

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

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**Dossier 19**

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Dossier 19 was edited by Marie-Aimée Hélie-Lucas and Harsh Kapoor  
Resource Section: Harsh Kapoor

Cover Photo: A bazaar in Tehran, Iran 1979, © Christine Spengler/SYGMA

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For all correspondence write to:

**Women Living Under Muslim Laws**, Boite Postale 23, 34790 Grabels, France.

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## *Introduction*

The increased labelling of diverse immigrant communities of Muslim background in Europe as having a common culture since they share a common religion is appearing as a dominant trend. Religion is becoming equated with "culture". Aziz Al-Azmeh shows how some of this has been happening in the U.K., through innovative attempts of Islamist political projects on one hand and, on the other, under the bizarre patronage of Multiculturalism. While the politics of culturalism, premised on the idea of difference, is facilitating the emergence of impermeable ghettoised communities, self proclaimed religious-cultural spokesmen are clearly interested in becoming the sole managers of this 'territorial space' using an imaginary Islamic social cement. The invention of a common 'Islamic culture' to coalesce immigrants [of Muslim background] in Britain has obvious political interests for professional Islamist politicians seeking recognition, status, resources and power. In all this the Islamists seek to assume exclusive charge of the interpretation and the definition of the content of their tailor made Islam. The obvious losers in this process are women, who in the name of religion, culture and tradition, are once more subjected to playing roles defined by the new custodians.

A study by Rachel Bloul in the early 1990s of 'Muslim' identity construction in France describes how the control of North African immigrant women's behaviour and their appearance became central to these processes. As part of a broader strategy to blur distinctions among migrants, an imagined common transnational Islamic culture was invoked, and women's attire used as an identity marker. There were French liberals who were reading 'just demands' for minority rights into all this, thus creating an 'Other' entity based on the concept of 'difference'.

In all this 'culture' construction business, women as bearers and transmitters of culture are viewed as a critical component to the transnational Islamist project for the reproduction of a 'made-to-order' Islamic society.

The article on Egypt by Azza Karam describes the implications and reactions to Islamism in the women's movement. It looks at ideological and practical strategies of Secular feminists and those of 'Muslim' feminists who are working from within an Islamic religious space.

In our continued efforts to survey the fundamentalist offensives, we have a paper by Muhammad Mahmoud providing a historical review of the growth and development of The Muslim Brotherhood or the Ikhwan in Sudan, its implications for secularism. and its impact on women.

Lynn Freedman's contribution takes us further by exploring the Fundamentalist project across religions. She demonstrates how women

have been key target of strategies of control by fundamentalist movements of all breeds.

The paper by Lucy Carroll examines the contrasts and similarities between divorce proceedings and women's rights under English law and as prevalent under Muslim law. The paper destined for use by activists analytically examines case law.

An unusual comment by Sultana Kamal takes issue with the Islamic legal provision of Mehr as being essentially patriarchal.

Finally a powerful personal testimony illustrates the little understood and frequently denied experience of lesbian women in Arab world contexts.

October 1997

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# *Muslim “Culture” and the European Tribe*

*Aziz Al-Azmeh*

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Un Parisien est tout surpris quand on lui dit que les Hottentots font couper à leurs enfants mâles un testicule. Les Hottentots sont peut-être surpris que les Parisiens en gardent les deux

Voltaire

**T**his essay derives from the contention that there are as many Islams as there are situations that sustain it. European Islam in its various forms and places is no exception. It is perhaps a measure of the potency of the imaginary Islam as it is conceived in mediatic representation and according to the spontaneous philosophy of “experts”, academics included, that this elementary contention needs to be defended at a time like ours. We can surely assume that among the permanent acquisitions of the social and human sciences is the realization that ideological and other forms of collective representation are unthinkable without internal change and structural bearing. And it is a fact that this acquisition is almost invariably put to use in the study of contemporary ideologies, mass movements and other phenomena of European histories and realities. But it is not generally put to use regarding phenomena islamica, which are regarded as generically closed, utterly exotic, repellently mysterious, utterly exceptionalist.

I do not wish to elaborate much on this pervasive and unflinching misrecognition, although I suggest, in this essay, many factors that make it prevalent. For now, I am commenting on the recent transition, most specifically in Britain, from structural considerations of immigration to a culturalist notion of ethnic diversity which has come to predominate in the past two decades and which was consecrated by the Rushdie affair. There are definite structural foundations for this transition in the demotic consciousness, and there is little mystery in this that cannot be unravelled with reference to elementary notions of ideology, in which relations of subordination and domination are sublimated,<sup>1</sup> so that a

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1. Véronique de Rudder, “L’Obstacle culturel: la différence et la distance”, *L’Homme et la société*, January 1986, pp. 39, 45.

fetishism of "culture" becomes a part of the social imaginary of advanced capitalism and its new divisions of labour on the international scale. Thus and in the first instance, primary importance must be attributed to the impossibility of socio-economic assimilation experienced by second-generation immigrants born in situations of urban degradation and into marginal, declining and unskilled industry, at a time of increasing state indifference and hostility coupled with racism in the very capillaries of the "host society".<sup>2</sup> Added to this are pressures that push Asian Muslim (and other) shopkeepers to cater for the poorest, as slum landlords and purveyors of cheap goods, and thus take on the classic features of a middleman minority confronted with racist reactions.<sup>3</sup> The work of the ethnic entrepreneur, operating through kinship networks which provide the basis for domestic commodity production as well as for the sweatshop, is a classic condition conducive to social involution,<sup>4</sup> and the formation of social as well as geographical ghettos. Finally, modern communications have enhanced the sense of immigrant deracination by facilitating the illusion of truth to the realities of the country of origin, a sense reinforced by the reality, made possible by increasing globalization, of transnational economic and social networks which forms a central part of immigrant life.

Thus structural and spatial segregation and the social involution and ghetto formation lie at the basis of the culturalism that is now becoming the prevalent mode of discourse as the non-European presence in Europe, most particularly of Muslims who, for a host of reasons not connected with historical or social reality, are assumed to form a community by virtue of sharing a religion which, peculiarly, has been dubbed a "culture". The reader will note that concrete material adduced in support of my arguments here concerns exclusively British Muslims of Pakistani origin, and it is indeed with them that the following paragraphs are chiefly concerned. Like other groups, British Muslims of Pakistani origin constitute a specific configuration of socio-economic locations. Yet generalizations about social groups in terms of religion in order to describe their specificities and to underpin factors that overdetermine their socio-economic and ideological positions have become habitual, although they are irresponsible, for the forces that make for social involution are not religious;<sup>5</sup> religious difference underwrites and does

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2. See, among many others, *ibid.*, p. 29; Verity Saifullah Khan, "The Pakistanis: Mirpuri Villagers at Home and in Bradford", in James L. Watson, ed., *Between Two Cultures: Migrants and Minorities in Britain*, Oxford 1977, pp. 75-6, 80, 86 and *passim*; Tariq Modood, "British Asian Muslims and the Rushdie affair", *The Political Quarterly*, 6/1-2, 1990, pp. 145 and *passim*.

3. Pnina Werbner, "Shattered Bridges: The Dialectics of Progress and Alienation among British Muslims", *New Community*, 17, 1991, pp. 342-3.

4. Haleh Afshar, "Gender Roles and the 'Moral Economy of Kin' among Pakistani Women in West Yorkshire", *New Community*, 15, 1989, pp. 211-26.

5. Saifullah Khan, "The Pakistanis", pp. 58, 74, 80, 86.

not overdetermine social exclusivism. The hyper-Islamization of collectivities of Muslim origin has accompanied hardening tendencies to social involution premised on structural features of communities of Muslim origin. This representation, which assumes a homogeneity overriding differences between those of rural and of urban origin, rich and poor, educated and illiterate, is by no means a reflection of social reality, which is one of stunning diversity.

Some Britons of Pakistani origin, like the Kashmiris of Mirpuri origin, who predominate in Bradford, are of rural origin with hardly any social awareness of city life even in Pakistan itself. Their culture is above all rural, with Muslim religious elements incorporated within this primary determination—but Muslim religious elements of a mystical and magical character, unconnected to the legalism of the puritanical Islam of their advocates and spokesmen. Their rural origin explains the tendency to be far more socially conservative on matters such as girls' education than Indian Muslims, for instance, who belong to a different "culture" born of different geographical, social and educational imperatives.<sup>6</sup> Facts such as the reasonable integration of wealthier Pakistanis within their class in Britain, the regional conditions of origin and socio-economic diversities among the Pakistanis of Britain—(not to speak of British Muslims generally, certainly not a corporate group)<sup>7</sup>—are often overlooked. Also habitually ignored are the facts of class division among Pakistanis, with the religious authorities leading the representation of poorer sections as far back as the late 1970s,<sup>8</sup> and the fact that there were forces for integration as well as for involution among British citizens of Pakistani origin before the Rushdie affair, including generous openness to knowledge, no matter how reserved, of Christianity and of the ambient society.<sup>9</sup> In the same vein of mystification, the considerable alienation of young Pakistanis, especially girls, from their background is ignored.<sup>10</sup> Instead, emphasis is exclusively laid on the undeniable forces for involution and ghettoization. Features observable and ascendant since 1989 are projected back into an indistinct, though very proximate past.

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6. Daniele Joly, "The Opinions of Mirpuri Parents in Saltley, Birmingham, about their Children's Schooling", Centre for the Study of Islam and Christian-Muslim Relations, Birmingham, Research Papers —Muslims in Europe, no. 23, September 1984, pp. 20-21.

7. For instance, Werbner, "Shattered Bridges", pp. 342-3.

8. Pnina Werbner, "Ritual and Social Networks. A Study of Pakistani Immigrants in Manchester", unpublished PhD thesis, Manchester University, 1979, pp. 338-9.

9. Werbner, "Shattered Bridges", pp. 339 and passim; Paul Bhai, "Image of Christian Life among Muslim Residents—A Study of Birmingham", unpublished dissertation for the Certificate in the Study of Islam, Centre for the Study of Islam and Christian-Muslim Relations, Birmingham, 1979, passim.

10. R. Sharif, "Interviews with Young Muslim Women of Pakistani Origin", Centre for the Study of Islam and Christian-Muslim Relations, Birmingham, Research Papers - Muslims in Europe, no. 27, 1985, pp. 11, 14 and passim.

Of these features one might cite many indices. Some are connected with kinship networks,<sup>11</sup> which, among Pakistanis as others, are increasingly international and encourage life in fantasy of rootedness. Others are newer. An interview with a marriage bureau owner who serves the British Pakistani community indicates a growing tendency for men in Britain to seek wives from Pakistan rather than from British-bred Pakistani women, and of the former they are choosing increasingly younger and more cloistered girls of more conservative outlook.<sup>12</sup> Other features are the proliferation of exclusivist Muslim organizations, like Young Muslims' annual fairs, Muslim fun-fairs, Muslim medical advisory services, not to speak of an unelected Muslim parliament. With the Rushdie affair, a number of Muslim internationalist infrastructures of an educational, welfare and propaganda nature ( beholden to networks controlled by Iran, Saudi Arabia and the Pakistani jammāt-i-islāmī) were put into high gear and conjured up the notion of an "Islamic community" as a distinctive and identifiable entity. But it must not be assumed that these and cognate phenomena are in any sort of continuity, direct or indirect, with the Muslim "culture" of origin, for there is no such culture at origin, and the trans-Islamism we witness is highly *recherché*, and specific to the present and the very recent past, as well as to Britain and to political interests articulated here in the name of Islam.

Thus the presumptions of Muslim cultural homogeneity and continuity do not correspond to social reality. Muslim reality in Britain is, rather, composed of many realities, some structural, some organizational and institutional, but which are overall highly fragmentary.<sup>13</sup> Nevertheless, abstracted from its socio-economic bearings, European Islam, and Islam tout court, has been represented as a cohesive, homogeneous and invariant force, indeed an otherness so radical that it is possible to speak of it as a historical enemy, much in the same way as communism was addressed in some circles.<sup>14</sup> It is represented as a repellent exoticism by mass psychological mechanisms very like those involved in anti-Semitism.<sup>15</sup> Yet the median discourse on Islam in Britain as in Europe is not predominantly or always overtly racist or quasi-racist. What we have is a culturalist differentialism; we are presented with supposed

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11. Saifullah Khan, "The Pakistanis", pp. 58, 74 and *passim*.

12. Muslim News, 23 March 1990; Modood, "British Asian Muslims", p. 147.

13. Modood, "British Asian Muslims", *passim*; Jørgen Nielsen, "A Muslim Agenda for Britain: Some Reflections", *New Community*, 17, 1991, especially p. 472.

14. An example of this vulgar discourse is Daniel Pipes, *The Rushdie Affair. The Novel, the Ayatollah, and the West*, New York 1990, pp. 214 ff.; and see Aziz Al-Azmeh, "The Middle East and Islam: A Ventriloquial Terrorism", in *Third World Affairs*, 1988, London 1988, pp. 23 ff.

15. T. Adorno in Theodor Adorno et al., *The Authoritarian Personality*, New York 1950, chapter XIX.

differences of “culture” within a discourse which can be either xenophile or xenophobic:<sup>16</sup> both are premised on irreducible and impermeable difference.

Now culture, like nature, is one of the most difficult notions to use in the social sciences. This difficulty is compounded by the fact that its increasingly pervasive and irresponsible use has come to indicate little beyond an aesthetic of otherness, and more generally a negative aesthetic of otherness, which invigilates ideological processes that oversee the constitution of specific identities under specific conditions of socio-economic confinement, buttressed by what is known, in the “host” society, as multiculturalism.

The origins of this exclusivist and differentialist notion of culture are quite straightforward. A culturalist relativism *avant la lettre* was available in the repertory of European social thought from the time of Romanticism in the late eighteenth and early nineteenth centuries and was counterposed to the universalist notions of civilization— “Politically, as so often in this period, it veered between radicalism and reaction and very often, in the confusion of major social change, fused elements of both”.<sup>17</sup> Thus differentialist culturalism comprehends both a libertarian streak and a segregationism, today as well as in its places of origin, as mirror images, with anti-racist xenophilia mirroring racist xenophobia, or indeed like racist xenophobia which wants “cultures” to coexist in mere spatiality without interpenetrating. The trajectory of this notion of “culture”, in the nineteenth century, was one in the course of which it was elaborated as racism along biologicistic lines,<sup>18</sup> and the irrationalist vitalism of this notion is still its most active constituent. In the course of the past two decades, three displacements affected this notion: race became ethnicity, then culture; normative hierarchy and inequality gave way to representation in terms of difference; and xenophobia was in many circles replaced by xenophilia.<sup>19</sup> Thus we find fused in racist and anti-racist discourse alike the concept of non-transmissible lifestyles, a concept garnered by the race relations industry, the Labour Party and professional ethnology deriving from the heritage of the German Romantic historical school and from British functionalist anthropology alike.<sup>20</sup>

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16. On differentialism, heterophilia and heterophobia, see in general Pierre-André Taguieff, *La Force du préjugé. Essai sur le racisme et ses doubles*, Paris 1987.

17. Raymond Williams, *Keywords*, London 1976, s.v. “Culture”.

18. Colette Guillaumin, *L’Idéologie raciste. Genèse et langage actuelle*, Paris and The Hague 1972, chapter 1.

19. Taguieff, *La Force du préjugé*, p. 14.

20. Claude Lévi-Strauss, *A View from Afar*, transl. J. Neugroschel and P. Hoss, Harmondsworth 1987, p. 26.

It is irrelevant to the force of this differentialist culturalism that it is tied to a specific vantage point in both time and place. This is a cosmopolite, post-imperial (but not necessarily post-imperialist) North with a particular grid of misrecognition to which is commonly applied the cliché "postmodernism".<sup>21</sup> This is a fictitious sense of novelty and of radical diversity primed to become automatically operational as a means of ideological and representational uniformization whenever collective representations of global and local social and political conflict are called forth.<sup>22</sup> It is shibboleth which reduces realities to Reality, expressed in bytes, and therefore amenable to manipulation; in other words, a recent form of the ideological production which had previously been termed "the end of ideology".

Culturalist differentialism is born equally in a situation of a radical notion of ascriptive individualism, a social condition which is projected on to a metaphysical screen describing universal conditions. And finally, in Britain, this condition is equally engendered by a tradition, become a knee-jerk policy of husbanding internal and external affairs, of politico-ethnic and politico-cultural categorization which, in the past, resulted in the catastrophic divisions of India, Palestine and Ireland, and which today results in regarding as natural—therefore not worth the effort of resistance—both the ghettoization of Britain and "ethnic cleansing" in the Balkans.

This culturalist differentialism nevertheless, and despite the individualistic liberalism of its proponents, exists in a "vicious circle of complicity" with xenophobic racism.<sup>23</sup> It has in Britain completely internalized the Powellite notions about nations or other collectivities being predetermined boundaries of sympathy, over-determined by an instinctivism<sup>24</sup> which does not need to present itself necessarily in terms of racial hatred: all it requires is a "discursive deracialization" underpinned by exclusivism and "arguments from genuine fears" premised on the supposed authority of "common sense".<sup>25</sup>

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21. On this phenomenon, the reader is referred to Alex Callinicos, *Against Postmodernism*, Cambridge 1989; David Harvey, *The Condition of Postmodernity*, Oxford 1989; and Fredric Jameson, *Postmodernism, or, the Cultural Logic of Late Capitalism*, London 1991. Highly pertinent here is a reminder of Herbert Marcuse, *One Dimensional Man*, London 1964.

22. See Christopher Norris, *Uncritical Theory. Postmodernism, Intellectuals, and the Gulf War*, London 1992.

23. Taguieff, *La Force du préjugé*, pp. 16, 43, 416.

24. Martin Barker, *The New Racism: Conservatives and the Ideology of the Tribe*, London 1981, pp. 14 ff., 97, and chs 3 and 4 passim.

25. Frank Reeves, *British Racial Discourse: A Study of British Political Discourse about Race and Race-Related Matters*, Cambridge 1983.

Like racism, culturalist differentialism is an essential perceptive system premised on a notion of a pre-given "culture" which, like race, has no sociological definition. Culture is here an obscure term coined to schematize without precision an indeterminate reality.<sup>26</sup> Indeed, it is the enormous advantage of this notion that it is put forward to indicate sheer difference, for in this sense it can not be disproved because it is tautological: chicken tandoori is not roast chicken; a black headscarf is not a fashion accessory; Muslim prayer is not a High Church Christmas mass.<sup>27</sup> In all, tokens of a banal nature are taken up and affirmed as tokens - or stigmata - of difference, and differences elevated to Difference based in an absolutization of heritage which, although cultural, is attributed to a state of nature in which cultures subsist, according to this discourse.<sup>28</sup>

What remains to be done here is symptomatically and briefly to examine some aspects of another actor in this "vicious circle of complicity", namely, the British Muslim advocates of culturalist Islamism.

There is no doubt that British Muslims, most particularly those of Pakistani, and, to a somewhat lesser extent, of Bengali origin, are witnessing a heightened sense of religiosity, albeit against a background of Bengali adherence to secular nationalist rather than to religious political advocacy.<sup>29</sup> Until recently, religiosity was connected with upward social mobility among the poorest elements, and correlated to intra-communal competition.<sup>30</sup> The Rushdie affair accelerated this tendency and made public a number of sentiments and stigmata which have become part of public mythology and hence have taken on autonomous trajectories<sup>31</sup> in the construction of inter-communalist myths, and thus in the generation of putative identities. Initially disembodied from social practice, religious vision and ritual observance under conditions of migration to Europe takes on a certain autonomy from social processes and prescribes an autonomist notion of the religious ego and a body of allied prescriptions.<sup>32</sup> It also proffers a fetishism of the collective self as a socio-political imperative.

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26. Guillaumin, *L'Idéologie raciste*, pp. 2, 13; Taguieff, *La Force du préjugé*, pp. 19 ff.

27. Cf. de Rudder, "L'Obstacle culturel", pp. 32-3.

28. Cf. Taguieff, *La Force du préjugé*, pp. 15-16; Etienne Baibar in E. Balibar and E. Wallerstein, *Race, Nation, Class: Ambiguous Identities*, London 1991, pp. 17-18, 21-2, 57.

29. See especially, Stephen William Barton, *The Bengali Muslims of Bradford*, Leeds 1986, pp. 184-5.

30. Werbner, "Ritual and Social Networks", pp. xxv, 60 ff, 357.

31. Werbner, "Shattered Bridges", pp. 344-5.

32. Werner Schiffauer, "Migration and Religiousness", in T. Gerholm and Y.G. Lithman, eds, *The New Islamic Presence in Western Europe*, London and New York 1988, pp. 151-2, 155.

Thus Islamic "culture" takes on the aspect of a psychodrama, and the serious business of inventing a culture begins, primarily by the conjuration and proclamation of tokens (stigmata to others) of exoticism, particularly ones which give a pronounced visual edge to the boundaries of exclusion/ inclusion. Basic and most plastic among these are dressing up, and exhibitionistic piety, with dramaturgical direction provided by such political or quasi-political organizations as are poised to take over this new political constituency, with the full complicity of the xenophile/xenophobic "host culture", the one in the name of "multiculturalism", the other with an apartheid intent closer in spirit to the advocates of this exclusivism themselves. A past is invented, sensibilities discovered. It therefore becomes possible to assert, for instance, that Rushdie's use of the now infamous "Mahound" is provocative,<sup>33</sup> although there is no tradition of awareness of this name in either medieval or modern Islam, and knowledge of this name was, until 1989, the preserve of a handful of Western antiquarians, who might well and justifiably object that it is far more complex than opponents of Rushdie imagine. Yet "Mahound" is given the status of "popular" knowledge quite artificially. Suddenly, we hear of "an authentically Islamic temper" and of what constitutes a "real Muslim".<sup>34</sup> We hear of "cultural treason" against Muslims<sup>35</sup> and opponents of this phantasmagoric trend, like the present author, are dismissed as "Christian" because they dispute the conjurations of the Islamist party. We also encounter positions of sanctimonious sentimentalism as "Muslim sensibility" without further qualification, and are told of arcadian scenes of spring cleaning in Damascus by "Muslim housewives",<sup>36</sup> although Christian Damascene households are by no means less fastidious about cleanliness—and indeed Damascene Muslim micro-sociological lore, to which I can testify at first hand, regards Christian housewives as rather more fastidious than Muslims, and their houses and streets somewhat neater. An ethnographic account tells of women in Pakistani households in Oxford supervising children regarding the back room—reading the Koran only is mentioned, not homework<sup>37</sup>. It also tells of Mughal families taking pride in their descent from Muslim conquerors, with too much accent on religion and too little on nobility<sup>38</sup>—the properly Muslim nobility consists of sayyids, not Mughals, whose title to nobility is conquest and statehood. Thus blanks in personal

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33. Malise Ruthven, *The Satanic Affair*, London 1990, p. 36.

34. For instance Shabbir Akhtar, *Be Careful with Muhammad*, London 1989, p. 7 and passim.

35. Ali Mazrui, in L. Appignanesi and S. Maitland, eds, *The Rushdie File*, London 1989, pp. 221-2.

36. Rana Kabbani, *Letter to Christendom*, London 1989, pp. ix, 19-20, 35, 37 and passim.

37. Alison Shaw, *A Pakistani Community in Britain*, Oxford 1988, p. 64.

38. *Ibid.*, p. 93.

sanctimoniousness or naïve research are filled with fanciful material weighted towards misrecognizing reality as a constituent in the Islamist psychodrama. And the primary victim, Salman Rushdie himself, edging towards compromise at a particular moment, recast his intellectual genealogy in such a way that the Arabian Nights, the influence of which he professes, became "Islamic" literature.<sup>39</sup>

A sentimentalist view of a spurious, unsullied reality prior to the corruption of the present, or of such a fantastic reality continuing in the present, is then made into the main constituent of a political and social programme. This spurious prior reality is termed "culture". It is neither "real" nor old, but is a *recherché* cluster of modes of visible behaviour which are said by certain Islamist authorities to represent the "true prior reality" - one that British Pakistani Muslims had never known until recently, for it is not only traditions that are invented, but also collective memories. The most notable title under which this politics of nostalgia for an imagined past is officiated is of course the "application" of Islamic law: a law which was never a code that could be "applied", as the Appendix to this chapter indicates. This "law" is supposed to distinguish a *genre de vie* which is as impermeable as it is intransitive, and therefore deserving of the title "culture". It is thus that the politics of nostalgia imagines a past, or a prior reality, conjures an affection for a past that never was, and turns this sentimentalist imperative into a programme to be imposed on the social and political realities of today.

All in all, therefore, we have, in the play of this psychodrama, an efflorescence of fantastic genealogies and explanations, all premised on xenophobic/ xenophile differentialism, from the flirtations of the willing Beauty and the eager Beast (such as the contributions of John Berger and David Caute to the Rushdie affair), through to the shrill xenophobia of a Fay Weldon or Anthony Burgess, across to the platitudinous liberalism of the median discourse of differentialism.

But there is more than psychodrama, self-parody and caricature in this explosion of the fantasy. For we have the steady accumulation of pressure points on the education system (with a view to creating Muslim schools where girls could be properly socialized) and elsewhere with a view to detaching British Muslims, especially Asians and most particularly Pakistanis, from the mainstream of modern life, and their resocialization within a new culture of exclusivism and xenophobia. This is the impact of the calls for Muslim communalist institutions,<sup>40</sup> with a subculture in the process of invention. Such, for instance, is the case of the Yummies (young, upwardly mobile Muslims), who stand against non-liberal liberalism, who dress sharply in clothes to pray and play in, who cloister

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39. Interview in *The Guardian*, 17 January 1991.

40. See particularly the sweet reasonableness of Modood, "British Asian Muslims", *passim*.

together in home-centred communities, immune from the vices of the ambient society, but nevertheless sharing housework.<sup>41</sup>

But British Muslims are perhaps no more than a case in point in the Europe and the Lombard League, of Jean-Marie Le Pen, of minuscule regionalism. Muslim differentialist discourse, a counter-racism or a racism in reverse, would seem appropriate in a Britain where culturalist differentialism has, as mentioned, fully internalized the Powellite conception of history as the savage play of ascriptive sympathies and antipathies, in which the “natural” condition of groups of different origins is one in which they are wholly apart, and in which any attempt to mix them would render conflict inevitable. Such is perhaps natural in a Europe that regards itself as tribal territory with precise border controls, in which nations (for some sections of their members) regard themselves as tribes, all ranged above one another according to a tributary model of subalternity. Such, in an age of dubious postmodernity, is the consequence of “the new Cartesianism of the irrational”.<sup>42</sup> And such is the natural outcome of a situation in Croatia and Serbia succinctly described by an outstanding columnist, a situation which is not alien to Western Europe except in sheer density and extent—but intensity is by definition shifting and conjunctural, and it is not clear to what extent the West European body politic is systemically immune to this:

Miraculous Virgins make their scheduled appearance. Lurid posters show shafts of light touching the pommels of mysterious swords, or blazoning the talons of absurd but vicious two-headed eagles. More than a million Serbs attend a frenzied rally, on the battle site of Kosovo, where their forebears were humiliated in 1389, and hear former Communists rave in accents of wounded tribalism. Ancient insignias, totems, feudal coats of arms, talismans, oaths, rituals, icons and regalia jostle to take the field. A society long sunk in political stagnation, but nevertheless across the threshold of modernity, is convulsed: puking up great rancid chunks of undigested barbarism.<sup>43</sup>

Tribalism, xenophilia, xenophobia and Islamist exclusivism alike are premised on a very classical trope of modern European irrationalist political and social thought (hence its attractiveness to postmodernism)—right-wing Romanticism,<sup>44</sup> with the attendant organicism of its notions of

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41. Muslim Wise, January 1990, pp. 14-15.

42. Umberto Eco, *Travels in Hyperreality*, trans. W. Weaver, London 1987, p. 129.

43. Christopher Hitchens, “Appointment in Sarajevo”, *The Nation*, 14 September 1992, p. 236.

44. Romanticism was a central feature of Western political discourse in the past 200 years, but is very little recognized and imperfectly known, and is usually and quite erroneously regarded as marginal in studies of Western political thought. See the recent overview of Michael Löwy and Robert Sayre, *Révolution et mélancolie. Le romantisme à contre-courant de la modernité*, Paris 1992, chs 1 and 2. The authors of this rather traditional history of ideas are, without justification, keen to save Romanticism from fascism and the religious right, which they classify as “reactionary modernism” (pp. 93 ff, 237).

history, the corporatism of its notion of society, and the voluntarism of its notion of political action.

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## **Appendix:**

### ***Blasphemy and the Character of Islamic Law***

When in 1608, King James asked the jurist and parliamentarian Sir Edward Coke why it was that law could not be interpreted by any intelligent man in the light of reason, Sir Edward resorted to an argument for the technical nature of legal reason:

True it is that God has endowed Your Majesty with excellent science, and great endowments of nature; but Your Majesty is not learned in the law of this your realm of England, and causes which concern the life, or inheritance, or goods, or fortune of your subjects, are not to be decided by natural reason, but by the artificial reason and judgement of the law, which law is an art which requires long study and experience before that a man can attain to the cognizance of it.

A response of the same nature could be given by any jurist with technical competence in the field of Islamic law to the claims made for this law by advocates of Islamist political ideologies. These advocates claim to speak for a univocal body of legislation which is not grounded in the vast historical experience of Muslims. They also speak in terms of explicit and demonstrable commands deriving from scriptural statements without the mediation of legal reason. Finally, they give the impression, and sometimes make the utopian presumption, of a universal extraterritoriality which has no grounds in Islamic scriptures or in the historical experience of Muslims.

This may not be surprising. This advocacy is made by ideologues with at best a rudimentary knowledge of Muslim scriptures. In the case of divines with undisputed knowledge of Islamic scripture and legal texts, it arises from the suspension of such knowledge in favour of immediate ideological and political purposes. It is unfortunate that an impression of ferocious crudity and simplicity is being given of Islamic law, an impression which is certainly undeserved by the vast corpus of writings on law and legal methodology (deontic logic, analogical connections, rhetorical methods, philological and lexical procedures) stretching over centuries and vast expanses of territory, the ensemble of which is Islamic law.

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Tzvetan Todorov's *On Human Diversity: Nationalism, Racism, and Exoticism in French Thought* (transl. C. Porter, Cambridge, MA, 1993) alas only came to my attention after this article had gone to press. But I should like to signal the meticulous detail with which Todorov treats the possible transformations of essentialist relativism (chapters 2 and 3 passim, especially pp. 219 ff) and the ease with which racism can give way to culturalism (pp. 156-7).

The first characteristic feature of Islamic law which ought to be indicated as a corrective concerns its technical nature. Islamic law is highly technical, indeed arcane, to those who have not sought properly to tackle its vast body of literature. Some of the great jurists such as Sarakhsi, the greatest figure in the Hanafite school to which the vast majority of Indian Subcontinent Muslims adhere (along with Afghans, Turks and the Arabs of Syria and Iraq) went to great lengths to demonstrate that his notions and procedures are so technical that they have none but a most tangential connection with ethical or dogmatic considerations.<sup>45</sup> The divine origin of some of the utterances which enter the conveyor belt of legal reason—that is, the text of the Koran—is technically irrelevant to their legal aspect. Infractions of law are punishable in this world, infractions of divine purpose in the next. This must be the first matter to bear in mind today, when ignorance and politics are wilfully confusing Islamic law with the requirements of Islamist ideology.

The second point concerns legal innovation. Contrary to political and ideological pretensions, the historical reality of the practice of Islamic law has been one of wide latitude in opinions over specific points of law (the *ikhtilaf*). The corollary of this, quite naturally, is the mutability of this law in the context of changing circumstances, a mutability which does not accord with the utopian archaism of Islamist politics. And indeed, the reform of Islamic law over the past century has instituted a condition of “absolute discretion” (*ijtihad mutlaq*) based on the reinterpretation of scriptural and other foundation texts, in addition to what Islamic legal theory designates as the “auxiliary” sources of law: custom, public interest and equity. The prevalent trend in Muslim law reform in the present century has indeed been an attempt to generalize the classical precepts in such a manner as to have them merge with a notion of natural law; such has been the achievement of the great reformer Muhammad Abduh. In theoretical terms, Muslim jurists (though not the Shi’a) have adopted a highly sceptical view of the finality of their judgements; hence the readiness mutually to recognize views that may be contradictory. It is recognized—though this recognition is not shared by Islamist ideologues—that it is against natural justice and natural law (which accords with divine will) to foist ordinances of relevance to the seventh century upon the twentieth.

Moreover, Islamic law is not a code. This is why the frequently heard call for its “application” is meaningless, most particularly when calls are made for the application of *shari’a*—this last term does not designate law, but is a general term designating good order, much like *nomos* or *dharma*. Islamic law is a repertoire of precedents, cases and general

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45. See Baber Johansen, “Die Sündige, gesunde Amme. Moral und gesetzliche Bestimmung (hukm) im islamischen Recht”, *Die Welt des Islams*, 28, 1988, pp. 264-82.

principles, along with a body of well-developed hermeneutical and paralogical techniques. In certain respects, it resembles English law quite strongly; one can study these connections (as with Germanic law) in the seminal work of the Arab world's premier jurist of this century, A. Sanhury,<sup>46</sup> and of his French associates, Edouard Lambert, Linant de Bellefonds and others. This characteristic nature of Islamic law reinforces its legal latitudinarianism, a fact which explains how it emerged and reigned successfully as one of the great legal systems of the world over more than twelve centuries in very different parts of the globe. Little wonder, then, that Islamic law has a predominantly objectivist character, as Sanhury and his associates have shown. This (in marked contrast to French law) reinforces its technical nature and further accentuates its being the preserve of fully trained jurists.

One final point must be mentioned. Islamic law as a corpus is predominantly private: it treats of obligation, contract, personal status (including succession) and other aspects of secular life. These are termed by Islamic jurists, *huquq al-'ibad*, the rights of persons. A much smaller corpus of public law exists under the rubric *huquq Allah*, the rights of God. These concern the obligations incumbent upon properly constituted Islamic polities; they are redundant in the absence of such a polity and have no extraterritorial competence, and a Muslim in *partibus infidelium* is a *musta'min* "under safe conduct", obliged to follow the laws of his or her country of residence. Substantively, the rights of God concern protecting and maintaining the Muslim body politic through international relations both martial and pacific, and through invigilating its internal integrity by the creation of a *Rechtsstaat* and the suppression of ideological sedition—that is, unbelief, apostasy and the very difficult notion of blasphemy.

Apostasy as a legal notion was questioned in the Middle Ages, abolished in Ottoman territories before the middle of the nineteenth century, and regarded by the famous Muslim reformer of the present century, Muhammad Rashid Rida, as a political matter concerning the seventh century and, as such, of no consequence to the present age; indeed, the Koran states quite unequivocally that there should be no compulsion in matters of religion (*la ikraha fid-din*). Unbelief and blasphemy have had different meanings and accents over the historical experience of Muslims, although there does exist a hard core of dogmas which are universally held, regardless of their historical justification; all traditions harden in this manner. Additionally, all traditions vary, over time and place, in the severity and in the systematic character with which

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46. See Enid Hill, "Islamic Law as a Source for the Development of a Comparative Jurisprudence: Theory and Practice in the Life and Work of Sanhuri", in A. Al-Azmeh, ed., *Islamic Law: Social and Historical Contexts*, London 1988 pp. 146-97; and Aziz-Al-Azmeh, *Al-'Ilmaniya [Secularism]* Beirut 1992, pp. 211 ff.

unbelief and dogmatic deviance are pursued. Likewise, most traditions reach a point where doctrinal purity and univocality become redundant. Such is the case with those parts of the world with Muslim majorities, especially in the Arab world, except for subcultural pockets and among political minorities which espouse a fundamentalist primitivism entirely inattentive to the historical experience of Muslims and to the historical character of their law. Islam has, moreover, never had a central authority which determines rectitude and which has exclusive title to the legitimacy which renders its territories the Abode of Islam, and thus the location of the practice of the Islamic legal system. This is especially so in modern times, when the Rights of Persons have been partly incorporated into the civil codes of such countries as Egypt, Syria and Iraq (all the achievements of Sanhury), but according to modern legal principles. What was not thus incorporated has been forgotten—and even such as was codified has lost its “Islamic” and taken on an entirely civil character. The Rights of God, on the other hand, though rarely abolished in any explicit manner, have been left in abeyance and relegated for exaction in the next world.

Thus any consideration of the question of blasphemy or of heresy, be it that of Mr Rushdie or of others, must first face the historical irrelevance of his task, and must also be cognizant of its technical impossibility in the very terms of the Islamic legal corpus and system themselves. Calls for the “application of Islamic law” have no connection with the Muslim legal tradition built upon multivocality, technical competence and the existence of an executive political authority which controls the legal system. It is a political slogan, not a return to a past reality.

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6 Meard Street  
London W1V 3HR  
United Kingdom

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# *Engendering Muslim Identities:*

## *Deterritorialization and the Ethnicization Process in France*

*Rachel Bloul*

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**T**hanks to the massive postcolonial immigration that has taken place in recent years, France is today a state in which people are increasingly concerned with their collective identities as either “Maghrebi”/ “Muslim” or “French”. It is important to see that this creation of politicized ethnic identities exists on both sides, not just that of the minorities. The core process of “ethnicization” involves linking a specific population to distinctive cultural characteristics. The collective control of female behavior and the use of feminine representations is central to this process. In this regard, both French and Maghrebi men have contrasted the image of veiled Muslim women with that of presumed-emancipated second-generation “Beurettes” (the daughters of Maghrebi immigrants, called “Beurs”), notably in recent controversies over the right of Muslim schoolgirls to wear hair coverings in class. Some Maghrebi men have used this contrast to assert the need to protect Muslim interests, while some French have used the same images to arouse fears of the Muslim population. These issues have then become involved in contests for control over the public sphere.

The focus of in this article is deliberately on men. Although women, and most notably Beurettes, have been involved in Maghrebi collective action in France,<sup>1</sup> they have been relatively invisible in contrast to men,

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1. Beur collective action made its first national impact in 1983 when several hundred Beurs and Beurettes marched though France to Paris to protest against racist incidents (Bouزيد, 1984; Jazouli, 1986). Beurettes played an important role, although relatively few in number, and some have been politically active ever since. One, Mme Djida Tazdait, has been elected to the European Parliament.

who create a Muslim collective identity as generically male. Moreover, French women are heard from but rarely in most public controversies. Men monopolized the earlier (1989-90) debate over the "veil."<sup>2</sup> This situation is not unique, since it is possible to argue that cultural communities are generally "communities of males" (Appadurai, 1990:19). In the case of the Maghrebis/ Muslims, this process of "engendering" ethnicity can be seen as an understandably intense response to the situation of a population no longer defined by their identification with a particular territorially defined entity.

A frequently heard comment, and self-definition, of Maghrebi men goes like this: "We are Muslims: our women don't (go out alone, wear lipstick, etc.), unlike French women, who do". Frenchmen contribute to this claim to distinctiveness by making exactly the same distinctions about Muslim women. Maghrebi men who make such arguments are more likely to be involved in Muslim organizations with international connections and to disapprove of French government attempts to encourage a "French Islam". They are thus more directly involved in an arena that makes issues of gender central in building a collective identity. As Helie-Lucas (1994) argues, there, too, men not only turn women into markers of collective identity but also make them the very stakes of cultural competition. In so doing, they claim to be able to speak for Islam (Bloul, forthcoming).

What is the relationship of Maghrebi "deterritorialization" to this use of "sexual politics"? As Arjun Appadurai (1990) argues, the increasingly integrated economic world-system and the dominance of Western media may not in the end be creating worldwide homogenization. "Global culture flows" may well create differences and an intensified sense of criticism or attachment to home politics in displaced populations. In this context, migrant communities, assaulted by the desires and fantasies depicted by the mass media, strive "to reproduce the family-as-microcosm of culture." In these circumstances, "the honor of women becomes not just an armature of stable systems of cultural reproduction" but also increasingly "a surrogate for the identity of embattled communities of

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2. The situation has somewhat changed since the resurgence of the debate in 1994, when the then minister for education, François Bayrou, expressly forbade the wearing of "conspicuous symbols" of group identity in the republican institutional space of the schools. When a number of adolescent females protested against what they perceived as discrimination, French media depicted them as "manipulated by extremist groups" and "blind" to the Islamist danger to themselves as women and to the advantages of liberal French gender arrangements. I have argued elsewhere that this contemporary French defense of Muslim women's rights echoes the French colonial "sexual politics" of penetration in Algeria (Bloul, 1995).

males" (Appadurai, 1990: 19). This may produce violence against women, who become victims of men's sense of displaced identity.<sup>3</sup>

### *Diversity Among Muslims in France*

The self-understanding of Maghrebi migrants and second-generation Beur men is varied and complex, even if all see themselves primarily as Muslim actors in a "Christian" (Nasrani), or white (Gauri) country. It is critical to recognize this complexity before generalizing about the transition to gendered (and twin) ethnic identities that has taken place in recent years in France.

My arguments are based on local field work in 1986-87, with a return visit in 1991, coupled with an analysis of the so-called "affair of the head scarves" over the right of Muslim schoolgirls to cover their heads. I worked in Mulhouse, a middle-sized industrial town in the northeast of France. Mulhouse has a high proportion of predominantly Maghrebi migrants, who are concentrated in the poorest surrounding suburbs, typical of the semi-ghettoized enclaves of postcolonial immigration in Europe (Belbahri, 1987; Berger and Mohr, 1982; Castles, 1984, 1986; Jourjon, 1980; Miles, 1982). The distinguishing characteristics of Qsarheim, the neighborhood in which I primarily worked, was its grassroots association of household heads, formed on the initiative of one local Tunisian man in 1984, under the tutelage of various French officials and "personalities," including the local mayor and the head of a housing company. Interestingly, a similar initiative was taken in the nearest Maghrebi neighborhood, Qsarstadt,<sup>4</sup> but there the association soon lost its impetus and became inoperative in less than a year. The French officials involved explained this in terms of Qsarheim's "dynamism" and "will to effect changes" in contrast to Qsarstadt's "instability", "population turnover", "local rivalries", and "lack of leadership".

Maghrebis themselves had a different interpretation. They argued that Qsarstadt had a number (about a dozen at the time) of young, educated Maghrebi migrants, who came to Mulhouse to study in the local university research center, and often participated in the Association des musulmans d'Alsace et de Lorraine, a Muslim organization known by its acronym, AMAL. AMAL is identified in the minds of many with the Muslim Brotherhood, an Islamist movement based in Egypt. By contrast, the Qsarheim leaders were older, more settled, much less educated, and

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3. Appadurai's use of gender shows how unreflectively he associates gender and women: he mentions gender only in relation to women as victims of (increased) male violence resulting from certain deterritorialization effects. This derivative use robs the concept of gender of much of its analytical potential vis-à-vis "the cultural politics of deterritorialization".

4. Both names are pseudonyms.

often belonged to mainstream Maghrebi associations organized along national lines: the Association des Algériens en Europe (AAE), the Association des travailleurs et commerçants marocains (ATCM), and the Association franco-tunisienne (AFT). Rumor attributed the collapse of Qsarstadt's local association to infiltration by AMAL.

Each association wanted to build a leisure center under French government patronage, with the necessary funds being raised from a variety of contributors, including the town council; the housing estate; the Fonds d'action sociale (FAS) and Comité pour le logement des travailleurs immigrés (COTRAMI), specialized national agencies of migrant welfare; and local donations. In 1987, the Qsarstadt center had been built, but it soon passed under the control of COTRAMI. AMAL, referred to by both Maghrebis and French as the "Muslim Brothers", took the lead in expressing resentment at the takeover. This did nothing to improve Qsarstadt's reputation as an inhospitable politicized ghetto. By contrast, in spite of considerable internal difficulties (Bloul, 1992), Qsarheim's association survived. Qsarheim men were quite proud of the visible improvements in the neighborhood, although disaffection among the local youth drastically limited their ability to effect change, especially after a leadership crisis reduced their association to near paralysis.

Nonetheless, by 1991, not only had Qsarheim been prettified, but there was also a general feeling of more prosperity. There were fewer children playing in the streets, since, I was told, parents now sent their children to the various activities organized by the town council, "even if they had to pay". More children of both sexes were encouraged in their studies and sent to university. To help with the costs, almost all mothers now worked, mostly part-time. This last bit of news was most surprising. Four years earlier, only four married women had worked (out of eighty-four Maghrebi families): they had tended to be younger and better educated than most, and they were subjected to not a little criticism. All the other women stayed at home and generally abided by the customary restrictions. In 1987, a married woman going out alone to shop at the local market too regularly used to raise censorious eyebrows. What had happened?

When I commented on these various changes and remarked that Qsarheim was getting to be quite indistinguishable from its French surroundings, people beamed at me and said that six or seven families had even quit the neighborhood to build their own homes in better suburbs. Their example had stimulated the remaining families. The generally more affluent feel was attributed to the fact that in most families, the father's salary was now complemented by the earnings of the mother and one or two elder siblings.

The various changes suggested quite a shift in family strategies. There was little mention of the "dream to return", of the house to build in the

Maghreb. Instead, each family's communal effort centered on improving their chances in France. What seemed most remarkable was the effect of this changed perspective on women's positions. Over and over, people drew my attention to married women's employment. Finally, they explicitly contrasted this with the fate of Qsarstadt, which, they told me, had become "quite fundamentalist": most Qsarstadt women now "wore a veil" and their Leisure Center had "become a mosque". Muslim proselytizers, some of my informants confirmed, had tried to "impose the veil here", but without much success. When I inquired about the reasons for such "failure", my female informants were categorical: husbands, they said, did not insist on the "veil" being worn, hence the "failure". My observations confirmed this.

Qsarstadt women wore a bewildering array of costumes: some were in traditional Maghrebi dress, some in modest Western clothes with an "Islamic scarf", and a few in the remarkable Egyptian fashion of the full, black neguab, in which only the eyes are uncovered. If the Leisure Center had not quite "become a mosque", it nonetheless now housed a prayer room, and use of its facilities was sex segregated.

Meanwhile, Qsarheim's center was mostly used by children and youth. Qsarheim's association, almost moribund when I left in 1987, had divided into a renters' association, composed of older Maghrebi men (all former members), and the association "Animation et cultures", whose directing committee now included a few French social workers and educationists and two Beur youths. Although women were still excluded, the inclusion of two sons was an extraordinary concession on the part of older men jealous of their patriarchal privileges (Bloul, 1992). It had been a battle, one son told me, but the older men were now reconciled to the change. The very different evolutions of two such similar neighborhoods should discourage easy generalizations about "the Muslim and/ or Maghrebi presence" in France. The "affair of the veil", in spite of the facile characterizations in some of the media, offered another such lesson.

The affair started as an incident involving three Maghrebi girls who refused to take off their head scarves in class in spite of the headmaster's demands, and were henceforth refused entrance to the classrooms. This soon became a national controversy, which at its peak figured daily and prominently in all national media for two months until mid December 1989. Nor was "the affair" resolved then. Rather, it was abruptly silenced when the effects of its political exploitation became dramatically obvious: local elections in November 1989 registered a marked increase in support for the right-wing National Front (FN), which led the FN leaders to make outrageous demands in its bid for power. This furious debate over females' proper attire was dominated, almost monopolized, by men, both French and/or Muslims.

Women's opinions were hardly ever heard. Mme Mitterand took a

position in favor of the “veil” in the name of individual rights, a stance widely criticized as a political embarrassment to her husband. Some French feminists and female politicians belatedly opposed the veil, and their opinion was duly registered and forgotten (*Le Monde*, October 25, p.14). Although the positions of a few well-known Muslim women (Mme Sebbar, Mme Tazdait) and of Beurettes’ associations were reported (*ibid.*; *L’Express*, November 3, p. 10), their arguments were not on the whole publicized and even less debated. Pride of place was given to prominent men’s views: French and Muslim male intellectuals, politicians, and religious representatives heatedly argued the vexed question of republican secularity as an ethnically neutral space. In addition, some Frenchmen delighted in defending Muslim women’s rights. In particular, the Freemasons, not particularly noted for their practice of gender equality, were the first to raise this issue.

Blurring the usual distinctions between Left and Right,<sup>5</sup> however, the question of women’s rights was quickly downplayed. The debate centered resolutely on secularity, the problems of immigration, the possible birth of a “French” (i.e., “democratic, secular, and privatized”) version of Islam, and the consequences of all this for French identity. What is most important, and has been little commented on, is that both French and Muslim professional opinion-makers took various positions for and against the veil in the name of the same values—that is, secularity and individual rights. For those in favor of the veil, secularity was a matter of “ensuring that everybody has a right to their own opinion, and to express it freely and safely. This right is only limited by the respect of the right of the other” (Cheikh Haddam, head, Paris Great Mosque, quoted in *Le Monde*, October 24, 1989, p. 16). For those opposing the veil, secularity meant the deliberative avoidance of any particularistic, symbolic inscription of institutional (republican) space, understood to be the only guarantee for tolerance and individual freedom. Thus, in a typical argument: “Displaying one’s minority group symbols against each [symbol] of the other groups [denotes] a logic... of intolerance and of ethnic exclusion, precisely the logic that the spirit of true secularity fights” (Cocq, 1989: 2).

Opinion polls showed that French and Muslim public opinion in general coincided with the parameters set by the media debate. French people, for example, were not so much opposed to the veil per se (32 percent only opposed the wearing of the veil in the street) as to the veil as an ethnic marker in republican institutional space such as schools (75

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5. The rightist opposition delighted in taking an unusual position for women’s rights. The parties of the Left and the usual antidiscrimination associations, as traditional supporters of women’s rights (in lieu of France’s very weak feminist organizations) and of minorities, were in an ambiguous situation, which produced belated attempts to defuse the question as much as possible.

percent against the veil in school). Second-generation Beurs showed the whole gamut of public positions for and against the veil in the name of secular values and individual rights, a result congruent with a marked gallicization of norms among Beurs (Bloul, 1992). Among Muslims in general, women (49 percent) and older people (66.7 percent) were more opposed to the veil in school than men (42 percent) and youth (43.6 percent) (Le Monde, November 30, 1989, p. 14). Most Beurs defending the veil did so in the name of a specific understanding of secularity and individual rights as respect of differences, while older Maghrebis opposed it in the name of discretion.

Thus, the divisions among Muslims in France, although downplayed in general by the French media, were as great as among the native French population. In addition, most Muslims, whatever their positions, appealed to the same values (freedom and individual rights) that French opponents of the veil in school invoked, and that form the core of the dominant French public discourse on morality. Finally, one must add that in spite of the scale of the debate, no resolution emerged. Whether the “veil” was or was not to be allowed in school was deemed a question to be answered in each specific circumstance. In this case, the girls involved removed their scarves the following January (1990) after the king of Morocco demanded it of their father, to the embarrassment of a French government whose relations with King Hassan II were already strained.<sup>6</sup>

### *Notes Toward a Gendered Approach*

The data above shows the determining importance of male social actors. Whether French or Maghrebi, men used female attire and behavior as markers of a distinctive collective Islamic presence and identity—or as a way to blur distinctions. They also illustrate the divisions among Muslim/ Maghrebi men. Finally, this account shows the appropriation of the dominant French moral vocabulary of freedom, secularity, and human rights to legitimate all the actors’ strategies, however different they might be. These common elements do not adequately describe whatever dynamic processes underlie the mutability of Muslim and Maghrebi realities in France, but they do offer a start.

Obviously, the different fates of Qsarheim and Qsarstadt are related to the different roles and circumstances of their leading men. Men in Qsarheim have come to believe that they can recreate a male social life for themselves through their association. In it, they have found, or believe they have found, some access to French public life and public recognition. They meet with the local mayor and “important” people,

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6. Hassan II of Morocco opposed François Mitterrand’s vague desire to give immigrants the right to vote. He had also been considerably offended by the publication in France of a book and various articles denouncing Moroccan human rights failures.

and the local newspapers write about them. These are significant and frequently cited signs of collective prestige. The men are also proud of the neighborhood renovations they have achieved.

These are men who came to France before the 1970s in hopes of bettering their socioeconomic status. They had no political or cultural goals, and for a long time they dreamed of return. They had throughout strong ties with the Maghreb, and most were members of the more traditional migrants' associations, organized along national lines. When they slowly abandoned hope of making an economically successful return to the countries of their birth, taking into account the economic and political troubles in the Maghreb and their children's gallicization, they focused on succeeding in France. All this spurred them to redirect family strategies toward integration, which involved women working to pay for their children's studies. A few Qsarheim families had built their own houses in France rather than in the Maghreb, and this was a stimulus to others to attempt their own escape from the "Arab quarter".

The Qsarstadt "leaders", if not the bulk of the Qsarstadt population, differ in that they are younger men who came to Mulhouse primarily to study. They belong to Islamic associations whose programs include political reform in the Maghreb, as well as proselytizing among Muslims, and even to some extent among the ethnic French. They also maintain strong cultural and social ties to the Maghreb, and they have not necessarily ruled out the possibility of return; they perceive themselves as Muslims first and have a very strong sense of belonging to a transnational, not to say universal, Islamic space. Unlike the older migrants in Qsarheim, who often split into opposed parties along national divides, Qsarstadt leaders form friendships and alliances across national lines on the basis of their Muslim allegiance.

For the Qsarstadt leaders, no participation in French public space can occur at the expense of their Islamic identity. Unlike Qsarheim men, they make their Islamic distinctiveness a central component of their recognized identity. To that end, and in line with their mastery of the moral vocabulary of freedom and individual rights, they mobilize Islam, within the limited sphere of the French public scene, following the logic of minorities' ethnic politics of "culture difference". This is a language familiar to them as students and semi-professionals with a Westernized formal education.

This is not to say that this particular type of mobilization of Islam is their only, or preferred, strategy in other domains. It is simply that in their fight for self-recognition in France, Qsarstadt leaders, unlike Qsarheim men, have chosen to stress their Islamic distinctiveness, emphasizing an Islamic allegiance (over mere national ones) and identifying themselves as members of an educated transnational Muslim elite. And one of the ways in which they mark their collective difference

is though their women's distinctive appearance in public, which is all the more remarkable in that few of these men themselves display any distinctive signs of their Muslim allegiance. Few wear beards, and they dress more in track suits, jeans, leather jackets, and casual Western attire than in white robes, which I have seen only the imam wearing. They are not alone in using women as markers of collective identity: as noted above, a common Maghrebi self-definition asserts: "We are Muslims, our women behave/ look this way".

Maghrebi women have some autonomy, but their individual freedom of choice, their margins of action, are severely limited precisely because they are in the position of individuals facing collective social might, whether French or Maghrebi. The three schoolgirls of the veil affair illustrate this most pertinently. They were presented by supporters of the veil as independent moral actors, but by detractors as the puppets of either patriarchal tyranny or religious militants. Two cartoons illustrate the pressure presumed to impinge on them from a father in one case (fig. 1) and from a trio of powerful French and Muslim males—the "ayatollah," the headmaster, and the prefect—in the second (fig. 2). Ironically, the monopolization of the debate by men, whether French or Maghrebi, questions their autonomy just as much as their abandonment of the scarf after Hassan II's intervention with their father. The acrimony of this male political debate over female attire clearly points to the



Figure 1. 'Are you for or against the veil [le voile] at school?'  
Le Monde, November 7, 1989



Figure 2. 'Here are the ayatollah, the headmaster, and the prefect back again to find out what you are wearing today!'  
Le Monde, November 7, 1989, p. 1.

collective stake at the heart of this particular bout of sexual politics, namely, the role and use of women in the constitution, and public display, of collective identities. Why else would three scarves threaten French identity and values or assert Muslim ones? Control over women is also a brutal affirmation of the genderization of such collective identities, whether French or Maghrebi, as generically male.

### ***The Gendered Politics of Representation in a Multicultural Context***

Feminists have long argued that collective identities are androcentric. Julia Kristeva (1989), for example, argues that collective identities are produced along a logic of masculine identity formation that includes rejection of some "other" and stresses the control, if not the suppression, of differences within.<sup>7</sup> As far as Western cultures are concerned, many

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7. Another version of this argument (Bloul, 1992) is partly inspired by the works of Chodorow (1978, 1989), Fox-Keller (1984), and Pateman (1988).

feminist analysts have expressed their suspicion of “substitutionalist universalism,” inasmuch as they detect male, middle-class, white men profiled behind the equal individual of democratic discourse (Benhabib, 1986; Fraser, 1989; Love, 1991). Similarly, the case for the androcentric mold of the Islamic ummah has been made repeatedly by Muslim feminist scholars (Abrous, 1989; Ait Sabbah, 1986; Jowkar, 1986; Lazreg, 1988; Mernissi, 1983, 1987). This argument is at the core of my understanding of the gendered politics of representation as illustrated in the male public debate about female attire.

In this case, deterritorialization brought about by Maghrebi postcolonial immigration raises the problems of the cultural reproduction of identity and values, not only for Maghrebis facing possible gallicization, but also, I would argue, for the French, whose territory now contains “strange foreigners”, to paraphrase Kristeva (1989: 274-77). Because of the gendered dynamics of collective identity, deterritorialization has specific consequences for both French and Maghrebi men, as male vehemence during the affair of the veil so aptly demonstrates.

The affair challenged patriarchal and fraternal understandings of gender roles and identities. In this particular instance, Maghrebi fathers and religious hierarchies were joined by Catholic and Jewish clerics who demonstrated unreserved support for the veil. Together they opposed the free circulation of women in the fraternal and secular French Republic. Those among the second-generation Beurs hoping to join the French fraternity (such as Arezki Dahmani of France-Plus), however, supported a strict interpretation of secularity. Others, less confident of their place in France or more involved in a process of ethnicization, defensively supported the veil and their right to “difference” in protecting “their women”. For them, Islam has become the main resource and guarantor of a marginalized and ethnicized androcentric collective identity (Bloul, 1992), and Muslim women have become the privileged site for the affirmation and display of such identity, quite apart from any individual decision women may make. Frenchmen’s responses betray their understanding of this collective use of women. As Qsarstadt and Qsarheim men are also well aware, the existence of “veiled women” in the French public space—whatever the motive—is perceived by Frenchmen as a Muslim male challenge to their own control of French republican fraternal space.

In this regard, the disruptions of masculinity brought about by deterritorialization are aptly captured, for the French side, by the particularly polysemic caricature shown in figure 3. The ugly, old, neutered Catholic nun is an obvious reference to the convergence of views of religious leaders of all denominations in favor of the veil. The nun stands for the old religious and patriarchal orders as seen from a



Figure 3. 'Give them this... they want this!' *Le Canard enchaîné*, October 25, 1989.

modern French male point of view: denying access to women in the name of the old orders is out. The glamorization of the Muslim student is counterfactual, as a photograph of the students suggests (fig. 4). But it reveals what the unconscious stakes are: the insupportable presence of forbidden women on the collective male territory of republican institutions. This is an old theme in the history of French/ Maghrebi colonial relations, here given a new postcolonial twist.

The presentation of both the nun and the sexy Muslim student as active agents is also counterfactual. While the caricatured nun is a classic example of scapegoating (the victim as oppressor), such presentation of the hypersexualized Muslim woman as an autonomous actor is more complex. The cartoon is obviously addressed to the French viewer as paradigmatically male. It is also a deliberate attempt to enlist the sympathy of young *Beurettes*, quite congruent with the "chivalrous" position taken by most Frenchmen in the debate, who suddenly became champions of women's rights. By fantasizing young Muslim women as autonomous actors (while denouncing their subjection!), it establishes with them an imagined alliance in the ridiculing of the old, repressive patriarchal orders represented by a nun (rather than an imam). Thus the French male viewer can fantasize complicity with a forbidden postcolonial object of desire. Finally, this fantastic seduction is staged



Figure 4. Two students at the Collège Gabriel-Havez de Creil, Oise

without compromising a remarkably persistent misogyny, quite congruent with the more habitual exclusion of women from French republican fraternal space.

### ***The Gallicization of Maghrebi Values and the Ethnicization of Islam***

As noted above, every (male) participant in the debate over the “Islamic scarves,” whatever his origins or opinions, invoked freedom, secularity, and individual rights as supportive arguments for or against the veil. The preeminence of this particular moral vocabulary, however French or indigenized its widely different interpretations might be, is an extremely interesting, if often ignored, fact. Nor is that moral vocabulary limited to the various Maghrebi, Muslim, and French social commentators with access to the media. Qsarstadt men defend their right to cultural difference and often make Islam part of their ethnic Muslim identity in the name of their inalienable rights as equal individuals. Cheikh Haddam’s argument, quoted above, in favor of veiling because “secularity is about ensuring that everybody has a right to their own opinion, and to express it freely and safely” articulates a very similar position. This comment effectively reduces Islam to a mere “opinion of atomized individuals. This is a peculiarly ironic product of the global embryonic transnational Muslim elite, yet has fostered the gallicization/Westernization of Maghrebi children in France.

Qsarheim men also use this vocabulary, although they are more skeptical. For them, freedom and individual rights are specific French values (as opposed to Maghrebi practices), which Maghrebi men in France can and should use to their advantage. But such reasoned application is characteristically specific and contextualized. "We are in France now. We must do things in the correct democratic way", a Qsarheim association president said to restore procedural order to a committee discussion that had become personal and heated. "There is freedom here...freedom is dangerous for those not used to it. Moroccans in France tend to abuse their [newfound] freedom and go bad", a Moroccan father said. The same reasoning was applied by men to Maghrebi women: they couldn't have the same freedom as French women because, not being used to it, they would "exaggerate" if not under the firm restraint of Maghrebi men.

As for the younger Beurs, they characteristically show a marked gallicization of their moral understanding and practices, albeit quite limited and circumscribed in relation to the status of Maghrebi women and of Islam as guarantor of an androcentric Beur collective identity (Bloul, 1992). This preeminence of the moral vocabulary of freedom and individual rights permeates the whole discussion of the modernization of Islam in France. Just as even the most gallicized Beurs affirm their allegiance to Islam (Bloul, 1992), very few, if any, Maghrebi men's understanding of their faith is un-influenced by the (French) public moral discourse of universal individual rights, although such influence does not extend to the discriminatory consequences of sexual politics, as has been documented above. But then, as feminist critiques of substitutionalist universalism show (see above), French women must also bear the effects of similarly discriminatory sexual politics. Thus, siding with some French proposals about a "French Islam", Beurs sometimes propose a model of gallicized Islam characterized as democratic, secular, and privatized (Kaltenbach, 1991). Relevant to this also are a number of government initiatives, most notably the establishment of a consultative Islamic body, the Conseil de réflexion sur l'Islam en France (also noted in Diop and Michalak). Others argue that a fundamental re-reading of Islam would purify it of historical misconceptions, since Islam is in fact compatible with the key democratic concepts of equality and solidarity. Many have more nuanced positions and consider the basic texts of Islam, not as absolute guidelines for modern everyday life, but as requiring sophisticated exegesis (Arkoun, 1986). Such developments characterize the central paradox of Islamic renewal in France as it simultaneously engages globalization (or is it gallicization?) and ethnicization.

***Conclusion: On Ethnic Revivals and Androcentric Cultural Processes***

Qsarstadt leaders, and others, ethnicize Islam as a Maghrebi attribute in France, while simultaneously proselytizing for Islam as an alternative

universalism. This localized strategy, like those revealed by the debate of “difference” generated around the affair of the veil, appears to be the ironic by-product of the deterritorialization resulting from global cultural flows—in this case, the transnational migration of Maghrebi Muslims and their adoption of the key French politico-moral concepts of equality, freedom, and secularity. The French also contribute to such processes. Such processes and strategies operate within the parameters set by the gendered politics of representation according to which women are both markers and stakes for androcentric collective identities. Not only in France but in many instances of conflict between Muslims and non-Muslims, a similar paradox between the globalization of the Islamic ecumene and the ethnicization of the relevant Islamic communities exists and is also to be understood in the context of the gendered politics of identity.

The final ironic result of the gendered politics of representation in a multicultural context is the effect on the host population. In this particular case, French perceptions of “an internal Islamic threat” have led to another ethnicization process—namely, the ethnicization of French identity, most crudely and powerfully expressed in the demagogic discourses of the National Front, which raises as a symbol of singular collage of Gaulish Christianity. The anxious interrogations of French identity and cultural values that have multiplied recently in France are another symptom of the push toward this dual ethnicization process. The range of these discussions, from affirmations of ethnocentrism to a revisitation of universalist ideals, allows one a slender hope that such twin processes of ethnicization might be counteracted. This cannot be done successfully, however, if the gendered nature of the processes of cultural reproduction is not understood.

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2120 Berkely Way  
Berkely, California 94720, U.S.A.

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# *Contemporary Islamisms and Feminisms in Egypt*

*Azza M. Karam*

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Islamisms, or diverse representations of political Islam, have become very difficult to ignore and even more difficult to categorize and explain satisfactorily. This is particularly the case when addressing a western audience, which is unfamiliar not only with the multifaceted aspects of Islam, but also with the crucial role Islamic faith plays, in the everyday lives of Muslim people.

Willy Claes, the Secretary General of the North Atlantic Treaty Organization (NATO), gave Western misperceptions and misrepresentations of Islam and Islamisms a new twist. He did this by proclaiming, on March 1995, that Islamic fundamentalism is the greatest threat facing the Western world after the collapse of communism. In a time when war is literally at Europe's door, when the rising tide of neo-Nazism and racism are being increasingly felt throughout, and with drug and crime mafia being voted into government, Willy Claes' statement seems oddly out of tune with global events. Not only that however, but such proclamations fall right into the hands of extremist Islamist tendencies whose main *raison d'être* revolves around "fighting Western determination to destroy Islam and Islamic culture"—a favourite slogan.

In effect however, Islamisms differ little from other kinds of religious fundamentalisms—particularly when it comes to their gender perspectives. Islamism is perceived by some women as restrictive, and by others as empowering. In Egypt, which witnessed the creation of the first Islamist movement in the 20th century, political Islam has become a major contender for power on the political arena. As such, it raises interesting questions as to the reactions political Islam has evoked from feminists, who themselves boast a legacy of 20th century activism. This article attempts to illustrate that in facing the hegemony of Islamist discourses, feminists have had to develop diverse strategies of both incorporation

and exclusion. However, feminists have become so embroiled in the formulation of individual defensive means, that they have lost touch with any collective ends, or goals. Effectively therefore, polarization, individualization, in-fighting, and duplication of effort, characterize most secular and Muslim feminist activities. The inevitable outcome is a political and social impasse for these feminists which costs them much support and credibility. Men and women Islamists will use this impasse to vindicate the long standing argument about the inefficiency of 'western styled' feminism in the Egyptian (also Arab and Muslim) contexts.

### *Islamisms*

The term Islamism is used here in preference to that of 'fundamentalism' for a variety of purposes. First of all because the Islamist activists I interviewed in Egypt all defined themselves as such. Secondly, Islamism refers more adequately to a political agenda to Islamize society and state. And finally, but following from the previous point, fundamentalism as a term misleads, because not all those who wish to live their life according to the fundamentals of their religion have a political agenda.

So what is Islamism all about actually? Islamism is a political ideology, based on some alleged "interpretations of Islam", aimed at Islamization of state and society, and capture of state power<sup>1</sup> Islam is characterized—as with any other religion—by a variety of interpretations, so exactly what is meant by "Islamic" may well differ from region to region, country to country, as well as from one school of thought to another, and so on. Islamism is by no means a homogeneous phenomenon, but in fact encapsulates a diversity of opinions, theories, strategies and tactics. Thus the need to speak and think in terms of Islamisms. Moreover, Islamisms are not 'a' static political tool. On the contrary, they are dynamic, creative and in many cases, a function of the differing political circumstances in which they are situated in. In other words, Islamisms which operated in the 1950s and 1960s in Egypt, are not the same as those of the 1980s, and again not like those of the 1990s, the latter being the period dealt with in this article.

Perhaps one of the best examples to highlight the increasing popularity of Islamism in Egypt is the heavy representation within professional syndicates (e.g. lawyers, doctors and pharmacists) that Islamists have achieved. What is significant is not the fact that they have reached positions of power within these syndicates—which have

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1. Not necessarily in that order though. The Muslim Brotherhood, for example, believe in educating the public in proper Islamic values first, and then this same public will later demand and receive power. On the other hand, another group like the Jihad, employs different tactics which necessitate gaining power through any means (i.e. armed struggle if necessary), and then imposing Islam on the masses.

traditionally been the bastions of democracy in Egyptian politics—but that they have been elected into these important positions by syndicate members.

Why is political Islam becoming increasingly popular and gaining more adherents not only in Egypt, but in many parts of the Muslim world? Though a complex question, suffice it to say that Islamisms are presented as viable social, economic and political alternatives, at a time when other ideologies (such as nationalism) have failed. Liberalism and Marxism, though still valiantly advocated by a minority in the Muslim world, have, in a sense, been tried and found unremunerative. Added to the latter is a fear of, and sense of frustration with, the dominance of "foreign" western cultural values and norms. Thus the call for an indigenous and authentic system of thought, which can reaffirm battered identities and lend legitimacy and credibility, to social structures as well as governance. The advocates of Islamisms use populist language, that average to highly educated people, are used to hearing and conditioned to accept. There is little, which is tainted with westernism and/ or imperialism, in the terms used or kinds of struggles promoted.

Notable in this regard is the Muslim Brotherhood (MB) which was created by Hassan Al-Banna in 1928, and as such is the first Islamist movement of this century. The ideals and activism of the movement were espoused by many other Islamic groups all over the Arab and Muslim world. Its impact in Egypt today is deep, diverse and wide-ranging. Before the 1987 parliamentary elections, the MB entered into a political alliance with the Labour party (henceforth called the Alliance) and thus succeeded in gaining many seats in parliament. Due to its widespread popularity, and the very real danger it poses to the legitimacy and efficacy of the Mubarak government, the latter has recently started systematic persecution of its members (particularly since the U.S. State Department had secret talks with the Brotherhood in 1993).

Using the slogan of "Islam is the solution", the MB organized efficiently in order to successfully provide alternatives (to government-run) social services to the poor. These services are comprehensive, affordable and diverse. They include such areas as health care, education, finance, and emergency relief (e.g. during the recent earthquake and floods). One of the logical outcomes of this is a growing popularity and social base among the ranks of the Brotherhood. By efficiently providing alternative and timely services to the poorest of the poor, these 'liberal' Islamists are actually highlighting their ability and viability as an alternative Islamic force to the existing state. As such their activism lends credibility to their discourse which in turn, becomes more popular. The end result is that their Islamist discourse becomes attractive enough to be emulated by other groups in society, which are also competing for popularity. Effectively, other competing political ideologies (including

those of the state) Islamize their own discourses in order to gain legitimacy for their own ideas and programmes. In such a manner, Islamism becomes the trend setter, and dominant ideological backdrop for much political activism—both for and against it. A fact which shapes the development and impact of feminisms in Egypt.

### *Islamisms and Gender*

The recognition of diversity becomes particularly important when analyzing the "woman question" in relation to Islamisms. There is no 'one' position on issues pertaining to women's status and rights within a given Islamic society. What one is likely to find is a frequently voiced idiom that 'Islam has given women many rights'.

What is interesting to point out however, is that as far as most Islamist discourse is concerned, the comparison with western women is an integral part of their definitions of what women's roles in a "proper" Muslim society should be. In other words, the positions and status of Muslim women are juxtaposed as being better than that of their Western counterparts. This is usually described in terms of the 'religiously observant' Muslim woman as opposed to the 'loose', and 'sexually promiscuous' western woman. Arguing against traditionalists who call for women's return to the home and non-involvement in public life, Safinaz Qazem, a prominent Islamist woman in Egypt says:

Unfortunately we live in a society which has been tainted by westernism so that meanings have become mixed and unclear. So that when it is said "women going out of the homes" or "mixing of the sexes" the first thing that comes to mind about these meanings is what happens in western societies where going out and mixing leads to sin or to the beginnings of it at best.<sup>2</sup>

It is important to stress the diversity of opinions that exist among Islamists as to what is expected of women. This can be illustrated by presenting a number of quotes from different Islamist activists on the issue of women's work.

Adel Hussein is a leading male member of the Muslim Brotherhood and is editor of the Alliance's (between the MB and the Labour Party) weekly newspaper *Al-Sha`b*. His is an interesting and novel opinion about women's work. In his opinion, women's work outside the home has led to many negative social consequences in society. He writes that calling for equality and women leaving the home in search of outside employment, is not a viable means towards enabling women to shake off years of oppression. As he clarifies:

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2. Safinaz Qazem, "Muslim Woman and the Challenges" in *Zahrat Al-Khaleej*, 4 December 1993, p. 131. All Qazem's quotes are taken from the same magazine, but different issues.

woman has long suffered from oppression, she has lost out culturally and been bound in the home, so that effectively all that Islam has given her in terms of rights and principles has been withdrawn from her.<sup>3</sup>

Hussein argues that:

The value of a woman's work inside the home is absolutely equal to (if not more than) the value of the work performed by an ordinary [male or female] worker outside the home in economic and social terms. And in a society based on cash economies I do not see what prevents the local community or the state from providing a regular exchange in cash to this woman in return for the roles she performs for her family and society, it being the case that hers is a situation like that of any other worker in other spheres. (Ibid. my emphasis)

Hussein's is a position which does not encourage women's non-domestic work, but at the same time, stops short of criticizing it or deeming it unnecessary. Moreover, his explicit acknowledgement of women's oppression and his advocacy for reimbursement of her domestic work, is an important element in accounting for the way he is perceived as being 'progressive' and therefore attractive to many young women Islamist members.

Islamist women active within Islamist groups would generally corroborate their male counterparts on the sanctity and importance of women's primary duties as wives and mothers. However, for many of them, their own experiences as active public persona would seem to indicate a contradiction. Not so. Islamist women contend that once women's primary obligations are fulfilled (i.e. the children are old enough to take care of themselves, and housewifely duties are manageable), women have a religious duty to become publicly active in promoting and spreading their faith, in many ways.

...None of the Islamists, men or women, deny that women should retrieve the rights afforded them by Islam—such as the right to education, choice of husband, inheritance, work, consultation, and the active participation in building an upcoming Islamic society (Qazem, 1994:117).

Many of them, when directly queried, are reluctant to distinguish between women's oppression and social oppression as a whole. They uphold that what is happening to women, is part of a societal process wherein "proper" Islamic principles are absent. They see their mission as a "structural jihad [holy practical and/ or spiritual struggle], that is aimed at change towards more Islamization, which in turn, occurs through active participation in all spheres of life".<sup>4</sup>

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3. Adel Hussein (1993) [In Arabic] "The Arab Woman: A Futuristic Outlook". In *Manbar Al-Sharq*, (No. 5, January) p. 27.

4. Interview with Islamist activist, May 1993 and November 1994.

This then, is not merely a call for women to stay at home. Rather, it is a "call to arms", which aims at enhancing and crediting traditional women's roles within the family (as mothers and wives). The enhancement gives women a sense of value and political purpose in these gendered roles, as well as a sense of confidence: their roles are not less than men, but equally important in different ways. For some Islamist women therefore, the perception is that of equality in compatibility.

### *Feminists in Response*

Egyptian feminists, be they Muslim, Islamist or secular are kept busy reacting to Islamist influences, among other things, on laws and public debates. For example, disputes regarding Egyptian Family Laws arouse a great deal of controversy, between Islamist-oriented lawyers and secular feminists. The impression one gets from the different feminists, is that of either trying to protect the rights already gained by the women's movement, or trying to consolidate certain Islamist viewpoints regarding women's roles. Peaks of Islamist activism are followed by frantic counter-organization on the part of secular feminists.

To describe Egyptian feminisms as reactive is very important in understanding not only their current dynamics, but also their historical evolvment. This is because the first buds of Egyptian feminism, like many other long standing feminist movements in the 'third world', developed in tandem with nationalist and/ or revolutionary aspirations. As such it was initially expressed through them—instead of being independent of these objectives.

But first let me outline how I arrive at my somewhat controversial definitions of feminist activism in Egypt.<sup>5</sup>

I take as my point of departure the fact that there are different forms of feminism and different expressions for the activism it advocates, which corresponds to the type of oppression women perceive in different parts of the world. Thus, there are different feminisms, which have different starting points, and understandings (i. e. of the reasons behind women's oppression). One therefore, tends to agree with a post-modern conceptualization of feminism, which advocates a theoretical outlook that "is attuned to the cultural specificity of different societies and periods and to that of different groups within societies and periods" [emphasis added].<sup>6</sup> Other important features of such post-modern

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5. Here, I am using Margot Badran's definition as outlined in "Competing Agenda: Feminism, Islam and the State in 20th Century Egypt", in Deniz Kandiyoti (ed.) *Women, Islam and the State* (London: Macmillan), pp. 201-236.

6. Fraser, Nancy and Linda Nicholson, (1990) "Social Criticism without Philosophy: An Encounter Between Feminism and Postmodernism". In Linda Nicholson (ed.) *Feminism/ Postmodernism*. New York and London: Routledge, (p. 34).

feminist theorising are—its heterogeneity, non-essentialism, non-universalism, pragmatism, and even, its fallibility. But most importantly, in its forswearing of a single feminist epistemology, it creates space for contemporary feminist political practice, which would have been regarded previously as unorthodox.

Feminism here, is understood and defined as—an individual or collective awareness, that women have been and continue to be oppressed, because of their gender, and attempts towards liberation from this oppression and developing a more equitable society with improved relations between women and men.<sup>7</sup> Given such a broad definition, I realized that some Islamist women activists—though by no means all—are in fact 'feminists' of a sort, in this case, Islamist feminists. These Islamist feminists are indeed aware of a particular oppression of women and they actively seek to rectify this oppression by recourse to Islamic principles.

As far as Islamist feminists are concerned, women are oppressed by two factors. The first can be represented in the words of one of them, as by:

retarded elements who call in the name of religion but are in fact advocating ignorant traditions forbidden by Islam, these same traditions which are still unable to rid themselves of the mentality of burning females alive. (Qazem, 1994: 118).

This was reiterated by A.B. (who did not wish to be identified as she is underground), when she said:

Though God has given each sex its strengths—women that of childbearing and men that of financial responsibilities—some people misunderstand. They think that women are weaker and urge that they be treated as property instead of, as Islam calls, equal human beings. They treat women with little respect, so many women are suffering because of this foolishness.

The second factor causing women's oppression, Islamist feminists uphold, is precisely because they try to be 'equal' to men and are therefore, being put in unnatural settings which denigrate them and take away their integrity and dignity as women. For example, women are "forced" to go out and compete in the labour market—a task—which means that women may come into contact with sexually repressed men (as in public transport) in a humiliating and "unsuitable" way.

For Islamist feminists, the demands of a "western" and "culturally inauthentic" ideology, that is made at the expense of Islamic teachings, plays a major part in the oppression of women. As far as many of them are concerned, "western feminism", with its emphasis on total equality of the sexes, only results in women striving to be "superhuman" and in the

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7. Personal interview with A. B. June 1993.

process, losing much of their effort while carrying more burdens. In relation to family obligations for example, Heba Ra'uf said "It is unrealistic for women to expect fathers to be mothers to their children", she continues:

women have a natural inclination for motherhood. That does not mean that mothers should be expected to fill the role of fathers either. Children need what both parents can provide, precisely because both father and mother are crucial in the upbringing. Both men and women have obligations in this regard. Women's oppression will be overcome once women cease to compete with men, since the 'natural order' of things lies in compatibility and not in competition.<sup>8</sup>

Nevertheless, Islamist women themselves will shy away from the term feminists, if not vehemently criticize it outright, as an "irrelevant western term".

Here, it is important to distinguish between Islamist feminists and another stream, who identify themselves as Muslim feminists. The latter also use Islamic sources, like the Quran and the Sunna and Hadith (the Prophet Mohammed's actions and sayings)—only their aim is to show, that the discourse of equality between men and women is valid, in accordance with the teachings of Islam. Muslim feminists, are trying to steer a middle course, between interpretations of socio-political and cultural realities according to Islam, and Human Rights discourse. Many of them will be proud to be seen as feminists, or at least have no problems with the term, in so far as it describes their main aims.

As far as Muslim feminists are concerned, a feminism that does not justify itself within Islam, is bound to be rejected by the rest of society, and is therefore, self-defeating. Moreover, Muslim feminists feel that to attempt to separate Islamic discourses from other secular discourses (whether they are accused of being 'western' or not), can only lead to serious fragmentation within the society, and is thus, unrealistic as an option. Such a separation, many argue, succeeds in preventing a process of mutual enlightenment, between the two discourses, and in fact, risks making the Islamic one more alienating and patriarchal, and the sole domain of the Islamists. Prominent writers who advocate this stance include Fatima Mernissi (from Morocco), Rifaat Hassan (from Pakistan), and Azizah Al-Hibri (Arab-American).

Muslim feminists look upon the issue of the veil for example, as one that should be based on a woman's choice and conviction. Islamist feminists on the other hand, take the veil as an indisputable religious obligation, and, even more importantly, a symbol of the depth of religious conviction and solidarity with other Muslim, if not Islamist, women. For the Islamist women, the veil is a must and without it, in their eyes, women

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8. Personal interview with Heba Ra'uf, June 1993. Original emphasis.

have not made that essential commitment to a particular ideal of authenticity of identity. In short, there are no unveiled Islamist women.

Both Islamist and Muslim feminists argue for a form of *ijtihad*. *Ijtihad* refers to independent inquiry into the sources of religion, with the aim of coming up with interpretations of religious texts that are suitable to the conditions and exigencies of modern-day life. Many Islamist feminists agree with Muslim feminists, that women are indeed capable of taking on tasks involving the interpretation of Islamic jurisprudence and providing social and political leadership (previously thought to be the exclusive domains of men).

In that sense, both these sets of feminists, are arguing against the existing power of patriarchal religious formations/ hierarchies, the implications of their interpretations on gender, and both use very similar 'tools' of analysis and argumentation. That is, both sets of feminists, are extensively studying, analysing and referring to traditional Islamic texts, in order to validate and justify their arguments. However, both do not arrive at the same conclusion. Whereas Muslim feminists emphasize the importance of reinterpretation of *shari`a* (Islamic law) for example, Islamist feminists are more concerned with the correct application of it.

Further, though both sets of discourse 'take on' established forms of thinking, there is yet another important difference in their political position. Namely, Islamist feminists are part of a political movement that is, on the whole, interested and actively attempting to raise support for itself in its ultimate quest for the capture of legislative and executive state power. In their bid to combine the support of their organized and unorganized groupings, moderate Islamists cannot afford to lose the political, social, and economic backing of these women, who actively participate in these Islamist movements. In many respects, the Islamist movements resemble nationalist and revolutionary movements of the 1930s to 1960s, in so far as their attempts to mobilize women for their cause are concerned. But for the time being, attempts to curtail the public roles of these women by male Islamists are not in evidence.<sup>9</sup>

Muslim feminists on the other hand, are more likely to be marginalized. This is also the case with secular women's groups, who are a feature of the mid 1980s to today. These groups include that of Nawal El-Saadawi which proved too politically active for the government's tastes, and was consequently banned in June 1992.

The role of the Egyptian state in debates between secular and Muslim feminists and Islamists is ambiguous. On the one hand, much state-

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9. And in any case, why should these roles be curtailed when many of them have to do with traditional charitable activities (e.g. organizing Islamic literacy classes, and instruction in sewing, health care and so on)?

controlled media space is devoted to traditional Muslim clerics who advocate women's proper place as the home. In fact, the government has on occasion gone so far as to placate Islamists over women's rights. For example, during the International Conference on Population and Development (September, 1994), the issue of female circumcision came up. Most secular and Muslim feminist groups called for the government to legally ban the practice. Islamist tendencies however, strongly argued against any government interference, and instead started a campaign to better "explain" the "misunderstandings" surrounding the practice. The standpoints of even the 'moderate' Islamists revolved around the fact that the whole furore against female circumcision was instigated by the 'West'/ enemies of Islam, in order to tarnish its image. The government eventually caved into Islamist pressure, despite promises made to the contrary. Female Circumcision was to remain, albeit with legal specifications that it should be performed by a medical doctor, instead of by traditional local practitioners. At the same time, the official ruling party line labels all Islamists as "terrorists", and carries out a vigorous anti-terrorist campaign.

Both Muslim and secular feminists, receive little or no support whatsoever from the state. On the contrary, the state's often ambiguous role and its lack of a definite standpoint, only complicates matters more for Islamic and secular women activists. As one secular feminist, Aida Seif Al-Dawla, said to me:

The state has allowed and made available about 30,000 mosques, which Islamists can use as pulpits and gathering places. But when we [feminists] ask for one place where we can hold our meetings, it is denied us!<sup>10</sup>

Given that many of the Muslim feminists are attempting to reconcile the discourses of Islam with Human Rights, they are facing the same accusations of "cultural inauthenticity" faced by other promoters of secular discourses. This can become a political handicap, when faced with increasingly dominant Islamist discourses, which advocate the concept of *asala* (authenticity) "at the expense of an appreciation of conjunctural and historical realities".<sup>11</sup>

Secular feminists though, in theory, claim the necessity of maintaining at least a dialogue with Islamist women, but in practice disagree totally with their points of view and their teachings. Theirs is a quest to actively work to keep any religion out of the struggle for women's rights.

The attack on feminist rights can be countered only by feminist discourse and not by an Islamic one. We believe that women's rights are part and parcel of

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10. Interview with A. Seif Al-Dawla, Cairo, June 1993.

11. Aziz Al-Azmeh, (1993) *Islams and Modernities*. London: Verso, p. 72

human rights and that the fight for them should be only within a secular discourse.<sup>12</sup>

Not surprisingly, secular feminists would not identify their Islamist counterparts as being anything, even remotely, feminist. In turn, as promoters of a secular discourse, they are not held in high esteem either by the Islamists. And any tactical, let alone strategic or ideological, arrangement/ agreement of any sorts (e.g. to agree to disagree), between them, is total anathema to all concerned. They are, to put it bluntly, political 'enemies'.

### ***Conclusion***

Because of the hegemony of Islamist discourses, secular and Muslim feminist discourses have become reactive instead of being creative. Even when not responding to the Islamists' arguments directly, secular and Islamic feminists have to deal with the rising conservatism in the society as a whole, as a result of the resonant Islamist pressure.

In sum, feminist strategies have ranged from those that incorporate and work from within Islamist agendas, to those that run totally counter to it. The intense political drive of the whole Islamist 'movement' has succeeded in imbuing Islamist feminists with a sense of purpose, and empowerment. On the other hand, precisely the same drive has galvanized many secularist feminists into a chaotic rush to 'protect women's rights'.

Neither feminist tendencies however, have succeeded in gaining many adherents. The reasons for this are similar to a certain extent. Ironically, both secularist and Islamist feminists 'suffer' the same weakness, namely that of exclusion. For secular feminists, the emphasis is on the exclusion of those who wish to argue from within any religious framework. Such a tactic, in a primarily religious society such as Egypt, is bound to attract limited participation. The Islamists also seek to exclude those who disagree with their positing of their political Islam only as the where all and be all of aims and strategies. They therefore simultaneously appeal to some religious people but discourage many others.

As for Islamists, I see a great deal of similarity between Islamist groups of today and nationalist/ revolutionary movements of the past. Many of these movements were busy recruiting women, in the name of equality and with promises of giving them their rights after the common struggles were over. Early feminist movements in Egypt and Algeria are notable examples. These movements were also fighting against a common enemy (colonialism) with an ultimate goal of liberation in mind. Yet history is witness to the repetitive fact that once in power, these male nationalist

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12. Interview with A. Seif-Al-Dawla in Cairo, June 1993. The same message was repeated again in November 1994.

leaders, at best ignored the pledges they had made to feminists, and at worst actively urged women back into the homes.<sup>13</sup> I am left wondering whether, once in power, these same Islamists who are today encouraging women to spread the Da`wa (Islamic call), would not imitate their earlier nationalist brothers and urge women back to sacred motherhood—and nothing else?

In view of this possibility and the polarization characterizing feminist groups in Egypt, it is imperative that some form of a dialogue between the different women's groups takes place. This dialogue should be based on a recognition of differences and not so much on attempting to homogenize. At the very least there needs to be an attempt made to agree to disagree on certain issues, while simultaneously searching for common interests. It is imperative that there be a realization that the means need not be the same as long as certain ends can be agreed upon. I believe that all Egyptian feminists have the benefit and welfare of Egyptian women in mind. But petty individualistic claims to fame among feminist leaders add to the dogmatic ideological hegemony, to form massive set-backs.

It is the opinion of this author that Muslim feminists have a greater potential to appeal and move forward. This is a conviction based not only on years of researching, but also based on living and working as a Muslim feminist in a relatively conservative environment in Egypt. Because the language of Muslim feminists is a tempered but firmly religious one, they can be understood across class and political boundaries and need not be limited to the pitifully few intellectual elites. Moreover, as a strategy, it encourages an empowerment for women based on mastery of innovative Islamic discourses. The attempts to harmonize such global discourses as Islam and human rights is, in my opinion a right step in a futuristic direction.

Further, all strategies must be gradual, dynamic and accommodating of different changes. I therefore argue that Muslim feminists must work on mastering the intricacies of the different Islamic discourses, then move on to affirming their reinterpretations. All the while stressing the alternative aspects of their discourse, as opposed to any reactive ones. This is important in their quest to underline their credibility and social base, as well as their liberalizing potential, and become politically and socially significant.

Creative, agenda-setting strategies based on these precepts, and strengthened precisely by their diversity, should be the outcome of necessary feminist dialogues. Such dialogues can make the difference between remaining a lightweight minority crying in the dark, and effective campaigning.

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13. See Kumari Jayawardena, *Feminism and Nationalism in the Third World*, London: Zed Press, 1986.

One must keep in mind that part of the success behind Islamisms lies in their ability to band together, despite their diversity, and seem united on issues such as legitimacy of state authority, and the importance of applying shari`a. By steadfastly holding onto these aims, the Islamists succeeded in pushing for an Islamizing of major political discourses—those of the state and of the opposition. One cannot help but wonder what would happen if this impression of firm, principled, and united feminisms could be achieved and projected by feminists? If a unity of purpose and diversity of methods can be agreed upon, then the potential for effectiveness consequently increases. Perhaps what the secular and Muslim feminists should do is learn something from Islamist strategies, instead of concentrating on reacting to their ideas.

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# *Muslim Women and 'Islamic Divorce' in England*

*Lucy Carroll*

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Three important changes in English law in the past quarter of a century have opened the doors of the English matrimonial Courts to Muslim spouses resident in England. Prior to 1973, the English Courts exercised divorce jurisdiction on the basis of domicile; spouses resident but not domiciled in England could not invoke the jurisdiction of the English Court to terminate their marriage. Until 1972 the English Courts refused jurisdiction in regard to all 'polygamous' marriages, defining this term to encompass a marriage de facto monogamous but 'potentially polygamous' in the sense that according to the rites by which the marriage had been solemnized, one of the parties was permitted to marry again during the subsistence of the marriage. This provision most importantly barred the English matrimonial Courts to spouses validly married according to Muslim rites in a jurisdiction where polygamy was permitted to Muslims (for instance, Pakistan or India). At the same time, if the parties (or one of them) were domiciled in England at the time of the foreign Muslim marriage, it was generally assumed that the marriage would be considered void in English law because an English domiciliary has no capacity to enter into a 'polygamous,' including a 'potentially polygamous,' marriage.<sup>1</sup>

The Domicile and Matrimonial Proceedings Act of 1973 expanded the jurisdiction of the English Courts by permitting them to entertain divorce petitions in circumstances where one of the spouses had been resident within the United Kingdom for a period of twelve months prior to the

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1. Note that before the changes under discussion, spouses domiciled in England who had been married in England (in a registry office or in a Muslim ceremony in one of the few mosques registered as places where marriages can be solemnized) or in monogamous rites abroad (e.g., under the Indian Special Marriage Act, 1954) could approach the English Courts for matrimonial relief.

presentation of the petition, and irrespective of the domicile of the parties. The Matrimonial Proceedings (Polygamous Marriages) Act, 1972, removed the bar on matrimonial relief previously raised by the fact that the foreign marriage was either potentially or actually polygamous.<sup>2</sup> And the 1983 decision of the Court of Appeal in *Hussain v. Hussain*<sup>3</sup> held that the Muslim marriage contracted abroad by a Muslim man domiciled in England was not void because 'potentially polygamous.' The Court pointed out that the Pakistani bride, according to her personal law (Pakistani Muslim law as the law of her domicile) was not permitted another husband during the subsistence of the marriage, while the husband, according to his personal law (English law as the law of his domicile) was not permitted another wife during the subsistence of the marriage. If neither spouse were permitted to marry an additional partner, where, the Court asked, was the 'potential' for polygamy.

Although after the statutory reforms of 1972 and 1973, either of the Muslim spouses resident in England might avail themselves of the matrimonial remedies available to them through the English Courts, if the parties were domiciled in a country where Muslim law would be applicable to the marriage, the husband was more likely to choose to execute a talaq in preference to pursuing judicial proceedings—or permitting his wife to proceed with her divorce petition. Again, changes in English law in the past quarter of a century both restricted the husband's access to talaq (by making it clear that an extra-judicial event which took place within the jurisdiction of the English Court would not effectively dissolve the marriage in English law), and considerably liberalized the rules for recognition of a 'procedural' talaq<sup>4</sup> effected abroad (by permitting such a talaq to take place in a country with which one of the spouses was connected by ties of nationality or habitual residence, rather than merely in the country in which the spouses were domiciled).

These developments, which were largely concessions—perhaps long over due concessions—to the multi-cultural nature of post World War II England and the presence of a significant Muslim minority, produced a disturbing reaction on the part of what might best be termed the

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2. See Lucy Carroll, "Recognition of Polygamous Marriages in English Matrimonial Law: The Statutory Reversal of *Hyde v. Hyde* in 1972," *Journal: Institute of Muslim Minority Affairs*, 5(1984): 81-98.

3. (1983) Family 26. See Lucy Carroll. "Definition of a 'Potentially Polygamous' Marriage in English Law: A Dramatic Decision from the Court of Appeal (*Hussain v. Hussain*)," *Islamic and Comparative Law Quarterly*, 4(1984): 61-71.

4. The distinction between foreign divorces "obtained by means of judicial or other proceedings" and foreign divorces obtained without the necessity of any 'proceedings' is important in English law. The Pakistani talaq has been held to fall in the former category, while the 'bare' or 'classical' talaq (such as the Indian talaq) has been held to fall in the latter category.

spokesmen of Muslim male interests. It will be most convenient to examine individually the various components of the evolving situation.

### ***I. Divorce and Muslim Law***

#### **Extra-Judicial Divorce by the Muslim Husband (Talaq)**

One of the features of Muslim law best known in the West concerns the facility for easy divorce which is provided to the husband. By the simple pronouncement of a verbal formula the husband can bring the marriage to an end; under the unreformed traditional law, this can be accomplished instantly and irrevocably if the husband is a Sunni. If the husband were a Hanafi (as are the overwhelming majority of South Asian Muslims; the vast majority of Muslims in England are of South Asian extraction), the fact that he uttered the fateful words while in a state of intoxication or uncontrollable rage, or the fact that he did not mean them or immediately repented having spoken them is of no legal significance—the marriage is terminated.

However, the Pakistan Muslim Family Laws Ordinance, promulgated by Ayub Khan's martial law government in 1961, (inter alia) introduced (section 7) some minimal restrictions on the Muslim husband's rights of easy extra-judicial divorce<sup>5</sup> by requiring that any talaq pronouncement be notified to a designated local official and to the wife, and decreeing that no talaq would ripen into an actual divorce until ninety days after such notification had been received. During the interval, the talaq pronouncement remains revocable (and if revoked, will not take effect as a divorce); during this interval also the local official is enjoined to undertake attempts at reconciliation of the spouses, although whether or not he carries out, or attempts to carry out, this responsibility has no effect on the finality of the talaq and the effectiveness of the divorce once the ninety days have expired without a revocation of the pronouncement being issued by the husband.

There are thus four procedural requirements for effecting a divorce by talaq valid in Pakistani law:

1. Pronouncement of the talaq formula;
2. Notification of the pronouncement to the requisite local official;
3. Notification of the pronouncement to the wife;
4. The passage of ninety days during which the husband refrains from revoking the pronouncement.

These 'procedures,'<sup>6</sup> mandatory for the execution of a talaq effective

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5. The Ordinance also introduced some restrictions on polygamy; required registration of Muslim marriages; raised the marriage age for girls from fourteen to sixteen years; provided an expeditious alternative to proceedings in the magistrate's court for the wife who sought maintenance from her husband; and protected the rights of succession of the 'orphaned' grandchild.

6. Or, more accurately, the actions covered by the first three entries in the list; it is difficult to characterize the waiting period of ninety days as a 'procedure.'

under Pakistani law, induced the English Courts to conclude that a Pakistani talaq constituted a divorce "obtained by means of . . . other proceedings" in the context of the Recognition of Foreign Divorces and Legal Separations Act, 1971.<sup>7</sup>

#### Recognition of Talaq Divorce in English Law

Prior to 1971, English law in regard to dissolutions of marriage occurring under and according to a foreign legal system was clear and concise: a foreign divorce would be recognized under the common law rules as a valid divorce in English law if it were valid by the law of the spouses' domicile (which, at that time, meant the domicile of the husband). Assuming such a divorce to be valid under the law of the spouses' domicile, it appeared that a marriage could be brought to an end in English law by an extra-judicial talaq pronounced in England.<sup>8</sup> The common law rules were substantially modified by the Matrimonial Causes Act, 1973, which (i) provided (section 16 (1)) that no procedure occurring within the United Kingdom could be recognized as dissolving a marriage unless instituted in a Court of law;<sup>9</sup> (ii) barred the recognition of a divorce obtained other than "by means of judicial or other proceedings" if both the spouses had been habitually resident in the U.K. for a period of twelve months prior to the divorce (section 16 (2));<sup>10</sup> and (iii) ended the wife's domicile of dependency (section 1). Recognizing that the spouses may have separate domiciles (the wife no longer automatically acquiring her husband's domicile on marriage) meant that henceforth a

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7. See *Quazi v. Quazi*, (1980) AC 744; *ex parte Fatima*, (1984) 2 All ER 458; *Chaudhary v. Chaudhary*, (1984) 3 All ER 1025.

See also Lucy Carroll—(1) "The Pakistani Talaq in English Law: Ex Parte Minhas and Quazi v. Quazi," *Islamic and Comparative Law Quarterly*, 2(1982): 17-37; (2) "Recognition of Foreign Divorces—Chaudhary and Fatima in the Court of Appeal: A Conflict?" *Journal of Social Welfare Law*, 1985:151-155; (3) "A 'Bare' Talaq is not a Divorce Obtained by 'Other Proceedings': *Chaudhary v. Chaudhary*," *Law Quarterly Review*, 101(1985): 170-175; (4) "A Talaq Pronounced in England is not an 'Overseas Divorce': *ex parte Fatima*," *Law Quarterly Review*, 101(1985): 175-179; (5) "Talaq in English Law: 'Procedural' Talaqs, 'Bare' Talaqs, and Policy Considerations in the Recognition of Extra-Judicial Divorces," *Journal of the Indian Law Institute*, 28(1986): 14-35; and (6) "The U.K. Family Law Act, 1986: Recognition of Extra-Judicial Divorce in England," *Journal of the Indian Law Institute*, 31(1989): 154-176.

8. See *Qureshi v. Qureshi*, (1971) 1 All ER 325. In view of the provisions of section 16(1) of the Domicile and Matrimonial Proceedings Act, 1973, this decision does not apply to extra-judicial divorces effected after 1 January 1974.

9. This provision was specifically intended to reverse by statute the decision in *Qureshi v. Qureshi*. See now section 44(2) of the Family Law Act, 1986.

10. Now see section 46(2)(c) of the Family Law Act, 1986, which raises the bar to recognition if one spouse (rather than both spouses) were habitually resident in the U.K. for a year prior to the institution of the divorce proceedings.

While a Pakistani talaq fulfills the statutory requirement of "judicial or other proceedings," a 'bare' or 'classical' talaq (e.g., an Indian talaq) does not.

divorce could only be recognized on the basis of the common law rule (foreign domicile) if it were valid according to the law of the domicile of each spouse; recognition was precluded if one of the spouses were domiciled in the U.K.

Meanwhile, the Recognition of Foreign Divorces and Legal Separations Act, 1971, provided a format<sup>11</sup> (inspired by—but going much further than required by—the 1970 Hague Convention on the same subject) for recognition of divorces “obtained by means of judicial or other proceedings” in a country with which at least one of the parties was connected by ties of nationality, habitual residence, or domicile (including domicile as defined by the foreign country in question). The requirements for recognition of a foreign divorce under ‘code’ section of the 1971 Act were much more lenient<sup>12</sup> than those laid down by the (revised) common law rules, which were preserved by the Act of 1971, and modified by the Act of 1973.<sup>13</sup>

There are thus two distinct sets of criteria under which a foreign divorce might be recognized in English law. The common law rules cannot be invoked if either spouse is domiciled in England or if the spouses have (after the Act of 1986, if one spouse has) been habitually resident in the U.K. for twelve months prior to the divorce proceedings. Neither of these bars automatically prevents recognition of a foreign divorce under the legislation implementing the Hague Convention.

Extra-judicial divorces or dissolutions of marriage raise their own peculiar evidential problems, dramatically demonstrated on two occasions when the English Court held that an extra-judicial act or event had had the effect, under the relevant foreign law, of terminating the marriage, when in fact the act or event had had absolutely no effect at all on the matrimonial status of the parties according to the law of the foreign jurisdiction.<sup>14</sup>

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11. Sections 2 to 5 of the 1971 Act; see now section 46(1) of the Family Law Act, 1986.

12. E.g., recognition was not automatically barred if one (or indeed, both) spouses were domiciled in England, or if both had been habitually resident there for a year prior to the divorce. To constitute a foreign divorce, of course, the talaq had to be executed abroad; no extra-judicial dissolution of marriage may take place within the jurisdiction of the English Court.

13. Section 6 of the 1971 statute; the 1973 statute (section 2) substituted a revised section 6 in the earlier Act. See now section 46(2) of the Family Law Act, 1986.

14. (1) *Viswalingam v. Viswalingam*; the case is reported in full (High Court and Court of Appeal) in *Malayan Law Journal*, 1980:10. See Lucy Carroll, “A Question of Fact: Ascertainment of Asian Law by the English Court. A Critique of *Viswalingam v. Viswalingam*,” *Malayan Law Review*, 22(1980): 34-65.

(2) *Chaudhary v. Chaudhary*, (1984) 3 All ER 1025. See Lucy Carroll, “A ‘Bare’ Talaq is not a Divorce Obtained by ‘Other Proceedings’: *Chaudhary v. Chaudhary*,” *Law Quarterly Review*, 101(1985): 170-175.

The more immediately relevant problem raised by recognition of foreign divorces derived from the fact that the English Court had no jurisdiction to deal with ancillary matters unless it itself dissolved the marriage. Thus, recognizing a foreign divorce as effectively terminating the marriage, deprived the English Court of any power to make financial orders in favor of the discarded wife. Although this difficulty could arise in regard to any foreign divorce (judicial or extra-judicial), it arose predictably and cogently in regard to talaq divorces due to the fact that Muslim law recognizes neither any concept of division of matrimonial assets nor alimony on divorce.<sup>15</sup> The woman divorced by a talaq recognized under the regime of 1971/ 1973 had little redress unless a sizable mahr (dower) had been pledged in her favor by her bridegroom at the time of the marriage. A major incentive for a Muslim husband in England to seek to dissolve the marriage by talaq, rather than petitioning for divorce in the English Courts (or allowing his wife to proceed with her divorce petition) is the desire to avoid any financial responsibility for his divorced wife.

The inability of the English Court to protect the interests of the woman whose marriage was dissolved by a foreign divorce entitled to recognition in English law under the more liberal recognition rules, was addressed in Part III of the Matrimonial and Family Proceedings Act, 1984. This statute empowered the English Courts to grant financial relief to one or other spouse even in cases where the marriage had not been dissolved by the English Court.<sup>16</sup>

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15. But note surah II ayat 214:—"For divorced women maintenance [or provision] should be provided on a reasonable scale. This is a duty on the righteous." (Yusuf Ali, trans.) The Shafi'is take this verse seriously; other Sunni schools adopt an interpretation which confers no protection on the woman and imposes no responsibilities on the man. Note, however, the recent dramatic decision of the Dhaka High Court in *Muhammad Hefzur Rahman v. Shamsun Nahar Begum*, 47 (1995) Dhaka Law Reports 54. See Lucy Carroll, "Divorced Muslim Women in India: Shah Bano, the Muslim Women Act, and the Significance of the Bangladesh Decision," in *Women Living Under Muslim Law, Talaq-i-Tafwid: The Muslim Woman's Contractual Access to Divorce*. An Information Kit, forthcoming.

16. It needs to be noted, however, that this statute did nothing whatsoever to deal with the major evidential problem which foreign extra-judicial divorces present to the English Courts. This problem, as so vividly demonstrated in *Viswalingam*, concerns the lack of competent and informed 'expert' evidence on foreign legal systems and the consequent difficulties the Court faces in attempting to ascertain whether the alleged action or event or happening actually brought the marriage to an end under the relevant foreign law.

Before granting an order for financial relief under the 1984 statute, the English Court will still have to reach a determination as to whether or not there has been a dissolution of the marriage by means of a 'foreign divorce' valid in the relevant foreign jurisdiction and entitled to recognition under English law.

### 'Blackmail' of Muslim Wives in England

By no means was it a coincidence that just when it appeared clear that legislation would be passed empowering the English Courts to grant ancillary relief in cases where the marriage had been dissolved by a foreign divorce entitled to recognition under English law, spokesmen for male Muslim interests (in many circumstances this phrase is preferable to the term 'fundamentalists') began putting it about that under Muslim law a woman is not entitled to a divorce without her husband's consent, and that no Muslim marriage can be dissolved in a 'religious' sense unless the husband pronounces a talaq.

Although this proposition is untrue as regards Muslim law, note how closely the alleged position of the Muslim woman so postulated approximates the position of the woman in orthodox Jewish law. Curiously, it appears that the fallacious proposition concerning Muslim law was readily and uncritically accepted by English legal circles simply because of this irrelevant similarity (see also footnote <sup>17</sup>).

I first encountered this fallacious proposition during the course of a question period following my lectures on Muslim marriage and divorce in English law at a training session for solicitors organized by the Greater Manchester Legal Services Committee in November 1983. Having convinced my audience that Muslim law did not in all circumstances require the husband's consent to the dissolution of the marriage and did permit the Muslim wife to obtain a judicial divorce in the face of her husband's opposition, I made many (unsuccessful) attempts to locate the source of the propaganda that seemed to be being put about, particularly in the Bolton area.

The following summer, two well-meaning Members of Parliament (Leo Abse and Peter Thurnham) proposed, in quite dramatic speeches, an amendment<sup>17</sup> to the Matrimonial and Family Proceedings Bill which, the proposers believed, would protect Muslim women who were being

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17. According to the individual claiming credit for suggesting the amendment (the then lecturer in Muslim law at Cambridge University and subsequently dean of the faculty of law at East Anglia University), the proposed amendment was modeled on a New York State statute applicable to New York Jews. (David Pearl, *Cambridge Law Journal*, 1984, pp. 249-250.) This is, of course, totally irrelevant to the question of whether it should be part of English law applicable to Muslims in England. Indeed, the Muslim law of divorce and the Jewish law of divorce are so different that any proposition which assumes the two systems are analogous is *prima facie* open to serious question. E.g., the only ground which Jewish law recognizes for dissolution of marriage, and the only ground on which a *gett* can be procured, is the mutual agreement of the spouses. While Muslim law recognizes divorce by mutual consent (*khul*), it also recognizes divorce at the instance of either spouse in the face of the opposition and resistance of the other spouse.

'blackmailed' by their husbands and forced to pay heavily for their spouses' consent to a 'religious' divorce.<sup>18</sup>

...Under Muslim law a man may have many wives, but a woman only one husband. Thus religious divorce is essential for a Muslim woman who wishes to remarry according to her faith, but a Muslim man can be content with civil divorce alone, as he does not have religious inhibitions about remarrying as often as he wishes.

Thousands of brides face that predicament. They are vulnerable to blackmail by their husbands, who will agree to a religious divorce only for a consideration...

Cases have been brought to my attention in Bolton, of which my constituency is a part. In one case, the parties had gained British nationality but had been separated for five years with a decree absolute. The ex-husband would not, however, grant a religious divorce. He demanded £5,000 and the return of the wedding jewellery as an inducement

In the second case, the husband and wife were married in India. After an unhappy relationship in Great Britain the husband sent his wife's passport to

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18. The proposed amendment read as follows (Hansard 13 June 1984, col. 926):

9A.--(1) Where a petition for divorce or nullity of marriage has been presented to the court, either party to the marriage may apply to the court at any time before decree absolute opposing the grant of the decree absolute on the ground that there exists a barrier to the religious remarriage of the applicant which is within the power of the other party to remove.

(2) The Court shall not entertain an application under subsection (1) hereof unless the applicant satisfies the court of the existence of such a barrier by means of a written declaration by the religious authority which authorised or sanctioned the marriage being dissolved by the court, or which authorised or sanctioned a religious ceremony of marriage between the same parties or on proof that such authority no longer exists, by a religious authority recognised by both parties to be competent.

(3) If the court is satisfied as to the existence of such a barrier then subject to the provisions of subsection (4) hereof the court shall refuse to permit the decree to be made absolute until it is satisfied by means of a written declaration by the authority referred to in subsection (2) hereof that the said barrier has been removed or that the parties have taken all such steps within their power to remove the said barrier or until the said application is withdrawn by the applicant.

(4) Notwithstanding the provisions of subsection (3) hereof the court may order that the decree may be made absolute if there are exceptional circumstances making it desirable for the decree to be made absolute without delay.

Even assuming that the husband's action in securing a 'religious divorce' were necessary in order for the requirements of Muslim law to be satisfied, I entirely fail to see how the proposed clause would solve the problem it purportedly attempted to address. In the five examples proffered by Mr. Thurnham, M.P. in his speech in the House of Commons (see extract quoted in text), it was apparently the respondent husband who was purporting to refuse the 'religious divorce.' Unless he is domiciled in England and anxious to remarry, delaying the decree absolute will not affect him adversely and may well benefit him (e.g., as long as the marriage is not dissolved, he will not become liable for payment of the deferred dower).

the Home Office in an attempt to get her removed, as she did not have British nationality. He eventually agreed to a religious divorce, but only if he did not have to pay maintenance and if she returned the wedding jewellery to him.

In the third case, both sides had British nationality, and the matter was settled only after violent persuasion by the wife's family. . . .

In the case of Mrs. Patel, her relatives fulfilled the husband's demands by paying him £4,000 and returning the marriage jewellery to obtain a religious divorce. In the fifth case, the wife was not a British citizen and her relatives paid money to obtain a religious divorce after the husband threatened to arrange a deportation.<sup>19</sup>

Fortunately, the proposed amendment was withdrawn, the Solicitor General promising to look into the matter.

Unfortunately, the damage was done. The statements in Parliament had only served to give publicity to a grossly erroneous view of Muslim law and to place the interests of Muslim women in the United Kingdom at even greater risk.<sup>20</sup>

#### Judicial Divorce and Muslim Law

The main distinction between the rights of the Muslim spouses in obtaining a non-consensual divorce is that while the husband can effect a divorce easily without his wife's consent by pronouncement of talaq; the wife whose husband will not agree to a divorce (or who will agree only on terms she is unwilling to accept) has to go to Court.

All schools of Muslim law recognize that the wife has a right to approach the Court for a judicial dissolution of her marriage. Such a judicial divorce is as final, and as much a 'religious divorce,' as is an extra-judicial divorce effected with the husband's consent and approval.

There is, however, considerable divergence among the schools of Islamic law concerning the precise grounds which would entitle a Muslim wife to judicial dissolution of her marriage. The classical Hanafi school is by far the most restrictive in this regard. For precisely this reason, comprehensive reform of the classical Hanafi law has been accomplished in several countries since the initial reform introduced in the Ottoman Empire in 1915. Since the majority of Muslims in the U.K. trace their ancestry to South Asia, the obvious statute to examine to refute the

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19. Peter Thurnham, M.P., Hansard, 13 June 1984, cols. 928-929.

20. See Lucy Carroll, "Muslim Women and Judicial Divorce: An Apparently Misunderstood Aspect of Muslim Law," *Islamic and Comparative Law Quarterly*, 5(1985): 226-245. This article was based on a long statement which I submitted to the Solicitor General, the Lord Chancellor, and the Law Commission immediately after the discussion in Parliament on the Abse-Thurnham amendment.

claims of the spokesmen of the interests of Muslim males is the Dissolution of Muslim Marriages Act, 1939.<sup>21</sup>

The statement of objects and reasons issued with the Bill which subsequently became the Dissolution of Muslim Marriages, Act, 1939, is set out below and explains the concerns behind this Act, which has now been on the statutes books of the territory presently comprising the states of Pakistan, Bangladesh, and India for more than half a century.

There is no proviso in the Hanafi code of Muslim law enabling a married Muslim woman to obtain a decree from the Court dissolving her marriage in case the husband neglects to maintain her, makes her life miserable by deserting or persistently maltreating her, or absconds leaving her unprovided for, and under certain other circumstances. The absence of such provision has entailed unspeakable misery to innumerable Muslim women in British India. The Hanafi jurists, however, have clearly laid down that in cases in which the application of Hanafi law causes hardship, it is permissible to apply the provisions of the Maliki, Shafi'i or Hanbali law. Acting on this principle the ulama [i.e., religious scholars and functionaries] have issued fatwas [i.e., opinions concerning the religious law] to the effect that in cases enumerated in clause 3, Part A of this Bill [contained in section 2 of the resultant Act], a married woman may obtain a decree dissolving her marriage. A lucid exposition of this principle can be found in the book called *al-Hilat al-Najizah* published by Maulana Ashraf Ali Saheb who has made an exhaustive study of the provisions of Maliki law which, under the circumstances prevailing in India, may be applied to such cases. This has been approved by a large number of ulama who have put their seals of approval on the book.

As the Courts are sure to hesitate to apply the Maliki law to the case of a [non-Maliki] woman, legislation recognising and enforcing the above mentioned principle is called for in order to relieve the sufferings of countless Muslim women.<sup>22</sup>

The background to this statute, enacted during the British period by rulers who had generally refrained from interference in the personal laws of its subjects is extremely interesting.

In the unique circumstances of British-India a few desperate Hanafi women had discovered that a way out of intolerable matrimonial situations existed if they were willing to apostatize, even temporarily, from Islam. In Islamic law, apostasy on the part of a Muslim spouse dissolves a Muslim marriage; a female apostate would, however, be

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21. It is extremely difficult to comprehend why this statute—so much more relevant to the situation than a New York State statute applicable to New York Jews; see fn. 17 above—was not called to the attention of those advising the women so brutally exploited in the cases referred to by Peter Thurnham, M.P., in the House of Commons, or to those supporting the suggested amendment.

22. Gazette of India, 1936, Part V, p. 154; as quoted and cited by Tahir Mahmood, *Muslim Personal Law: The Role of the State in the Subcontinent*. Nagpur, India: All India Reporter, 1983 (2nd edn.), pp. 47-48.

incarcerated until she repented of her error and then remarried on a minimal mahr (dower) to the man to whom she had been married at the time of her apostasy. Apostasy was not a crime in British-India; indeed, the Christian missionaries were actively seeking converts and the Evangelical lobby was strong. It is to the latter that must be credited the Caste Disabilities Removal Act, 1850, (otherwise known as the Freedom of Religion Act), which declared that the apostate lost none of his pre-existing rights (particularly rights of property and inheritance) by virtue of leaving or being expelled from caste or religious communion.

Perhaps somewhat illogically, the British-Indian Courts when confronted with the question decided that, although much of the law of apostasy was not applicable in British-India, that part of Muslim law which decreed the dissolution of the apostate's marriage was in force. A Muslim woman could thus easily shed the husband she despised by converting to Christianity. She could, and often did, then reconvert to Islam as a single woman.

Although the number of women who resorted to such desperate measures was small both numerically and statistically, the cases that did occur were widely publicized in the Urdu press and aroused considerable concern in the Muslim community. Petitions and memorials were submitted calling upon the government to overrule the Courts which were issuing declarations recognizing the dissolution of her marriage occasioned by the apostasy of the Muslim wife. The government was reluctant to take any action unless some alternative remedy were made available to the women who were using apostasy as a means of obtaining matrimonial relief otherwise unavailable to them. Meanwhile, many distinguished ulema issued fatwas proposing that Hanafi women should be allowed access to judicial divorce on grounds recognized by other Sunni schools, particularly Maliki.

The Act of 1939 was essentially a compromise: it entitled Muslim women to petition for divorce on the grounds set out below (which had been adopted from Maliki law), while at the same time laying down that apostasy on the part of a married Muslim woman would no longer have the effect of dissolving her marriage (section 4).

Section 2 of the statute sets out the grounds on which a South Asian Muslim wife may petition the Court for divorce:

2. A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:

(i) that the whereabouts of the husband have not been known for a period of four years; (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years; (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards; (iv) that the husband has failed to perform without reasonable cause, his marital

obligations for a period of three years; (v) that the husband was impotent at the time of marriage and continues to be so; (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease; (vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years; Provided that the marriage has not been consummated;<sup>23</sup> (viii) that the husband treats her with cruelty, that is to say: (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or (b) associates with women of evil repute or leads an infamous life, or (c) attempts to force her to lead an immoral life, or (d) disposes of her property or prevents her exercising her legal rights over it, or (e) obstructs her in the observance of her religious profession or practice, or

(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran; (ix) on any other ground which is recognized as valid for the dissolution of marriages under Muslim law.

In Pakistan and Bangladesh the Dissolution of Muslim Marriages Act was amended by the Muslim Family Laws Ordinance, 1961, and a further ground on which a wife may seek a judicial divorce enumerated: "that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961," i.e., without the requisite prior permission of the Arbitration Council.

It is perhaps worth noting that the Act of 1939 is of general application, and applies to Muslim women in Pakistan, Bangladesh, and India, whether Hanafi or Shafi'i, Sunni or Shia. It should also be noted that the fact that a woman has recourse to the Dissolution of Muslim Marriages Act to secure judicial divorce does not affect her financial claims against her husband: section 5 of the Act specifically provides—"Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower [mahr] or any part thereof on the dissolution of the marriage." She would, of course, also be entitled to maintenance from her husband during the period of iddah. It should also be pointed out, and with some emphasis, that there is nothing to be found in the 1939 Act to the effect that the husband's consent is required for the divorce to become final, or imposing the requirement that the husband pronounce a talaq before the wife is free to remarry according to Muslim law and Muslim rites—nothing in fact in any way comparable to the terms proposed to be introduced into English law by the Abse-Thurnham amendment.

The grounds available under the Dissolution of Muslim Marriages Act are not really very different from those available under the English

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23. See Lucy Carroll, "Muslim Family Law in South Asia: The Right to Avoid an Arranged Marriage Contracted During Minority," *Journal of the Indian Law Institute*, 23(1981): 149-180.

legislation. Most divorce petitions in a contested action rely on either five years' separation or unreasonable behavior to establish irretrievable breakdown of the marriage necessary to obtain a divorce under the Matrimonial Causes Act, 1973. It could be argued that the former ground is less lenient than those available under the Dissolution of Muslim Marriages Act, which entitle a wife to divorce on grounds of either failure to maintain for two years or failure to perform marital obligations for three years. The import of the English expression "has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent" is much the same as the comparable clause in the Dissolution of Muslim Marriages Act, "makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment."

A divorce granted by the Courts of India, Pakistan, or Bangladesh under the Dissolution of Muslim Marriages Act does not require the husband's consent or approval; the Muslim wife is most emphatically not in the position of the Jewish *agunah*.<sup>24</sup> There is absolutely no justification at all for subjecting Muslim women in England to a more fundamentalist, or less enlightened, interpretation of Muslim law than that to which their sisters in the subcontinent are subject, or for denying Muslim women in England rights which their sisters in the subcontinent have enjoyed for more than half a century.<sup>25</sup>

It is tragic that the well-meaning MPs were not better informed than they were, for had they been, the statements made in the House of Commons, instead of merely broadcasting an erroneous proposition concerning Muslim law and publicizing the success that Muslim men were having 'blackmailing' their ignorant and uninformed wives, could have been used to expose the error and publicize the correct state of affairs, thus achieving to some extent the goal sought by the ill-advised MPs of granting some protection to ill-used women.

Within a year or so of the discussion in Parliament concerning the Abse-Thurnham amendment, I was contacted by a solicitor representing a Muslim woman suing for divorce in the English Court. The letter indicated that both the solicitor and her client were of the opinion that the marriage would not be dissolved 'religiously' unless the husband pronounced a *talaq*; made it clear that the husband was attempting to extract a heavy price for his *talaq*; and asked for my advice. I pointed out that the client clearly had grounds for divorce under the South Asian Dissolution of Muslim Marriages Act; that the grounds available to her

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24. A Jewish woman who has obtained a judicial divorce from the civil Court exercising matrimonial jurisdiction in the matter of divorce, but who has been denied a *gett* by her husband and thus retains the status of 'married woman' in orthodox Jewish law.

25. See article cited in fn. 20 above.

under the English legislation were quite comparable to those available under the Dissolution of Muslim Marriages Act; that were the marriage dissolved in South Asia under the Dissolution of Muslim Marriages Act, the husband's consent would not be necessary and the wife would not lose her rights to mahr; and that I saw no reason why a Muslim woman in England should be denied rights available to her sisters in Pakistan. I enclosed a copy of my article on Muslim women and judicial divorce,<sup>26</sup> written in response to the Abse-Thurnham debate. The solicitor replied that my letter and enclosure had been "a real eye-opener" to both her and her client. The moral is obviously that women are only vulnerable to the kind of intimidation and blackmail to which Muslim women in England are being subjected to the extent that they are ignorant of their rights under Muslim law. If they have available to them information with which they can reply to their husband's pronouncements concerning what Muslim law decrees or demands, they are able to hold their own ground and to refuse to be intimidated or blackmailed.

## *II. The Islamic Sharia Council and 'Islamic' Divorce*

Why an 'Islamic' divorce?

I have recently been advising a young Muslim woman who had gone through a procedure involving the Islamic Sharia Council in London and purportedly resulting in an 'Islamic divorce.' The first question which obviously arises is why, having obtained a decree absolute from the English Court before she approached the Sharia Council, the woman considered such a course necessary.

She explained to me that she thought such an 'Islamic' divorce was necessary in two respects. (i) She wanted a divorce that would be recognized in Pakistani law. Although the woman is a British national, was domiciled in England prior to her marriage, and resumed her English domicile after the parties separated some years prior to the divorce, her (ex) husband is a Pakistani national and domiciled in that country. She and her family have close friends in Pakistan and she wanted to be free to visit that country without harassment and worry. And (ii) she wanted a divorce that would be recognized in certain countries of the Middle East (e.g., Bahrain) where she is likely to travel because she has relatives living there. The fear was that in the absence of an 'Islamic' divorce, in addition to the decree absolute, her ex-husband might follow her to, or encounter her in, Pakistan or Bahrain, and there claim his conjugal rights and enforce her wifely obedience on the ground that the matrimonial bond still subsisted.

It is important to realize that in the modern world Islamic law, as law, does not exist as some disembodied entity floating in the stratosphere,

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26. Ibid.

overreaching national boundaries and superseding national law. In the modern world, Islamic law exists only within the context of a nation-state; and within the boundaries of any particular state it is only enforced and enforceable to the extent that, and subject to the reforms and modifications that, the nation-state decrees.

In regard to Pakistan, all the woman needed to do was to send a copy of the English decree (with a covering letter indicating that she was giving notice of the divorce as required by section 8 of the Muslim Family Laws Ordinance) to the local official empowered to receive notifications of divorces under the Ordinance, with a copy of the covering letter to her ex-husband. Section 7 of the Ordinance, which specifically deals with divorces effected by the husband's unilateral pronouncement of talaq, has been discussed above. Section 8 of the Ordinance applies the same procedural requirements (*mutatis mutandis*) to other forms of divorce,<sup>27</sup> including divorce by mutual consent (the extra-judicial khul; see below).

The wording of section 8 of the Muslim Family Laws Ordinance clearly would encompass a judicial divorce decreed on the petition of the wife. More significantly, the Pakistan Family Courts Act, 1964, specifically enacted (section 21):

21. (1) Nothing in this Act shall be deemed to affect any of the provisions of the Muslim Family laws Ordinance, 1961, or the rules framed thereunder; and the provisions of sections 7, 8, 9, and 10 of the said Ordinance shall be applicable to any decree for the dissolution of marriage solemnized under the Muslim Law, maintenance or dower, by a Family Court. (2) Where a Family Court passes a decree for the dissolution of a marriage solemnized under Muslim Law,<sup>28</sup> the Court shall send by registered post, within seven days of passing such a decree, a certified copy of the same to the appropriate Chairman [i.e., a local government official] referred to in section 7 of the Muslim Family Laws Ordinance, 1961, and upon receipt of such copy, the Chairman shall proceed as if he had received an intimidation of Talaq required to be given under the said Ordinance. (3) Notwithstanding anything to the contrary contained in any other law, a decree for dissolution of a marriage solemnized under Muslim Law shall—(a) not be effective until the expiration of ninety days from the day on which a copy thereof has been sent under subsection (2) to the Chairman; and

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27. "8. Dissolution of marriage otherwise than by talaq.—Where the right to divorce has been duly delegated to the wife [talaq-i-tafwid] and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by talaq, the provisions of section 7 shall, *mutatis mutandis* and so far as applicable apply." (Emphasis added.)

28. Solemnization of a marriage "under Muslim law" need not be concluded by or in the presence of a religious functionary or representative; it need not involve any religious rites or ceremonies. The legal requirements for solemnization of a marriage according to Muslim law consist merely of offer and acceptance of the contract of marriage at the same meeting and in the presence of witnesses. See further below.

(b) be of no effect if within the period specified in clause (a) a reconciliation has been effected between the parties in accordance with the provisions of the Muslim Family Laws Ordinance, 1961.

Thus a judicial decree of divorce obtained by a Muslim woman in Pakistan is, in effect, a decree nisi, and becomes a decree absolute ninety days after notice of the decree has been delivered to the requisite local official, unless the parties become reconciled during this period. The only way the husband can prevent the decree from becoming final is by persuading his wife to a reconciliation; he has no power of veto and cannot impose 'conditions' or require his wife to 'purchase' his acquiescence to the decree.

The Muslim Family Laws Ordinance states that its provisions apply to "all Muslim citizens of Pakistan, wherever they may be;" it thus applies to the woman's ex-husband (a Pakistani national). Notice of a divorce under section 8 of the Ordinance may be given by either spouse;<sup>29</sup> in the case of a judicial divorce obtained by the wife, it would primarily be her responsibility to ensure that notice was appropriately given.<sup>30</sup> There are no grounds for contending that a non-Pakistani woman who had been married to a Pakistani national and whose marriage had been dissolved by judicial proceedings outside of Pakistan could not give notice under section 8; and no grounds for contending that such notice (failing

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29. The husband pronouncing a talaq must himself give notice under section 7. The corollary is that his failure to give notice conclusively evidences the fact that he retracted or revoked the pronouncement.

The forms of divorce covered by section 8 normally occur at the initiative of the wife or through the agreement of the spouses; there is no requirement that notification of the divorce effected "otherwise than by talaq" be given by the husband. (A judicial divorce obtained by a Muslim husband in a jurisdiction, or under circumstances where extra-judicial divorce by talaq would not be recognized would also come under section 8; theoretically notice could be given by the wife no less than by the husband, once the decree were final.)

30. This is particularly the case in the province of the Punjab (where the parties to the present case resided together during the marriage; and where the ex-husband is apparently still domiciled), because in 1971 the provincial government deleted subsections (2) and (3) and part of subsection (1) of section 21 of the Family Courts Act. As applicable in the Punjab, section 21 therefore reads simply:—"Nothing in this Act shall be deemed to affect any of the provisions of the Muslim Family Laws Ordinance, 1961, or the rules made thereunder."

Interpreting the effect of the provincial amendments, the Lahore High Court in 1975 (*Muhammad Ishaque v. Ch. Ahsan Ahmad*, PLD 1975 Lahore 1118) concluded:—"The Family Courts would thus continue to follow the practice of sending a copy of the decree to the Chairman concerned but at the same time it is also necessary for the wife in whose favour the decree is passed, to independently inform the Chairman about the decree as also to send a notice thereof to the husband in a formal manner."

reconciliation of the parties within the statutory ninety days), would not lead to effective registration of the divorce in Pakistan.<sup>31</sup>

As far as Bahrain or any other state wherein Muslim law is applicable in matters of personal status to nationals and domiciliaries of that state, a foreign Muslim husband would not be permitted to invoke the domestic law to override a divorce obtained by his foreign wife in a foreign country. The rules of private international law would surely be held to govern the question of the matrimonial status of two foreigners who were neither nationals of or domiciled in (e.g.) Bahrain, whose marriage had not taken place in Bahrain, and who had been divorced in England. The matter would be determined by reference to the country or countries of domicile or nationality of the individuals involved. The woman is domiciled in England and a national of the United Kingdom; according to the law of her nationality and domicile, she is divorced. The ex-husband is a national of and domiciled in Pakistan; if the divorce had been notified under section 8 of the Muslim Family Laws Ordinance, by the law of his nationality and domicile, he is divorced.

#### The Position of the Sharia Council

The woman approached the Sharia Council in London in August 1992 (by which time she had already obtained a decree absolute), requesting that this body arrange an 'Islamic' divorce for her.

The Sharia Council is a self-constituted body, founded in 1982<sup>32</sup> and claiming to have branches in London, Birmingham, Manchester, Bradford, and Glasgow. It has, of course, no legal status in England; it has no legal status under Pakistani, Bangladeshi, or Indian law (the vast majority of British Muslims are of South Asian descent).

The Constitution of the Council sets forth among its objects, *inter alia*, the following:

To advance the Islamic Religion in particular by... Establishing a bench to operate as a court of Islamic Sharia and make decisions on matters of Muslim family law referred to it.

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31. I am fortified in making this statement by conversations and communications with members of the superior judiciary in Pakistan (including an individual at the time a judge of the Supreme Court) and with senior advocates in Pakistan in the period immediately after the Abse-Thurnham amendment had been proposed in the House of Commons and with specific reference to that amendment.

32. At a time when it was clear that legislation would soon be enacted (as it was two years later) which would make it impossible for a Muslim husband to absolve himself of any financial responsibility for the wife who had filed for divorce in the English Court by hastily effecting a talaq abroad, thereby depriving the English Court of jurisdiction to dissolve the marriage (because, assuming the talaq were entitled to recognition in English law, the parties were no longer husband and wife) and, consequently, of jurisdiction to order a financial settlement in favor of the wife (because, prior to the legislation of 1984, this jurisdiction only arose if the English Court itself dissolved the marriage). See now Part III of the Matrimonial and Family Proceedings Act, 1984.

To educate the public generally in the field of Muslim family law and to foster and disseminate information in that field.

Literature put out by the Sharia Council claims that ninety-five per cent of all the queries referred to them concern "matrimonial problems faced by Muslims in this country,"<sup>33</sup> and the majority of these "come from women who are seeking a divorce from their husbands;" "[i]t is usually Muslim women who are seeking an Islamic divorce from their husbands who turn to us." "Even a number of cases are referred to us through the solicitors who were able to obtain civil divorces for their client but they had to turn to us to obtain an Islamic divorce."

The matter is not merely that the Sharia Council does not recognize the 'civil divorce;' the premise appears to be that a couple may be simultaneously married to each other under two sets of legal regimes, and that each marriage must be individually dissolved.

As the Muslims normally conduct their marriages both Islamically (known as Nikah ceremony which is accomplished through an Imam at any Mosque or Islamic Centre), and by registering with the civil authorities,<sup>34</sup> this Council deals only with the Islamic Nikah. It has nothing to do with the civil marriage which is dissolved by the British Courts and not by us.

If the marriage ceremonies took place in the order in which they are mentioned in this extract, it might be possible to argue that from the perspective of Muslim law, it was the nikah ceremony which was relevant and the civil ceremony was totally superfluous. However, the ceremonies do not and cannot take place in that order, because the nikah (if it were to occur first) would almost certainly be in violation of the Marriage Acts—not because it was a Muslim ceremony but because it would almost certainly have taken place in an 'unregistered building.'<sup>35</sup> It is because the venue of the nikah is an unregistered building where a marriage ceremony cannot be legally performed and because the act of purporting to solemnize a marriage in an unregistered building is a criminal offense, that the civil ceremony precedes the nikah; the nikah then becomes merely a ceremony of religious celebration and blessing, legally without significance in either English or Muslim law as far as the status of the

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33. The Council claims to have dealt with more than 950 matters in the period (apparently) 1982-1991; a more recent (but undated) document puts the number at more than 1150.

34. The reference is to a marriage ceremony in a registry office.

35. English law requires that marriages be solemnized in a registered building. The main complication this poses for members of the Muslim and Hindu communities is that a building can only be registered for the solemnization of marriages if it is used exclusively for religious services. Many mosques and temples are used for purposes (e.g., accommodation of the religious leader and his family) other than a venue where religious services are conducted.

parties is concerned: a man can no more marry a woman to whom he is already married in Muslim law than he can in English law.

However, the civil ceremony, which routinely precedes the nikah ceremony, is not irrelevant in Muslim law. The legal requirements for solemnization of a marriage according to Muslim law consist merely of offer and acceptance of the contract of marriage at the same meeting and in the presence of witnesses. These requirements are fully satisfied by the civil marriage ceremony.

This very important point was underscored by the 1967 decision of the Pakistan Supreme Court in *Jatoi v. Jatoi*.<sup>36</sup> The question here was what law of divorce would govern the dissolution in Pakistan of a civil marriage solemnized in an English registry office between a Pakistani Muslim man and a Spanish Christian woman. Since marriage and divorced in Pakistan are governed by religious-based communal laws, a choice had to be made between the (Christian) Divorce Act, 1869, and Muslim law. The Supreme Court held that the solemnization of the marriage under the U.K. Marriage Act, involving as it did formal consent to the marriage on behalf of each party at the same meeting in the presence of witnesses, fully conformed to the legal requirements for solemnization of a marriage under Muslim law. The marriage having been “assimilated to the position of a Muslim marriage,” the majority went on to hold that the marriage could be and had been dissolved by the husband’s pronouncement of talaq.

Since the registry office ceremony constitutes a valid solemnization of the marriage in Muslim law, the subsequent nikah ceremony, rather than producing a second matrimonial tie totally separate and distinct from that created by the civil ceremony, is irrelevant in Muslim law as far as the status of the parties is concerned (note again that in Muslim law, no less than in English law, one cannot marry someone to whom one is already married).

The Muslim nikah is undoubtedly of social and cultural significance; it is of legal significance primarily in regard to the specification of the wife’s mahr (dower). (The fact that the parties are already legally man and wife at the time of the nikah ceremony is of no significance in the context of mahr: the amount of dower can be set or modified at any time after the marriage.)

The Islamic Sharia Council in the present case set about arranging a divorce by khul—an extra-judicial divorce agreed with the mutual consent of the parties. A necessary prerequisite for a khul—or any other form of divorce—is that the parties are at the time actually married to

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36. PLD 1967 Supreme Court 580.

each other. This prerequisite fails in the present case; thus reliance on the khul, or upon any alleged terms of the khul agreement, likewise fails.

A concomitant of a divorce by khul is that the woman 'purchases' her freedom by making concessions in favor of her husband in order to secure his consent to the divorce.<sup>37</sup> Usually the Muslim wife surrenders her right to the dower (mahr) pledged by the husband and payable on dissolution of the marriage by death or divorce.

However, as observed by Leo Abse, M.P., in his speech to the House of Commons, children are sometimes made the currency of the barter:

According to orthodox Jewish or Islamic law,<sup>38</sup> in order to remarry, the divorced parties must be in possession of a religious divorce—a gett as it is called within the orthodox Jewish religion, a talaq for the committed Moslem. The obtaining of such religious decrees requires an initiative from the husband...

Unfortunately, one partner—usually the husband—can brutally manipulate the passionate wish of the other party to be free after a civil divorce to remarry according to the religious law...<sup>39</sup> Therefore the protection that our civil law provides for maintenance and the custody of children can be subverted by a ruthless partner.

The partner—usually the husband—blackmails the wife. The price for taking the necessary initiative [for the obtaining of a 'religious' divorce] is an

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37. The khul is usually concluded by the husband's pronouncement of talaq, although in Hanafi law such a pronouncement is not strictly required. In essence, the wife is 'buying' her husband's pronouncement of talaq by agreeing to the 'price' (in monetary or other terms) which he demands. The bargain necessarily fails if the alleged husband has no authority to pronounce talaq in reference to the woman in question—which, of course, he does not if he is no longer married to her.

According to some Muslim jurists, the bargain cannot be enforced against the woman who, although she had grounds for judicial divorce, agreed to a divorce by khul and payment by her of compensation out of ignorance, as a result of pressure, or to preserve her modesty and her family's honor (by refraining from airing private matters in a public forum). That the woman in the present case had grounds for judicial divorce is proved by the fact that she had, even at the time of her approach to the Shariah Council, a decree absolute in her hands.

38. Note again the assumption that Jewish law and Muslim law are analogous and the Muslim woman whose husband has not pronounced a talaq is in the same position as the Jewish woman whose husband refuses her a gett.

39. In orthodox Jewish law, the only recognized form of divorce is the consensual gett; the husband has to give, and the wife has to accept, the gett. In the absence of a gett, an orthodox Jewish woman cannot remarry.

The Muslim woman, it must be stressed, is not in a position analogous to the Jewish agunah. While Muslim law recognizes divorce by mutual consent (the khul), it also recognizes unilateral divorce by the husband (talaq) or by the wife (faksh). Of course, the woman is disadvantageously placed in that while the husband can execute his unilateral talaq extra-judicially, she has to claim her right of unilateral dissolution through the Courts.

agreed settlement and arrangement relating to children. It might be a settlement which, if the issues were adjudicated upon openly in court, would according to the principles which this House had laid down in our civil law, be far different from that to which the hapless wife has been compelled to submit.<sup>40</sup>

The literature produced by the Sharia Council states that a divorce decreed by the English Court will only be recognized 'Islamically' if the husband is the petitioner or if the husband consents to the divorce in writing. In any other case the wife who wishes to be divorced 'Islamically' must apply for an 'Islamic divorce' through the Sharia Council.

An application for divorce by the wife is known as *Khula*, a condition of which is that the wife must return to the husband any *mahr* (dower) or jewellery she received from him, if he so demands it.

The procedure for the granting of an 'Islamic' divorce to a woman applicant as set out in the Council's literature may be summarized as follows. Upon receipt of the application, the Council will attempt to correspond with the husband (or, as will most commonly be the case, ex-husband) in order to ascertain his response to his wife's (or ex-wife's) application. If no reply is received, a second letter is sent; and, if there is still no response, a third. If a reply is received and if the husband (or ex-husband) has imposed any conditions upon the granting of an 'Islamic' divorce to his wife (or ex-wife), she is required to comply with them "provided that these conditions are reasonable." Apparently the Council is the judge of the reasonableness or otherwise of the pre-conditions.

What is particularly interesting is that the Sharia Council apparently claims jurisdiction to grant a *khul* to the wife if the husband fails to reply to their communications, or in certain circumstances if the husband refuses his cooperation or consent—i.e., claims the right to impose a divorce by *khul* on the husband in *ex parte* proceedings and/or without his consent, although the 'price' of the *khul* is the woman's renouncement of claims for *mahr*, repayment of any *mahr* already paid, and return of any jewellery etc. presented to her by her husband.

The first part of this proposition reflects the Maliki view of *khul*, assuming that the Council is functioning in the role of the 'arbiters' supposedly appointed by the spouses. (The Hanafi view is that the arbiters can only attempt to reconcile the spouses and have no authority to dissolve the marriage unless the husband has specifically empowered them to pronounce *talaq* on his behalf.)

The second part of the proposition, however, departs from Maliki law to the disadvantage of the woman, for the Maliki arbiters would not automatically impose reparations upon the woman, and certainly would

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40. Hansard, 13 June 1984, cols. 926-927; emphasis added.

not automatically deprive her of her entire mahr. Having made a determination that the marriage should be dissolved, the Maliki arbiters would attempt to allocate blame for the discord and may award the wife all, some, or none of her mahr.

Particularly since women who approach the Sharia Council for a divorce have already obtained a divorce decree from the English Court, a procedure which requires that they prove grounds which are very comparable to those available to Muslim women in South Asia under the Dissolution of Muslim Marriages Act, the rather heavy handed attitude toward Muslim women urgently needs to be reconsidered.

The other problem, demonstrated by the case I have recently been involved in, is that the Sharia Council has no effective sanctions which can be invoked to ensure that the (ex) husband abides by his agreement and fulfills his responsibilities and undertakings. The khul in this case was granted on the (ex) wife's refund of her mahr and her commitment to allow her ex-husband access to the child of the marriage in accordance with prior arrangements made through the Sharia Council. The (ex) husband was also to return the jewellery given to the (ex) wife by her parents and other relatives. The (ex) wife refunded her mahr, but the husband did not return the wife's jewellery. And the Council was equally powerless to hold the (ex) husband to orderly arrangements concerning access to the child.

However, there is a powerful sanction available for use against the wife—the threat that without an 'Islamic' divorce, she is not free ever to marry again according to Muslim law. While remarriage may be the very last thing on the mind of a woman in the process of extricating herself from an unhappy and traumatic matrimonial situation, the fact remains that she may some years hence wish to consider remarriage. By that time she may well have lost all contact with her ex-husband and have no idea where he is or how to get in touch with him. If she believes (or is induced to believe) that her first marriage had not been effectively dissolved, she would obviously be in a difficult situation. Better, it might seem, to sever the bond 'Islamically' as well as civilly, at once, through the Sharia Council. The granting of an 'Islamic divorce.' states the Council's publication, produces "[a] great sigh of relief for the wife who feels really she is Islamically free to start a new life."

### ***Concluding remarks***

The immediate need is for moderate and educated Muslims to interest themselves in the question of Muslim law in a non-Muslim environment. It is surely unacceptable that Muslim women in a country like England should be forced, by ignorance and social pressure, to subject themselves to an interpretation of Islamic law that is harsher than that to which

women in South Asia<sup>41</sup> are subjected. The matter is too urgent to be left to self-appointed committees of ulema.

A matter to be kept prominently in mind is that, as a leading Muslim scholar in India has written, "The true Islamic law in fact stood for what is now known as the 'breakdown' theory of divorce."<sup>42</sup> More than a quarter of a century earlier, a distinguished Muslim jurist, Chief Justice Tyabji of Sind, explained the Dissolution of Muslim Marriages Act in the following terms:

From the earliest times Muslim wives have been held to be entitled to a dissolution when it was clearly shown that the parties could not live 'within the limits of Allah,' when (1) instead of the marriage being a reality, a suspension of the marriage had in fact occurred, or (2) when the continuance of the marriage involved injury to the wife... The grounds stated in section 2 of Act 8 of 1939 in sub-clauses (1) to (iv) are based on the principle that a suspension of the marriage had occurred which justified dissolution, and in sub-clauses (v) to (viii) on the principle that continuance of the marriage in those cases would be injurious to the wife.<sup>43</sup>

In this case the learned Judge granted the petitioning wife a divorce on the ground that the husband had failed to maintain her for the statutory period of two years, although during this period the wife was living apart from her husband without legal ground (i.e., was herself in desertion and unentitled to claim maintenance from her husband unless she rejoined him in the matrimonial home) on the basis that such separate living and failure of the parties to reconcile their differences demonstrated the total breakdown of the marriage. Marriage in Islam not being a sacrament, the Judge found no merit in preserving a marriage which had broken down and equally no desecration in dissolving a marriage which had failed.

What the Muslim woman petitioning for divorce in the English Court must prove is that the marriage has "broken down irretrievably." And she must establish this breakdown by proving one of the following facts:—(i) adultery coupled with the further circumstances that she finds it impossible to live with the respondent; (ii) "that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;" (iii) desertion for two years; (iv) separation for two years when both spouses agree to a divorce; or (v) separation for five years. This is perhaps a more limited list than that available to the Muslim wife in South Asia under the Dissolution of Muslim Marriages Act,

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41. To which geographical region the overwhelming majority of Muslims in Britain trace their origin.

42. Tahir Mahmood, *The Muslim Law of India*. Allahabad: Law Book Co., 1980, p. 95.

43. *Hajra v. Kassim*, unreported; passage in the text was quoted by the same judge in *Noor Bibi v. Pir Bux*, AIR 1950 Sind 8, p. 10.

although the entries under section 2 (viii) would constitute the kind of behavior referred to by the shorthand expression 'unreasonable behavior' in the context of the English statute.

The immediate point is to emphasize how closely analogous are the grounds upon which a Muslim woman might obtain a divorce from the English Court and those upon which her sister may obtain a divorce from the Indian or Pakistan or Bangladeshi Court. A marriage that has broken down, has broken down irrespective of geography.

Meanwhile, individual Muslim women who possess the strength of personal character and religious faith<sup>44</sup> to take their own individual stands may push the community in more liberal and humane directions—just as individual South Asian Muslim women who went to the extent of apostatizing (usually temporarily) from Islam in order to shed a husband they could not rid themselves of by less drastic means deserve credit for the passage of the Dissolution of Muslim Marriage Act of 1939.

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44. The woman I most recently advised asserted with considerable feeling, after more than two years of attempting to work matters out through the good offices of the Sharia Council, "If this is Islam, then I am not a Muslim! But I know that it is not Islam; I refuse to accept that it is Islam."

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# *The Discourse of the Ikhwan of Sudan and Secularism*

*Muhammad Mahmoud*

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The beginnings of the al-Ikhwan al-Muslimun (henceforth, Ikhwan) movement in Sudan may be traced back to the mid-1940s. This period witnessed the emergence of small student and popular-based groups.<sup>1</sup> As far as the latter are concerned we find that their commitment was the outcome of two direct influences: the interest that the Egyptian al-Ikhwan al-Muslimun was taking in Sudan (owing partly to the fact that Egypt was a partner alongside Great Britain in the Condominium arrangement) and the ferment of the Sudanese nationalist movement that expressed itself partly in terms of an Islamist and Arabist identification. However, the most pressing matter for these forerunners of the Ikhwan was not the issue of secularization of Islamic polity but rather the national question of determining the country's future. In contrast, the student group showed a more pronounced ideological orientation, and this may be attributed to the specific circumstances of its inception as it grew largely in reaction to the growth of the communist left among the students. What made Marxism uninviting for them was its atheism. They argued that Islam was a 'comprehensive' religion that addressed the concerns and problems of this world (as opposed to the 'hereafter'), and in insisting upon an intrinsic complementarity between the religious and the worldly in Islam they were decidedly anti-secularist.

However, their hostility to Marxism did not prevent them from borrowing considerably from its sources and so they maintained that Islam was a 'socialist' religion and formulated a programme that called for the abolition of feudal and capitalist relations of production in the Sudan and for taking the means of production into social ownership. The confrontation with the communists had thus produced an 'Islamist' left -

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1. Ahmad 1982: 6-15; al-Turabi 1991a: 27ff; el-Affendi 1991: 46-52.

a situation that was bound to invite a backlash. By the early 1950s the mainstream of the Islamist student movement was showing determined signs of distancing itself from the 'socialist' rendering of Islam and, when in 1954 a founding conference was convened, a conservative trend emerged as the victor and the decisive shaping force of the Ikhwan's political destiny.

The first stiff challenge that the nascent Ikhwan movement had to face was the constitution debate between 1955 and 1958. The Ikhwan called for an 'Islamic constitution' and promulgated a model for this. The salient Islamic features in this document were provisions for Islam as the state religion, for sharia (Islamic canonical law) as the source of legislation, the prohibition of *riba* (usury), and the charging of the state with the collection of *zakat* (alms tax).<sup>2</sup> The document was clearly modelled on Western constitutions and based on the acceptance of the Sudanese state within its recognized territorial boundaries, without insisting on a distinctive 'Islamic' concept of state.

The Ikhwan's campaign during this period succeeded in grafting its discourse on to the wider national political discourse. The extent of this success was evident in 1968 when the Draft Permanent Constitution was produced, turning out to be 'more Islamic than the 1958 draft'.<sup>3</sup> To understand this development we must take into account the overall context of the Sudanese political scene between 1964 and 1969. This was a time of multi-party democracy and the Ikhwan was gradually growing out of its pressure-group phase and entering a party formation phase. Its major achievement was spearheading a vigorous campaign that led to the dissolution of the Sudanese Communist Party in December 1965. The pretext for this highly political act was 'religious': the communists were atheists. The hitherto secularized nature of the dominant political discourse in the country, notwithstanding the religious basis of the two major parties, al-Umma and the Democratic Unionists, underwent a radical shift after this event. Henceforth, the politics of 'Islamization', and particularly in its strident sharia version, grew into an active, aggressive component in the political struggle, so much so that by the mid-1980s sharia became the foremost divisive issue in Sudanese politics.

The May 1969 coup d'état of Colonel Jaafar Nimeiru started off as a left-oriented affair but ended up veering in the opposite direction and adopting sharia. The bloody confrontation between the regime and its opposition in the Umma Party, the Democratic Unionists and the Ikhwan led eventually to a reconciliation between the regime, the Umma Party and the Ikhwan in 1977. It was, however, the Ikhwan which profited most from this development. The movement assumed a decidedly capitalist

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2. Ahmad 1982: 46f.

3. Kok 1991: 240.

nature, channelling a great deal of its energies into banking and commercial activities, while conducting an extensive, low-profile campaign to win over new recruits. The dramatic shift occurred, however, in September 1983 when President Nimeiri announced the implementation of sharia with immediate effect. By April 1984, the process had gathered full momentum and a state of emergency was announced. With the Ikhwan acting as the regime's judicial right-hand, Northern Sudan was plunged into a full sharia rigour and by March 1985, when the regime was brought down, there had been 106 amputations of hands including seventeen cross-limbs (i.e. amputation of right hand and left foot), the number of floggings ran into thousands,<sup>4</sup> and Ustadh Mahmoud Muhammad Taha, the founder of the Islamic Republican Party who had called for a blend of social democracy and mysticism, was hanged on a charge of apostasy.<sup>5</sup> The civil war in the South was in full swing, with amounting civilian and military death toll and an unprecedented harrowing displacement of ever-growing masses of people.

Between 1985 and 1989, the North-South divide was reduced to the question of sharia. This bestowed upon the Ikhwan, who emerged as the third parliamentary force, a unique political significance. The prevalent political balance and the momentum of the secular campaign against the Islamization of the law led, however, to a moratorium on sharia. When it became evident that this state of affairs and other political developments might favour a dismantling of Islamic law, the Ikhwan swiftly moved in and staged a coup d'état in June 1989.

### ***A Blueprint for an Islamic State***

In exploring the Ikhwan's ideological perspective, we shall concentrate on the writings of Dr Hasan Abd Allah al-Turabi (b. 1932), the movement's political leader and principal ideologue. Turabi's formal education was entirely secular, since he had studied law at the Universities of Khartoum, London and Paris. Since 1965 he has dominated the movement and succeeded in moulding it in his own image. He has been greatly helped in this by his personal abilities and by the weakness of the representation of the ulama (theologians and experts on sharia) class in the movement. This section will deal with Turabi's concept of the Islamic state, his project concerning the reform of Islamic legal thinking, and his position on women, which is meant to demonstrate his practical fiqh (Islamic jurisprudence) and the constraints which are placed on it.

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4. Khalid 1990: 310.

5. For more discussions of the period of Islamization under Nimeiri, see Khalid 1985, Esposito 1988, Delmet 1990, Fluehr-Lobban 1990, and Warburg 1990. For an informative and balanced account of the execution of Ustadh Mahmoud Muhammad Taha, see Abdullahi Ahmed An-Na'im's introduction in Taha 1987.

The Ikhwan's set purpose has been the establishment of an Islamic state, which is projected as the highest expression of an Islamic society. Secularization as a process that separates the practice of politics and the running of government from the concepts, precepts, values and injunctions of the religion of Islam has always been anathematized by the Ikhwan. In explaining the dialectic that relates state to society, Turabi says:

The state is only the political expression of an Islamic society. You cannot have an Islamic state except insofar that you have an Islamic society. Any attempt at establishing a political order for the establishment of a genuine Islamic society would be the superimposition of laws over a reluctant society.<sup>6</sup>

Turabi establishes a clear sequence here: as an 'expression' the state comes after the creation of a genuine Islamic society.

But how does such a genuine Islamic society come into being in the first place? According to Turabi, this takes place in the course of a natural and relentless process of pervasive 'Islamization' that constitutes the destiny of all Muslim societies. Its substance is an assertive 'religious energy' and it is through political organization that this process assumes its historical expression.

In expounding the ideological foundations of his state, Turabi points out that the Islamic doctrine of tawhid (God's unity) is the creedal basis that determines its intrinsically religious nature and makes it decidedly anti-secular. In elaborating this, he asserts: 'All public life in Islam is religious, being permeated by the experience of the divine. Its function is to pursue the service of God as expressed in a concrete way in the sharia...'<sup>7</sup> He is certainly aware of what he describes as 'elements of secularisation in the political conduct of Muslims', but he is quick to point out that the redeeming virtue of Muslims (as opposed to Christians) is that they often recognize the 'gap' between their practice and the Islamic 'ideal' as enshrined in the Quran and the Sunna (Prophetic guidance).

In dealing with his state's physical attributes, Turabi addresses himself to: a. people; b. territory; and c. sovereignty. In the light of the Islamic concept of umma (the community of believers), he finds the phrase 'Islamic state' a bit of a misnomer, since the state is 'only the political dimension of the collective endeavour of Muslims'.<sup>8</sup> This judgement is based on the way sharia is supposed to operate, since it depends only partly on the state's sanctions and is mostly left to the 'free conscience of believers' or (maybe more effectively) to the 'informal means of social

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6. Turabi 1983: 241.

7. Ibid.: 242.

8. Ibid.: 243.

control'. In placing this final emphasis on sharia and in stressing its relative independence from the state, Turabi adopts a minimalist position in portraying his state. With sharia as an ultimate source of the umma's cohesiveness and the state's legitimacy, it seems that Turabi's logic implies that sharia is the foundational element in defining his state; it is the element through the agency of which the neutral/secular category of 'people' is transformed into the Islamic category of umma.

However, Islam being a universal religion, there is only one umma and consequently one state. The umma's unity is predicated on the unity of God and hence nationalism cannot be accommodated within Turabi's scheme. Likewise, territory has no place since the Islamic state is theoretically not limited by any territorial boundaries. Furthermore, the centrality of sharia makes Turabi's state one that is neither absolute nor sovereign.

Turabi characterizes his state as republican and as a representative democracy. He is, however, careful to emphasize that an Islamic republic is not 'strictly speaking a direct government of and by the people; it is a government of the sharia'.<sup>9</sup> Bearing his Western readership in mind, Turabi chooses his words carefully in order to play down the 'theocratic' nature of his state, which is supposed to represent divine will as opposed to the will of the people. Shura (consultation) is the Islamic formula for democracy as it guarantees a fair distribution of political power, which should coalesce with a fair distribution of wealth. Turabi's state is a Sunnite state that does not allow for an Iranian-like vilayat-i faqih (guardianship or government by the expert theologians), which he derides as an 'elitist or theocratic government'.<sup>10</sup> In addition, the Islamic state according to his scheme is not a patriarchal affair that excludes women.

Turabi does not rule out a multi-party system outright, but he prefers what amounts to a one-party system that seeks to govern through consensus politics. An important feature that brackets his state with modern states and decidedly distances it from the classical Islamic state is his suggestion that it establish complete legal codes. The legal codes would no longer emanate from the jurists as in the past, but from the state.<sup>11</sup> The implication of his minimalist leaning is abandoned here in favour of direct governmental and centralized intervention. Showing the influence of his own education and inspired by the example of early Muslims who had to cope with the problems of their expanding imperial realm, Turabi adopts a flexible approach to legislation:

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9. Ibid.: 244.

10. Ibid.: 244.

11. Ibid.: 246.

Any form or procedures for the organisation of public life that can be ultimately related to God and put to his service in furtherance of the aims of Islamic government can be adopted unless expressly excluded by the shariah. Once so received, it is an integral part of Islam, whatever its source may be.<sup>12</sup>

In dealing with the status of religious minorities within his state, Turabi assures them the sanctity of their basic rights and invokes the example of the Medina state under Prophet Muhammad.

Addressing the same theme of the Islamic state in a paper presented in Khartoum in 1987, Turabi treats his subject with a different approach. His tone is characterized this time by an intense sense of self-righteousness and his statements exhibit a marked disdain for some of the concepts he had previously espoused, such as democracy. He maintains that all Muslim governments subsequent to the Medina state deviated from the prescribed norm and that all existing Muslim governments are devoid of legitimacy owing to their 'irreligiosity'.<sup>13</sup> The influence of the Egyptian Islamist Sayyid Qutb is evident in this tendency to hereticate existing governments and to demand the acceptance of the Islamist project as a precondition for accepting their legitimacy. Another significant Qutbite feature is Turabi's commitment to the elitist 'vanguard' formula, whereby an Islamist vanguard organizes itself with the express intention of 'Islamizing' the rest of society (and of course, ultimately, the whole of mankind). All means are open to this vanguard, including jihad (war in the cause of Islam, whether offensive or defensive) against its enemies.<sup>14</sup> He argues that once this vanguard has taken power and once Islam has governed, then all human ills will find their solutions - secular ideologies like democracy and socialism have failed and the only feasible formula is that of the Islamist programme, the twin pillars of which are tawhid and sharia.

Turabi poses a 'universal model' which is largely divorced from the concrete history of the Islamic state from its foundation under the Prophet to the dissolution of the Caliphate. An example that is dear to his heart is the way non-Muslims fared under the Prophet's state. It is noteworthy that his references to the status of Jews and non-Muslim Arabs during that period consistently expurgate the problems experienced during it and the bloody confrontation that led to the virtual eradication of Jews from the Arabian Peninsula and the forcible imposition of the new religion on the Arab polytheists.

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12. *Ibid.*: 249.

13. al-Turabi 1987b: 23.

14. *Ibid.* 50-7. The leaders of the Ikhwan were apprehensive about the revolutionary implications of Sayyid Qutb's ideas and so they distanced themselves from them. Nevertheless, Qutb continued to exert a considerable influence and some of his ideas were incorporated into the Ikhwan's active discourse. See al-Turabi 1991a: 241 and Hamid 1989: 138.

When Turabi turns to inter-state or international relations, he is at his weakest and vaguest due to his assumption that his state is an embodiment of a divine plan and as such its frontiers must coincide with those of the world. As soon as he shifts to the non-homogeneous terrain of non-Muslims, his scheme shows less confidence and this is quite evident in the emotional nature his argument assumes when he addresses Christians living under his Islamic state:

Christians in particular who now, at least, do not seem to have a public law, should not mind the application of Islamic law as long as it does not interfere with their religion. It is a moral based on values which are common and more akin to Christian values than any secular law - Caesar's law.<sup>15</sup>

In dealing with Christians and non-Muslims Turabi avoids the use of terms such as dhimmis (non-Muslims subject to the Islamic state), kharaj and jizya (taxes exacted from non-Muslims). This gives an idea of the change that his movement's discourse has perceptibly undergone. Though he stated triumphantly in 1979 that his movement had eliminated secularism in Sudan,<sup>16</sup> the movement's discourse and some of its stated policies clearly demonstrate the inroads of secularism. Two examples may suffice in this connection: the first concerns non-Muslims and their holding of public offices under sharia. Contrary to their formerly-stated position about the ineligibility of a non-Muslim to hold positions of legal power over Muslims or become president of the republic, the Ikhwan announced in a document that appeared in 1987 under the title 'Sudan Charter: national unity and diversity' that 'none shall be barred from any public office, only because of his adherence to any religious affiliation'.<sup>17</sup> The second example concerns the federal formula which the movement had put forward in the aforementioned Charter and which constitutes the basis of the movement's proposed plan for the ending of the present civil war in Sudan. According to this plan, the implementation of a federal system entails a legal division whereby Northern Sudan (mainly Muslim) shall be subject to sharia while Southern Sudan (subscribing mainly to traditional African religions and Christianity) shall be subject to secular laws. Consequently, Muslims who reside in the South shall be outside sharia jurisdiction, whereas non-Muslims who live in the North shall be subject to sharia. Though this proposal is rejected by non-Muslims in the Sudan because of the discriminatory nature of sharia, it undoubtedly represents a daring break on the part of the Ikhwan with sharia as it has been historically practised

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15. Turabi 1983: 250.

16. Quoted in Voll 1983: 135.

17. Quoted in Niblock 1991: 264.

and conceived.<sup>18</sup> Since there is a powerful secular trend in Sudan that opposes and abhors discrimination on the basis of religion, it is reasonable to assume that the Ikhwan was directly influenced by it on both counts. However, to make this position plausible, Turabi and his movement had to argue from within the Muslim tradition in terms of a different perspective.

### *The Necessity for a Revitalized Fiqh*

In his writings and talks, Turabi does not just present himself as an advocate for the revival of Islam or as a fundamentalist in the sense of simply going back to the 'fundamentals', but primarily as an exponent of *tajdid* (renewal, reform). He does not of course conceal his dissatisfaction with the decadent and abject conditions of contemporary Muslims and does not fail to point out the role of imperialism in this. He is, however, equally critical of the internal problem of juridical and intellectual stagnation and rigidity on the part of the Islamic schools of *fiqh*.

In a seminal tract entitled *Manajiyat al-Tashri fi al-Islam* (The Methodology of Legislation in Islam, 1987) Turabi maintains that the condition of Islamic decadence has degenerated to such a level that it no longer suffices to open the gate of *ijtihad* (independent judgement) but that it is necessary to address the central question of methodology. An established methodology approved by present-day Muslims would serve as a general framework within which *ijtihad* could be exercised and as a yardstick against which opinions could be verified and differences harmonized.

He draws the traditional sharp distinction between the Quran and the Prophetic Sunna on one hand (as the two permanent, most reliable sources that are not subject to the mutability of history and that constitute the essence of the Divine plan for the guidance of man) and *fiqh* on the other hand, which is a human response to the problems arising within a specific historical context. The body of *fiqh* and its devised foundations are human *kasb* (acquired knowledge) which retain authority insofar as they respond adequately to human needs. The classical science of *usul al-fiqh* (the foundations of jurisprudence) was largely influenced by Greek formal logic and was such a highly formalized and abstract activity that it soon divorced itself from its social environment, thus failing to produce a living and adaptable *fiqh*. Turabi recognizes that the Muslims are nowadays under the cultural hegemony of modern Western culture, with what he describes as its 'logical

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18. This observation should, however, be qualified. In the nineteenth century the Ottomans engaged in a legal reform that modified some aspects of *sharia* in favour of *dhimmi*s. The reform was limited but it provided a basis for a new approach to the question of religious minorities. For a discussion see Ye'or 1985: 56f.

positivist, relativist, and empirical methodologies', a circumstance that is bound to affect them. Just as the Muslim jurists opened themselves to Greek influences in the past, he is quite willing to follow their example of *istishab* (preference) and open his usual blueprint to Modern Western influences.<sup>19</sup>

In outlining his position, Turabi starts off from the familiar Islamist assertion that all activities comprising the totality of human life should be subjected to religious legislation. This he bases on the Islamic premise of a unity of God. The criticism that he levels against classical *fiqh* is based on his preference for an all-embracing *fiqh* scope. He lashes against the classical jurists for having produced a *fiqh* system that tended to operate exclusively within the sphere of private life. *Fiqh*, consequently, grew less and less concerned with public issues pertaining to the running of the state. Turabi thus envisages a *fiqh* that extends to politics as well.<sup>20</sup>

Who is going to produce such a *fiqh*? As one might expect, Turabi, seasoned politician that he is, would be reluctant to leave this crucial matter with its vital role in his projected Islamic polity solely in the hands of the specialized class of *fiqh* scholars and to the independent internal mechanisms of the discipline. He would rather control and direct the *fiqh* process himself. In Turabi's Islamic state the sultan, or the executive power, is not only charged with taking decisions but can also make laws and, as such, actively contribute to the making of *fiqh*. In the power structure he outlines, *fiqh* scholars outside the governmental judiciary system are not formally recognized. Furthermore, he advances a populist view designed to undermine the status and the role of the *ulama*. He argues that Islam does not recognize a specializes class of scholars who are invested with the powers of instructing Muslims and legislating for them. This anti-clerical position may be encountered in the pronouncements of many modern Islamists and Turabi uses it in order to forestall any potential discord or threat that an independent *ulama* body might pose to his state.<sup>21</sup>

In dealing with problems such as the appeal to authority as opposed to the appeal to reason, or the dependency on received tradition as opposed to the freedom of innovation, Turabi is careful not to dissociate himself altogether from the traditional Sunnite position, while stressing

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19. al-Turabi 1987a: 14.

20. *Ibid.*: 19.

21. The *ulama* have generally tended to ally themselves to the state and this association has earned them the bitter scorn of the radical Islamists in many countries. For the disenchantment of the *Ikhwan* in Egypt and Syria with the *ulama*, see Sivan 1985: 50-3.

at the same time the necessity for adopting a more flexible and open attitude.<sup>22</sup>

The position he propounds makes no appeal to any of the existing juridical schools. On the contrary, Turabi believes that the challenges facing Muslims today and the pressure of Islamic resurgence make it incumbent upon Muslims to throw their respective schools to the winds and seek a unitarian position.

It may be argued that the weakness in Turabi's proposed methodological perspective is that, despite his constant awareness of the historical relativity of fiqh and its schools, he does not apply the same measure to the Quranic text and the Sunna traditions which are treated as meta-historical frames of reference. This places a clear limit on his attempt at renewal and modernization which claims to derive its authority from these sources. To make a better assessment of his dilemma, we will turn to his treatment of a specific problem in order to explore the nature of his fiqh.

### ***Women as a Case in Point***

In 1973, Turabi brought out a tract entitled *Al-Marr'a fi Taalim al-Islam* ('Women in the Teachings of Islam'). This tract came out in the atmosphere of a heightened political and ideological confrontation between the Ikhwan and the Left on the campus of the University of Khartoum in the early 1970s. It was clear for Turabi that the movement's subscription to the traditional Islamic position of insisting on the inferiority of women and their marginalization was doing it a great deal of damage and that it was losing the battle with feminism. Owing to the sensitivity of the subject and the entrenched Islamic conservatism attached to it, Turabi circulated the tract before its publication, by way of testing the water without putting his name to it. It was reportedly shown to the influential Egyptian Islamist, Muhammad al-Ghazali, an Azharite scholar, who gave it his seal of approval.<sup>23</sup>

Turabi's line of argument is 'fundamentalist' in the sense that he assumes an 'original' Islamic condition where women enjoyed an 'ideal' status of equality and active social and political involvement. This ideal condition was followed by a 'fall' which characterized Muslim societies, allowing for the creeping in and dominance of deep-rooted prejudices against women. The 'original' Islamic condition is enshrined in the pronouncements of the Quran and epitomized by the Prophetic tradition. The Medinan model Islamic society set by the Prophet was later deviated from and betrayed, the Quranic and Prophetic precepts ignored and distorted, and so the Islamic feminist revolution never really came of age.

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22. al-Turabi 1987a: 37-43.

23. See Turabi 1991b: 2.

In the course of his argument, Turabi moves on two levels: creedal and juridical. On the creedal level he asserts that the call of Islam is addressed to both male and female, that religious duties and obligations constitute personal responsibilities that cannot be performed by proxy, and that on the Day of Judgement women earn reward or punishment on the basis of their individual accountability. On the juridical level, Turabi dismisses the hijab (veil) and argues that it is an anomalous institution meant only for the Prophet's wives owing to their distinctive status as 'mothers of the believers'. Consequently, he fervently argues in favour of desegregation which he deems the 'normal' Islamic condition.<sup>24</sup>

To drive his point and prove his case, Turabi marshals his evidence. During the Prophetic era, women were allowed to participate in congregational prayer and they took an active role in military expeditions. They took part in the tawaf (circumambulation) ritual alongside men during the pilgrimage, were present at public festivals, and were free to receive guests in their homes and entertain them. A Muslim woman may own property, take an active part in the community's economic life, and has the right to acquire education. When the opinions of Muslims were sought to decide on the favourite caliph after the assassination of Umar Ibn al-Khattab, women were included in the consultation process.<sup>25</sup>

In dealing with the vexed question of whether it is permissible to greet women by shaking hands, Turabi is on the liberal side, though he cautiously warns that it should take place in a 'chaste' atmosphere. The tradition deployed by the conservatives, in which the Prophet is reported to have said, 'I do not shake hands with women', is discounted by Turabi as referring to a practice that is unique to the Prophet and not applicable to the rest of the umma.

Nevertheless, Turabi upholds many of the restrictions laid down by sharia. So, women should dress in strict accordance with what is stipulated in the Quran: covering the whole body except the face and the hands. Men and women should not meet in private, and in the absence of her husband a woman should not meet a man except in the presence of one or two other men. Men and women are not allowed to look (sic) at each other lest illicit sexual desires be aroused. In congregations, where man and women gather, a distance between them should be maintained. This distance should also be rigidly maintained in public thoroughfares where women should not walk in the middle of the road but keep to the sides. In mosques, women should have a special entrance. Closely allied to women's potential sexual seductiveness is the stipulation that they should not pass by men when wearing perfume.<sup>26</sup>

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24. Ibid.: 27.

25. Ibid.: 20.

26. Ibid.: 32-5.

It is noteworthy that Turabi's treatment circumvents the discomfiting issues that testify to some aspects of sharia discrimination against women. The legal capacity of a woman to be head of state is never discussed. It is doubtful whether any modern Muslim can discuss the question of women credibly without bringing up the issue of their political role.<sup>27</sup> As a movement, the Ikhwan did in fact come to terms with the political role of women in Sudan, but up to now it has not addressed the wider juridical implications of this role.<sup>28</sup>

Like the rest of Islamic revivalists, Turabi offers up the Prophetic society of Medina as an ideal model for every time and every place. It may, however, be argued that this proposed ideal presents modern Muslims with a problematic situation. Let us, for instance, take Turabi's reference to the participation of women in congregational prayers as a model of desegregation and examine it more closely.

The Medina mosque was in fact a tripartite space of ritualized and sexist segregation where men occupied their designated front space and women occupied their assigned rear space, with an empty space in the middle dividing the two sexes. It is thus unlikely that the Medina mosque would be looked upon as a viable model of desegregation in the modern sense, where desegregation means the free movement of men and women within a shared space. An important question related to women and congregational prayer is whether they can lead the prayer. Though the issue has not been conspicuously raised by Muslim feminists, one may envisage that they might put it forward at some point in the future. Just as this question proved to be problematic and divisive in the contexts of modern Judaism and Christianity, so it is likely to be, if not more so, in the context of modern Islam.

Furthermore, other issues concerning problematic aspects of the status of women under sharia are disregarded by Turabi: for example, the question of their testimony is not accepted at all in criminal lawsuits. Neither can a woman function as a judge according to the majority of scholars. One school of fiqh maintained, however, that women can act as judges in civil but not criminal courts.<sup>29</sup> The secular nature of the Sudanese educational system has produced a good number of women lawyers and judges, and this is likely to present the Ikhwan's Islamist

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27. For an investigative and polemical treatment of the issue of women and political power in Islam, see Mernissi 1991. The Moroccan author's feminist consciousness crossed a new threshold when she decided to grapple with this theme and her views express an emerging feminist sensibility that questions the image of women in traditional Islamic sources and most of what has been produced by modern revivalists.

28. For a recent account of the gender politics of the Sudanese Ikhwan, see Hale 1992.

29. See al-Zuhayli 1984: 482f.

project with a practical challenge if it moves in the direction of barring women from the legal profession.

The question of inheritance is one of those issues on which Turabi is likewise silent. His assertion that women can own property and take an active part in economic life raises questions about their legal rights as active economic agents who contribute their share in the creation of social wealth. The fact that Sudanese women have been an active productive force in the traditional sector and that an increasingly growing number of them are gaining education and becoming part of the productive force in the modern sector is bound to highlight the problem of the present inheritance laws.<sup>30</sup> Hence, any Islamist reform programme is likely to find itself under great pressure to take this into account.

Turabi is at his best when he writes about family law. It may, however, be argued that the ideal image he projects of the Muslim family is rooted far more in the values of the educated, urbanized middle class of Sudan rather than in those of seventh-century Islamic Arabia. In such a family, polygamy, for instance, is anathematized and is described as a 'thing of the past'. And in a such a family the beating of a wife for 'disobedience', a measure enjoined by the Quran, is unacceptable. Both the problems of polygamy and beating as a corrective measure are notably absent from Turabi's treatment.

The multi-religious context of Sudan also raises a problem that does not figure in Turabi's discussion: namely, whether a Muslim woman has the right to marry a non-Muslim. In many African countries the sharia stipulation that a Muslim woman can marry only a Muslim has been flouted, and there are examples of this in Southern and Western Sudan.<sup>31</sup>

Turabi's treatment is characterized by a serious deficiency in his failure to take into account the scope of the change in the status of women and some of their most pressing needs. It should, however, be pointed out that his education and physical and intellectual contact with the West have made him more amenable to the pressures and exigencies of modernization and hence he demonstrates a higher degree of awareness of the dilemmas of sharia vis-à-vis women. He tries to meet the modernist challenge at a point of his own choosing in order to avoid a calamitous collision. However, he is entangled in the poignant predicament of many a Muslim reformer: the pressing challenges posed by the 'outside' (modernization being one of its manifestations) are so pervasive and overwhelming, that a systematic coming-to-terms with them will lead to

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30. For a good account of women's education and its social impact, see Hall and Ismail 1981: 50-79, 213-22.

31. For an example of a court case involving a marriage between a Muslim woman and a non-Muslim, see Fluehr-Lobban 1987: 132f.

perceptible divergences from the received tradition which is constantly projected as comprehensive and capable of tackling all problems irrespective of time or place.

The Islamist impulse has always expressed itself in terms of an 'idealist' project, in the sense of aspiring and striving to transform existing social reality by subordinating it strictly to a given 'ideal'. In the demonology of Islamists, secularism has come to represent a 'grand Satan' since it 'compartmentalizes' Islam and excludes it from politics and the organization of social life in accordance with its precepts. Secularization is further held responsible for the fragmentation of the umma into 'nations', thus serving the designs of the enemies of Islam.

Although the Ikhwan movement in Sudan subscribes to the Islamist universalist ideal, its leaders have been pragmatic enough to insist on indigenizing their movement and giving it a distinctly 'Sudanese' character.<sup>32</sup> This earned the movement political success, but in the process another perceptible transformation took place. When the movement started in the 1950s and 1960s it saw itself as a 'moral force' that aspired to 'religionize' politics. By the late 1970s and 1980s the movement had established itself as a political, economic and social force to be reckoned with, but the more it submerged itself in the quagmire of power politics, the more it became evident that the movement was, rather, about 'politicizing' religion. The nature of Sudanese Islam, which is characterized by its tolerance and disregard for sharia except in the areas of personal status law and inheritance, and Sudanese politics, which has inclined towards secularism as an acceptable and fair formula that accommodates the country's religious, cultural, and ethnic diversity, have together created a context that inheres powerful resistance to Islamization whether in its revivalist or fundamentalist versions.

Between 1985 and 1989, the Ikhwan made repeated assurances that it accepted liberal democracy as a framework within which it wanted to push its programme through. In June 1989, it turned its back on those assurances and decided to impose its 'ideal' through the naked and brutal force of a military regime. The manner of the Ikhwan's seizure of power and the way in which it has so far run the country, do not demonstrate any intrinsic differences between their 'Islamic' regime and other military regimes in developing countries.

Sudan's great diversity and its present intractable political, economic and social problems have confronted the Ikhwan with serious dilemmas that are increasingly proving recalcitrant. The harsh irony may turn out to

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32. The movement's constitution mentions explicitly its 'Sudanese' nature. See Makki 1990: 371. For the differences between the Sudanese and the Egyptian Ikhwan movement over the question of amalgamation into a pan-Islamist movement, see Hamid 1989: 121.

be that the Ikhwan are in a better position to thrive (and even flourish under certain circumstances) as long as they hold up an 'idealised' and 'unrealised' promise of a 'final Islamic solution', but that once in power, they are very likely to lose their appeal rapidly and their Islam-based ideological authority may be seriously questioned and challenged.

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83 King Street  
London WC2E 8J, U.K.

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# Mehr:

## *An Advantage or Dependency Reinforced?*

*Sultana Kamal*

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One of the most frequent questions I am faced with in the process of my dialogue with men regarding the personal laws and women's rights is whether or not we, women- think Mehr is a provision which is an unjust imposition on men. They further ask whether or not we, women- who demand equality for ourselves be against this provision? The other side of the story is that there are women who question the validity of the provision as beneficial to themselves even after recognising the compensatory gesture of the society to women's systematic subordination and dependency.

The provision of Mehr, like maintenance of wife/s, is generally believed to be a part of the economic security or a symbol of honour provided to women within marriage. Mehr, for example is textually defined as a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage.<sup>1</sup>

In the explanation it is said that the word 'consideration' is not used in the sense in which the word is used in Contract Act. It is further said that under Mohammedan law Mehr or Dower is an obligation imposed upon as a mark of respect to the wife.<sup>2</sup> However it is also said that the dower becomes confirmed:

- a. by consummation of marriage;
- b. by a valid retirement; or
- c. by death of either the husband or the wife.

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1 M. Hidayatullah and Ashad Hidayatullah. Mulla's Principles of Mahomedan Law, 18th Edition (Bombay: N.M. Tripathi Private Ltd.) 1977.

2 Baillie. Digest of Mahomedan Law, Part I, 1875, Part II, 1869.

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According to Baillie,<sup>3</sup> under Shia Law the right to dower is established by consummation or by death of either party, but not by "valid retirement". According to the law, if the husband divorces the wife before consummation, the dower is reduced by half, but if the husband dies before consummation, the full dower is payable to the wife. This shows consummation forms a very important part of the whole contract.

In short, dower or Mehr is an essential condition of marriage and marriage in Muslim Law is defined to be a contract which has for its object the procreation and legalising of children.<sup>4</sup> In its attempt to explaining contract in this connection, scholars have agreed in saying that marriage according to the Mohammedan law is not a sacrament but a civil contract.

Let us briefly examine the evolution of the Islamic structure of the Institution of Marriage. One must remember that it is generally accepted that the Pre-Islamic customs served as the basis of the legislations brought about by Islam. The new order after the Koranic revelation either accepted or rejected or made improvements upon the customs.

In case of marriage, we find that the Pre-Islamic customs provided for four kinds of biological relationship between the males and the females.<sup>5</sup>

These are:

- a. A form of marriage in which a man would propose for and marry another's daughter or dependent by giving a certain dower.
- b. A man desiring a noble offspring would ask his wife to call in the house a noble man and beget an issue through that man.
- c. A limited number of persons less than ten, would visit a woman and after delivery of a child, the woman would fix paternity out of those persons and the man would be bound to accept the child.
- d. There were prostitutes who had a large number of visitors. If a child was born to any of them, paternity would be decided on comparing the appearance of the child with any of the visitors.<sup>6</sup>

Out of the above four kinds of customary sex relationships, Islam accepted only the first one with a very important modification and rejected and prohibited the three others.<sup>7</sup>

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3 Ibid.

4 Hedaya, Charles Hamilton's Translation, Original Edition. 4 volumes, 1870. and Baillie. Moohumudun Law of Inheritance, 1874.

5 Abdur Rahim from Kashf of Ghumma Muhammadan Jurisprudence Cited in Thoughts in Alimuzzaman Choudhury. Thoughts on Mulla's Principles of Mahomedan Law. (Dhaka: Interline Publishers) 1983.

6 R. Levy cited by Alimuzzaman Choudhury. See 5.

7. Wensinck, Early Mohammedan Tradition quoted by Alimuzzaman Choudhury. See 5.

The modification was made in the area of Mehr. Mehr according to the Pre-Islamic customs was to be paid to the father or guardian of the bride which amounted to a sale, but in Islam, dower or Mehr became payable only to the bride and the idea of sale 'almost' (emphasis is mine) disappeared.<sup>8</sup>

Now if we turn to the findings of our 'Women and Law in the Muslim World'<sup>9</sup> national research done in Bangladesh, we can see some of the prevailing popular beliefs as well as some of the more sensitive reactions to the provision of Mehr.

Mehr, as we know is an essential condition of valid Muslim marriage. In Bangladesh, it is popularly known as a condition to be concerned about at the time of Talak or dissolution of Marriage. People tend to believe Mehr is a debt of the husband to his wife to be paid at the time of breaking the marriage tie.

It is also generally believed that Mehr is definitely an advantage given to women within marriage and it is mark of respect or honour Islam has awarded women with. It is also mentioned by some as a security provision within marriage in favour of women. Many people, however, believe it to be an unfair imposition on men especially at this period of history when women are demanding equality in all spheres of life.

We need to look at some of the issues raised here with enough care. First of all, if marriage is to be considered a civil contract between two adults why should there be unequal provisions for the partners in the name of security? This then is a definite indication that one of the partners suffer from some inherent inequality. One needs not to be told that Mehr relates to the bride's or the woman's social and economic status, and the provision from that point of view, is an agreement to accept, reinforce and institutionalise a woman's subordinate position. This reflects a social concept that women are by definition weak and dependent on the systems of protection by men and are destined to remain so for ever.

The exponents of the opinion that Mehr is indeed a mark of honour to women have never been, as far as our research goes, able to clearly establish the nature of that honour. They are emotional but vague in their explanation. In response to our questions during the research, most of these people made some significant comments on this very subject. One of the Imam was of the opinion that "through the system of Mehr, Religion (in his case Islam) teaches us that one has to pay a price to get

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8. Tyabji. Encyclopedia of Islam Vol. III.

9. Sultana Kamal. Her Unfearing Mind, (Unpublished) - English translation of the Bangladesh National Report of the Women and Law in the Muslim World Research Programme, Dhaka, 1994.

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the service of women” and that was his concept of honour. He added, “without the payment of the prompt dower the marriage is not valid”. By this he meant a man cannot touch his wife without having paid the prompt dower. One of the teachers of a religious school said, “your wife is not ‘Halal’ unless you pay the agreed amount of dower”. Another commented, one must pay the dower before consummation of marriage. The most outrageous comment came from another Imam who said one must pay the woman for the use of her “hidden parts”. The more moderate yet conservative opinion that came was that the prophet did not want to see women in an insecure position within marriage and that is the reason why this provision was made. A Jamat-e-Islami worker was very frank in saying that the system of Mehr was introduced because women are weak and dependent on men. He immediately added, “if one fears God, there should not be any opposition or criticism to this!” His statement does not call for any further analysis.

The fact that a man’s sexual rights over his wife is directly related to the provision of Mehr cannot be overlooked. It is clearly indicated in the following judgement delivered by one of the Courts of Pakistan which states:

Prompt dower, as soon as it is demanded, becomes a debt which the husband is liable to pay. The wife may refuse to live with the husband unless and until the prompt dower is paid.<sup>10</sup>

Again Section 336 (2) of Mulla's Principles of Mohamedan Law states:

... If the marriage was not consummated, and the amount of dower was specified in the contract, she is entitled to half that amount. If no amount was specified all that she is entitled to is a present of three articles of dress.<sup>11</sup>

Commenting on the provision of Mehr, most of our women respondents as well as some men said they do not think it has anything to do with honour though in the given situation where majority of women do not have economic security it may be accepted as a compensatory gesture by the society. They would ideally like to see fair economic opportunities for women rather than such protective measures. They also pointed out that Mehr in our societies, where people in general suffer from economic insecurity, is almost impossible to secure. Men pledge highly inflated amounts at the time of wedding but at the time of realisation women end up in getting almost nothing. Weaker position of women in comparison with their male counterparts make them either

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10. Rohilan vs Sana Ullah ('59) p.. Lah 470. quoted by Mulla in his Principles of Mahomedan Law, 18th ed., 1977.

11. Section 336 (2) of Mulla's Principles of Mohamedan Law, (Bombay: N. M. Tripathi) 1990 (19<sup>th</sup> edition), page 275. Reference is made here also to Hedaya, 44-45 and to Baillie, 96-97.

forgo the claim under duress or some other pressure or they are unable to realise the claim through any legal process if and when refused.

In several cases it has been noted that since the husband has to pay the dower in full at the time of dissolution of marriage, it makes the process of divorce difficult for the couple. It is applicable to both the partners but in most cases wives are deserted by their husbands just because either they (husbands) are unable or unwilling to pay the Mehr. It quite often compels a couple to continue an unhappy relationship too. To quote from a judgement:

“Dower is often high among Mahommedans to prevent the husband from divorcing his wife, in which case he would have to pay the amount stipulated”.<sup>12</sup> Under such circumstances the woman is often made a victim of insult, harassment and torture which may result in suicide or femicide.

In conclusion, it may be said that the provision of Mehr may be considered to be beneficiary to women as long as women's social and economic subordination remains the norm. It is a way of reinforcing, institutionalising and perpetuating women's dependency on men. The belief that Mehr gives security to women is merely theoretical as our practical experiences show that women are seldom able to realise the claim either during continuation of marriage or at its dissolution. Moreover, the direct relation it has with men's sexual rights over his wife rules out the idea that Mehr is at all a mark of honour to her. It can only be appreciated as an effort to minimise the economic risk of women within marriage in a society where her rights to equality are either systematically denied or violated.

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Sylhet, Bangladesh.

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12. Cases cited by Mulla of *Zakari Begum vs Sakina Begum* (1892); 19 I. A; 157, 165, 19 Cal. 689. Also *Mohd. Bashir v Walayat Begum*, Pakistan Legal Decisions (P.L.D.). 1967 Lahore 391.

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# *The Challenge of Fundamentalisms*

*Lynn P. Freedman*

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Few developments in the post-Cold War era have captured public attention, stirred primal fears, stoked the fires of racism, and stymied critical thinking quite so thoroughly as the rise of fundamentalism. Although it is a force to be reckoned with in virtually every area of public endeavour, the rise of fundamentalism presents a very specific, and somewhat unique, challenge to the emerging field of reproductive health and rights. The 1994 Cairo International Conference on Population and Development (ICPD)—replete with death threats from militant Egyptian Muslim groups, eschatological rhetoric from the Vatican, and a high-profile alliance among conservative forces identified with various religions— ensured that fundamentalism would push its way onto the international stage. Having captured the spotlight of the moment, what role will fundamentalism be permitted to play as the reproductive health and rights field takes shape?

**T**he ICPD Programme of Action signals a paradigmatic shift in the way that governments purport to deal with the relationship between population, development, women's health and human rights. Moving from a model that focused on population growth as a primary obstacle to social and economic development and on the spread of family planning as the primary means for curbing population growth, the Programme of Action announces an emerging model that focuses on the promotion of women's health, rights, and empowerment as the route to both increasing development and decreasing population growth. Of course this new view, the 'reproductive health' approach, did not spring full-blown from the minds or pens of the government delegates assembled in Cairo nor, indeed, from the group within the UN charged with writing the initial drafts. Rather it was an approach carefully shaped and nurtured over the decades that preceded ICPD through writing,

research, meetings, conferences, lobbying and activist campaigns nationally and internationally to change laws and policies starting in the 1970s.

Much of the post-ICPD commentary has focused on the shifting alignment of interests between the population establishment and women's health and rights advocates that paved the way for a consensus Programme that seemed almost eerily easy to enact in Cairo. While that consensus may be 'the right agenda for the right time,'<sup>1</sup> many feel that it is a shaky coalition whose durability will be sorely tested in the years to come.<sup>2</sup> But even if this analysis of the 'Cairo consensus' is correct, it is not the end of the ICPD story. To many others at ICPD, the dynamics of population growth and its effect or non-effect on development actually mattered very little, if at all. For them, Cairo was a stage on which a different drama was playing out:

**The scenario:** a post-Cold War world riven by bloody conflicts in ex-Yugoslavia, Rwanda, the Middle East and elsewhere; by a resurgent communalism in India and other parts of South Asia; by an economic order powered by US and European interests in a relentless push for privatisation and the creation of free markets for transnational corporate capital and for a globalising media spreading a particular brand of American consumerism; and, perhaps most of all, by the rise of conservative social movements that used the language, the symbols and the intense power of religion to cloak their political goals.

**The cast:** In Cairo itself—the Vatican, Al Azhar University, the Muslim Brotherhood, and an array of anti-abortion forces aligned against human rights and reproductive rights activists. At home (in both the North and South)—social conservatives decrying the 'immoral, imperialist ICPD' and clashing with human rights and women's health advocates struggling to be heard in response.

**The central prop:** women's bodies, their sexuality, their roles in family and society.

Here, in the list of props, lies the crux of the matter. Women's bodies, their sexuality, their social roles—the tools of population policy and family planning programs, and the subject of women's rights campaigns—are also the quintessential tools of fundamentalist political projects. Thus all three forces share a common currency. And while each can retreat after Cairo into their own familiar patterns of discourse and

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1. Germain A and Kyte R, 1995. *The Cairo Consensus: The Right Agenda for the Right Time*. International Women's Health Coalition, New York.

2. Hodgson D and Watkins SC, 1996. *Population controllers and feminists: strange bedmates at Cairo?* Paper presented at annual meeting of Population Association of America, 9-11 May, New Orleans.

interaction, the woman who is the object of such machinations has only one body, one womb, one life.

Much ink has been spilled to analyse the 'Cairo consensus' and its potential for overhauling population and family planning programmes, and for shaping health and development policies. But surprisingly little attention has been given to the implications of the confrontation in Cairo with fundamentalism. Indeed, if the 'Cairo consensus' does not fall of its own weight, then it may be pushed by the failure of both the population establishment and the women's health and rights movements to deal with the challenge of fundamentalism through an honest examination of their own assumptions and motivations, and a renewed commitment to the most basic human rights principles on which that consensus was first constructed.

### *The Phenomenon of Fundamentalism*

In both academic and activist circles, there is much controversy surrounding use of the term 'fundamentalism,' first coined by American Protestant movements in the late nineteenth century to identify their own brand of literalist interpretation of the Bible,<sup>3</sup> but transformed in recent years by the western press to refer most often to Muslim groups and to invoke an instant apprehension of Islam itself as threatening, violent, and irrational. Some feel the term has become so loaded as to be useless or worse; others feel the term levels such important differences in the varied movements labelled 'fundamentalist' that it obscures more than it elucidates; still others feel the term is politically potent and that it is important to maintain and elaborate it.<sup>4</sup>

While recognising that the term can be problematic and is best avoided in some particular political circumstances, I use it guardedly here for several reasons. First, although careful study of the distinct historical origins of each movement labelled 'fundamentalist' is no doubt absolutely essential to full understanding, I am convinced that there is a sufficiently meaningful set of 'family resemblances' among different

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3. Ammerman NT, 1991. North American Protestant fundamentalism. *Fundamentalism Observed*. Marty ME and Appleby RS (eds). University of Chicago Press, Chicago; Bendroth ML, 1993. *Fundamentalism and Gender: 1875 to the Present*. Yale University Press, New Haven.

4. For a spirited condemnation of both the term and the concept generally, see Harris JM, 1994. 'Fundamentalism': objections from a modern Jewish historian. *Fundamentalism & Gender*. Hawley JS (ed). Oxford University Press, New York. For a review of the debate in the context of Islam specifically, see Al-Azm SJ, 1993 and 1994. Islamic fundamentalism reconsidered: a critical outline of problems, ideas and approaches. *South Asia Bulletin*. Part I:XII(1, 2), Part II:XIV(1). For a discussion from the activist perspective, see WAF Journal 1(5), particularly Pieterse JN. *Fundamentalism discourses: enemy images; and the responsive article by Sahgal G and Yuval-Davis N. The uses of fundamentalism.*

movements to make their analysis as an international, cross-cultural phenomenon both illuminating and urgent.<sup>5</sup> Second, such movements have shown themselves capable of allying politically across international borders (as at ICPD) and it is therefore essential to see how and why their interests and agendas dovetail. Finally, the demonisation of some religions as being given to intolerance and violence, often blinds people to the same tendencies in the history of their own or any other religious traditions. Seeing the 'family resemblances' helps keep perspective on what is inherent within a particular religion itself and what is more likely to be the result of fallible human beings who appropriate and manipulate the power of religious doctrines and symbols for their own distinctly earthly ends.

So what is this phenomenon called 'fundamentalism'? I do not attempt to give it a definitive or even provisional definition; indeed I think it important to resist seeing fundamentalism as a fixed category or school of thought to which any given group either does or does not belong. Rather I attempt here only to describe some particular characteristics of the phenomenon that seem most relevant in its challenge to the reproductive health and rights field. In making these observations, I draw on the growing body of academic work that examines fundamentalist or fundamentalist-like movements originating in a wide range of religious traditions.<sup>6</sup> I also draw on the work of activist women's groups who, coping with quite diverse manifestations of this phenomenon in their own communities throughout the world, have found that comparative analysis opens not only new understanding, but also new possibilities of response.<sup>7</sup>

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5. Of course, the fact that the phenomenon may be real, does not itself justify the choice of the particular word 'fundamentalist'. While bordering dangerously on misnomer (because of the implication that something 'fundamental' is also 'authentic'), I would agree with Marty and Appleby (from whom the phrase 'family resemblances' is borrowed) that there is no perfect word available, that alternative suggestions have even more serious defects, and that in any event the term is already firmly entrenched in popular usage—in short, 'fundamentalism' is here to stay.' Marty and Appleby (eds), (see footnote 3). See also Al-Azm, (see footnote 4).

6. Perhaps the most comprehensive of these is The Fundamentalism Project, sponsored by the American Academy of Arts and Sciences, whose initial volume examined different religious fundamentalisms—including Protestant, Catholic, Jewish, Sunni Muslim, Shia Muslim, Hindu, Sikh, Buddhist, Confucian, and Shinto—in an effort to identify 'family resemblances.' Marty and Appleby (eds), (see footnote 3).

7. For example, proceedings of the workshop 'The political uses of religion, ethnicity and culture'. NGO Forum, ICPD, sponsored by Women Living Under Muslim Laws, Women Against Fundamentalism, and Catholics for a Free Choice. Portions in WAF Journal 7:13-15 and Women's Health Journal 1/96; Full transcripts on file with the author. Also Sahgal G and Yuval-Davis N (eds), 1992. Refusing Holy Orders: Women and Fundamentalism in Britain. Virago Press, London.

Academic studies, even when they consider gender specifically, typically focus on religious traditions and look carefully at how religious texts and doctrine are used in fundamentalist projects. This is certainly an extremely important part of what we need to do to understand and cope with fundamentalism. But activist groups add two equally important points to the analysis, drawn from their intimate, day-to-day experience of confronting fundamentalism. First, without denying that many who participate in fundamentalist movements feel deeply moved by religious faith and symbols, experience on the ground demonstrates that in many cases the use of religious language and imagery is deeply, profoundly cynical.<sup>8</sup> To automatically credit any political project that chooses the discourse of religion as therefore 'religious' is a grave mistake.

Second, the same style of discourse and basic set of strategies that are employed by fundamentalists when religion is used to characterise a group's identity, are also employed when other markers of identity, such as ethnicity or nationality, predominate. Consequently, from an activist perspective, it is important to go beyond explicitly religious fundamentalisms and to include in the analysis events such as the war in ex- Yugoslavia with its 'ethnic cleansing' or the experience of Nazi Germany with its 'final solution'—and, indeed, to consider how religion, ethnicity or race, and nationality all relate to each other.

Surveying fundamentalist movements from this broader perspective, it is important to recognise that fundamentalists are not spiritual, other-worldly dreamers; they are pragmatic ideologues who organise themselves to engage in active, future-oriented, political projects. At the core of virtually all such projects is a profound sense of seige: fundamentalists see themselves as part of a community in danger. However they define and name the danger—whether it be secularism; the encroaching, decadent West; a pervasive immorality symbolised by abortion; or a one-world government—that danger is the source of chaos and disorder. But fundamentalists do not opt to insulate themselves from the danger by withdrawing from modern society and retreating to some golden past of timeless, enduring principles. Rather, they fight back with militancy, with absolutism, and with selective use of the implements of modernity, as they seek to control the dislocation they feel and to impose order on the broader societies in which they live.

Clearly the specific strategies that fundamentalist groups employ will vary—sometimes, but certainly not always, incorporating violence in the repertoire; sometimes, but not always, incorporating community service

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8. Eg. Ahmed SI, 1995. Blasphemy bill: revenging the war of liberation? Sanglap: Attack on Fundamentals. 4 (Aug). Ain O Salish Kendra, Dhaka, Bangladesh. Reprinted in Fatwas Against Women in Bangladesh. 1996. Women Living Under Muslim Laws, Grabels, France.

(eg. running schools or providing health care).<sup>9</sup> Here I focus on some of the strategies common to almost all such movements. Perceiving grave threats to the very existence of their community and identity, fundamentalist projects virtually always fight back by constructing a view of the world premised on difference and confrontation, and on the ability to define and maintain the purity and integrity of their own community against the polluting, contaminating reach of those outside. This means building borders by making clear demarcations between self and other. But it is an invented, inflated self and other. While the fundamentalist's own community is reinvented with a righteous and glorious past, the Other is demonised and vilified, thus lending an apocalyptic quality to the battle that is looming.

'Because confrontation and opposition are essential to the dynamic of reaction, radical fundamentalism requires a worthy adversary. Thus the temporal antagonist is enhanced and enlarged no less than the protagonist. Fundamentalists name, dramatise, and even mythologise their enemies, situating oppressive dictators or Westernised elites or compromising co-religionists within the same eschatological or mythic structure in which they see themselves.'<sup>10</sup>

For the emerging reproductive health and rights movement, what is important about this great confrontation and the boundary-building that goes with it is (i) the way that it uses women to map its territory and construct its borders; and (ii) the way that it uses law, particularly laws relating to reproduction and sexuality, to harness women to this task.

But the escalating rhetoric that fundamentalists use to stage this cosmic drama should not be allowed to obscure the fact that there are other, seemingly less ominous forces operating at the global level, which also use the discourse of difference and/ or confrontation in pursuit of their own political agendas. Perhaps the most obvious example can be found in the shifts of mainstream, US foreign policy discourse that have followed the end of the Cold War. In the new world order as sketched out by such influential and respected analysts as Harvard professor Samuel Huntington and eagerly promoted by the popular media, US and European economic interests are identified with the continued dominance of western (read white Christian) civilisation; and 'western civilisation' is positioning in opposition to darker, more threatening civilisations defined by religion, specifically 'Islamic' and 'Confucian' civilisations. Such scenarios are given their own apocalyptic flavour:

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9. See the essays in the second volume, *The Fundamentalism Project*. Marty ME and Appleby RS (eds), 1993. *Fundamentalism and Society: Reclaiming the Sciences, the Family, and Education*. University of Chicago Press, Chicago.

10. Marty ME and Appleby RS (eds), 1993, (*Fundamentalism and Society*), p.820.

Predicting 'the next world war, if there is one, will be a war between civilisations', Huntington surveys the world today and warns us, 'Islam has its bloody borders'.<sup>11</sup>

Ultimately, it is the ways in which fundamentalist movements, with their intense focus on women, feed on and fuel these other global forces that poses the deepest challenge to the reproductive health and rights movements emerging in every part of the world.

### ***Women, Law and the Re-creation of Tradition and Modernity***

Among the most persistent misconceptions about fundamentalist movements is the notion that the beliefs and practices which their adherents assert to be fundamental and inviolable are actually authentic, ancient, uncontested doctrines or customs. In this view, tradition is understood to be something fixed and identifiable, which fundamentalists retrieve and then assert aggressively against modernity. But this is an unduly static view. In fact, just as fundamentalists engage in a process of inventing self and other, so they engage in a similar process of simultaneously constructing both the tradition to which they cling and the corrupt world to which they react.

Women are central to the fundamentalist project of defining and mythologising tradition—and thus to the process of imagining and living the highly-charged cosmic drama in which fundamentalists typically locate themselves and their perceived enemies. Of course, the use of women to define and maintain a society and culture is certainly not unique to fundamentalism. Indeed, there is a substantial literature exploring the ways in which discourse about women—and particularly about their biological nature and their social function within the family as housewives, sexual partners, childbearers and childrearers—becomes a basic tool through which identity is shaped and maintained. The subtle dynamics of this process have been demonstrated particularly effectively in writing about colonial encounters. A number of scholars have shown how the European colonisers' perceptions of the nature and roles of women in colonised societies were basic to their understanding of those societies as a whole, and thus to their strategies for subduing,

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11. Huntington, S, 1993. The clash of civilisations? Foreign Affairs, Summer.

12. McClintock A, 1996. Imperial Leather: Race, Gender and Sexuality in the Colonial Conquest. Routledge, New York; Ahmed L, 1992. Women and Gender in Islam. Yale University Press, New Haven. The instrumental use of women as the repository and protectors of culture and community identity did not end with the demise of formal colonialism, nor was it unique to the colonial situation. Today, in a post-colonial world wracked by some of history's most vicious displays of ethnic conflict, women continue to be both targets and tools in the struggle. See Moghadam V (ed), 1994. Identity Politics & Women: Cultural Reassertions and Feminisms in International Perspective. Westview Press, Boulder CO.

controlling, reshaping, and exploiting them. However, this was not a simple, one- directional gaze: ultimately, the discourse about women of different classes and races shaped not only the coloniser's view of the colonised and vice versa, but also the way in which each culture—colonised and colonisers—created and perpetuated its view of itself—ie. its identity.<sup>12</sup>

One means by which such evolving visions of self and other—and of women and tradition—were translated into the actual institutions that governed everyday life was through the articulation and imposition of laws. Analysis of specific legal debates helps elucidate the process by which this happens. For instance, in a brilliant essay on the debate on sati (widow immolation) in colonial India, Lata Mani asserts that, while women are emblematic of tradition, these debates were 'in some sense, not primarily about women, but about what constitutes authentic cultural tradition.'<sup>13</sup> She shows how colonial discourse—a discourse in which Bengali intellectuals also participated—ultimately privileged Brahmanic texts in a manner that was actually quite alien to the varied forms of Hindu religious practice that existed throughout India. Premised on the (misguided) assumption that the true source of tradition lay in selected scriptures and that such texts could and should be treated as prescriptive rules—essentially religious laws— that would override customary practices, the colonial debate on sati became a debate about scriptural interpretation, not a debate about the interests of women or even about cruelty to women. Though the British prohibition against sati is often seen as evidence of British concern about the status of Indian women as part of their self-described 'civilising mission,' the nature of the debate, particularly the hegemony granted to texts, actually marginalised women:

Given that the debate on sati is premised on its scriptural and, consequently, its 'traditional' and 'legal' status, it is little wonder that the widow herself is marginal to its central concerns. The parameters of the discourse preclude this possibility. Instead women become sites upon which various versions of scripture/ tradition/ law are elaborated and contested.<sup>14</sup>

This analysis of a nineteenth century debate holds important clues for the way fundamentalist discourse functions today—even beyond the practice of sati which has recently re- emerged as an issue in Hindu fundamentalist politics in India.<sup>15</sup> Certainly more work needs to be done to test the generalisability of Mani's analysis. But her tantalising

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13. Mani L, 1990. Contentious traditions: the debate on sati in colonial India. In Sangari K and Vaid S (eds). *Recasting Women: Essays in Indian Colonial History*. Rutgers University Press, New Brunswick NJ.

14. Sangari K and Vaid S (eds), 1990, (see footnote 13), p.115.

15. Hawley JS, 1994. *Hinduism: sati and its defenders*. *Fundamentalism & Gender*. Hawley JS (ed). Oxford University Press, New York.

demonstration that women are marginalised by a style of discourse that privileges texts as the most authoritative source of religious authenticity, and that converts such texts into prescriptive rules, may help us to understand the mechanisms by which fundamentalists have often been able to set the terms of the debate about women's place in society.

Indeed, while many fundamentalist movements profess to be centrally concerned with morals and values, experience shows that they are rarely willing to engage in genuinely open debate or discussion about philosophical or spiritual matters. Instead, they typically convert value-laden questions into a narrow and rigid analysis of text and law premised on the assertion that they possess exclusive access to truth and divine meaning. Such an approach to religious texts and law leaves little or no room for interpretation or debate or theological inquiry, or for a religiosity derived from personal, spiritual experience.<sup>16</sup> Religious language becomes political language, as religious content is used instrumentally to advance political goals.<sup>17</sup> Thus, even when they purport to be the guardians of religious traditions such as Islam or Judaism that can boast hundreds, even thousands, of years of rich legal debate, jurisprudential fluidity, and remarkable on-the-ground adaptability, fundamentalists typically construct a religious-legal system that brooks no ambiguity or dissent. All legal, moral and ethical matters are black-and-white; shades of grey cease to exist. As Joseph Scheidler, a former Benedictine monk and now a national leader in the US anti-abortion movement, put it:

We are going to win because we are right. They are wrong. We are good. They are bad. It's that simple.<sup>18</sup>

In this fundamentalist framework, legal rules are sacralised and thus made absolute and unchallengeable. The breach of a rule—sometimes even the verbal challenge to a rule—is taken as an offence, not just against the State that promulgates the rule or the community authorities who enforce it, but against the divine will as well. Moreover this absolutist approach to law and to religious authenticity enables fundamentalists to ignore or condemn any diversity of belief and practice that exists within their broader communities. This, in turn, facilitates their efforts to create and maintain the notion of a monolithic, homogeneous (powerful and glorious) people—a particularly potent formula in Islam, with its appeal to preservation and unity of the worldwide ummah (community of believers); and in Judaism, with its appeal to the

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16. Strozier CB, 1994. Religious militancy or 'fundamentalism'. Religion and Human Rights. Kelsay J and Twiss SB (eds). Project on Religion and Human Rights, New York.

17. Ahmad M, 1991. Islamic fundamentalism in South Asia: the Jamat-i-Islami and the Tablighi Jamaat. In Marty and Appleby (see footnote 3).

18. Quoted in Hitchcock J, 1993. Catholic activist conservatism in the United States. In Marty and Appleby (see footnote 3).

preservation and unity of am Yisrael (the Jewish people), and even to some extent now in Hinduism with its appeal to Hindutva as the essence of Indianness.<sup>19</sup>

Activist women's groups, particularly in Muslim countries and communities, have demonstrated how such a myth of a monolithic, homogeneous Islam (or Judaism or Hinduism or Christianity, for that matter) can be paralyzing, particularly when it gives the exclusive power to define religious authenticity to those who would adopt an approach to text and law of the kind described above.<sup>20</sup> Much of the research and activist work conducted by such groups is designed to explode the myths of homogeneity and to counter the exclusive claim to authenticity by documenting (and celebrating) the enormous diversity—in lifestyles, in legal systems and interpretations, in theological discourse—that actually exists in the Muslim world.<sup>21</sup>

In doing so, it has been important to understand the historically specific roots of the very legal concepts and systems which today are championed by fundamentalists as divinely inspired and thus immutable. For instance, over 200 years ago in colonial India, the British established a legal system that required the civil and criminal courts to apply 'indigenous legal norms' in 'all suits regarding inheritance, marriage, caste, and other religious usages and institutions.'<sup>22</sup> The 'indigenous legal norms' to be applied were 'the laws of the Koran' with respect to Muslims and the laws of the Brahmanic Shasters with respect to Hindus, all of which were to be authoritatively interpreted by maulvis and pandits on request from the (British) court. This basic system had enormous implications, still reverberating in communal politics today.

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19. On the relationship between the discourse of Hindutva, women, law and communal politics in India, see Kapur R and Cossman B, 1995. *Communalising gender, engendering community: women, legal discourse, and the Saffron Agenda*. Women & Right-Wing Movements: Indian Experiences. Sarkar T and Butalia U (eds). Zed Books, New Jersey. On the critically important relationship between Hindutva and current legal and political discourse about secularism in India (including an analysis of recent opinions of the Supreme Court of India on these issues), see Cossman B and Kapur R, 1996. *Secularism: bench-marked by Hindu Right*. *Economic and Political Weekly*. 21 Sept: 2613-30.

20. Shaheed F, 1994. *Controlled or autonomous: identity and the experience of Women Living Under Muslim Laws*. *Signs*. 19(4):997-1019.

21. For a description of this overall strategy, see Shaheed F, 1995. *Networking for change: the role of women's groups in initiating dialogue on women's issues*. *Faith & Freedom: Women's Human Rights in the Muslim World*. Afkhami M (ed). Syracuse University Press, Syracuse NY. For a specific example of diversity in actual laws and practices, see *Chart of Customary Practices in Pakistan in Comparison with Statutory Law*. 1995; Women & Law Pakistan Country Project. Shirkat Gah, Lahore.

22. Anderson MR, 1993. *Islamic law and the colonial encounter in British India*. Arnold D and Robb P (eds). *Institutions and Ideologies: A SOAS South Asia Reader*. Curzon Press, London. Reprinted by Women Living Under Muslim Laws as Occasional Paper 7, (1996), quoting the text of The Hastings Plan of 1772.

First, it assumed that Islam and Hinduism were, in their 'authentic' state, homogeneous religious traditions in which the 'true' and 'correct' legal rules could be determined through reference to text and authoritative interpretation—when, in fact, both religions had historically tolerated a wide range of practices and beliefs. It also assumed that the people of colonial India could be divided neatly into Muslim and Hindu communities—when, in fact, many followed aspects of both (and other) traditions, never being forced to identify as one or the other. The result was the application of a legal system that, in historian Michael Anderson's words, 'was often more alien than familiar to putatively 'Muslim' [or Hindu] groups.'<sup>23</sup> Yet this system of separate personal laws to be applied by religious courts and authorities within each religious community has remained essentially intact. Despite the historical (indeed, colonial), rather than divine, origins of this system, religiously based personal laws with their emphasis on women's status and behaviour, have remained the focal point for religious identity. As such they provide much of the fodder for the communal tensions gripping India today.

The central place that law and religiously-justified rules of behaviour have come to play in virtually all fundamentalist projects forces us to acknowledge that fundamentalism is not simply a matter of adherence to the kind of turbulent, apocalyptic worldview described earlier. It also entails the commitment to convert that view into an active political programme. And what makes fundamentalist programmes quintessentially political—and not just theological or even social—is their determination to use the power of the state to implement their vision of the social order. Thus, a professed goal of most fundamentalist movements is the institution of religious law as state law, or at least the incorporation of 'religious values' into state law. Yet it is not just any religious values or any religious laws that seem to preoccupy fundamentalists. Rather, for reasons explored below, fundamentalist projects give top priority to laws that focus intensively on women's bodies —on controlling their movements, their sexuality, their interactions with others in public and private—and thus on their roles in the home, the family and the society.

The precise political programmes adopted by fundamentalists in the name of religion can vary substantially from place to place, even when they purport to derive from the same religious tradition. Thus, the strategies that women adopt to counter such movements have been developed with careful attention to the specific historical, cultural, and political context in which each movement operates. In the case of Iran, the religious framework has yielded substantial space—even if it is the only space—for women activists to negotiate with a fundamentalist

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23. See footnote 22

regime which, having gained power, must now deliver on its promises.<sup>24</sup> In other situations, such as Bangladesh, where Islam has been recognised as the state religion and fundamentalist movements have been gaining ground, most women activists are united in their demand for a secular civil law.<sup>25</sup>

### ***Women, Difference and the Rise of Fundamentalism***

While effective strategies to counter fundamentalism at the local level must grow from an engagement with particular fundamentalist forces in their specific contexts, it has become important to understand not just the commonalities that different forms of fundamentalism share, but also the way in which fundamentalism has begun to function as a trans-national, trans-cultural—even global—phenomenon. Moreover, as fundamentalist movements grow in power and influence, it will be vital to see and understand the ways in which they use and are used by other powerful interests functioning at the global level, and the impact this ultimately has on the spaces available to women. Being a basic building block in whatever system a society uses to organise and perpetuate itself, gender will also be a critical issue for other movements striving for social change—including, of course, women's movements and human rights movements. As these varied movements interact in the quest for political power or social influence, the pivotal question is whether women will capture the space to participate as full agents in determining the scope and direction of change, or whether they will find themselves struggling to resist attempts by others to use them in the promotion of various agendas which are not of their own making.<sup>26</sup>

Given the central role that gender ideologies play in so many social movements, one might legitimately ask whether fundamentalism is really distinguishable from other 'isms' that use women instrumentally. In some sense, fundamentalism is one point on a long continuum of different patriarchal ideologies or systems. As a consequence, many other conservative political and social movements that might not be tagged so readily with the label of fundamentalism, actually do much to support and strengthen it.

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24. Hoodfar H, 1994. Devices and desires: population policy and gender roles in the Islamic Republic. Middle East Report. Sept-Oct.

25. Kamal S, 1995. Undermining women's rights. Sanglap: Attack on Fundamentals. 4 (Aug), (See footnote 8); Fundamentalism and gender: a view from Bangladesh. Communalism Combat. 1996; April: 5.

26. An important issue beyond the scope of this paper is the extent to which women are attracted to and participate in fundamentalist movements, even when such movements adopt agendas which include explicit controls over their ability to make choices about key aspects of their lives.

The spectacular entrance onto the American scene of the Promise Keepers, an organisation founded by an evangelist former college football coach, is a good example. In massive rallies around the country, Promise Keepers packs huge sports stadiums with tens of thousands of Christian, mostly white, men chanting their faith in Jesus Christ and their determination to take back from women the leadership of their families and communities. In the basic treatise of the organisation, *Seven Promises of a Promise Keeper*, under the heading 'Reclaiming your manhood', preacher Tony Evans gives men the following advice:

...sit down with your wife and say something like this: 'Honey, I've made a terrible mistake. I've given you my role. I gave up leading this family, and I forced you to take my place. Now I must reclaim that role.' ...I'm not suggesting you ask for your role back, I'm urging you to take it back... there can be no compromise here. If you're going to lead, you must lead... Treat the lady gently and lovingly. But lead!<sup>27</sup>

While not overtly political, Promise Keepers is funded and supported by right-wing, Christian political organisations whose social—and ultimately political—agenda is clearly being advanced.<sup>28</sup>

Yet, in other important ways, fundamentalism is different because of the place of women in the fundamentalists' cosmic drama and, more importantly, in the concrete political projects that flow from and feed it. To understand the specific role that women play in such projects and how that role ultimately revolves around the regulation of women's behaviour and the control of their sexuality, it is useful to go back to the original assertion that fundamentalism is a reaction to deep social dislocation and the feeling of impending chaos that accompanies it. Certainly it is possible to many economic and political conditions, such as massive and abrupt shifts in labour markets or rapid urbanisation, that help account for such dislocation—and it will ultimately be essential to understand fundamentalism in the context of these forces themselves. But aligned with massive social dislocation is the breakdown of patriarchal structures that keep women in carefully circumscribed roles, particularly within the family. In this context the uncontrolled woman is symbolic of the disorder all around. Moreover, it is precisely her uncontrolled sexuality that is often understood and felt as the deepest source of such danger.<sup>29</sup>

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27. Conason J, Ross A and Cokorinos L, 1996. The Promise Keepers are coming: the third wave of the religious right. *Nation*. 7 October.

28. See footnote 27

29. See Sabbah F, 1984. *Woman in the Muslim Unconscious*. Pergamon Press, New York; Imam AM, 1996. The Muslim religious right ('fundamentalists') and sexuality. Presented at conference on Religion, Sexuality and Contemporary Crisis, Park Ridge Centre for the Study of Health, Faith and Ethics, Chicago, 14-16 April 1996.

This set of symbolic relationships linking uncontrolled women to an out-of-control economic and political order, taps into the patriarchal strains that exist in many of the world's religions—often alongside equally longstanding (even if ultimately incompatible) traditions that support a commitment to gender equality and justice. For example, elucidating elements in the traditional religious literature that provide a basis for Hindu fundamentalists to construe women's behaviour as both the symptom and the cause of the social decay, John Hawley quotes a passage from the Bhagavad Gita in which Arjuna warns Krishna:

In overwhelming chaos, Krishna,  
women of the family are corrupted;  
and when women are corrupted,  
disorder is born in society.<sup>30</sup>

A somewhat analogous point can be made for Islam, focusing on the parallels and connections among certain constructions of the Islamic familial order (premised on the wife's obedience to the husband), social order (premised on women's subservience to men), and cosmic order (premised on man's submission to God). Indeed, Fatima Mernissi has argued that it is precisely because of these symbolic relationships that *nushuz* (an individual woman's rebellion against her husband) is regarded, in some Muslim societies, as threatening and dangerous to the community as a whole—and therefore as behaviour that must be contained and controlled.<sup>31</sup>

Although such relationships between women's behaviour and the order of society and the universe may indeed have ancient roots in many religious traditions, in the context of fundamentalism, they take on a different quality of importance and urgency. Faced with impending destruction, the collectivity and its identity must be strengthened and defended by shoring up its borders, by drawing clear lines of difference and then policing those lines to ensure that they are not crossed. There is heightened concern, even hysteria, about issues of purity and authenticity; about the mixing of races, ethnicities, or religions. In this, women's sexuality and reproductive capacity are viewed as points of both vulnerability and opportunity.

So in the most extreme situations, women's wombs are used literally to produce the pure race, as in the *lebensborn* programme in Nazi Germany in which blond, blue-eyed Aryan women were sheltered in secret homes to breed with elite SS troops to produce 'pure Aryan'

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30. Hawley JS, [15] above. Quoting Bhagavad Gita 1.41, as translated by Miller BS, 1986. *The Bhagavad Gita*. Columbia University Press, New York.

31. Mernissi F, 1987. *Femininity as subversion: reflections on the Muslim concept of nushuz*. *Speaking of Faith: Global Perspectives on Women, Religion and Social Change*. Eck D and Jain D (eds). New Society Publishers, Philadelphia.

children for the Third Reich.<sup>32</sup> In other situations, women's wombs are used to destroy the enemy polluting race, as in the systematic 'ethnic cleansing' operations in the former Yugoslavia in which rape was used by Serbian forces to terrorise, humiliate, sometimes murder and ultimately drive out Croats and Bosnians. When combined with forced pregnancy, rape was further used to demolish the identity of the Bosnian or Croatian women (and, by extension and intent, the existence of their ethnic communities as well) by forcing them to produce future soldiers for the Serbian state.<sup>33</sup> In still other situations, women's wombs are used to effect a 'violent polarisation of difference,' as in the communal riots in India where rape—justified by the 'inherent immorality' of the minority community and its members—became a tool through which the majority community asserted its distinctiveness from and hegemony over them.<sup>34</sup>

But also in the everyday situation when fundamentalist groups gain influence or authority, even without the added stress of war or riots, there is an intensification of concern about women's behaviour. Women's sexuality is controlled and policed; their personal physical space is constricted, their movements regulated. This is one reason why dress and spatial concerns become so highly charged in many fundamentalist discourses. Most often written about is Muslim fundamentalist imposition of 'the veil'—even in some situations such as Algeria in which the style of dress that fundamentalists demand that women wear, on threat of death, is not even traditionally known in that culture.<sup>35</sup> But dress codes and concern about women's movements and interactions with outsiders are a common feature in other religious and ethnic fundamentalisms as well. For example, in Sri Lanka, during the height of women's activism in the Tamil nationalist movement, handbills appeared in the streets, requiring 'proper' dress for Tamil women—a requirement whose basic spirit, even if not its specific restrictions, was supported by the women's wing of the Liberation Tigers of Tamil Eelam. In the context of the bloody civil war gripping Sri Lanka, a 'woman who merely travels to the South [from Tamil controlled territory in the north] is constructed as 'sexually

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32. Papanek H, 1994. The ideal woman and the ideal society: control and autonomy in the construction of identity. In Moghadam (ed), (see footnote 12).

33. Meznaric S, 1994. Gender as an ethno-marker: rape, war, and identity politics in the former Yugoslavia. In Moghadam (ed), (see footnote 12); Women's Rights Project, 1995. The Human Rights Watch Global Report on Women's Human Rights. Human Rights Watch, New York.

34. Kannabiran V and Kannabiran K, 1995. The frying pan or the fire? Endangered identities, gendered institutions and women's survival. In Sarkar and Butalia (eds), (see footnote 19).

35. Bennoune K, 1995. SOS Algeria: women's human rights under seige. In Afkhami (ed), (see footnote 21).

loose,' and therefore as a traitor to the cause: her sexuality is a site for the control of her movements.'<sup>36</sup>

If controlling the enemy within, the intimate other, is basic to the building of borders that is at the heart of fundamentalism, equally basic is the creation of the worthy enemy against whom borders are drawn and barriers built. In much of the world this enemy is conceived as the decadent west. And the primary symbol of that decadence is its immoral, licentious women. Yet attention is not focused on such seemingly obvious manifestations of sexual decadence as prostitution or trafficking in women and children. Rather, energy is saved for the real enemy that has the power to sow chaos in the social order: the 'western feminist movement.' This connects the enemy within to the enemy outside. As Mernissi explains:

...women's disobedience is so feared in the Muslim world because its implications are enormous. They refer to the most dreaded danger to Islam as a group psychology: individualism. I want here to suggest that Muslim societies resist women's claim to changing their status, that they repress feminist trends which are actually evident all over the Muslim world, and that they condemn them as western imports, not simply because these societies fear women, but because they fear individualism.<sup>37</sup>

The strategy of condemning women's claims as 'unauthentic' western imports—despite the long and rich history of feminist initiatives within various Muslim societies—is actually aided and abetted by those forces in the global economy, originating in the US and Europe, who have created and effectively used a sort of cartoon version of feminism to expand their markets at home and abroad, while effectively robbing political feminism of its radical, transforming potential:

The market has to transform the militancy of this feminist individualism into consumerism. It attempts to do this by focusing on freedom, which the mass market absorbs, instead of equality, which the market rejects. Feminism gets

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36. In support of this point, Sitralaga Maunagura quotes the following letter printed in LTTE's official newspaper: 'Young Tamil women who travel to Colombo come into contact with the military at various points. They are physically handled by male soldiers on the pretext of checking. In Colombo, these women become friendly with policemen from Sinhala and Muslim communities and lose their morals. In addition, they pass on information on the struggle which is taking place in the North. Hence, a total ban should be imposed on young women travelling to the South. And women who return from Colombo should be considered anti-social elements and punished accordingly.' Maunaguru S, 1995. Gendering Tamil nationalism: the construction of 'woman' in projects of protest and control. *Unmaking the Nation: The Politics of Identity and History in Modern Sri Lanka*. Jeganathan P and Quadri, I (eds). Social Scientists' Association, Colombo.

37. See footnote 31

redefined as an individualized consumer self-help market; and the politics surrounding the struggle for equality drops out the bottom.<sup>38</sup>

In this way, a caricaturised feminism is mass marketed in the west and then, with 'glitzy advertising and romanticised displays [that] fantasise the freedom of the 'west,' exported around the world.<sup>39</sup>

Thus, pop feminism often ends up turning women against themselves as it turns others against women; for one thing is ultimately clear: 'These misreadings and misuses—with their transnational effect—construct anti-feminist stances both at home and abroad.'<sup>40</sup> As a result, a woman's assertion of her most basic human rights is condemned as a crass display of selfish individualism and so automatically deemed to be an abandonment and betrayal of her family and community—and thus of her own, valued identity.

Marshalled in the context of identity politics, such anti-feminist rhetoric effectively blocks the efforts of women to organise both locally and internationally. Moreover, when lodged within a fundamentalist discourse that magnifies and mythologises the corrupting power of the enemy, and then describes the enemy as a monolithic and encroaching West, the identification of feminism with the west becomes an even more powerful tool for social control.

Of course, in the West, Christian fundamentalists do not identify the enemy as the West per se. Rather it is secular humanism, feminism and the godless actions of those who control public life. These are understood not as products of western civilisation—ie. white, Christian civilisation—but as betrayers of that civilisation. Alternatively, these are the acts not of betrayers from within, but of infiltrators from outside—the affinity with rising anti-Semitic and anti-immigrant sentiment being obvious. As for feminism, its corrupting influence was graphically described by the founder of the Christian Coalition, an organisation that is now among the most influential forces in mainstream US politics:<sup>41</sup>

The feminist agenda is not about equal rights for women. It is a socialist, anti-family political movement that encourages women to leave their husbands, kill their children, practice witchcraft and become lesbians.<sup>42</sup>

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38. Eisenstein Z, 1996. *Hatreds: Racialized and Sexualized Conflicts in the 21st Century*. Routledge, New York.

39. See footnote 38

40. See footnote 38

41. Boston R, 1996. *The Most Dangerous Man in America? Pat Robertson and the Rise of the Christian Coalition*. Prometheus Books, Amherst NY.

42. Washington Post, 23 August 1992. Hawley and Proudfoot note that 'fundamentalist rhetoric is often tinged with the suggestion that homosexuality is an inevitable consequence of modernism—a sign of the dishonor and downright emasculation that the collapse of traditional values visits on secular societies'. In Introduction, Hawley JS (ed). (see footnote 4).

To many in the US, such pronouncements are little short of comical. But the defense of white Christian civilisation has recently acquired a more respected academic veneer in foreign policy discourse and in the popular media, following such influential articles as that by Harvard professor Samuel Huntington, in which Western civilisation is positioned in opposition to darker, more threatening 'Islamic civilisation' and 'Confucian civilisation.'<sup>43</sup>

On the one hand, such re-positioning of global dynamics along the axes of monolithic civilisations feeds (even if inadvertently) the most extreme elements of white American racism such as the Christian Identity movement and the militia movements, whose presence on the American landscape was seared into public consciousness with the 1995 bomb blast in Oklahoma City and whose rhetoric of violence and bloodshed is a match for any fundamentalist movement in the world.<sup>44</sup> It also validates those in other countries who demonise an undifferentiated, monolithic West as the 'Great Satan.'

On the other hand, difference has uses for other global players as well. In the new economic order that has followed the end of the Cold War, 'the world is simultaneously borderless for capital and rebordered by cultural/ racial identities defined by "difference".'<sup>45</sup> The sense of deep economic and social dislocation coupled with disillusionment about the ability of corrupt or ineffectual governments to address its causes and consequences, which together fuel fundamentalist movements, certainly pre-dates the end of the Cold War in many parts of the world. Yet there can be little doubt that the end of the Cold War and the economic imperatives of the Western-dominated global economic system that has taken its place, have thus far served to heighten the tensions that feed fundamentalism in the North and South alike. The relentless drive to open global markets includes the institution of economic policies, such as structural adjustment programs and free trade agreements, which have sunk millions of already poor people into even more desperate poverty while enriching those elite few (in both North and South) positioned to take advantage of the new space created for global capital.

While the homogenising spread of a certain kind of consumerism is an essential condition for the maximum exploitation of such new space, corporate interests actually use the rewriting of difference along racial

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43. Huntington S, 1993. The clash of civilizations? Foreign Affairs. Summer.

44. The strand of US right-wing ideology that focuses on the 'racial purity' of white, Christian civilisation finds a comfortable home among 'Patriot' groups, such as those subscribing to the Phineas Priesthood, who justify murders and hate crimes with reference to a Biblical passage (Numbers 25:1-18) which they interpret as condoning murder to prevent racial mixing in violation of 'God's law'. Terrorists in the name of God and race. Klanwatch Intelligence Report. 1996; 83 (Aug).

45. See footnote 38

and cultural lines to their advantage. Although at first glance, the recognition of difference might seem a welcome retreat from the Eurocentric stance commonly associated with the marketing efforts of multinationals, in fact the rewriting of difference along racial and cultural lines is effectively used to disguise real power differentials in an effort to 'contain the disruptiveness of diversity and adapt to a transnational marketplace.' In short, the rewriting of difference by race, culture and religion 'does not renegotiate the white center for the globe, but adds differences around it.'<sup>46</sup>

### ***Meeting the Challenge to Reproductive Health and Rights***

When the rewriting of difference along cultural/ racial/ religious lines and the promotion of a caricaturised feminism has the potential both to serve the interests of transnational capital and simultaneously to validate fundamentalists' worldviews, then it is time for reproductive health and human rights advocates to develop a deeper understanding of the challenges they face. This will require a recognition of the different arenas and levels of social life and public discourse at which fundamentalists operate—and an ongoing analysis of how they connect to each other.

When fundamentalists fight for or succeed at implementing a political programme that includes specific laws and policies designed to limit women's access to contraception or medical care, or even to limit their rights to marry, divorce, or enter the labour force, then the connection to reproductive health and rights is fairly obvious. When fundamentalists initiate physical attacks on individual women who have transgressed social or sexual mores, or when they organise campaigns of threats and intimidation against NGOs who have promoted women's autonomy or participation in civil society, then the challenge to the reproductive health field escalates to another level. This has recently been happening in Bangladesh, for example, where right-wing religious forces have not only instigated extra-judicial proceedings and punishments against individual women, but have also fomented attacks on NGOs—including the women's credit programmes of Grameen Bank, the educational programmes of the Bangladesh Rural Advancement Committee, as well as community-based family planning initiatives—as part of their struggle for political power in the country.<sup>47</sup> Focused strategies to fight specific laws and policies, and the intimidation of individuals and organisations, will continue to be developed by women's and human rights groups in

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46. See footnote 38

47. Amin S and Hossain S, 1995. Women's reproductive rights and the politics of fundamentalism: a view from Bangladesh. *American University Law Review*. 44 (4):1319-43; (see also footnote 8).

the affected communities, sometimes including campaigns that solicit support from other organisations and advocates internationally.

But fundamentalist movements also pose a different, if subtler, kind of challenge to reproductive health and rights advocates. With the supremely confident assertion that they are championing the truest, purest, most authentic embodiment of whichever religion, ethnicity, nationality, or culture they claim to represent, fundamentalists have been remarkably successful at setting the terms of public debate, putting on the defensive those who would claim different principles and values for their communities and for the construction of their identities. Moreover, by shrewdly employing the most effective language and imagery of other social movements, fundamentalists have often been able to disguise their true political goals, simultaneously creating new alliances on particular issues and paralysing potential opponents whose causes they appear to defend.<sup>48</sup> The Vatican's constant refrain that the ICPD Programme of Action was a new form of 'cultural imperialism' slyly foisted by Western feminists on the rest of the world, is a good example; their condemnation of pornography for its use of 'women as sexual objects' and their challenge to corrupt and authoritarian governments in the name of the 'oppressed classes,' are others.

Strategies to resist fundamentalism at this level will require women's and human rights activists to make connections and build collaborations across geographic, religious, cultural and professional communities. However, in the reproductive health field, the simple act of striking an alliance between the population establishment and the women's movement will not be enough; such an alliance must be based on something stronger than happy coincidence of matching short-term goals. It must be grounded in a renewed and deepened commitment to the basic principles and values that underlie this emerging field. These are perhaps best captured by the notion of women's human rights—not as a wooden, legalistic, text-bound, historically limited concept, but rather as a fundamental commitment to women as valuable in their own right; as subjects able and entitled to make decisions about their lives rather than as objects used to advance someone else's political goals; and as people with spiritual, physical and intellectual needs, bound up with and intensely committed to the wider social units in which they live.

Without a strong sense of what this means—its potential but also its bottom lines—the field risks disarray and co-optation. While established international law and formal treaty obligations certainly have a role to play, this field also has the opening to fill the concept of human rights

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48. I am grateful to Mahnaz Afkhami, executive director, Sisterhood Is Global Institute, for articulating this aspect of fundamentalists' strategies and for several of the examples used here.

with new meaning. Efforts to expand and elaborate human rights within the frameworks of different religious traditions,<sup>49</sup> to make meaningful the concept of indivisibility between civil and political rights on the one hand, and economic, social and cultural rights on the other;<sup>50</sup> to link the basic premises and tools of human rights and public health;<sup>51</sup> and to work through these concepts on the ground through dialogue with people around the world via human rights education programmes,<sup>52</sup> all contribute to our growing understanding of how human rights can relate to human well-being—morally, politically and strategically.

The text of the ICPD Programme of Action acknowledges the centrality of human rights concepts to the emerging reproductive health field—and most publications following ICPD imply or proclaim that these were the principles on which the 'Cairo consensus' was built. But words are easy to come by. A true commitment to these principles in their fullest sense will require the kind of painful self-examination and reformulation of assumptions and aims that few academic disciplines or professional fields are able to accomplish, particularly under the conflicting political and financial pressures that prevail today.

Indeed, a careful look at the history of the population establishment and the specific development of its affiliated academic field, demography, gives much reason for scepticism about the depth and solidity of the commitment to broadly understood notions of women's human rights. In many respects, demography and, more importantly, the family planning industry (ie. family planning programme managers, policymakers, contraceptive manufacturers and so on) are the products of the Cold War, and it was the American politics of this era that most dramatically shaped both the theory and the practical, financial realities

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49. Religious human rights in the world today: a report on the 1994 Atlanta conference. *Emory International Law Review*. 10 (1):53-193. An-Naim A, 1995. The dichotomy between religious and secular discourse in Islamic societies. In Afkhami M (ed), (see footnote 21).

50. Copelon R and Petchesky R, 1995. Toward an interdependent approach to reproductive and sexual rights as human rights: reflections on the ICPD and beyond. Schuler M (ed). *From Basic Needs to Basic Rights*. Women, Law & Development International, Washington DC.

51. Freedman L, 1995. Reflections on emerging frameworks of health and human rights. *Health and Human Rights*. 1(4):314-48.

52. Mertus J in collaboration with Dutt M and Flowers N, 1995. *Our Human Rights: A Manual for Women's Human Rights*. Organising Committee, People's Decade for Human Rights Education, New York; Afkhami M and Vaziri H, 1996. *Claiming Our Rights: A Manual for Women's Human Rights in Muslim Societies*. Sisterhood Is Global Institute, Washington DC; Yamin AE, 1993. Empowering visions: toward a dialectical pedagogy of human rights. *Human Rights Quarterly*. 15:640-85.

of the field.<sup>53</sup> Those politics boiled down to one overwhelming imperative: reduce Third World population growth through the diffusion of contraceptive technology.

The Cold War may be over but, as Susan Greenhalgh has persuasively shown, for reasons related to its failure to develop an adequate basis in social theory and for reasons related to the funding and institutional imperatives of the primary actors, the spread of contraceptives remains the dominant driving force of the field.<sup>54</sup> It is a force that has managed to absorb and convert each challenge to its success into a tool to promote its ultimate ends, for example in the way in which 'culture' as an analytic category has been incorporated into family planning projects. Much as transnational capital absorbs, de-politicises, and then re-deploys both genuine diversity and political feminism in pursuit of its own ends, so the family planning field attempts to de-politicise and re-deploy culture in its efforts to spread contraceptives. Thus: 'culture is seen as communication about contraception, while fertility decline is portrayed as a socio-technical process spreading contraceptive technology.'<sup>55</sup>

It does not take a great leap of imagination to see that the population establishment could be tempted to try to effect a similar kind of absorption and redeployment with fundamentalism (or with human rights, for that matter). Although fundamentalists are intensely concerned with the control of women, this does not necessarily mean that all fundamentalists are inherently opposed to contraception. Indeed, the experience of Iran shows that fundamentalists, particularly when in power, will continue to be pragmatic and, using the tools of scriptural interpretation, accomplished a 180-degree reversal from a pro-natalist to an anti-natalist policy. While this may open the space for women activists,<sup>56</sup> this does not thereby change the discourse to put the interests,

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53. Greenhalgh S, 1996. The social construction of population science: an intellectual, institutional, and political history of twentieth-century demography. *Comparative Studies in Society and History*. 38 (1):26-66.

54. See footnote 53

55. Greenhalgh goes on to critique 'diffusion theory', the theoretical rationale used in family planning work to justify the programmatic focus on spreading contraceptives. Asserting that the assumptions underlying diffusion theory are both ahistorical and apolitical, she draws this devastating conclusion: 'The term diffusion, for example, is silent about the historically specific political and economic conditions that permit the mass transfer of Western contraceptives to the third world for use in fertility control projects. Through its silence about the structures that support diffusion and its implicit assumption that the place of origin is superior to the place of destination, the notion of diffusion in fact supports a political project, that of justifying efforts to spread modern contraceptives to benighted 'traditional' people. Unintentional though it may be, demographic research serves the political goal of 'making them more like us.' (See footnote 53).

56. See footnote 24

feelings, and needs of women themselves over the requirements deemed to flow from scripture. In turn, if the ultimate goal of the population establishment is really the spread of contraceptives, for which the Cairo consensus is currently a convenient strategy, then an alliance with particular fundamentalist forces, even at the expense of the woman at the heart of the Cairo consensus, does not seem out of the question.

But fundamentalism is not just an analytical construct. It is a potent political force with a clear political vision and specific political goals. Such a force is not likely to be absorbed, de-politicised and redeployed to increase the empowerment of women, though it might be useful in promoting 'acceptance' of contraceptives. Thus, for example, efforts to make information, education, and communication programmes more effective by working through whichever religious authorities hold power, just like efforts to increase primary education by working through whatever religious schools exist no matter what their political bent, is a potentially problematic strategy. An approach to reproductive health premised on the empowerment of women will not be effected through institutions dedicated to keeping women under control.

The same is true at a discursive level. When fundamentalists succeed at turning the public debate about reproductive health into a debate about cultural imperialism—claiming, for example, that items in the ICPD document 'offend our religious feelings, our culture and above all our civilisation'<sup>57</sup>—then the understandable desire to respect and not to offend kicks in. But respect for a culture can not mean uncritical deference to the fundamentalist version of it, thereby denying respect for the basic dignity and aspirations of many of those who see themselves as part of that culture. In parsing out the discursive strategies at work here, it is vital to recognise that for the fundamentalists who opposed the ICPD Programme, it was not ultimately fertility regulation itself that was threatening and thus labelled offensive, rather it was the challenge to 'traditional' patriarchal social structures posed by the Programme's commitment to women's empowerment that sparked such vehement protest. Yet precisely that notion of empowerment lies at the heart of what respect for others should mean for the reproductive health and rights movement. If we bargain away a commitment to women's empowerment, we bargain away the very respect that we are striving to realise and uphold.

By this discussion, I certainly, most emphatically, do not mean to imply that religion itself is irrelevant to the ways in which women think about and live out their lives—including the decisions they might make about

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57. Razzaq A, 1994. Keynote paper, Seminar on the Cairo Conference on Population and Development: Human Rights and Moral Issues, Dhaka. Quoted in Amin and Hossain. [47] above.

childbearing or their ability or willingness to access contraceptive and other reproductive health services—and thus to their empowerment. But religion is not synonymous with religious authorities or with institutions or individuals who choose the discourse of religion to legitimate or disguise their political ambitions. Indeed, the certain importance that religious belief and practice has for millions of women around the world is one of the most important challenges for the human rights and reproductive health movements today. At the very least, meeting that challenge will require women's health advocates to develop a self-consciousness about their own work, their presentation of it, and the political implications of both, in order to understand how it can be captured, redefined and deployed against them.

More importantly, the confrontation with fundamentalism should give renewed energy to the determination to develop a theory and practice that privileges the fully contextualised experiences of women themselves as the starting point. Thus, the commitment to putting women as subjects at the center of health programmes and policies—in short, the commitment to human rights—must include a willingness on the part of women's advocates to see the world from the woman's own perspective. This means recognising the important roles that religion, culture and ethnicity play in women's life choices and constructions of identity. It also means acknowledging the very complex set of forces that the post-Cold War world has created for women in many countries.

There may be little choice about the call to engage with fundamentalism as the reproductive health and rights field develops. To quote Zillah Eisenstein: 'the body is a symbolised site because it is such a basic political resource.'<sup>58</sup> As such, women's bodies are the currency of all three movements: fundamentalism, population and feminism. At the level of international discourse, in conferences and internal policy discussions, each can, for a while, pursue its political programme, keeping the others at bay. But for the woman herself, there is only one body, one womb, one life. Ultimately the conflict will be resolved at that site—and only time will tell whose interests will finally determine the choices made.

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58. See footnote 38

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***Reproductive Health Matters***

29-35 Farringdon Road  
London EC1M 3JB, U.K.

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# *The Story of the Forgotten*

*Mansiya*

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(Translated by Gila Svirsky)

Mansiya, a pseudonym that means 'the forgotten', is a university student aged 22. She was born in the north of Israel and lives today in the center of the country. She writes about what it's like to be an Arab lesbian.

**M**any claim that there's no difference between a Jewish and an Arab lesbian, because for both it demands courage and lots of openness. In my opinion, there's a difference between the two experiences because Israeli society is composed of a majority and a minority. As an Arab, I belong by nationality and religion to the Arab minority as well as to the homosexual-lesbian minority.

Although I grew up in a very open and liberal home that saw no difference between Jew and Arab, Muslim and Christian, man and woman, the fact that Israeli society discriminates between Arab and Jew, and that conservative Arab-Palestinian society discriminates between man and woman created many dilemmas for me.

Today I live far from my village, but I still feel that I belong to and respect my society and the home where I was born. Today I know that if I want to leave this closet, it's not possible, certainly not at this time. In Arab society, we do not yet have awareness of or openness to the subject, and I cannot fight an entire society by myself. In Arab society, being a lesbian is like being a prostitute, and a prostitute is ostracized and, in the worst case, murdered. There is currently no organization that represents or supports Arab lesbians. The problem stems from dependence upon one's parents and fear of society. Therefore I prefer to live far away and not involve my parents in it.

If we return to the matter of being a lesbian, that's a problem in and of itself. Why? We were raised in a heterosexual society and a world that is still fighting for its rights. And don't forget that most religions forbid homosexuality, i.e., society in general does not accept us, many consider it unnatural or abnormal, and many are born with that opinion and grow

up with the attitude of the majority. I am one of those born and brought up in this tradition, and therefore it was very hard for me to even accept myself or the idea that I am a lesbian. I forgot my internal truth for a long time and lived 'like everyone'. I suffered and cried, and it hurt a great deal. Several years ago, I moved to the center of the country. Although aware of the fact that I was a lesbian, I did not find myself there, and thus went around as if I were heterosexual until I made contact with homosexual society, and then I came out of the closet, but only to them. At first it was very hard to live a double life, but by now I'm used to it. But I always try to be in homosexual company so that it won't hurt me that I am living a painful double life.

Over the past few years, I found myself alone. An Arab woman alone. I really miss speaking Arabic, thinking in Arabic, being myself among Arabs, and it's very hard. And then I find myself burning up my thoughts in cigarettes and crying on paper and screaming in the words of poems from all cultures. Today I write poems in three languages, and still I have not found my own language. In Arabic—I write, but not about my identity as a lesbian. In Hebrew—I do write as a lesbian, but as a non-Jew, I miss the sense of belonging to the language. And in English—I express all the issues, but it's not my mother tongue.

So where am I? Where am I—a lesbian Arab? Revealed to everyone and to every ear that listens and eye that reads, therefore I prefer to keep several secrets to myself; on the other hand, I try to liberate myself from a society that prohibits freedom, truth, and a life of independence.

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Source: from *Claf Hadash*, the magazine of the Community of Lesbian Feminists in Israel, Issue 18-19, Spring-Summer 1997. We wish to acknowledge Gila Svirsky for sending us this article.



# *Newsbriefs*

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Iran:

## **The battle begins for a freer Iran**

Kathy Evans in Tehran

Before leaving his house every morning, Cyrus, a retired Tehran businessman, peers from his balcony down the street, his golden retriever standing at his side, her tail wagging. "It's getting dangerous to take the dog out now. People keep throwing stones at her. I'll try again later when the neighbours are not around," he says, patting the dog's head.

In Iran, such a simple pleasure as walking the dog is considered an un-Islamic habit imported from the West. It is only one of the pleasures banned in the Islamic Republic.

The government determines what you wear, what you read in your newspapers, what novels are published, what films are made, what television programmes you can watch, and even who you can entertain in the confines of your own home.

After 18 years of Islamic revolutionary fervour, the majority of Iranians have had enough. They yearn for normality and freedom, for a return to the time when an Iranian passport did not have pariah status overseas, when business and industry flourished and jobs were plentiful.

Mohammed Khatami, the man they believe can deliver such changes, took power last Sunday as the country's president. He carries the hopes of two-thirds of the country's voters, particularly the young and women, for change and reform.

The changes they want strike at the very heart of the revolution and the hardline clerics who sustain the system in the name of Islam.

In the past few weeks of the run-up to Mr Khatami's inauguration, the hardliners have demonstrated their power

by arresting leading liberals in the Khatami camp.

Faraj Sarkuhi, an editor, is facing the death penalty on charges of espionage, and the prominent philosopher Abdul Karim Suroush, who believes religion is a private rather than a state affair, has been banned from leaving the country. Liberal figures in the Tehran municipality have been rounded up and charged with corruption.

Mr Khatami inherits a system rigged against change. Conservatives have the majority in parliament and will oppose his reforms at every step. His biggest problem, though, is the man at the top, to whom all political organisations including parliament and the president re sub-servient - the supreme leader, Ayatollah Khamenei.

In the election Ayatollah Khamenei seemed to back Mr Khatami's conservative rival, Nateq Nuri, the parliamentary Speaker. Mr Khatami has since been reminded in numerous newspaper editorials and speeches that he must pursue policies approved by the supreme leader.

What these warnings ignore is that Ayatollah Khamenei's status is being questioned as never before. Until now the issue could not be broached: those who dared to often ended up in prison.

Clerics have questioned Ayatollah Khamenei's status from the day he took over from his more illustrious predecessor, Ayatollah Khomeini. Many believe he is not qualified for the role of marja (spiritual leader) of all Shias. Since the presidential election, the debate has come out of the shadows.

Last month Grand Ayatollah Montazeri argued in a letter to the new president that the supreme leader was not above the law. The point has since been taken up by supporters of Mr Khatami.

But the reality is that the key revolutionary organisations report not to the president but to the supreme leader,

and it is that they have the power to arrest you for wearing the wrong clothes or having coffee with members of the opposite sex.

It appears, however that Mr Khatami has won the first round in the battle by appointing liberals to head the key ministries of foreign affairs, the interior, and Islamic guidance.

But on the eve of the inauguration, the editorials in pro-Khamenei newspapers are already full of criticism of the new faces. The battle, it seems, has only just begun.

Source: *The Guardian Weekly*, August 10, 1997, p. 4

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### Afghanistan: **Taliban use Islam for Violence Against Women**

The New York Times, August 29, 1997

Mr. Qalamuddin is the head of the General Department for the Preservation of Virtue and Prevention of Vice, the religious police of the Taliban, the Islamic movement that controls most of the country. Under his command, thousands of young men known as 'mohtaseb' - an Arabic word that translates roughly as 'inquisitors' - roam the land, watching for infringements of the Taliban's taboos, arresting some offenders and meeting out summary beatings and floggings to others. Some of these enforcers roat through dusty streets on Japanese-made pickup trucks...

Others patrol on foot, often with rifles, sometimes with switches fashioned from tree branches or lengths of electric cable.

Their role is to insure conformity with Sharia, the ancient Islamic social and penal code. The Taliban have ordered the stoning to death of couples caught in adultery, the amputation of the hands and feet of thieves, and public executions where male relatives of rape

and murder victims act as firing squads. Such punishments are not unknown in Saudi Arabia and other conservative Islamic societies.

Taliban rule has also come to mean floggings for women who allow faces or ankles to show beneath the head-to-toe shrouds called burqas that the Taliban have made mandatory. Other Taliban taboos include bans on women talking to men who are not blood relatives, making themselves visible to passers-by through the windows of their homes, or traveling in cars or buses alongside men who are not from their family.

Recently, there have been cases in Kabul in which Mr. Qalamuddin's men have beaten women for wearing white socks or plastic sandals with no socks, attire Taliban zealots have said was likely to provoke "impure thoughts" in men.

But many Afghans complain that the Taliban militants make up taboos as they go along. In the villages where most of the young, illiterate Taliban recruits come from, contact between men and women outside of family and marriage has always been forbidden... Mr Qalamuddin denied that the Taliban have unleashed a terror. On the contrary, he said, the Taliban have brought a measure of "peace and security" to the country that had been absent throughout the years of Communist rule.

Referring to a stoning of two adulterers beside a mosque in the southern city of Kandahar last August, he chuckled, saying it had been one of the Taliban's most successful demonstrations. "Just two people, that's all, and we ended adultery in Kandahar forever," he said. "Even 100 000 police could not have the effect that we achieved with one punishment of this kind."

Taliban rules ban women from working, deny education to girls, and restrict women and girls past puberty to domestic seclusion. But Mr. Qalamuddin's elaboration on what he depicted as the

ever-present dangers of sex lent weight to a common impression among ordinary Afghans that it is the Taliban not their critics, who are obsessed with sex.

Mr. Qalamuddin laid out a view of relations between men and women that seemed rooted in an Adam-and-Eve view of men as deeply vulnerable to corruption through unregulated contacts with women. In Islamic society, he said, these risks had been curbed by rules that strictly limited male-female encounters. "If we consider sex to be as dangerous as a loaded Kalashnikov rifle, it is because it is the source of all immorality,..."

Source: Excerpt from The New York Times, August 29, 1997

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Afghanistan:  
**Women's/Girls' Health Care ignored by Afghanistan's 'Islamic' rulers**

Doctor's Without Borders (DWB) is reopening its clinic in Shadai camp near Herat, Afghanistan. This program, which serves 18 000 displaced people who fled the front line in Herat, in western Afghanistan, was suspended on June 10 when the Taliban authorities forbade female Afghan doctors and nurses from working in a DWB clinic. According to the authorities, the female staff were "not proper Islamic women."

After negotiations, DWB agreed to replace female staff with new female staff approved by the Ministry of Health. It is vital to the health of the female population that they have access to healthcare and DWB staff. Due to cultural and religious restrictions it is forbidden for male staff to treat female patients. Afghanistan has the second highest maternal and fourth highest infant mortality rates in the world."

Source: "Healthlink", National Council for International Health

1701 K St., NW, Suite 600, Washington, DC 20006, U.S.A.

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India:  
**Bauls - Minstrels in Distress.**

Ruben Banerjee, in Murshidabad

The way to the divine  
Has been blocked  
By temples and mosques.

As these words of a Baul song bear out, the wandering minstrels of Bengal have always been above the narrow confines of religion. Clad in flowing robes, strumming an ektara, the Bauls have long been an integral part of the region's lush landscape, wandering from village to village singing of a universal God. Their faith comes straight from the heart and refuses to be circumscribed by Hindu or Islamic tenets; it is instead a synthesis of the unorthodox Sufi strain in Islam and the Hindu concept of Bhakti, or devotion. That is why the purists have always been suspicious of these self-proclaimed fakirs; history records many instances of both Hindu and Muslim Bauls being ostracised by religious puritans.

And it's happening once again in the Bengal of the '90s. Several incidents in the past few years suggest a disturbing trend of conservative elements targeting the free-wheeling lifestyle of the village singer-philosophers. Though Bauls are found throughout the state, the cases of persecution are being reported from the border districts of Murshidabad and Nadia, where a tiny band of these minstrels is struggling to survive against a renewed wave of intolerance.

Take the case of Sadar Fakir of Kurchaidanga, a village in Nadia. His life revolved round his ektara and the songs that debunked religion. "The search for Allah and Bhagwan is futile", says

Sadar. "Salvation lies in a universal love for mankind". But the local maulvis don't agree. In September last year, they called a religious congregation declaring Sadar a kafir (non-believer). That, in itself, was not so bad as Sadar had never pretended to be a believer. The real damage, however, was done when his land was forcibly cropped and his thatched house completely ransacked. Even worse, he was sternly forbidden from singing within the village boundaries. "I still can't sing inside my village. My soul was murdered", laments Sadar.

Similar treatment was meted out to Omar Shah Fakir of Alinager in Nadia. Late last year, the village elders called a meeting where Omar was charged with sacrilege; he was dragged out of his home and his beard shaved. A fine of Rs 1 001 was imposed and Omar's neighbours were debarred from socialising with him. His son Azizul moved out of the family home to escape the maulvis' wrath; Azizul has been threatened with a fine of Rs 400 if he allows Omar to play with his son. Omar's beard has grown back, but he hasn't quite forgotten the humiliating experience.

Social boycotts of Bauls are becoming common in the two districts. In Dharampur village, Murshidabad, 10 fakirs are currently facing such a ban. "Our only fault is that we believe that we are human beings. Being Hindus or Muslims is only incidental," says Kazem Sheikh, one of those ostracised. "They are harming Islam," justifies Karim Sheikh, the maulvi of the local mosque. Five years ago, six Baul fakirs were hacked to death for refusing to capitulate to the diktats of religious zealots in Kotgram, a village in Birbhum.

The Bauls, however, are now beginning to organise themselves against the fundamentalists' onslaught. The Baul Fakir Sangh recently organised a gathering at Kumirdah village in Murshidabad district, where several fakirs attacked the persecution by both "Muslim fanatics" and "Hindu bigots". Says Shakti Nath

Jha, president of the Sangh: "This gathering was held to serve notice that the Baul fakirs cannot be silenced. As in the past, the present too cannot drown out their voices".

The Bauls of Muslim origin may be facing the brunt of the onslaught, but those from a Hindu background are also in the firing line. When Gouranga Hazra of the Hindu-dominated Beldanga village in Murshidabad took on a Muslim fakir as his guru, he was beaten up, his hut burnt down and a boycott imposed on him.

The irony is that a community that decries formal religion has been caught in the crossfire.

The people who are now targeting this heterodox community are obviously out of touch with some of the greater traditions of Bengal.

Source: Excerpt from India Today, 15 April, 1997, pp. 118-119.

### **India Today**

F-14/15, Connaught Place,  
New Delhi 110 001, India.

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Pakistan:

## **Supreme Court moved for restoration of women's seats in National Assembly**

Staff Correspondent [DAWN]

Islamabad, May 25, 1997: A constitutional petition has been filed in the Supreme Court for the restoration of women's seats in the National Assembly.

The petition has been moved by Mr Kowkab Iqbal, advocate, and Fatima Kowkab in their capacity as president and secretary of the Citizens Welfare Association respectively by invoking the original jurisdiction of the Supreme Court. The petitioners submitted that 20 seats were reserved for women in the National Assembly for a period of ten years from the commencing day or hol-

ding of the second general elections in the country whichever is later.

In 1985, under the 8th Amendment, the words "second general election" were substituted with the words "third general election". The petition said that after the expiry of the deadline, the seats for the women stood abolished.

According to the petitioners, the governments of Benazir Bhutto and Nawaz Sharif promised to restore the seats for women but they could not do so as they did not have the requisite majority in the parliament. They took the plea that now that the PML had the majority in parliament, it could restore women's seats as it did by stripping the president of his power to dissolve the National Assembly.

The petitioners said that the government failed to fulfil its pledge. They submitted that disregard of the dignity of women was violative of Articles 15, 16, 17, 18 and 19 of the Constitution relating to freedom of movement, assembly, association, of trade, business or profession and of speech. The petitions said that freedom guaranteed under the articles were not available to women due to lack of their adequate representation in the National Assembly.

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India:

### **Muslim children entitled to maintenance: Supreme Court**

By T. Padmanabha Rao

New Delhi, July 31.

The children of Muslim parents are entitled to grant of maintenance under Section 125 of the Code of Criminal Procedure (Cr. P.C) for the period till they attain majority or are able to maintain themselves whichever date is earlier, the Supreme Court has ruled.

In the case of Muslim female children, they are entitled to get maintenance under Section 125 of Cr. P.C., till they get married, the court said.

This right of children of Muslim parents is not restricted, affected or controlled by divorcee wife's (appellant-Muslim) right to claim maintenance for maintaining the infant child/children in her custody for a period of two years from the date of the birth of the child concerned under Section 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Bench held.

In other words, Section 3(1)(b) of the 1986 Act does not in any way affect the rights of the minor children of divorced Muslim parents to claim maintenance from their father under Section 125 Cr. P.C. till they attain majority or are able to maintain themselves, or in the case of females, till they are married, the Bench pointed out.

Dr. Justice A. S. Anand, who delivered the judgment of the Bench, set aside a judgment of the Patna High Court which held that right to claim maintenance of the children (of the Muslim parents) under Section 125 of Cr. P.C. was taken away and superseded by Section 3(1)(b) of the 1986 Act and that maintenance was payable to the minor children of Muslim parents only for a period of two years from the date of the birth of the child concerned notwithstanding the provisions of Section 125 Cr. P.C.

The Bench, which included Mr. Justice K. Venkataswami, therefore, restored the order of the Trial Court, namely, Judicial Magistrate, First Class, Gopalganj (Bihar) directing the Muslim husband (respondent) to pay maintenance of Rs. 200 per month to his divorced wife (appellant) for a period of three months, that is, for the period of "iddat" in view of the relevant provision of the 1986 Act.

The trial court's order directing the respondent under Section 125 of Cr. P.C. to pay Rs. 150 per month for each of the three minor children till they attain

majority as well as its (trial court's) view - that the childrens' right to maintenance under Section 125 Cr. P.C. was not affected by the 1986 Act in any manner - was upheld by the Apex Court.

The 1986 Act - which aims to protect the rights of Muslim women who have been divorced - was enacted as a sequel to the Apex Court's judgment in the noted "Shahbano case" (1985).

The 1986 Act was not enacted to regulate the obligations of a Muslim father to maintain his minor children unable to maintain themselves which continued to be governed under Section 125 Cr. P.C., the Bench noted.

"Whereas the 1986 Act deals with the obligation of a Muslim husband vis-a-vis his divorced wife including the payment of maintenance to her "for a period of two years of fosterage for maintaining the infant/infants," while they are in the custody of the mother, the obligation of a Muslim father to maintain the minor children "is governed by Section 125 Cr. P.C. and his obligation to maintain them is absolute till they attain majority or are able to maintain themselves, whichever date is earlier," the Bench noted and added that in the case of female children this obligation extended till their marriage.

Both under the "personal law' (governing Muslims) and the statutory law (section 125 Cr. P.C.), the obligation of a Muslim father, having sufficient means, to maintain his minor children, unable to maintain themselves, till they attain majority and in case of females till they get married, is absolute, notwithstanding the fact that the minor children are living with divorced wife," the Bench explained.

"Indeed it would be unreasonable, unfair, inequitable and even preposterous to deny the benefit of Section 125 Cr. P.C. to the children only on the ground that they are born of Muslim parents," the Bench noted and added that "the effect of a beneficial, like

Section 125 Cr. P.C., cannot be allowed to be defeated except through clear provisions of a statute."

The Bench, in allowing an appeal from the appellant-divorced wife against the High Court judgment, restored the order of the Trial Court and the Revisional Court (which affirmed the Trial Court's order).

Source:

The Hindu Friday, August 01, 1997

SECTION: National :: Pg: 14 :: Col: d

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## Sudan: **SHRO's Women Office Condemns Beating of Student Girls in Sudan**

Press Release (For Immediate Release)  
September 8, 1997

On Saturday the 23rd of August 1997 at 12.00 a group of public order police - 'the NIF militia' - stopped buses transporting student girls from al-Ahfad university to their houses, at the university main gate. A number of NIF members got into each mini bus and ordered the drivers towards the Public Orders Centre in Rabi' square in Umdurman.

The girls were forced to get off the five mini buses and were taken to the Public Order police building where they were detained in a small room, accused of wearing obscene clothes. The students were wearing large trousers and long shirts that reach the knees and their heads were covered. They were not allowed to inform their families in spite of their continuous insistence.

At 5.30 PM the assigned judge arrived and started immediate summary trial. The girl students requested solicitors to defend them but were denied. They were lashed before they received medical examination.

Parents of the girls wrote a complaint against the judge who tried the girls, requesting a full investigation into the incident, mentioning their girls did not

commit any crime, they were arrested from inside the buses on their way home from the university.

The complaint was delivered to the Chief Justice who did not respond till now. The public order police however responded by arresting the journalist who wrote about the incident.

This was a clear attack on women's rights in the name of law and the justice apparatus. The trial was not held according to the due process as the girls were denied their rights to have solicitors. They did not have medical examination before they were lashed. Their trial was a summary trial and was not during the normal time for courts' from 8.00-14.00p.m.

The Womens Office of Sudan Human Rights Organisation condemns this violence against women, the unfair trial, and calls upon all governments, human rights activists and organisations, and women organisations to put the maximum possible pressure on the Sudanese Government to respect internationally recognised women's rights and to sign the international convention that prevents the discrimination against women, and on the other hand, to respect international measures for fair trials.

SHRO, BM Box 8238,  
London WC1N 3XX, UK

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Pakistan:

### **Member of National Assembly's remarks upset women activists**

Staff Reporter [DAWN] 15 May 1997

Karachi, May 14: Around a hundred and fifty activists of an umbrella organisation "Legislative Watch Group" created to monitor discrimination against women and minorities took to the streets on Wednesday in protest against the remarks by two members of the National Assembly during a recent debate on a bill to restore women's seats in parliament.

The opposition bill was introduced in parliament on May 7 and was rejected by 70 to 10 votes. Parliamentary secretary Syed Zafar Ali Shah of the PML had then said on the floor of the House that the government was in support of restoring women's seats and was planning to introduce its own constitutional package in parliament and that one part of this would include the restoration of 20 seats for women in the National Assembly.

In that debate PML MNA Chaudhry Asadur Rahman had been reported (in this newspaper) as saying that there was no reason for having separate seats for women in parliament because the elected members represented both the male and female populations. Mr Rahman also said that since children were also discriminated in society perhaps they should also be given special seats. Another PML MNA from Kohat, Ibrahim Piracha, then said that if women were given special seats then "tomorrow the so-called 'third sex' would also demand special seats for representation.

The demonstrators on Wednesday also said that since the government was planning to introduce a constitutional package now was as good a time as any to do away with the Hudood Ordinance since it blatantly discriminated against women.

In a separate Press release the Legislative Watch Group said that the government should set aside 33 per cent seats for women in parliament. Incidentally a similar demand has been made and is being deliberated upon in neighbouring India since the past many months.

After Wednesday's protest rally the umbrella organisation plans to hold a protest meeting next week at the APWA office, then a forum and seminar and eventually a joint Press conference.

The Legislative Watch Group comprises activists of the Human Rights Commission of Pakistan, the Aurat Foundation, the Karachi Women's Peace Committee, Shirkatgah, Women's Action Forum, War Against Rape, ASR, APWA, PILER, the Urban Resource Centre, the Movement for Joint Electorate, the United Baloch Foundation and the Karachi Reproductive Health Project. Meanwhile in a Press statement the Karachi chapter of Amnesty International (AI) said that women were completely under-represented in the national and provincial assemblies. This under-representation, it said, meant that women's concerns and their viewpoints were hardly taken into account when legislation or policy decisions are made.

AI said that 35 women contested the 1997 polls compared to 11 in 1993. It said that out of 17 women contestants in provincial assembly elections only one woman was elected compared to 7 the last time around in 1993.

© Excerpt from DAWN Group of Newspapers, 1997

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## Pakistan: **Shirkat Gah celebrates its 20th year**

More than 500 women and men belonging to some 150 organisations from all over Pakistan gathered at the APWA College ground in Lahore to take part in a mela celebrating the 20th anniversary of Shirkat Gah Women's Resource Centre and its commitment to women's rights and development... Participants who came from places as diverse as the village of Bhutri in Hazara Division and the urban katchi abadi of Ali Mohammad Goth in Karachi brought their handicrafts, poems, songs and dances to enliven the celebrations.

Pakistan poet and women's rights activist Kishwar Naheed also recited a num-

ber of her poems relating to the history of the women's struggle in Pakistan. Tracing the history of the collective since its formation in 1976 founder member Aban Marker stated: "Twenty years ago when we began, we wanted only to be able to prove that an ideal - of sisterhood, of equity, of a new way of being was possible. Our aims were modest if revolutionary. The power of the ideal is here for all of us to see now, in Shirkat Gah's survival and growth. The aim is now less modest and still revolutionary. An institution has arrived."

Looking towards the future, founder member Najma Sadeque stated: "It has not been all roses. Over the past 20 years it seems that the government has been creating more and more hurdles in the way of women's participation in all spheres of life. For every two steps forward, it seems that we have been dragged one step back." SG collective member Farida Shaheed spoke about the formation of Women's Action Forum and the involvement of Shirkat Gah members in that process.

Member Meher Marker Noshirwani highlighted Shirkat Gah's transformation from a part-time office to a full-fledged, full-time women's resource centre in the mid-1980s... An award was presented by renowned human rights activist Asma Jehangir for the "unsung heroines of change"... Certificates in Paralegal Training were also distributed to 14 trainees from Punjab, Sindh and NWFP.

Shirkat Gah was founded in 1976, by a group of dynamic young women who found they shared a common perspective on women's rights, development and advocacy. Shirkat Gah - literally, a place of participation - is a non-hierarchical collective whose purpose is to increase women's autonomy, promote gender equality; and actively cultivate democratic norms... Over the past 20 years, Shirkat Gah has grown from a one-room's office in a member's home to

two full-fledged offices in Karachi and Lahore with a total of some 70 people including collective members.

**Shirkat Gah, Women's Resource Center,**  
208 Scotch Corner, Upper Mall,  
Lahore-Pakistan

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South Africa:  
**South Africa preparing to officially recognize polygamy**

(The Boston Sunday Globe, July 13, 1997)

The black majority government is moving to give tribal weddings the same recognition as church marriages and to accept the practice of polygamy. Under previous rule, African traditional marriage ceremonies were not recognized by the state. Only church or civil weddings had full legal status... "The main difference is with a customary union, a man can have more than one wife," said Mary De Haas, an anthropologist with the University of Natal, "whereas he can't if it is a statutory marriage."

"A marriage law common to everyone in the country should seek to correct the prejudices of the past by recognizing whatever union is clearly accepted by the established cultural systems of South Africa." That is the opening sentence of a report by a government commission on harmonizing traditional law and the country's new constitution...

It would also give females equal rights of inheritance with males, replacing the frequent favoritism toward the eldest son. It also endorses the practice of "lobolo", the traditional payment of cattle or cash by the groom to the bride's family. Polygamy, practiced mainly in rural areas, will be formally accepted if the commission has its way... The commission's recommendation to recognize polygamy promises to raise disputes.

"There is a strong across-the-board opinion from the women that polygamy must go," said Jenine Hicks of the Durban Community Law Center, who is helping rural women organize opposition to the practice.

"For such an initiative to be a success, it has to come from within the community, from black women," Hicks said. "They are the ones who are going to be challenging traditional practice and beliefs, and who are going to have to live with it. They find polygamy an incredibly discriminatory, disempowering practice that affects their status within the family."

University of Natal's De Haas asks: "what happens if a woman comes along and says this is gender discrimination - how can a man have two wives and we can't have more than one husband. As a matter of equality you could argue that."

According to a survey conducted at the University of South Africa, between 35 percent and 40 percent of marriages in the Pretoria area last year combined traditional rituals with church or civil weddings. In Parliament, the issue is how to bring the customary practices into line with a constitution that opens the way for legislation recognizing marriages under any tradition, system or personal or family law...

Source: The Boston Sunday Globe, July 13, 1997.

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Indonesia:

## **Pesantren attracts Moslem women in "jilbab"**

By Tedy Novan.

Yogyakarta (JP): Yogyakarta is not a santri or strict Moslem town like Pekalongan in Central Java or Ponorogo in East Java but the city sees more and more Moslem women wearing jilbab (headwear) and cadar (veils).

Their appearance draws much attention. Some women wear black robes which cover the entire body and leave no part visible. Sometimes they also cover their faces with black transparent cloth. The practice - common in Middle Eastern countries - is still rare in Indonesia, with over 160 million Moslems.

On her way to market, Ani, a local woman, leaves her house wearing black robes from head to feet. She also wears a pair of gloves and socks.

At the market, Ani's presence soon drew attention. Some pointed whilst whispering to their friends. Others shook their heads in amazement. But for the traders at the market veiled women like Ani are common. "That woman used to doing her shopping here," said a trader.

Ani paid and put the money in front of the trader, who did not seem offended.

Veiled women like Ani may be students. Some form groups pesantren (Islamic boarding schools). One such community of veiled women is an education center, called Pondok Pesantren Tarbiyatun Nisaa (Islamic boarding school for female education), located in Degolan village, Sleman, north of Yogyakarta. Ani is one of the inhabitants of the pesantren.

At this pesantren, there are 32 students from Java, Sumatra, Sulawesi and Nusa Tenggara. The women, with an average age of 20, conduct a routine life at the pesantren in accordance with the strict schedule laid down by the masters. The

day starts before the morning call for subuh prayer. After the subuh prayer a recitation of dzikir and reading of the Koran begins.

Formal education starts at 5:30 am in a room measuring 5 m x 7 m. The pesantren has three permanent teachers and three outside teachers. Only two of them are men and the rest are women. The students are instructed in akidah (faith), religious law, explanation of passages in the Koran and hadits (the statements and deeds of Prophet Muhammad).

The morning session lasts for an hour, after which the student wash and bathe. Classes resume at 7:30 and go until noon. The students also study sewing, flower arrangement, cooking, handicraft making, planting and even journalism. In addition they learn to raise chickens and ducks, and cultivate chillies, sweet cassava and broccoli for their own consumption.

Together they produce a monthly magazine called Salafi, with a circulation of 11 500 copies distributed throughout Indonesia, Japan, Australia and a number of Arab countries.

Ummu Amir, the school manager, said that strict schedules and rules are enforced to ensure that the students only use their time for productive purposes.

"Spare time without activities will only lead to sin. At this pesantren, time is not wasted and it is solely for the observance of religious duties," said Ummu Amir, whose original name is Khodijah Hasan Baisa.

Very tight restrictions are placed on the interaction between men and women. Even the ustadz (teacher) Umar Ja'far Thalib, one of the male teachers, when teaching the female students, is separated by a black-cloth screen.

Before marriage, a man who is interested in wedding, may only listen to his prospective wife's voice from outside a joint prayer session of male and female

members. A declaration that he likes her will be considered as a request for marriage. Not long afterwards the couple are married. "There is no courting session" said Ummu Amir.

The pesantren obtained its permit from the Ministry of Religious Affairs on Sept 30, 1994. Ummu Amir, whose husband is Ustadz Umar Ja'far Thalib from Yaman, has often toured provinces in Indonesia.

With the upsurge of interest in recitation sessions Ummu Amir has been encouraged to establish her own pesantren. The first session had only 15 participants and the second one 35. Each student pays Rp 60 000 per month. Education at the pesantren lasts two years.

The pesantren aims at educating women to manage a house hold. Women should live their lives at home in accordance with women's life at the time of the Rasulullah (Messenger of God) Muhammad. This is to avoid slander.

According to Prof. Syafii Maarif, secretary of the Muhammadiyah Moslem organization, a community like Pondok Pesantren Tarbiyatun Nisaa has a tendency to isolate itself from social life.

Islam does not recommend that its members shut themselves off. "God created men to communicate with each other, not to make a community that is separated from its environment," said Maarif, a history graduate from Chicago University in the United States.

Source:

The Jakarta Post (Tuesday) August 12, 1997  
(page 9)

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Qatar:

## **In Changing Islamic Land, Women Savor Options**

By Douglas Jehl

Doha, Qatar - Laala Mohammed, a 24-year-old medical technician, says that new doors are opening every day for women in this conservative Persian Gulf country. What she does not know is whether they are the rights ones.

About 6 000 Qatari women graduate each year from the University of Qatar, which educates 90 percent of female high-school graduates, and more and more of them are going on to work, even side by side with men, something that until recently was widely regarded as un-Islamic.

Qatar's undersecretary of education is a woman, the first to hold a prominent Government position. More firsts are expected later this year, when women have been promised a right to vote in the country's first municipal elections.

But Ms. Mohammed's elder brother still insists that she veil her face when she leaves the house with him, completing a protective uniform that already consists of a black head scarf and a shapeless black abaya, or cloak. "All day at work, I wear only a head scarf and a lab coat, so anybody can see what I look like, men as well as women," Ms. Mohammed said the other day during a discussion that offered a glimpse into the lives of young Qatari women. "But my brother is very strict. He says that if his friends see my face, there will be talk."

A social transition is clearly under way in Qatar, where strict allegiance to the fundamentalist Wahabi Muslim faith and to local custom has for centuries required that women be largely invisible outside the home. As many as 30 percent of Qatari women now work, local officials say. Some of them drive

cars of their own, although they must prove that they have a need to do so.

Unlike Saudi Arabia, Qatar is not patrolled by religious police. Qatar allows foreigners to purchase alcohol, and although it forbids Muslims from doing the same, some Qataris find access to beer and liquor through a thriving black market.

But in the Middle East, Qatar still probably ranks behind only Saudi Arabia in the limits it imposes on what women may do or wear. Most marriages are still arranged, with most social contact between unrelated men and women forbidden under unwritten codes of conduct.

The university is strictly segregated, and it became clear during the group discussion, held in the separate headquarters for women workers of the Red Crescent Society, that change has become a source of confusion and debate among women as well as men.

"I think in our society we should cover our faces," announced Rasha al-Mana, 26, who holds a clerical post at the university. Of five young women who agreed to take part in the session, she was one of three who remained cloaked from head to ankle through two hours of animated discussion. When she travels to Europe or the United States, Ms. Mana acknowledged, she does not wear a veil, a head scarf or an abaya. But she said that at home there remain lines that should not be crossed.

"Here, we can't be against the people," Ms. Mana said.

Under its new Emir, Hamad bin Khalifa al-Thani, who took power two years ago, Qatar is rushing to reshape itself, and one of the Emir's three wives, Sheika Moza bint Nassar al-Misned, has already begun to assume a persona of her own, even as the other two remain virtually invisible. But both the country's leaders and its people are plainly deter-

mined to balance the modern with tradition.

Conversations with ambitious, well-educated women made clear that few even among this group are eager to fling aside their abayas or otherwise to trample on taboo.

Most of the women nevertheless made clear that they yearn to play a more prominent role in Qatari society. Those in their 20's said they would not tolerate being one among several wives, even though Islamic law permits men to have as many as four wives. All expressed relief that a woman's right to refuse a marriage proposal is now widely accepted, something they said was not true five years ago.

But in tiny Qatar, whose citizens number only 150 000 of a total population of 600 000 and where most social life revolves around large, extended families, the women said they were reluctant to press for swifter change.

"We can't do it all at this very limited time," said Dr. Kawkaw al-Noaimi, a professor of chemistry at the university, who went on to describe the new Emir as a ray of hope.

"We have to do it slowly," she said. "We want to go on, not go back. This is the only chance that we've seen in so many years. So why spoil it by asking too much."

Among the young women, only one said she believed that classes at the University of Qatar should be mixed by sex.

But the others said such a step was bound to be seen as so scandalous that attendance at the university of 8 500 would plunge, perhaps by 80 percent. The ratio of women to men at the university is 3 to 1, in part because many young men join the army and the police force after leaving high school, but also because most families willing to send their sons abroad for undergraduate

study cannot conceive of doing the same for their unmarried daughters.

Men and women in Qatar otherwise still lead largely separate lives, with men socializing among themselves late into the evening while women are expected to remain mostly at home.

In the course of the discussion, each of the women mentioned this as troubling, and they said they were troubled too by a trend toward Islamic orthodoxy that all agreed has left their brothers more conservative in their views than their fathers.

But all saw reason for hope in the example set by Sheika Moza, who led a women's delegation to the United States late last year in preparation for the establishment of a new university in Qatar. Still in her 30's, she has also broken with tradition by delivering a speech at the annual women's graduation ceremonies at the University of Qatar.

"People here tend to wait for someone else to take the first step," said Ms. Abulfath, the banker. "And if it's the wife of the Emir taking that step, that matters a lot."

Sheika Moza is the second and youngest wife of the Emir. She does not permit herself to be photographed, saying that she does not want to alienate conservatives. But people who have met with her and Sheik Hamad together said they appear to function very much as a team. Her favored role may also be reflected in the fact that it was her eldest son, now 19, whom the Emir designated last year as his heir.

In a country with few female role models beyond the belly dancers and submissive soap-opera characters who remain the staples of most Arab television, Sheika Moza has said that she is conscious of setting an example for young women.

"I'm trying to put them on the right track to be themselves and at the same

time to be open to the rest of the world," she said.

For now and probably forever, though, most Qatari women who have begun to venture into new territory say that Islamic faith remains their main compass.

"We should mix with men outside our families only out of necessity," Ms. Abdullah, the student studying in Bahrain, said firmly. "If a man tries to talk to me in an airport because he needs something, like directions, fine, I will talk to him. But if he just wants to talk, that's forbidden."

Source:

Excerpt from New York Times, Sunday, July 20, 1997

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Turkey / Iran:

## **Islam and Liberty: Struggles in 2 Lands**

By Stephen Kinzer

Traveling between Turkey and Iran these days produces an odd sensation of dissonance. In militantly secular Turkey, a Muslim-oriented political movement is thriving despite intense efforts by generals and others to suppress it. In orthodox Iran, a relatively moderate cleric who preaches tolerance and studies Kant and de Tocqueville has been elected President.

It would be too simple to suggest that the two countries are changing political places. Turkey is not entering a period of religious rule, nor is Iran about to embrace Western values. Yet in both countries, people seem to be sending a similar message. They want a government that respects individual rights but also gives religion an important role in public life.

Turkish generals, who consider themselves the guarantors of the secular state, detest the country's Islamist leader, Necmettin Erbakan, and last week, finally yielding to their pressure, he resigned as Prime Minister. The generals

and their secular allies rejoiced, congratulating themselves for saving the country from fundamentalism. No longer, they said, was Turkey in danger of becoming "another Iran" or "another Algeria."

In some quarters, however, disquieting questions were being asked. By using their power to block the rise of an Islamic party, weren't the generals following the same policy as the late Shah of Iran, and more recently the Algerian military? By repressing that party, might not they be radicalizing it and driving some of its members underground, laying the groundwork for far more serious trouble in the future?

The generals believe that by forcing Mr. Erbakan from office, they have crushed a grave threat to Turkish freedom. To them, Islamic political power means obscurantism, fanaticism and ultimately dictatorship. Others see it as simply a response to what growing numbers of Turks want.

The founder of modern Turkey, Mustafa Kemal Ataturk, forged his new nation in the 1920's by ripping it from its Ottoman religious roots. He issued a series of revolutionary decrees designed, among other things, to eliminate forever all vestiges of religious influence over government and politics.

It is now becoming clear that such a radical action would inevitably produce a reaction. After a delay of three-quarters of a century, the reaction has begun. Through Mr. Erbakan's movement, millions of Turks are saying that they want to reclaim some of their Muslim traditions.

### **Alienation**

During his 50 weeks as Prime Minister, Mr. Erbakan proved to be remarkably mild, and took no strong steps toward establishing an Iranian-style theocracy. That was not enough to satisfy the generals, who consider him a conniving

hypocrite and are certain that he is hiding his true fundamentalist agenda.

Turkey is a highly dynamic society, just as Iran was in the period before the Islamist takeover. Huge numbers of villagers have flooded into big cities, bringing their religious beliefs with them. They have slowly become alienated as the tired and corrupt political establishment fails to meet their needs.

Many of them vote for the Welfare Party, Mr. Erbakan's political movement, and Welfare leaders are certain that as migration continues and other parties continue squabbling among themselves, their own appeal will grow.

Secularists, on the other hand, hope that this marginalized mass will slowly be integrated into the mainstream and not feel the kind of strong disaffection vital to Welfare's success.

### **Lightening Up**

Just the opposite sort of disaffection is visible across the border in Iran.

Iranians are tired of being ruled by dour mullahs who want to regulate not just the clothes they wear on the street, but also the music they hear and the movies they watch inside their own homes. Many remain committed to the idea that religious leaders should play a role in public life, but they want that role to be less all-encompassing. Keep following Allah, they seem to be saying, but lighten up.

Mohammed Khatami, elected President in a landslide last month, won support during the campaign by advocating an easing of some of the nation's religious restrictions. Given Iran's political realities, it is impossible to predict how far Mr. Khatami will try to go to liberalize public and private life.

The key to his political résumé, however, is the fact that he was forced from his job as Minister of Culture and Islamic Guidance several years ago because ultra-conservative ayatollahs considered

him too tolerant. Among other transgressions, he approved the screening of films less than fully favorable to Islamic rule, and once allowed a female singer to give a solo show in Teheran.

If Mr. Khatami manages to move his country toward a balance between religious and secular power, he will be finding an equilibrium for which Iranians have paid a terrible price.

Turkey's challenge is to find that equilibrium without suffering through a nightmare like Iran's.

Source:  
Excerpt from The New York Times, Sunday, June 22, 1997

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Turkey:  
**Ruling islamists rocked by sex and sleaze scandal**

By David O'Byrne,  
17 March 1997, Istanbul

A sex scandal involving the leaders of two high-profile Islamic sects has severely jolted Turkey's new Islamist-led government.

Viewers of a private Turkish television channel were treated to live coverage of a police raid on the house of "Sheikh" Muslim Gunduz, leader of the ultra-Islamist Aczmendi sect.

The raid, prompted by Turkey's strict but rarely-enforced laws against adultery, produced the spectacle of the bearded, turban-wearing sect leader being caught naked in bed with a 23-year-old woman. Gunduz, 53, has been married for more than 30 years, but reacted by making the unusual claim that he had married his young companion 20 years previously.

Subsequent live appearances by the woman, Fadime Sahin, enjoyed some of the highest viewing figures in Turkey's 28-year history of television broadcasting.

Wearing a traditional Islamic headscarf, Sahin made emotional allegations against both Gunduz and another sect leader, Ali Kalkanai. She said Kalkanai, a self-styled "exorcist of demons", regularly preyed on young female students, and had raped her and forced her into a religious marriage before passing her on to Gunduz, who had subjected her to similar abuse.

Her accusations have led to a bitter war of words between the Government and the media.

The row has been further fuelled by allegations made by Kalkanai's estranged wife. She appeared on television claiming not only that her husband had close links with senior members of the governing pro-Islamic Welfare Party, but that a company he owned had been awarded a lucrative contract by the Islamist mayor of Istanbul.

The Government has reacted by saying that anti-Islamist groups active within the police have combined with powerful media groups in an attempt to bring down the democratically-elected administration.

The Welfare Party, which came to power at the head of a coalition with the True Path Party in the middle of last year, has aroused suspicions among the security forces that it might seek to undermine Turkey's secular status.

There has even been rumours of a possible military coup.

The list of government opponents has been growing. Large media groups are angry with proposed legislation which will force them either to close or sell off parts of their operations.

Observers have noted that the planned laws have been announced in the wake of a series of widely-publicised scandals concerning connections between senior politicians and organised crime.

Public concern has been aroused as the new laws are perceived as posing a serious threat to press freedom.

The current allegations concerning sect leaders have also sparked a wider debate over the nature and role of Islam in modern Turkey.

Sects, or Tarikats, such as those at the centre of the current scandal, have been around for more than 1,000 years. Although they were banned when the secular Turkish republic was founded in 1925, they continued to exist illegally until laws were relaxed in the 1960s.

With the recent rise of the Welfare Party, many Tarikats have assumed a higher profile, campaigning for strict Islamic Sharia law, including the right for men to take four wives.

Much of Welfare's support comes from devout but more moderate middle-class Muslims disillusioned by the corruption of the secular parties in recent years. But the recent upsets and scandals may encourage them to change their allegiances. - Gemini News

About the Author: David O'Byrne is a freelance journalist working in Turkey.

Copyright: News-Scan International Ltd (1997)

17/3

Excerpt from The Guardian Weekly, August 10, 1997, p. 27

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## Organisations and Projects

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### HomeNet

#### The International Network for Homebased Workers

HomeNet has been set up to coordinate work with homebased workers in different parts of the world. Since the 1970s there have been organisations of homebased workers. These organisations aim to make homebased workers visible and to fight for recognition of their rights as workers.

The first of these organisations was the Self Employed Women's Association (SEWA), of Ahmedabad, in India, a trade union for women workers in the informal sector, including homebased workers. Other groups have been set up in South East Asia; South Africa; North America and Europe.

In some cases, trade unions have begun to organise homeworkers; in others, non-government organisations have been set up in the form of networks or cooperatives.

Over the last six years, there have been growing contacts between different groups in both North and South. In 1994, a meeting was held to set up an international network to extend these contacts and to coordinate international lobbying work.

The aims of the network are:

a. To build an international network for homebased workers and their organisations as well as NGOs, cooperatives, trade unions, researchers, women's groups etc. including all those directly or indirectly undertaking work in this field.

b. To coordinate an international campaign for the improvement of homebased workers' conditions of work at national, regional and international levels.

c. To collect and disseminate information on homebased work to members of the network and other interested organisations.

d. To assist in obtaining technical assistance for, and act as a channel of the same to homebased workers.

The network aims to publish a regular newsletter as part of the process of exchanging and disseminating information on homebased workers and their organisations. We welcome comments, criticisms and contributions to the newsletter.

Contacting Home Net:

#### Asia

##### Self Employed Women's Association

SEWA Reception Centre  
Opposite Victoria Garden  
Bhadra, Ahmedabad 380001  
India

#### Africa

##### Self Employed Women's Union

PO Box 62745  
Bishopsgate 4008  
South Africa

#### Americas

##### UNITE

25 Cecil Street, 2nd Floor  
Toronto  
Ontario M5T 1N1  
Canada

#### Europe

##### HomeNet

24 Harlech Terrace  
Leeds LS11 7DX  
United Kingdom

#### Email address

homenet@gn.apc.org  
clairec@indigo.ie

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### Women's Rights Network (WRN)

The Women's Rights Network (WRN) is a non-profit, non-governmental human

rights organization located in Boston, Massachusetts, USA. Founded in September of 1995, WRN strives to link activists in every corner of the world who are working to end domestic violence, so that they can access their most valuable resource: each other. WRN serves as a bridge between battered women's advocates and organizations in different countries by offering them ongoing opportunities to share strategies, ideas and resources, as well as to provide mutual support and inspiration to one another. WRN's philosophy is that by building and sustaining a dynamic global network of activists around domestic violence and related issues, we can begin to create a world that is free from violence against women and children. We welcome you to our network.

#### **Projects on the Horizon**

As WRN looks to its future projects, it will work to maintain dialogue with battered women's advocates globally to ensure that their needs shape the development of WRN's program areas and specific international education and exchange projects. At the suggestion of battered women's advocates, including WRN's program participants, WRN is currently considering:

- Organizing a public education event on domestic violence as a violation of women's human rights for the 16 days of Activism Against Gender Violence 1997 Campaign.
- Holding an International Strategy Session on the needs of battered immigrant and refugee women and their children.
- Developing a database within its International Resource Center that monitors the status of domestic violence legislation, or lack thereof, in every country in the world.
- Expanding its program areas to include a Muslim Women's Project which would focus on the interconnections

between violence against women, Islam and modernity.

#### **Women's Rights Network**

One Post Office Square, Suite 1900  
Boston, Massachusetts 02109  
USA  
Tel: 617-382-1276/1277  
Fax: 617-382-7000  
Email: wrn@fhe.com

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Palestine:

#### **Association of Women Action for Training and Rehabilitation**

[El-Bireh-Ramallah]

(The Palestinian Federation of Women's Action)

#### **Identification**

Women's Action Society for Care and Rehabilitation of Women is a women's society that provides free access to all Palestinian women sectors in the two adjacent cities and for the surrounding villages and camps.

- The society was established in 1994.
- It is one of the Societies where the Women's Action Federation carries out its program through.
- Its headquarters are in El-Bireh.
- Its branches extend to the villages, camps and neighborhoods of Ramallah district.

#### **Motivations behind establishment**

1. Women's Action Society for Care and Rehabilitation of Women was established as a women's society with social character that aims at enhancing women's awareness towards issues related to women i.e. in justice, equality and freedom by consolidating rules of democracy and justice in laws and legislations.
2. Defending women's rights in education, work, health care, training and rehabilitation.

3. Defending the rights of working women, maintaining laws and regulations that provide for equal opportunities between men and women in employment, rehabilitation, training, promotion, retirement, old age allowances and yearly payment increase.

4. Facing violent phenomenon against women, providing social assistance and protection according to available possibilities and in cooperation with specialized centers.

5. Enhancing women's role in society through developing her skills and abilities in different spheres of work.

6. Developing women potentialities in Palestinian countryside.

**This could be achieved through:**

1. Arranging programs to protect women from physical and psychological violence and that is through establishing a center supervised by the society that would provide legal and psychological consultations, and initiating various activities that would curb such phenomenon, and to work on documenting such violations from women in their places of work, or in the streets, etc.

2. Organizing primary health care programs through first aid courses, health education, health prevention programs, child development programs, besides offering treatment at the dental clinic of the Society.

3. Conducting programs for training and rehabilitation of women and that is through arranging workshops to discuss syndicate work, women leadership, democracy, establishing contacts with women groups, and the role of law as a means of maintaining changes in society, and to work on establishing specialized women library.

4. Arranging programs for providing skills in the area of administering projects and institutions, marketing, financial analysis, using the computer, initiating courses in food processing, agriculture guidance and in manual handicrafts.

5. Testing public opinion regarding women issues through conducting various surveys on issues of interest to women.

**Address:**

El-Bireh,  
near Friends Secondary School playground,  
P.O. Box 938,  
Ramallah. Tel. 050-358092

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The Kurds:

**International Kurdish Women Studies Network**

An International Kurdish Women Studies Network is in the process of being established in the goal of promoting the study of Kurdish women from diverse disciplinary and theoretical perspectives. As a first step, the network is planning to hold conferences and workshops, build an archive and a library, and compile a bibliography.

Those interested in gender studies of Kurdish society, activists in the women movement, or those who want to contribute to the project may join by sending a concise CV (including areas of research interest, languages used, and address) to:

**Shahrazad Mojab,**

Department of Adult Education,  
OISE, 252 Bloor Street West,  
Toronto ON M5S 1V6 Canada  
(416-923-6641, ext 2242  
smojab@oise.utoronto.ca).

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India:

### **Secular Initiative**

The Indian Muslim Liberals, largely urban but secular, have been fairly indifferent of affairs concerning their community. While not really accepting the authority of the clergy, pandered to by political parties over the years, the secular liberals were, at the same time, unwilling to shed off their apathy regarding the welfare of the community at large. Until the demolition of the Babri masjid on December, 1992.

Just as secularists came out onto the streets in protest against this violent attack on the Constitution, so also did the Muslim liberal whose shock turned into a spontaneous realisation of his responsibility towards the community at large. Since then this has found expression in seminars, meeting, village level discussions and the formation of Forums to highlight issues concerning the Muslims in particular and the secular society in general.

Secular Initiative is one such effort by a group of Muslim liberals. The idea is to create an awareness amongst the Muslim community that will facilitate its development and progress, and at the same time ensure that the problems facing the community are addressed through a secular vision.

Secular Initiative has taken a conscious decision to network with secular groups working in the country. Muslim organizations like the Waqf Board, Haj Committee, Muslim Personal Law Board will be up for scrutiny as will be any future 'rulings' by the clergy concerning the supposed welfare of the community.

The group has decided to investigate the performance of the Wakf Board in view of complaints that the Board has long ceased to fulfil the objectives for

which it was created. It will also examine in minute detail the birth and functioning of the Muslim Personal Law Board. It has published a detailed report on the police raid on Nadwa, an institution of Islamic learning at Lucknow in Uttar Pradesh. The blatant disenfranchisement of Muslim voters in Delhi and Bombay has been taken up as part of a joint campaign with Secular organizations working in these cities. A major seminar on Reservation for Muslims has been organised by Secular Initiative which has also circulated a note on the subject amongst vested interests as well as secularists. This is the first news letter of what we hope, will become a quarterly effort.

We appeal to you to help by way of comments, suggestions, ideas, reactions and of course, whatever little finances possible to keep the Initiative going. We hope to act, with you, as an intermediary between the Muslim community and Secular groups, a pressure group within the Muslims and a sentinel with a finger on the secular pulse of India. The founder members Secular Initiative include, Atyab Siddiqui, Danial Latifi, Mrs Rafia Ziauddin, A.R. Khan, Iqbal Husain, Jamaluddin Ahmad, Seema Alavi, Col (Retd) M.H. Khan and Seema Mustafa.

#### **Secular Initiative**

201 Bhikaji Cama Bhawan,  
Bhikaji Cama Place, Ring  
Road, New Delhi 110 066  
India

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Turkey:

### **Lambda (Istanbul)**

Lambda (Istanbul) is a liberation group for gay, lesbian, bisexual, and transgendered people in Turkey. Lambda, Istanbul is the largest queer liberation group in Turkey. It was formed by a small number of gays and lesbians as a result of a police ban on Christopher

Street Day celebrations in 1993. Since then, Lambda, Istanbul has grown in membership and aims to raise its voice on behalf of the gay communities in Istanbul.

Homosexuality is not a criminal offence in Turkey, but some articles of the highly flexible police regulations can be used very easily to ban meetings and demonstrations on so-called public morality grounds. In 1995 and 1996 Lambda, Istanbul planned activity weeks which would have included gay and lesbian themed films, panels discussions, and exhibitions. On both occasions, they were banned by the police and the Governor of Istanbul, who claimed they were against public morals. The organizing committee was advised by police not to make any further attempts as the Turkish society was not yet ready for the visibility of homosexuality!

Despite this pressure and opposition, we are still carrying out our projects:

Our eighth issue of our bi-monthly magazine is out in June 1997, it is available in alternative bookstores in Istanbul and in Ankara.

We are on air with a weekly one hour GL radio program on Acik Radio since May 1996. It is the first GL program in

Turkey's history and has enabled us to reach a greater number of people.

In collaboration with the AIDS Prevention Society in Turkey we have prepared the first Safe Sex brochure addressing gay men. The current objective of the AIDS Prevention subgroup of the group is to increase the availability of water-based lubricants as well as safe condoms. A safe sex hot-line project is in process as well.

Despite the serious work we do, we are all volunteers, who come together determined to keep on working against our society's prejudices, homophobia and Turkey's anti-democratic law and regulations.

Radio program: Istanbul, Acik Radyo, 94.9 FM, Monday night 00.00-01.00

Call +90 (212) 296 2389 (4 lines) to go on air the program.

Please send us your comments, contributions, recent news items, and your requests for contact info. Lambda Istanbul at:

Snail mail: PK 103 Goztepe,  
Istanbul Turkey

Fax: +90 212 224-3792 (Talk first to ask for connection to fax)

Email: [turkiye@qrd.org](mailto:turkiye@qrd.org)

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## Bulletins and Journals

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### Women:

#### A magazine of the Babikar Badri Scientific Association for Women's Studies

Contents of some back-issues :

Gender Roles in Sudanese Conflict (December 1996 )

The Sudanese Women's Movement (June 1997 )

International Subscription fees (Annual) US\$ 40

Subscription fee for Africa (Annual) US\$ 30

Bank drafts and cheques transfers payable to BBSAWS.  
(Sudan Commercial Bank. Omdurman, Sudan)

#### Babikar Badri Scientific Association for Women's Studies

P.O. Box 167 Omdurman  
Sudan

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### Inside Indonesia:

#### Bulletin of the Indonesia Resources and Information Programme

Inside Indonesia gets behind the soundbite and official propaganda. Every three months, it keeps you informed about the real Indonesia

Recent issues have included:

Elections

Paedophilia in Bali

Java's new middle Class

Indonesia migrant workers in Malaysia

Ethnic Violence in Kalimantan

Alternative Press

Student Movement

Islam

Subscription rates in Australian Dollars

	4 Issues	8 issues
Individuals	18.00	34.00
Institutions	30.00	58.00

Overseas subscribers must add AU\$ 12 for 4 issues and AU\$ 24 for 8 issues for postage charges

#### Inside Indonesia

PO Box 190

Northcote, VIC 3070, Australia

Phone: +61-3 9419 4504

Fax: +61-3 9416 2746

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## **Newsheet:**

### **A quarterly newsheet on women, laws and society**

Produced by Shirkat Gah for the International Solidarity Network of Women living Under Muslim Laws (WLUML)

#### **Shirkat Gah: Women's Resource Centre**

208 Scotch Corder, Upper Mall  
Lahore, Pakistan  
Fax: (92-42) 571 3714

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## **Awaken / L'Eveil**

[Towards a better understanding and a more effective strategy for the eradication of all forms of female circumcision ]

Volume 1 Issue No. 1, June 1997

Editor: Asma Abdel Halim

We would like to welcome all organisations and individuals who are trying to build a strategy for eradication. Send us news about the work and publications of your organisations. Let us know about you and those in your network.

### **Awaken**

c/o Equality Now  
226 West 58th ST. #4, New York, NY 10019, USA

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## **Thamyris**

### **A Cross-continental journal**

Thamyris is an autonomous journal and international forum for cultural criticism. True avant-garde scholars all over the world participate in the journal and submit their work on mythmaking and the unravelling of myths. They make dissenting voices heard, spark incisive viewpoints and initiate ongoing debates.

A unique resource of feminist, lesbian, gay and ethnic research.

Feminist studies and other innovative studies in the fields of lesbian, gay and ethnic scholarship have introduced a valuable resource for pioneering research. For they have laid out ground-breaking paths for radical critique of ideology and culture. Thamyris is committed to providing a focal point for such work concerned with gender, sexuality, culture, nationality, ethnicity, race, class/caste and so on. Drawing on contributions from a wide range of disciplines across the humanities and sociohistorical sciences, the articles appeal to a broad audience of academics transcending traditional boundaries. A selection from back issues

- Avatars of the Monstrous Human Races
- Roles for Men in Greek and Roman Births
- The Gender of Homosexuality
- Two Carribean Women Writers on the Relation between Sexuality and Race
- Euripides' Medea and Toni Morrison's Beloved
- "Gay" Responses to the Sexuality Debates

- Theorizing Early Modern Lesbianisms
- Colonialism and Homosexuality
- New Age Consciousness and Aboriginal Culture

Contents of 1996 Autumn issue "Gender in the Middle East"

- Introduction "Mythmaking on Gender in the Middle East"
- Veiling, Unveiling and Meanings of "the Veil": Challenging Static Symbolism
- Dumb and Dull: The Disregard for the Intellectual Life of Middle Eastern Women
- Marking Gender and Difference in the Myth of the Nation: "Bashu", a Post-Revolutionary Iranian Film
- On Appearance and Disappearance: Representing Women in Palestine under the British Mandate
- "You're some sort of supercommando, aren't you?": The Gendering of Israel's Image in Bestsellers

For more information contact:

The Editors,

**Thamyris**

Najade Press bv,

P.O. Box 75933,

1070 AX Amsterdam, The Netherlands

Fax: + 31 - 20-679 8874

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## Audiovisuals

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### Nana

**Producer / Director: Ruti Gadish,  
Alison King Fabienne Bouville and  
Suhear Ismail**

Language: Arabic / English  
Duration: 52 min.  
Production : Rag Films  
International, Scènes de Ville

Israeli director Ruti Gadish's grandmother reminisces fondly about her glamorous youth as a dancer in the hey-day of the Egyptian court. Her's is just one of the layers of narrative woven together in this evocative documentary where four women directors have teamed up to explore the deep personal relationships that exist between themselves and their grandmothers in four very different societies - the Palestinian territories, Israel, France and the U.K.

Distribution: **TVE**

Prince Albert Road, London NW 1 4RZ, U.K.

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### Egypt: The Fear and the Faith

**Produced by Journeyman Films**  
50 min. Video.

The Fear and the Faith exposes persecution of Christians in Egypt as Moslem fundamentalism continues to grow. Never before has this important story been filmed. Both the Church and the Egyptian government have created a wall of silence behind which an ugly persecution of the Christian minority is occurring. The Islamist movement is bent on converting the eight million Coptic Christians living in their midst. They succeed in converting around 12,000 a year. Isolated Christian families in poor areas of Cairo are especially targeted for conversion. Some inducements are financial and social rewards, but violent tactics are also used. We meet a Christian man who was shot and stabbed by Moslem fanatics, the Coptic cross tattooed on his

wrist as a sign of faith, gouged out with a knife. He accuses the police of colluding with the Moslem fanatics, a common accusation.

Available from: **Filmakers Library**

124 East 40th Street, New York, NY 10016,  
U.S.A.

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### Talking to The Enemy: Voices of Sorrow And Rage

**Produced by Mira Hamermesh**  
54 min. Video.

Amidst the seething conflict between Israel and Palestine, a young Palestinian journalist and an older Israeli editor try to negotiate their own peace. Chaim Shur invited Muna Hamzeh to visit his kibbutz. It was difficult for her to accept his invitation but she did.

Each of them had their own bitter memories. Muna had been expelled from the land of her birth. Chaim had lost a son in the Six Day War. The reconciliation they had hoped to accomplish was not to be, but out of this meeting comes a mutual compassion.

**Filmakers Library**

124 East 40th Street, New York, NY 10016,  
U.S.A.

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### Conversations Across the Bosphorous

**Directed by Jeanne C. Finley**

Connects the stories of two Muslim women from Istanbul with different approaches to their faith, and provides an insight into Turkish society in the backdrop of current tensions between fundamentalist and secular forces.

**Women Make Movies**

462 Broadway, Suite 500-L,  
New York, N.Y. 10013, U.S.A.

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## Courses

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### **Middle East Feminism(s): Theory And Practice - A course outline**

by E. Fernea

This course will examine feminist discourse in the Middle East, both theoretical statement and imaginative writing. An historical overview will be offered, to establish context for the range of diverse feminist expression evident in the Middle East in the late 20th century. What is the relationship between cultural production and ideology? Between social and economic circumstances and cultural production? Between ideology and literary technique? Between a writer's intent and cultural expectations about the writer's proper function?

#### **Suggested Texts:**

Halide Adivar, *Memoirs* (Turkey); Nawal al-Saadawi, *The Hidden Face of Eve* (Egypt); Assia Djebar, *L'Amour, La Fantasia* (Algeria); Fatima Mernissi, *Beyond the Veil* (Morocco); Daisy El-Amir, *The Waiting List* (Iraq); Sadika Arebi, *Women and Words in Saudi Arabia* (Saudi Arabia); Farzaneh Milani, *Veils and Words: Iranian Women Writers* (Iran); Salwa Bakr, *The Wiles of Men, and Other Stories* (Egypt); Deniz Kandiyoti, ed. *Women, Islam and the State* (Various); Poetry by various writers--Nazik al-Malaika, Suad Sabah, Fadwa Toqan; Articles by Riffat Hassan, Leila Ahmed, Chandra Mohanty, Miriam Cooke, Sara Suleri and others.;

For further information write to:

English Department, College of Liberal Arts at University of Texas - Austin, U.S.A  
E.mail: englweb@www.dla.utexas.edu

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## **International Msc in Gender, Agriculture and Rural Development**

Wageningen Agricultural University is now accepting applicants for the first International Masters Degree Programme in Gender, Agriculture and Rural Development (GARD) to be inaugurated in September 1998. This M.Sc. is the first in the world to focus on gender, rural change processes, the environment and sustainable agricultural development in developed and developing countries.

Courses in Gender Studies, Rural Sociology and Economics, where students are exposed to the principle theories, concepts, comparative empirical research methods and related debates in Gender, Agriculture and Rural Development are offered.

Optional courses permit students to pursue a specialization in:

- Gender, Environment and Natural Resources Management
- Gender, Institutions and Development Interventions

A social science background is not required. Applicants from both developed and developing countries worldwide are welcome.

For more information and application forms, contact:

Dr. J. Wolffensperger,

### **Gender, Agriculture and Rural Development,**

Wageningen Agricultural University,  
De Leewenborch/Hollandseweg 1, 6706 KN Wageningen, The Netherlands.

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## Dissertations and Theses

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### A select list of dissertations submitted to English universities

The influence of the Shafi'i school of Muslim law on marriage and divorce in the Malay Peninsula, with special reference to the State of Trengannu.

Ph.D. 1968-69. (St. Andrews).

**Hassan, A.J.B.H.**

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Marriage and social organisation among Durrani Pashtuns in Northern Afghanistan.

Ph. D. 1979. (School of Oriental and African Studies). (D30109/80).

**Tapper, N.S.S.**

---

Personal status in English, French, Turkish and Persian law. (A study in comparative and private international law).

Ph. D. 1957-58. (Southampton).

**Mehr, F.**

---

The conflict of personal laws in the Sudan.

Ph.D. 1975. (Cambridge). (D13056/75).

**Tier, A.M.**

---

Some aspects of the life of Indians and Pakistanis in Newcastle with special reference to women.

M.A. 1970-71. (Durham).

**Nath, J.**

---

The Shia Imami Ismaili community in Britain.

M. Phil. 1970-71. (School of Oriental and African Studies).

**Hallam, R.N.M.**

---

Gender Activism and the Islamic Revival.

M.phil December 1995 in Anthropology, (London School of Economic and Political Science)

**Dunya Maumoon**

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For further information and access:

**The British Library**

Lending Division, Boston Spa, Wetherby  
West Yorks LS23 7BQ, U.K.

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## Declarations and Statements

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### Muslim Thinkers' Plea to Rulers

By Our Staff Reporter

NEW YORK: ... A number of Muslim scholars have begun to question the use of so-called Islamic morality as a tool to oppress women.

"The oppression of women is a grave offense against all of humanity," leading Muslim intellectuals, some of them internationally-renowned, said in a recent statement. "We cannot ignore the oppression of women by orthodox and fundamentalist religions."

The statement, which was first published in the *Free Inquiry*, a US-based philosophical and sociological journal, was signed by more than 15 scholars from India, Iran, Pakistan, Bangladesh, Morocco, the Sudan, Palestine, Syria, and Turkey.

Unlike apologists, who tend to use progressive interpretation of the Koran to defend women's rights, those signed the statement observed that the Abrahamic religions of Judaism, Christianity, and Islam with the Old Testament, New Testament and the Koran as their respective holy texts, consider women inferior in every way to men, physically, morally and intellectually.

"We cannot deny history," they said adding "which shows that these religions were devised and enforced by men who claimed divine justification for the subordination of women to men."...

"While women in the Christian West and Israel have ameliorated their lot considerably enough, their sisters in the Islamic world have been thwarted in their valiant attempts to rise above the inferior position," they said.

Deploring various Islamic regimes for clinging to orthodox and male-chauvinistic policies, the Muslim scholars said there is no justification, whatsoever, to enforce centuries-old Islamic custom and law to prevent women from exercising their rights.

"We have watched official Islamization programs in Saudi Arabia, Pakistan, Iran, the Sudan and Afghanistan among others," they said. "All these programs have led to serious violations of human rights of women."

They said women deserve the same rights and freedoms as men, but Muslim conservatives in all Muslim countries, and even in nominally secular India have refused to recognize women as full, equal human beings.

In many Islamic societies, they said, women's lives are just confined to homes where they are expected to obey their husbands and bring up children, with no permission for participation in public life. At every stage in their life, they are denied free choice and fundamental right of autonomy.

"They are forbidden to acquire an education. They are prevented from getting a job. They are thwarted from expressing their potential as members of the human community," they said.

The Muslim scholars who described such restrictions as "impediment to social and moral progress," demanded of the Muslim governments to repeal laws that promote discrimination against women.

"A women should be able to travel alone," they demanded in the joint statement. "She should be permitted to uncover her face and be allowed the same inheritance rights as a man."

She should not be subject to gruesome ritual mutilation of her person."

"On reaching the legal age," they said, "a woman should be free to marry a man of her own choice without permission from her guardians or parents. She should be free to marry a non-Muslim. She should be free to divorce. She should enjoy the same human rights as those guaranteed under the International Human Rights legislation."

The scholars said social, economic, political and educational forces are responsible for the discrimination against women, but added it's "the application of the Shariah, Islamic law, that remains a major obstacle to the evolution of the position of women."

Urging that women's status must be removed from the religious sphere, they said the Muslim governments institute a separation of religion from state with a uniform civil code under which all are equal.

Those who signed the statement include: Reza Afshari (Iran, political scientist), Sadik al Azm (Syria, philosopher), Mahshid Amir-Shahny (Iran-France, author and social critic), Masud Insari (Iran, physician, author, United States), Parvin Darabi (Afghanistan, scholar, United States), Ranjana Hussain (Bangladesh, Executive Director of the Assembly of Free Thinkers), Mustafa Hussain (Sudan Ibn Khaldun Society, United States), Khalid Duran (Professor of Political Science and Founder of the Ibn Khaldun Society, United States), Ramine Kamrane (Iran, political scientist, France), laonna Kuouradi (Secretary General International Federation of Philosophical Societies, Turkey), Luma Musa (Palestine, Communication Researcher, United States), Taslima Nasrin (Bangladesh, author, physician, social critic), Hossainur Rahman (Indian social historian), Siddiqur Rahman (Bangladesh, former Research Fellow, Islamic Research Institute), Armen Saginian (Iran, Editor, Publisher, United States), Anwar Sheikh (Pakistan, author, social critic, United Kingdom), Ibn Warraq (Indian author, Why I Am Not a Muslim, United States).

Source: Excerpted from New India Times October 17, 1997, p.4

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## **To Forget Crime is to Commit Crime**

Five years have passed since the war in Bosnia and Herzegovina started. Many citizens of that ex Yugoslav republic were killed, maimed, victimised, humiliated, dislocated and impoverished - that is the result of the policy which originated with the "anti-bureaucratic revolution", continued with the agreement between Slobodan Milosevic and Franjo Tudjman on the division of Bosnia and Hercegovina and which ended in ruins, genocide and the enforced Dayton peace accord. The peace accord was signed by the same people who had planned the aggression on Bosnia and Hercegovina and who had enforced ethnic cleansing. While pretending to enforce the Dayton peace accord they still continue to divide Bosnia and Hercegovina and attempt to hide the committed crimes. They impose oblivion for their own responsibility for the war by manipulation and repression. The planners, organisers, commanders and the people who have committed crimes are helped by the indifference of those citizens who did not react and still do not react to the committed crimes.

Moral responsibility for the committed crimes demands that the citizens publicly and resolutely dissociate themselves from those who have in the name of the threatened

Serbian people destroyed Sarajevo, tolerated or encouraged massacres in Zvornik, Prjedor, Srebrenica... and at the end encouraged the Serbian people to a mass exodus. We express our solidarity with all the people who support an integral Bosnia and Hercegovina where all its citizens regardless of their ethnic, cultural, religious, and political differences will be able to live. We think that the prosecution of war criminals is an assumption for the safe return of all refugees, exiles and dislocated people to their homes. The democratic republic of Serbia has an obligation to submit itself to a conscientious self-examination. The first step in that direction is the prosecution of war criminals in this country.

3rd April, 1997 (Belgrade )

Signed by:

Belgrade Circle

Centre for Anti-war Action

Centre for Cultural Decontamination

Helsinki Council for Human Rights in Serbia

Multinational Association of Bosnia and Hercegovina

Women in Black

Belgrade Centre for Human Rights

## Campaigns and Events

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**The Afghan Women's Network (AWN) is a volunteer group of educated Afghan women working for peace and women's human rights.**

The AWN is established in Islamabad in September 1995. The members are working in different capacities for the Afghan refugee schools, UN Agencies and NGOs operating for Afghanistan.

We are aiming to bring "peace thoughts" and advocate for "women's rights as human rights" in the Muslim societies, particularly, in Afghanistan, through educational efforts such as training workshops, artistic work, competition among school children, discussions and meetings with policy/ decision makers, information sharing with Afghan women/ families as well as with the international organizations. Since September 1996, due to the current circumstance in Afghanistan, our activities are mainly in Islamabad and Peshawar until the situation allow us to re-establish contacts with our members in Kabul and Mazar-i-Sharif and expand our work in other parts of the country.

1998 Global Campaign of Women's Human Rights: As you might be aware, 10 December 1998 will mark the 50th anniversary of the adoption by the United Nations of the Universal Declaration of Human Rights. During 1998 a series of events will take place that provide a unique opportunity to re-focus world attention on women's human rights. It is a chance to celebrate and demand women's rights by insisting that there are no human rights without women's rights. It is also the fifth anniversary of the World Conference on Human Rights and its historic recognition of women's rights as human rights and a time when the UN Commission on Human Rights will review implementation of the Vienna Declaration and Programme of Action. In addition, the 1998 session of the UN Commission on the Status of Women will review for key human rights sections of the Beijing Platform for Action: Human Rights of Women; Violence Against Women; Women & Armed Conflict; and the Girl-child.

Our preparation for the 1998 Campaign: It is critical to link these events in order to bring world attention to the human rights of Afghan women. We have made preparation for the following activities:

1. Poster and corresponding postcards. We are planning to produce a poster around the theme "Imagine a world where all women enjoy their human rights" (e.g. the right to education, health care, freedom from violence, equal participation in the society, etc.).
2. Action Kit and 50 Questions. We are also developing an "action kit" to go with the poster and postcards which will include general information about the campaign and a list of 50 Questions about the Women's Human Rights.
3. Collection of stories on violation against women. This is an effort to establish the linkages of Afghans with the global human rights organizations, by the collection and submission of the facts and realities of violation against women. Meanwhile, a copy of the questionnaire provided by the UN Special Rapporteur on Violence Against Women, has been translated and distributed in order to facilitate communication between the victims of violations with the United Nations Human Rights Committee. Your participation and Assistance: We urge your participation in this

joint effort of supporting and protecting human rights, by demanding additional initiatives and/ or assisting us in the following:

- a. Since all our activities so far have been based on voluntarily contribution by our members, to accomplish this important task, assistance is needed (in term of financial or direct support) for documentation, typing, translation, photocopying, printing, distribution fo the above poster, questionnaire and stories of violation against women.
  - b. Your contribution and support in strengthening our Network to become a legal NGO/ Society, which will be highly appreciated. We look forward to hearing from you."
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### **Petition on behalf of the rights of Afghan women:**

We are deeply alarmed at the practices and policies of the Taliban against Afghan women and girls. We urge the Taliban to immediately cease its gender apartheid, and allow Afghan women to work outside their homes, earn income, and access the Afghan society's education, to safety and the sharing of public spaces, and to public mobility. We further urge the Taliban to lift the forced veiling and imposed dress code policy against women, and to uphold the human rights of Afghan women and men as accorded to them under Islamic constitutional laws.

We call upon governments, the international community, the UN and multinational corporations, to hold the Taliban accountable to uphold and respect the human, civil and political rights of Afghan women, girls and men. We call upon these bodies to withhold: recognition of the Taliban; access to the UN seat; and donor assistance. We ask that economic transactions be conditional upon the respect of the Taliban towards the Afghan people and particularly the human rights of women and girls.

We urge the US Congress and other governmental and intergovernmental bodies, to appropriate development assistance monies in support of Afghan women's education, skill building, capacity-building, health-related programmes and other basic needs for civil society.

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### **Ibn Khaldoun Society**

The inaugural meeting, attended by 90 men and women from 22 countries, was held from 6-9 september 1996 at St Mary's University College in London, England. The meeting was organized by Dr Khalid Duran, editor of *Trans-State*, a periodical published from Washington, DC. The name Ibn Khaldun was chosen because of this Tunisian born (1332-1382) intellectual's contribution to history, philosophy and sociology avant la lettre in a time of crisis and decline.

The meeting had three purposes :

- (1) to affirm the creation of the Ibn Khaldun Society (IKS) providing moderate Muslims with an opportunity to promote the rich and diverse religious, philosophical, cultural and political tenets of Islam ;
- (2) to challenge interpretations of totalitarian ("fundamentalist") movements, and focus positive attention on Islam, countering negative stereotypes and Islam-phobia ; and

(3) to examine specific issues pertaining to the question of religious renewal and political ideology.

The first lecture was delivered by the Pakistani scholar Rifat Hasan, indicative of the prominent part played by women intellectuals in the IKS. Asghar Ali Engineer from India was there and so was Muhammad Tozi from Morocco.

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## **International Conference on Violence Against Women in War and Armed Conflict Situations**

October 31 - November 3, 1997  
Tokyo, Japan

### **Background**

Violence against women in armed conflict situations is one of the most massive-scale violation of human rights, in terms of the nature of the atrocities and the number of persons affected. Yet history has hardly recorded war crimes committed against women. Even under conditions of war and internal conflicts, in which states are the protagonists, war crimes against women were hardly addressed and their occurrence has been repeatedly denied. One of the most painful reasons for this denial is that these are the violations perpetrated against women.

It is only now that these war crimes against women are given attention on a national and international level mainly because the women victims have decided to come out and tell the stories which they have once tried to forget. More importantly, the coming out of these women have given issue of rape in wartime political significance.

Violence against women in war has confirmed the treatment of women as objects in a terrible way. The world has come to speak of rape as an inevitable fact of war- as part of the reality of the behavior of the armed forces. But the origins of the systematic practice of rape and why it is rampant in armed conflict situations, is never discussed.

We hope this initiative will help us in our future work among women victims of armed conflict, whose numbers have increased and justice continuously denied.

### **Objectives**

- To be able to identify different issues of violence against women in war and conflict situations.
- To redefine and broaden the definition of wartime rape to include sexual slavery, forced impregnation, mass rape, chemical warfare impact, military sexual slavery, genocide, trafficking, physical experiments, mutilation etc., as war crimes.
- To gather statistics and cases of violence against women in armed conflict situations to assist us describing the issues and establishing the pattern of violations.
- To concretize role and capacity of women's human rights groups in advocating for the issues in armed conflict situations.
- To submit our resolutions/recommendations/cases statistics to UN Special Rapporteur Rhadika Coomaraswamy for her perusal and study - for her

coming report to the UN Commission on Human Rights in Geneva in March 1998.

- To explore legal strategies in national or international courts in defense of women victims of armed conflict, in order to demand accountability, justice and legal compensation.

#### Convenors

Indai Lourdes Sajor <indai@mnl.cyberspace.com.ph> Asian Centre for Women's Human Rights

(ASCENT ascent@mnl.cyberspace.com.ph)

Yayori Matsui <yayori@jca.ax.apc.org>

Asia-Japan Women's Resource Center (AJWRC ajwrc@jca.ax.apc.org)

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## Stop Men Getting Away with Murder

Lucy Kellet was preparing to leave Oliver Kellet after years of abuse. As she was waiting for the removal van to take her to her new home he stabbed her repeatedly with a bowie knife. He pleaded manslaughter on the grounds of diminished responsibility and was given 3 years' probation.

Sonia Denise had left Patrick Sheehan three weeks before he killed her by hitting her over the head 15 times with a clawhammer before mutilating her dead body. He pleaded provocation on the grounds that she had left him. The judge summed up by saying 'I can understand you were feeling rejected'. Sheehan was sentenced to just 7 years. The history of violence towards Sonia never came out in court.

Abnash Bisla was killed by Rajinder Singh Bisla in 1992 in front of her two children. Judge Dennison said in sentencing: 'You have suffered through no fault of your own a terrible experience for a very long time'. Bisla, the defendant, claimed he had been 'nagged'. He was given a suspended sentence.

Caroline Griffin endured 8 years of violence from her husband Craig Russell-Jones. She finally got the courage to leave him, whereupon he stabbed her to death. He claimed he was provoked because he believed Caroline had been unfaithful. In 1992, he was sentenced to 4 years imprisonment. The judge stated, it was clear Russell-Jone 'was full of remorse'. An appeal that the sentence was too lenient was rejected by the Attorney General.

Deborah Helen Smith was stabbed and then strangled by her husband, Richard Eric Smith in June 1994. He had previously subjected her to violence and had attempted to murder her. The police, in investigating this incident, said it was not serious enough to take any action and even apologised to Smith for bothering him! The case never went to trial because the CPS accepted a plea of manslaughter on grounds of diminished responsibility. On sentencing, the judge said, 'you are obviously not a violent man', and gave him a four year sentence.

Join Justice for Women's campaign which has been launched with the support of friends and family members of women killed by violent men. The campaign aims to highlight the failure of the law to deal adequately with male violence against women or to value women's lives.

### **A stark contrast**

Spousal homicide is almost always a direct result of domestic violence. When women kill men there is often a history of domestic violence against the woman; when men kill women there is often a history of previous domestic violence by those men

towards the women. In both cases, therefore, it is normally the history of male violence which provides the context for such killings.

### **Why do battered women kill?**

Many survivors of domestic violence have said that they previously considered killing their partners. Below are the most common reasons cited:

1. frequent assault;
2. severe injury;
3. frequent forced sexual intercourse or other sexual acts by the man;
4. the abuser's frequent intoxication or habitual use of illegal drugs combined with his violence;
5. the abuser's threats to kill; or
6. the woman's belief that her abuser would eventually kill her.

Reasons accepted by judges for why men kill women known to them:

1. she nagged him;
2. she was unfaithful;
3. he thought she was unfaithful;
4. he was unfaithful and she challenged him;
5. she had left him; or
7. he was afraid that she would leave him.

These excuses for murder have all been accepted by the courts thereby reducing the charge from murder to manslaughter.

### **Murder or manslaughter**

For someone to be convicted of murder there must be an intention to kill or cause really serious harm. Murder convictions carry a mandatory life sentence. A murder conviction can be reduced to manslaughter if there is a finding of either diminished responsibility or provocation. Sentences for manslaughter are entirely at a judge's discretion and can range from life to a probation order.

### **Diminished responsibility**

Research conducted between June and September 1995 of all cases coming to court where men killed women showed that in over half the cases where diminished responsibility was offered as a defence it was accepted at pretrial. The prosecution will accept a plea to manslaughter when they think there is no realistic chance of murder conviction. This means there is no trial and no jury and the evidence of his previous violence towards her is not admitted. The research found that 80% of the defendants in cases where diminished was accepted at pretrial had proven domestic violence backgrounds against the women they killed.

Furthermore, when the defence of diminished responsibility was submitted at pre-trial, depression and various other psychiatric disorders were used as evidence. However, not one defendant who was successful with this plea was deemed ill enough to go to a secure hospital. In contrast, in cases of non-domestic killings it was psychotic illnesses, typically schizophrenia that were cited when arguing diminished responsibility. More than half of these men were locked up indefinitely in order to protect the public. It would seem that women in domestic relationships with men are not viewed as 'members of the public'.

### **Provocation**

For this defence to work it must be shown that there was an act of provocation by the victim which caused the defendant to experience 'a sudden and temporary loss

of self control'. This is essentially is a defence about anger, seeing red or boiling over. However, it presumes the physical capacity and psychological predilection of the defendant to act in this way. In other words that person would have to have the necessary strength, physical confidence and social conditioning to be able to respond violently enough to batter someone to death. Given the normal pattern of violence where it occurs in relationships between men and women, this defence clearly is more appropriate to male responses and behaviour.

Often grounds for provocation used by men are that their partners nagged them or he thought she was being unfaithful. Common excuses given by these men to the police are 'I just snapped. She taunted me. She was having an affair. My life was made intolerable by her nagging'. Here are some grounds, accepted by judges in real cases, which have resulted in the man escaping a murder conviction:

1. She moved the mustard pot;
2. She had not allowed him to listen to his favourite radio programme.
3. She had confronted him about having an affair;
4. He was an ambulance driver and had attended the Baltic Street Bombing where a young girl had died in his arms. This made him depressed so he went home and killed his girlfriend.

Justice for Women have campaigned for 'words alone' and 'alleged or actual infidelity' to be removed from the defence of provocation. An alternative would be to get rid of the defence altogether and bring in a defence of 'self-preservation' which would fully take into account the whole history of violence and abuse.

### **Right of Appeal?**

In recent years the law has allowed the Attorney General to ask the Court of Appeal to increase sentences which are too lenient. Several times friends and family of the victims have attempted to get the sentence reviewed. Yet never once has the Attorney General referred a case to the Court of Appeal when a man killed his partner.

### **Civil liberties?**

Civil libertarians are often quick to label any individual or group who are concerned with adequately punishing those who commit crimes as part of the 'law and order' right wing camp. We are not. The civil liberties of women include the right not to live in fear of our lives. In the same way jail sentences are appropriate to perpetrators of racist or homophobic attacks. The law must deter the perpetration of hate crime whether against women or some other oppressed group. By giving violent men who commit murder proper sentences we can go some way towards protecting the lives of women and children who are vulnerable to them. By adequately punishing violent men we are no longer giving society the message that the lives of women are of less value.

### **We are not alone - the international scene**

Dr Hanan Ashwari - former leader of the Palestinian delegation to the Middle East Peace talks - is prioritising the banning of marriage under 18 and of 'honour killings', where men can kill a wife or female relative thought guilty of infidelity. For twenty years Brazilian feminists have been campaigning around such honour killings. In 1988 they protested the case of Joao Lopez who was acquitted of killing his wife and her lover. The jury had accepted his defence that he acted in defence of his honour. Feminist protests resulted in the Appeal Court overturning the verdict and ruling that 'murder cannot be seen as a legitimate response to adultery'.

**What You Can Do**

Monitor the press and send us details/press cuttings of such cases.

Write to newspapers to protest when the cases are reported.

Petition the Attorney General to demand that such cases are referred back to the Court of Appeal for sentence review.

Join our 'Getting Away With Murder' Campaign. Send donations and offers of help.

Please make cheques payable to Justice for Women and send to:

**Justice for Women**

c/o 55 Rathcoole Gardens  
London N8 9NE, U.K.

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**6th International Meeting of Women's Solidarity Network Against War**

August 7th - 10th, 1997 at Novi Sad (80 km from Belgrade).

Circumstances have changed since we, women from every region of former-Yugoslavia and women coming from abroad, first gathered together in 1992. Each year it brings joy to see and embrace old and new friends again, but this is not enough. When the war was raging, we used the meetings to share its painful and destructive impact on our lives. Now, keeping the past in mind, we look toward the future; our thoughts and experiences weave between pessimism and optimism. In this climate, it is crucial that we continue to broaden and strengthen our network.

The program included formal and informal workshops and discussions on the following subjects:

- women against authoritarian power: participation of women in democratic progress.
- lesbian rights in civil society.
- patriarchy - the globalization of conservatism.
- are we only wives or mothers?
- different forms of fundamentalism in western countries.
- fundamentalism through the institutions of religion, state, nation and cultural heritage.

A documentary film, "Women in Black", also was shown.

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# Backissues contents

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### *Fundamentalism*

The Muslim Religious Right ('Fundamentalists') and Sexuality  
Ayesha M. Imam

### *Arab world*

Women in the Discourse of Crisis  
Dr. Nasr Abu-Zeid

### *Iran*

Stretching The Limits:  
A Feminist Reading of the Shari'a  
in Post-Khomeini Iran  
Ziba Mir-Hosseini

### *Women & Islam*

The Muted Voices of Women Interpreters  
Bouthaina Shaaban

### *Syria*

The Shahrur Phenomenon:  
a Liberal Islamic Voice from Syria  
Peter Clark

### *Middle East*

Middle Eastern Cultures: The Real Boundaries  
Elie Dib Wardini

### *Senegal*

Cultures and Religions in Senegal  
Aminata Sow Fall

### *Afghanistan*

Women Rights in the Current Political Backdrop  
of Afghanistan

Afghan Womens Network

Statement by the Afghan Women's Network

Kabul, the largest prison for women in the  
world

Afghan Women's Network

Message from the Afghan Women's Network  
Afghanistan goes to absurd lengths  
to implement Islamic laws

Jean-Pierre Perrin

Kabul, ban on women working, the cold,  
the misery and trading in human remains  
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Letter to the Taliban

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NGO Sign-on letter to the UN Secretary-General  
regarding Women's Human Rights  
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## Dossier 18

The All-American Queer Pakistani Girl:  
The dilemma of being between cultures  
Surina Khan

Lihaf (The Quilt)  
Ismat Chughtai

### *United States*

Sex and the Single Shi'ite:  
Mut'a Marriage in an American Lebanese  
Shi'ite Community  
Linda S. Walbridge

### *Algeria*

S.O.S Algeria:  
Women's Human Rights Under Seige  
Karima Bennoune

### *Sudan*

Gender Politics and Islamization in Sudan  
Sondra Hale

Legal Aid, New Laws & Violence  
Against Women in Sudan

Ustadh Mohamed Taha:  
12 years after his execution  
Anonymous

### *Pakistan*

The Offence of Rape in the Islamic Law  
of Pakistan  
Rubya Mehdi

### *India*

Customary Practices Among Muslims  
in Gomia, Bihar  
Geetanjali Gangoli and Seema Kazi

