

Dossier 16

Women living under muslim laws
النساء في ظل قوانين المسلمين
Femmes sous lois musulmanes

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About the Dossiers

The Dossiers are an occasional publication of the International Solidarity Network of Women Living Under Muslim Laws. Conceived as a networking tool, they aim at providing information about lives, struggles and strategies of women living in diverse Muslim communities and countries.

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Introduction

Highlighting the debate on women's human rights in Muslim countries and communities, this dossier presents the testimony on violations of women in Algeria which opened the Women's International Tribunal at the NGO forum- Beijing Conference on women; it is followed by a testimony on the practice of Female Genital Mutilation (FGM) amongst the Bohra Muslims in India. Both contributions show that certain local practices are being extended to other geographical areas: In Algeria, fundamentalist armed groups have recently borrowed from the Iranian Shia practice of temporary marriage, while the Bohra Muslims have long practiced FGM which in fact originated in African countries around the sphere of influence of ancient Egypt. We should be reminded that fundamentalist women's groups in Sri Lanka are now claiming that FGM is an Islamic practice and should be extended to all Muslim women.

In this context we feel the need to proceed with the demystification of ahistorical constructs of religion and culture¹ by examining the notions of particularisms vs. universalism and the role they play in the debate on women's human rights. A paper on the subject examines the Middle Eastern experience. We have included an article from South Africa where a debate is currently raging regarding the potential introduction of separate personal laws in the new non-racist non-sexist South Africa. We will in future publish other papers representing different view points.

Women in Muslim contexts do not fight in isolation; we may learn from knowing and exchanging with women from other contexts who wage similar struggles against similar forces: we have included here an article on women's struggle against Catholic religious conservatism.

1. On this question see also our occasional papers on the colonial and cultural roots of Muslim laws in British India and in the Mediterranean region.

• Michael Anderson. Islamic Law and the Colonial Encounter in British India, WLUML Occasional Paper No. 7, June 1996.

• Ann Elizabeth Mayer. Reform of Personal Status Laws in North Africa: A Problem of Islamic or Mediterranean Laws?, WLUML Occasional Paper No. 8, July 1996.

Starting with this issue we intend to give more space to news of women from South East Asia. We are including a short piece on Women in Malaysia and Indonesia.

As started in our previous dossier, we will now regularly include material on women in the diaspora, where, even more than in their countries of origin, women are confronted with a construct of identity which is fixed in the past, and cut off from struggles waged by women back at home. This paper deals with Palestinians in Germany.

Resistance, protest and dissent are illustrated here by examples and analysis from Bangladesh, Turkey and a general overview on the Muslim world.

We especially want to highlight these courageous statements from Pakistan and Egypt condemning discrimination and exclusion of citizens on religious grounds.

August 1996

Algeria: The Martyrdom of Girls raped by Islamic Armed Groups¹

Zazi Sadou

Introduction

This testimony is obviously not based on imaginary events. It is the sum of dozens of accounts that have come from young girls who were kidnapped in the streets after leaving school, or right in front of their parents. Islamic armed groups abducted them for the purpose of rape, often by gangs. The terrorists kept them in their hiding places for long months, frequently under inhuman conditions and constantly subjected them to the terror imposed by young hateful, and totally unbalanced gunmen. They were forced to cook, wash, and be successively raped, beaten, burned, and mutilated. Some of them were later found decapitated; such was the case of our sister Zoulikha, a 20 year old university student, and Saida, a 16 year old secondary school student.

Some of the following accounts have already been made public via the independent national press. Others were collected through interviews that I conducted with these girls and their parents.

In my country Algeria in 1995, dozens of young girls and women continue to be abducted and raped on a daily basis by groups of fundamentalist terrorists who consider females to be the spoils of war to which they are entitled. These self-proclaimed emirs would assert that Islam authorizes them to take any woman they desire as a "temporary wife". This practice from the dark ages has now become "legal" and was

1. This testimony was presented at the opening session of the Women's Tribunal on Violence Against women, held at the Beijing International Conference on women in September 1995.

For a record of the Tribunal refer to: Niamh Reilly (Ed.). *Without Reservation: The Beijing Tribunal on Accountability for Women's Human Rights*. (New Brunswick, N.J.: Centre for Women's Global Leadership) 1996.

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generalized by a "fatwa". In this way, barbaric acts such as rape, mutilation, and decapitation are trivialized and justified as retaliation and appropriate punishment for women who refuse to submit to the dictates of a theocratic and fascist ideology.

Once they are pregnant, some of these women are released by the armed groups. They are found in a deplorable state of moral and physical degradation. Such was the case of Karima, who at the age of nine, was abducted from her home in a small village. After several months of unbearable detention and successive acts of rape, she became pregnant and was released. When found, she was completely insane, and her physical health was broken.

Many children are born as a result of such rape. The official census in no way accounts for them. Furthermore, the state assumes no responsibility for them or their mothers. Most of them are rejected by their families and thrown out into the streets.

According to the information collected by state institutions, some of these children, left with no means whatsoever, are the easy prey of prostitution. With these children, the hospitals' "X" classification, that is "name unknown", can only swell.

Testimony

My name is Zazi Sadou. I am 34 years of age, and I am the mother of one child.

My own flesh has not directly experienced what I am about to recount. However, I have experienced it, and I continue to live with it both psychologically and physically. I am a women's rights activist. I am the spokesperson of an Algerian women's organization (Rassemblement Algérien des Femmes Démocrates - RAFD), which is resisting Islamic fundamentalism and struggling for life, liberty, and dignity. Having met with the young girls who did experience horror in their own flesh; having held Ourda, Amel and others in my arms; having drunk their tears and wept with them; and having cried in their pain, I agreed to come before you and relate what they have undergone, for they no longer have the strength to do so. You can forget my face and my name, but please do not forget what those young martyrs are going to tell you.

My name is Ourda. I am 17 years old. Until October 13, 1994, I was a secondary school student and I lived with my family in the neighborhood located in the downtown area of Algiers, the capital of my country. In addition to my regular courses, I studied music in a school directed by a famous master. I had my friends at school, and I went out from time to time. I was very happy at home and very coddled because I am the youngest child. But my life was turned upside down on that horrible day,

October 13, 1994. I'd just left school and was heading home when a young man approached me. He asked me to show him where the neighborhood doctor's clinic was located. I wasn't mistrusting in the least, and before I knew what had happened, he'd violently shoved me into a van that was parked nearby, tied me up and blindfolded me. Then the van sped off. I was completely terrorized by what had just happened and by the knife that the man was holding against my cheek so that I wouldn't scream. However, I still hadn't realized that I was on my way to hell.

The ride seemed endless to me. My fright and anguish increased as the minutes ticked away. I thought about my parents and their panic. I hoped that someone in the neighborhood had seen me, that my abductors would soon be discovered, and that I'd soon be free.

Finally, the van stopped. I was taken out, and one of the young men removed the blindfold. First I saw an old house in ruins. Then, when I saw all the young girls there, I began to feel a little calmer. There were ten of them. Some were my age, three were over 20, and two were only about ten years old. A group of young armed men was there watching over us. The girls had all been kidnapped either off the street as I had been, or directly from their homes. Their parents had been threatened at gunpoint by the terrorists, who always moved in groups of 15 to 20 men when they abducted the girls. One of them had even been raped in her uncle's house by the terrorist "emir," who had gone back to find her again because she was so pretty. Her name was Khadidja, and she was only 15. She lived in a small village near Bouira.

Every morning the group leader meted out different tasks: cooking washing mending and so on. I had to wash their clothes, and of course, just like all the other girls, I was raped every day. I was left to the guards because I wasn't that pretty. The most beautiful girls went to the so-called emir, and the others were left to the troops. My suffering lasted two and a half months. It was only after being found by the security forces that I discovered how long I had been in captivity. It had seemed to be eternity itself, but I was no longer able to measure time.

The worst of the horror in the terrorist hideout came at mealtime a few days after I'd arrived. All the women were eating in a circle. There were two guards there that day. I later found out that they called themselves Boualem and Kamel. They were staring at me while they talked to each other and laughed. I was terrorized. I said to myself: "My God, today it's going to be my turn." I'd seen what they'd done to the other girls. After a short while, one of them asked me if I'd finished eating. I said "no." He asked me the same thing several times after that. I think that the meal was the longest one I ever had. I stuffed myself to delay the horror. Then Kamel and Boualem sent the other girls out of the room. Since they knew

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what was coming, some of them - especially Souad, who was later killed one evening after trying to escape - recommended that I not resist. They said that I should just close my eyes; if not I might be mutilated.

When all of the other girls were gone, one of the guards came back to me; he was still armed. I don't know if it was Kamel or Boualem that day. He ordered me to take off my pants. I refused and told him that what he wanted to do was not right and that God condemned such an act. He threatened me with his dagger and said that he was going to slash me, cut me up in pieces, and do whatever he wanted with me because God allowed him to because he was a "combatant", and because he was going to marry me later anyway. I begged and cried and told him I was young and a virgin. Then he placed the blade of the dagger on my cheek. I took off my pants while I continued to beg. I refused to take off my panties. Then he grabbed a cigarette, lit it, and started to burn my thighs. I screamed out of pain and when he did it again, I passed out. I don't know what happened after that. When I came to, I was on the ground, covered with blood and bruises. I cried and refused to speak with the other girls who came to help me. I was raped again several times.

From the day I arrived in that hell, I knew what was in store for me because the other girls had warned me. They'd told me how some girls had been slashed because they resisted. The worst of all was when the terrorist rapists came to interrogate us after all that horror to see if we felt anything. Since that ill-fated day, I experienced the same anguish of my companions: the fear of being left pregnant as a result of a grotesque act.

Amel was one of us and was 20 years old. She had been there for several months and was pregnant. She was suffering. Sometimes she stayed awake the whole night sobbing and groaning. There was no medicine or anything else. She cried the whole time. What drove her crazy was the thought of going home to her parents and possibly being rejected because she was pregnant. When the girls were close to giving birth, the terrorists would release them near a village, but I don't know what became of them after that. I only heard that the children born as a result of these rapes were abandoned in the hospitals and that most girls were sent away from their homes.

We all hoped to be freed someday, and every time one of the girls was raped, the terrorist promised that she would soon be released. One evening, a girl decided to escape, no matter what. She had also been there for several months. She was about my age and she was very pretty. She was always crying and thinking about her mother, her family and her "disgrace". We tried everything we could to talk her out of it, but she got up in the middle of the night and tried to leave. One of the guards who was sleeping with us got up, grabbed her by the hair, turned on the

light, and then put two bullets in her head there in front of us. Little Miriem, who was only ten years old, was sleeping next to me that night, and I only had enough time to put my hands over her ears to muffle the ringing of the shots. Some of us really cracked up that night, particularly the youngest ones. Then, they threw her body outside. I'll never forget her shattered beautiful face. They waited until the morning to dig a hole somewhere and bury her. Her parents probably don't even know what happened to her. I'm free now but I can't look for her parents because none of us told the others our true names nor who we really were, nor where we came from. I myself changed my name and said I had been abducted from a village. I was so ashamed and my dignity had been trampled to a point that I had to invent a new identity. All the girls did the same thing. We all knew that we were lying to each other, but perhaps the lying helped us to survive. Each of us would look forward to being freed, and we couldn't leave any tracks behind us. If I told someone who I was, I could be recognized in my neighborhood and "disgrace" my family. In my country, when a girl is abducted and raped, even under such atrocious conditions, the subject becomes taboo and must be kept under cover.

I'm only free now because of the alertness and help of some people living in a village where our abductors had taken me along with some other girls so as to transfer us to another terrorist hideout. I was in a deplorably sorry state. I had become very thin and was ridden with lice. The few pieces of clothes still on my body were in tatters. I had to use some of my clothes as sanitary napkins. I hadn't been able to wash properly because, just like the other girls, I was only entitled to a litre of water every two days to take care of all my needs, and I didn't have a change of clothes.

Although I've come home to my loving family, I am continuously harassed by an obsession that makes me cry out in fear every night: I'm afraid that the terrorists will try to retrace me, even though we've moved to a new address, and they will try to retaliate by attacking me again, as well as my entire family. I still forget the hell that I experienced. What kind of life can be ahead of me now? How can I heal my deepest wounds and dream of the future? How can I ever dream of falling in love and having children? I just can't anymore. My family and all the others who look after me do love me and try to comfort me; they tell that I'm young and that I'll get over the nightmares and the pain; that someday I'll be able to look at my own body without hating it; that someday I'll stop hating men. But I'm not there yet. Like all Algerian sisters who have been raped, disfigured and even decapitated, like Zoulikha and her sister Saida were, I still shudder to think that those who are guilty of these crimes are still ruthlessly plaguing our country.

I can't sleep peacefully knowing full well that the fundamentalist leaders of armed groups continue to issue their "fatwas", which legalize their

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barbaric acts. There is no way I can go to sleep when I remember every day how my raped sisters have been thrown out into the streets by their families, taking their pain with them and receiving no help from the state or anyone else.

*All for 'Izzat'**

The Practice of Female Circumcision among Bohra Muslims in India

Rehana Ghadially

I am a Daudi Bohra woman and I was circumcised when very young. I do not remember at what age. But I do recall the incident. My mother took me to the house of a woman in our Bohra mohalla. Except for the lady, no one was at home. I was told to lie down on my back on the floor and spread my legs. It hurt me bad and brought tears to my eyes. The whole thing was over in a matter of minutes. As I grew up and became aware of my sexuality I realized the purpose of this circumcision is to discourage masturbation. It limits the possibility of sexual pleasure from the stimulation of the clitoris. The circumcision exposes the nerve endings and direct contact makes the area hypersensitive and painful to prolonged touch.

While the practice of male circumcision is universal in the Islamic countries, female circumcision (sunna) is not. Saudi Arabia, considered the cradle of Islam, does not have the practice of female circumcision (Harden, 1985). A considerable amount of literature is available on the more drastic variety of female circumcision namely, clitoridectomy and infibulation¹ as practiced in Africa. In Asia, the countries where female circumcision is practiced, but literature is singularly lacking, includes Malaysia, Indonesia, Southern parts of the Arab Peninsula, along the

1. Some divide the practice into three and some into four types. The first and the least severe form is called ritualistic circumcision, where the clitoris is merely nicked. The second form is called circumcision, or sunna. This involves the removal of the clitoral prepuce -the outer layer of the skin over the clitoris, sometimes called the "hood"; the gland and the body of the clitoris remain intact. Clitoridectomy or excision, a third variety involves removal of the entire clitoris and most of the adjacent parts. Lastly, infibulation or pharonic circumcision includes clitoridectomy and sewing of the vulva.

Persian Gulf, United Arab Emirates, Oman, Bahrein, South Yemen and among some sects in Pakistan² and Russia. (Asma El Dareer, 1982)³. A more systematic study of sunna -the least drastic variety- is lacking. This article deals with the practice and nature of sunna in a Muslim sect in India namely the Daudi Bohras.

The Daudi Bohras -an Ismaili Shia sect- number approximately half a million and are concentrated in the western states of Maharashtra and Gujarat. Those residing outside India are primarily found in Pakistan and E. Africa. (Engineer, 1980). A highly organised sect, they have a spiritual head known as Dai, Maulana or Syedna. Despite the fact that the sect prides itself on being modern in terms of education, occupation and family planning, the Syedna continues to exercise considerable control over his followers.

The information on the nature and practice of this custom was gathered by talking informally to several women on the community, especially those with young daughters, interviewing two women who do female circumcision and drawing upon secondary sources. The data was gathered in the city of Bombay where approximately 50 percent of a total of approximately half a million Daudi Bohras reside.

The Bohras practice the sunna variety in which the prepuce or the tip of the clitoris is removed. The word for circumcision is khatna and applies to both male and female. The practice is supported but not enforced by the clergy. No other Muslim sect practices female circumcision.

Khatna is performed by mullanis, women who have a semi-religious standing, or by dais or midwives, or by any woman with some experience. As some families become more interested in a safe circumcision, they prefer to go to doctors. (Srinivasan, 1991). The circumcision is done when the girl reaches the age of seven. The choice of this particular age is not clear. At this age, the girl is considered nadan (innocent) and nasamaj (not capable of understanding). She is considered not capable of understanding what is being done to her and at the same time is considered sufficiently mature to continue the tradition when she has a daughter of her own.

Justification for Circumcision

While the practice is very common, in terms of the number of people practising, it has undergone a slow change. Among the approximately 50 women I talked to, about 10 percent have given up circumcising their daughters. Only about 20 percent question, discuss and debate the

2. The Daudi Bohras in Pakistan practice female circumcision.

3. Female circumcision is not practiced among the Muslims in Bangladesh according to Profulla Sarker of Rajshahi University.

practice with their family and friends when a daughter comes of age. The majority eventually decide to have their daughters circumcised. Seventy percent or more follow the practice without questioning it. The main reasons for doing circumcision respondents gave include:

- a) it is obligatory on the parents to do it as it is mentioned in the shariat;
- b) it is a tradition/custom in the community, and
- c) to curb the girl's sexuality.

Less commonly cited reasons include:

- a) cleanliness and purity; and
- b) like male circumcision it represents the attainment of the status of a Muslim.

An unpublished survey⁴ found that the main reason why women have their daughters circumcised is to curb a woman's sexual passions. Srinivasan also found a similar reason. In Sabak (Sunday School) women are instructed by the wives of the clergy that if a girl is not circumcised she will bring disgrace on the family and the community. The reasons cited for giving up the practice included not wanting to subject the daughter to a painful procedure unless there was a strong rationale for doing it; not wanting to interfere with the girl's natural sexuality; and to avoid any medical complications.

The main justification is to curb female sexuality. This is closely related to the sex socialization of Bohra girls. The word sex is simply not mentioned, it does not exist. However, the girls are warned to keep away from strange men. A similar point is raised when discussing Kashmiri Muslim women. Nallazaralli states, "The women do not understand their own bodies -the female body in general is considered unclean and an "improper" subject for discussion". (Nallazaralli, 1974). As one Bohra woman put it, describing the lack of understanding of young Bohra girls, "Do they know anything about the human body?" (Srinivasan). When they start menstruating they are told that now you have become a woman. There is emphasis on cleanliness and taking of the ritual bath at the end of the menstruation period but no information about sexual and reproductive aspects. Young brides do get a few words on sex from an experienced aunt on their wedding night. While sex is taboo, it is acceptable and even enjoyed within the context of marriage. A man may have a higher sex drive but a woman is entitled to sexual pleasure in marriage.

Bhatty (1988) put it succinctly: "Socialization of Muslim girls in Uttar Pradesh is based on three basic concepts. First, women are inferior to men in every sphere of life. They are weak physically, mentally and

4. R. Baxamusa (Personal communication).

spiritually. Second, women are responsible for ensuring the continuity of cultural norms by conforming to the traditional culture and socializing the young accordingly. Third, the women must safeguard the izzat of the family. The second and third concepts are interconnected since non-conformity threatens izzat. India Muslim society, like many other traditional societies, uses double standards for judging men and women and demands from women complete adherence to these double standards. Any deviance from the codes of morality prescribed for women threaten the izzat of her kin group". Unlike other Muslim women in India, the sexual desire of Bohra women is curbed both physically and culturally. The task, as expected, is accomplished by enforcement from older women of the family.

Unlike the more severe forms of circumcision, the least drastic form has neither serious health nor reproductive repercussions. In my own sample the most common complaint was the girl's difficulty in discharging urine. According to one Bohra doctor, there have been cases of infection, swelling, severe bleeding, shock, tetanus. In some instances circumcision has been a contributory factor in some cases of frigidity. (Srinivasan).

There has been no systematic attempt to do away with this practice. Bohra doctors working within the community had tried to take up the matter with the clergy but without success. An activist of the Bohra Women's Action Forum, founded in 1989, stated that the practice of circumcising the girl is abhorrent. Reformist⁵ women have not come to question female circumcision organizationally; but individually a lot of women are opposed to it, and have made sure that it is not done to their daughters. (Srinivasan).

Profile of a Woman who does Female Circumcision

Living in the heart of a Bohra mohalla in a metropolitan city, Ms A, of lower middle class circumstances, occupies a dilapidated one room plus kitchen flat and lives together with her son, daughter-in-law and two grandsons. She is 75 years old, uneducated but literate. She has no training in nursing or first aid. Widowed at the age of 30, with three young sons to support, she took the clergy's permission to become gainfully employed by doing female circumcision. Besides, she states, this line of work had already been in the family. Her grandmother performed khatna but her mother never learnt the trade as she was married in an economically well-to-do family. Her grandmother therefore taught the trade to another Bohra woman acquaintance. Ms A learnt how to circumcise from her grandmother's acquaintance and also got some initial instruction from the wives of clergy.

5. The reform movement has been predominantly concerned with the clergy's encroachment on secular matters and much of their energy has been channelised into making the clergy accountable for taxes collected from the community members.

For the next 35 years, it remained her major occupation. She stopped only when her eyesight began to fail. She taught her three daughters-in-law to circumcise. They were already assisting her in this work and learnt the procedure by observation. Permission for the daughters-in-law to practice was duly obtained from the clergy. Today, all the three daughters-in-law do female circumcision and supplement their husband's meager income. For Ms A this is honorable work and a perfectly legitimate way for a woman to earn an income. For doing this work the clergy takes care of her and sends her a food ration every month. The community members also take care of her in a similar manner. According to her, no other Muslim group in India other than Bohras practice it. Because of this practice, Bohra women, unlike other Muslim women, are permitted in cemeteries, mosques and can touch the stone of kaaba in Mecca. Ms A's acquaintances in the mohalla tell her to stop doing this work and ask her "Why do you make little girls cry?" She replies that as long as the shariat sanctions it and the clergy support it she will do it but the decision is really that of the women themselves.

Procedure: She has a rusted box containing five items: 1) the astro -a barber's razor- rusted, with a broken handle (about 8 to 9 inches long, duly blessed by the clergy); 2) a small stone on which to sharpen her razor; 3) a pile of 1" by 1" pieces of paper -this is used to wrap up the foreskin which is thrown away; 4) a small box of indigenous medicine called aber or kapurkanchi powder mixed with silk thread ash (pure silk threads are burnt, grounded and put through a sieve). This mixture is put over the cut over the clitoris, the powder is for its cooling effect and the silk ash for its adhesive value, and lastly, 5) a pile of 1" by 1" pieces of cloth to put on the cut in case of bleeding.

According to her, the entire procedure takes a few seconds and if the girl is agitated it takes several minutes. The girl is told to lie on her back on the floor. Her two hands are held over her head by the mother, and her two legs are held down by a woman each. Ms A holds the foreskin in one hand and uses the razor (which she claims has been sterilized), with the other. The foreskin -the skin of a yellow moong bean- is excised. No anaesthetic is used for the purpose. There is no bleeding unless the girl is difficult to manage. She recommends to the mother that the genital area be washed with warm water and antiseptic and the girl be given coconut water to drink to help in the discharge of urine. The wound is healed in a day or two. Post circumcision complaints are rare. Occasionally mothers come saying that the girl won't permit them to wash the circumcised area. The girl is told not to mention what happened to her to anyone. Some of the girls are told that a worm was removed from their stomach. Busy months for her include the summer and Christmas school vacations when it is more convenient to get it done. Fatima, the Prophet's daughter was said to have been born circumcised, hence the practice. In

her own practice she has seen one girl in 100 born circumcised in which case a cut betel nut leaf is ritualistically placed on the clitoris and then removed.

A Guarded Secret

The girl's circumcision has been kept an absolute secret not only from outsiders but also from the men of the community. Unlike a male child's circumcision it is neither announced nor celebrated⁶. It is a ritual very strongly guarded by the community women. However, Ms A says this is no longer true. The washerwoman -a non-Muslim- who comes to her house knows about it. The men in the mohalla around her house know about it as mothers with little girls come asking for the whereabouts of her house.

Her clients include Daudi and other Bohra sub-sects such as the Suleimanis and Aliya Bohras. Occasionally, she has had Arab girls from the Middle East brought to her. When a non-Bohra woman decides to marry a Bohra man and they want a Muslim religious marriage ceremony to be done by the clergy, the woman is asked to be circumcised. In the adult stage the size of the foreskin is that of a channa dal.

Today a khatna done at her own home fetches Rs 70 and if she is invited to the house of the client she asks for Rs 100. Out of this Rs 70 she keeps Rs 10 for herself, and gives Rs 10 to her daughter-in-law. The remaining cash is spent in buying coconuts or sweets which are given away as charity. Although this is her normal rate she accepts whatever the client offers. Sometimes from the poor she gets as little as Rs 30. About 75 percent of the khatna are performed in her own house, 25 percent of the time she goes to the house of the client. Occasionally she would be invited to do khatna for several girls together in Surat, a town 260 kms from Bombay and which has a fairly large Bohra population⁷.

The African Connection

The Bohras of India belong to the Shia Ismaili faith. The Ismailis effectively challenged the Abbasids -the Arab Sunni rulers, and succeeded, with the help of the Berber tribe, in establishing their own

6. Male circumcision is celebrated by distribution of sweets, making of a special meal and new clothes for the circumcised boy.

7. Another woman who does the circumcision in a small town of about 3 lakhs population having approximately 50 Daudi Bohra families said that all the families have their daughters circumcised. Her box contains a razor blade, bottle of antiseptic, cotton pads and ash to hold the clitoris steady. She gets Rs 10 and a coconut. With the money she buys sweets and distributes it to the children. According to her no other Muslim sect practices female circumcision. She mentioned that other Muslim women express surprise at finding out that a Muslim sect follows such a practice.

state called the Fatimid state, in North Africa which later extended to Egypt and Yemen. Female circumcision was practiced in Africa before the advent of Islam.

The Ismaili movement, from its inception was a proselytizing mission which had spread the network of its missionaries to countries like Persia, Central Asia, Yemen and India. In the eleventh century two missionaries from Egypt and later a few from Yemen landed at the port of Cambay and sought converts to the Ismaili faith. The Bohras imbibed the traditions of the new religion in a thorough manner. Its followers in India have been very scrupulous followers of all the practices prescribed by the shariat. (Engineer, 1989). Evidently, female circumcision was a direct import from Egypt. It must be mentioned that excision/clitoridectomy is practiced in Egypt. (Hosken, 1979). Circumcision is unheard of in the indigenous Indian population.

The theory of the Egyptian connection is further strengthened when one compares the Bohras with two other Muslim sects -the Khojas and the Memons. All the three sects are petty business communities from Gujarat, are well structured, and have similar and contemporaneous origin. Despite similarities among these three Muslim sects, the Khojas and the Memos do not have the practice of female circumcision. The Bohras and the Khojas have a common Shia Ismaili origin whereas the Memons are a Sunni sect. However, all the three communities have their own distinct identities, important doctrinal differences and generally do not inter-marry and have separate closely knit socio-religious structures. Like the Bohras, the Khojas, have a highly centralised command structure and are tightly controlled from above. Compared to other Muslim sects, both the Bohras and the Khojas are better educated, culturally well assimilated with other non-Muslim Gujarati communities. (Engineer, 1989).

The Khojas or Aga Khanis constitute the Nizari branch of the Ismailis. Most were converted to the Ismaili fold by the Nizari missionaries who came from Iran. The Nizari missionaries used local religious idiom to convert Hindus to their fold. The Prophet and his successor Ali were projected by them as avatars of Krishna and Vishnu. The Khojas for this reason remained highly Hinduised for a long time. It was only during the period of the father of the present Aga Khan that they were encouraged to openly identify themselves with the Muslims in India. The Bohras on the other hand were a highly Islamised sect from the beginning of their conversion. (Engineer, 1989).

Likewise, the Memons, trace their origin to the 700 families, comprising of 6,178 persons belonging to the old and famous Lohana community of Sind in Pakistan. The Lohanas, found in the area stretching from Sindh to Lahore embraced Islam in the 15th century. During this period Sindh was under the King of Kabul. They were converted at the hands of Hazrat

Yusufuddin -a descendant of the great Sufi saint Ghusul Azam who probably came from Afghanistan. The present Memon community stems from these converted Lohanas who migrated from Sindh to Kutch in Gujarat. (Engineer, 1989). The place of origin of the missionaries -Egypt, Iran or Afghanistan- and to what extent they were able to impose an imported religion or were willing to assimilate local customs perhaps determines the absence or presence of female circumcision among the Muslims in India.

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* Editor's note: The urdu term "Izzat" used in the above paper signifies "honour".

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Cultural Particularism as a Bar to Women's Rights:

Reflections on the Middle Eastern Experience

Ann Elizabeth Mayer

There are two basic positions that one can take on women's human rights: the universalist and the cultural relativist¹. What does the universalist position entail? Simply put, it holds that "all members of the human family" share the same inalienable rights. This means that the international community has the right to judge, by reference to international standards, the way states treat their own citizens and that states must reform their constitutions and laws where necessary to bring these into conformity with the international norms. According to the universalist position, all women are entitled to the rights set forth in international covenants and conventions such as the 1966 International Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which has been in force since 1981.

Cultural relativists argue that members of one society may not legitimately condemn the practices of societies with different traditions,

1. For a general introduction to this topic, see Douglas Donoho, "Relativism versus Universalism in Human Rights: The Search for Meaningful Standards", *Stanford Journal of International Law* 27 (1991): 354-91. For a work sympathetic to universalism, see Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell Univ. Press, 1989); for one sympathetic to cultural relativism, see Alison Dundes Renteln, *International Human Rights: Universalism Versus Relativism* (Newbury Park, CA: Sage, 1990). A particularly stimulating analysis is provided in Rhoda Howard, "Cultural Absolutism and the Nostalgia for Community", *Human Rights Quarterly* 15 (1993): 315-38.

denying that there can be valid external critiques of culturally-based practices and claiming that no legitimate cross-cultural standards for evaluating the treatment of rights issues exist. Where Western criticisms of the treatment of women in the Middle East are concerned, cultural relativists object to universalist approaches on the grounds that they use criteria that are ostensibly international but that actually reflect the values of Western culture. Therefore, Western condemnations of discrimination against women in other regions are said to reflect an insensitive, ethnocentric approach to rights issues, which is linked to cultural imperialism.

This essay assesses one aspect of the implications of the cultural relativist argument: appeals to what might be called "Islamic particularism" to justify the denial of civil and political rights to Middle Eastern Muslim women. In what follows, it will be argued that according unquestioning deference to Middle Eastern governments that insist that cultural particularism requires the international community to tolerate those governments' discrimination against women constitutes a misguided application of cultural relativism.

Regarding the status of Muslim women, cultural relativists might maintain that the reasons for tolerating deviations from international norms are particularly strong, because many discriminatory features of Middle Eastern law are directly traceable to religious precepts. Thus, demanding respect for human rights could be equated with disrespect for indigenous religious norms set by Islamic law², particularly after the 1990 issuance of the Cairo Declaration on Human Rights in Islam by the Organization of Islamic States, to which all Muslim countries belong. The declaration affirmed that all rights were subject to Islamic law, and it was notably lacking in provisions granting women equal rights with men or assuring them equal protection of the law³.

Application of international rights standards would have enormous impact on the legal systems of Middle East because, in addition to customary norms that relegate women to a subordinate status, much of

2. For a general examination of the ways that Islam is used to justify deviations from international human rights standards, see Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder, CO: Westview, 1991). For a critical appraisal of the use of cultural relativism in this way, see *ibid.*, 9-21.

3. In an ambiguous formulation, Article 1(a) provides that all "men" are equal in terms of basic human dignity and basic obligations and responsibilities (not "rights"). Article 6, which deals with women, provides that "woman is equal to man in human dignity" (not "rights") and stipulates that she has rights as well as duties to perform. In context, the failure to provide for equal rights must be seen as an attempt to accommodate the existing discriminatory laws. For a general discussion of this declaration and its context, see Ann Elizabeth Mayer, "Universal versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?" in *Michigan Journal of International Law* 15 (1994), 307-404.

the discrimination against women depriving them of civil and political rights is *de jure*⁴. Even a selective listing of the types of discriminatory laws currently in force in Middle Eastern legal systems indicates that there would be a wide range of laws that would be potentially affected by rigorously adhering to norms of equality and equal protection. Laws commonly provide that the wife must obey her husband, that wives are not allowed to work outside the home without their husbands' permission, that men may take up to four wives, that Muslim women may not marry outside the faith, and that women are entitled to only one-half the inheritance share that men inherit in the same capacity. Depending on the country involved, one may find that women are compelled to wear concealing garments in public, that they are excluded from studying certain subjects, that they are deprived of the right to vote, that they are barred from the legal profession and the judiciary, that their testimony in court is excluded or valued at one-half the weight of a man's, that they are not allowed to travel without the permission of a male relative or unless accompanied by a male relative, or that they are not allowed to drive cars. Obviously, it would be hard to justify the retention of such laws if one took seriously international norms such as Article 2 of CEDAW, requiring all states "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women", which would entail abrogating and revising laws that confer an inferior status on women⁵.

Claims that Islam justifies noncompliance with international norms regarding the rights of women have been raised in connection with

4. For a survey of personal status laws affecting women see Jamal Nasir, *The Islamic Law of Personal Status*, 2d ed. (London: Graham & Trotman, 1990). For information on laws discriminating against women outside the area of personal status, one can consult reports of human rights organizations like Amnesty International or Middle East Watch, as well as the annual U.S. Department of State Country Reports on Human Rights Practices.

5. The CEDAW mandate has become particularly important in an era like the present when Islamic fundamentalism has augmented the discriminatory features of previous laws. For information on the retrograde impact of Iran's Islamic Revolution on the progress that had been made toward enhancing women's rights, see Farah Azari, *Women of Iran: The Conflict with Fundamentalist Islam* (London: Ithaca Press, 1983); Guity Nashat, ed., *Women and Revolution in Iran*, (Boulder, CO: Westview, 1983); Eliz Sanasarian, *The Women's Rights Movement in Iran: Mutiny, Appeasement, and Repression from 1990 to Khomeini* (New York: Praeger, 1982); Azar Tabari and Nahid Yeganeh, eds., *In the Shadow of Islam. The Women's Movement in Iran* (London: Zed, 1982). Pakistan is another example. See Khawar Mumtaz and Farida Shaheed, *Women of Pakistan* (London: Zed, 1987). The 1984 Algerian Code of Family Law represented a triumph for proponents of reactionary patriarchal ideas. See Nouredine Saadi, *La Femme et la Loi en Algérie* (Casablanca, Morocco: Le Fennec, 1991), pp. 43-80. Under the fundamentalist regime that seized power in the Sudan in 1989, women's rights have suffered serious setbacks. See "Sudan: Threat to Women's Status from Fundamentalist Regime", *News from Africa Watch*, April 9, 1990; "Women under Sudan's Fundamentalist Regime", *Middle East International*, August 3, 1990, p. 20.

debates over CEDAW. Although few Muslim countries have ratified CEDAW, among those that have, all have entered reservations to its substantive provisions, several on religious grounds. Bangladesh, Egypt, Libya, and Tunisia have invoked "Islam" as the reason for making reservations⁶, Egypt saying, for example, that it would comply with CEDAW's antidiscrimination provisions "provided that such compliance does not run counter to the Islamic shari'a"⁷. From the fact that Egypt did not subsequently modify its laws discriminating against women after ratifying CEDAW, one could infer that Egyptian officials had concluded that reforms undertaken pursuant to CEDAW principles to give women equal rights would violate shari'a requirements.

Now, it is permissible to ratify international treaties subject to reservations, but the reservations are not supposed to be incompatible with the object and purpose of the treaty or convention involved⁸. Rather than ratify with reservations that effectively nullify its obligations under the treaty, a state should elect not to become party to a treaty in the first place. The reservations made by Bangladesh, Egypt, Libya, and Tunisia were so sweeping that critics have claimed that they are not compatible with the object of CEDAW, which is to free women from systematic subordination because of sex⁹.

Showing their concern for this issue, some states that were parties to CEDAW debated whether the reservations that had been entered were acceptable. When in 1986 these concerned countries wanted the Secretary-General of the United Nations to survey the parties to CEDAW as to their respective views on what reservations would be incompatible with the object of the convention, the proposal was denounced by some delegations as being anti-Islamic or amounting to a Western attack on Third World countries¹⁰. At the forty-first session of the General Assembly, delegations from Muslim countries denounced the West for "cultural insensitivity" in this matter¹¹. In 1987, the CEDAW committee decided to recommend that the UN and specialized agencies study the status of women in Islamic law. The General Assembly squelched this proposal after Muslim countries asserted that the proposal of the CEDAW committee constituted religious intolerance and cultural imperialism¹².

6. Rebecca Cook, "Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women", *Virginia Journal of International Law* 30 (1990): 687-703.

7. *Ibid.*: 688.

8. See Belinda Clark, "The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women", *American Journal of International Law* 85 (1991): 282.

9. *Ibid.*: 299-302, 310-311, 313, 317, 320.

10. *Ibid.*: 284.

11. *Ibid.*: 287.

12. *Ibid.*: 287-8.

The result was that, faced with appeals to cultural particularism, the UN tolerated a situation where some Middle Eastern countries would be treated as parties to a convention whose substantive provisions they had professed their unwillingness to abide by. Implicitly, the UN acquiesced to the cultural relativist position on women's rights in the Middle East, allowing parties to CEDAW to invoke Islam and their culture as the defense for their noncompliance with the terms of the convention. This was paradoxical, since CEDAW Article 5 calls on parties to "modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". That is, CEDAW was premised on the notion that, where cultural constructs of gender were an obstacle to the achievement of women's equality, it was the culture that had to give way—not that women's rights should be sacrificed in situations where their realization would require modifying local social and cultural patterns. In the UN, the ostensibly religious/cultural bases for Muslim countries' objecting to CEDAW principles remained unexamined; here they will be subjected to critical scrutiny.

In examining whether one should defer to pleas that "Islam" justifies denying women full rights, it would be well to ponder the significance of the general acquiescence of the international community to the gutting of CEDAW. In reality, the treatment of CEDAW suggests that there is nothing peculiar to Islam or Middle Eastern culture that stands in the way of realizing the norms of full equality for women that the treaty mandates. Of all human rights treaties, CEDAW has the distinction of having "the greatest number of reservations with the potential to modify or exclude most, if not all, of the terms of the treaty"¹³. Where CEDAW was concerned, states were permitted to make their own determinations as to whether their reservations were incompatible with CEDAW, which stood in sharp contrast to the rule imposed regarding the Convention on the Elimination of Racial Discrimination (CERD), where a two-thirds vote by other parties can declare a state's reservations incompatible with the object of the convention¹⁴.

Muslim countries were not alone in registering reservations that undermined the treaty; countries as diverse as Belgium, Brazil, Canada, Cyprus, Jamaica, the Republic of Korea, Mauritius, and Thailand did so as well¹⁵. This is hardly surprising, given that the governmental actors in international forums consist for the most part of men, as, for instance, in

13. *Ibid.*: 317.

14. *Ibid.*: 287.

15. *Ibid.*: 298-302.

most delegations sent to the UN. Therefore, the disparity between the treatment of reservations to CERD and those to CEDAW and the greater toleration for discrimination directed at women can be linked to a prevailing pattern of the exclusion of women from real influence in the UN system as well as from real influence in the institutions shaping international law more generally¹⁶.

Middle Eastern governments have made deliberate attempts to stifle dissenting women's voices when they could discredit the authenticity of the official constructs of Islamic/Middle Eastern culture that are used to rationalize the treatment of women. In this regard, the governments can exploit Western stereotypes of Islam. Western supporters of cultural relativist approaches seem disposed to believe that non-Western cultures are monolithic and immutable. In reality, intense conflicts and debates on rights issues rage within Muslim countries from Africa to Asia, particularly regarding the rights of women; there is no single monolithic cultural position on women's role in society and no inanimity of opinion about how Islamic requirements should apply to problems of contemporary societies. A substantial feminist literature has been produced by Muslim women in the Middle East that seriously challenges the patriarchal biases that infect the political systems in the region as well as the readings offered by male interpreters of the Islamic sources¹⁷.

It is inconvenient for Middle Eastern regimes attempting to legitimize their opposition to women's rights by appeals to Islam to be faced with domestic manifestations of feminist dissent, and there have been many instances in which regimes have tried to stamp out Muslim women's voices. The brutal repression by the postrevolutionary Iranian Government of women's protests against the retrograde version of Islam, which interprets the law in its most discriminatory form, is notorious. In Pakistan in 1984 the government violently suppressed women's protests over a new law reviving elements of Islamic evidentiary law that downgraded the value of women's testimony¹⁸. In Saudi Arabia, after

16. The implications of this exclusion have been critically appraised in an important recent article. See Hilary Charlesworth, Christine Chinkin, and Shelley Wright, "Feminist Approaches to International Law", *American Journal of International Law* 85 (1991): 613-645.

17. In addition to the sources on Iran and Pakistan already cited, see Leila Ahmad, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven, CT: Yale Univ. Press, 1992); Nadia Hijab, *Womanpower: The Arab Debate on Women at Work* (Cambridge, UK: Cambridge Univ. Press, 1988); Fatima Mernissi, *The Veil and the Male Elite. A Feminist Interpretation of Women's Rights in Islam*, trans. Mary Jo Lakeland (Reading, MA: Addison-Wesley, 1991). Mernissi, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society* (London: Al Saqi, 1985); Freda Hussain, ed., *Muslim Women* (New York: St. Martin's Press, 1984); Naila Minai, *Women in Islam: Tradition and Transition in the Middle East* (New York: Seaview, 1981); Nawal el-Saadawi, *The Hidden Face of Eve* (Boston: Beacon, 1982).

18. Mumtaz and Shaheed, *Women of Pakistan*, pp. 106-107.

women demonstrated in November of 1990 against the local ban on women driving—a ban that was officially justified as flowing from Islamic morality and principles—the government prohibited all future demonstrations by women¹⁹. In Egypt, the suppression of the prominent Arab Women's Solidarity Association (AWSA), a dynamic feminist association that advocated enhanced rights for women, provided a particularly interesting example of governmental determination to ensure that opinions of progressive Muslim women would not be heard—and the exploitation of Islam to justify the suppression.

AWSA was dissolved in June of 1991 by the Egyptian government, apparently because the regime disapproved of its political activities, although officially AWSA was dissolved for being in "perpetual violation of the law" and for "dissemination of ideas running counter to the position of the State²⁰". There was considerable international criticism of this action²¹, but in May of 1992 the order dissolving AWSA was upheld on appeal, this time for a different reason: the court asserted that AWSA had offended the Islamic religion. According to the ruling, AWSA had "threatened the peace and political and social order of the state by spreading ideas and beliefs offensive to the rule of Islamic shari'a and the religion of Islam", had "violated the rule of law and public order and morality by the practice of political and religious activities through its magazine and publication", and had put out publications that "contained attacks against and aroused suspicions of the social and religious order, especially the conventions of marriage, divorce, and the (permitted) number of wives", constituting "attacks on state policy²²".

Given this ruling, it would appear that in Egypt "state policy", "public order and morality", "the rule of law", "Islam", and specific elements of Islamic law according men superior rights all afford interchangeable rationales for suppressing feminist activism. One might then ask: if any or all of these rationales can be employed against a feminist group, how important is Islam to the government's position? And since the appeals to "Islam" only became belatedly, a year after the Egyptian government had originally dissolved AWSA for other reasons, one may wonder if the

19. For an account of the incident, see Judith Ceasar, "Big Saudi Brother", *Christian Science Monitor*, January 4, 1991, p. 18.

20. "Update: Dissolution of the Arab Women's Solidarity Association", *News from Middle East Watch*, December 1991.

21. Among other things, a brief was submitted on behalf of AWSA by American human rights activists. See Bert Lockwood and Kenneth Roth, *Dissolution of the Arab Women's Solidarity Association. Brief for the Urban Morgan Institute for Human Rights. University of Cincinnati College of Law and Middle East Watch and Women's Rights Project of Human Rights Watch as Amicus Curiae*. October 22, 1991.

22. "Egypt. Court Upholds Closure of Women's Organization", *News from Middle East Watch*, June 1992.

Egyptian government had concluded in the interim that "Islam" would be the most effective defense it could deploy before its international critics in its efforts to justify dissolving AWSA.

These (and other attempts to silence women) suggest that when governments assert that adherence to their culture and religion precludes the granting of equal rights to women, they actually fear being discredited by women in their own societies —women who are prepared publicly to take issue with them.

One should also bear in mind that the versions of Islam invoked by various UN delegations to justify reservations to CEDAW represent official constructs of Middle Eastern/Islamic culture that are in almost all cases imposed by undemocratic regimes, which raises doubts about whether they should be taken as representative of the societies they dominate. Historically, Middle Eastern Muslim cultures have not been monolithic creations imposed from above by the nation-state (the nation-state being a modern innovation recently borrowed from the West). The actual cultures of the Middle East have been produced by women as well as men and have shown innumerable variations. Local expressions of Islamic culture have not necessarily corresponded to the norms expounded by the Islamic jurists from the educated male elites of urban milieus, but have been greatly influenced by forces such as folk tradition, mysticism, and customs that women have participated in shaping. Is there, then, any reason to treat state-generated definitions of "culture" and "Islam" as authentic or definitive? And if the same states that have generated these artificial national models of "Islam" then subsequently insist that these very models compel them to deny rights to women, why should outsiders accept such rationales, particularly from states that have spotty records of adhering to Islamic law elsewhere²³?

One may doubt whether these states actually believe in the authoritative character of the official constructs of Islamic culture that they put forward in international forums in their efforts to justify their refusal to undertake reforms to eliminate the legal barriers to women's equality. If the governmental constructs of culture were indeed normative and authentic, the elimination of legal barriers to equality could be taken without risk of upsetting the status quo. States could be confident that Muslim women would react by saying that, despite the fact that it had become legally permissible, they did not want to drive, vote, study law,

23. In areas where women's rights are not involved, Egypt has preserved its largely French-inspired legal system, refusing to reinstate Islamic law despite strong pressures from fundamentalist groups for the Islamization of all laws. See Rudolph Peters, "Divine Law or Man-Made Law? Egypt and the Application of the Shari'a", *Arab Law Quarterly* 3 (1988): 231-53. The Egyptian government does not seem to feel compelled to follow Islamic law where this would require amputating the hand of a thief or eliminating interest charges from the economy.

disobey their husbands' commands, demand an equal share of inheritance, etc., because such things would be deemed contrary to authoritative cultural norms. In reality, it seems that governments appreciate all too well that the cultural model they rely on to rationalize discrimination against women has shaky authority and that Muslim women increasingly aspire to equality—which is precisely why Muslim men are obliged to have recourse to state-sponsored legislation and rough police measures designed to try to keep women in the place to which they were once confined by the strictures of living custom and tradition.

One should also consider that, where governmental constructs of the local culture and religion are deployed as bulwarks against international human rights norms and "alien" ideas of freedom, accepting these ultimately means that one is denying the people of the region the right to change culture, to challenge existing norms, and to assimilate new ideas. Such acceptance presumes a normative model of Middle Eastern culture to be a self-contained, static entity—one different from cultures elsewhere, whose historical records have shown that a culture almost always changes to accommodate modern norms of human rights²⁴.

A comparison is illuminating in this connection. If we were to take seriously the claim that one can have the principle of male/female equality only in societies in which the local culture and religion have been geared to accept such an ideal, we would have to regard equal rights for women in the West as equally illegitimate, since the struggle to introduce feminist principles went against the grain of Western culture. One does not have to go back many decades to find outspoken, deeply ingrained Western cultural and religious resistance to feminist ideals combining with laws that subjugated women in many of the same ways Middle Eastern laws do today. Indeed, in the more retrograde quarters of the Western world, the notion of full equality for women is still being resisted and denounced for being subversive of the natural order of society and incompatible with religious values. However, cultural relativists do not seem to treat the norm of full equality for women as lacking cultural legitimacy in the West, which means that they must, at least implicitly, believe that Western culture is one that by its nature is destined to evolve and embrace new ideas, unlike non-Western cultures associated with Islam, which they presume are frozen in time somewhere in the darkness of the Middle Ages.

To assume that it is unnatural for Middle Eastern cultures to evolve is particularly odd given the aspirational character of international human

24. For a thoughtful analysis of this subject, see Rhoda Howard, "Dignity, Community, and Human Rights", *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, Abdullahi An-Na'im, ed. (Philadelphia: Univ. of Pennsylvania Press, 1992).

rights principles, which set norms to be achieved and are designed to foster the evolution of laws in ways that enhance rights protections. One recalls the Universal Declaration of Human Rights in its Preamble proclaimed itself "a common standard of achievement for all peoples and nations" and that the International Covenant on Civil and Political Rights in its Preamble spoke of "the ideal of free human beings enjoying civil and political freedom". To claim that these international rights cannot be extended to the Muslim Middle East is tantamount to saying that the people in that region cannot aspire to a future in which such ideals could be realized—that they alone among the peoples of the world can never have more rights than they had in the past.

The cultural relativist might reply that there is a difference between the way feminist currents arose in the West and the way feminist standards are employed to judge the cultures and societies of the Middle East. As perceived by cultural relativists, Western feminism is a movement offering an indigenous critique of patriarchy, while demands that Middle Eastern countries respect women's rights and freedoms come from the outside—an argument that on the surface might seem reasonable in light of governmental suppression of indigenous feminist views. External critiques of the treatment of women in the Middle East, then, are considered representative of ethnocentric Western attitudes and, ultimately, expressions of imperialism²⁵. This notion warrants critical evaluation. Is it true that imperialism and colonialism are inextricably tied to demands for according women in the Middle East full equality in the areas of civil and political rights?

Associating any demands for enhancing the rights of Muslims with imperialism is odd because, in the main, the great powers in the age of imperialism took the position that it was only citizens of Western powers who deserved to have their rights protected according to Western standards, setting forth the precursors of today's international rights norms. Some confusion in this area is understandable, because one can cite certain instances in the past where imperialist powers did seek to control Muslim societies by driving a wedge between Muslim men and women, condemning traditional Islamic strictures, and offering Muslim women the relatively greater freedoms afforded by European laws. The tactics used by the Soviet Union to divide Muslim men and women in

25. This is a refrain endlessly reiterated by the Iranian government and its ideological allies, who see in foreign condemnation of the way women have been treated since the Islamic Revolution an imperialist plot designed to undermine Iran's independence and restore American domination—whence the castigation of Iranian women who rebel against the "Islamic" constraints placed on their freedoms as agents of imperialism. See, for example, Farah Azari, "The Post-Revolutionary Women's Movement in Iran", *Women of Iran. The Conflict with Fundamentalist Islam*, Farah Azari, ed. (London: Ithaca Press, 1983), pp. 194, 206.

Central Asia provide a particularly striking example in this regard²⁶. It is important, however, to examine the relevance of such historical examples in today's circumstances. Where is there at present a neoimperialist power that stands to advance its own political agenda by pursuing policies designed to promote enhanced rights and freedoms for Muslim women?

The United States may be the country that many cultural relativists and Middle Easterners have in mind when they —too casually— associate neoimperialist designs with the use of international human rights norms to judge or condemn the human rights records of Middle Eastern governments. However, given the antifeminist policies of the recent Reagan and Bush administrations, the United States has hardly been in a position to preach to others about women's rights or to condemn other states for their failure to ratify CEDAW or for reservations they have entered. The close American alliance with Saudi Arabia, which has one of the worst records in the world in its treatment of women, shows how little women's concerns have mattered to the architects of U.S. foreign policy.

It is significant that the strongest voice for women's rights in the controversies over reservations to CEDAW has been that of Sweden, yet it is hardly plausible to cast Sweden in the role of an imperialist power bent on subjugating Middle Eastern societies via its calls for adhering to norms of equal rights for women. In fact, the positive role Sweden has played in this regard comes from Sweden's genuine commitment to the principle of full equality for women, as evidenced in its feminist domestic policies, which allow women significant roles in public affairs.

After the 1993 Vienna conference on human rights, where deviations from international norms were justified with appeals to culture, Dorothy Thomas, a representative of Human Rights Watch, spoke of women's reactions:

Women from every single culture and every part of the world are standing up and saying we won't accept cultural justification for abuses against us anymore. We are human, we have a right to have our human rights protected, and the world community must respond to that call and throw out any attempts to justify abuse on the grounds of culture²⁷.

Thus, claims from diverse states and regions that the conventions interfere with their right to culture turn out to have the same consequence —denying women equal rights. If all such "particularisms"

26. See Gregory Massell, *The Surrogate Proletariat: Muslim Women and Revolutionary Strategies in Central Asia, 1919-1929* (Princeton, NJ: Princeton Univ. Press, 1974).

27. Hilary Bowker, "Women Succeed in Pressing for Rights Hearing at Vienna", CNN, June 22, 1993, available in Lexis, ALLNWS file.

Cultural Particularism as a Bar to Women's Rights

mean that violations of women's rights are excused and perpetuated, they are nothing more than disguises for the universality of male determination to cling to power and privilege. If constructs of a supposed Islamic particularism are no more than one part of a universal campaign for maintaining the subordinate status of women, they deserve to be treated with the same degree of skepticism as the other rationales that are being invoked by men for depriving women of their full human rights.

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The Interim Constitution and Muslim Personal Law¹

Najma Moosa

Introduction

Muslim women face the same status problems in the private and public spheres of life as their non-Muslim counterparts but it is alleged that, as members of a particular religious community, they experience another inequality. To assess this assertion, it is necessary to consider how gender issues are dealt with not only in terms of Islamic law, but also in the light of the authentic spirit of the Koran². With an eye to how South Africa's final constitution might address the status of Muslim personal law and the related question of the position of Muslim women, this chapter examines the issue of Muslim personal law in South Africa and the constitutional provisions relating to the rights of women in a number of Muslim countries. It argues for the need to reform and codify Muslim personal law and for its recognition by and subordination to the constitution. However, it also stresses the importance of the

1. The Koran is a religious text considered by Muslims to be the literal word of God. It is a primary source of Islamic law and contains approximately 80 verses dealing with legal matters, most of which pertain to personal laws of family and inheritance. It is in the areas explicitly referred to by these verses that one finds little or no difference between various Muslim countries. The term "Muslim personal law" has been coined by various Muslim countries and jurists because it pertains to the personal sphere of marriage, divorce, inheritance, polygyny, custody and guardianship. All laws affecting the status of Muslim women have historically been relegated to Muslim personal law. For more detail see N. Moosa, "Comparative study of the South African and Islamic law of succession and matrimonial property with special attention to the implications for the Muslim woman", unpublished master's thesis, University of the Western Cape (1991).

2. The Koran is separated from the classical formulation of Islamic law or shariah by a process of legal development lasting more than two centuries. It is common for Islamic law, which the interpretation and application of the primary sources by early Muslims, to be mistaken with Islam itself.

reform project being in Muslim hands and the need for those involved "to ask afresh who we are, what we want, and if we are willing to begin to create a new order of things³".

Islam in South Africa

The first Muslims arrived at the Cape from the Dutch colonies in the East Indies (now Indonesia) and the coastal regions of southern India between 1652 and 1658⁴. Although they were granted freedom to practise their religion in 1804⁵, the social and political inequalities prevailing in South Africa until recently prevented this from having full legal effect. However, it is anticipated that the rapid changes taking place in South Africa since the democratic elections of 1994 will rectify this situation.

Central Statistical Services data⁶ reveal that Muslims constitute an estimated 1,1 per cent of the South African population (excluding inhabitants of the former "independent" homelands of Transkei, Bophuthatswana, Venda and Ciskei)⁷, while Christians make up 66,5 per cent. South African Muslims in general belong to the Sunni⁸ school of Islamic law⁹.

While the South African Law Commission has been engaged on a comparative study of South African and Islamic law¹⁰, its latest progress report records a temporary halt to the project¹¹. The reasons are twofold. In the first place, the previous minority government gave assurances, albeit at commission level only, that the *modus operandi* of Muslim personal law would be determined by Muslims themselves. Hence, the South African Law Commission had to leave room for this kind of

3. J.H. Garvey & T.A. Aleinikoff, *Modern Constitutional Theory: A Reader* (Minnesota, West Publishing Company, 1991) 409.

4. A. Davids, *The Mosques of Bo-Kaap: A social history of Islam at the Cape* (Cape Town, South African Institute of Arabic and Islamic Research, 1970) xv.

5. Davids, *Mosques*, note 4 at xxi.

6. *Demographic Statistics* (1993) 9.

7. This figure is approximated at 500 000; see F. Cachalia, 'Legal Pluralism and Constitutional Change in South Africa: The Special Case of Muslim Family Laws', paper presented at seminar on "Approaches to the Study of Islam and Muslim Societies", University of Cape Town, 17-19 July 1991.

8. The four major Islamic schools of law were established in the eighth century and named after their founders, namely Hanafi, Maliki, Shafi'i and Hanbali; see J.L. Esposito, *Women in Muslim Family Law* (New York, Syracuse University Press, 1982) 2. These together comprise the Sunni (traditionalist) school.

9. They are more or less equally divided between the Hanafi and Shafi'i schools. See J.A. Naudé, "Islam in South Africa: A General Survey", *Journal Institute of Muslim Minority Affairs* (1985) 25.

10. Project 59, on Islamic marriages and related matters.

11. South African Law Commission, *Twentieth Annual Report 1992* (1993) 42.

discretion¹². Secondly, the present government of national unity has not instructed the commission or any other body to investigate the possible recognition of Muslim personal law¹³.

In the interim, however, the ulama or Muslim religious bodies composed of experts on Islamic law have responded to a questionnaire issued by the commission, supporting the incorporation of Muslim personal law into the South African legal system¹⁴. These ulama, established in some of the erstwhile provinces of South Africa, consist of the jamiats of Natal and Transvaal, the Muslim Judicial Council of the Western Cape and the Madjlisul Ulama of Port Elizabeth in the Eastern Cape¹⁵.

Although the decisions of these bodies are theoretically binding upon the consciences of Muslims, their competence to apply Islamic law is often questionable, since their members frequently lack accredited legal training. In any event, the long-standing non-recognition of Muslim personal law by the South African state has meant that the ulama have lacked the legal power to enforce their decisions.

This situation is almost certain to change, given the fact that the interim Constitution of the Republic of South Africa¹⁶, which is scheduled for finalisation by April 1999¹⁷, not only guarantees freedom of religion and belief (section 14(1)) but also provides for the enactment of legislation recognising religious personal law (section 14(3)(a)) and Muslim marriages (section 14(3)(b)). It may be that the establishment of the new political order underwritten by the Constitution is what persuaded the ulama and other local Islamic bodies to finally reach consensus on the need for state recognition of Muslim personal law.

In any event, the result was that a Muslim Personal Law Board was inaugurated in Durban on 14 August 1994 and charged with working for the incorporation of Muslim personal law into the South African judicial system¹⁸. Although the board is preparing draft bills aimed at providing

12. Moosa, *Comparative Study*, note 1 at 169.

13. A.K. Toffar, "Muslim Personal Law in a Non-Muslim State", paper presented at workshop on "Islamic Personal Law in South Africa: Its Future Position", Islamic Unity Convention, Cape Town, 16 October 1994.

14. Moosa, *Comparative Study*, note 1 at 172-88.

15. Naudé, "Islam in South Africa", note 9.

16. Act 200 of 1993, hereinafter referred to as the Constitution. See J.C. Bekker & G. Carpenter (eds.), *Butterworths Selection of Statutes and Constitutional Law* (Durban, Butterworths, 1994); D. Basson, *South Africa's Interim Constitution*, note 16 at xxiii.

17. Basson, *Interim Constitution*, note 16 at xxiii.

18. "Board gets established and prepares to draw up MPL bills", *al-Qalam* (1994) 4.

interim relief in the areas of marriage and divorce¹⁹, its main task is conceived as hammering out how Muslim personal law might be applied, by "ordinary courts or special family courts presided over by Muslim judges", and interpreted²⁰.

However, some controversy surrounds the establishment and composition of the board. Although participation by the range of Muslim organisations is emphasised in the working of the board, critics point to a need for greater transparency and inclusivity, emphasising the principle that women's experiences should inform the drafting of any proposals that affect them²¹. In addition, there are differences of opinion over whether the recognition of Muslim personal law would mean that Muslims were exempted from the provisions of Chapter 3 of the Constitution, notably the equality clause (section 8), where they conflict with Muslim personal law. In other words, the question is whether the Constitution will be supreme (section 4) or whether Muslim personal law will take precedence in respect of Muslims. The latter scenario has serious implications for Muslim women since they are accorded a status inferior to men by Muslim personal law, although, significantly, not by Islam itself. In any event, this apparent conflict between the right to freedom of religion and the right to equality is one of the issues that writers of the final constitution will have to address.

Women under Islamic law

Explanation of the legal and social status of Muslim women requires some reference to the Islamic law which evolved in the seventh century of the Common Era (CE) in the predominantly urban environment of the Arabian peninsula and lower Mesopotamia²². The two primary sources of Islamic law, the Koran and Sunna, developed during the 23 years of Muhammad's prophethood. The Koran, regarded by Muslims as the literal word of God revealed piecemeal to Muhammad over this period, emerged as a book after his death in 632 CE. It is not considered a book of law, although it contains approximately 80 verses dealing with legal matters, mostly to do with the family and inheritance. The Sunna are the received customs associated with Muhammad, also compiled after his

19. These draft bills are based on traditional interpretations of Islamic law and leave much to be desired as far as women's rights are concerned. Viewed from a gender perspective, it is essential that the board should have at least 50% female representation. It is highly unlikely that traditionally oriented ulama will be able to formulate and codify Muslim personal law so that both sexes will be treated equitably.

20. S. Dangor, "Muslim Personal Law: Interpretation and Application", *Muslim Views* (1994) 12.

21. G. Paleker, "MPL Board Under Attack", *Muslim Views* (1994) 4.

22. B.F. Stowasser, "Religious Ideology, Women, and the Family: The Islamic Paradigm", in B.F. Stowasser (ed.), *Islamic Impulse* (London, Croon Holm, 1987) 290.

death into a book called Hadith. To some extent this can be considered a biography of Muhammad²³.

Of some 100 verses dealing with women's issues in the Koran, only a few are devoted to the Islamic status of women. Thus it is not surprising that varying interpretations of this status have developed²⁴. In addition, the fourth chapter or sura of the Koran is devoted to women, a significant feature when viewed in the context of seventh century patriarchy and misogyny. Indeed, Islam afforded numerous improvements to the lives and rights of women in the Arabian community. However, a flexible and gradual approach was essential if Islam was to survive in the hostile milieu into which it was born, and if the religious bond of comradeship and equality was to replace pre-Islamic paternal and tribal ties.

Modernist Muslim scholars make an important distinction between verses in the Koran that are normative or of enduring relevance, and those whose relevance is confined to the context of Muhammad's fledgling community²⁵. Their argument is that the moral or ethical norms relating to the status of women contained in the Koran are at least as important as its specific legal rules²⁶. In other words, their contention is that it is not the spirit of Islam, as revealed in its primary sources, that discriminates against women. Rather it is the practice of an Islam distorted by cultural influences during the centuries of its development and its own early readmission of patriarchy after the death of Muhammad²⁷.

The crucial point is that the Koran is separated from the classical formulation of Islamic law²⁸ by processes of legal development lasting more than two centuries. During this period the Koranic norms underwent considerable dilution, often to the detriment of women²⁹. In other words, classical Islamic law is not canonical. Rather, it is common law, codified several centuries after Islam came to existence³⁰. Not only

23. M.F. Rateb, *Civil rights in the light of Islamic legislation* (Cairo, Aalam Al-Kotob, 1988) 3.

24. Stowasser, "Religious Ideology", note 22 at 262.

25. F. Rahman, "The Status of Women in Islam: A Modernist Interpretation", in H. Papanek & G. Minault (eds.), *Separate World: Studies of Purdah in South Asia* (New Delhi, South Asia Books, 1982) 301.

26. N. Coulson & D. Hinchcliffe, "Women and Law Reform in Contemporary Islam", in L. Beck & N. Keddie (eds.), *Women in the Muslim World* (Cambridge, Harvard University Press, 1978) 37.

27. W.M. Watt, *Muhammad at Medina* (Karachi, Oxford University Press, 1981) 272; A. Hibri, "A Study of Islamic Herstory: Or how did we ever get into this mess?", *Women's Studies International Forum* (1982) 207-12.

28. Islamic law or shariah is the reinterpretation and application of the primary sources by early Muslims. It is common for shariah to be mistaken for Islam itself.

29. Coulson & Hinchcliffe, "Women and Law Reform", note 26 at 38.

30. F. Shaheed, "The Cultural Articulation of Patriarchy: Legal Systems, Islam and Women", *South Asia Bulletin* (1986) 39.

has the Muslim approach to the issue of women's rights been historically diverse³¹ but, more significantly, the changes introduced by Islam in relation to women's rights were revolutionary in the context of seventh century Arabia. It is irrelevant to an exploration of the original spirit of Islam that these changes do not appear dramatic against the backdrop of modernity, or that the status of Muslim women today compares unfavourably with that of their Western counterparts.

However, it is precisely modern and Western influences that have led to the enactment of legal reform in a range of Muslim countries. Such reform has been restrictive in some cases, for example in Egypt and Pakistan, less restrictive in Iran and Iraq, and non-restrictive in countries such as Turkey and Tunisia³². In some Islamic countries, Saudi Arabia, for example, there has been no attempt to reform Muslim personal law³³.

Various indicators, such as the regulation or abolition of polygyny and the secularisation of inheritance law, have been used to assess whether the status of women in Muslim countries has improved as a result of such reforms. However, close examination reveals that personal law reform in most Muslim countries, especially as it pertains to women's rights, has been minimal and slow, bringing only superficial relief to women, contrary to the clear Koranic injunctions in this regard. Even where reform has been non-restrictive, as in Turkey, it has not delivered substantial improvement to women's lives³⁴. This conservatism in the realm of personal law stands in sharp contrast to the liberal adoption of secular commercial and criminal codes.

Thus it is the case that in many respects the position of Muslim women is less favourable today than it was in the early days of Islam. However, this is not to support the contention that discrimination against Muslim women is religiously based. To the contrary. It is, in fact, deviation from

31. Faruqi describes four periods: the period of pre-Islamic Arabia or "Age of Ignorance"; the classical period or early centuries of Islam; the period of decline (around 1250-1900) during which a negative picture of the status of women was etched; and the period of reform, which extends from the late nineteenth century to the present; L.L. Faruqi, "Women's Rights and the Muslim Women", *Islam and the Modern Age* 76 (1972).

32. Beck & Keddie (eds.) *Muslim World*, note 26 at 15; Coulson & Hinchcliffe, note 26 at 48; B. Sivaramayya, "Equality of Sexes as a Human and Constitutional Right and the Muslim Law", in T. Mahmood (ed.), *Islamic Law in Modern India* (New Delhi, Indian Law Institute, 1972) 75; M. Charrad, "State and Gender in the Maghrib", *Middle East Report* (1990) 21; N.J. Austrin, "Modernization, Legal Reforms and the Place of Women in Muslim Developing Countries", unpublished doctoral thesis, Southern Illinois University (1987) 46.

33. E.H. White, "Legal Reform as an Indicator of Women's Status in Muslim Nations", in Beck & Keddie (eds.), *Muslim World*, note 26 at 54.

34. A. Afetinan, *The Emancipation of the Turkish Woman* (Paris, Unesco, 1962) 51-3; F. Mansur Cosar, "Women in Turkish Society", in Beck & Keddie (eds.) *Muslim World*, note 26 at 124-40; D. Kandiyoti, "Women, Islam and the State", *Middle East Report* 9 (1991) 11.

the original spirit of Islam, as a result of patriarchal interpretations, cultural or customary influences, illiteracy and ignorance, that is responsible for the oppressed position of Muslim women³⁵.

That this oppression may appear most dramatic in the domestic sphere is the result of the tendency in Islamic states towards secularisation in the public sphere, while at the same time leaving the private realm to regulation by Islamic law. Under the influence of the modern trend towards recognition and protection of human rights, constitutions guaranteeing equal rights to all citizens exist in many countries with Muslim communities and even in some Islamic states. Obviously this sets up contradictions and tensions since such constitutional provisions conflict with the Muslim personal law codes that privilege men over women³⁶. The following comment in respect of the awkward dichotomy experienced by Egyptian women, in their roles as citizens of modern states and members of a religious community, could apply to all Muslim women:

In a division that was never precise, the state increasingly came to influence their public roles, leaving to religion the regulation of their private or family roles. The structural contradictions and tensions this created have to this day never been fully resolved³⁷.

Reaction to the challenge posed by modern concern with human rights, particularly as it relates to the status of women, has divided Muslims into three main camps: modernists, conservatives and fundamentalists³⁸. The modernist minority is reformist, embracing Western ideals of emancipation. Their view is that Islam itself, properly understood, establishes complete equality between the sexes in all spheres, public and private. Conservatives and fundamentalists, between whom there is not much ideological difference, take the view that Islam restricts equality between the sexes to the sphere of religious belief and observances such as prayers, fasting, charity and pilgrimage. Such observances are essentially what determines whether a person is Muslim, and it is this part of Islam that remains practically static, creating a kind of umbrella identity which unifies Muslim people of various cultures. While what one may call the "apologetic-progressive" stance of the conservatives does

35. N. Honarvar, "Behind the veil: Women's rights in Islamic societies" *The Journal of Law and Religion* (1988) 365; F. Shaheed, "Cultural Articulation", note 30 at 38; D.C. Gordan, *Women of Algeria: An Essay on Change* (Cambridge, Harvard University Press, 1968) 31; A.A. Engineer, *The Rights of Women in Islam* (London, C. Hurst and Company, 1992) v-vi.

36. Kandiyoti, "Women, Islam", note 34 at 5.

37. M. Badran, *Competing Agenda: Feminists, Islam and the State in Nineteenth- and Twentieth-Century Egypt* (London, Macmillan, 1991) 201.

38. Gordan, *Women of Algeria*, note 35 at 29; Stowasser, "Religious Ideology", note 22 at 260.

allow some openness to adaptation and reform, the scriptural activism of the fundamentalists rules out any possibility of change³⁹.

Strange as it may seem, Muslim feminists are also aligned with one or other of these three approaches. Hence, their perception of inequality and the need for reform is dependent on the particular ideology they follow. While a minority have either abandoned Islamic law in favour of a secular civil code or wish to do so, most argue that their feminism resides within Islam, rather than deriving from any secular base⁴⁰. While the goal of the radical few is the achievement of equality in both the public and private spheres, even if this would mean living outside of Islam, most Muslim feminists are fighting for liberation within the religious context. Thus, unlike their Western counterparts, whose struggles are focused in the public sphere, Muslim feminists are concentrating their efforts on the reform of Muslim personal law, in other words, in the domestic or traditionally private realm⁴¹.

Constitutional conundrums

A study of the historical background of Islamic constitutions reveals uncertainty about what constitutes Islamic constitutional law and a variety of approaches to the issue⁴². Some Muslim countries⁴³ have therefore opted for a Western model. However, while all modern Islamic states claim that the right to equality is entrenched in their constitutions, they rarely uphold this right in reality. The same dichotomy between theory and practice pertains to "reforms" of Muslim personal law enacted in these states.

Women are perceived in Muslim countries to have equality with men in public rights and duties, but not in the private sphere of the family,

39. M.H. Kidwai, *Woman under different social and religious laws (Buddhism, Judaism, Christianity, Islam)* (New Delhi, Light & Life Publishers, 1978) 73; Stowasser, "Religious Ideology", note 22 at 263; J.I. Smith, "Introduction", in J.I. Smith (ed.), *Women in Contemporary Muslim Societies* (Lewisburg, Bucknell University Press, 1980) 20.

40. Badran, *Competing Agenda*, note 37 at 210; F. Shaheed & K. Mumtaz, "The Rise of the Religious Right and its Impact on Women", *South Asia Bulletin* (1990) 9-17.

41. F. Hendricks, "Traditional men stand between Muslim women and their rights", *Muslim Today* (1994) 4-6.

42. See, for example, R.H. Nolte, "The Rule of Law in the Arab Middle East", *The Muslim World* (1958) 278; K.M. Ishaque, "State and Constitution in Islam", *Islamic and Comparative Law Quarterly* (1984) 5-6; and M. Hamidullah, "The First Written Constitution of the World", *The Islamic Review* (1941) 334.

43. Reference to a "Muslim country" implies that the majority of its population are followers of Islam. Thirty-nine of the approximately 41 Muslim countries have adopted written constitutions. Asia has 22 Muslim countries, Africa 16 and Europe three; see K.B. Jain, "An Initial Project Report: Constitutional Law in Muslim Countries", *Islamic and Comparative Law Quarterly* (1985) 305.

which is mainly or exclusively regulated by Muslim personal law. However, close examination of the constitutions and other pertinent legislation in Muslim countries shows that even such professed equality in the public sphere is not unqualified. This pattern is evident in Egypt, Algeria, Nigeria, India, Pakistan and Malaysia, although countries like Indonesia do deviate from it.

In Egypt, the Civil code of 1947 was the culmination of efforts towards modernisation, including changes, albeit restrictive, to Muslim personal law. Conflict between Muslim personal law and modern commitment to the notion of equality was dealt with in the 1971 Egyptian Constitution, as amended in 1980, by providing that the state would ensure women's equality with men only in so far as it did not conflict with Islamic law⁴⁴.

In Algeria, Muslim personal law is governed by the conservative Family Code of 1984. Comprised of three volumes, all of which reflect the inequality of the sexes in the private sphere, the Family Code stands in direct "contrast with the legal and constitutional rights of equality pledged in the public realm⁴⁵". Thus, as in Egypt, commitment to equality of the sexes articulated in the Algerian Constitution of 1989⁴⁶ is all but meaningless.

Mayer⁴⁷ sums up the current situation in Algeria as follows:

The stage has been set in Algeria for reconsidering the relationship between constitutional law and sharia-based law. The questions that occur in this context are relevant... for other Muslim countries where similar inconsistencies between constitutional guarantees of equality and shariah-based personal status rules persist. Will... Algerian women... be better able to challenge the discriminatory features of the 1984 law on constitutional grounds? Or will it turn out that, despite the assurance that the Algerian Constitution is the supreme law, the 1984 shariah-based personal status rules will in practice be treated as inviolable?

A similar situation exists in the predominantly Muslim north of Nigeria. Although the 1979 Nigerian Constitution prohibits discrimination on grounds of sex or religion, among others, the "more common pattern... appears to be acceptance of Islamic law in family matters, with minimal interference within well-defined boundaries⁴⁸".

44. Article 11 and 40; see E. Hill, "Comparative and Historical Study of Modern Middle Eastern Law", *The American Journal of Comparative Law* (1978) 296.

45. B. Cheriet, "Islamism and Feminism: Algeria's 'Rites of Passage' to Democracy", in J.P. Entelis & P.C. Naylor (eds.), *State and Society in Algeria* (Boulder, Westview Press, 1992) 194.

46. Articles 28, 30, 31 and 32.

47. A.E. Mayer, "Islam and the State", *Cardozo Law Review* (1991) 1034-35.

48. S.S. Richardson, "Social Legal Reform", in J. Kritzeck & W.H. Lewis (eds.), *Islam in Africa* (New York, Van Nostrand-Reinhold Company, 1969) 112.

In India, where Muslims constitute a minority, Muslim personal law is governed by the Muslim Personal Law (Shariat) Application Act of 1937 and enjoys statutory recognition as a separate code. Although in force at the time of the commencement of the Indian Constitution and clearly inconsistent with it, Muslim personal law was construed by the Indian courts to be exempt from constitutional scrutiny on the basis that it was not among "laws in force".

Thus, for Muslim women in India it is of little help that article 13(1) of the Constitution stipulates that all laws inconsistent with the fundamental rights it guarantees in Part III will be void to the extent of such inconsistency. Nor does the right to equality before the law and equal protection of the law afforded by article 14, or the article 15 prohibition of discrimination on grounds of sex and religion, among others, mean a great deal in practice⁴⁹. Muslim personal law enjoys a large degree of immunity to state interference and regulation in India, creating a "deplorable situation" for Muslim women⁵⁰.

In Pakistan, apart from the Dissolution of Muslim Marriages Act of 1939 and the Muslim Family Laws Ordinance of 1961, there has been no codification of Muslim personal law⁵¹. However, unlike their counterparts in secular India, Muslims in theocratic Pakistan have made slow but steady progress in reforming Muslim personal law⁵². Nevertheless, the same pattern of constitutional subordination to Muslim personal law is evident. The 1973 Constitution of Pakistan itself exempts the Muslim Family Laws Ordinance of 1961 from challenge in any court and from article 8 of its Fundamental Rights, which provides that laws inconsistent with those fundamental rights will be void. Thus, constitutional guarantees of the equality of citizens and freedom from discrimination on the basis of sex, are meaningless for women in Pakistan.

In Malaysia, a federation of 13 states with a 50 per cent Muslim population, the federal Constitution is based on a Western model and concept of democracy. However, the commitment to human rights that is part of this model is subverted by constitutional recognition of Muslim personal law and provisions enabling its regulation by state governments. As a result, there is little uniformity, except in so far as most states have opted to codify rather than reform Muslim personal law. What is

49. S.A.H. Rizvi, "Book Review: Muslim Law and the Constitution by A.M. Bhattacharjee", *Islamic and Comparative Law Quarterly* (1987) 84.

50. H.A. Gani, *Reform of Muslim Personal Law: The Shah Bano Controversy and the Muslim Women (Protection of Rights on Divorce) Act 1986* (New Delhi, Deep and Deep Publications, 1988) 161.

51. R. Patel, *Islamisation of Laws in Pakistan?* (Karachi, Faiza Publishers, 1986) 92.

52. Gani, *Reform*, note 50 at 27 and 158.

uniform, however, is the fact of conflict and contradiction between constitution and Muslim personal law⁵³.

Indonesia, with a 90 per cent Muslim population, is an exception to this pattern, at least in respect of national marriage laws which were unified in 1975 for all sections of the population, regardless of religion. Although there was resistance from Muslims, these marriage laws changes resulted in modifications to Islamic law. To the extent that Islamic law is part of the new marriage laws, it is part of the positive law of Indonesia and the state is therefore established as an authority in the administration of such law and as an arbiter of its legitimacy⁵⁴.

International instruments

The pattern of conflict between modern constitutions and Muslim personal law outlined above, and its resolution in favour of Muslim personal law, applies also to the position of Muslim states in relation to international human rights instruments such as the United Nations Charter of 1945 and the Universal Declaration of Human Rights (1948). While both documents provide for both religious and women's rights, neither foresees a conflict between these two kinds of rights. In respect of more recent and explicit instruments, such as the 1980 United Nations Convention on the Elimination of All Forms of Discrimination Against Women (Cedaw), the strategy of Muslim states and those with significant Muslim communities has been to become signatories but with reservations in respect of articles that conflict with Muslim personal law.

The Egyptian stance on article 16 of Cedaw provides an example. The article requires complete equality between men and women in all matters relating to marriage and family relations during a marriage and upon its dissolution. While Egypt has become a signatory to Cedaw, it is with the explicit reservation that its obligations in terms of article 16 should not prejudice Islamic shariah provisions⁵⁵. Similarly, India has placed a reservation on its signature of Cedaw in respect of both article 16 and article 5, which requires states party to the convention to work towards eliminating prejudicial customary practices that maintain inequality between the sexes. The reservation subordinates Indian compliance with the convention to its "policy of non-interference in the

53. Z.A. Wahid, "The Muslims in Malaysia: A Political and Constitutional Analysis", *Ethnic Studies Report* (1990) 9-10; J. Connors, "Malaysia: Responding to Religious and Cultural Pluralism", *Journal of Family Law* (1988-1989) 203-4.

54. A.H. Johns, "Indonesia: Islam and Cultural Pluralism", in J.L. Esposito (ed.), *Islam in Asia: Religion, Politics and Society* (New York, Oxford University Press, 1987) 217-18; M. Cammack, "Islamic Law in Indonesia's New Order", *International and Comparative Law Quarterly* (1989) 56.

55. A.A. An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (New York, Syracuse University Press, 1990) 178-9.

personal affairs of any community without its initiative and consent", rationalised on the basis of "India's desire to safeguard the rights of its religious and ethnic minorities⁵⁶". Pakistan has not yet become a signatory of Cedaw but the government has indicated that it intends to sign the document with similar reservations⁵⁷.

In summary then, it appears that the Cedaw goal of equality between the sexes is unlikely to be realised in Muslim countries, even in those that have signed the convention, since it is a goal in direct conflict with Islam as it is practised today⁵⁸. This is true also in respect of those Muslim states which claim that equality between the sexes has been achieved, as is evident from a cursory inspection of both personal and public law in these countries⁵⁹.

Muslim women in South Africa

The interim Constitution of South Africa includes a Bill of Rights which, among other things, outlaws discrimination on grounds of sex (section 8). The question is how such safeguards of fundamental rights might coexist with recognition of Muslim personal law. Put differently, one might ask what the chances are for Muslim women in South Africa to reap the benefits of the Bill of Rights, given the failure of similar instruments to afford protection to Muslim women elsewhere. Finally, the question could be formulated in terms of conflicting rights: will the right to equality take precedence over the right to religious freedom?

There is, of course, another fact for women to contend with: there is no guarantee that legal reform, whether constitutional or statutory, will deliver real equality between the sexes. For Muslim women, the achievement of real equality lies on the other side of reformation of Muslim personal law in line with the true Koranic spirit. The worst that could happen for Muslim women in South Africa is that Muslim personal law remains unrecognised and therefore unproblematised.

Section 35(1) of the Constitution provides that, in interpreting the provisions of the Bill of Rights, a court of law "shall... have regard to public international law" of relevance to the protection of human rights. Clearly, Cedaw would qualify as relevant in relation to the rights of

56. A. Rahman, "Religious Rights Versus Women's Rights in India: A Test Case for International Human Rights Law", *Columbia Journal of Transnational Law* 28, 1 (1990) 473-98.

57. *Women & Law, National Report, Pakistan*, (Lahore, Shirkat Gah, 1994) vii.

58. M.K. Bruce, "Work of the United Nations Relating to the Status of Women", *Revue des droits de l'homme* (1971) 365-6.

59. N. El Saadawi, "The Political Challenges Facing Arab Women at the End of the 20th Century", in N. Toubia (ed.), *Women of the Arab World: The Coming Challenge. Papers of the Arab Women's Solidarity Association Conference* (London, Zed Books, 1988) 11.

women and it could be argued that this is so irrespective of ratification of the convention by the South African government⁶⁰. However, the Women's Charter adopted by some 100 women's organisations participating in the National Women's Coalition and handed over to the Constitutional Assembly on National Women's Day in 1994, seeks more explicit recognition for Cedaw in the final constitution.

Submitted in the hope that it will be attached as a supplement or interpretive guideline to the final bill of rights, the charter provides in article 9 that "Custom, culture and religion shall be subject to the equality clause in the Bill of Rights". Representing a distillation of the Cedaw requirement of state signatories "to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation... and to ensure, through law and other appropriate means, the practical realisation of this principle⁶¹", such a provision, if adopted, would settle the questions posed in the first paragraph of this section.

However, even if the Women's Charter does acquire constitutional status, a word of caution would be in order, since "the record of equality litigation in countries as diverse as... India and the USA, reminds us that a bill of rights is not always translated into justice⁶²". And, in the absence of an explicit settlement of the conflict between the Bill of Rights and Muslim personal law, it may be that, despite the equality clause, the Commission for Gender Equality provided for in the interim Constitution, and Constitutional Principle V⁶³, Muslim women will continue to suffer subordination. Indeed, this has been the case not only in Muslim countries but also in secular India, notwithstanding election promises made to women.

There are, in fact, pointers to the possibility of such an outcome in the interim Constitution itself. Section 4(1), while making the Constitution "the supreme law of the Republic", also allows for the possibility that laws or acts inconsistent with the Constitution may be permitted if so "provided expressly". It could also be argued that section 33(1) opens the way for subordination of the equality clause to Muslim personal law by

60. Cedaw was signed by the previous South African government in January 1993. The convention has not been ratified by the new democratic government but there have been calls for such ratification to be given soon and without reservation.

61. Part 1, article 2(a), GA Res. 34/180, 1979.

62. C. Albertyn, "The Limits of Equality: Women's Issues in a Bill of Rights", *Rights* (1992) 23.

63. This principle reads:

The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

providing for limitation of the rights entrenched in Chapter 3 by "law of general application", which would include customary law⁶⁴ and, by implication, Muslim personal law once it is recognised⁶⁵. However, the provisos attached to such limitation would appear to make this argument untenable⁶⁶.

More difficult to dismiss is the argument that Muslim women will be among the victims of the fact that the Bill of Rights appears to operate only vertically, that is, enforceable only against the state⁶⁷. If this is true of the final constitution, then it is difficult to see how challenges to an unreformed Muslim personal law might enjoy constitutional support.

In the light of the fact that neither international human rights instruments nor egalitarian provisions incorporated into the constitutions of Muslim states have been effective in providing relief for Muslim women, it is clear that legal reform is not necessarily the total answer. It may be that gradual social reform within the Muslim community is the only hope for Muslim women. In this regard it is necessary to emphasise again that the supposed androcentric nature of Islam is nothing more than a fiction sustained by ignorance. Therefore, although some Muslim personal laws are in clear conflict with the principle of gender equality, it would be wrong to conclude that Islam itself is antipathetical to equality between the sexes. Indeed, "as women become effective participants in Muslim society, Islam will be better able to cope with the realities of the twenty-first century⁶⁸".

Conclusion

The best option for the recognition and application of Muslim personal law in South Africa lies in the codification of Islamic law and enactment of a comprehensive bill or "uniform Muslim code" applicable to Muslims. Such a code should address variations in the four major schools of Muslim legal thought as well as the desirability of reform to existing Muslim

64. T.W. Bennett, "The Equality Clause and Customary Law", *South African Journal on Human Rights* (1994) 123-4.

65. It appears that customary or indigenous law is erroneously equated with Muslim personal law which, although influenced by custom, is essentially religious in nature; see "Muslim marriages will be 'legal' in new SA", *al-Qalam* (1993) 9.

66. Limitation of the rights enshrined in Chapter 3 is permissible, provided that such limitation "shall not negate the essential content of the right in question", and only to the extent that it is "reasonable and justifiable in an open and democratic society based on freedom and equality".

67. See Bennett, "Equality Clause", note 64 at 125-6 and L.M. du Plessis, "The genesis of the chapter on fundamental rights in South Africa's transitional constitution" *South African Public Law* (1994) 13 and 19, for discussion on the horizontal application of human rights.

68. Rahman, "Religious Rights", note 56 at 498.

personal law. A secular civil code, intended to apply uniformly to all citizens, would be rejected by the Muslim community. Moreover such codes, where they do exist, have failed to offer significant redress to Muslim women.

It is too ambitious to expect the process of reform of Muslim personal law to be set in motion by a call for the reinterpretation of Islam and the Koran, as suggested by some academics at a conference on "Islam and Civil Society in South Africa" held at the University of South Africa in August 1994⁶⁹. Instead, reform must be addressed in line with the true Koranic spirit and in the context of an evolving South Africa.

The relationship between constitutional law and Muslim personal law must be very carefully considered. The constitution cannot protect Muslim personal law if the necessary justification and legitimation for it is lacking. Arguments to the contrary notwithstanding, it is all but certain that freedom of religion will be guaranteed only in so far as it does not violate other fundamental rights.

Although there are opposing voices, the general hope in the Muslim community of South Africa seems to be for Muslim personal law to be included in the ambit of the final constitution and in accord with the provisions of its bill of rights. The challenges facing the Muslim Personal Law Board of South Africa in this regard are enormous. Unless it succeeds in its task, the result will be continuation of the status quo, namely the functioning of Muslim personal law independently of the South African law⁷⁰.

At the very least, the board should enable Muslim women to exercise a choice. In reality, however, the vast majority of Muslim women are subject to men and male-dominated religious bodies who continue to regulate their lives in accord with the traditional interpretations of Islamic law. Subordinating Muslim personal law to the bill of rights will ensure that, whatever the final shape of a code of Muslim personal law, it will provide for equality between the sexes and, moreover, in Muslim terms.

It is in this regard that the following poignant judicial rumination seems appropriate as a conclusion:

I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these

69. "Conference calls for 'rethinking' Islam", *al-Qalam* (1994) 5.

70. This happened in Britain where special emphasis was placed on the human rights dimension of the issue; see S. Poulter, "The Claim to a Separate Islamic System of Personal Law for British Muslims", in C. Mallat & J. Connors (eds.), *Islamic Family Law* (London, Graham & Trotman, 1990) 147, 159.

The Interim Constitution and Muslim Personal Law

are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it⁷¹.

71. J.D. van der Vyver, "Constitutional Options for Post-Apartheid South Africa", Emory Law Journal (1991) 772.

Reproduced with permission from:

Sandra Liebenberg (Editor). *The Constitution of South Africa from a Gender Perspective* (Capetown: The Community Law Centre at the University of the Western Cape in association with David Philip, Cape Town) 1995.

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Responding to Religious Conservatism

Plenary Speech to the Nongovernmental Forum, Fourth World Conference on Women, Beijing, 1995.

Frances Kissling

I am here to speak of conservatism, in particular conservatism within the Catholic tradition. It is sometimes difficult for us, as women and as justice-loving people, to challenge the conservatism that is among us, for that conservatism often expresses itself in ways that are intolerant, violent, silencing, and provocative. But we need to stand firm, and we need to move forward. The most important strategy to combat conservatism has begun and is exemplified in this very meeting of nongovernmental organizations (NGO's). That is, to be open, to talk about the problems. The fact that the NGO Organizing Committee and the NGO Forum have recognized this need is really the first step that we need to take as women. They are to be applauded for this decision.

I would like to begin by raising several questions, because I think that we need to ask critical questions. We need to know that we don't have all the answers, and we need to dialogue with each other -in this room and also out in the corridors and in the streets.

I come from the Roman Catholic tradition, and in some ways, talking about the rise of conservatism seems to me an anomaly, for there has always been conservatism within Roman Catholicism. There also has always been within Roman Catholicism a liberation perspective at the root of our church. Within all religions there are tendencies that are conservative, indeed, reactionary, and tendencies that are liberating.

For me, the interesting issue is why governments tend to support the conservative side of religious thinking and to degrade and ignore the

liberation side of religious thinking. Why do conservatives in politics and religion seem to go together? The second interesting question is, why is it that conservatism always includes the attempt to control women's lives? Whether it is religious, political, or cultural, there is always the attempt to rein in women.

The word "conservative" can be good or bad. There are many things I want to conserve as a Roman Catholic feminist. I want to conserve respect for the moral capacity of women to make good decisions about every aspect of their lives. I want to conserve the way Jesus Christ operated in the world, including his respect, inclusion, and friendship with women, many different types of women. But when the Vatican in its present form talks about conservatism, what it wants to conserve is patriarchy, and this we cannot permit.

Not all of history is good, and we need not conserve that which represents injustice, intolerance, discrimination, and degradation of women. To that end, I want to share some of the strategies and organizing principles that guide the work of Catholics for a Free Choice. I offer them as our way and our path. I am sure that we all have much to add to this, for these are not strategies which will work for everyone.

In fact, that is our first principle: we are diverse; we have different backgrounds; we have different personalities; we have different gifts; and each of us needs to bring our gifts and our personalities and our inclinations into our political work, and we need to respect those who have gifts different from ours. That is the first principle that we try to work by.

The second principle follows from a fact rooted in the Roman Catholic tradition: in addition to patriarchy, what the church wishes to conserve is secrecy. Injustice and intolerance operate best in the dark. It is our job as feminists to take that injustice out of darkness and expose it to the light of day. For centuries, women and men in the church who have spoken for justice and gone against the church thinking of their times have been punished and have suffered in silence. Indeed, our religious leaders are trained to submit. Submission -supposedly to the will of God, but most often to the will of men- is ingrained in the early education of religious leaders within Catholicism.

We have learned that this works against freedom. For example, two years ago in Brazil, a Roman Catholic nun who is an eminent theologian spoke out in a magazine and said, "Abortion is not a sin". She also said that because she has committed her life to the poor, because she believes in what we call the preferential option for the poor, she is in favor of poor women's and all women's ability to make decisions about their reproductive health. She did this in a simple, straightforward way. So now, as punishment, this eminent feminist theologian is on her way to

Belgium, to study theology, having been told by the Vatican that she doesn't understand theology. Can she only learn theology in Europe? Is there no theology in Brazil? Is she not wiser than these approved-of Belgian theologians? She has been told that for two years she cannot write, she cannot speak in public, she cannot express her views. But we are here to serve as her voice and to let you know that she is being punished.

For the same reason, we need in our struggles to use the media. This is another way of bringing injustice to light. And the women's movement has learned this very well, I think. The media are interested in our lives, maybe for good reasons, maybe for bad reasons, and the media reach billions and billions of people. We must be public in our disagreements, in our dissent, and in putting forward our positions. I have learned, as I have watched the Vatican operate during the last three years in various conferences -from the Rio de Janeiro Conference on Environment and Development to the International Conference on Population and Development, in Cairo, to this very conference we are today- that the person who gets to shape the debate determines the outcome.

It is our obligation not simply to respond to the ridiculous charges that are made about women by those who disagree with us. It is our obligation also to put forward the correct questions, to guide the media, government and indeed each other, by going to the root of our differences and asking the right questions. For instance, why does conservatism, or patriarchy, or religious fundamentalism seek to control women's lives, to have power over women? We need to ask that question.

The other thing we need to do is to exercise power, ourselves, as women who work for justice. Those of us who have tried all our lives to move through, and within, society -and to have a voice and to have power- know that power is not a dirty word. We are entitled, we are responsible and obligated to exercise power.

To do that, we need to do solid research, including historical research. At Catholics for a Free Choice, this helps us to challenge the statements of the Vatican. For example:

- How many people know that the Roman Catholic Church has no position on when the fetus becomes a person? The church does not know when, any more than anyone in this room knows. But misinformation on this point, on the part of the Vatican, leads to absolutism in terms of women's lives.
- How many know that the church is willing to give latitude to politicians, to generals, to soldiers as they decide whether and when to take life, and no latitude to women to decide when and whether an abortion would be appropriate?

- How many of us know the lies the Vatican has put forward about this conference? The pope's spokesperson, Joaquin Navarro-Valls, states that the document does not contain the word "mother" even ten times, that the document is negative on the family. We need to publish the reality about the document. We need to publish the reality about women.

Our research and our scholarship need to be impeccably accurate. One mistake, and we will hear about that mistake forever. We put out one hundred accurate statements, and one error condemns us. So this is what we need to do: we need to be perfect, or as near perfect as we can.

We also need to accept our imperfections, something that the hierarchy of the Roman Catholic Church seems to have great difficulty in doing. I often think that our biggest mistake is to put forward the vision of an omnipotent or perfect God. Indeed, if we understood the frailty of God, perhaps we would be more respectful of the frailty of human beings.

In the same way, as I said, we must not be divided. We are different: we work on different issues; we work in different forums. Some women have chosen to work within systems; some women have chosen to work outside systems. But we need to understand that all our issues are related. The homophobia we see in the world, the hatred of lesbians, is rooted in the same hatred that reviles women who choose to have abortions or use contraceptions. It is rooted in a principle that says the only purpose of sexuality is procreation, and that to seek pleasure in sexuality, to seek unity, to seek growth, to seek affection and love, to express commitment and ideals -these things are not adequate without the willingness and the desire to procreate. I say this is a bankrupt principle that should not be conserved.

We need to listen to those who disagree with us, and those who disagree with us need to learn to listen to us. The hallmark of mature difference is the ability to recognize what is good in the positions and arguments of those who disagree with us. It is not to stereotype and mischaracterize the positions of others. This is difficult, and we have tried hard to do this at Catholics for a Free Choice.

We need, also, to commit to religious freedom. We are all free to find our spiritual paths, and we need governments that will permit us to do that. At the same time, we need to be sure that we do not allow those with narrow -or even good- religious views to impose those views on all of us through the use of state power. We do not need to attack religion in order to be clear in saying that the role of government is to make it possible for all of us to practice our faith and to express our spirituality without state interference. We must be committed to that.

Here at this UN conference, we must understand that the Vatican sits in this body as a government, and yet that it is a religion. I respect it as a

religion. I invite it to participate in the NGO Forum where it belongs. But I say it is not a government, and it does not belong at the table of the United Nations.

And now I want to quote Pope John Paul II. The hallmark of his papacy, the phrase that he has used most often since he was installed as pope, has been: "Be not afraid". I support that. We must not be afraid to speak the truth as we see it. We must not be afraid to take difficult positions. We must not be afraid of being marginalized. We must be courageous.

Finally, I quote Sister Theresa Kane, a Roman Catholic nun, who said, "The core of courage is rage". Let us also not be afraid of our anger. It is not wrong to be angry in the face of injustices. In fact, it would be a terrible shame to never experience righteous anger at the horrible injustices that we see in the world. If we can be courageous, if we can be open, we indeed can begin to conserve that which is good, that which is justice-seeking. And we can begin to defeat that which oppresses us.

Frances Kissling is president of Catholics for a Free Choice. This article is adapted from the speech she gave during a plenary session of the forum for nongovernmental organizations in connection with the United Nations' Fourth World Conference on Women, held in September in Beijing, China.

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Catholics for a Free Choice

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A Veil Over the East

The rise of an intensely religious class of professionals in Indonesia and Malaysia coincides with both countries' headlong rush towards economic modernization. A scenario of arresting contrasts and paradoxes between contemporary trends and reclaimed or imported traditions has risen along with it.

About 15 years ago, Santi Soekanto became the first woman in her family to wear a veil. Since then, her mother and four sisters have followed her example. She says: "I have a very democratic family. I would never pressure my sister or my mom to wear a veil". Now 33, Soekanto, a devout Muslim from Jakarta, does not shake hands with men, nor does she like to find herself alone with a man who is not her husband or a close family member. She feels it her duty not to watch "revealing" television programs such as Baywatch.

None of these stops Soekanto, who works for Indonesia's best-known English language newspaper, The Jakarta Post, from specializing in the high-profile, male-dominated field of political journalism. She says she does her best to interview a male in the company of another person, explaining that "there is a clear limitation in Islam about how men and women should communicate".

Although her views on contact between men and women are more extreme than those of other Muslim interviewed for this story, Soekanto represents the face of a new, conspicuously Muslim middle class that is becoming more entrenched in Indonesia and Malaysia. Indonesia has the world's largest Muslim community, about 85 percent of its 190 million people.

The rise of an intensely religious (but not fundamentalist) class of professionals has coincided with both countries' headlong rush towards economic modernization, leading to arresting contrasts and paradoxes between contemporary trends and reclaimed or imported traditions.

In plush shopping malls and department stores in Kuala Lumpur, women in firmly secured scarves and veils hover around the cosmetics and perfume counters, paying Western prices for quintessential Western brands such as Passion and Chanel.

In Jakarta, yuppie women arrive at work in designer suits with their prayer clothes in tow so they can visit the office prayer room up to five times a day.

In 1993, the Indonesian government banned a popular, state-backed lottery after protests by Islamic students and religious elders. Yet, late last year, President Suharto, who is known as a strict Muslim who made the pilgrimage to Mecca in 1991, played golf with Sylvester Stallone when the latter opened a Planet Hollywood outlet in Jakarta.

In Malaysia and Indonesia, attendance at mosques are up, and more mosques, Islamic study centers, universities and schools are being built. In Indonesia, several Islamic radio stations have started broadcasting in recent years, and more Muslim-inspired newspapers and magazines are being published. Indonesia established the legal foundations for an Islamic banking system three years ago, and in a recent promotion, the Muslim Bank Pertanian Malaysia offered customers making deposits a free prayer mat or compass which points to Mecca.

Another important indicator of the rise in Muslim consciousness and wealth is that pilgrimages to Mecca by Asians are increasing dramatically. This year, Garuda Indonesia carried 195,000 pilgrims from Indonesia on 24 aircrafts to the Hajj. In 1991, it used just seven aircrafts to carry 79,346 pilgrims.

An academic from West Java is amazed by the number of her colleagues who were "statistical" or passive Muslims 10 or 15 years ago but who have since made the pilgrimage.

The respected Malaysian newspaper columnist and commentator, Rustam Sani, has noted this trend and other signs of Islamic revivalism in his own country. He believes the Islamic revival filtered through Malaysia and then Indonesia through the influence of students who studied abroad (especially in the Middle East) in the 1970s and '80s, and in the wake of Muslim euphoria at the Iranian Revolution.

"All over the world, Islam is rediscovering itself. I think at first, it rediscovered itself not necessarily at a highly intellectual level. At first, it was trying to reread an identity, it was looking around for what would differentiate it", he says.

He sees Islamic revivalism in his native country as a search for a distinctive identity by ethnic Malays. (They represent the biggest racial group in Malaysia and all are officially defined as Muslims.) However, he believes the Malaysian Muslims' new emphasis on tradition or ritual has not been accompanied by sufficiently rigorous debate. He and many others, for instance, believe the veil was historically specific to the Prophet Muhammed's wives, and is therefore not mandatory for all Muslim women today.

Despite this, Rustam says "there are people who say that you shouldn't ask these questions, that these are accepted procedures and if you raise these questions it amounts to being an apostate".

He adds that his wife, a chief librarian at an Islamic organization in Kuala Lumpur, has come under great official and peer pressure to cover since the spirit of revivalism swept through Malaysia. (The veiling of women is a practice that was almost unknown in Asia 20 or 30 years ago.)

Debra Yatim, a short story writer and one of the founders of the Indonesian women's group Kalyana Mitra sees the Muslim resurgence in Indonesia as a new form of nationalism and a direct reflection of the aspirations of a new middle class, many of whom have conservative rural roots and use their religion as a defining attribute. "You have your house, you have your BMW. You eat in McDonald's, send your kids off to plush Islamic schools and you present yourself as a devout Muslim", she says.

Among Jakarta's upper-middle classes, Yatim commonly sees contradictions and tensions caused by the coincidence of increasing prosperity and the flight to tradition.

This year alone, she knows of three women who assumed they were in modern marriages but their husbands took second wives without consent. In every cases, she says, these tertiary-educated, careerist women felt their marriages were based on equal rights.

And in every case, Islamic courts sided with the polygamous husbands, despite a 20-year-old secular law requiring that the first wife's explicit consent is needed for a man to take a second wife.

"I find this amazing in this day and age", says Yatim. "Of the three women I know, none of them even dreamed their husbands were seeing people on the side".

Yatim says polygamy is less common now in Indonesia than it was under the Sukarno regime, partly because Indonesia's first president had several wives, while president Suharto and his wife have made clear their preference for monogamous marriage, and are looked upon as role models.

Nevertheless, she believes the "ambiguities" that result from the interplay of the ultra-modern and the ancient will "fall on our children's shoulders... I have a feeling we are spawning a very confused generation", she says.

The rise of the new Muslim middle class has a potent political dimension in that both the Malaysian and Indonesian governments have adopted their own agendas of moderate Islam in order to neutralize extremists and their Muslim political rivals.

For instance, many government ministers are members of the Indonesian Association of Muslim Intellectuals, which has its own influential newspapers, and pushes for a more Islamic approach to government while stopping well short of advocating religious State.

Even so, in both Malaysia and Indonesia, some pro-Islamic government policies have resulted in a tightening of personal behavioral codes that would be considered extreme by Western standards.

In Indonesia in the late '80s, it was decided registry offices could no longer perform marriages, which meant mixed religious marriages were virtually impossible to procure.

In Malaysia, where economic prosperity and revivalism are both more conspicuous than in Indonesia, Islamic laws governing personal behaviour seem to be more strictly enforced. One man interviewed says he would not dare drink a beer in public now, though he did so during his student days 20 years ago.

In Kuala Lumpur recently, a Singaporean singer was fined for being found in a upmarket hotel room with her boyfriend, under khalwat laws which were introduced in the '80s and forbid an unmarried Muslim man and woman to be alone in close proximity.

Norani Othman, an academic and a member of the high-profile Malaysian women's group Sisters in Islam, believes Malaysia's attempts during the past decade to combine official Islamisation policies with more modern lifestyles have thrown up contradictions that "are now at their apex, mainly because the kind of Islamic resurgence that has taken root in most Islamic countries, as well as in Malaysia and Indonesia, since the Iranian Revolution, has been the orthodox, the backward".

In the late 1993, the Sisters in Islam met the Prime Minister, Dr. Mahathir Mohamad, to tell him of their concern about hudud laws proposed by the Kelantan Government, the only State government led by the fundamentalist opposition Parti Islam Se Malaysia (PAS).

Under these laws, those found guilty of crimes such as adultery, armed robbery and apostasy would be subject to punishments including flogging, amputation of limbs, stoning to death and crucifixion. Enactment of this Bill depends on support at federal level -which the Matahir Government seems unlikely to give.

Though support for PAS weakened in the recent federal election, it is still in power in Kelantan, where street signs warn women to cover themselves, and where women have been banned from working night shifts or appearing on stage.

Noran believes it is a "rational enough" approach of the Malaysian Government to seek to neutralize extreme elements by adopting its own

Islamic programmes. However, she also believes that because of this strategy, "the present government is constantly driven to adopt policies and strategies that contradict its own agenda... of encouraging a Muslim culture of modernity".

She points out that Malaysian Muslims are routinely cautioned not to question the authority of Islamic judges. (Malaysia has paralegal secular and Islamic legal systems and, within the latter, women are not permitted to be judges.) Yet the Sisters in Islam was formed in 1987 precisely because of complaints about interpretation of Islamic law disadvantaging women in family matters such as divorce and maintenance payments.

Since the '80s, says Norani, official pressure have been added to social pressure to spell out that "if you are Muslim, all your problems must be addressed legally under Sharia [Islamic] law".

A startling example of the mistreatment of women under Islamic law involved the case last year of a leading Malaysian politician who allegedly had an affair with a minor, a 15-year-old schoolgirl, who got pregnant. Eventually the case against the politician (mounted under secular law) was dropped. But because of her pregnancy, the girl, who had helped the police with their inquiries, found herself liable for prosecution for fornication under Islamic law.

The decision was announced by a deputy minister in the Prime Minister's Department. It provoked a national outcry. In the end, neither the politician, who is now facing separate corruption charges, nor the girl was charged but other men who had sex with her were.

Despite cases like this, Norani passionately believes that because of its multi-culturalism (it has large Chinese and Indian populations) and its recent economic prosperity, Malaysia is in a unique position to be a modernist, model State for other Muslim countries.

She believes this will not be easily achieved given that much of the response to rapid economic modernization has been a "flight to something that smells and smacks of radiation".

She also thinks that in many Muslim societies, fear of debate is "endemic" because of possible reprisals from fundamentalists. After being misquoted by a Malaysian language newspaper about her view on polygamy recently, one of the Sisters in Islam was compared to the condemned writer Taslima Nasrin, who went into hiding after fundamentalists issued death threats against her.

The veiling of women, girls and sometimes babies is probably the most emotive and visually striking feature of the rise of Asia's new Muslim bourgeoisie. That this is most common among the better educated, and has coincided with the adoption of some feminist influenced reforms (such as better education for girls), makes it all the more intriguing.

Some Indonesian universities and tertiary colleges tried to ban veils in the '80s. Now, they are permitted in schools and universities, so it is common to see female students in tight jeans and T-shirts sitting in tutorials alongside students in veils, long-sleeved smocks and men's socks.

The Jakarta Post's Santi Soekanto insists there is no peer pressure for women to take the veil; indeed, during the early '80s, she felt like part of a marginalised minority for wearing it. But now, the student daughter of one of Indonesia's most powerful Muslim leaders -she has long, wavy unrestrained hair- believes some of her friends cover up because of peer pressure. She says it is not unusual for young men on campus to declare they would only marry a women who was veiled.

Though many people see the new assertion of Islamic values in Asia as a repudiation of western materialism, in a Kuala Lumpur shopping mall I saw one young veiled woman in jeans and a sweatshirt with the letters U.S.A. and the American flag emblazoned on it.

"There are many veils and many levels of veiling. Not every woman in a veil is submissive and not every woman in a veil is progressive", explains a Middle Eastern academic who was recently based in Kuala Lumpur.

She believes it is simplistic to see women covering themselves solely as a manifestation of gender oppression or as a type of Arabic cultural imperialism. In the Middle East and now in Asia, she has seen women put on Muslim garb for spiritual reasons, but also for social and professional gain if they or their husband want to impress a Muslim hierarchy in business or politics.

She has seen it worn as a result of peer pressure or in the name of being good (and comfortably kept) wife and mother, or even as a fashion gesture.

Last February, one of the biggest women's magazines in Indonesia, Femina, featured a fashion spread on Islamically correct fashions for the fasting month, Ramadan, while one of Jakarta's major department stores, Sarinah, has a section devoted to such fashions called Muslim Corner.

This academic believes predominantly Muslim countries have a preoccupation with controlling women. This is tempered in Indonesia and Malaysia by both governments strongly opposing fundamentalism and urging women to work.

Then again, Norani points out that since Malaysia's Muslim resurgence, state-sponsored family institutes have put renewed emphasis on "moral constructions" of the ideal Muslim woman, who might work and possess a degree but will always define herself primarily as an obedient wife and mother.

At a conference held in Jakarta last year called Islam and the Advancement of Women, Indonesia's State Minister for the Role of

Women, Hajjsh Mien Sugandhi, said: "Many Muslim women still live in darkness and backwardness and are restrained by traditional cultural views being put in the name of religion, which are in fact contradictory to the soul and spirit of Islamic teaching".

These views are increasingly endorsed by Islamic modernists in Asia, who are anxious to challenge Western perceptions about Islam oppressing women.

Lily Munir, from the research and development arm of Nahdlatul Ulama, Indonesia's biggest Muslim organization, thinks the increasing incidence of veil-wearing is part of a search for identity and a reaction against Western values on the part of the young.

Her daughter, a "socially progressive" engineering student, wears the veil partly because it makes her feel more physically secure when she is out at night.

Still, Munir has advised her daughter to steer clear of some undergraduates who declared they were uncomfortable talking to any woman who was not veiled. "I think this is the influence of fundamentalist elements... Islam is a very democratic religion that is respectful of religious differences", says Munir.

Zainah Anwar, another member of the Sisters in Islam, researched the effects of revivalism on university students several years ago. Though she thinks attitudes are becoming more relaxed in Malaysia than they were during the '80s, she found veiled girls were unlikely to attend a student dance, ride a bicycle, watch television in a room with boys or join a campus drama group.

She thinks the key issue raised by the practice of veiling is whether it circumscribes women's behavior. Zainah, an analyst with the Institute of Strategic and International studies in Kuala Lumpur, says: "That is where my concern is among young people. At our age (the Sisters are in their 30s and 40s), if we should decide to cover up, nothing would change, except our physical look, because we are confident we know what we stand for.

"But for the young people... when you're forced to cover up and people in charge at schools and universities and older students are asking you to cover up and the same time regulate your behavior -that's where the control comes in".

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Islam in a North European Setting:

Palestinians in Berlin

Dima Abdulrahim

Much has been said about the construction of identity among forced and voluntary migrants, if such a distinction can really be made. Studies have looked at elements ranging from 'cultural baggage', to the socio-economic and political conditions of the new diasporas, to relations with host societies and to the interplay between these factors. This article focuses on a group of Muslim migrants in the West: Palestinians in Berlin. Like other studies, it will argue that contemporary forms of identity cannot be simply regarded as continuing the past, although the past undoubtedly shapes present forms. In the new German context, identity is to a great extent generated by the new environment Palestinians find themselves in. Elements of identity are selectively redefined, reconstructed, created or dropped. Identity thus has to be regarded as a multi-faceted, dynamic and malleable construct. It is formed, maintained and modified by social process and social interaction.

In this paper, I will examine how 'traditional' models of community and continuity are effaced at times and reaffirmed at others. Specifically, I will look at Islam and Shari'a in the construction of national and ethnic identity. I will argue that they take changing and often conflicting roles. The adherence to Shari'a at times, and movement away from it at others, are both used in the building of national, ethnic and political categories and boundaries.

The paper will also look at the changing interpretation of Shari'a, itself affected by the changing nature of social and gender relations in the new European ghurba or exile. It will examine how these reflect the subordination of women resulting from the socio-economic and political conditions they are facing, in addition to 'cultural' and normative factors.

1. Palestinians in Berlin: Background

The overwhelming majority of Palestinians in Berlin are refugees from the battle of Lebanon and the survivors of its numerous battles and massacres. They do not represent a cross-section of refugees in Lebanon; most have arrived from impoverished refugee camps, and were generally unskilled or semi-skilled and illiterate or semi-literate¹.

Until the end of the 1980s, Palestinians in Berlin were asylum seekers - a fact which determined to a large extent- their social, economic and psychological conditions. Their legal status was changed at the end of the 1980s, and the majority were given a permanent right to remain. Today, some Palestinians living in Berlin even hold German citizenship.

It is impossible here to cover the legal and socio-economic implications of seeking political asylum in Germany in the last two decades. Suffice to say it that it was a long and complicated process for the applicant which culminated in either recognition as a persecuted political refugee or deportation. Like other asylum seekers from the 'Third World', Palestinians had very little chance of being recognized as 'refugees'. However, the situation in Lebanon most often made their expulsion difficult, if not impossible. They thus remained in the city, pending deportation, in many cases for as long as a decade.

It can be argued that the procedures of political asylum functioned as a 'total institution' aiming at the segregation of asylum seekers and the circumscription of their social and economic action placing them in a position of dependence and control. The procedures determined the marginal character of asylum-seeking communities and denied them participation in formal public life. They also determined the transient and temporary character of these communities.

Asylum laws intervened in all aspects of the lives of hopeful refugees, either directly or indirectly. People were very often housed in collective premises and were not allowed to leave the -then walled- city without prior permission from the Police. Adult and further education was not possible. Legal employment was not permitted for all practical purposes. To meet the basic needs of asylum seekers, social benefits were given in the form of cash, vouchers and food rations.

As often happens in similar situations, an informal economy developed. Illegal employment was found in the services sector, often unskilled work in bars and restaurants. Predictably perhaps, women suffered the brunt of formal exclusion from public arenas. The nature of illegal employment made it very difficult to seek paid work. Cultural norms meant that it was

1. The overwhelming majority of Palestinians in Germany are Muslims. Generally speaking, the more skilled and educated Christians migrated to areas where their skills were in demand.

unacceptable for women to work in bars and similar areas. Other employment, such as domestic work and cleaning, was characterised by bad pay and low status.

Today, many Palestinians in Berlin have been granted a permanent residence. Many have civil and civic rights. They are, for example, eligible for further, higher and technical education and allowed to enter the labour market legally. In reality, however, their situation has not been drastically changed. A combination of factors has kept them at the 'bottom of the heap'.

Adults, for example, who previously had no training remain unskilled. Like other 'migrant' children, Palestinians are disadvantaged from the first day at school and fall into the vicious circle of bad school performance, deficiency in skills, badly paid jobs and unemployment. Moreover, they are now in competition over jobs with the much more technically adept ex-East Germans and other migrants from beyond the former 'Iron Curtain'. Palestinian women benefited even less from these new rights and privileges, although male and female exceptions, of course, exist².

2. Islam and the Definition of National and Ethnic Identity

The part played by religion in the preservation of the cultural heritage of a migrant society, and its role in the constitution of identity in exile are complex matters and cannot be reduced to any single, or simple, factor, such as continuation of the past³. Undoubtedly, in the case of Islam among Palestinians in Berlin one important factor has been the context of the emergence of Islam in the West as a political force. However, any emphasis on religious expression has also to be understood in the context of Muslim marginality and minority status within the wider German society and culture.

Thus, the position of Muslim groups in Germany is largely determined by the official policy of integration developed in the 1970s in order to avoid what was referred to as the 'structural marginalisation' of Turkish and other migrant groups. The education of second generation migrants -i.e.

2. It is beyond the scope of this paper to analyze in detail the relationship between gender identity and the conditions of the setting in which it is located. Suffice to say that the construction of gender differentiation in the Palestinian community in Berlin and the subordination of women cannot be analyzed or understood without reference to asylum procedures and more recent socio-economic conditions. Where the community assigns women a role of dependence and control, these conditions greatly contribute to make any real emancipation unlikely (see Abdulrahim forthcoming).

3. A study carried out in 1982 in a refugee camp in Lebanon concluded that Palestinian ethnicity has little religious content (Rubenberg 1989: 107).

those socialised as children in Germany illustrates this point. Unlike some other European countries, the FRG offered little multi-lingual and multi-cultural schooling to non-German children integrated in mainstream schools.

Socialisation of migrant children into their 'native' culture and religion is thus restricted to the domestic domain and to voluntary organisations mobilised in the various 'ethnic' minority communities. In the mid-1980s, Berlin saw a proliferation of Mosques, and religion and Quranic lessons became very popular among Arabs. This popularity was largely due to their role as institutions where young people could learn about their culture and religion. Not surprisingly Quranic lessons were in high demand among Palestinians the moment the Arabic language classes organised by a voluntary organisation closed.

Islam is thus used as a means not only to preserve a distinct identity but also to safeguard the community from assimilation. Muslim institutions also fill the gap left by mainstream German schools. They are the only formal institutions in which young Muslims can learn about their culture and religion, and provide knowledge not based on a Christian and Western discourse and understanding.

To the outside world, Palestinians strive to promote the idea that they live in a 'culturally intact' and 'religiously pure' community. However, they have very contradictory conceptions of the nature of this community and its continuity, arising from the symbolic significance of 'migration' to Europe. Many Palestinians live with the guilt of having left behind kin, friends and compatriots in turbulent Lebanese refugee camps. The guilt is aggravated by all the implications which movement to the 'Imperialist West' has for Third World liberation struggle.

Further, they have acquired a reputation among those who remained in Lebanon, of having 'sold out' politically and morally, and of falling prey to drugs, prostitution and -maybe most painful- to foreign intelligence Services. Palestinians in Berlin have a contradictory reaction to this perception of their community. On the one hand, they feel the need constantly to reaffirm the 'moral' purity of the community and its strict adherence to strict moral and behavioural codes. On the other hand, they have also internalised this outside image of themselves and constantly refer to the 'moral collapse' and the 'fall' of the community in delinquency, substance abuse and political betrayal.

There is no doubt that Islam is an important component of Palestinian identity in Berlin and Palestinians perceive and judge their community in terms of its adherence to, and deviation from, religious prescriptions and tradition. However, Palestinians in general have never demanded a public recognition of their identity with Islam at its centre. On the contrary it can be argued that, at times, their identity is also constructed by a deliberate move away from Islam and Shari'a.

This movement away from religion has to be seen in light of a number of factors. These include the politicisation of Islam since the Iranian revolution in the late 1970s, and the call to build states and societies based on the dictates of Shari'a. By moving away from this ideology, Palestinians in Berlin reaffirm their allegiance to their own political organisation, the PLO. Undoubtedly, the nature and form of their political participation in Berlin has changed from what it had been in Lebanon, but their allegiance to the PLO and its secular organisations continues to be central to their national identity. Adopting an Islamic political identity would thus imply an alternative political allegiance and the rejection of the national movement.

The need to emphasise Palestinian identity was also reinforced by its official negation. Palestinians in Germany are denied a separate national identity and are not recognized as such. In all official documents they are referred to as stateless or as Lebanese (because they carry Lebanese-issued travel documents). More often, they are referred to as *inkeglart*, i.e. with an 'unsettled' nationality. Palestinians believe this to be part of an international conspiracy aiming at the annihilation of their national identity and claim to the land. The affirmation of Palestinian identity is turned into a form of political struggle.

Movement away from Islam as the centre of identity also finds its roots partially in the German perception of Muslim culture and society. In Germany, the relatively large Turkish population has led to the common use of 'Turk' as synonymous with 'Foreigner' and to some extent 'Muslim'. Emphasising Arabism at the centre of identity is a reaffirmation of ethnic and national salience in a Muslim mass portrayed as amorphous and undifferentiated.

This move away from Islam is also important in clarifying the difference between themselves and the group of people closest to them, and with whom they identify most. Lebanese Shi'a are also refugees from Lebanon, frequently from the very same areas or battles. The need to draw clear boundaries increased in the mid-1980s as a result of the battles raging between the two groups in Beirut. The Lebanese Shi'a community generally embrace an Islamic political identity and support Islamic revivalist political organisations. Religion is thus used to differentiate the two groups by their varying degrees of faithfulness to religious dictates. As the Lebanese Shi'a move closer to Islam, Palestinians tend to move away from it. Boundaries are often visible. For example, whereas many Shi'a women cover their heads in conformity with Islamic prescriptions, Palestinian women tend to do so less⁴.

4. The Palestinian Islamic political organisation, Hamas, is affiliated to the PLO. Its membership is almost exclusively concentrated in the occupied Palestinian territories and most particularly in Gaza strip. Hamas is a relatively new organization and does not have any presence in Lebanon and among refugees from Lebanon in Germany.

The emphasis on differentiation, however, is not intended only for inter-Arab consumption. Movement away from the Shari'a is also a distancing from the image of the 'fundamentalist', 'kidnapper' Muslim portrayed in the media. It also aspires to point out to German society the differences that exist among the various Arab and Muslim groups, and to characterize Palestinian national identity as 'modern', 'progressive' and, in a sense, more westernised.

Whether Islam in the coming years will take a more central role in the definition of self and collective identity is a question which only future research can answer. It depends, of course, on developments in the Muslim world and internationally, in particular on the resolution of the 'Middle East question' and specifically on the fate of Palestinian refugees. It depends also on elements of the situation of Palestinians in Germany. Palestinians are part of a larger Muslim community, reaching almost two million in the Federal Republic of Germany including Berlin in 1990 (Ashkenazi 1990: 305). For a number of years, Muslims in Germany have been voicing the demand for Islam to be recognized as an official religion on the State. This demand also aims at unified Muslim representation and unified Muslims action in issues such as ritual slaughter and education.

Although they have supported them, Palestinians are marginal to these demands, a fact determined for a long time by the temporary nature of their stay as asylum seekers. In comparison to long established Muslim minorities in Berlin, it could be argued that Palestinians do not feel as much part of German society as do second generation Turks, for example, and have lesser need to negotiate their position within a society which discriminates against them. Unquestionably, this situation will change. Many Palestinians and other refugees from Lebanon are no longer under threat of deportation and can look at the longer term implications of their presence in Germany. In addition, a new generation brought up in Germany may well participate actively in this struggle for recognition. It could be argued that reaffirming their religious identity is a sign of integration. In other words, it is precisely because members of minority ethnic and religious groups feel part of society that they feel the need to express this identity. In the future, will a generation of Palestinians feel part of German society and strive to be accepted as Muslim? Only future research will answer the question.

3. Women, Islam and Identity in Exile

The political role of women in the construction, reproduction and maintenance of ethnic and national identity has been documented in a variety of settings. They have also been analyzed as signifiers of ethnic and national differences and as foci and symbols in the ideological discourse of national and ethnic categories (Yuval-Davis and Anthias 1989: 6-7). A historical analysis of Palestinian women in exile shows a

transformation of gender dynamics and the position of women in society at different historical moments. The study of Palestinian women in the camps of Lebanon in the 1970s and early 1980s shows how the integration of women into the realms of the formal public political and economic arenas was turned into a symbol which reflected the new national identity. This was made possible by wider political and ideological factors and a process of social engineering carried out by the Palestine Liberation Organisation (PLO) and its numerous social and economic institutions (Abdulrahim, forthcoming).

A reverse process took place in Berlin. A combination of 'cultural' factors and the socio-economic and political conditions of the new setting of the German exile led to the exclusion of women from public arenas, their strict adherence to 'traditional' values and a subservient position, which have come to define for the community a separate national, ethnic and religious identity. Furthermore, Palestinians live in what they perceive to be a 'morally corrupt' and 'corrupting' society. They attempt to preserve themselves from this 'corruption' and to portray themselves, to those who remained in Lebanon or the Arab world, as 'culturally intact' and non-assimilated to their new environment. In a Western society with a different normative codes and a different sexual culture, the 'traditional' position of Palestinian women takes on a new importance and meaning. Women are turned into symbols of the retention of cultural values and adherence to religious prescriptions, thus the preservation of the community from assimilation to the majority German society. The adherence of women to a reconstructed 'traditional' normative system maintains group boundaries and becomes a means to achieve the legitimate reproduction of these boundaries. Adherence to religious prescriptions is turned in the German setting into an assertion of ethnic identity and an affirmation of a separate culture and values. An emphasis on the Shari'a and tradition is turned into a defiant challenge to the dominant German culture and society.

In the eyes of the Arab community, the Arab woman is defined -to a great extent- by everything that the German woman is not. She is chaste, dependent, subservient and 'in-doors'. Any deviation from the idealised, reified tradition is understood as movement towards German ways, a threat not only to the honour of a woman's kin, but also to a community which wants to define itself as separate by rejecting cultural integration and thus 'distortion' by a larger and more powerful society. It is significant that Palestinians see any violation of sexual norms by women as being solely a result of their presence in Germany. In their reification of Arab culture, they overlook the fact that similar infringements take place in the Arab world.

Although Palestinians in Berlin endeavour to present their community to the outside world as culturally 'intact', especially in relation to women,

they sometimes, nonetheless, acknowledge changes and the impact of German culture on behaviour. It can be argued that this admission reflects a new facet of identity. Information was often only volunteered to me, a native researcher, the moment people were aware that I had come from Britain. It was probably assumed that, because I live in a country with a similar sexual culture to that of Germany, I would be more understanding and less judgmental. It was also surmised that I would not blame the collectivity for the behaviour of an individual. I would not automatically assume a 'collective loss of honour and identity' as phrased by one respondent. This ability to discuss violations of sexual norms openly with me reflects a new distinctiveness. Like them, I had been forced to leave Lebanon by circumstances outside my control. Like them, I had become a 'Palestinian in Europe'.

Palestinians and other Muslims are not alone in assigning to Shari'a an important role in the construction of ethnic and cultural boundaries. German society too, uses Shari'a to mark the distinctiveness of Muslims from other 'Third World' immigrants. As in other European societies, there is in Germany a popular and learned discourse, even in establishment press and among liberals, about the improbability of the 'integration' of Muslim groups. This discourse insists on the cultural gaps that exist and the irreconcilable concepts of family law, especially regarding women.

Muslim women are more often than not analyzed in the West as passive victims of an 'oppressive' religion and culture. Very little thought is given to the many variations that exist, to class differences and to the role of the socio-economic conditions of exile which greatly contributed to make this oppression and subordination possible. Also frequently forgotten is the fact that 'assimilation' is rarely a matter of choice. Racism remains a very important factor in the lives of minority groups. Their history and character cannot be understood without an understanding of the reaction against this prejudice.

On a more general level, it is also true that Islam in the West has been recreated as the 'enemy' within the 'aggressive alien other'. It is also increasingly seen exclusively in the light of fundamentalist groups which 'threaten to engulf the achievements of Western Europe and their national cultures'. Islam is thus increasingly perceived as a danger that must be banned from society, or at any rate, controlled (e.g.: Rath, Groenendjik, Pennix 1991: 101-114).

4. Islamic Family Law in a North European setting

It can be argued that the encounter of Western and Muslim cultures and legal systems often work to the detriment of women. In other words, in a German society that accepts premarital sexual relations, it is important

that young Arab women are married as soon as legally feasible, and before they have faced the possibility of breaching sexual norms. Moreover, as the likelihood of further education and employment is limited, the 'inactivity' of young women further promotes early marriages. The marriage of young women also may take a 'punitive' role. Those considered 'loose' or caught transgressing family rules are threatened with marriage. In some cases, they are married off to a male kinsman, who often has no choice in the matter, but has the duty to offer his *sutra* (protection), thus redressing the 'shame' that falls on the kinship group as a result of the young woman's violation of the norms. Most young women, however, see advantage in early marriages. Despite their presence in a society which claims to offer equal opportunities for social mobility, marriage is one of the only means to open to women to improve their status and increase their freedom to move and act. Women have little chance of attaining power in formal public arenas. They thus find it in private and communal domains.

It could also be argued that the restriction of women to the domestic domain also further limits their ability to meet potential husbands independently from the family and communal groups. The political organisation which offered this possibility in the camps in Lebanon was much less prominent in Berlin. The kinship group thus takes on an increased importance in providing potential spouses. Wedding parties have also recovered their importance in fulfilling this purpose, regaining much of their role as one of the main legitimate arenas for cross-gender contact.

The presence of the community in Berlin reinforces the importance of 'traditional' factors in the choice of a suitable spouse. In fact, close kinship relations take on a renewed significance as does a shared peasant, urban or semi-nomadic background. The relatively small size of the community, however, means that suitable kin of a marriageable age are not always available. Marriages outside the family are often not easy. Increased emphasis is placed on the eminence of the kinship group, often linked to its landowning status in Palestine, more than 40 years ago. Having powerful family members in Berlin is also a great advantage.

The social standing of the parents and agnates of a man and woman have thus become a major determinant in marriage arrangements. Whereas in the camps in Lebanon a man's suitability was influenced by his political work and social activities, in Berlin the 'nationalist' and 'patriotic' credentials of a suitor are either non-existent or not very relevant. Marriages between persons of different social strata and backgrounds are less common than they had been before arrival in Germany. Social mobility is greatly hampered by the lack of education and employment.

It is also significant that the movement of the community to Germany regenerated the importance of mahr or dower. Previously, in the camps in Lebanon, the importance of the dower had diminished, asking for large sums was frowned upon and considered 'reactionary'. In Germany, the relatively small size of the community means that suitable kin, whose dower is generally lower, are not always available. Marriage outside the family is subject to large payments. In fact, young men in Berlin complain about their inability to find brides whose mahr they can afford. This high dower is often imposed by young women who also demand jewellery, costly presents and an expensively furnished marital household. This can be partially attributed to the lack of cash available to the majority of Palestinians, and their presence in a Western consumer society.

The presence of the community in the West also rejuvenated other declining marriages practices. In the decades before their arrival in the new European exile, Palestinians tended to look at polygamy as 'backward' and 'reactionary'. It is undoubtedly ironic that the presence of the community in Germany gave polygamy a new legitimacy. In Berlin it is sustained by the manipulation of both Shari'a and the German legal system, and is conducted in the following way. An Arab wife is divorced from her husband in a German court; he then marries a German woman. The Arab woman, however, not having been divorced in a Shari'a court, remains his wife in the eyes of the Arabs. This new type of polygamy is tolerated by Arabs in Berlin, as the male asylum seeker acquires a new legal status through his union with a German wife, gaining the right to remain in the country, the right to work and other rights denied to asylum seekers. The Arab wife does not turn into an economic burden, as her living expenses are covered by social benefits given to asylum seekers.

The new legal status and rights given to Palestinians and others in the 1990s remove the justification that such marriages lead to the acquisition of rights and the improvement of living conditions. Future research is needed to investigate whether such polygamy will continue, and if so, whether it will be tolerated, and how it will be vindicated. Future investigations will also need to examine men's extra-marital relations and the attitude of the community to these. Such relations are more feasible than in the Arab world since German women are not subjected to the same sexual culture as Arab women.

Conclusion

Research among Palestinians in Berlin has demonstrated that Islamic Family Law has to be understood as mutable, and varying in relation to its social and historical setting; in this case, by its presence subject to a non-Muslim legislative authority. It has also shown a shifting and dynamic role of Islam in the construction of identity. Palestinians perceive themselves as both 'culturally pure' and 'corrupt'. Shari'a takes a central

position in the definition of identity at times, and is marginal or deliberately negated at others. I have shown how marriage, one of the applications of Shari'a, is to a great part constructed by its German context. The paper has also investigated how Islam came partially to define models of 'community' and 'continuity'. In the face of a perceived 'corrupting' society, Islam and 'tradition' safeguard women -thus society- from corruption and assimilation.

The study of Palestinians in Berlin has also shown that the construction of contradictory and dynamic notions of self and collective identity does not have a fixed essence but varies both in time and place. This case study has shown that the 'ethnicity' of migrant groups cannot be reified. On the contrary, it is plural, complexly structured and subject to constant change. Like any case study, this one is 'historically' bound. A generation of Palestinians brought up in Germany is now reaching adulthood. The nature of their presence in the country will give rise to a new set of questions which only further research can answer.

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Women, Islam, and The State:

Subordination and Resistance

Tazeen Mahnaz Murshid

Introduction

After a period of political oblivion, the religious right in Bangladesh has not only made electoral gains but also successfully engaged in political alliances which allowed it to campaign virtually unopposed for an Islamic state where women could step outdoors only at their own peril. The many speared campaign has targetted development organisations which empower women through offering loans, skills training and employment opportunities. It is argued that female emancipation is not part of God's plan. Schools for girls have not remained unscathed. Women who dared to challenge existing social codes, alongside those who did not have been equally victims of violence and moral censure. These activities are at odds with the development objectives of the state. Yet, at times the role of the state has been an ambivalent one. Where decisive action could have stemmed the tide, none was forthcoming.

This paper seeks to examine the position and status of women in Bangladesh in relation to the interplay of religion and politics. In order to do so it will first present some relevant background information on the history of the country and recent data on socio-economic indicators of female status. A discussion of the nature of women's subordination and resistance follows:

the women's movement, though weak, has achieved some success in negotiating policy changes at the state level. Therefore, its interactions with the state merits some attention. An assumption shared by feminist scholars is that the postcolonial state reinforces gender inequality and

sanctions injustices against women.¹ This view will be examined within a context where political Islam is an important force to be reckoned with. It is argued that the position of the state is compromised because of the alliances it has had to forge with the religious right. In particular, the Jama'at-i-Islami Party may be mentioned, for it is committed to the establishment of its own vision of an Islamic state, wherein the public role of women would be significantly curtailed. In order to demonstrate the implications of the rise of the Jama'at for female emancipation and gender equality the paper will examine its response to the feminist writer, Taslima Nasrin. Her works will be analysed in an attempt to put into perspective the nature of her 'offence' and the expectations of society from women.

Background

Bangladesh emerged as an independent nation state in 1971 committed to a secular liberal democracy. While its secular politics was compatible with ideas of gender equality, the new government was too busy dealing with the ravages of war to pursue this objective creatively. Nor was there a significant women's movement at the time to influence policy. A major concern of the state was to rehabilitate destitute or raped women, often marriage was regarded as the only means.² Subsequently, government and non-government initiatives were focussed on securing gainful employment for such women. As a result, initiatives such as skills training and encouragement of cottage industries based on traditional crafts which could be marketed abroad were pursued. It was a time when organisations such as BRAC and Grameen Bank were established, mobilising, educating, organising and conscientising women in an attempt to help them throw off the shackles of subordination and achieve some degree of financial security, i.e., control over their own earnings.

Sheikh Mujibur Rahman's secular government was overthrown in 1975. After a series of military coups, Ziaur Rahman emerged as the next head of state with strong army backing. Hussein Muhammad Ershad, a

1. An author notes, 'In all postcolonial nations the state, envisaged as the guarantor of rights to its citizens, have invariably emerged instead as a major perpetrator of injustices - whether as a function of military power, or, as in India as an aspect of political parties' electoral calculations'. Rajeswari Sunder Rajan, *Real and Imagined Women: gender, culture and postcolonialism*, (London and New York: Routledge, 1994), p.6.

2. Kabeer notes that rehabilitation, whether of prostitutes, jail inmates or other fallen women were determined by notions of 'purity'. Marriage ensured the return of women to a relatively pure state. Other initiatives focussed on gender specific training such as sewing, knitting etc. as acceptable women's work. Naila Kabeer, *The Quest for National Identity: women, Islam and the state*, (Institute of Development Studies Discussion Paper No. 268, Sussex, October 1989), pp. 19-21.

repatriated military officer, became president after the assassination of Zia in 1981. Zia and Ershad pursued similar policies: decentralisation through the creation of gram sarkar and Upazila Parishads to gain new support bases in rural areas and increase the influence of the rural rich; winning the support of the Islamic orthodoxy by institutionalising Islam at the state level, while subscribing to women and development (WID) policies. There was also a to the right in international alignment.

Both under Zia and Ershad, state policy on women pulled in opposite directions. At one level, it supported development initiatives funded by foreign donors which aimed to empower women; at another, it capitulated to the forces of religious extremism which sought to reverse this process. Kabeer has argued that both Zia and Ershad played a:

...blatant balancing act between the conflicting gender ideologies implicit in different aid packages ... to accommodate the conflicting demands of the Saudis and the Americans by preaching Islam while practising population control.³

While the principle underlying the argument is valid, the examples cited reflect a bias. The argument assumes the view that birth control is not sanctioned in Islam whereas in fact, this is the interpretation given by some groups, including the Jama'at, while others disagree on the grounds that the Koran makes no explicit or implicit statement on the issue.⁴ Therefore, some believers would find no contradiction in the policies.

With the fall of Ershad and the resumption of the electoral process, a civilian government was installed in 1991. But, the party in power, the Bangladesh Nationalist Party, founded by Ziaur Rahman, originated in the army; hence, it continues to maintain strong links with it. In addition to this, the acute crisis of governability faced by the state under Khaleda Zia because of a non-functioning parliament, makes it unlikely that it will deviate from the path of Zia and Ershad in its internal and external policies.

Socio-economic status of women

Bangladesh is a low income developing country with a population of 114 million growing at the rate of 2 per cent per annum. The female population is approximately 48.6 per cent. Eightyfive per cent of the population is rural. The economy is primarily agrarian: 36 per cent of the gross domestic product (GDP) originates in agriculture. The

3. Naila Kabeer, 'Subordination and Struggle: women in Bangladesh', *New Left Review*, No.168, pp. 114-15.

4. Tazeen M. Murshid, *The Sacred and the Secular: Bengal Muslim Discourses, 1871 - 1977*, (Delhi: Oxford University Press, 1995), chapter 7.

manufacturing sector accounts for only 10 per cent of the GDP.⁵ The country is aid dependent for a large share of its development expenditure. This was 35 per cent under Mujib, 40 per cent under Zia and 48 per cent under Ershad in the early years, 1981/82 to 1984/85; subsequently, down to 42 per cent in the budget of 1986/87 to 1987/88.⁶ Under the current elected government of Khaleda Zia, \$1.8 million in aid meets two-third of the country's development expenditure.⁷

The socio-economic indicators of female status reveal that women bear a disproportionately high share of the country's underdevelopment compared to men. The literacy rate for women, 15 years and above, is 24.2 per cent compared to 45.5 per cent for men of the same cohort. Their life expectancy is 55.4 years as against 56.4 years for men. The daily per capita calorie intake for women is 1,599 k cal while for men it is considerably higher, 1,927 k cal. The wage rates for women is 58 per cent of men's for the same job, dropping to 43 per cent during the slack season. As much as 43 per cent women and only 8 per cent men earn less than Tk 100 (\$2.5) per week.

Despite this bleak picture, there has been an increase in the levels of female participation in the national economy. Between 1983/84 and 1985/86, the economically active female population rose from 2.4 to 3.1 million. Between the years 1985/86 and 1988/89 women contributed an annual increase of 4.2 per cent to the labour force against the national average of 2.6 per cent. More phenomenal changes occurred in urban areas: while the economically active population grew at the rate of 7.1 per cent annually, this was 50 per cent among the female population!⁸

There has been a steady transfer of the labour force from agricultural to non-agricultural occupations such as manufacturing, as well as some improvement in the working and living standards of women. With the changing pattern of female labour increasing attention has been paid to the terms and conditions of work such as wages, working hours and child care facilities in the workplace as well as access to public resources like

5. Debapriya Bhattacharya, 'Women and industrial employment in Bangladesh: challenges and opportunities in the era of new technologies', a paper prepared for the United Nations University Institute for New Technologies, Dhaka, July 1994, p. 10.

6. Ben Crow, 'The state in Bangladesh: the extension of a weak state', in Subrata K. Mitra (ed.), *The Post-Colonial State in Asia: dialectics of politics and culture*, (New York, London: Harvester Wheatsheaf, 1990), p.207.

7. D. Bhattacharya, *op. cit.*, p.10.

8. Women's contribution to the agricultural labour force appears to rise from 0.4 million in 1985/86 to 18.8 million in 1989 as a result of this method of estimation. If the female household agricultural labour is discounted as per the earlier definition, the 1989 figure would be approximately 2 million, also indicating a significant increase in female participation since 1985/86. See World Bank, *Bangladesh: from stabilization to growth*, March 17 1994, Table 1.8 p. 176.

health care, education and training. However, it has also given rise to male hostility.

Waz mahfils have condemned women for the destruction of the soil and causing crop failure because they go out to work.⁹ A more earthly reason for such censure is economic competition.

The subordination of women

The subordination of the majority of women is illustrated by the attitudes of men derived from socially and culturally determined concepts of gender roles which prevent women from becoming self reliant: for example, belief in purdah reduces female mobility and the scope for full participation in national life, such as in education and employment; hence, it enhances dependence. Women are considered inferior by most men, even in professions like journalism.¹⁰ Women's work is undervalued both in terms of pay and status. Women are primarily expected to be wives and mothers engaged in undervalued work like reproducing and rearing children, cooking, cleaning and looking after the household. Otherwise, they are expected to work in areas considered suitable for women: in the agricultural sector, this includes sowing, husking, reaping etc. and in the non-agricultural sector, teaching, sewing, knitting, crafts and embroidery etc. But, as Bhattacharya points out, it is in the non-traditional sector of manufacturing that women may expect changes in the sexual division of labour, higher incomes and a concomitant change in social attitudes.¹¹

State inability to contain poverty, illiteracy and corruption have ensured the vulnerability of women. Their search for a better life frequently leads them to fall prey to unscrupulous men who traffic in women in the international scene.¹² Often, their lack of knowledge about their rights prevents them from exercising these. They are not sufficiently protected from domestic violence, including dowry deaths because these are not treated as criminal offences, but as family quarrels to be resolved by family courts. However, family laws treat women unequally: marriage, divorce, custody of children, inheritance, etc are resolved by family courts through the application of shariah laws which favour men.

Women's subordination is also ensured by the policies of the patriarchal, post-colonial state of Bangladesh which is not fully committed to female

9. Maleka Begum, *Nari andolan: samasya o bhabiswat*, (Dhaka: Gyan Prakashani, 1989), p. 72.

10. Nahid Bakr, 'Problems faced by women journalists in Bangladesh', in Firdous Azim and Niaz Zaman (eds.) *Infinite Variety*, (Dhaka: University Press Ltd, 1994) pp. 319-21.

11. D. Bhattacharya, *op. cit.*, p.13-14.

12. Kazi Sufia Akhter, 'Shishu o nari pachar prasange', *Edesh Ekal*, No. 2, April 1988, pp. 23-26.

equality. On the contrary, it has endorsed violence and injustices against women, both in the private and public spheres, through its failure to enact and implement appropriate measures of deterrence. The existing legal system was bypassed by the fatwa courts which pronounced verdicts of death on the writer, Taslima Nasrin and others, whereas, in fact these institutions have no legal authority to do so under the constitution. Even so, the state took no action against them.

Resistance to subordination

The history of resistance to subordination has focussed largely on how religion has been manipulated to ensure male domination followed by the advocacy of economic emancipation for women and revision of family laws. The women's movement in Bangladesh, has been weak because it has largely been an urban, middle-class phenomenon. With increasing participation of rural women in the economy, the movement has acquired a wider support base. Between the fifties and nineties, women's concerns have widened from personal laws, to issues of economic empowerment, domestic violence and their public roles. The women's movement achieved some success in influencing state policy. In the fifties, the All Pakistan Women's Association successfully lobbied Ayub Khan to eventually enact the 1961 Family Laws Ordinance. This restricted polygamy in the face of orthodox opposition. The military could afford to dispense with the religious right because it was not the source of its legitimacy.

In the eighties, the women's movement was only partially successful in obtaining a commitment from the state to eliminate inequality in accordance to the UN Resolution number 180 of 1976.¹³ Articles 2, 13(a) and 16(d) were left out on the grounds that these were not in accordance to the shariah.¹⁴ Article 2 stipulated that existing institutional structures such as the legal and judicial system as well as social norms and practices, should be modified in conformity with the provisions of the document. Article 13(a) laid down the principle whereby women would have equal opportunities to take out loans and mortgages. negotiate contracts and participate in sports and cultural activities. Article 16 provided for equal rights and responsibilities for women in relation to the family. In striking contrast to Ayub Khan, the military regimes of Zia and Ershad, relied on

13. The resolution underpinned the plan of action for the UN Decade of Women and was submitted in 1980 to national governments to endorse and implement. The military regimes of Zia and Ershad looked to religious sanction for legitimacy and the religious right for support. The men of political Islam do not approve of female emancipation and do not believe in equality. Hence state policy was opposed to signing the document. Faced with tremendous pressure from women's groups, the document was partially approved and endorsed.

14. Meherunnisa Isam, 'Narir somanadhikar prosanga', Edesh Ekal, No. 4, December 1986 - January 1987, p.37.

religious sanction for their legitimacy; therefore, they were unable to fully endorse the document.

It was thus no surprise that the protests against the State Religion Bill by the Oikya Badhya Nari Samaj fell on deaf ears. Subsequently, Naripkkkho filed a writ against the state claiming that the Bill was contrary to the fundamental rights of women. Nevertheless, Islam was given the status of state religion through a constitutional amendment in 1988. The state position is that women may achieve equality within the scope of the law currently in practice, or by bypassing the impact of some of these. For example, under personal laws, sisters inherit half the share of their brother's inheritance. The impact of this could be offset by parents through the institution of heba or gift. Women do not automatically have the right of divorce or the promise of monogamy of husbands, but these could be ensured in the marriage contract.

The post-colonial state of Bangladesh has thus played a role in re-enforcing gender inequality, the reasons are both structural and normative. The Bangladesh state is a weak state. Decisions are not based on dialogue and compromise. The lack of consensus generally means that it is unable to enforce decisions, ensure accountability, contain violence or implement the rule of law. As a weak, aid dependent state it is unable to stand up to donors and foreign governments. Hence, family planning receives a higher allocation than social welfare or women's affairs; and health and family planning come under different ministries.¹⁵

Jama'at-i-Islami and feminism

The increasingly important political role played by the Jama'at today as a third force exercising the balance of power ensures continued tension between the world views of the religious right and feminists. Effectively, the foundations were laid during the Zia period for the rise of the Islamic right. Undoubtedly, the entry of the military in politics provoked a legitimacy crisis. In its search for new support bases, the leadership adopted measures of inclusion and exclusion whereby Islamists were ushered in while secularists were being rendered ineffective.

The Eighth Amendment was a major gain for the Islamists, who were also making gains elsewhere. To illustrate, their influence in the sphere of education was manifest in the number of madrasahs and recruitment of teachers and students (see Table 1 below). During the period of Ershad's rule there was more than a hundred fold increase in the number of

15. In the third Five Year Plan, Tk 870 crore was allocated to Family Planning, Tk 550 crore to Health, Tk 75 crore to Social Welfare and Tk 50 crore to Women's Affairs. It is estimated that another Tk 50 crore was allocated for women through other sectors. See Planning Commission, *The Third Five Year Plan, 1985-90*, Ministry of Planning, Govt. of Bangladesh, Dhaka, December 1985, pp. 371, 391, 396, 401.

government and affiliated madrasahs and nearly 300 percent increase in the number of staff and enrolment of students.

Table 1
**Number of Madrasahs with Teachers and Students
 (1977/78 to 1991/92)**

	1977/78	1981/82	1990/91	1991/92
Madrasahs*	1,976	2,864	5,959	6,025
Students	375,000	388,000	1,028,000	1,735,000
Teachers	21,579	29,608	83,761	94,961

* from secondary level and above - government and affiliated

Source: Bureau of Statistics, Statistical Pocketbook of Bangladesh, various issues, based on information obtained from the Madrasah Board.

Another significant gain made by the Jama'at and its supporters occurred in 1991. During the elections none of the major parties achieved an absolute majority. The BNP achieved a majority in parliament with the support of the Jama'at. Thus, for the first time in the history of the new nation the Jama'at gained a formal role in government.

While its position in government was a recognition of its rehabilitation at the state level, the matter was far from resolved in the streets. The selection of Golam Azam as the amir of the Jama'at provoked a massive protest because he was accused of war crimes. The celebrated case of the feminist writer Taslima Nasreen offered them a pretext to attention away from Golam Azam and increase the momentum of their campaign for the establishment of an Islamic state based on shariah laws.

As a lone woman perceived to have stepped out of acceptable social bounds she became an easy target of misrepresentation. Taslima was accused of subverting the cultural and religious values of the state and hence was depicted as a traitor to the state and religion, rashtradrohi and dharmadrohi. A process of 'psychological manipulation' of the popular psyche was carefully orchestrated. Extracts from her works were presented out of context to portray her as one who insults Islam, hates men and is a woman of loose moral standards. In a leaflet, she is charged with accusing God to be a liar, of making fun of the Day of Judgement, of going against the dictates of religion by insinuating that the birth of a son or daughter has nothing to do with God's will but is determined by chromosomes.¹⁶ By challenging existing codes and superstitions, she earned the censure of their upholders.

16. Leaflet, Dharmadrohi o deshdrohi nastikder rukhe darao, 26 June, 1994 (Dhaka: Oitijhya Sangsad).

Taslima rightly advocates the freedom of women to determine the size of their families. But, she provocatively describes it as the 'freedom of the womb', *jarayur swadhinata*. Therefore, in the campaign of calumny against her she is accused of campaigning for free sex, a charge she vehemently refutes.¹⁷ Quotations from her book *Lajja* have been bandied about to prove that she deems Muslims to be unworthy of trust and the state to be communal and discriminatory to religious minorities.¹⁸ This is a misreading of her essential message: Taslima, the social critic is shaming a nation for betraying itself,- for she believes Hindus and Muslims to be one nation,- and challenges it to confront some unpalatable truth about itself.

Her harshest critiques were levelled against pirs, mullahs and razakaars. In her columns she wrote about their misdeeds and scathingly noted, 'The image of a pir is no longer that of a good and pure Muslim - pir means evil, worthless and tremendously lustful men'.¹⁹ It is thus no wonder that these men of religion wanted her head.

The Jama'at and its various front organizations took full advantage of the fact that Taslima's provocative message, language and style had alienated large segments of Bengali society. Women accused her of 'derailing the feminist movement'. Politicians held her responsible for the bad press Bangladesh was receiving abroad. Religious bigots insinuated she was pandering to the West, India and the extremist rightwing party, the Bharatiya Janata Party (BJP). Intellectuals implied that she was after cheap publicity. Literary competitors considered her work shallow. Others envied her success, while most men were annoyed at her audacity: in one of her poems she warns women to flee from men for they carried syphilis in the same way that one ran away from dogs which had rabies. In daring to confront society at many fronts, Taslima became isolated; she says in one of her columns: 'Like a dot I am alone in this universe'.

The Awami League, historically a proponent of secular ideals, gave her no backing, not even when fatwas were thrice declared by mullahs for her death on the ground that she had insulted Islam.²⁰ It was loath to jeopardize its 'undeclared alliance'²¹ with the Jama'at in its struggle to

17. Taslima Nasreen, *Nashta Meyer, Nashta Gadya*, (Dhaka, 1992, 1993), pp. 60-61.

18. Leaflet, *Dharmadrohi*, op.cit., pp. 4-7. Taslima Nasreen, *Lajja*, (Calcutta: Ananda, 1993), p.31.

19. Taslima Nasreen, *Nirbachita Column*, (Dhaka: Vidyaprakash, 1991, 1992) pp.27-28. All translations of extracts are by the author.

20. Fatwas were pronounced in Sylhet in October 1993 and twice in June 1994 in Bogra and Khulna, Bangladesh. In Sylhet a price of Tk. 50,000 (approximately US \$ 1,500) was put on her head.

21. Barrister Sarah Hossain, interviewed for *Newsnight*, BBC 2, London, August 4, 1994.

force the BNP government to amend the constitution so that future elections could be held under a caretaker government.

The government too was hostile. It withdrew the protection she had obtained through a court injunction. Instead, on the 4th of June, the Home Ministry obtained a warrant for her arrest; it took no action against those who violated the law through incitement to murder.

This provoked an outcry from foreign governments, which eventually led to her exile to Sweden. Nationally, however, the state had played into the hands of mullahs. Interpreting government and opposition roles as tacit support for their stand, they believed that victory was within reach and intensified their campaign for Islamic rule at various fronts. There were demands for the introduction of blasphemy laws as in Pakistan, for the execution of all atheists and apostates (*nastik* and *murtad*), for the ban on all publications by such people, for Ahmadiyas to be decreed non-Muslims etc. These were accompanied by massive demonstrations, meetings and the setting up of organizations such as the Sanmilita Sangram Parishad and branch committees with provocative names such as Student Soldiers of Islam or Islami Chhatra Sena to spread the message into villages.²²

The controversy surrounding Taslima Nasreen makes sense only if it is seen in the context of a struggle between the forces of religious extremism and secular liberalism, which are both vying for the hearts and minds of the people in Bangladesh. These forces are engaged in symbol manipulation to secure the social and political order they desire. The status and visibility of women form an important element in this struggle as the orthodoxy had always viewed gender issues to lie within their jurisdiction. Feminists pose a threat to such territorial assertions.

But Taslima is only one of the many victims of the vengeance of fanatical forces. She survived because of the publicity, the foreign interest and the support of a few who rose to defend the rule of law.²³ Others were less fortunate: one woman was stoned to death for alleged adultery whereas, in fact, the lustful gaze of a mullah had fallen on her. Several intellectuals and writers like the poet Shamsur Rahman and the scholar Ahmad Sharif also face death threats because they subscribe to secular, rationalist, non-communal and democratic values. Religious extremists have described them as *deshdrohi*, *rashtradrohi* and *dharmadrohi*, traitors to the nation, state and religion.

A series of such provocative actions have virtually led to the

22. Inquilab, Dhaka, 12th of August, 1994.

23. Taslima went into hiding for she could not even present herself at court in safety. She emerged from hiding on the 4th of August, 1994 after assurances and armed protection was secured.

establishment of a parallel structure of authority in remote areas far from the reaches of officialdom. Various front organizations of the Jama'at supported by their own armed cadre have begun to impart Islamic justice. They derive their authority from the fatwas given by local mullahs and not from any court. Not only have thieves lost their limbs and 'adulterers' been stoned, but opposition newspapers have lost access to various distributors and their clients. Many rural women have been divorced by fatwa for practicing birth control. Such a situation is novel in the history of the region. Women are also losing their marital status for taking bank loans for their small businesses. It is being argued that economic independence for women is undesirable because it can give them a status superior to men, which was not God's design.²⁴ Non government organizations like BRAC and their workers have been attacked by madrasah students for allegedly spreading Christianity. BRAC schools for girls have been burnt in protest against 'westernized' female education. Here coercion is a method of neutralising the sources of alternative ideologies. Various women's groups and legal bodies have gathered evidence and successfully convicted some of the fatwabaj mullahs.²⁵ But the trend persists unabated while the police find themselves inadequately armed to face the challenge.²⁶

Conclusion

The paper has attempted to examine the interplay of religion and politics in relation to its impact on the position and status of women. It demonstrates that the forces of religious 'fundamentalism' do not endorse the concept of female equality and that an alliance between these forces and a weak state is particularly problematic for female emancipation. The state is unable to play an effective role as a mediator between these forces and the women who are often their victims, because it effectively becomes a party to the perpetration of injustices

24. Inquilab, 12th and 19th of August 1994.

25. Ain-o-Shalish Kendra, 'Threats of violence and violations of human rights by imams of mosques and the religious right in Bangladesh' (a collection of cases compiled for the period 1992-94, unpublished), Dhaka, 1994.

26. In Chittagong, the police confessed their inability to control the Shibir- Yuva Command because their own weapons were inferior. There was evidence to suggest that arms were coming to specific Shibir members from Pakistan by post. See Dainik Sangbad, Dhaka, Friday, 12 August 1994, p.6.

Source: Paper presented at The 1995 Bengal Studies Conference, University of Chicago: (April 28-30, 1995).

This paper can be accessed on the Internet at the URL (or address) given below:

<http://www.lib.uchicago.edu/LibInfo/SourcesBySubject/SouthAsia/Tazeen.html>

Women's Reproductive Rights and the Politics of Fundamentalism:

*A View from Bangladesh*¹

Sajeda Amin and Sara Hossain

Will it be we, the women living in the Muslim city, who will pay the price...? Will we be sacrificed for the community security in the coming rituals to be performed by all those who are afraid to raise the real problem -the problem of individualism and responsibility, both sexual and political²?

We do not accept -and will not accept- the concept of a single parent family or the concept of a family in its plurality of forms... Single parent family means a woman without a legal husband with a child without a legal father³.

As women are gradually becoming more visible in public life, and are breaking the bonds of patriarchal control, they are also facing a backlash articulated in terms of the reassertion of cultural, traditional, and religious values. In the ensuing struggle over women's rights, rival interpretations of Muslim laws, reformist and anti-reformist, are enlisted by each of the parties for their own aid. What is forgotten in the process, however, are women's own experiences, and the struggle to bring those experiences to bear on the formulation of standards by which to secure women's rights.

1. This is an extract from a longer article published in *The American University Law Review*, Vol. 44, 1995.

2. Mernissi, *Islam and Democracy: Fear of the Modern World* 9 (1993).

3. Abdur Razzaq, Keynote Paper Presented at the Seminar on the Cairo Conference on Population and Development: Human Rights and Moral Issues, Held by the Centre for Human Rights in Dhaka, Bangladesh (9 September 1994).

Articulating reproductive rights in Bangladesh

The Constitution of Bangladesh of 1972 guarantees the right of life and personal liberty, to equality under the law, to non-discrimination on the grounds of sex, and to equal protection by the law. It provides, subject to 'reasonable restrictions', the right to freedom of association and freedom of thought, conscience, speech, and expression. There is an obligation upon the State to take all measures to ensure the right to health and education of all citizens.

However, to the extent that there is any articulation of reproductive rights in Bangladesh, it is focused on the right to health and derived from the principle that access to health and freedom from disease are basic needs. The family planning programme, instituted to meet demographic goals of reducing population growth, has been the principal source of contraception for women. Contraceptives are readily available at little or no cost to women all over the country. Denial of access to contraception, therefore, is not perceived, at least by married women, as a major problem. In these circumstances, rather than criticizing the availability of contraception, women's groups have frequently criticized the family planning programme for its overzealous commitment to increasing contraceptive prevalence for fertility control, because the programme diverts attention from meeting the full range of women's reproductive health needs. Demographically-driven programmes are accused of treating women as objects and being a means towards achieving population control objectives.

It is not surprising, therefore, that women's demands for reproductive health services are voiced in terms of freedom from violence, coercion, and inappropriate use of reproductive technology. The equally important focus on women's needs in positive terms such as better access to health services, better quality services, more diverse health services, and services for health needs other than for fertility control, receive less attention. Again, there are few attempts to explicitly articulate the notion of the right to reproductive health or freedom, including the right to reproductive self-determination. Women's groups in Bangladesh have largely remained conspicuously silent on the issue of sexuality. This silence exists despite highly publicized events of extremely grave violations of women's rights. These violations have not directly infringed on access to the means of reproductive control, but instead, involved digressions from socially acceptable sexual practices.

Legal basis of family planning

All family planning services, other than abortion, are legal. (By social consensus, contraception and related services are only provided to married women). However, abortion during the first trimester is widely practiced under the name of Menstrual Regulation (MR). MR services

were initially justified as preventing botched abortions and consequent maternal mortality; it finds its legal basis in an interpretation that it is "an interim method to establish non-pregnancy". This effectively removes it from the Penal Code. MR services have been widely available since the late 1970s as part of the family planning programme and provided at government health facilities free of cost by government functionaries who receive high quality training.

Despite the widespread practice of MR, the criminal status of abortion undoubtedly contributes to the current moral ambiguity of the practice. In most rural contexts, MR/abortions are carried out secretly, because the woman obtaining the process may face serious repercussions, including social sanctions. Although there are no reported court decisions regarding prosecutions for abortion, if a situation involving MR/abortion is exposed, it may be heard before informal village tribunals (*salish*), in particular if the abortion is the product of an illicit relationship or adultery.

Rising contraceptive prevalence in Bangladesh

Bangladesh has been noted for the very rapid rise in contraceptive use over a relatively short period. Most demographers attribute the rapidly changing fertility profile that has accompanied rising contraception to an aggressive family planning programme.

The Bangladesh Government declared population its number-one problem in 1976, and combined an elaborate family planning programme with a strong motivational campaign, which has been backed by extensive external financial support. The programme emphasizes access to contraceptive services and delivers them at the doorstep of women even in remote rural areas.

The use of modern contraceptives rose from 7.7% in 1975 to 30% in 1989 and 45% in 1993. Access to contraception went from being available to less than 10% to nearly 50% of married women. Contraceptive use is even higher among women who participate in credit schemes meant to give women independent access to cash and income.

Religiosity and religious opposition to contraception

A recent analysis of factors that affect women's contraceptive use shows that religiosity (as measured by both the frequency with which women pray and self-assessment) is not statistically associated with use of modern reversible contraceptives. However, religious fervour does affect the decision to adopt sterilization as a contraceptive method. In other words, women who report themselves as most religious are less likely to use sterilization as a method of contraception. Female sterilization has always faced the most severe opposition, primarily because doctors who

perform the procedure are very often men. It is perceived, therefore, as a violation of the rules of seclusion that prohibit women's contact with non-kin.

Religious leaders voiced early opposition to the aggressive family planning campaign. The most common obstacles to birth control were social ostracization, refusal for burial, and lashings and other sentences imposed by shalish tribunals. As the programme matured, this opposition gradually faded. It is not uncommon, however, for fear of religious reprisals to make women unwilling to accept certain contraceptive services.

The family planning programme has addressed religious opposition through educational programmes for religious leaders. These programs provide information about the need to control population growth and the health benefits of reduced births. Additionally, there have been some concerted efforts to motivate religious leaders to make public pronouncements endorsing the use of family planning. For the most part, these pronouncements are based on liberal interpretations of the Quran. In 1985, in response to a request from the Government's Planning Commission, the Islamic Foundation published a book highlighting these liberal interpretations.

Muslim laws and reproductive issues

The practice of deploying progressive interpretations of Muslim laws in support of state-sponsored family planning programmes has found favour in a number of countries other than Bangladesh. Eminent religious leaders have issued among others these fatwas (religious opinions):

I see no objection from the sharia point of view to the consideration of family planning as a measure, if there is a need for it, and if the consideration is occasioned by the people's choice and conviction without constraint or compulsion, in the light of their circumstances, and on the condition that the means for effecting this planning is legitimate.

There is agreement among the exponents of jurisprudence that coitus interruptus, as one of the methods for the prevention of childbearing, is allowed. Doctors of religion inferred from this that it is permissible to take a drug to prevent childbearing, or even to induce abortion. We confidently rule in this fatwa that it is permitted to take measures to limit childbearing. (And the grounds on which contraception was considered permissible included economic, social, and medical factors).

Many jurists, however, rejected sterilization as a means of acceptable contraceptive practice, despite the absence of any prohibition on sterilization in either the Quran or the Hadith. Some jurists have pointed out that sterilization should be allowed in the absence of any specific

textual prohibition, particularly because "the preservation of reproductive power was not one of the obligations under Islamic Law⁴". In practice, in countries with significant Muslim populations, sterilization has been made illegal only in Iran and Saudi Arabia and is allowed in Egypt, Tunisia, India and Bangladesh.

In contrast to the relatively liberal position that jurists take on the issue of contraception, the juristic interpretation of the right to abortion has been more limited. For every school of interpretation except one, abortion is prohibited, except to save the mother's life, after the ensoulment of the foetus. Ensoulment of the foetus is considered to occur 120 days from conception. Jurists differ, however, as to whether and when abortion is permitted prior to ensoulment. The Hanafi school, which prevails in Bangladesh, permits abortion with justification before ensoulment. Several countries with a majority Muslim population have legislation permitting abortion within the first trimester, on the grounds of saving the woman's life, or for reasons of maternal health, or on any grounds whatsoever.

Furthering reproductive rights

Given the liberality and range on interpretation of Muslim law on reproductive issues, any attempt to identify "a fateful triangle model that sees an inevitably ill-fated association between Islam, women and demographic outcomes⁵" appears doomed at the outset. Similarly, any attempt to assert a monolithic and restrictive view of the "Islamic position" on reproductive rights would be misleading.

While the framework of Muslim laws permits the development and operation of family planning programmes, it remains unclear whether the framework of Muslim law alone can ensure women's reproductive rights. In contrast to other religious laws, Muslim laws are premised on the need to encourage marriage for all members of the Muslim faith. Muslim laws also assert that both parents in a marriage have a right to sexual enjoyment. In spite of such provisions, however, and while Muslim law may condone family planning, the notion that a woman may, for her own reasons, choose to adopt a contraceptive method is derided.

More importantly, personal laws that regulate rights within marriage in many Muslim countries establish a framework that denies women equality and inhibits them from exercising their right to self-determination within the family. In particular, in the South Asian context,

4. Shaikh Hasan Mamun, Rector Al Azhar University, Egypt, 1964, cited in Julie Sachedina, *Islam, Procreation and the Law*, 16 *International Family Planning Perspective* 109 (1990).

5. Carla Makhoul Obermeyer, *Islam, Women and Politics: The Demography of Arab Countries*, 18 *Population and Development Review* 50 (1992).

it has been argued that the combination of men's right to polygamy or unilateral divorce and women's lack of alternatives to marriage, restrains women from exercising the choice not to bear children. In this particular social and economic context, a woman's sole safeguard may be her ability to give birth to sons.

Moreover, traditional interpretations of Quranic verses and other sources of law tend to emphasize the inequality between men and women. While asserting that the introduction of Islam improved the status of women in Arabia, at the time of Mohammed, these traditional interpretations emphasize that Islam sanctions gender inequalities, particularly with respect to rights in marriage, rights to inheritance, and also establishes that one man's evidence is equivalent to that of two women.

The failure to establish that Muslim laws or Islam determine constraints on women's reproductive choices does not mean, however, that Islam or Muslim laws and beliefs are irrelevant with respect to reproductive issues. The powerful ideological influence of Islam ensures its impact on reproductive choices. This has prompted certain women's rights advocates (pre-eminently, Riffat Hassan and Fatima Mernissi) to adopt a strategy of attempting to reinterpret religious texts from a human rights and feminist perspective. They argue that texts used to legitimize women's inferiority should not be relied on outside their historical context, but instead be seen as limited to a particular historical context, and, therefore, subject to reinterpretation in an evolving society.

While such reformists strategies, which clearly situate themselves within the parameters of a religion, are useful for any community, their limitations need to be addressed. Reformist reinterpretations are unlikely to be accepted by religious leaders, and can offer no solutions across religious groups. A more effective strategy for establishing women's reproductive rights would ground such rights within an appropriate framework that takes into account, not only Islam and Muslim laws, and their varying interpretations, but also the specific cultural and political contexts of any society, and is based on a bedrock of universal human rights standards.

The fundamentalist challenge

The women's reproductive rights movement has faced challenges from all religious orthodoxies, as well recent religious fundamentalist movements. Otherwise pitted against each other politically, religious fundamentalists, of whatever hue, appear to share a common agenda regarding the control of women's rights.

Interestingly, while Muslim fundamentalists have not directly threatened family planning programmes, they have reacted strongly to the assertion

of women's reproductive rights within the context of such programmes. In this effort to challenge the ability of women to assert their reproductive rights, fundamentalist groups have sought to impose a monolithic and repressive interpretation of religious laws and religious views.

For example, Moududi, a Pakistani religious leader, and founder of one of the leading Muslim fundamentalist parties, who was firmly opposed to family planning, selectively cited religious texts to support his claims that birth control was anti-Islamic conspiracy, and that the introduction of family planning in developing countries would result in "the breakdown of the family and sexual promiscuity" and in women giving up their traditional roles⁶.

More recently, the Cairo Conference saw a coalition of Christian (led by the Vatican) and Muslim fundamentalists attempting, and succeeding in part, in restraining the affirmation and elaboration of women's reproductive rights. They strongly opposed the terminology used in the chapter of the International Conference on Population and Development (ICPD) Programme of Action entitled Reproductive Rights and Reproductive Health and a small number of Muslim countries also opposed the language on women's empowerment. While some countries accepted the need for post-abortion counselling and care (including Bangladesh), the Programme of Action itself stated that no changes could be made regarding abortion law except by national legislatures.

An indicator of how fundamentalists will take up the challenge of Cairo domestically may be gauged by the following comments: "We do not accept the concept of a single parent family or the concept of a family in its plurality of forms...". This commentator also appears particularly opposed to the provision of reproductive health care and information to adolescents and men. He argues that acceptance of these proposals would result in:

"a society in which extra-marital sex will be socially and legally permissible. Parents will have no control over their children. This has been prevalent in the West for the last half century and this has led to immoral behaviour, sexual anarchy, sexually transmitted diseases, more crimes, and more particularly, sexually related crimes".

In conclusion, he asserts: "As far as Bangladesh is concerned these offending clauses of the document offend our religious feelings, our culture and above all our civilization... to agree to such a proposal would be... unconstitutional⁷".

6. See, Abdel Rahim Omran, *Family Planning in the Legacy of Islam* (1992).

7. Abdur Razzaq, *op. cit.*

Muslim fundamentalists thus deny more liberal interpretations of Muslim laws and foreclose the possibility of any further progressive interpretation. In seeking to impose an extremely authoritarian version of the sharia on an entire society, fundamentalists reveal their essentially autocratic agenda. Any attempt by an individual to assert her own sovereignty or right to self-determination is viewed as a challenge to the prevailing order. The combination of the individual and collective demands of women for social justice, explicitly insisting on a change in the distribution of power, may in this context provoke a violent response.

Attacks on sexual and reproductive rights

It is in the context of rehabilitation of fundamentalists in Bangladesh, despite its secular constitution, that the attack on women's sexual and reproductive rights has been launched. This increasing visibility of women in both urban and rural areas, prompted by women's employment in the garments sector and the activities of development organizations, has acted as a catalyst for such an attack.

The fundamentalists chose as their first target single women identified as having transgressed social norms. In a series of cases, fatwas were issued by imams or madrassah principals, accusing women of zina (adultery/fornication), and sentencing them to punishments such as stoning, caning, and, in one particularly horrifying case, burning at the stake. Three women have died in such incidents. Other women who were accused by fatwas now face social ostracization. In each case, the fatwa was issued in the context of a shalish. A centuries-old method of alternative dispute resolution, the shalish is traditionally called upon to negotiate and mediate family or land disputes or petty criminal matters. Its judgements are usually accepted by both parties.

In the case described below, shalish authorities stepped far beyond their traditional bounds. Invariably composed of community and religious elders, the shalish tried and convicted women for acts that do not constitute offenses under Bangladeshi criminal law and sentenced them to punishments that also are not provided for by the prevailing law.

Dulali's case

In one case, Dulali, age twenty-five, became pregnant during an extra-marital relationship with Botu, another resident of her village. On discovering her condition, her family arranged her marriage to another man. Her husband, on confirming his suspicions that she was pregnant, however, divorced her. Dulali's family then reportedly called upon local elders to hold a shalish in the matter. At the shalish, Dulali was accused of zina and sentenced to be caned 101 times, to be administered seven days after the delivery of her child. No accusation was made against Botu, the man involved.

The execution of the sentence was pre-empted by the intervention of national women's organisations and the consequent presence of the police in the village on the day appointed for the caning. Subsequently, all locals denied the shalish, the fatwa, and the sentence. Dulali is no longer able to live in the village.

Trial by shalish, as in the above case, is clearly illegal. Shalish authorities have invariably invoked the sharia during these trials, although religious law is not applicable to criminal matters in Bangladesh. Shalish have no jurisdiction to hold trials for zina, which is not a criminal offence under Bangladeshi law. Although these shalish clearly violate the fundamental right to life and personal liberty, and the right to protection of the law, the failure of the State to respond promptly in each case has enabled perpetrators of such violence against women to escape with impunity.

Young women have been targeted by the community, led, in particular, by religious leaders, for having transgressed social and sexual norms. The risk of exposure and the lack of information combined to ensure that the options of contraception or abortion, which could have pre-empted the shalish and its ensuing consequences, were not available.

The focus of fundamentalist attacks shifted in their second phase to development organizations. Both the staff and the beneficiaries of a number of development projects faced threats of violence and criminal intimidation. Non-formal primary education schools, in which a large number of girls were enrolled and which provided secular education, were burned to the ground. Women receiving health care from NGOs were warned to boycott such organizations and were threatened with divorce if they failed to abide by such injunctions. Attacks continued to be targeted at sterilization programmes, with women who adopted sterilization being socially ostracized or refused religious burial rites.

The backlash effect

Religious opposition to reproductive rights, in the wake of Cairo, has been identified as being fuelled by extremist groups and fundamentalists. Such opposition appears to be based, not on religious considerations, but rather on purely political considerations. Thus, fundamentalists are unable to provide any clear or comprehensive theological justifications for their position. They are compelled to attempt to whip up fears of disintegration of social and moral order resulting from the application of reproductive rights.

Despite a steady trend of Islamization of the Bangladesh Constitution since independence, some far-reaching legislative interventions have been made, at times wholly at odds with the position under sharia, and judicial interpretations have in certain instances also interpreted sharia wherever possible, to allow for more equitable resolutions. In contrast,

the failure to legislate in the arena of women's reproductive rights effectively allows for the enforcement of such rights to be determined by community bodies solely on the basis of tradition or custom. In extreme situations, this, combined with the denial of information regarding reproductive health care and the lack of any access to such care, can result in situations such as those facing the fatwa victims described above.

The recent reaffirmation of reproductive rights at the Cairo Conference, combined with the existing legal foundations in international human rights law, as well as in the Constitution, provides an unassailable framework for women's rights advocates to press for the enforcement of reproductive rights and freedoms. Specifically defining rights and elaborating their operation through the law is of importance insofar as this establishes easily recognizable and uniform standards to meet certain needs. The challenge for women's rights advocates is to effectively use human rights law and the policy pronouncements at Cairo to establish the rights to reproductive security, health, and self-determination for Dulali, and all other women.

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The Women's Movement in Turkey:

The Influence of Political Discourses

Pinar Ilkkaracan

The question of the status of women in Islam has started to draw more and more attention in the Western world in the last years. This attention is due to a complex set of factors: From the rise of fundamentalist movements in the Islamic world to the fall of the Soviet Socialist Republic and the end of the Cold War, which resulted in a new picture of enemy for the Western world, namely Islam, all play a role in this interest.

The approach to Muslim women in the Western world has been traditionally racist. In German media, muslim women are generally depicted as being backward, isolated and in need of help¹. The women's movement has also more or less operated in this framework. The confrontation with the muslim migrant women in many European countries in the last decades has surely played an important role in the development of this interest in women and Islam. As these women started to participate in the German women's movement, they rejected the passive role given to them as objects "in need of help" and reminded the feminists and the public that they are active subjects by articulating their own demands and claiming their rights.

No doubt this interest will bring about positive changes in the contact of Muslim and non-Muslim women, in abridging distances, learning from each other and questioning self perceptions. Still, I believe the European women would profit from such interaction only if they are also willing to question hundreds of years of racist socialization.

1. Hebestreit, Sabine (1984). Rueckstaendig, Isoliert, Hilfsbeduerftig - das Bild auslaendischer Frauen in der deutschen Literatur. Frauenforschung, 2.

The situation in Turkey

The latest developments in Turkey, including the rise of the new feminist movement in the 80's and the parallel rise of the Islamic fundamentalism including women Islamic activists, give a confusing picture.

Fighting for better legal, economic and social rights with an increasing radicalism on the other hand and confronted with the threat of widespread fundamentalism, militarism, nationalism and human rights violation on the other hand, the women's movement in Turkey seems overwhelmed and paralyzed despite the vast potential it carries.

The rise of fundamentalism in Turkey includes elements such as women demonstrating to demand the right to cover their heads in the universities and at public offices, the victory of the Welfare Party in 37 provinces, including cities like Istanbul and Ankara at the local elections of 1994 and the rapid increase in the number of people who voted for WP including women. Many in Turkey perceive these phenomena as a shocking threat which has to be fought against vigorously. Others insist on understanding, tolerating and keeping the dialogue with the Islamic movement and claiming it to be a part of democracy. Those who have this perspective are against any prohibitions related to religious freedom and seem to carry post-modern characteristics in their discourse.

The present situation and the discourse becomes even more complex if we also look at the fact that there is no "one single Islam" and no "single and homogeneous Islamic or fundamentalist movement" in Turkey any more than in the rest of the world.

If we oversimplify the current debate in Turkey, we can say that the highlights of the present discourse are being for or against Kemalism and different perspectives on gender roles. I believe that the present discourse has its roots in the earlier discourses about modernism or westernization, Islamism and nationalism of the nineteenth century and that the women's movement in Turkey has not yet succeeded in freeing itself from the hindering effects of these discourses.

The historical development

Up to the "Beneficial" political reforms of Abdulmejid in 1839, there was no unified legal code in the Ottoman Empire. The social status, gender, profession, religion or religious sect of the person were factors which determined the application of the law. The Koran formed the basis of the family law which determined the status of women. There was no civil marriage. A special contract between a man and a woman which had to be made in the presence of two witnesses was enough for the validity of a marriage. Although there was no legal necessity, because of the importance given to marriage, it had become a tradition for an imam or

kadi (religious judge) to lead the marriage ceremony. There was no limitation of age for marriage. The marriage contract took place between the man and the woman, or the guardian of the woman representing her. The only condition was the consent of both the man and the woman.

The right to divorce was given only to men who could use this right as they wished to. The divorce act did not have to rely on any legal reasons or framework, it was not necessary to ask for the consent of the woman or the decision of a judge for the validity of the divorce. The man took over automatically all the custodial rights over the children in case of divorce. An Islamic right, "tefviz-i talaq" which also made it possible for women to divorce, was neither known nor practised by the majority of the population, but only for the daughters of the Sultan.

Theoretically, women had the right to use their property as they wished, but in practice, it was generally their husbands who decided what should be done with it. Girl children could inherit only half of what the boy children inherited. At a court of law two female witnesses were equal to one male witness².

During the second half of the nineteenth century, the status and the role of "women" became the center of attention of the modernization movement which identified with Western universality. The Islamic conservatives looked at the dissolution of the traditional role of women with considerable alarm.

The history of the modernization in Turkey is the struggle of these two movements: The westernization movement and the Islamic movement³. Although the content and the actors of this struggle have been changing throughout history, it is striking to note that the role of women in society is still one of the main domains of politics in Turkey, as we approach the turn of the twenty-first century.

With the initiation of social reforms during the Reform Period, there was an attempt to standardize and codify the legal system and to unify the law. There was also a heated debate going on about the status of women. During the period between the "Beneficial reforms" and the second constitutional period in 1908, the modernists were especially criticizing arranged marriages, polygamy and gender segregation; and defending the free access of women to education and "free love".

The conservatives on the other side perceived these reforms which were affected by western thought as a threat to the prevailing cultural identity and stressed the necessity to preserve the current status of women. The

2. Cakir, Serpil (1994). *Osmanli Kadin Hareketi (Ottoman Women's Movement)*. Istanbul: Metis Yayinlari.

3. Gole, Nilufer (1992). *Modern Mahrem*. Istanbul: Metis Yayinlari.

defenders of Islamic thought have since then wanted to limit the effects of modernization to the technical, administrative and material domains and have constantly underlined the importance of the cultural and the ethical legacy of the past. According to them, the dominating role of sharia'a, the Islamic law, in gender relationships is a precondition for the preservation of ethics and moral values.

The defenders of modernization on the other hand, from the reformists of the nineteenth century to the Kemalists of the Republican Period, have taken a holistic approach to civilisation and wanted to change the traditions in an attempt to catch up with contemporary modern values. For them, the education and the "liberalization" of women have been pre-conditions in reaching this goal.

Women's movement in the Ottoman period

Cakir (1994) mentions that during the nineteenth century mentions about 40 women magazines were published before the foundation of the republic in 1923 and several women's associations and groups formed. Although there are vast differences between the perspectives and demands of these women's groups during this period, the common demands of the progressive groups in those years include the right of divorce for women, the prohibition of polygamous and arranged marriages, the right to work and the creation of jobs for women, the reform of the educational system and the right of education for women.

Seni (1990) argues that the question of the dress code was also an important theme for the reformists and the conservatives during this period of modernization and that the dress code for women had become a symbol of being for or against Westernization⁴.

It is interesting to note that even the progressive women activists of the time have felt the necessity to keep their demands on the dress code for women as modest as possible, demanding a "national dress code for women which allows them to work, but which is modest and without ornaments" (Cakir, p. 59). It seems that even the women activists had to take note of the sensitivity of this subject related to the religious feelings of the public and have chosen to compromise on this theme in order to keep good relations with the public, preferring to work for women's rights in other areas⁵. Mert (1983), argues that the women writers were also affected by the nationalist movement of the time. Their demand for

4. Seni, Nora (1990). 19. Yuzyil Sonunda Istanbul Mizah Basininda Moda ve Kadin Kiyafetleri (Fashion and Women's Clothing in the Humor Magazines of Istanbul). In Tekili, S. (Ed.), 1980'ler Turkiyesinde Kadin bakis Acisindan Kadinlar (Women from the Perspective of Women in Turkey in the 1980's). Istanbul: Ilestisim Yayinlari.

5. Ilyasoglu, Aynur (1994). Ortulu Kimlik (The covered Identity). Istanbul: Metis Yayinlari, p. 53 and Cakir, Serpil, p. 34.

a national dress code and the use of national products was also a way of resisting the effects of the European fashion and creating a national identity⁶.

Another interesting phenomenon is the use of Islamic dress code (carsaf) by women activists during the Independence War between 1918-1923, although this was not at all the fashion for the socio-economic classes to which these women belonged. Ilyasoglu (1994) concludes that this reflected an effort by women activists to bridge the gap with the "women on the street". Moreover, by wearing the carsaf, women activists felt that they were able to establish equality with women of other classes and anonymity for the goal of fighting for independence⁷.

The Kemalist Revolution

The War on Independence ended with the victory of the reformists not only against the foreign allied forces but also against the conservative forces at home. The foundation of the Turkish Republic in 1923 was followed by the introduction of several revolutionary changes for women: polygamy was banned and women were granted equal rights in matters of divorce and child custody in 1926 by the Turkish Civil Code; and finally women were enfranchised in 1934. The civil code was an important victory over the defenders of sharia'a. Other Middle Eastern countries like Egypt and monarchist Iran, went through similar Westernization efforts but fell short of reforming the code of family laws or putting through changes related to the status of women in the society. In such a comparative perspective, the early and uncompromising nature of the so-called Kemalist revolution becomes even more striking⁸.

According to Tekeli (1982), women's rights granted by Kemalists aimed to break down the bridges back to the Ottoman Empire and to shake up the foundations of the religious hegemony⁹. Indeed, it seems that the official Kemalist position on the status of women is restricted to the framework of secularism and reform of the Islamic way of life instead of the actual liberization of women in real life. Although women were granted many rights on paper, the mechanisms to facilitate the use of these rights have not been realized. As a consequence, the women who were able to benefit from the new rights were a small minority: mostly women of

6. Mert, Nuray (1983). A study on the Change of Ottoman Clothing Habits. Unpublished master's Thesis. Istanbul: Bosphorus University.

7. Ibid., p. 54.

8. Arat, Yesim (1994). 1980'ler Turkiyesinde Kadin Hareketi: Ilberal Kemalizmin Radikal Uzantisi (Women's Movement in Turkey in the 1980's: A Radical Extension of Liberal Kemalism). In Arat, N. (Ed.), *Turkiye'de Kadin Olgusu*. Istanbul: Say Yayinlari.

9. Tekeli, Sirin (1982). *Kadinlar ve Siyasal toplumsal Hayat (Women and Socio-political Life)*. Istanbul: Birikim Yayinlari.

higher socio-economic classes in big cities like Istanbul, Izmir and Ankara and wives and daughters of the Kemalist bureaucracy.

After the Kemalist revolution

Several decades after the granting of women's rights by the Kemalist revolution not much had changed in the lives of the majority of women living in Turkey. In 1995, the percentage of paid women workers was still 3.8%. In 1975, 51.8% of women were still illiterate although primary education has been mandatory after the Kemalist revolution¹⁰.

Yet the official discourse has been that the problem of the status of women has been solved and that Turkish women should be considered "lucky" since they have been granted specific rights before their European counterparts. Unfortunately, this discourse has been internalized by many women who were able to benefit from the new possibilities of the young republic, such as professional women living in big cities or women of the bureaucratic elite. As a result, most of the women's groups and associations formed during the post-Republican era have concentrated on "helping" women living in villages, instead of questioning the overwhelming role that the Republic had determined for them. Moreover, the dichotomy they perceived between themselves and the women living on land hindered their understanding of the problems and potentials of the women they were supposedly trying to "help".

Another development which took place after the death of Mustafa Kemal, was that radical secularism had lost its speed, especially during the Democratic Party government of the 50's. In order to gain the votes of the village population, the Democratic Party tolerated, even supported the activities of religious orders. The number of Koran courses increased in all Anatolian cities and the Imam Hatip schools became a part of the official education.

In the legal domain, the first effort to reform the Turkish Civil Code of 1926 to benefit women was in 1951. From 1951 up till now there have been numerous commissions and several proposals by the Ministry of Justice. None of these proposals made over 44 years has even reached the level of becoming a draft of a law. The patriarchal system shows the highest resistance in reforming the institutions of family and marriage. The only change made in the framework of the Turkish Civil Code was the bill facilitating the act of divorce in 1988¹¹.

10. Ozbudun, Sibel (1984). *Turkiye'de Kadın Olmak (Being a Woman in Turkey)*. Istanbul: Yazın Dergisi Yayınları.

11. Ekren, Fahrunnisa A. (1993). *Medeni Kanun Degisikligi: Kadın Aleyhine Hukuklar (The Changes in the Turkish Civil Code: The Jurisdiction against Women)*. Ankara: Cagdas hukukcular Dernegi Yayınları 2.

Despite the Turkish constitution's guarantee that women and men are equal and shall enjoy equal rights, several laws, especially those concerning the marriage and family section of the Turkish Civil Code place women in a subordinate position in the family. For example, the husband is defined as the head of marriage union, thus granting him final say over the choice of domicile as well as over children. Married women are required to assume their husband's surname and can be required to obtain their husband's permission to receive a passport. Laws on adultery discriminate against women, making it easier for a man to initiate divorce based on his wife's alleged adultery than vice versa. A married woman cannot procure an abortion without her husband's permission.

Although a proposal to change these laws has been presented to the National Assembly since 1984, and various women's groups have submitted several petitions to the National Assembly, urging its acceptance, there has been no change up to date.

Other areas of discrimination

Traditional and contemporary patriarchy also dominates other areas of life. 50% of the Turkish population still lives in rural areas and women working in the agricultural sector are mostly unpaid family workers. Women who have migrated from rural areas become in general housewives or do piecework at home without any social security. Equal pay for equal work exists on paper but in practice, women have generally the lowered paid professions and jobs. Women who enjoy the freedom of higher education and having a profession are mostly from upper classes or from bureaucratic families in big cities. Still, the majority of women living in cities define themselves as housewives.

Women representatives in parliament is still as low as 2-3%, despite a female prime minister. Although primary education is mandatory since 1924, 32% of women in Turkey are still illiterate according to the 1985 poll¹². Most of the illiterate women are of Kurdish origin, living in the Eastern and South-Eastern regions of Turkey or who have migrated to the cities from those regions.

Women have free access to abortion including the state hospitals since 1983 but if consent by their husbands is not given, the state hospitals can refuse. Moreover, many women living in rural areas do not have any practical access to this right owing to poor or absent health services.

12. Gok, Fatma (1990). "Turkiye'de Egitim ve Kadinlar" (Education and Women in Turkey). In Tekeli, Sirin (Ed.), *Kadin Bakis Acisindan 1980'ler Turkiye'sinde Kadin*. Istanbul: Iletisim Yayinlari.

The Eighties: a new women's movement

As a reaction to strong state control, political movements with right and left-wing ideologies dominated the political debate and action in the 1960's and 1970's in Turkey, and women's issues were consequently subsumed under Marxist discourses. In 1980, Turkey got an expected but unwanted guest: the military intervention, claiming to be "the only way to put an end to the anarchic atmosphere" of the 1970's, suppressed all kinds of social opposition by force, applied a systematic depolitization of the masses and formed the basis of neo-liberalism proposed by the IMF and capitalistic forces.

In this atmosphere of suppression and fear, the first new social movement which showed the courage to be in the opposition and articulate its demands was the women's movement. Several feminist magazines started publication pursuing a lively debate on women's rights and the role of the state in supporting the patriarchal system. Women organized several campaigns and demonstrations to realize their demands. In the legal sphere, they succeeded in the cancellation of two articles of law discriminating against women. Article 438 of the Turkish Penal Code, which reduced sentences for rapists in cases where the victims were prostitutes was, after much public outcry, repealed by the Turkish parliament. Article 159 of the Turkish Civil Code, which decreed that a married woman must have her husband's implicit or explicit consent to work was rendered unconstitutional by the Constitutional Court as a result of a landmark case brought to court by the advocacy efforts of women's groups.

Another tangible success of the women's movement has been breaking the taboos on discussing violence against women in the family. While several women's shelters were established in the 80's as a result of the efforts of the women's advocacy groups, at the moment, there is only one women's shelter left in Ankara. The existence of this remaining shelter is threatened by the Local municipality governed by the Welfare Party. The rest have been shut down by other parties, including the True Path Party of Ciller. The Purple Roof Foundation, which is the only completely autonomous women's shelter will start its work in a few months after years of struggle.

Present situation of the women's movement

The women's movement in Turkey at the moment seems to have lost its initial power of activism and influence in restructuring of Turkish society. This has several reasons.

I believe that the main discourses of the nineteenth century, namely Modernism which formed the foundation of Kemalism into the twentieth century, Islamism and nationalism are still at work. The women's

movement has not yet managed to free itself from these discourses and to form its own discourse. Hence, it has been unable to develop a critical approach to all of them as elements of the patriarchal system. Instead women's groups engage in the ongoing debate, investing their energies in becoming part of the established hegemonies and dividing their own power by doing that.

The so-called secular/Kemalist feminists perceive the growth of the Islamic movement as the main threat and are willing to cooperate with the state in avoiding this danger. They see women activists in the Islamic movement as their enemies or reduce them to ignorant beings "who are being used as instruments by the male activists of the Islamic movement". Gole, in her research on the women activists of the Islamic movement concludes that such women do well in the use they make of the "space of opportunity" provided by Kemalism in restructuring the traditional gender roles and overcoming the Islamic prohibitions for women. For Gole, "Islam is not any more against modernism, it has rather become an instrument of life in coping up with modern society"¹³.

The Turkish women's movement fails also to bring up a substantial critical approach to the militarism and the war going on in Eastern and South-Eastern regions of Turkey, the growth of a new nationalism and the official discourse of the state on the Turkish identity, claiming all the citizens living within the boundaries of Turkey to be "Turks". Besides from some initiatives condemning racism, there is almost no effort to create solidarity and engage in networking with the Kurdish women.

Another problem of the women's movement seems to be the lack of networking among several groups to initiate effective lobbying. This, I believe is not specific to the Turkish women's movement. Specific to Turkey though, is the small number of autonomous women's groups and the almost non-existent waged places for women activists as a result of lack of funds and the absence of state support for the NGO's. The concept of professionally working NGO's has started to develop only in the last few years but it seems that there is a long way to go before the state starts funding them financially. As a result, efforts of networking often get nowhere. Moreover the contrast between women of higher education and classes and women living in rural areas and women of lower education levels continues to increase instead of diminishing.

Interestingly, women active in the Islamic movement seem to have realized this phenomenon. They are quite successful in using this potential by including in their networking the women from rural areas and women of lower education who have migrated to the cities.

13. Gole, Filufer (1992). *Modern Mahrem*. Istanbul: Metis Yayinlari, p. 138.

Women in the "Islamic movement"

Women active in the "Islamic movement" are drawing more and more attention from the public and from social researchers. Surely, their motives in engaging in political Islamic activity after 70 years of secularism is quite complex. Here, I will try to outline some observations, warning that they carry the danger of over-simplification.

The main change in the lives of women after the Kemalist revolution came through migration to the cities as a result of mechanization of agriculture, industrialization, and the distribution of land. The migrants formed the shanty town areas around the cities, creating their own sub-culture and dynamics. The effects of migration for women meant getting away from agricultural production and becoming a housewife or starting to work in marginal sectors like cleaning, daily piece-work with almost no social security. I believe that the increase in the votes of the Welfare Party in the 1990's cannot be understood without noting the huge dimensions of migration to the cities.

Migration, women and Welfare Party

The migration to the cities has taken on huge dimensions in the last decade, helped by the military presence and human rights violation in the Eastern and South-Eastern Turkey. In the last ten years over half the Turkish population has migrated from one place to another. There are almost no social services or support programs provided by the government for the migrant women living in big cities. These women who have even lost the advantages of agricultural production and their traditional support network are left alone to fight the effects of migration: a new way of life and set of values, mostly worse economic conditions, failing sanitary and health services, lack of educational opportunities and the changing paradigms of family life such as being reduced to dependents on their husbands and subjected to their violence.

The oft cited legal rights granted by the Kemalist revolution have little or no meaning for them as they have neither the awareness of these rights, nor ways of realizing them in practice. Under these conditions, it is the Welfare Party with its excellent networking and organization which offers the migrant populations the financial support, spiritual solidarity, political activity and a sense of identity. The women's branch of the WP functions better than equivalent branches of all other parties, going from door to door in migration areas, distributing food, offering health services and social support and inviting and welcoming the women in their local organization.

An interesting phenomenon is the effort of the WP to give a "liberal" picture of itself in terms of the "women question". One example of that was recruiting ex-pornostars of fashion models as members of the party

who claimed to have found the "right path". This is a strategy of the WP to prove their ability to cope with the contemporary way of life in the cities after 70 years of secularism and modernism and to attract the votes of those who have internalized such values.

Moreover, I share the perspective of the sociologist Serif Mardin who argues that the gap between the Kemalist elitists and the others, as well as the failure of the Kemalist state in developing mechanisms to facilitate the realization of granted rights for the majority, form the basis of a social dynamics in which people approach religion and religious groups to develop strategies to cope with life.

Women who have little access to formal education will continue to take advantage of education in religious schools provided by the Islamists; women who have little access to participation in political life instead seize the opportunity of engaging in Islamic women's groups with their excellent organization and networking. And women who get no state support in social services will not of course reject the offer of the religious groups and activists for support and financial help. No doubt that for many this is a way of emancipation even if it is not a "feminist" one as criticized by many feminists.

On a final note a foreign journalist living in Turkey interviewed several people from all political wings, professional groups, politicians and people on the street. He found no common dominant view. The vast differences in the projections of future by different individuals and groups was mind boggling.

I think this is the present reality of Turkey. The only thing we can do is open our eyes and try to see and understand the present without prejudices and free of internalized official discourses. The incredible pace of social changes and social dynamics in Turkey with a rapidly changing world in the background allows for no more at the moment.

The advantage of the present situation is the opportunity it provides in re-evaluating perspectives which have become obsolete and the chance it offers for an increased creativity in redefining the present dynamics and our course of action.

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Voices of Dissent

Salman Rushdie

The following news stories are taken from the first half of 1993.

In Pakistan, an elderly poet, Akhtar Hameed Khan, 78, is quoted as saying that while he admires Muhammad his real inspiration has been Buddhism. He denies saying this, but is nevertheless accused by mullahs of Blasphemy. In 1992, he had been arrested for insulting the Prophet's descendents by writing an animal poem which the fundamentalists alleged had hidden, allegorical meanings. He beat that charge now, once again, his life is in danger.

In Sharjah, one of the United Arab Emirates, an Indian theatre group which in 1992 performed a play entitled *Corpse-Eating Ants*, which was held to be blasphemous, and who had been sentenced to six year jail sentences for blasphemy, appealed against the sentence. Some members of the group are freed, but one has his sentence increased to 10 years and another has his six year term upheld.

In Turkey, one of the country's most respected secularist journalists, Ugur Mumcu, is gunned down in the street. Turkish fundamentalists take credit for the attack and the Turkish government says it has evidence linking the murders to Iran. The interior minister, Ismet Sergin, says that at least three killings have been carried out by a group called Islamic Movement, whose members have been trained in assassination techniques "at an official Iranian facility between Tehran and Qom".

In Egypt, the assassins who in 1992 murdered the distinguished secular thinker, Farag Fouda, are brought to trial; however, extremist bombings and killings continue. In Algeria, the writer Tahar Djaout is one of seven secularists murdered in a killing spree by what the security forces call "Muslim terrorists". In Saudi Arabia, distinguished intellectuals form the country's first human rights group. Many are fired from their posts, including university professorships; many are arrested and jailed. Trials are pending.

In Egypt, Professor Nasr Abu-Zeid, who teaches literature at Cairo University, is charged with apostasy because his criticisms of the Islamists. Fundamentalists ask the courts to dissolve his marriage, since it is illegal for a Muslim to be married to an apostate. The alternative would be for his wife to be stoned to death as an adultress. In Turkey, three dozen secularist writers and artists gathered for a conference in the town of Sivas were burned to death in their hotel by a mob of Islamic fundamentalists which accuses them of being atheists and therefore, in the fanatics' view, deserving of being burned alive.

And in Sudan... and in Iran... but enough, perhaps.

The United states has recently become all too painfully familiar with the nature of holy -or, rather unholy- terrorists of Islam. The crater beneath the world trade centre, and the uncovering of a plot to set off more gigantic bombs and to assassinate leading political figures have shown americans how brutal these extremists can be. These and other cases of International Islamic terrorism have shocked the world community; whereas the cases of domestic terrorism listed above have captured relatively little of the world's "share of mind". I should like to suggest that this imbalance in our attention represents a kind of victory for fanaticism. If the worst, most reactionary most medievalist strain in the Muslim world is treated as the authentic culture, so that the mullahs get all the headlines while progressive, modernising voices are treated as minor, marginal, "Westoxicated" -as small news- then the fundamentalists are being allowed to set the agenda.

The truth is that there is a great struggle in progress for the soul of the Muslim world, and, as the fundamentalists grow in power and ruthlessness, those courageous men and women who are willing to engage them in a battle of ideas and of moral values are rapidly becoming as important for us to know about, to understand and to support as once were the dissident voices in the old Soviet Union. The Soviet terror state, too, denigrated its opponents as being overly Westernised and enemies of the people; it too, took men from their wives in the middle of the night, as the poet Mandelstam was taken from Nadezhda.

We do not blame Mandelstam for his own destruction; we do not blame him for attacking Stalin, but rather rightly we blame Stalin for his Stalin-ness. In the same spirit, let us not fall into the trap of blaming the Saudi theatre folk for their rather macabre-sounding worms, or Turkish secularists for "provoking" the mob that murdered them. Rather, we should understand that secularism is now the fanatics' Enemy Number One, and its most important target.

Why? Because secularism demands total separation between church and state in the Muslim world; philosophers such as Fouad Zakariya argue

that free Muslim societies can exist only where this principle is adhered to. And because secularism rejects utterly the idea that any society of the late 20th century can be thought of as "pure", and argues that the attempt to purify the modern Muslim world of its inevitable hybridities will lead to equally inevitable tyrannies. And because secularism seeks to historicise our understanding of the Muslim verities: it sees Islam as an event within history, not outside it. And because secularism seeks to end the repressions against women that are instituted wherever the radical Islamists come to power. And most of all, because secularists know that a modern nation-state cannot be built upon ideas that emerged in the Arabian desert over 1,300 years ago.

The weapons used against the dissidents of the Muslim World are everywhere the same. The accusations are always of "blasphemy", "apostacy", "heresy", "unIslamic activities". These "crimes" are held to "insult Islamic sanctities". The people's wrath, thus aroused, becomes impossible to resist. The accused become persons whose "blood is unclean" and therefore deserves to be spilled.

The British writer Marina Warner once pointed out that the objects associated with witchcraft - a pointed hat, a broomstick, a cauldron, a cat, a mole on the chest - would have been found in most women's possessions during the great witch hunts. If these were the proofs of witchcraft, then all women were potentially guilty; it was only necessary for accusing fingers to point at one and cry, "Witch!" Americans remembering the example of McCarthyite witch hunts, will readily understand how potent and destructive the process can still be. And what is happening in the Muslim World today must be seen as a witch-hunt of exceptional proportions, a witch-hunt being carried out in many nations, and often with murderous results.

So the next time you stumble across a story such as ones I've repeated here, perhaps a story tucked away near the bottom of an inside page in this newspaper, remember that the persecution it describes is not an isolated act - that it is part of a deliberate, lethal programme, whose purpose is to criminalise, denigrate and even to assassinate the Muslim world's best, most honorable voices: its voices of dissent. And remember that those dissidents need your support. More than anything, they need your attention.

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