being in accordance with a chain of association. Displacement is peculiarly connected with the disguise that the dream wears" (*Sigmund Freud* (New York: Viking, 1971), p. 65).

13. Daniel Latifi, "The Unfriendly Act," *Sunday* (8–14 June 1986), pp. 32–37, esp. 37.

14. Shekhar Gupta, Farsand Ahmed, and Inderjit Badhwar, "The Muslims," p. 90.

15. Kuldip Nayar, "Separate Personal Laws Do Not Dilute Secularism," *Telegraph* (15 March 1986).

16. Syed Shahabuddin, p. 34.

17. We use here the argument put forward by Gayatri Chakravorty Spivak, "Subaltern Studies: Deconstructing Historiography," in *Subaltern Studies IV: Writings on South Asian History and Society,* edited by Ranajit Guha (Delhi: Oxford University Press, 1985), pp. 330–63. She uses the phrase "discursive displacement" to mean "functional changes in sign systems." Our indebtedness to the work of Gayatri Spivak goes beyond the actual quotations used in this essay.

18. Subaltern: Of inferior rank: A particular not a universal (OED). Of inferior rank: A particular in relation to a universal of the same quality. Therefore, here, a subject relating to the societal universal norm of a unified, freely choosing subject—tangentially or marginally, or in opposition to, or opaquely.

19. Asoke Sen, 5 May 1986; Syed Shahabuddin, May 1986; Zoya Hassan, March 1986; Justice Chowdhary, 22 March 1986; as cited in a publicity pamphlet issued by Mediastorm at the inaugural screening, 14 September 1986, of "In Secular India," a video film on the Muslim Women (Protection of Rights in Divorce) Bill.

20. This theory of language was propounded by Ludwig Wittgenstein, *Philosophical Investigations,* translated by G. E. M. Anscombe (New York: Macmillan, 1985); and J. L. Austin, *How to Do Things with Words* (Cambridge, Mass.: Harvard University Press, 1962), and is fully formulated in the speech-act theory of language.

21. This sentence is analogous to "white men are saving brown women from brown men" in Spivak's essay on *Sati,* "Can the Subaltern Speak? Speculations on Widow Sacrifice," *Wedge* 7/8 (Winter/Spring 1985), pp. 120–30, esp. 121.

22. Through a strategy of synedochic substitution, the Muslim Personal Law Board has claimed to represent the sentiments of the entire Muslim population. "Progressive" Muslims have felt alienated from their community because their call for Islamic reform has been dismissed either as irrelevant or as opposed to mass opinion. Women of the Muslim community have also been ignored; no referendum on the bill among Muslims was held, though it was repeatedly promised.

23. In an article in *Statesman* (8 May 1986), the editor described the law minister as an acknowledged legal luminary who could argue both sides of a case with equal facility. He pointed out that "perception theory" had not been applied to the Sikh minority's demand for a separate state, or to their perception that Sikh temples were sacred places which the army could not enter. Castigating the perception theory as dangerous, the article held: "In a plural society such as ours, the rulers, though not impervious to public opinion, are expected to lead society—to mould it, rather than surrender to its darker mood. If the 'perception theory' were to prevail, no reform would ever be possible. . . . Dowry is considered a necessary evil among the Hindus. Will the Government make it a ground for not reforming society?"

24. Seema Mustafa, "Behind the Veil," points out how the prime minister, Rajiv Gandhi, himself defended the bill in Parliament "on the grounds that it was secular, that it did not deprive Muslim women of their rights but was superior to even Section 125, Cr.P.C., and that, as Hindus, Parsis and Christians had modified bills why should this be denied to Muslim women" (see The *Telegraph* (2 March 1986).

25. Madhu Kishwar, "Pro Women or Anti Muslim? The Shahbano Controversy," *Manushi,* 32 (1986, pp. 4–13, esp. 12–13.

26. See K. K. Wadhwa, *Minority Safeguards in India* (Delhi: Thomson, 1975), 85, 96.

27. In recent times, it has been the task of women's groups to question the sanctified space of the family and to demand that women's cries for help be heard and addressed.

28. Peter Berger and Thomas Luckmann, *The Social Construction of Reality* (Harmondsworth: Penguin Books, 1967), 53.

29. Jurgen Habermas, quoted in T. A. McCarthy, "A Theory of Communicative Competence," in *Critical Sociology,* edited by Paul Connerton (Harmondsworth: Penguin, 1976), pp. 473–78.

30. *Ibid.*

31. Catherine Belsey, *The Subject of Tragedy: Identity and Difference in Renaissance Drama* (London and New York: Methuen, 1985), p. 191.

32. "Open Letter to Muslims," *Inquilab* (13 November 1985). The letter is signed by Shahbano with her thumb impression, attested by the signatures of four witnesses; translated into English by A. Karim Shaik, in *Radiance* (24–30 November 1985); reprinted in Asghar Ali Engineer, ed., *The Shahbano Controversy* (Hyderabad: Orient Longman, 1987), 211.

33. Gayatri Spivak, "Subaltern Studies," p. 341.

34. M. S. Gurupadaswamy, "In Focus," *Sunday Observer* (11 May 1986).

35. Palimpsest: A parchment from which writing has been partially or completely erased to make room for another text.

36. Herbert Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (Brighton: Harvester Press, 1982), p. 216.

37. Jacques Derrida, "Difference," in *"Speech and Phenomena" and Other Essays on Husserl's Theory of Signs* (1967), translated by David B. Allison (Evanston, Ill.: Northwestern

38. When, in 1948, an attempt was made to introduce a clause to save personal law, Dr. B. R. Ambedkar, one of the framers of the Constitution, argued as follows against it: "The religious conceptions in this country are so vast that they cover every aspect of life from birth to death. There is nothing which is not religious, and, if personal law is to be saved, I am sure about it, that in social matters we shall come to a standstill. . . . After all, what are we having liberty for? We are having this liberty to reform our social system which is so full of inequalities, discriminations and other things which conflict with our fundamental rights." Ambedkar, like other liberal secularists, postulated an Indian-hood which would hold together in unity identities grounded in gender, class, language, and religion; see P. C. Chatterjee, *Secular Values for Secular India* (New Delhi: Lola Chatterjee, 1984), 13.

39. Jacques Derrida has explained the functioning of the supplement thus: "But the supplement supplements. It adds only to replace. It intervenes or insinuates itself *in-the-place-of;* if it fills, it is as if one fills a void. If it represents and makes an image, it is by the anterior default of a presence. Compensating . . . and vicarious, the supplement is an adjunct, a subaltern instance which *takes-(the)-place*" (see *Of Grammatology,* translated by Gayatri Chakravorty Spivak (Baltimore and London: Johns Hopkins University Press, 1976), p. 145).

40. As Asghar Ali Engineer points out, "Whatever the merit of a common civil code . . . when the demand for it comes from communalist Hindus, it arouses deep suspicion even among the Muslim intelligentsia and they begin to perceive it as a Hindu Code" (18).

41. On the ideology of modernization with special reference to Islamic law, see Iqbal Masood, "Islam and 'Word Politics,'" *Express Magazine* (1 June 1986).

42. By "significatory function," we refer to the invocation of art. 44 as a sign: it has served until now as both threat and promise, as that which has to be fulfilled in an indeterminate future, a "deferred presence." "The circulation of signs," as Derrida points out, "defers the moment in which we can encounter the thing itself" (see *Margins of Philosophy* (Chicago: University of Chicago Press, 1982), p. 9). It is this free play of the sign that will be curtailed in actualizing the code.

43. In "The Production of an Official Discourse on *Sati* in Early Nineteenth-Century Bengal," *Economic and Political Weekly,* Review of Women Studies 21, no. 17 (April 26, 1986): pp. 32–40, Lata Mani has argued that increasing textualization of Hindu laws by colonial rulers reduced the heterogeneity, contextualization, and variety of traditional interpretations, and produced "consequences of domination" (39).

44. The closeness of personal and secular laws already exists in some cases. Some of the personal laws of the Hindus, codified since 1955, such as the Hindu Adoption and Maintenance Act and the Hindu Marriages Act, have no specific *shastric,* i.e., religious, sanction. There exist also several uniform laws covering personal matters, such as the Special Marriage Act, 1955, the Indian Succession Act, 1875, the Guardians and Wards Act, 1890, the Indian Majority Act, and the Medical Termination of Pregnancy Act, 1971; see Dhagamvar (n. 7 above), p. 15.

45. The Supreme Court judgment makes this recategorization clear: "The liability imposed by sec. 125 to maintain close relatives who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution. . . . Sir James Fitz-James . . . piloted the Code of Criminal Procedure, 1872 . . . as a mode of preventing vagrancy or at least of preventing its consequences. In Jagir Kaur v. Jaswant Singh . . . Subba Rao J. speaking for the court said that [sec. 125] 'intends to serve a social purpose'" (n. 1 above). Foucault's study of a society through its procedures of exclusion is an insightful one and useful

in this context; see, esp., *Madness and Civilization: A History of Insanity in the Age of Reason,* trans. R. Howard (New York: Random House, 1973), and *Discipline and Punish: The Birth of the Prison,* trans. Alan Sheridan (New York: Random House, 1979).

46. Stanley Aronowitz, *The Crisis in Historical Materialism: Class, Politics and Culture in Marxist Theory* (New York: Praeger, 1981), p. 131.

47. Janak Raj Jai, *Shah Bano* (New Delhi: Rajiv Publications, 1986), 119.

48. These events have been listed in Asghar Ali Engineer, ed., *The Shabhano Controversy* pp. 237–42.

49. In addition to articles already cited in this essay, see also Nandita Haksar, "And Justice for All," and Madhu Kishwar, "Losing Sight of the Real Issue: Another Look at the Shahbano Controversy," both in a special supplement, "Woman," *Times of India* (8 March 1986), 1, 4; Shahida Lateef, "Indian Muslim Women: Caught in a Time Warp," *Express Magazine* (30 March 1986); Rasheeda Bhagat, "How Poor Muslim Women Look at Maintenance" (a report from Madras), *Indian Express* (11 April 1986); Neeraja Chowdhury, "The Communal Divide" (three-part article), in *Statesman* (18, 19, and 20 April 1986), "Muslim Women Bill: Trail of Errors," *Statesman* (28 April 1986), and "Shortsighted Move to Appease Communities," *Statesman* (1 May 1986).

50. The National Conferences on Women's Studies are organized by the Indian Association of Women's Studies (CWDS, B–43, Panchsheel Enclave, New Delhi, 110 017). This paper, and two others on the "Shahbano" issue, were part of a workshop on religion, secularism, and women's rights convened by Uma Chakravorty and Sudesh Vaid.

51. This book, cited in n. 32 above, is a collection of documents relating to the issue and reprints of several newspaper and periodical articles.

52. Leonard Green, Jonathan Culler, and Richard Klein, "Interview: Frederic Jameson," *Diacritics,* 12 (Fall 1982), pp. 72–91, esp. 82.

53. Antonio Gramsci, *Selections from Prison Writings, 1910–1920,* edited by Quintin Hoare, translated by John Mathews (London: Lawrence & Wishart, 1977), 175n.

54. Asghar Ali Engineer, ed., *The Shahbano Controversy,* p. 242.

55. Minu Jain, "Curious Role Reversal," *Sunday Observer* (24 January 1988).

56. The three supposedly prowomen acts passed in 1987—the Dowry Amendment Act, the Prevention of Immoral Traffic Act, and the Indecent Representation of Women Act—"were intended to soften the negative impact of the politically motivated Muslim Women (Protection of Rights in Divorce) Act" (see unsigned editorial, "Women versus Women," *Statesman* (2 September 1988)). These acts have nevertheless been widely perceived not only as powerless to effect real changes but also as impinging upon civil rights. The Commission of Sati (Prevention) Act, 1987 (which bans the celebration of *Sati*), has also come in for the same criticism (*see The Current Indian Statutes,* June 1988, pt. 6, pp.7–12). The pressure from women's groups for effective legal reform therefore continues.