

**Gender, Citizenship, and the Nation-State in Pakistan:
Willful Daughters or Free Citizens?**

Discourses about Muslim women's victimization, which have intensified during the U.S.-led "war on terror," position Muslim women as objects in a debate of Islam versus the West, tradition versus modernity, and threaten to erase accounts of Muslim women's agency and activism within their own societies. We need to examine Muslim women's ambivalent positioning within religion, society and politics, and family and nation and recuperate the ways in which women appropriate contradictory discourses to assert their identities as daughters and citizens. This article seeks to trace the mutability of the gendered identity and status of citizen that is the locale of a persistent tension between Shariah laws and constitutional statutes in Pakistan. I focus on the social construction and control of women's sexual autonomy in Pakistan that is due to the imbrication of law, religion, and politics at a particular historical moment. While I do not mean to suggest that a neat demarcation between legal, political, and social spheres is possible, I am interested in a peculiar collaboration between the imperatives of nation-state formation and the cultural-political project of Islamization in which the courtroom became the site of construction and contestation of ideas about "the nation," "Muslim woman," and "citizen." An important part of my project is to explicate the challenges posed by the assertion of women's sexual agency to the ideology of the heterosexual middle-class nuclear family and thus to the nation-state, even as the demand for autonomy is couched within the language of citizenship. This complicated positioning of women within family, community, nation, and state has shaped the feminist discourse in

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Pakistan, which is overwhelmingly couched in the language of women's rights as universal human rights.

Sexual autonomy and citizenship

Contemporary feminist analyses have usefully explicated the dangers that women's assertion of sexuality and sexual agency pose to the ideology of the heterosexual middle-class nuclear family, which is both the cultural and economic unit of capitalist society and hence of the nation-state that assumes such a society. Many of these analyses have also successfully delineated the heterogeneous implications of sexual autonomy for citizenship in different contexts.¹ Feminist scholars have shown how women—whether as lesbians defying the heterosexual ideology of the capitalist state (Alexander 1997) or as daughters refusing to yield control to fathers and brothers over their sexuality in marriage (Hussain 1997)—tend to destabilize the categories of nation, citizen, home, and family. M. Jacqui Alexander has proposed the concept of erotic autonomy to signify the independence of “woman as citizen rather than daughters raised and ladies always defined in relation to men” (Alexander 1997, 64). For her the erotic is a contested site for both state and citizens, and she suggests that the institution of “heteropatriarchy” enables the state to regulate domains other than the sexual and also to represent itself as a savior of the citizens (1997, 99). She argues that erotic autonomy poses a danger to the nation-state since it threatens the nuclear family and points out that, “because loyalty to the nation as citizen is perennially colonized within reproduction and heterosexuality, erotic autonomy brings with it the potential of undoing the nation entirely, a possible charge of irresponsible citizenship or no citizenship at all” (1997, 64). Other feminists have also looked at how various notions of home and family based on the arbitrary, and highly sexualized, constructions of private and public are used to construct different types of women and citizens (e.g., Grewal 1996). Thus contemporary feminist work emphasizes the dangers posed by women's autonomy to the middle-class home and argues that in threatening this social and economic unit of the modern nation-state, women's sexual autonomy threatens the nation as well. Another important outcome of the feminist interpretation of these processes of assertion and challenge is the identification of ways in which certain gendered and raced bodies come to symbolize this eroticism and serve as tropes for normative narrations of

¹ See Grewal 1996; Joseph 1996; Alexander 1997; Hussain 1997.

nation and citizen. Ritu Menon and Kamla Bhasin's (1996) work on abducted women powerfully illustrates how ideas about women as cultural and biological reproducers of the nation structured the "rescue" operations undertaken by the newly partitioned nation-states of India and Pakistan in the early 1950s. More recently Alexander has pointed to lesbians in the context of the postcolonial Bahamas as an example of "particular figures [who] have come to embody this eroticism and have historically functioned as the major symbols of threat" (Alexander 1997, 65). Similarly, I would suggest that in contemporary Pakistan the woman who transgresses the boundaries of clan, caste, sect, class, or religion to form sexual relationships is being slotted in this space. This is a sign of "woman" who asserts her sexual autonomy, and her citizenship, either by choosing her own marriage partner or rejecting forced marriages—thereby challenging patriarchal control over a traditional site for the respectable deployment of women's sexuality. The construct of the "willful" daughter/woman that is being recuperated through the discourse of Islamization appears to interact with another one—the enduring concept of the "Westernized woman," a rights-claiming individual—that has traditionally functioned as a trope to enable the narration of the virtuous woman, be she a mother, a sister, a wife, or a daughter, as the privileged national female subject. Therefore, in this article I would like to examine the constructions of these identities and representations at the particular moment at which the idea of the (sexually) willful daughter burst into prominence in the national imagination. Although more extreme cases exist in the history of male violence against women in Pakistan, I will focus on the one instance referred to in the literature as the "Saima case" or the "Saima Love Marriage case" (details follow in later sections). I will show that this particular episode epitomizes the unstable constructions of "woman" and "citizen" that emerge through the interaction between the discourses of Islamization and modern nation-state formation in Pakistan.

While "Islam" and "woman" have always been part of the public discourse around citizenship and nation in Pakistan, this process intensified with the state-sponsored program of Islamization adopted by General Mohammed Zia-ul-Haq, who controlled the nation from 1977 to 1988. Zia's project of Islamization of law and society introduced oppressive laws, particularly the notorious Hudood Ordinances, and promoted other measures and guidelines that have adversely affected the political, legal, and social position of women and religious minorities in Pakistan.² These have

² On February 10, 1979, on the recommendation of the Council of Islamic Ideology,

been recorded in detail by Pakistani activists and scholars.³ On the whole, this literature provides substantive information and insights into the legal, social, and political implications of Islamization for women and religious minorities. However, since most of these accounts consider Islamization to be an attack on modern nation-state formation, they often reinscribe the dichotomous tradition-versus-modernity construct, which does not allow a nuanced account of the discursive terrain where political subjectivities are constructed and contested. We need analyses of Islamization as a project of modern nation-state formation in which the state is apprehended as a complex of practices, a complex that overlaps, contends, and collaborates with a catachrestic sphere of civil society that includes both religious and secular groups. Such analyses can usefully explicate the significance of the middle-class home both as a bastion of the nationalist project of signification and also as the limit of the state's authority when women creatively invoke discourses of citizenship and human rights in their own interest.

Although the Saima case was not conducted under the legal framework of Hudood laws (with the exception of a related case filed against Saima's husband's lawyer), it was clearly marked with the subtext of politicized culture.⁴ Thanks in part to the public debates in the case, judges felt impelled not only to deliberate on questions relating to rights, legality, the individual, and the family but to determine what type of woman was necessary for the kind of society desired by the Islamization project. In particular, widespread speculation about the ineffectiveness of institutions responsible for the domestication of the "pure Muslim girl" enabled the pathologizing of women's autonomy as deviance. This, in turn, facilitated narrations of the willful daughter, the Muslim home as a sanctuary, and the preservation of the family in ways that undermined the legitimacy of both the rights-bearing individual and the sexual woman. In addition the constitutional protection that General Zia provided for the Shariah laws meant that the nature of constitutional rights was changed and with it

Zia issued five ordinances that would change the existing Pakistan Penal Code. These were called Hudood Ordinances and related to offenses concerning private property, adultery, fornication (*zina*), false accusation of adultery (*qazf*), and consumption of alcohol. The ordinances also defined a series of punishments that were ordained according to the severity of the offense.

³ See Weiss 1986; Mumtaz and Shaheed 1987; Jahangir and Jilani 1990; Khan 1994; Haq 1996; Gardezi 1997; Hussain 1997; Saeed and Khan 2000.

⁴ The Saima case in fact comprises a set of related cases referenced by this name.

the notion of citizenship.⁵ In this case the issue of women's citizenship itself appears to be a problem for the judges, who must try to reinterpret the constitution in order to bring it in line with what they consider to be an ideal Islamic society.

The "Saima case"

The "Saima case" refers to the courtroom battle that started in the city of Lahore in early 1996, when Saima Waheed, a twenty-two-year-old business student, married Arshad Ahmad, a teacher of English, in accordance with Islamic law but against the wishes of her family (Khan 1996a). When Saima's father, Hafiz Abdul Waheed Ropri, and other relatives asked her to rescind her decision, she approached the AGHS Legal Aid Center, which arranged accommodation for her at Dastak, a shelter for women in Lahore (Khan 1996a).⁶ Saima's father and uncle, who are members of the powerful right-wing religious Ahle-Hadith sect, used their influence to put Arshad in jail, where he was tortured into signing a divorce deed (*Dawn* 1996b). When Saima refused to yield to her family's pressure, her uncle filed a habeas corpus petition for her "recovery," on the basis of which Justice Ihsan-ul-Haq Chaudhry deputized a bailiff to forcibly remove Saima from Dastak. Eventually another judge, Malik Muhammad Qayyum, who was approached by Saima's counsel, Asma Jahangir, ordered the police to take her to Darul Aman, an institution run by a religious organization, Anjuman Hamiyat-I-Islam. Justice Qayyum, while refusing Saima's request to be allowed to return to Dastak, ordered that she should not be forced to see any of her relatives, including her parents, but would be free to meet her counsel (*Dawn* 1996b). Meanwhile, Saima filed a petition for release from illegal detention, in which she stated that she was sui juris (entitled to act for herself) and therefore had the right to decide for herself where she could live. On April 22, the Lahore High Court found Saima to be sui juris but ordered her back to Dastak. Instead of being allowed to join her husband she was placed under the supervision

⁵ In 1985, before he ended martial law and introduced a civilian government with himself as president, General Zia issued President's Order no. 14 of 1985 for the Revival of the Constitution of 1973 (also known as the Eighth Amendment). Constitutional amendments made through this order not only introduced the basis for a theocratic state in Pakistan but also validated all laws passed under Zia's military rule since July 5, 1977, so that they could not be challenged in court.

⁶ The acronym AGHS stands for the first letters of the names of four women lawyers who founded the organization: Asma Jahangir, Gul Rukh Rahman, Hina Jilani, and Shahla Zia.

and control of the Lahore High Court Bar Association president pending further proceedings on a petition filed by her father for her “custody.” Thus, what is popularly referred to as the Saima case comprises two main petitions: one by Saima for permission to live with the man to whom she said she was legally married; another by her father, Hafiz Abdul Waheed Ropri, for custody of his daughter on the grounds that her marriage was illegal since it was contracted against his wishes.

The two petitions raised a number of legal, social, and cultural issues, such as whether a *sui juris* woman is entitled to marry without the consent of her parents, whether she is at liberty to live anywhere she likes, whether the “rights” of a father over his children are judiciable, and whether validity of a *nikah* (marriage) is to be determined by legal precedence or particular interpretations of Islamic Shariah. By June 1996 the judges perceived the issues arising through the arguments presented by the two sides to be so important that they decided to apply to the chief justice for the constitution of a larger bench. The two judges hearing the case, Justice Chaudhry and Justice Qayyum, agreed that the decision about the independence of a *sui juris* woman in Islam could affect the roots of Family Law, the sole law governing marriage and divorce in Pakistan (*Nation* 1996). In her arguments on behalf of Saima, Jahangir said that Saima was an adult woman and as such entitled to autonomy under the constitution of Pakistan. She said the argument by Saima’s father’s counsel for the presence of a legal guardian, or *wali*, to mandate all matters relating to women’s activities outside the home would violate basic human rights and contravene the country’s constitutional guarantees provided for all citizens (*Dawn* 1996a). After almost a year of courtroom debates the judges were unable to render a decision and asked the Supreme Court to place the split decision before a referee judge. Finally, on March 10, 1997, a full bench of the Lahore High Court upheld the validity of Saima’s marriage on the grounds that a marriage contracted by a *sui juris* woman without the consent of her *wali* was validated by the constitution. While two members of the bench upheld the marriage, a senior member of the three-man bench gave a dissenting judgment.⁷

Each of the three judges separately recorded and explained his judgment. Justice Chaudhry, in his forty-page judgment, relied extensively on

⁷ Pakistan Legal Decision 1997 Lahore 301 (PLD 1997) before Ihsan-ul-Haq Chaudhry, Malik Muhammad Qayyum, and Khalil-ur-Rehman Ramday, JJ, Hafiz Abdul Waheed (petitioner) versus Miss Asma Jehangir [*sic*] and another (respondents), criminal miscellaneous no. 425-H of 1996, decided on March 10, 1997. In *All Pakistan Legal Decisions* (Lahore: PLD Publishers, 1997), 49:301–84.

Quranic verses and *hadith* (recorded statements of the Prophet Muhammad) to conclude that marriage was not simply a contract in Islam but also a religious duty and that obedience to parents could be legally enforced.⁸ Justice Qayyum, in his two-page order, differed with the opinion of Justice Chaudhry. While conceding the importance of family and its sanctity in Islam, he relied on legal precedent to argue for the validity of the *nikah* of a sui juris Muslim woman even in the absence of the consent of her *wali*.⁹ The third judge, Khalil-ur-Rehman Ramday, in thirty-one pages of remarks, relied on the Quran and the Sunnah (the life and practices of the Prophet Muhammad) to argue that Saima's action, though constitutionally sound, was socially and morally precarious.¹⁰ While accepting that the consent of the man and the woman involved is an indispensable condition for the validity of a marriage and that a *wali* has no right to grant consent on behalf of the woman without her approval, the judge declared that he believed "premarital and extra-marital liaisons, courtships, secret friendships and secret marriages" to be offensive to Islam.¹¹ Therefore, in his remarks he strongly recommended that the state introduce laws that would make such relationships and marriages a penal offense. Despite the ambiguity in the decision, eminent lawyers and jurists termed the decision in the Saima case to be "historic" and a "landmark judgment" (*News* 1997).

An examination of the reports in the media, court debates, and the texts of the judgments suggests that the case brought up insecurities about cultural and national identity since arguments about "Islam versus West" and "tradition versus modernity" were freely mobilized to counter appeals to constitutional provisions or legal precedents. I will therefore explore how constructs of Muslim womanhood encountered modernist ideas about citizenship to authorize particular kinds of subjects to police the boundaries of subjecthood. This encounter was rehearsed through a variety of discourses that proliferated at different sites during the trial: the question of women's legal maturity or entitlement to act as autonomous individuals, the "home" and "family" as ideological units of the "nation," the reinscription of ideas about Muslim womanhood in constructing the normative woman in the Pakistani nation-state, and definitions of national boundaries through notions of the good society. Feminist discursive strategies in support of Saima's, and women's, autonomy can be understood

⁸ *Ibid.*, 312–52.

⁹ *Ibid.*, 352–53.

¹⁰ *Ibid.*, 353–84.

¹¹ *Ibid.*, 383.

as being framed by and against these discourses. Texts that I draw on include newspaper reports in Urdu and English that sensationalized not only the Saima case but also other similar cases; related feature articles, editorials, and newspaper columns; judgments in the Saima case; and published statements by government officials, social activists, human rights groups, and religious political parties.

Muslim daughter or citizen of Pakistan?

Feminist accounts describe the Saima case as significant and argue that it represents a battle between patriarchal control of women's sexuality and a (Pakistani Muslim) woman's assertion of her desire and rights (Sarwar 1996; Hussain 1997). The Saima case, like many similar situations, appeared to constitute a struggle between two opposing social, economic, and cultural groups in Pakistan—one represented by Saima's father, an upwardly mobile middle-class businessman with close ties to an orthodox religious sect, the other represented by Jahangir, a prominent human rights lawyer with elite family connections who is well known for her secularist politics. Thus it invoked representations of a classic struggle that Muslim feminist scholars such as Fatima Mernissi, Farida Shaheed, and Khawar Mumtaz have theorized as the tradition-versus-modernity struggle being fought in Muslim societies between "fundamentalist" men and elite professional women (Mumtaz and Shaheed 1987). According to journalist Beena Sarwar, Saima's family and her lawyer symbolized the "two extremes of Pakistani society," since her father was a leader of the extreme right-wing religious sect Ahle Hadith, while her lawyer, Jahangir, was "known for her stand on secularism and progressive thinking" (Sarwar 1996, 6). "This factor contributed in no small way towards propelling the case into prominence," Sarwar writes (1996, 6). Similarly, feminist scholar Neelam Hussain describes the Saima case as a power struggle between "an upwardly mobile fundamentalist orthodoxy and women who represented a mix of the old elite and rising social classes" (Hussain 1997, 206). Hussain's detailed analysis of the narratives of the Saima case attempts to illustrate how state apparatuses, social institutions, and the community "colluded in the interests of maintaining both legal and social control over women's sexuality" (Hussain 1997, 202). Seeing Saima's marriage as the assertion of a woman's autonomy, Hussain suggests that the issue is so fraught with danger that Saima's father's counsel tried to draw attention away from Saima's avowal of her citizenship rights by raising the question of parents' right to be obeyed, the status of marriage in Islam,

and the condition of a *wali*'s permission for a valid *nikah* (Hussain 1997, 226). Therefore, although feminists and progressive groups welcomed the apparent victory of constitutional rights, it is important to explicate how and in what ways the validation of a woman's autonomy was overwritten by discourses of the protection of daughters and the nurturing of girls.

While "woman" carries (admittedly limited) ideas of legal and social personhood, the concept of "girl" is culturally and socially associated with dependency, protectedness, and legal incapability (Smyth 1998). Although Saima had defied her family by acting out her desires and rights as a woman, in the statements of her father and his counsel she remained a "girl" whose "innocence" had been corrupted by the influence of feminists and Westernized women. In one extreme illustration of such defilement, her father's counsel actually tried to convince the court that Saima had not married Arshad of her own accord but that her lawyer, Jahangir, had been involved in misleading her into the situation (Khan 1996a). The desire to protect (and to disempower, by speaking for) was evident in the arguments for "custody" put forward by Saima's father's counsel, Riazul-Hasan, who defined the main issues as parents' right to obedience, the inapplicability to Muslim marriage of the notion of civil contract between individuals, and the permission of a *wali* as a prerequisite for a valid *nikah*.¹² This position was in turn enabled by the ambivalent decision of the judges, early on in the case, when they declared Saima *sui juris* yet ordered her to be retained under supervision at Dastak instead of freeing her to rejoin her husband (Khan 1996b). Muhammed Malik Nawaz, also an advocate for Saima's father, stressed this point further by asserting that in Islam, the outdoor activities or public life of even a *sui juris* woman could be regulated by her parents or *wali*, who are also responsible for arranging her marriage. He claimed that prior to marriage, "the girl is the responsibility of her parents" and if she defies their authority or shows them any disobedience, under Islamic tenets she can be put on the "right track" through a judicial order. Nawaz argued that "a virgin girl stepping out of her house without the consent of the parents can be asked to go back."¹³

One of the main questions before the judges was whether a woman whom they considered to be *sui juris* could be compelled to live at her father's home against her will or, conversely, whether a Muslim woman

¹² Gayatri Chakravorty Spivak (1988) has demonstrated how strategies of representation work in the silencing of women in particular locations.

¹³ PLD 1997, 313.

could be allowed to live independently.¹⁴ Eventually the judges decided to treat it as an issue of state failure in successfully integrating “Islamic” tradition and culture into constitutional law, a failure through which the relationship between the religious and the legal presented thorny dilemmas for the judiciary. Pakistan’s legal system is a corpus of laws established under British colonial rule, the Anglo-Muhammadan Law, intermixed with Shariah law (Mehdi 1994). Centralization and unification of laws by British administrators in India in the interest of efficient colonial rule led to the replacement of local criminal justice systems by British law, although Hindu and Islamic law continued to be applied as the “personal” law in matters relating to inheritance, succession, and religious endowments. This meant that the diverse Muslim legal practices that existed in colonial India were subsumed under a uniform and consistent code—Islamic law—and this universal set of rules was applied to every person who identified with Islam (Mehdi 1994). In territorially independent Pakistan, judges traditionally managed to avoid the inherent contradictions between constitutional and Islamic laws by following in the footsteps of the British Indian courts in applying case law, evoking legal precedent rather than their own interpretation of the Quran. This changed after 1977, with Zia’s plan to “Islamize” all aspects of life in Pakistan, including both criminal and status law (Mumtaz and Shaheed 1987). Shahnaz Rouse (2001) points out that this marked the first time in Pakistan that the liberal agenda was ideologically challenged at the state level and that this challenge reversed the compromise between secular and religious forces that had been in evidence up to that point. While earlier regimes had tried to appease the religious opposition by delegating them some control over personal law, Zia altered the entire legal structure and created parallel systems of civil, religious, and military courts in which the latter two were accorded supremacy over the former (Rouse 2001). My reading of the *Saima* case suggests that the judges, who were civil court judges, showed a concern not so much for abidance with the “true” principles of Shariah or consistency with legal precedence but with their perception of their own roles in the Islamization of society—their pedagogical position in nation-building. “We are national judges and as such custodians of the morals of the citizens,” declared Justice Chaudhry in his dissenting judgment of March 10, 1997.¹⁵ From this and other statements from a variety of positions, it is clear that the case had acquired a pedagogical importance for the project of national signification and therefore entailed a reassertion

¹⁴ Ibid.

¹⁵ Ibid., 341.

of different interests about the relationship between woman, sexuality, and national interest.

In his minority judgment Justice Chaudhry made it clear that he considered it the duty of Muslim parents to arrange the marriage of their children, particularly daughters, as early as possible to prevent them from coming across male outsiders and sully the “purity” of the home.¹⁶ Further, he suggested that the government should regulate or ban marriage bureaus and other institutions that were becoming “a menace” to society, presumably by encouraging people to choose their spouses.¹⁷ Of most significance are the thirty-one pages of judgment remarks by Justice Ramday, whose decision turned the case in favor of Saima. Despite allowing Saima her constitutional “liberty,” Justice Ramday’s remarks show very little difference from those of Justice Chaudhry and, in some instances, seem to be harsher in condemning her actions.¹⁸ Although he declared the marriage of Saima and Arshad to be valid and conceded Saima’s right to reside wherever she desired, Justice Ramday emphasized not so much the importance of citizenship or individual rights but the need for measures that would limit these rights in the interest of what he deemed to be Islamic and moral values. He called for preserving the middle-class family as a symbolic national model and as a bastion in the cultural battle against the West. Justice Ramday proposed a “right of pre-emption” through which families could protect themselves “in the matter of strangers being brought into the household either in the form of a son-in-law or the form of a daughter-in-law.”¹⁹ According to this view, in the discursive regime of the middle-class Muslim home, as Hussain rightly points out, the concept of “woman” can only be invoked through the transgressive metaphor: thus crossing the threshold can signify the transformation from daughter to citizen and from “good anonymous woman” to “transgressive woman or *fitna* [agent of social and moral chaos]” (Hussain 1997, 215). Seen thus, domestic chaos can lead to national chaos. While upholding Saima’s liberty as a citizen, Justice Ramday hastened to draw attention to the plight of the West, where social chaos had erupted due to the absence of “proper balance between the extent of the individual’s freedom and the limits to which the individual’s rights extended.”²⁰ The judge blamed the “social chaos” of the West on the inability of its

¹⁶ Ibid., 312–13.

¹⁷ Ibid., 343.

¹⁸ Ibid., 353–84.

¹⁹ Ibid., 380–81.

²⁰ Ibid., 370.

leaders to control the “common man.”²¹ He therefore emphasized the need for the nation-state to maintain the balance between home and street through measures designed to protect the purity of the middle-class family. For Justice Ramday, the security of the Muslim family meant *purdah*—protection of women from the “outside” and from their own sexuality. After emphasizing the respected status of women in Islam, Justice Ramday proposed to guarantee this status by circumscribing the home as a “safe” gendered space and by silencing women within a discourse of seclusion as protection. He suggested that: “(a) the females should ordinarily stay indoors; (b) if a woman needs to go outdoors then she must extend her veil over her face; must cover her chest and should not indulge in any act which could attract men; and that (c) if it becomes inevitable for her to talk to a man then she should *not* talk in a mild and a pliable tone, and further that if someone needs to ask her for something then she should talk to the man from behind a screen or a veil.”²² In this extreme representation of sexuality, Justice Ramday seems to equate the gendered female body, the fact of woman’s identity in itself, with the potential for sexual chaos—a face unveiled, the female body outside the home, even a mild tone of voice is considered a dangerous signal of sexuality and, consequently, societal immorality. Hence he proceeds to emphasize marriage not as a relationship between two individuals but as a religious and social duty that parents must discharge so that a daughter will not have to undertake the un-Islamic practice of “husband shopping.”²³ Therefore, despite the favorable majority judgment deeming her capable of marrying without a father’s consent, Saima remained symbolically the daughter who had been tainted by feminists and outsiders and who needed to be represented because she could not represent herself.

There was thus a profusion of concerns about the “problems” of “girls” and the proper nurturing of daughters in the judges’ final statements as well as in other statements and discussions in the courts and the media. What is unremarkable about these discourses is the enabling fiction that a girl’s identity is supposed to emerge within the sanctified atmosphere of the middle-class family and home. What makes these discussions significant is that the anxieties about the proper upbringing and education of girls were focused overwhelmingly on the middle classes, who are just

²¹ Ibid.

²² Ibid., 379; emphasis added; some Islamists argue that Muslim women, when speaking to male strangers, should use “straight-forward and customary speech” so as to avoid appearing flirtatious. See Jameelah (1978) 2000.

²³ PLD 1997, 381.

entering the developmental project of the nation-state through access to modern education, employment, and media. This becomes evident in a sampling of the national and local Urdu press, which directs itself mostly to urban and rural lower- and middle-class readers.²⁴ Feature articles, letters to the editor, discussion forums, interviews, and surveys started appearing in Urdu newspapers about the problems of girls and the failure to provide proper upbringing, education, and nurturing to girls by particular classes of families, by the education system, by teachers, and by the state. There were debates on the pros and cons of arranged versus love marriages, early versus late marriages, relationships between parents and daughters, the generation gap, and so on. Anxiety about the changing patterns of behavior among girls in middle-class families is exemplified in a feature article in a nationally circulated Urdu daily that suggests that late marriages of girls were leading to difficulties for many families (Nazir and Zafar 1996). The article cites parents, psychologists, and the manager of a marriage bureau in arguing that many social problems were resulting from increased opportunities for higher education and careers as well as from the changing aspirations of girls in middle-class families. “Whatever the reason the problem of late marriage of girls is a problem that besets every fourth household,” the authors noted (Nazir and Zafar 1996, 12). They quote Syed Azfar Ali Rizvi, head of the Department of Psychology at Government College Lahore, as saying, “Failure to find a suitable [marriage] proposal is a problem, but higher education, the quest for the best, desire for the ideal, discrimination of caste and class and greed are reasons why late marriages are on the increase. And the higher incidence of divorce in our society is an aspect of this trend” (Nazir and Zafar 1996, 12–13). While this article seems to be drawing attention to the social and economic stresses of modernization on middle-class families, another writer laments the failure of national cultural processes in producing the right kind of citizen-subjects in middle- and lower-middle-class families. Referring to the uproar created by the Saima case, columnist Saeed Wasseq asks in the newspaper *Khabrain* why girls run away from home. For the answer, he draws on religion, Western psychology, and modernist notions of family and parent-child relations to explain the “crisis” facing the middle-class Muslim family: “There are many reasons. . . . The basic one is that the girl does not receive from her parents, brothers and other family members, the kind of attention and love that she craves. . . . Another tragedy of

²⁴ In contrast, the English-language press is aimed primarily at upper- and middle-class urban readers who are more conversant, and often more comfortable, with English than other local languages.

our society is that there are very few parents who have a mutual understanding with their children. Parents consider themselves to be the providers for their children and therefore their superior and consider it their fundamental right to assert their will on their children. . . . This is why there is very little communication between parents and children and there is a great distance between them” (Wasseq 1996, 6). What the writer appears to be arguing for is a reorganization of the Muslim home as a space in which individuals as members of a family are trained in their “proper” roles as mothers, brothers, daughters, and so on. Wasseq notes the significance of differential social and economic conditions of different families and pinpoints as most deserving of national concern “those low middle-class families” that experience “constant strife” due to economic and social problems (1996, 6). Although Saima was identified with a wealthy industrial family, the anxiety generated by her marriage appeared to be felt most acutely in relation to the section of the population identified as the lower middle classes of Pakistani society who, presumably, could not be relied on to act in their own interest or that of the nation. Wasseq suggests that the concept of girls running away is less common in upper-class homes, where children are granted much more freedom due to the influence of Western culture. In lower-middle-class families that, according to him, are larger and have more domestic problems, he suggests that parents are not sensitive to the emotions of their children since they are not “educated in the right sense.” He declares that this is evidence of the failure of national ideology: “Is this what Pakistan stands for?” (1996, 7). The protection of “girls” from their social environment and the creation of the right kind of mothers and daughters are thus seen to be the responsibility of the nation-state. This resonates with Lisa Smyth’s (1998) analysis of discussions that surrounded the issue of abortion for a teenage girl in Ireland in 1992, which were dominated by appeals for safeguarding her identity as a Catholic daughter. The positioning of a girl as a daughter aroused issues of nation, family, and state protection, since daughters “belong” to families and since “the family” is an important trope for the narration of the nation.

These comments illustrate anxieties related to the changing situation of the middle-class family and particularly of daughters within such families, since there is evidence that women from the middle and lower-middle classes entered urban-based universities and employment sites in record numbers during Zia’s time. This period is also associated with the dislodging of the Western-oriented elite from their almost total control of state and social power in Pakistan (Weiss 1986; Mumtaz and Shaheed 1987; Jalal 1991). Due to political realignments and changes in the bal-

ance of power among different social groups, Zia's period witnessed the rise of a new section of middle-class traders and petty entrepreneurs who continue to be the strongest supporters of the state's Islamization project. The ascendance of this class is ascribed to a number of factors, including increased access to financial credit for groups hitherto denied it, the use of financial incentives as a measure to neutralize political opponents, and most of all a dramatic boost to Pakistan's economy by trade and labor migration to the oil-rich Arab Gulf states. Saima's father's family, the Ropris, arose from within the petty commercial and trading groups that appear to be both economically prosperous and religiously conservative (*Sahafat* 1996; Hussain 1997). Hussain suggests that they represent the "orthodox world of fundamentalist Islam as it reaches out for the fruits of modernity while holding on to the certitudes of traditional structure inherent in female segregation and authoritarian lifestyles" (Hussain 1997, 205). I would add that the "inner" and "outer" spaces of home and society are constructed not only by fundamentalist or modernist desires but by the dividing practices of gender, class, ethnicity, religion, and status, which produce gendered subjects capable of functioning within the context of both capitalist expansion and state-sponsored religious repression. Thus, newspapers reported that Saima, who appeared in court completely veiled, was allowed at other times to dress in Western clothes, to own a mobile telephone, to go swimming, and to ride in fancy cars (Haider 1996; *Sahafat* 1996). I would argue that this reflects the family's ability, due to their economic prosperity, to straddle the border between what is considered modern behavior for women in Pakistan and that which is seen as traditional. Further, I propose that in Saima's case, transgression of the boundary between family and society can be seen to lie in her reaching out for the modernist rights of the individual as citizen-subject rather than in appropriation of the usual markers of cultural change—for example, unveiling or Western education—that in anticolonial nationalist discourse often symbolized the change from "traditional" to "modern" woman.²⁵ Saima's internalization of her case as representative of the elusive woman-citizen is significant. Against widespread depiction of her, on the one hand, as lovesick (media) or innocent but duped (her father) and, on the other, as an independent adult (her supporters), or an essential woman (sympathetic writers), Saima describes herself as "the first drop of rain" and as an autonomous, rational individual through statements such as: "My

²⁵ Such a conception of women's liberation or modernization is most vividly evident in women's own accounts of their lives and times, such as Shahnawaz 1971 and Ikramullah 2000.

nikah was not an impulsive act” (Qayum 1997). Saima therefore publicly presented her case not as the victory of a “love marriage” or the fruition of a woman’s desire as emblazoned by the national and international media but on the register of modernity, as marking a new identity for Muslim women of her class (Qayum 1997). Whatever significance one attaches to the Saima case, the debates that it generated certainly disturbed—even though they did not dislodge—the discursive regime of the middle-class family in Pakistan in which female selfhood is limited to “daughter,” “wife,” “sister,” or “mother.”²⁶ If, as Partha Chatterjee (1993) argues, the middle-class home was the originary site of anticolonial nationalism and the development of middle-class female selfhood, the Saima case also bears out Inderpal Grewal’s (1996) contention that notions of selfhood in the home can also be constituted in ways that challenge notions of state and nation. As Hussain points out, Saima’s transgression succeeded “in revealing possibilities of breaking the frontier and in revealing the anxieties of the powerful within ‘the maps they have drawn’” (1997, 240). The discourse of the home as a sacred harem of privacy and protection was disrupted by Saima’s repeated accusations that she feared for her life from her relatives and by her refusal to go with any of them: “I have tested all my relatives—I was betrayed by everyone I trusted” (Jang 1996a).

The discourse of women activists supporting the idea of middle-class women’s autonomy as “individuals” was also complicated by the need to attend to the differential social class positioning of different women as highlighted by the Saima case. While the project of Islamization begun by Zia affected women from the poorer and working classes most adversely, it was accompanied by a public discourse on women’s dress and mobility that alarmed upper-class women and led them to experience social and cultural restrictions from which they had previously been protected by their class position (Mumtaz and Shaheed 1987).²⁷ The leading women activists who challenged Islamization, including Saima’s lawyer Jahangir

²⁶ Michel Foucault (1982) defines a discursive regime as the circulation of knowledge as truth and the practices of power related to this organization of knowledge.

²⁷ Prime Minister Benazir Bhutto (1988–90, 1993–96), who came to power after Zia, although not a proponent of Islamization, did not take any effective measures to reverse the process. Prime Minister Nawaz Sharif (1990–93, 1997–99), who was a protege of Zia’s, revived the Islamization program and introduced new legal and political changes. General Pervez Musharraf, who seized power in October 1999 and is Pakistan’s president as of this writing, describes his philosophy as enlightened moderation. He has vowed to review, and where necessary modify, unjust laws that were introduced in the name of Islam. However, all the oppressive laws, including Hudood Ordinances, remain in force.

and the women who set up Dastak, are associated with the upper and upper-middle classes of Pakistani society. In demanding constitutional rights for Saima and in her efforts to enlist sympathy for her struggle, Jahangir also appeared to replicate the paternalistic discourses of protection of girls in both middle- and lower-income classes. However, unlike Justice Ramday, she took care to emphasize not only the threats from outsiders and strangers but also from within the “protective” space of the family, from fathers, uncles, and brothers. In challenging the idealized constructions of daughter and family, Jahangir drew attention to the vulnerability of the majority of girls and women in Pakistan who are denied access to social and legal resources due to their social and economic class position (*Jang* 1996b). She also referred to dowry rituals associated with poorer families in which fathers are seen to “sell” their daughters and to other instances where (middle-class) parents subject their daughters to humiliating court cases to punish them for marrying against family wishes. She argued that even though higher courts frequently legislate in favor of daughters, it is usually the parents who take the matter to court—mostly after nonlegal attempts at coercive control fail to achieve the desired results. Jahangir emphasized the increased responsibility of the state and judiciary to compensate for the fragility of a woman’s legal personhood and her vulnerability as a daughter by contending that the “treatment of girls in our society is such that no girl would have the courage to move the courts for redress” (*Jang* 1996b). The discourse of women’s autonomy in Pakistan therefore became entangled, inextricably and contradictorily, with the class-specific discourses of the construction of girls and their protection.

Conclusion

The Saima case is significant in expanding our understanding of how gender underlies and organizes citizenship—and how women in Pakistan both contest and appropriate the discourses of Islamization and modernity. In the case of Pakistan (as in many other Muslim states), while the modernizing state seeks to build a concept of nationhood by eroding alternate forms of alliance, it has foundered in the area of personal law—particularly in matters relating to women and the family (Kandiyoti 1994). The gendered nature of the discontinuous and contradictory processes of nation-state formation in Pakistan has meant that even as the state has tried to claim more authority for itself in certain areas, it has also relinquished its authority in other areas to tribes, families, and privatized forms of regulation, particularly of women. While Pakistani feminists have tended to

see the modernizing state as liberating, it is important to understand that the processes of state formation, including anticolonial secular nationalism, have strengthened patriarchal control of women by delineating customs, traditions, and culture as a domain of the personal against which the legal and political are then seen to constitute the public sphere. The imposition of “Islamicized” laws such as the Hudood Ordinances, the Law of Evidence, and the Law of *Qisas* (retribution) and *Diyat* (blood money) has made some matters pertaining to women’s bodies and sexuality directly accountable to formal laws, yet it has also made certain types of murder and injury, especially violence within families and tribes, “compoundable,” that is, crimes against the individual rather than the state.²⁸ There is thus a peculiar reconfiguration of the private and public by which areas typically designated private such as sexuality, personal relationships and liaisons, modes of dress, and so on are deemed to be matters of public interest while other issues typically designated as public have been subsumed under the private rights of families and communities. The state’s attempts to bolster its authority through constitutional amendments and acts that enable it “to prescribe what is right and to forbid what is wrong” (*News* 1998, 9) include the incorporation and endorsement of mechanisms embedded in notions of family, community, and tribe to regulate women’s morality. This has resulted in the privileging of informal and customary practices and privatized identities over the national identity of “citizen.” As in the Saima case, there are dangerous results for women when sub-national identities such as family, *biradri* (community), or tribe emerge as subjects to arbitrate issues of sexuality and identity. Pakistani feminists argue that the Islamizing state has bolstered private control of women by the family and community by further restricting women’s access to the public sphere and by regulating morality through strict prescriptions for women’s dress and deportment.²⁹ As the above discussion shows, there was a profusion of uncertainties around whether the Saima case should

²⁸ I use the term *Islamicized* to emphasize that Islamization in Pakistan must be approached not with reference to Islamic revivalism or fundamentalism but as a historically situated policy that was implemented within specific sociopolitical conditions. The Law of *Qisas* and *Diyat*, which determines all aspects of intentional and unintentional murders, bodily injuries, and abortion, was proposed during Zia’s regime but passed later, in 1990. According to this law the compensation for a victim of murder or bodily injury if it is a woman or non-Muslim would be half of that for a Muslim male. In the aspect of evidence too, this law reduces women’s testimony to circumstantial evidence in all cases of murder or bodily injury (Mumtaz and Shaheed 1987; Mehdi 1994).

²⁹ This argument has been ably expounded by Mumtaz and Shaheed 1987 and Rouse 1998.

be judged according to legal precedent, prevailing social and cultural behavior, or religious law. Caught between the ideals of national interest as envisaged in the discourse of Islamization or the imperative to uphold rights enshrined in the constitution, the judges evinced ambivalence around the question of whether to treat Saima as a citizen or as a daughter.

Feminist politics in Pakistan are both framed by and have to mobilize the tension between private and public and home and nation to press for women's rights. Although they used the discursive space opened up by Saima's predicament to draw attention to women's oppression within the family and community, Saima's supporters could ignore neither the class-specific nature of women's experiences nor the decisive role of cultural and ethnic affiliations in their lives. They therefore had no option but to resort to an unmarking of women's identity as citizens. While drawing attention to the precarious position of girls, especially in lower- and middle-class families, Jahangir ultimately emphasized women's citizenship rights and human rights as offering the best protection for Pakistani women of all classes. The crux of her arguments was that any law, convention, or customary practice that conflicted with the provisions of the constitution regarding fundamental rights could not be legally sustained. In challenging her opponents' arguments about Islamic tradition and Muslim or Pakistani customs, Jahangir thus relied on the formal guarantees provided in the 1973 constitution through articles 10, 11, 14, 20, and 25 relating to fundamental rights, safeguards against detention in custody, safeguards against traffic in human beings, inviolability of the dignity of man, freedom of religion, and safeguards against discrimination on the basis of sex alone.³⁰ The Women's Action Forum (WAF), a major alliance formed in Pakistan in 1981 specifically to challenge the Islamization of law and society, was one of the groups that strongly campaigned for Saima's right to be treated as a citizen instead of as a daughter. In a statement issued during the Saima case, WAF stated that the issue was not, as popularly represented, the right of a father over his daughter but one of "an adult woman's rights to freedom in movement, choice in marriage and right to determine her own life, all of which are fundamental rights granted in the Constitution of Pakistan" (*News* 1996). The group said it was "alarmed by the developments taking place in the country as exemplified by the controversies surrounding the Saima Waheed case" (*News* 1996). In its arguments the women's group also highlighted the importance of Pakistan's commitment to universal human rights instruments and treaties such as the Convention on the Elimination of all Forms

³⁰ PLD 1997, 321.

of Discrimination Against Women. Such a privileging of universality as the desired condition of national subjectivity resonates with the demands of many progressive and secular democratic groups in Pakistan and other Muslim societies. It certainly testifies to feminists' emphasis on the transcendence of human universality over nationalist particularity in local contexts where notions of politicized culture are mobilized to subvert gender equality. By strategically fusing ideas about Muslim identity and citizenship claims and by subsuming both under women's rights as universal human rights, women activists in Pakistan attempt to reject both notions of women as wards of the family and as dependents of the state. Through demands for state adherence to international conventions on women and human rights and by drawing on transnational support to confront the state, women activists discursively challenge the emotional and physical boundaries of both "home" and "nation" as sanctified spaces for women.

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