Legal Pluralism, Familial Honour and Shariat: A Case of Alternative Dispute Resolution within a Muslim Clan, Uttar Pradesh, India

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Abstract

Legal pluralism, contrary to the belief of some scholars, is a thriving phenomenon and has been vibrant through different eras. In the due course of time it may have undergone some changes, but undeniably, legal pluralism remains an important aspect of the post-modern world where extra-legal institutions have their own specific roles to perform. The existing normative systems act as an important alternative to individuals who make rational choices to pursue their objectives. In this article I show how *Shariat* courts and kinship-based adjudicating bodies form a complex whole which is in a state of paradox with the formal-state-legal courts, sharing conflicting, complementing and competing relationships with each other. I further focus on the manner in which landed aristocratic Muslim families bypass even Shariat norms in property distribution to secure familial honour through a case study of a Muslim family in Uttar Pradesh, India.

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Introduction

With the emergence of nation-states in the post-colonial world, legal pluralism became a defining feature of many of these newly formed sovereign countries. India, with its multi-religious and multi-ethnic population, assured its commitment to a legal system where customary and religious laws would be accorded weightage along with secular/state laws. This assuredness was welcomed by the Indian religious minority communities that were, it is believed, rather apprehensive of the newly formed sovereign state's constitutional policies towards its religious minorities, especially the Muslim community.

It is observed that legal pluralism is more prevalent in countries which were under colonial rule and have had a history of multiculturalism (Peletz 2002). Religious minorities in order to be able to secure their socio-cultural distinctiveness vis-à-vis a dominant religious majority culture emphasised on adhering to their Personal Laws. Thus, issues related to inheritance, marriage, property rights, etc. are dealt with in the ambit of the respective Personal Laws. These Personal Laws are drawn heavily from religions, customs and folkways, or from a combination of all three. Often some of these customary laws are found to contravene the formal-state-laws, leading to a situation of legal impasse.

In this paper, I argue that individuals, when it comes to arbitration, resort to multiple sources of non-state legal institutions. Given the fact that Personal Laws are sensitive issues, the state treads cautiously whenever a conflicting situation arises. For instance, in the Shah Bano's case[1], the Government of India faced challenges in adjudicating on the issue of maintenance of ex-wife (divorced) after the *iddat* /wait period which according to some Muslim despots, was seen as a deliberate act of infringement of their religious rights and, was a form of blatant intervention to attack their identity (Engineer 1998). Hence, for them, any intervention by the secular court is also perceived as a threat to their religion and to their religious identity. Amartya Sen, while trying to comprehend these identity-based insecurities, states that 'Muslims like all other people in the world, have many different pursuits, and not all of their priorities and values need to be placed within their singular identity of being Islamic.' (Sen 2006: 14). Religious identity forms only one element of the numerous other identities based on race, region, caste, sect, gender, political affiliations, country, and so forth.

Muslims in India

Muslims in India form almost fourteen percent of the total population. Divided into various fault lines such as region, language, race, sect and class, Muslims are, but a homogeneous community. Of the two sects, Sunni Muslims outnumber Shia Muslims as far as demographics are concerned. While the former forms almost eighty percent of the total Muslim population in India, the latter forms the remaining twenty percent. Furthermore, Sunnis in India are predominantly Hanafi[2], i.e., they follow the Hanafi School of jurisprudence/fiqh[3]. Shia Muslims have their own schools of jurisprudence/fiqh.

Hanafi Muslims are further subdivided into two groups based on the reformist movements started by Islamic scholars in two districts of northwestern India, i.e., Bareli and Deoband. The *Ahle-Sunnatwal-Jammat* (the community of the followers of the traditions of the Prophet or the Barelvi movement) movement was started by Ahmad Raza Khan in Bareli in 1880 which aimed at reforming Muslims from the influence of the non-believers/ *Kafirs*. The movement was closely associated with the Sufi tradition of tomb worship. The Barelvis supported the formation of Pakistan and refused to lend support to the nationalist movement as the movement was led by a non-Muslim, Mahatama Gandhi.

In 1867, a school was founded at Deoband by the reformist *ullema* headed by Shah Abdul Aziz. The movement opposed affiliation to any political organization and hence did not support the Muslim League. It also critiqued the blind emulation of western culture and philosophy by the inferiority-complex-driven Muslim community as it considered such emulation as the only means of becoming progressive (Metcalf 2004).

Both the Barelvis and the Deobandis consider themselves rival groups because of the conflicting ideologies propagated by each school. Each considers superior to the other in terms of following and maintaining the true ethos of Islam. However, despite their conflicting views on Islamic jurisprudence, each School is held as an important body (legal) of arbitrations.

As discussed earlier, legal pluralism is an important aspect of lived Islam in India. Besides the formal bodies of law, there are *Shariat* courts also which address issues related to family, inheritance, marriage, etc., pronounce verdicts or *fatawas.* Given the fact that legal pluralism is an outcome of the coexistence of the various legal-normative systems, its functionality is contingent upon factors such as gender, class, and kinship relationships. My argument is premised on the fact that individuals make conscious choices in matters of adjudication related to inheritance, marriage, divorce and property disputes. They may not necessarily seek *Shariat's* or formal-legal court's intervention to get their issues resolved.

For the sake of safeguarding *khaandan's* honour, *sharif* families prefer to settle disputes within the confines of their courtyards and in so doing they do not hesitate in circumventing the *Shariat* norms. We will see in the later sections how, despite the Quranic provisions for daughters' share in the father's property, seldom do they claim their share.

One of my participants sounds cryptic when he boasts of his noble background, *Hamareyahan mil jul karrahtehain.Aana janaa lagaa rahta hai* / we stay together…girls visit their natal families on a regular basis. Hence girls do not demand (and those who do so are rather looked down upon as it does not behove of *sharif* /noble girls to be greedy and money minded) …but they often receive their share as gifts and other help. The give and take of things continues till eternity'. Thus, in such instances when social relationships are seen as important saviours in the face of crisis (i.e., widowhood, separation or financial difficulties), girls/women let the customary laws prevail upon the *Shariat* laws. They prefer, sometimes in anticipation, to maintain their natal links at the cost of their share in patrimony.

Legal pluralism, evolution of Muslim Personal law

John Griffiths defines 'legal pluralism as that state of affairs, for any social fields, in which behaviour pursuant to more than one legal order occurs' (1986: 2). The simultaneous existence of different bodies of law, with conflicting and sometimes overlapping norms, having different orientations and *modus operandi,* leads to the phenomenon of legal pluralism.

Legal pluralism is not a new phenomenon rather it has existed since the middle ages (i.e., medieval times, roughly from the 5th century AD to 15th AD) (Tamanaha 2007). In India too, legal pluralism existed in the forms of customary, tribal and religious laws. During the Mughal rule, the emperor owned all the land and was the sole authority to distribute it in the forms of grants and *jagirs* to support the military and the nobility (Cohn 1989: 132). The Mughal political system was

absolute and all the powers rested in 'the person of the emperor, with property and honours derived solely from the will of the despotic ruler' (ibid: 139-140). All criminal matters were adjudicated according to Muslim law. However, the Mughal rulers restrained from interfering with the customary laws of the various religious communities as far as matters pertaining to their marriage and inheritance were concerned.

The British East India Company started the process of codifying and reforming the existing customary laws. The colonizers were aware of the fact that communities of India, unlike the Indians and slaves of the New World, had a fixed body of laws, mostly derived from the respective religious texts (Fisch 1983). With so many customary and religious laws co-existing, the British found it confusing and cumbersome to administer. The Hindu and Muslim jurists and religious leaders were found to be manipulative and corrupt in explaining laws to laymen. The colonial regime, therefore, realized the urgency of codifying these multiple laws and as a result by 1862 the Indian Penal Code was put in place (ibid).

But the issue of Personal Laws was yet to be resolved. Personal Law covers matters of marriage, divorce, maintenance, inheritance, succession, and adoption of socio-ethnic-religious communities. The founding moment of Personal Law was when, in 1792, Warren Hastings, the Governor General of the East India Company, declared that in matters related to inheritance, marriage, caste and other religious institutions, and rituals, Muslims should adhere to the *Quranic* law and the Hindus should refer to the *Shashtric* laws. The Muslim community got a codified law in the forms of The Shariat Application Act 1937, and The Dissolution of Muslim Marriages Act 1939.

The concept of property and inheritance rules in Islam

The concept of property is not universal. It is defined variedly across cultures. A broader definition of property includes valued goods/ objects, which have resale value and have the capacity of reproducing wealth. Such an explanation of property is provided by the capitalists. Thus, productive assets such as gold, silver, agricultural land, residential property and other household utility goods form corporal property; whereas special knowledge, specific skills, reputation and honour (familial) form integral components of incorporeal property (Lowie 1921).

Property, according to the Marxian thesis, is premised on the idea of 'private ownership'. Ownership, then, entitles an individual to both the right to use and dispose of the property. The entitlement is embedded in the cultural and legal ethos of that particular society.

According to Hirschman, property is 'thus seen as valued goods/objects which can be transferred between legally constructed individuals' (Hirschon 1984: 2).

Acknowledging an object or valued goods as property entails that there is the involvement of a legal angle. The legality involved in certifying individuals as rightful owners of property encompasses not only the formal legal norms but also customary and religious norms. These norms together form a composite whole which helps guide property-related issues. Often customary norms are overlapping with the formal legal norms of the land, but, there are instances when one is in direct confrontation with the other, and it is in such instances that the complexity of legal pluralism gets highlighted.

The concept of property is an integral element of the Islamic tradition. Property or Mal gets defined vis-à-vis ownership rights (e.g. corporeal or usufruct). According to philologists, the word *mal* and its derivatives find innumerable mentions in the Qur'an and the Hadith. Property rights, legally speaking, are sanctified in the Islamic tradition, and both men and women are entitled to these rights. The Quran mentions property and related issues in 99 instances.

Furthermore, property rights in Islamic jurisprudence are very complex as these rights are predicated upon a number of factors such as categories of heirs, marital status and gender of the contending heirs. But despite provisions laid out according to the Islamic injunctions pertaining to the possession, ownership and inheritance of property, disparities exist across societies. Such dichotomies between theory and practice exist because of the varied interpretations of the Qur'anic injunctions and also because of the socio-cultural influences. There remains a hiatus between theory and practice as far as property rights are concerned. In many such instances, ownership and inheritance of property and the disputes related to them are decided and resolved by avenues other than the *Shariat.*

Inheritance rules according to Islamic jurisprudence are rather complex. There is, in the Holy Quran, specific guidance regarding the division of inherited property among the rightful beneficiaries.

It is prescribed that when death approaches any of you and he is leaving behind wealth, he shall make a will in favour of his parents and relatives equitably. This is a duty who all fear God (2: 180)

If any of you die and leave widows, make a bequest for them of a year's maintenance without causing them to leave their homes (2:240)

Men shall have a share in what parents and relatives leave behind, and women shall have a share in what parents and relatives leave behind, whether be it little or much. If other relatives, orphans or needy people are present at the time of division, then provide for them out of it, and speak kindly to them (2: 7-9)

Concerning your children, god enjoins you that a male shall receive a share equivalent to that of two females.

The Quran contains specific and detailed guidance regarding the division of inherited wealth, among the rightful beneficiaries.

The Quranic verses that contain guidance regarding inheritance are:

- Surah Baqarah, chapter 2 verse 180
- Surah Baqarah, chapter 2 verse 240
- Surah Nisa, chapter 4 verses 7-9
- Surah Nisa, chapter 4 verse 19
- Surah Nisa, chapter 4 verse 33 and
- Surah Maidah, chapter 5 verses 106-108

Legal Pluralism

Religious minority communities in India, for civil matters, resort to their respective Personal Laws. Contrary to the popular belief that Muslims in India religiously follow the provisions laid out in Muslim Personal Law(MPL, what I found, during my fieldwork[4], was that people sought help from a range of legal and normative institutions - right from their *Khandan* and *biradari* to Shariat and formal courts depending upon their interests and convenience. Much later during the course of my fieldwork, I realized that such practices were not aberrations but were, rather, norms and these were found to exist across the community. Some of these serendipitous findings prompted me to conduct another study, albeit of a different kind. The main objective of this study was to find out to what extent Muslims followed Shariat in matters pertaining to inheritance and property distribution. Did they seek help from any other normative body in resolving disputes arising among the contending heirs? To what extent are the verdicts pronounced by these, non-formal, indigenous, legal formations valid? How vibrantly active is legal pluralism among Muslims in India, especially among Sunni Muslims following the *Hanafi* school of law?

Thus, in order to understand the practicality of legal pluralism existing among Muslims from Uttar Pradesh (now residing in Delhi)[5], I conducted two rounds of in-depth interviews with people concerned with the arbitration process related to property and inheritance disputes. The first round of interviews was an exploratory one, done primarily with the intention of getting the feel of the difference between the textual law and the lived law, between the ideal and the real. The main interviewees were i) Islamic scholars (mufti) of the Fatehpuri mosque situated diagonally opposite the Red Fort and ii) Maulana W Khan, an Islamic scholar of repute who is held in high esteem by educated Muslims for his relatively liberal ideologies and for his initiatives in spreading the 'Islamic message of peace and love' between Muslims and non-Muslim communities and iii) individuals who got their issues resolved by seeking help from these customary non-official legal institutions. All interviews were conducted between the first and third weeks of December 2013.

Having assessed the complexities involved in dealing with sensitive issues such as inheritance and property division, I tried to zero in on a single case[6]. In so doing I took up a case of that individual who had all that I was looking for, for example, acquired and inherited property, a relatively big *Khandan* and an influential *biradari.* I, after having consulted a fellow researcher, decided to take up Maulana W Khan's (henceforth Maulana) case for further investigation on the lines of the stated objectives. Thus, the second round of interviews was conducted in the first week of August 2014 and in the second week of September 2014. In-depth interviews were conducted with Maulana, his daughter, eldest son (owner of Milli G, a monthly journal in English on social and political issues concerning Muslims), and with two of his relatives (members of his *khanadan* and *biradari*), who reside in Badheria, telephonic interviews were conducted.

Beyond *Shariat*

Contrary to the popular belief that Islam is a static tradition which offers a 'single standard and single interpretation (Metcalf 2004: 3), Islam and its traditions are redefined constantly, and are subjected to multiple interpretations contingent upon the context and the content.

Islam is seen as an evolving religion which is constantly in a state of flux and is influenced by the temporal and

environmental conditions of a particular society, creating distinctive patterns of belief (Ahmad 2011). *Shariat* too is interpreted differently and there could be more than one interpretation of the same legal issue. *Shariat* is considered to be a unified body of law and a 'comprehensive moral framework regulating all aspects of the lives of Muslims' (Turner and Arslan 2011: 140).

The Islamic discursive tradition, with the provision of *ijtehad/* reasoning in place, helps demystify the stereotypes about Islam's rigidity and non-interpretability. *Fatwa*, a legal response to the queries posed by the petitioner (*mustafti*) and addressed by an authorised jurisconsult (*mufti*) is rather a manifestation of the Islamic discursive tradition. Hence, the discursive process between the *mufti* and *mustafti* leads to an ever-evolving *Shariat* (Kaptein 2005). Leading life within the framework of *Shariat* provides a sense of pious behaviour to the believers (Turner and Arslan 2011). Even in their mundane activities, *Shariat-conscious* people develop a distinct habitus which helps them cultivate the desired religious virtues. The shariah-induced habitus determines an individual's behaviour even when faced with conflicting and contravening situations. However, strict adherence to *Shariat* may be a rather difficult goal to achieve. An individual in relatively pressing situations may choose to forego *shariat* rules in preference to the customary or formal-legal-state rules. In the following section, I describe how *khandaan* turns out to be a site where Shariat rules and customary rules are both interplayed and contested at the same time.

Qasba calling

Badheria, the site of my study, in popular parlance is, referred to as Qasba. Mushirul Hasan acknowledges that the term 'qasba' has no English equivalent (Hasan 2012:11). One of the Persian dictionaries, Ghiyasul Lughat defines 'qasba' as a small town or large village (ibid).

Badheria, a *qasba* with mixed demographics, is situated at the banks of the river Kunwar in the Azamgarh district of Eastern Uttar Pradesh. There are some two hundred Muslim households staying in Badheria along with their Hindu counterparts. Badheria's caste demographics are punctuated with the co-existence of both high and low castes. The Yadavas form almost fifty percent of the total Hindu population, followed by the Harijans. High castes such as Brahmans and Rajputs form some ten percent each. Among the Muslims, Pathans are more in number than the other high castes such as Sayyed and Shaikhs. Darzi, Ansari, Kunjre, Qasai, and Lalbegi form the low castes and are in the majority.

The main avenues of livelihood in Badheria are agriculture and allied activities. But there has been a history of out-migration of people in search of employment and good education[7]. The most preferred destinations for Muslims are Mumbai and Delhi in India and Middle Eastern countries. These migrants are mostly unskilled or semi-skilled labourers. The role of 'Gulf money' in changing the fate of many low castes and low-class Muslims is undeniable and this sudden improvement in the living standards of hitherto deprived groups has been rather discomforting for the so-called high-class *Ashraafs.* These deprived groups now want to provide good education and a better living standard to their children. The caste dynamics have certainly changed over the years.

Badheria is known for its close affinity with Sufiism. It has produced some great scholars, and prominent among them are

Maulana Iqbal Ahmad Khan 'Suhail', a poet, lawyer-politician and Maulana Wahiduddin Khan, an Islamic scholar. Thus Badheria is a distinct and vibrant qasba where streams of knowledge, both spiritual and worldly flow in communion, producing erudite scholars. This could be a reason why the non-resident Badherians now want to come back and take up humanitarian calling in their qasba (e.g. Shakil Ahmad Khan, founder of the Ziauddin Public School)

God, Piety and competing choices

Information collected during interviews indicated that a relatively good number of Muslims, while seeking legal help, tend to knock more at the doors of customary, religious and community arbitration systems than at the doors of the official state legal system. Unlike the observations made by Tamanaha (2008) on the relative powerlessness of the official state legal system in developing countries, people in India generally avoid going to formal courts because of the tedious legal procedures which often weigh heavily on their pockets and are exhaustively time-consuming. Furthermore, some Muslims prefer adjudication done within the *Shariat* framework because of the inherent element of piety underpinned in this particular normative system.

Allah, the Islamic God is believed to be the ultimate adjudicator and His verdicts are just and infallible. A true Muslim should be a firm believer in Allah's ways of adjudication as His is the ultimate court of justice and, 'God is watching His servants' (the Quran, 3:14). Invoking Allah as the Ultimate Judge is a practice that is done with the twin purpose of trying to instil fear (*tahrib*)[8] in the hearts of the contending party and trying to convince oneself of the deferred but befitting justice at His court. Adjudication by Allah, generally, is not immediate. He may take time, but He will certainly reward those who practice *sabr*[9] or patience and keep trust in Him (*mutawakkal*).

In this section, I will discuss some of the findings of my study by invoking Tamanaha's (2008: 397) six categories of forms of normative orderings. According to him, these six categories are, i) official legal systems, ii) customary/cultural normative systems, iii) religious/cultural normative systems, iv) economic/capitalist normative systems, v) functional normative systems, and vi) community/cultural normative systems.

All these six categories dwell in a paradoxical state of conflict, competition and accommodation, thereby constituting a vibrant kaleidoscope of legal pluralism. Individuals, while opting for any of the six or a combination of two or more categories of forms of normative orderings, make rational choices (Friedman and Hechter 1988) by weighing the chances of achieving the desired objectives. To an extent, Maulana's case exemplifies this rational choice thesis in seeking legal arbitration.

Maulana W Khan, unlike his fellow scholars, is media friendly and tech-savvy and is seen by many as the face of liberal and modern Islam. He has to his credits scores of books and articles on topics as diverse as theology and medicine. Now in his mid-nineties, Maulana is still stout standing at slightly more than six feet. However, he has become hard on hearing and one has to raise her voice while talking to him.

On my first visit to his residence, Maulana's daughter, Farhat Khannum, Professor of Islamic Studies at JamiaMiliaIslamia,

greeted me on his behalf. Since Maulana had hearing problems, Farhat decided to do much talking herself. And given the fact that I was a *ghairmahram/* unrelated, unveiled woman, Maulana all through talked to us with his gaze lowered, maintaining his adherence to the Islamic norm of *purdah* observance. The interviews were both recorded (on my cell phone) and jotted down verbatim. They were later transcribed and coded for emergent themes.

According to Barnes (1977), scholars researching sensitive issues should get ethical questions addressed adequately before proceeding any further. Keeping Barnes 'statutory warning' in mind, I briefed Maulana and family about the proposed research and the information it intended to gather. Anything to do with property, wealth, and income is definitely alarming and one is ought to get under the lens of suspicion. I met with the same fate. However, when I assured them about my intentionality and convinced them of using the information for purely academic purposes, they agreed to share information on inheritance, property, and property division. Despite my assurance, I could feel the reluctance on their side (Maulana and Farhat) in discussing wealth-related topics. Hence, I decided to circumvent and rephrase questions lest they caused discomfort to Maulana and his daughter, Farhat, for instance, now instead of asking them directly about the total acreage of land owned by their family, I tried to enquire about the people staying at their ancestral home in Badheria, and how did they sustain themselves given the fact that there were not many avenues of employment in rural areas; and so on and so forth.

Tales of Biradari, Khandan and Shajrah

Ideally, Islam is against any kind of social differentiation, but in reality, there are many social categories premised on the thesis of social distance practised for the sake of maintaining 'elite closure'. Studies have established that Muslims too have caste-like formations, and they too maintain a status hierarchy, however, unlike the Hindu caste structure, which is based on the *varna* system and guided by the notion of purity and pollution, the Muslim caste system is based on the notion of descent from a source located in the distant land of Arab, Iran, Iraq, and Afghanistan. These form the *Ashraaf*categories while the local converts are referred to as*Ajlaaf* and *Arzaals*. Thus in order to maintain the distinction from the local converts Muslims often start claiming their (fictitious/made up/imagined) descent either from the Prophet's pedigrees (e.g., the Sayyeds) or from his companion's line of descent (e.g. Siddiquees claiming to be descendants of Abu Bakr Siddique), or from any region regarded as *daar-ul-Islam* (e.g. Pathans/Khans from Afghanistan).

Tracing her genealogy to a foreign descent (Ahmad 1978), Farhat, Maulana's daughter revealed her ancestry with a tinge of pride reflecting on her face. Her ancestors, who were of 'pure' Pathan blood from Afghanistan, came to India centuries ago and settled initially in the Kashmir region. They were employed by the Mughal rulers and were allotted villagesas*jagirs*(in the Doab region of erstwhile Awadh) to collect revenue for the empire's exchequer. Subsequently, over the years they became the *de facto* rulers (i.e., Zamindars or landlords) of these villages. However, things changed after partition, and also after the enactment of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, of 1950.

In 1950, with the introduction of the U.P. Land Reforms and the Zamindari Abolition Act, agricultural land was to be

redistributed between the landowner and the tenant. The Act broadly prescribed a ceiling to the ownership of agricultural land based on the criterion of how much land a farmer could cultivate. 'Land to the tiller' and 'abolition of absentee landlordism' were the two main objectives which the government aimed at achieving through this Act. As anticipated, the Act created ruffles in the landlord community. The landlords devised various smart ways to retain as much land as they could, and of the many such manipulative moves, the conversion of agricultural land into orchards was rather an easier way to save the land from confiscation.

Much of their land was claimed by the government of India. Maulana's*shaj'raah* offers some interesting insights which are described below. *Shaj'raah* is a document which describes a record of the line of descent, and is a nuanced genealogy of an individual's ancestors. The practice of documenting *shaj'raah* was an exclusive feature found among the privileged families; those who could take pride in exhibiting their presumably 'glorious ancestry', and who could afford the luxury of maintaining decent records.

Farhat answered vaguely when I enquired about how much land was left post-Abolition of Zamindari Act 1950. She appeared to be unaware of the total acreage, and surprisingly, Maulana too seemed to be not very sure of the exact land-expanse. This is how they recounted the stories related to their *shajrah, khandan* and *biradari.*

Fahimuddin Khan, Maulana's father (F)[10] was a petty *zamindar* of Badheria. He had three sons and two daughters. Maulana, born in 1925 at Badheria, is second in order and is the only one surviving (of Fahimuddin's five children). Fahimuddin died in 1929 when Maulana was barely four years old. Maulana and his siblings were raised by their mother Zaibunnisa Khatoon. His paternal uncle, Abdul Hamid Khan, a sufi mendicant, got him admitted to Madrasaat-ul-Islahi in the year 1938, an Islamic traditional seminary at Sarai Mir, located a few kilometres from Badheria. He graduated from there as Maulana (an academic certification) in 1944.

> *"My elder brother, Abdul Aziz Khan was a businessman in Allahabad and is survived by five Ss and four Ds, and then I am the middle one, I have two Ss and three Ds. My younger brother, Abdul Mohid Khan was an Engineer by profession, studied at Benaras Hindu University, and is survived by his two Ds only (he mentioned his two Zs only fleetingly). I did not study English in any formal institution. I learnt it on my own and having realized its importance in the modern times, I ensured that all my children become proficient in English".*

Maulana founded the Islamic Centre in 1970 at Nizamuddin, Delhi and started publishing a monthly journal*Al-Risala* on spirituality and the true message of Islam in 1976. Many of his relatives (members of his *biradari*) had already left India during Partition, and his immediate relatives left Badheria in the following decades in search of good formal-English-medium-education and lucrative employment opportunities.

> *'What happened to your landed property then?' I enquire.*
>
> *'I do not own any property', he replies modestly. 'Whatever we had, was taken away by the government…we [the khanadan] have some mango orchards, a few acres of agricultural land, and the ancestral house…but all these*

> *are under the care of one of our relatives.'*
>
> *'Do you not ask for the agricultural produce?'*
>
> *'No..we don't… instead, we let the people decide what they want to do with the produce…they take care of everything. .hence they are the rightful claimants of the produce. Besides all my children, nieces, nephews, and cousins are at far-off places (some are in foreign lands)…they hardly get time to visit Badheria.'*
>
> *'But we do get mangoes every summer from the Bawan Bigha (52 Bighas)[11] Orchard, and these are eagerly awaited for their delicious taste', Farhat interrupts her father in a rather nostalgic tone.*

Maulana pauses reflectively and after some time continues narrating some important events:

'Our ancestral land was abandoned when all of us left Badheria. It was never divided… nobody asked for his/her share. The caretakers, in the absence of any authoritarian figure, had become insincere and irresponsible. It was then, that my elder brother's eldest son, Shakeel Khan, an NRI businessman, showed his desire to come back to India and make proper use of hitherto abandoned land (till now Maulana has not mentioned the exact area of their landed property).

According to Farhat, Shakeel Ahmad showed his inclination to use the ancestral land for founding an English medium school for the villagers. Till then there was no formal English medium school in and around Badheria. Given the rapidly changing times, and the ever-rising demand for robust education through the English medium, Shakeel Khan became determined to utilize his savings and the ancestral land for his philanthropic work of establishing a school which would have a judicious mix of both modern and traditional education. He knew that utilizing the common property according to his own whims and fancies could not be an easy task. Each prospective claimant would pose a completely different set of problems. He, therefore, tried to seek *khanadan* and *biradari* intervention as an alternative body of legal arbitration, thereby invoking legal pluralism. In Tamanaha's words (2008: 397), 'it is almost invariably the case that the social arena at issue has multiple active sources of normative ordering such as official legal systems, folkways, religious traditions, economic or commercial regulations, 'functional normative systems and community or cultural normative systems'. *Khandan/Biradari-mediated* arbitrations may not have the same degree of legal validity as those mediated by the formal-state-legal systems, yet they have their own significance, especially in societies where kinship ties are stronger and where traditional normative systems play decisive roles.

Shakeel discusses the matter with Maulana, his uncle and the only surviving sibling of his father. After much deliberation, the village elders and his uncle decide to convert the ancestral property into a memorial trust which would be named after Shakeel's great-great-grandfather and Maulana's great-grandfather, Ziauddin Khan. Shakeel was willing to pay each claimant's share's worth in cash provided they forfeited their claims to the common property. And those who were willing to donate their share for the philanthropic work would be duly rewarded by Allah. Barring a couple of claimants, none asked for their respective shares. On the contrary, they worked together for the cause of humanity. Finally, in September 2000 the Ziauddin Khan Memorial Public School (affiliated with the CBSE) was inaugurated in Badheria. First of its kind, the school is run by the Ziauddin Memorial Trust and caters to the educational needs of students from the adjoining

twenty-four villages. Shakeel Ahmad Khan headed the Trust as its chairman till his death in January 2011. The Trust aims at expanding its educational endeavours by opening a medical college and a university for higher education.

'For the sake of *Khandan*'s honour, we don't go to the courts'-alternative dispute resolution

'Sharif khandani log court kachehri ke chakkaron se bachtehain…unhen apni izzat zyada pyari hotihai People of noble lineage avoid getting involved in the messy (sic) affairs of formal legal institutions, they are concerned more about their honour', Abdul Ali Khan,[12] a distant relative of Maulana, tells me emphatically about the importance of *izzat*/honour over material gains. He resides in Badheria and oversees the *khandan's* property. According to him (and his views resonate with the general view on 'honour' as prevalent in the north and north-western parts of the Indian Subcontinent), familial honour is an integral feature of a *sharif khandan,* hence it is the duty of every member to guard it against any malignity.

Sharif families, therefore, more often than not, desist from indulging formal state courts for legal arbitrations related to marriage, divorce, inheritance and property-related disputes. In any eventuality of disputes arising over any of the issues mentioned earlier, the *khandan* doubles up as an important institution for arbitration and conflict resolution.

When matters of a graver nature merit arbitration, then along with the *Khandan, Biradari* too, is approached for its contribution. Biradari, according to Ali is 'a local term used to denote endogamous Muslim descent groups having a common traditional occupational background' (Ali 1978: 19). Often the biradari's modus operandi is getting the guilty and ostracised from the whole *biradari*. The fear of social ostracization weighs heavily on the members and acts as a deterrent for violating any norm, especially norms pertaining to honour, and kinship relations.

Arbitrations carried out by *Khandan* and *Biradari* in matters related to property, inheritance, marriage, divorce, etc. are less tedious and less expensive as compared to those carried out by the formal-state-legal system. Thus, their significance and viability cannot be ruled out in contemporary times given the fact that communication revolution and globalization have redefined social institutions.

During my previous fieldwork, I came across a similar kind of arbitration which was carried out by a few elderly neighbours of the disputant in the KuchaChalan locality of Old Delhi. Here the issue was related to marital discord. The elders pronounced their verdict in favour of the wife by giving strict warnings to the abusive husband. These arbitration bodies are very informal and without any enforcement agency in place they can, at times, can be quite influential in settling matters between disputants. These extra-legal institutions should not be mistaken for *Panchayats,* which are more formal civic bodies with stronger enforcement mechanisms.

Another incident that merits mention is related to Maulana's wife and her share of the property. Farhat admits the fact that property distribution is a very complex issue. For Maulana, however, these issues are of quasi-religious dispositions, hence they are treated with sincerity. In Maulana's opinion, one should, if in doubt, refer to the specialized Islamic institutions both at local levels and at the national level such as the *dar-ul-qaza.*

On being asked, whether Maulana in his capacity as an expert on Islam and Islamic jurisprudence, participates in the process of adjudication, he replied in the negative. He thinks that he is not well suited for such responsible and serious

jobs.

Maulana married his cousin's widow (levirate marriage) who inherited her deceased husband's property. It was the *khandan* that decided her remarriage within the family as the khandan did not want to let go of the property which it would have legally lost had the widowed daughter-in-law remarried outside, in some other *khandan*. So, Maulana also inherited his wife's property from her earlier husband.

When Maulana's younger brother died he got a share in his deceased brother's acquired property. The brother was survived by two daughters and his wife. Each got her respective share. When the deceased brother's widow wanted Maulana to have his share, he declined. But on much insistence, Maulana agreed to have the money (which amounted to some six lakh rupees) transferred to his 'Quran Fund'. Farhat briefs me on this Quran Fund which is an innovative idea of distributing free Quran to the seekers (something which is modelled on the lines of the free Bible Distribution Association). Thus property inheritance takes various forms. When the inherited property is used for philanthropic work, the chances of ensuing disputes are less. And the *khandan*, adjudicates in matters related to marriage, divorce and inheritance rather efficiently, with minimal chances of giving way to dissenting voices.

Conclusion

Legal pluralism, contrary to the belief of some scholars, is a thriving phenomenon and has been vibrant through different eras. In the due course of time it may have undergone some changes, but undeniably, legal pluralism remains an important aspect of the post-modern world where extra-legal institutions have their own specific roles to perform. The existing normative systems act as an important alternative to individuals who make rational choices to pursue their objectives. *Shariat* courts and kinship-based adjudicating bodies form a complex whole which is in a state of paradox with the formal-state-legal courts, sharing conflicting, complementing and competing relationships with each other.

The extra-legal institutions run parallel to the formal-state-legal system and they are more popular among the socially and economically weaker sections of society because of their affordability, viability and promptness in resolving disputes.

Many times disputants prefer kinship-mediated arbitration over the *Shariat* courts as they seem to rely more on the wisdom of the elders and also by doing so they would be further strengthening the kinship ties. Maulana rightly sums up when he extols the importance of kinship relationships, 'But our family structure is different from that of the Western society. Here relationships are valued more than material things.' And it could be because of this strong traditional value system that Maulana would have preferred to seek the *Khandan's* and *Biradari's* arbitration for his common ancestral property.

However, in some families, seeking formal-state courts' arbitration is vehemently opposed for the sake of safeguarding familial honour. Resolving disputes within the confines of courtyards through the joint mediation of the khandan or biradari elders is a better way of adjudication.

In societies like India, people tread cautiously when it comes to seeking material benefits from inherited property,

especially women, who dread to bargain familial ties with material gains. Despite the Quranic provisions for daughters' share in parental property, daughters rarely ask for it. 'It does not behove of girls of Sharif families to ask for their share', such caveats are often invoked whenever a situation arises where daughters may demand their share. Undeniably then, discrepancies do exist between the textual and the lived, between the ideal and the real and such discrepancies are both created and maintained by the ever-evolving legal norms.

Footnotes

[1] The Supreme court of India, under section 125 of the Criminal Procedure Code passed judgment in favour of divorcee Shah Bano asking the ex-husband to pay her maintenance till life, which was seen as un-Islamic by many in the Muslim community. This led to a country wide agitation; subsequently forcing the Rajiv Gandhi government to retract the Supreme Court judgment and pass a new law known as the Muslim Women(Protection of Rights on Divorce)Act 1986.

[2] Sunni Islam recognizes four schools of law (also known as*madhhabs*) based on their respective interpretations of the Quranic injunctions. They are the Hanafi school, the Maliki, the Shaafi and the Hanbali. Sunni Muslims in the Indian subcontinent follow the Hanafi school

[3] In this paper I have restricted the discussion to Sunni-Hanafi-Deobandi Muslims only.

[4] This fieldwork was for my study on Muslim women's rights to property conducted in the second half of 2011.

[5] Information was also collected from interviews conducted with people who were still residing in their ancestral village.

[6] While my emphasis would be on Maulana's case study I would also be referring to other cases depending on the relevance of such information.

[7] However, it is reported that with the establishment of Ziauddin Public school, out-migration for better education has slowed down in the last few years. In fact the very idea of such a school was propelled by the absence of good English medium school in the whole qasba and also in the adjoining areas.

[8] *Tahrib*/ fear alludes to an emotional mix of 'Allah's wrath, the contortions of death and the tortures of hell' (Mahmood 2005: 91).

[9] Mahmood (ibid : 170-174)

[10] Anthropological abbreviations used to denote primary kinship connections are: F= Father, M=mother, B= brother, Z=sister, S=son, D=daughter, H=husband, W=wife.

[11] Bigha is a unit of measurement of the area of land. It is traditional unit of measurement and is used in most parts of India. Such traditional units are not uniform, and vary from region to region. Thus in Azamgarh, 1 bigha= 2500 sq m.

[12] This interview was a telephonic one.

Glossary

- *Aalim* learned man, more specifically in Islamic jurisprudence and literature
- *Ajlaaf* the 'low born', uncivilized and without etiquettes, alludes to the native converts to Islam
- *Arzaal* of the lowest caste, almost untouchable
- *Ashraaf* of noble birth, whose genealogy could be traced to the descendants of the Prophet or to his companions
- *Awqaaf* Islamic charitable endowments
- *Bigha* unit of area measurement of land
- *Biradari* extended kinship and includes both agnates and cognates.
- *Daar-ul-Islam* the abode of Islam, any place conducive to the practice of Islam
- *Fatwa* a piece of authoritative legal advice written/pronounced by a mufti
- *Fiqh* Islamic jurisprudence
- *Hadith* the Prophet's traditions and sayings, considered to be an important source of Islamic jurisprudence
- *iddat* wait period of three menstrual cycles by widows or divorcees to confirm
- pregnancy
- *Ijma* unanimous consensus of the jurists
- *Khandaan* extended kinship, includes mostlyagnates
- *Madhhab* the schools of law known for varied interpretation of the Quranic injunctions
- *Maulana* a Muslim doctor of law
- *Mufti* juri-consult
- *Mutawakkal* trust in God/Allah
- *Qiyas* analogy
- *Sabr* patience
- *Shajrah* a record of line of descent, genealogy, details of ancestors
- *Shariat* the code of conduct based on the Quran to be followed by the faithful
- *Sharif* noble
- *Tahrib* fear
- *Ullama* plural of aalim, learned men, scholars
- *Waqf* Muslim charitable endowment
- *Zamindar* landlord

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