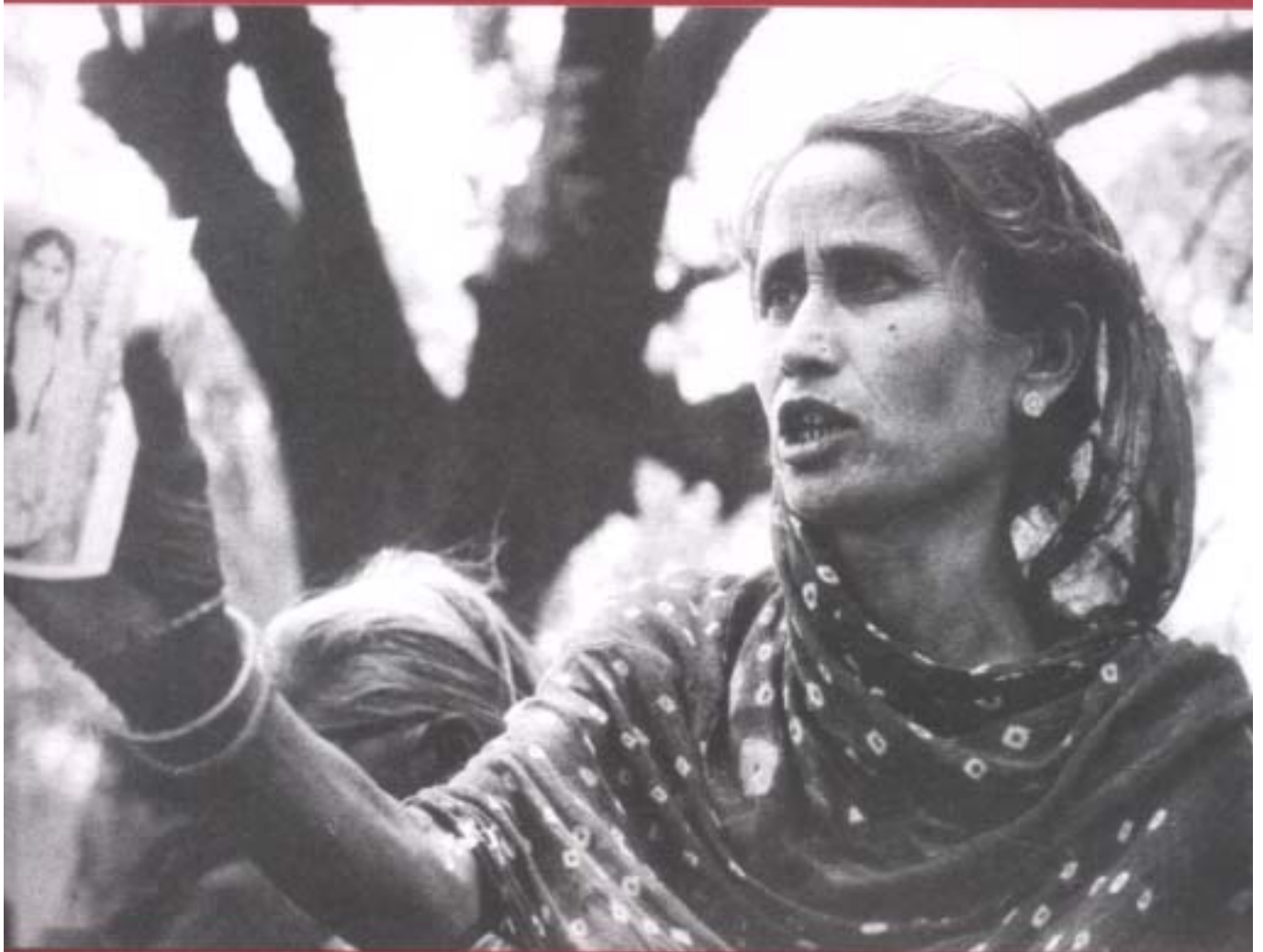


Women living under muslim laws
النساء في ظل قوانين المسلمين
Femmes sous lois musulmanes



Dossier 22

Dossier 22

Women living under muslim laws
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Dossier 22 was edited by Harsh Kapoor.

Cover photo: "Shahjehan Begum 'Apa' with photograph of her daughter, allegedly murdered for dowry. This photo was taken at a women's demonstration in New Delhi"
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About the Dossiers

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

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Produced on non-profit basis through donations and grants, the Dossiers have, till now, mostly been distributed free of cost to women and women's organisations. Printing and distribution costs of one Dossier work out to 60 F.Francis (about 12 US\$). We appeal to readers to send donations to meet the production and postage costs. Any donation however small is extremely welcome.

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IN MEMORY OF BEGUM SUFIA KAMAL, THE UNRELENTING VOICE FOR
DEMOCRACY, SECULARISM AND WOMEN'S RIGHTS IN BANGLADESH

• *Excerpts from: New York Times, November 28, 1999*

Sufia Kamal, Bangladeshi Writer and Women's Rights Advocate, Dies

By Douglas Martin

Sufia Kamal, a Bangladeshi poet, political activist and feminist, died at age 88 on Nov. 20 1999 and was buried [...] with full state honors, the first woman to receive that recognition from Bangladesh. [...]

[Thousands] of people paid their respects to Ms. Kamal at her funeral [...] in Dhaka. [...]

[Begum Kamal] ... devoted her life to fighting for the rights of women and the poor and against the forces of religious fundamentalism. [...]

She published her first story at 14, and her prose and poems drew favorable notice. Some works were aimed at children. Some were translated into English and Russian. Increasingly, she wrote against religious communalism, fundamentalism and superstitions. She promoted democracy and women's emancipation.

"The culture was to keep the women at home, train them in household chores and make them perfect women: docile, ready to please everyone in the family," she said in an interview this year. "There was a strong anti-British movement, and my family also believed that women should stay out of it.

"But I had an indomitable nature and I crossed my limits to get a taste of all there was. I was allowed to learn Arabic and a little Persian, but not Bengali. I made it a point to learn Bengali from people working in the house." That became the language she used for her writing.

Though she called herself a romantic poet, her work more and more reflected the struggles to preserve the Bengali language and culture and to fight Pakistani rulers.

During Bangladesh's struggle for independence from Pakistan in the early 1970s she worked to help women hurt by the war.

She also worked with an organization [Nirmul Committee (a committee for demanding trial of all War Criminals of 1971)] to try to bring to justice those Pakistani officials whom the Bangladeshis considered war criminals.

In later life, she made women's rights her top priority and headed

Bangladesh's largest women's organization [Bangladesh Mohila Porishad] for many years. She did not see the oppression of women as mainly a class issue.

"My own experience as a woman made me sensitive toward the condition of women of all classes," she said. "Be poor or middle-class or upper-class, the violence against women in family, society and in public life was always there. Women were exploited and deprived of opportunities."

In 1993, an Islamic fundamentalist group called for her execution as punishment for her denunciation of the fundamentalists' treatment of women [...].

• Bangladesh newspaper 'The Daily Star' (Dhaka). on January 1, 1996
Following are extracts from her conversation with Mahfuz Anam

The Poet Speaks

An interview with Begum Sufia Kamal

[...] Q. What are your feeling on the occasion of the 25th Victory Day?

A. I could not attend this year's Victory Day celebrations. But I have been told, and I also read in the newspapers that it was a grand celebration. I am very pleased to hear it. Now the young people will get to know a little better about our Liberation War. What happened at that time, and at what cost we gained our independence. Our young people must learn that a country cannot be formed on the basis of religion. That is what Pakistan tried. There are Muslims all over the world- Arab muslims, Indian muslims, Indonesian muslims, Thai muslims, and Bengali muslims. Religion is the same for all of us, but we are different nations. Everybody has his or her own religion. A state cannot be built on religion.

This our young people must learn, and this was the reason for our war against Pakistan. Muslims of Bengal have always been muslims, and they lived side by side with Hindus for hundreds of years. There was never any friction or fight between them. So everyone must be allowed to live with their own religion.

Today nobody is exploiting us - not Russians, Japanese, Indians or Pakistanis. Today we Bengalis are fighting against one another and destroying ourselves. It is we who are killing, injuring, abusing and insulting one another. We have become our worst enemies.

The present widespread terrorism is doing immense harm. On the 25th anniversary of our Victory, how can I live with the fact that terrorism has engulfed our society completely? Who will save us from this? That is what you all will have to think about.

Q. What would be your message to the nation on the occasion of the 25th anniversary of our independence?

A. We must bring respect and dignity to our country and to our people, and reach the fruits of independence to the masses. We must all work together to build our country. We should not allow ourselves to be misled by a vested group, in the name of religion, and let people exploit our religious sentiments for narrow political ends. Our younger generation must be taught the values of our Liberation War and the ideals for which million gave up their lives.[...].

• On the occasion of the Independence Day this year[1999] Navine Murshed interviewed Begum Sufia Kamal. ... her last interview to the Daily Star (Dhaka)

A Pristine Spirit

Extracts from the conversation

[...] DS: What do you feel towards the present generation in terms of cultural awareness and their attachment to their roots? Do you feel that we have been able to live up to the spirit of 1971?

SK: The present generation has been deliberately kept away from the real spirit of 1971. The whole nation, with the exception of the traitors, Rajakars and Al-Badr, fought for an exploitation-free, non-communal, egalitarian and above all a democratic society. It was written in the 1972 constitution. But over the years, the autocratic and military rulers have deliberately erased the spirit of liberation from people's minds for a generation without self-esteem and patriotism is easier to subjugate than people with self-respect and idealism.

Introduction

As we prepared to wrap up this issue we were struck with the sad news of the death of Begum Sufia Kamal the well known poet, outspoken voice for women's rights and democracy in Bangladesh. We dedicate this issue of the Dossier to her memory.

History is replete with examples of use of religion for social-political mobilization and for community control. The backdrop for this Dossier reflects processes leading sociological Muslims to becoming institutionalised subjects of organised Islamic nation states, communities and families.

Modeling / Remodeling of the identity of social groups under larger religious identity has been a tendency both within efforts to build national culture and to deploy a common homogenous identity over diverse local & regional communities. Identities that were syncretic, ambiguous and localised have progressively been gaining a 'fixity' of religio-legal categories enforced by the state and also by greater organisation/mobilization of influential religious movements trying to promote 'authentic Islam'. These process became intensified during the 19th century under colonisation and assumed newer forms in the postcolonial phase of globalisation, where a transnational Islamic identity is being constructed, notably among diasporic or newly converted Muslims of diverse national and ethnic origins. The processes at work here cover a wide spectrum between religion, custom, local cultural practice, law and politics.

The multi religious, multi ethnic environment of Sri-Lanka ever since colonisation (when religio ethnic classifications were imposed for 'administration') has been sliding into a full scale polarisation between different religious or ethnic groups, as completely distinct and uncommon entities, leading to the destructive communalisation of the Muslims there. An ethnically diverse Muslim minority today sees itself (also being viewed by outsiders) as ethnically separate group. Faizun Zackariya and N. Shanmugaratnam draw a detailed historical picture of 'communalisation' process and point out that, as elsewhere, women in that country have become the worst victims of the ethno-nationalist project as it is on them that falls the burden of socialisation.

Eqbal Ahmed's excellent review of the process of development and expansion of an internationalised Islamist activism (the networks, infrastructures and manufacture of the men involved in Jihad ('holy' war) during the war against the Russians in Afghanistan) provides a valuable understanding of both, the geo-politics and the dangerous implications of the nexus between guns (gun traders), gold (drug peddlers) and god.

We provide a small selection of newspaper articles on the now beleaguered 'Islamisation' project (known as the 15th Constitutional Amendment) of the recently deposed Pakistan government. The

remarkable opposition from women's rights and civil rights activists in Pakistan to this project, stands out as a lesson for other parts of the world that are likely to face authoritarian projects in the name of religion as a means of greater political regulation and social control.

In Uzbekistan which was once part of the former Soviet union, a series of reversals or hurdles to women's autonomy and freedom have emerged. The paper by Marfua Tokhtakhodjaeva shows how the Uzbek media is involved in the constructing new mythical stereotypes seemingly rooted in 'tradition' and calling for women's return to the domestic sphere, seeking revival of polygamy and 'allocation of responsibilities to husband's for women's well being'; And all this is justified as coming from an imagined religio-legal doctrine.

But, the Shariat is surely not a code of law but a body of concepts, principles & precepts with considerable heterogeneity. The translation of the Shariat into actual functioning legal procedures has varied from region to region. While, this process of translation-conversion has mostly meant creating a structured corpus of Muslim laws to be implemented by an administrative legal system, customary and local cultural practices co-exist alongside where dominant & powerful social groups did not permit the taking away of local authority by a modern state system.

Indonesia the largest Muslim country in the world, has witnessed a continued Islamisation of its Family law ; absorption & subsumption of prevalent practices into a logic of codification and reform according to Muslim Law. In light of the Government's 1988 'Compilation of Islamic law', some limited changes in the Inheritance laws favourable to women have taken place. The paper by Cammack examines the intricacies of this process in Indonesia.

Sami Aldeeb writing from Switzerland uncovers the discriminatory nature of Personal Status laws in different Arab & North African countries and argues for the need to unify and modernise these laws to make them favourable to women.

Muslim Personal law in India is a British enactment and is practised as such and not because it's a divine immutable thing. This dated law requires modification and change to allow greater rights to women. A. A. Engineer, the social reformer, activist and theologian makes a case for change.

The courts in Bangladesh in the last few years, produced some progressive and pioneering judgements in Muslim legal matters of post divorce maintenance providing a much needed renewal of regional discussion on this very important subject. A practicing lawyer Faustina Pereira presents her viewpoint.

Women in Palestinian community inside Israel, Israeli Arab women and women in the autonomous Palestinian territories all fight daily at various levels to seek an improvement in status of women. We reproduce two

separate accounts (by Dahlia Scheindlin and David Sharrock) of how these battles for change and survival are underway.

- In April of 1998 women's rights activists in the Gaza and the West bank town of Ramallah organised a Women's Model Parliament and overwhelmingly voted for a total ban on Polygamy.

- Three young women confronted with patriarchal Arab men in their own community decided to move out of their neighbourhood and live in Jerusalem where they now face the wrath of conservative and orthodox Jews.

Custom, tradition and family honour are invoked with ease as a rationale to forced marriage transactions. Some representatives of immigrant communities in the Europe consider these private matters of family as well as minority rights that, should the state interfere, would be violated. Reports from the UK and Turkey demonstrate the increased use of forced marriages that are unacceptable whether in the counties of original culture or in country of immigration and the need for universal laws and codes of conduct which reprimand patriarchal control of women's life and sexuality.

Forced marriages of British Muslim women (particularly from immigrant communities of South Asian origin) in the UK have been on a rise pushing the Government there to take notice and institute an official body to look into the scope of the problem. (A News Report from a British newspaper)

A feminist research effort by Pinar Ilkkaracan and activists of 'Women for Women's Human rights' examine the use of customary practices such as forced marriages, polygamy, to control women's sexuality in Turkey and proposes preventive strategies against these.

Inching toward equality:

Recent developments in Indonesian inheritance law

*Mark Cammack**

Introduction

In recent years Islamic doctrine has assumed a more visible place in the Indonesian legal system. This trend arguably dates from the passage of the National Marriage Act in the mid-1970s, which for the first time gave explicit recognition to Islamic doctrine as state law. Its most conspicuous manifestations, however, have occurred since the mid-80s. In 1989 the Religious Judicature Act significantly expanded the system of Islamic courts, ended their subordination to the civil courts, and enlarged the courts' substantive jurisdiction. Two years later the government promulgated a code of Islamic rules, known as the Compilation of Islamic Law, containing rules governing marriage, divorce, inheritance, and charitable foundations.

The Islamization of Indonesian family law over the past quarter century seems to cut against other avowed legal policies of the period. State enforcement of Islamic legal doctrine undermines an asserted commitment to the development of a system of uniform national law based on the non-sectarian ideology of *pancasila*. Adoption of Islamic family law doctrine as state law also seems to contradict the government's stated desire to improve the legal status of Indonesian women. Basic elements of traditional Islamic family law, such as polygamy, unilateral divorce, and the rules of inheritance, treat men and women in a grossly unequal manner. The extreme gender inequality that characterizes Islamic family law offends, not only internationally recognized norms of basic human rights, but also, many argue, indigenous Indonesian values.

This paper explores the tensions created by the recent trend toward greater state enforcement of Islamic law by examining the effort to codify Islamic inheritance doctrine in the Compilation of Islamic Law. Although officially described as simply a compilation of restatement of existing

* Professor of Law, Southwestern University School of Law. Research in Indonesia was supported by a grant from the United States National Endowment for the Humanities. Completion of the project was assisted by a summer research grant from Southwestern University School of Law.

doctrine, those in charge of the project, or some of them, saw in it an opportunity to reinterpret the Islamic legal tradition to bring it more closely into line with a conception of Indonesian inheritance practice. Related to the goal of achieving a synthesis of Islamic and Indonesian inheritance schemes was a desire to redress the inferior legal status of women in Islamic law. As conceived by the leaders of the project, Indonesian Islamic inheritance law would accord equal status to male and female relatives. This represented a significant departure from traditional Islamic doctrine, which generally grants male relatives a share twice that of female heirs. The primary justification put forward by the government in support of the proposal was that treating male and female relatives equally is consistent with Southeast Asian social realities and Indonesian legal sensibilities.

The debate over the proposal and the content of the final product reveal both the problems and potential of Islamic family law reform in Indonesia. For the most part, Indonesian Islamic legal thought at the grass roots remains highly conservative. The far-reaching reforms proposed by the government were ultimately not accepted. The Compilation as approved and implemented largely restates traditional Islamic doctrine. But the debates showed that the content of Islamic law and the premises of Islamic jurisprudence are by no means fixed. The new voices urging reappraisal of the received tradition are as noteworthy for their progressivism as the traditional forces are for their conservatism. While recent events bear witness to the enduring power of Islamic symbols, they also reinforce the lesson that the content of those symbols is highly variable.

Background

Controversy over the use of Islamic doctrine in the determination of the distribution of property on death has a long history in Indonesia (see generally Prins, 1951). Since at least the 1930s inheritance law has served as a focus of tension between legal regimes claiming legitimacy under the banner of universal Islam on the one hand, and legal understandings whose point of reference is a supposedly indigenous local practice, or "adat", on the other. Dutch legal policy promoted adat over Islam primarily because of fears about the political potential of Islam as a focus of native resistance against Dutch control (Benda, 1958: 68). That policy was reflected in the so-called reception theory, which holds that Islamic rules have the force of law only insofar as they have been received into the local adat (Lev, 1972: 196-197). The Dutch preference for adat over Islam also served as the impetus for a court reform carried out in the 1930s which stripped Islamic tribunals in Java and South Kalimantan of jurisdiction over inheritance (Lev, 1972: 16-29).

Independence introduced new considerations in the debate, but it did not alter the basic terms of the controversy or dramatically shift the balance of forces for or against state enforcement of Islamic law (see generally Lev,

1972: ch. 2, 3). Dutch political logic opposing Islam because of its unifying potential did not operate in reverse once the goal had changed upon the achievement of independence. Support of *adat* by the Dutch was intended to forestall the development of Indonesian nationalist sentiments, but the leaders of independent Indonesia did not perceive in Islam a means for cultivating national consciousness once that became the paramount political objective. On the contrary, the exigency of maintaining national unity in the face of powerful disintegrative forces seemed to demand a deemphasis of Islamic law. That fact is forcefully illustrated by the failure of Islamic leaders to win approval of a constitutional provision recognizing an obligation to carry out Islamic law for Indonesian Muslims (Boland, 1982: 23-39; Lev, 1972: 41-43).

While tension between Islamic and indigenous legal regimes has been a constant in Southeast Asia, there have also been more or less constant efforts at synthesis or reconciliation. One effort to bridge the gap between Islam and *adat*, that is of particular relevance to the present topic, was that of Professor Hazairin, a scholar of both Islamic and customary law at the University of Indonesia, who achieved national prominence for his ideas in the 1950s¹. Although Hazairin's views were too radical to win widespread acceptance during his lifetime, they defined the parameters of all future debates over national inheritance law reform, and helped lay the groundwork for developments in the 1980s.

Hazairin sought to transcend the tension between Islamic and indigenous legal systems by advocating the development of a distinctive body of Indonesian Islamic law (see Hazairin, 1962). His jurisprudential warrant for proposing such a change was Islamic legal modernism. The basic premise of legal modernism is that, while the primary sources of Islamic law - the Koran and the dicta of the Prophet - embody the very word of God, the interpretive efforts of the classical era jurists that comprise the orthodox legal corpus are the contingent product of a particular historical circumstance (see generally Esposito, 1991: 125-55). Each generation has the obligation to interpret the primary sources in line with contemporary needs and circumstances. In keeping with this assumption, modernism rejects the authority of the received doctrinal canon contained in classical legal compendia, and advocates a reinterpretation of the divine revelation in order to derive rules suitable to modern conditions.

Hazairin was a daring exponent of the modernist thesis. He called for the "demolition" of Syafii doctrine, the school of Islamic law followed in Indonesia, and the development of a "national" or "Indonesian" doctrinal corpus (Hazairin, 1962: 3). The content of Indonesian Islamic law would reflect an interpretation of Koranic norms in light of Indonesian social and

¹ For biographical information and a brief summary of Hazairin's views, see *Ensiklopedi Hukum Islam*, Vol II, 537-40.

cultural values. This effort was to be undertaken in the context of a movement to establish national law applicable to all Indonesians regardless of religion or ethnic identity in order to cultivate national unity. The ultimate aim was to resolve the conflict between Islamic and indigenous legal systems by formulating a body of Indonesian Islamic law similar if not identical with adat law.

Hazairin focused his attention on the law of the family. He claimed that the Koran, correctly understood, embraces a bilateral or parental system in which descent is traced along both the male and the female line (Hazairin, 1982: 11-14). This conception of the family, he argued, is implicit first in the marriage prohibitions contained in the Koran, which do not implement either a patrilineal or matrilineal clan structure, and in Koranic inheritance provisions, which grant inheritance rights to females and, in certain limited circumstances, relatives related to the deceased through female links. The patrilineal bias of traditional Islamic inheritance doctrine, Hazairin argued, was a consequence of the fact that the formulators of the classical doctrine interpreted Koranic provisions from the perspective of their own patrilineal society (Hazairin, 1982: 75). Because the marriage system embraced by the Koran is bilateral, the law of inheritance should accord equal weight to male and female blood ties.

Hazairin argued that an appreciation of the true character of Islamic inheritance would bring the religious law more closely into line with Indonesian values and customary practice. Although, as Hazairin well understood; Indonesian society included a variety of kinship structures, the most widely practiced family organization is, like that prescribed by the Koran, bilateral and individual. In an effort to close the gap between Islam and adat, Hazairin proposed a national inheritance scheme to be based on the principle of bilateral descent (Hazairin, 1962). Although the basic principles and general outline of the law would be the same for all Indonesians, some variation from the basic pattern would be necessary in order to accommodate distinctive features of Islamic inheritance.

Hazairin's proposals were much too radical for the majority of Indonesia's Muslim leaders. For many of Hazairin's contemporaries, and indeed many Muslims today, any effort to reinterpret the original sources was deemed inadmissible. Among those who subscribe to the modernist program, Hazairin's interpretations of the Koran were regarded as extreme. But while Hazairin's followers were few, they were not completely lacking, and the small group that did agree with his program was nothing if not influential. Through his position at the prestigious University of Indonesia, Hazairin influenced a whole generation of the country's brightest and most privileged students, many of whom went on to careers in academia or government. His proposal for a uniform national inheritance law was also appealing to elements within the government, which promoted inheritance law reform based on Hazairin's model in a variety of ways (see Nur Ahmad

Fadhil Lubis, 1997: 55). By far the most determined attempt to bridge the gap between Islam and adat came in the 1980s when the government launched its attempt to codify Islamic inheritance doctrine in the Compilation of Islamic Law.

The Compilation of Islamic Law

A. Preparation of the Compilation of Islamic Law

The preparation of the Compilation of Islamic Law was undertaken jointly by the Department of Religion and the Supreme Court in 1985². The stated goal of the project was to specify rules to govern decisions by Islamic courts. To avoid any implication that the government was engaged in the creation of Islamic doctrine, the project was defined as a "Compilation" of Islamic rules, rather than a codification. According to the official definition of the project, the materials for the Compilation were to be taken from four sources: traditional Syafii legal texts, decisions of Indonesian Islamic courts, rulings of the country's leading Islamic organizations, and legislation from other Islamic countries. Its subject was to include all of the substantive matters over which the Islamic countries. Its subject was to include all of the substantive matters over which the Islamic courts exercise jurisdiction - marriage, inheritance, and charitable foundations.

The project statement named Bustanul Arifin, chair of the Islamic panel of the Supreme Court and tireless advocate of Islamic law reform, as chairman of the project. It established a two year timetable for completion and called for the ratification of the final product by Islamic scholars. The decision not to submit the document for consideration by the legislature was based on a number of factors. A code of Islamic doctrine would certainly have encountered significant opposition in the legislature, and, even if successful, the legislative process would have added years to the time needed for completion. From another perspective, the characterization of the document as a Compilation suggested that legislative approval was not necessary. According to Islamic legal theory law derives its validity from its connection to God's revelation; positive enactment by the legislature is irrelevant to legal validity.

The drafters of the Compilation fully appreciated the necessity of securing the support of the country's Islamic leadership in any reform to Islamic law. In the process of preparing the manuscript the drafting committee compiled a detailed questionnaire covering all of the substantive topics to be treated in the Compilation and outlining the proposed reforms

² The project was launched with a Joint Decree issued by the Chairman of the Supreme Court and the Minister of Religion dated March 21, 1985. The most complete published account of the preparation and content of the Compilation is Abdurrahman (1992). Other widely cited discussions of the Compilation written by individuals involved in the project include Bustanul Arifin (1985) and Yahya Harahap (1992).

(interview with Gani Abdullah, 7/27/97). The questionnaire was distributed to Islamic leaders around the country, who were then interviewed by members of the drafting committee based on the questionnaire. Although the survey results were never made public, the content of the Compilation clearly shows that the views expressed by the Islamic community shaped the content of the final product.

The ratification, which took place over several days in February of 1988 in Jakarta, was a carefully orchestrated event designed both to lend credibility to the claim that the finished product simply collected and restated a body of rules already in effect and to ensure the broadest possible participation and presumably investment in the outcome. The format was similar to other government organized national seminars that address all kinds of topics. The invited participants included prominent legal academics, judges, Islamic legal scholars, Religion Department officials, and leaders of all the country's major Muslim organizations³. Some of those who attended the conference criticized the way it was conducted on the basis that it did not allow for meaningful input from the participants (interview with K.H. Azis Masyuri, 07/20/77). According to these critics, the draft was not circulated sufficiently in advance of the meeting to permit them adequately to study it, and the organizers did not allow adequate comment during the conference. The objective of the meeting was quite clearly to secure agreement from leaders of the Islamic community, rather than to invite discussion on issues on which agreement was highly unlikely. The whole process of seeking ratification by a convocation of the country's leading Islamic scholars was a transparent attempt to invoke the concept of *ijma*⁴ or consensus, the Islamic jurisprudential principle that serves in the classical theory of the sources of Islamic law as the criterion of validity of a particular interpretation of the primary sources (cf. Coulson, 1964: 77-81).

Because of the depth of feeling on many of the issues treated in the Compilation, the successful completion of the project reflects a truly remarkable accomplishment. The ultimate success of the undertaking owes much to the efforts and skills of Religion Minister Munawir Sjadzali, who came to the religion post from a career in the diplomatic service. Perhaps the best indication of the difficulty of the task and the measure of the significance of the accomplishment is the fact that the final product has left virtually everyone dissatisfied.

B. Content of the Compilation Islamic Law

The Compilation is divided into three books. Book One covering marriage and divorce closely tracks existing law contained in the national marriage law and other legislation. Book Three, which addresses charitable

³ Official versions of the Compilation published by the Department of Religion include a list of the seminar participants in an appendix.

⁴ Arabic derived legal terms are spelled according to standard Indonesian transliteration.

foundations, also closely follows existing Indonesian law⁵ The only part of the Compilation to break new ground was the second book dealing with inheritance.

Notwithstanding its characterization as a "compilation", the format and style of the document is that of the code. The material is topically subdivided into books, chapters and articles. Each of the three books begins with a chapter addressing general provisions followed by chapters treating specific subject areas.

The inheritance provisions are contained in 44 articles divided into six chapters. After an initial chapter containing definitions, the following three chapters set forth the rules governing identification and allotment of the deceased's legal heirs. Chapter Five addresses testaments, the importance of which is minimized by the rule that a maximum of one third of the deceased's estate may be disposed of by bequest. The final chapter deals with gifts, a subject not traditionally considered in connection with inheritance.

The heart of the law of inheritance is contained in Chapter three. The 16 articles that make up this chapter comprise no more than the rudiments of a scheme for the distribution of property upon death. The summary character of the inheritance provisions seems intended to commit the drafters to as little as possible. This was necessary both to secure the broadest possible approval and to leave open the possibility of further development of the law through judicial interpretation.

The rules regarding specification of heirs and assignment of shares in the Compilation are not intelligible except in the context of traditional Islamic law. The traditional doctrine, in turn, must be understood against the background of pre-Islamic Arabian customary law.

Before the advent of Islam in the 7th century, the basic unit of Arabian society was the patrilineal tribe⁶ The tribe consisted of persons who traced their descent to a common ancestor through exclusively male links (Coulson, 1971: 29). The rules of inheritance served to reinforce the tribal structure by recognizing rights of inheritance only in males who were related to the deceased by male blood ties; the only survivors with rights of inheritance were the male agnate relatives, the "asaba" of the deceased (ibid.). The deceased's property passed to the "nearest" such relative based on a system of priorities. Neither female relatives nor males related to the deceased through females had any claim on the deceased's property.

5 I have argued elsewhere that the basic purpose of restating marriage and divorce rules in the Compilation was to Islamicize Indonesian state law (Cammack et al., 1996: 66-68).

6 The most comprehensive treatment of Islamic inheritance law in English is Coulson (1971).

Islam, at least as understood by the majority Sunni sect, did not altogether replace this scheme, but simply modified it⁷. The holy Koran, which is believed by the faithful to contain the very word of God, grants inheritance rights in the form of specified shares of the estate to certain of the deceased's relatives (Coulson, 1971: 35). The persons who are accorded these "Koranic shares" are either relatives who had no inheritance rights under tribal law - daughters, mothers, sisters, spouses - or relatives whose entitlement to inherit was often foreclosed by the existence of a nearer relative-fathers, for example, whose entitlement under customary law was entirely foreclosed by the existence of a son. The entitlement of these heirs is defined as a fractional share (faraid) of the estate - e.g., one-eighth, one sixth, one-half, etc. In some cases, either the right to inherit or the share of the estate is made contingent on the existence of other heirs. For example, the husband receives one-half if the deceased left no children, one-fourth if there were children; siblings share in the inheritance only if the deceased left no children. Those designated as heirs by the Koran are known as ahl al-faraid, or "those entitled to prescribed portions" (Coulson, 1971: 30).

The Koranic entitlements clearly do not by themselves constitute a complete body of inheritance doctrine. The jurists who elaborated the Koranic provisions into a systematic set of inheritance rules interpreted the Koranic verses as establishing an overlay on the scheme of agnatic inheritance (Coulson, 1971: 33). As fully developed, the law merges two essentially discrete categories of legal heirs into a fully integrated scheme for the distribution of property on death: the "Koranic sharers" inherit on the basis of having been nominated as heirs in the Koran; and the asaba derive their entitlement from the strength of the male blood tie. The complete distribution of the estate is accomplished in two stages: the Koranic sharers are given their prescribed portions first and the nearest surviving male relative, the asaba, takes what remains. Although the male agnate's portion is the variable residue of the estate after the Koranic heirs have taken their portion, he is not a secondary heir in any sense. His position is protected in most cases against the possibility that the estate will be depleted by the distribution to the Koranic heirs by a complex set of priorities that exclude certain heirs in the presence of other relatives (Coulson, 1971: 33-39) and the principle of tasib, which converts a female relative of the same relationship to the deceased as the asaba into a residuary heir (Coulson, 1971: 41-42). The female residuary then no longer takes a fixed portion, but shares in the residue with her male relative in the proportion of two parts to

7 The inheritance law of the other major group within Islam, the Shia, differs in fundamental ways from the inheritance law of the majority Sunni (see generally Coulson, 1971: ch. 8). The most basic difference is that Shiite law gives greater recognition to female blood lines than Sunni law. Some analysts have interpreted reforms included in the Compilation which improve the position of female relatives as based on Shiite law (interview with Thoyib Mangkupranoto, 7/23/1997).

the male against one part for the female. Thus, a sole daughter takes a Koranic share of one half if there is no son, but if she and her brother are the exclusive heirs, she no longer takes her Koranic portion, but shares the estate with her brother in the proportion of two to one, giving her one third to her brother's two thirds.

The advent of Islam transformed Arab society in fundamental ways. Politically, the tie of common faith superceded ancient blood loyalties; the individual family replaced the tribe as the primary social group. But while the impact of Islam on Arabian society was profound, it is also true that the imprint of Arab culture on traditional Islamic law runs deep. Female relatives and spouses are accorded rights of inheritance. But the force of the male blood line is one of the law's unifying themes. In general, male relatives enjoy both a greater likelihood of inheriting and a larger portion of the estate than females.

Initially, the drafters of the Compilation, or some of them, intended to eliminate the patrilineal bias of Islamic inheritance, and replace it with a system that treated male and female blood ties equally (interview with M. Yahya Harahap, 7/29/97). This approach clearly built on the argument developed by Hazairin that Islamic inheritance law is bilateral. But the scheme favored by the drafters of the Compilation went further in reforming the traditional doctrine than even Hazairin had suggested. As initially conceived, Indonesian Islamic inheritance would have treated male and female relatives equally. This meant not only eliminating the priority enjoyed by male relatives, but also equalizing the shares of male and female heirs.

I am not aware that the drafting committee ever actually produced a draft that fully implemented the principle of equality between the sexes. No such proposal was ever made public. However, the essence of the scheme was presented publicly by Religion Minister Munawir Sjadzali in the form of a proposal to equalize the shares of sons and daughters (Munawir Sjadzali, 1988). In support of the reform, he put forward a number of arguments drawn from classical Islamic jurisprudence, but the overriding reason offered for the proposal was its conformity with existing Islamic values and practice. As illustrative of the point, Munawir related his own experience of consulting a prominent "ulama", or Islamic scholar, about arranging for the distribution of his own estate (Munawir Sjadzali, 1988: 3-4). Munawir told the ulama that he had six children, three sons and three daughters. All three sons had been educated overseas, paid for out of his own resources, whereas the education of his daughters had cost far less. If, Munawir said, his sons were to receive twice the inheritance of his daughters, he would consider this grossly unfair. The ulama responded by relating how he had handled his own estate. Instead of waiting until he died for his property to be divided among his heirs, he distributed the bulk of his wealth to his children by way of gift, giving sons and daughters equal

shares, leaving only a small amount to be distributed according to Islamic inheritance rules. Other religious leaders, according to the ulama, used the same or similar methods to evade the application of the rule granting sons a double share. Munawir considered this telling of the Islamic attitude toward Islamic law. The fact that the country's religious leaders did not themselves follow the rule granting males a double share indicated that traditional Islamic legal rules were inconsistent with Islamic legal sensibilities, and demonstrated the need for a "reactualization" of traditional doctrines.

The major obstacle to carrying out a reform of the rule regarding the inheritance rights of children was Koran IV: 11. That verse states without apparent ambiguity that "male [children receive] the equivalent of the portion of two females". Various arguments were put forward to justify a departure from the apparent clear command of the text. Among the more promising in my view is an argument made by drafting committee member Yahya Harahap (Yahya Harahap, 1988: 141-42), a judge on the Supreme Court, came to the committee from a career in private law. Although he had no significant background in Islamic jurisprudence, a fact used against him by the project's critics, he is a highly intelligent and energetic man who emerged as one of the project's leading theoreticians. He began his argument that giving equal shares to sons and daughters is not inconsistent with the Koranic text by granting the assumption of the defenders of the two to one distribution that the rationale for the differential treatment of males and females has its source in the different social roles and obligations of men and women. The justification for granting men the larger share is not because of their sex per se, but because they bear the financial burden of supporting the family. In Southeast Asia, however, Muslim women frequently contribute as much or more to the household economy as men. Thus, the purpose or effective cause of the rule is not present. In addition, the language of the Koran is not necessarily mandatory. The provision stating that the daughter's share is one half that of the son should be interpreted to mean that daughter's share must be at least half that of her brother. The Koran does not, however, preclude equal shares for males and females if social realities warrant such a distribution and the Muslim community desires it.

Ultimately this argument and all others in support of the proposal for equal treatment of males and females was rejected. Indeed, Yahya Harahap, who was in charge of surveying Muslim opinion, reported that not one of the ulama surveyed was willing to depart from the two to one rule (Yahya Harahap, 1988: 140). Although the reasons for rejecting the change varied somewhat, the most consistently stated objection rested on the distinction recognized in Islamic legal theory between Koranic texts that are clear and certain, and those that are not (see generally Al Yasa Abubakar, 1991: 173-78). While it is permissible indeed necessary to apply human reason to penetrate the latent purpose of ambiguous language, no such analysis is required or allowed when the text is clear and its purpose manifest. Since

the verse that grants males a double share is by near universal agreement both detailed and clear, deviations from its express mandate based on speculation about the divine purpose are not allowed.

C. The Compilation Codifies Traditional Doctrine

Muslim reaction to the proposal to equalize the inheritance rights of sons and daughters, voiced both publically and in response to the drafting committee's questionnaire, left no doubt that such far reaching change would not be accepted⁸. The inheritance scheme that was ultimately approved and incorporated in the Compilation largely tracks Koranic dicta on the subject. The rule regarding the inheritance rights of children, for example, provides:

If there is a daughter she receives one half, if two or more they share two thirds, and if there are both daughters and sons, the sons share with the daughters in the ratio of two to one.

This provision closely tracks the language of Koran IV, 11. Although not explicitly stated, the rule suggests a continued adherence to the dual basis for inheritance recognized in traditional doctrine: daughters inherit on the basis of Koranic nomination; sons based on the strength of the agnatic blood tie. The provision also preserves the principle that the male takes a double share. Daughters inherit a fixed share of the estate only when the deceased left no male descendant. If there is a male descendant, the female descendants no longer inherit as Koranic heirs, but are converted into residuary heirs, sharing with the males in the proportion of two to one. In every respect, the rule suggests a codification of traditional doctrine.

The provisions relating to the inheritance rights of the mother, the spouse relict, and collateral relations likewise codify Koranic language⁹. As regards the rights of mothers, article 178(a) provides first that the mother receives one sixth if the deceased left children or two or more siblings, but her share is increased to one third if there were neither children nor more than one sibling. This language tracks precisely the portion of Koran IV, 11 that addresses the rights of the mother.

Article 178(b) treats the special case of the mother in competition with both the spouse of the deceased and the deceased's father. The Koranic text (Koran IV, 11) provides that, if there is no surviving child and "the parents are the legal heirs", the mother takes one third, except where the deceased has left brothers, in which case the mother takes one sixth. This rule presented a problem for the early jurists since, if applied literally, it had the

⁸ The editors of the modernist-oriented magazine *Panji Masyarakat* solicited responses to the proposal from a range of perspectives and collected them in a volume entitled *Polemik Reaktualisasi Ajaran Islam* (Jakarta: Pustaka Panjimas, 1988).

⁹ The Compilation also includes provisions addressing the situation of an over- or under-subscribed estate that are similar if not identical to traditional Syafii doctrine.

effect in some situations of granting to the mother a larger share than the father, a result that was at odds with basic assumptions about the superior rights of males. If, for example, the deceased left a husband, whose entitlement was one half, and the mother is granted the one-third portion that the Koranic text seems to prescribe, the father's residual portion is only one sixth.

The solution to this problem adopted by the traditional doctrine is known as the "Two Decisions of Umar" after the second Caliph. The early jurists interpreted the Koranic verse to mean either that the mother takes her Koranic portion when the parents are the only legal heirs (in which case the father takes a two-third portion), or that the mother takes, not a one-third share, but a share that equals one third of the residue (Coulson, 1971: 45-46). Under either of these constructions of the Koranic language, the principle of *tasib* - that a male agnate converts a female heir having the same relationship to the accused - is extended to the case of the parents. That is the mother is converted by the father into a residuary heir, and shares in the residue according to the rule of two parts to the male to one part to the female.

Article 178(b) of the Compilation appears to codify both the Koranic rule and the juristic gloss on the rule. It states that when the mother shares the estate with the father she takes "one third of the residue after the widow or widower has taken his or her portion" (emphasis added). The effect of this language is to preserve the traditional principle that the share of male heirs is twice that of female heirs.

Compilation provisions on the inheritance rights of the deceased's spouse, treated in articles 179 and 180, mirror Koranic doctrine precisely, and reinforced the impression of the drafter's commitment to preserving traditional doctrine. The widow's portion is one quarter of the estate if the deceased died without children, and one eighth if there were children. A widower takes exactly twice as much as a widow.

The clearest indication of the Compilation's adherence to traditional doctrine and its rejection of the bilateral inheritance scheme advocated by Hazairin is in the treatment of the inheritance rights of collaterals. In the Koran the rights of collaterals are treated in two separate verses which, on their face, are inconsistent if not entirely contradictory. Koran IV: 12 states¹⁰,

If the heirs of a deceased man or woman are collateral relatives and a brother or sister survives, then he or she takes one sixth. But if there are more than one brother or sister, they share one third.

Koran 4: 176 provides:

¹⁰ I have adopted the translation contained in Coulson 1971: 65.

[I]f a man dies without a child and leaves a sister, she takes half of the inheritance... If there are two sisters, they take two thirds of the inheritance. If the collaterals include both males and females, then the male takes a share equivalent to that of two females.

Although the Arabic terms for "collateral relatives" and "brother" and "sister" is the same in both verses, juristic opinion differentiated between the two provisions and reconciled the apparent conflict between them by interpreting verse 12 as referring exclusively to uterine siblings - brothers and sisters who have the same mother as the deceased but a different father - and verse 176 as referring to germane and consanguine siblings - full and half siblings having the same father as the deceased (Coulson, 1971: 65). The uterines are restricted under all circumstances to a fixed Koranic share, while agnatic sisters take a fixed share in the absence of an agnatic brother, but are converted into residuaries when a brother is present, and share the residue in the proportion of two shares for the male as against one for the female. Although this interpretation is supported by ample legal authority, the deeper explanation for the distinction lies in basic assumptions of Islamic inheritance doctrine and the general preference accorded to the male blood line. The orthodox interpretation of the quoted texts has the effect of extending to collateral relations the same system of dual entitlement that governs other relatives. Sisters and non-agnatic brothers, relations who did not inherit under Arabic customary law, are treated in the same manner as spouses: they receive a Koranic portion. In the absence of a son or a father, an agnatic brother qualifies as the nearest male agnate, and is entitled to the residue. When the brother is accompanied by agnatic sisters, the principle of *tasib* converts the sisters into residuary heirs, who share with their brother in the proportion of two to one.

Because the orthodox interpretation of the verses on collaterals is premised on and reinforces a patrilineal kinship system, Hazairin rejected it. Applying his assumption that male and female blood lines have equal weights, Hazairin rejected any distinction between the two verses based on the character of the relationship between the deceased and the siblings (Hazairin, 1982: 54-55): that is he denied that a uterine sister is any less a sister than a full or consanguine sister. Instead, he distinguished the two verses on the basis of the presence or non of the father. The provision granting siblings the larger share, according to Hazairin, applies only when the deceased was not survived by the father. When the father is an heir with the deceased's siblings, the siblings take the smaller portion specified in verse 12.

The Compilation of Islamic law unequivocally embraces the orthodox view on the rights of collaterals and rejects Hazairin's position that agnatic and non-agnatic siblings have equal rights. Compilation articles 181 and 182 explicitly distinguish between uterine and full or consanguine siblings, granting agnatic siblings the residue of the estate in the absence of a child

or father¹¹. When agnatic brothers share the residual portion with agnatic sisters, brothers take two shares to the sisters one.

The Compilation provisions regarding children, the mother, spouses and collaterals appear to simply restate orthodox Islamic doctrine. The one point on which the Compilation deviates from traditional doctrine is in its treatment of the inheritance rights of the father. Article 177 provides:

The father takes one-third share if the deceased left no children and, if the deceased had children, one sixth.

The second part of this provision, the specification of a one-sixth share for the father when the deceased left children, is taken directly from Koran IV: 11. The provision granting the father a one-third share when the deceased did not leave children, however, has no apparent basis in either the Koran or traditional doctrine. In the absence of children or, more specifically, in the absence of male agnatic descendants, the father inherits the residue of the estate in his capacity as *asaba*¹².

The origin of the language assigning the father a one-third share and the explanation for its inclusion in the Compilation are the subject of considerable confusion. One view, probably the most common, holds that the one-third rule is a drafting or typographical error. Another view, held by more besieged elements of the Muslim community who suspect an effort to secularize the law, maintains that the one-third share for the father has its source in civil law, specifically the French Civil Code. The most plausible explanation, confirmed by those involved in the preparation of the manuscript, explains the rule granting the father one third of the estate in the absence of children as the sole surviving element of the drafters' original plan to implement a system of bilateral inheritance (which requires abolition of the institution of the *asaba* as residual heir) and equalize the inheritance rights of male and female relatives (interviews with Gani Abdullah, 7/27/1997 and Bustanul Arifin, 7/30/1997). As discussed above, the orthodox view recognizes two principal categories of heirs: Koranic sharers and the nearest male agnate. Under the traditional doctrine, the father inherited as the nearest male agnate in the absence of an agnatic descendant. Because that status is not recognized in a system of bilateral inheritance, the drafters of the Compilation specified a fixed fractional share for the father when the deceased left no descendants¹³. The size of the father's share was determined based on analogy to the share granted in the Koran to the mother: one third. Thus, the one-third share for the father

11 The Compilation also includes provisions addressing the situation of an over- or under-subscribed estate that are similar if not identical to traditional Syafii doctrine.

12 When the deceased left daughters, the father inherited both his one-sixth Koranic share and a residuary portion (Coulson, 1971: 43).

13 Hazairin rejected the interpretation of Koran IV: 11 that limits the mother to one third of the residue rather than a one-third share, but he did not propose a fixed share for the father.

represents a deliberate reform based on a novel interpretation of the Koran inspired by the goal of making the law of Islamic inheritance fully bilateral and equalizing the position of all male and female relatives.

The conflict between article 177 and Islamic doctrine did not go unnoticed. When the text was published in 1991, the Nahdlatul Ulama (NU), the most important organization of conservative Muslims, issued a protest, threatening to reject the Compilation entirely unless the provision relating to the inheritance rights of the father were changed (interview with Daud Ali, 08/02/1997). In response to the protest, the Supreme Court, after consulting with the Department of Religion, issued a circular "clarifying" the intent of the provision (Surat Edaran n° 2, Mahkamah Agung, June 28, 1994). The clarification states that what was intended with article 177 is that "the father takes a one-third share if the deceased left to children, but did leave a husband and mother" (emphasis added). Although this explanation satisfied the immediate objections of NU, it hardly makes the law "clear". The Supreme Court's explanation of the provision is acceptable to Muslim traditionalists because, according to the orthodox view, the father's share of the inheritance is in fact one third of the estate when the other heirs are the mother and husband. The father receives one third under those circumstances not because the law grants him one third as such, but because one third is what remains for the father as the residuary heir after the husband takes his fixed share of one half and the mother takes her one-third share of the residue or one sixth. It cannot, however, have been the intention of the drafters to write a provision that addresses the rights of the father in one circumstance only - where the other heirs happen to be the husband and mother - but leave unresolved the father's rights when, for example, he shares the estate with the mother and the wife.

The Supreme Court's circular fails to resolve the question of what article 177 means. Indeed, in pointedly not specifying the father's entitlement except in the one situation it addresses - when he shares the inheritance with both the husband and the mother - it seems designed to avoid a definitive resolution of the father's inheritance rights. The majority of observers doubtless interpret the clarification as signaling the government's intention to preserve the traditional doctrine regarding the inheritance rights of fathers. It is possible, however, that the clarification was intended to preserve the ambiguity as to the father's inheritance rights in order to keep open the possibility of future interpretations in line with the drafters' original intentions: that is the clarification does not preclude an interpretation of article 177, which grants the father a one-third share whenever the deceased died without descendants. To be sure, such a construction is difficult to reconcile with article 178 regarding the rights of the mother, which gives the mother not a fixed share of one third, as suggested by the literal language of the Koranic text, but one third of the residue, in line with predominant juristic opinion. Such an interpretation is, however, consistent with the privately stated views of members of the

Supreme Court that the Compilation as approved abolishes the principle of male residuaries (interviews with Taufiq, 7/25/1997 and Yahya Harahap, 7/29/1997). As will be shown below, moreover, the Court has already signaled an intention to depart from orthodox Islamic legal doctrine and interpret the Compilation in line with the intention of the drafters to move toward a bilateral system of inheritance rights.

D. Progressive innovations: Representation and Adoptive Children

The outstanding feature of the inheritance provisions of the Compilation is its resemblance to prior doctrine. All of the relevant Koranic texts are incorporated in the document. Indeed, much of the Koranic language on inheritance is imported into the Compilation in verbatim translation. Although nowhere explicitly stated, the basic principle underlying Islamic inheritance - that the fixed fractional shares are distributed to the Koranic heirs and the nearest male agnate takes what remains - receives strong implicit endorsement. The Compilation also includes part - though only a small part - of the juristic interpretation of Koranic texts. The provision relating to the rights of the mother in competition with the deceased's spouse and father and the rules governing the rights of collaterals are the most notable examples of an apparent intention of adhering to traditional interpretation of the Koran.

The Compilation does, however, include two modest reforms designed to bring the law more closely into line with indigenous Indonesian values. Article 209 prescribes an "obligatory bequest" in favor of adopted children when the child has not been named in an express testament by the adoptive parents¹⁴. While not prohibiting adoption, Islam does not recognize any legal relationship between the adoptive parents and the child (Fysee, 1974: 189). In Islamic Southeast Asia, however, the practice of rearing children outside their birth home is very common (see e.g. Geertz, 1961: 36-41 discussing the Javanese). The fact that such children are not entitled to any share of their adopted parents' inheritance has long been regarded as grossly unfair.

The institution of an obligatory bequest was borrowed from Egyptian law, which in 1946 provided for an obligatory bequest in favor of children of pre-deceased heirs (Coulson, 1971: 145-46). As in the Egyptian statute, the Compilation provision limits the bequest to a maximum of one third of the estate. This limitation derives from the fundamental rule of Islamic inheritance law that no more than one third of the deceased's estate may be disposed of by will. The necessity of approaching the problem indirectly through the somewhat awkward means of a fictitious grant reflects the general unwillingness to rethink the fundamental premises of the law.

¹⁴ The provision also grants adoptive parents an obligatory bequest out of the estate of their adoptive child.

Potentially more significant than the provision relating to relationships formed through adoption, which is based on a highly conservative rationale and has few implications beyond the narrow circumstance it addresses, is another provision providing for representation of pre-deceased heirs. This provision addresses the situation that has long been regarded as entailing the greatest hardship under traditional Islamic doctrine. The grandson or granddaughter of the deceased, according to all four schools of Sunni jurisprudence, was totally excluded from inheriting by the presence of a son (Coulson, 1971: 143). This outcome results from the application of the basic principle of priority governing the rights of residuary heirs that the nearer in degree of relationship excludes the more remote. Thus, the son excludes not only his own children from inheriting but also his orphaned nieces and nephews. As Noel Coulson pointed out, this rule presented no particular injustice within a society in which common tribal membership was the strongest social linkage, since the surviving uncle could be expected to have the same regard for the needs of his orphaned nephews as for his own sons (Coulson, 1971: 143-44). But in a society that emphasizes the nuclear unit and in which the family of the deceased's children comprise independent branches of the family, the complete termination of an entire branch because of the death of the father seems arbitrary and unjust, especially since the death of the grandchildren's father may leave them in particular need of assistance.

The rights of children of pre-deceased heirs has been regarded as a problem in many Islamic countries for a long time. As mentioned, the matter was first tackled in Egypt in 1946 through the institution of an obligatory bequest. This approach was later followed in several other Middle Eastern and North African countries (Coulson, 1971: 144-46). Pakistan provided for representation of pre-deceased heirs directly (Coulson, 1971: 145). The question of the inheritance rights of the children of pre-deceased heirs was also a major component of Hazairin's proposed national inheritance scheme (Hazairin, 1982: 26-44). Based on a creative though somewhat strained interpretation of Koran IV: 33¹⁵. Hazairin argued that the Koran, correctly understood, recognizes the principle of representation of pre-deceased heirs. The children and more remote descendants of pre-deceased heirs inherit the deceased heir's share per stirpes: that is the representatives inherit a share equal to the share that would have passed to the heir - the party represented - had s/he survived.

The Compilation provision on representation of pre-deceased heirs is contained in article 185: that article provides that "An heir who dies before the deceased may be represented by his children", but that "The share of the

15 The relevant portion of Koran IV, 33 reads, according to Mohammed Marmaduke Pickthall's English translation, "And unto each We have appointed heirs of that which parents and near kindred leave". The word here translated as "heirs", Hazairin interprets to mean "representatives".

representative may not exceed the share of an heir of the same degree [of relationship] as the person represented". The jurisprudential basis for the change is not apparent from the text of the Compilation and was nowhere authoritatively specified. The absence of an express jurisprudential foundation for the rule has been criticized (see Ahmad Azhar Basyir, 1992: 19), but may have been necessary for approval. On the one hand, the majority of the country's ulama would not have accepted a rule that grants inheritance rights to the children of pre-deceased heirs on the basis of Hazairin's (or any other) appeal to the language of the Koran. On the other hand, the only jurisprudential justifications acceptable to the country's more conservative ulama would not support the kind of change that the drafters intended. According to drafting committee member who was in charge of surveying Islamic opinion, Yahya Harahap, the only basis on which the ulama could accept representation of pre-deceased heirs was the on the principle of an obligatory bequest (Yahya Harahap, 1988: 138). Conceiving the representative's share as a bequest, however, would require that the share of the representative not exceed one third of the entire estate because of the rule requiring that two thirds of the entire amount go to the legal heirs.

In addition to provoking criticism, uncertainty over the jurisprudential basis for the representation rule has contributed to the emergence of conflicting views as to what the provision accomplishes. On one view, article 185 does not create or recognize inheritance rights in children of pre-deceased heirs, but operates only as a grant of authority to the judge to provide for orphaned children on an ad hoc basis in order to avoid a manifest injustice (see Roihan A. Rasyid, 1995). This understanding is apparently based on the view that only those persons who are alive at the time of the deceased's death qualify as "heirs" under Islamic law. If, therefore, the pre-deceased "heir" - the party represented - is not him or herself an heir, a fortiori neither is the representative, since the "non-heir" pre-deceased parent provides the only possible link with the deceased. Thus, the beneficiary of article 185 does not inherit in his own right, is not an heir, but takes a share of an heir. Advocates of this view find support for this interpretation in the terms of the provision, which is permissive rather than mandatory. Article 185 states that the child of a pre-deceased heir "may" - not "shall" - fill the position of the heir. Proponents of this interpretation also point to the fact that the share of the representative is not necessarily identical with the share of the pre-deceased heir. If the rights of the parent simply devolved on the child making the grandchild an heir in his own right, he would be entitled to a specific portion of the estate. Under the Compilation, however, the share of the representative is discretionary with the court, with the limitation that it may not exceed that of another heir having the same relation to the deceased as the person represented.

Another view of the rule regarding representation of pre-deceased heirs regards it as having effected, or perhaps recognized, a fundamentally

different conception of Islamic inheritance from the traditional understanding. Adherents of this view regard article 185 as endorsing not only the principle of representation of pre-deceased heirs but also and more importantly Professor Hazairin's theory that Islamic inheritance treats male and female blood lines equally (see e.g. Abdul Ghofur Anshori, 1995: 39). This interpretation is based on the assumption that the descendants of the pre-deceased heir do in fact inherit in their own right. If that is so, and if the pre-deceased heir was a female, the net effect of recognizing rights in the representative is that inheritance rights have been passed along the female line. Thus, the rule does not simply authorize ad hoc solutions to provide for the orphaned grandchildren of the deceased, but is a logical ingredient of a coherent system of inheritance that attaches equal weight to male and female blood lines. Within the context of a bilateral family structure, the principle of representation of pre-deceased heirs has the effect of extending inheritance rights to the closest living descendant of the deceased regardless of whether the representative is related through male or female ties (see Hazairin, 1982: 32).

Future Development of Islamic Inheritance Doctrine

Considering both the similarities between the inheritance provisions of the Compilation and Islamic doctrine as well as the process by which it was formulated and agreed to, it is not surprising that the majority of judges and other interested observers interpret the text of the law as essentially codifying traditional Syafii doctrine. That is not, however, the only interpretation. The brevity of the text leaves many unanswered questions, and the absence of any meaningful explanation of the law contributes to the uncertainty of what it means. In my view, the text was deliberately left ambiguous to leave open the possibility of future development through interpretation. The final provision of the text, article 229, gives credence to such a possibility by requiring that in their decisions judges "give sincere consideration to the values of the living law in order that their decisions shall conform to the sense of justice". Munawir Sjadzali and the other reformers have stressed the importance of this provision as not precluding the eventual adoption of the changes embodied in their original proposal (interview with Munawir Sjadzali, 7/10/1997).

In contrast to the very public discussion that accompanied the drafting and ratification of the Compilation, the current debate over the content of Indonesian Islamic inheritance doctrine is being carried out more quietly and with less confrontation. The delicacy of this process and the likely direction of future development is illustrated by a 1994 decision of the Supreme Court in a case involving the rights of collaterals in competition with a daughter. The decision came in a case referred to as *H. Nur Said bin Amaq Mu'minah*¹⁶, involving a dispute between the descendants of two

¹⁶ The decision is designated as Reg. No. 86 K/AG/1994.

brothers, Amaq Itrawan and Amaq Nawiyah. Amaq Nawiyah died first, sometime before 1930, survived by a daughter and his brother. In 1992, the heirs of Amaq Itrawan filed suit in the Islamic Court for Mataram on the island of Lombok, West Nusa Tenggara, claiming title to property that had belonged to Amaq Nawiyah when he died. The defendants in the case were descendants of Amaq Nawiyah. The plaintiffs claimed title to the property on the basis that Amaq Itrawan inherited a share of Amaq Nawiyah's estate as his brother.

The merits of the plaintiffs' position under the traditional doctrine was clear. Their claim, however, was based on a juristic interpretation of the relevant Koranic provision at odds with the apparent literal meaning of the Koranic language. Koran IV: 176 conditions the inheritance rights of collaterals on the absence of a "child" of the deceased. The Arabic word for child used in this provision - *walad* - typically refers to a child of either sex (Coulson, 1971: 66). Indeed, the same word for child used in verse 176 appears as well in other Koranic texts on inheritance, and has interpreted in those contexts as including both male and female children¹⁷. But the majority of Sunni scholars interpreted the word *walad* in verse 176 as referring to male children only (Coulson, 1971: 66). The traditional doctrine granted agnatic siblings a share of the inheritance when the deceased was survived by a daughter, but not when the deceased was survived by a son. This interpretation of the Koran was necessary in order to preserve consistency with a well known Tradition in which the Prophet divided the deceased's estate between his daughters and their uncle, the deceased's brother (Ibid.). It was also consistent with the general principle that Koranic heirs do not exclude other relatives of the inner family (Coulson, 1971: 36-37). Most importantly, though, interpreting the word "child" in verse 176 to refer to sons but not daughters had the effect of systematically advantaging male relatives.

Thus, under the received doctrine, the rights of the brother in competition with the daughter, and therefore the entitlement of the plaintiffs in the case of H. Nur Said, were clear beyond any reasonable dispute. The daughter is entitled to a one-half Koranic share; the brother takes the rest. The Compilation provision regarding the rights of agnatic siblings does not clearly alter this outcome. Compilation article 182, like Koran IV: 176, makes the inheritance rights of siblings dependent on the absence of a child. The Compilation does not, however, specify whether the entitlement of collateral relations is contingent on the absence of male children only, as under the traditional doctrine, or lapses in the presence of any child. The Indonesian word used in the Compilation (*anak*), like the Arabic word in the Koran, commonly refers to children of either sex.

¹⁷ The entitlement of the deceased's spouse, for example, depends on whether the deceased was survived by one or more children. In that context the tradition interpreted *walad* to mean either male or female children (Coulson, 1971: 66).

The lower courts in H. Nur Said decided the case in line with traditional doctrine. The Supreme Court reversed. In a very brief and conclusory decision, the Court stated simply that "so long as the deceased is survived by children, either male or female, the rights of inheritance of the deceased's blood relations, except for parents and spouse, are foreclosed". The only reasoning or authority cited in support of this interpretation was a brief reference to the views of Ibnu Abbas, one of the companions of the Prophet, who construed the word *walad* in Koran 4: 176 as embracing both male and female children.

The reasons given by the Court in support of its decision obviously provide little guidance as to the direction of future change. It could be argued that the decision does no more than adopt the most plausible linguistic interpretation of the Koranic language on which the Compilation provision is based. On the other hand, the Court's decision is consistent with the most ambitious plans of the reformers - to implement an inheritance scheme based on the premise that male and female relatives have equal standing under the law. It is certainly noteworthy that the Court cited as the sole support for its interpretation of the Compilation the opinion of a respected Islamic authority on the meaning of the Koran. One inference that could be drawn from this is that the Court will not impose an interpretation on the Compilation that does not have some foundation in the classical Islamic legal literature. There is precedent for such an approach to legal change in other Islamic countries, and at least some commentators appear to have assumed that the Court will not deviate significantly from accepted canons of Islamic legal interpretation. I suspect, however, that the Supreme Court regards the potential for developing the law through interpretation as more open ended. As noted, the Compilation provision requiring that judges consider the values contained in the living law arguably authorizes judicial development of the law. In addition, the arguments and interpretations put forward while the Compilation was being debated as both possible and permissible. To be sure, the need to maintain legitimacy with more conservative Muslims will moderate the pace of change. Moreover, in the absence of a clear signal from the Supreme Court, lower Islamic courts are unlikely to depart from traditional doctrine beyond those changes clearly stated in the Compilation. But while inheritance law reform will probably be gradual and somewhat haphazard, the indications are that the Supreme Court is committed to a view of Islamic inheritance doctrine that is both equitable in its treatment of women and more similar to its conception of Indonesian custom.

Conclusions

The debate over inheritance doctrine and the content of the Compilation reveal both continuity and change in Indonesian Islam. Historically, attitudes toward law and jurisprudence have marked off significant divisions within Islamic society. The debates over the inheritance provisions

of Compilation indicate that, despite very significant changes in the Indonesian Muslim community, the historic lines of cleavage remain. The content of the Compilation was dictated by the need to negotiate the different outlooks of the traditionalists - who insist on literal adherence to the received doctrinal corpus - and the modernists - who advocate reinterpretation of the original sources - while at the same time advancing the drafters' reform agenda. Accommodating all these interests required the balance of a funambulist. The bulk of the document consists of clearly stated texts the reconsideration of which is out of bounds for either modernists or traditionalists. The Compilation also includes enough indications of an intent to adhere to standard interpretations of those texts to foreclose strong objections that it conflicts with traditional doctrine. On the other hand, since most of the juristic gloss on the texts is not expressly stated in the Compilation, it can be read as preserving only that part of the law of inheritance which was directly revealed, leaving open the possibility of new interpretations of those divine dicta.

While the Compilation shows that the historic fault lines within the Muslim community persist, the debate over Indonesian Islamic inheritance also demonstrates that the terms of Islamic law are by no means fixed, and suggests that a long term process of doctrinal change is underway. Like the modernists, the new group of reformers embraces the central tenet of Western scholarship on Islamic law, that the interpretations of the Koran embodied in legal doctrine are a product of a particular historical context. But the reformers regard the terms of the divine revelation as less definitive than the modernists and recognize a broader scope for the exercise of human reason. Aptly described as "indigenists" (Liddle, 1996: 74), they favor a thoroughgoing accommodation of Islamic and indigenous legal regimes and advocate rules of inheritance that are generally consistent with widely shared views about fundamental human rights, and are premised on an understanding of the sources of Islamic law that is consistent with the positivist assumptions of the contemporary nation state.

The changes from the traditional doctrine that were incorporated in the Compilation fell far short of the proposals of the Department of Religion and the Supreme Court. Viewed in a longer historical perspective, however, the changes indicate a widening acceptance of reform methodologies and doctrinal change that would not have been possible a generation earlier. Professor Hazairin's advocacy of representation of pre-deceased heirs placed him on the doctrinal fringe in the 1960s. A generation later, the principle of representation, though not universally accepted, is no longer regarded as completely unthinkable. The strategy of those who favor further doctrinal reform is premised on the view that change can be accomplished gradually through a process of discussion and familiarization.

Notwithstanding evidence of jurisprudential development and doctrinal change, what stands out in the Compilation above all else is its extreme

conservatism. It has often been remarked that the gender systems that characterizes Southeast Asian Muslim societies differ markedly from those of the Arabian Peninsula where the rules of Islamic inheritance originated. Although it would be erroneous to characterize Southeast Asian Muslims as embracing gender equality, Southeast Asian women enjoy a relatively strong social status and have long participated in a wide variety of economic pursuits. The opponents of the government's reform proposal never seriously disputed the claim that many Indonesians believe that systematically favoring male children in the distribution of property on death is unjust. For most of those expressing opposition to the proposal, however, the actual practice of inheritance was basically irrelevant to the question of what the law should prescribe.

Part of the explanation for the conservatism of Islamic legal thought is to be found in the idealism and scholasticism that have generally characterized Islamic jurisprudence. Islamic legal scholars have long conceived their role as having much to do with apprehending the divine and much less to do with regulating social practice. Specifying the rules of inheritance is not solely or even primarily a matter of prescribing rules for the authoritative resolution of actual inheritance disputes. It touches on fundamental questions of meaning and truth. Questions regarding such real world and eminently disputable matters as the shares of male and female relatives are regarded as neither more nor less important than impossible and fantastical questions such as determining the precise moment at which succession opens to the estate of a person turned into stone by the devil (Coulson, 1964: 81).

The attitude of Islamic leaders toward law reform and the seeming commitment to traditional legal doctrines by the Muslim community is also influenced by contemporary Indonesian social realities. Indonesian society is undergoing very rapid social and economic change. Part of the appeal of a system of divinely based and immutable inheritance doctrines is that it offers refuge against uncontrollable forces of change. Islam and Islamic law provide fixed points of truth in a world that seems to be moving at breathtaking speed.

Finally, the methodological conservatism that characterizes the Compilation is partially rooted in internal jurisprudential concerns that plague all late twentieth century legal systems, not just Islamic law. All contemporary legal systems are faces with the problem of establishing a convincing connection between law and truth. Within Islamic jurisprudence there has from the beginning been a recognition that certainty in all things is not possible. But while doubts about the possibility of achieving truth in law have been expressed for centuries, the challenge to truth posed by the contemporary situation is different. In the past, the problem of uncertainty was understood as rooted in the difficulty or impossibility of imperfect humans achieving certain knowledge of divine

intent. By contrast, the challenges of today's generation raise more fundamental and intractable problems. To acknowledge, as the reformers do, that all interpretations of the divine revelation are the contingent product of time and place is to relinquish completely the aspiration for absolute truth. Moreover, to concede the absence of solid foundations for knowledge is to give up precisely that which is most sought after - an anchor of stability in a world otherwise characterized by uncontrolled change.

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Traditional Stereotypes and Women's Problems in Post-Soviet Uzbekistan:

A Survey of the Mass Media

M. Tokhtakhodjaeva

Introduction

Following independence in 1991, the former Soviet republic of Uzbekistan has been undergoing sweeping social, political and economic changes, all deeply affecting the country's women. However, women's problems continue to be ignored, while the role of women has become a battleground between the various forces, including fundamentalism, which seek to fill the ideological vacuum left by the collapse of Soviet power. This paper uses the discourse appearing in the local mass media as a case-study to highlight the problems currently confronting the women of Uzbekistan in the transitional period.

A review of the mass media in Uzbekistan reveals that problems affecting women are barely discussed. Meanwhile the representation of women in the media has seen the introduction of a new, somewhat alarming, element: alongside stereotypical Soviet-style images of women standing by a machine at a plant, or women on a plantation, there is a new image, typical of patriarchal discourse - a blushing bride, a mother sitting by the cradle, an elderly woman surrounded by numerous relatives, and a woman running her home.

The formation of public consciousness through mass media

In radio and TV programs devoted to the revival of national identity, special emphasis is laid on the image of a shy and modest girl, obedient to her parents' will, who is kind as well as good at managing the home. These programs provide information on the activities of women's committees and makhalla (local community) committees, as well as talks on moral and ethical problems facing women in the family context and the upbringing of an 'Asian woman'. In a popular TV talk-show, 'A Fiancée and a Bride', the same stereotype prevails and the show's popularity illustrates the persistence of the image of an Asian woman as something special, a person who must be, first and foremost, an obedient daughter and wife and an excellent mistress of the house. The proponents of traditionalism emphasize the 'special' destiny of an Asian woman using false statistical data, myths

about the past, misinterpreted information about the allegedly weak feminist movement in the East; by appealing to women's 'natural and biological' needs, they demand the revival of polygamy and hold up to shame 'the amorality' of the West. For most young women participating in these talk-shows their ideal is a woman who has devoted her life to her family, husband and children. Meanwhile, the image of a modern woman, who in addition to her domestic preoccupations is engaged in some kind of business or in public activities, is left off screen or mentioned only in passing. There is also a cycle of TV programs devoted to business, which features many business women. However, this cycle was meant for Russian-speaking women and is not accessible to the Uzbek-speaking majority.

A review of the mass media in Uzbekistan also reveals that there is little analytical and critical material which dwells upon women's social problems. The articles that do contain criticism reflect either a conservative position or attack all models of an equal woman, whether Soviet or western. While discussing violations of women's rights, the authors base their stance on moral and ethical perspectives and not legal perspectives, thus strengthening a traditionalist socialization of women. At the same time, pre-Soviet family relations are idealized, the role of men in the family is exalted and the conclusions in such articles are usually directed at women. The mistress of the house, a wife and mother: this should be a woman's ideal. The rest is of lesser importance, or is even alien to her destiny, they seem to argue.

Criticizing women's current economic position, the authors are all for introducing the norms of the Shariat, in particular the legalization of polygamy, as a means of providing women social protection. The only positive conclusion to be made about articles such as the one titled 'Is Polygamy a Sin?' is that they bear witness to the freedom of speech in Uzbekistan, since such articles stand in direct contradiction to the guarantees of women's equality contained in the Constitution of Uzbekistan.

This paper shall attempt to analyze the extent to which the mass media in Uzbekistan fails to reflect current realities and why on the other hand both authors and their audience accept the image of a 'domesticated woman' as an ideal. It further highlights the fact that there is a lack of discussion of social problems such as domestic violence, the violation of women's rights by parents, husbands and in-laws, and the deterioration of women's economic and educational status. This is instead supplanted by criticism of the 'Soviet' model of equality, by appeals for the revival and legalization of polygamy as the only means of protecting women from social problems, and by the rehabilitation of traditions which violate women's rights but which are justified as coming from Shariat.

Such a situation is not accidental. It witnesses the fact that Uzbek society is not homogenous and that two distinct trends can now be discerned in its development: the modern and the traditional.

The modern aspects of Uzbek society began emerging in the early 20th century, heavily influenced by Muslim reformists. During the Soviet period, modernism formed part of state policy. However, under totalitarian Soviet rule, modernization was introduced by force. Examples include the Khudjum (the forced unveiling of women in Central Asia) in the 1930s., the ideological struggle against religion, collectivization and industrialization, and the repression launched against part of society. The modernization of society was also conducted through the educational system and the policy of russification.

Meanwhile, traditional society continued to exist in parallel with the new Soviet social structures. At first openly and subsequently more subtly it resisted modernization and upheld a way of life 'bequeathed by our forefathers'. However, Soviet social scientists ignored the persistence of traditional society and thus its influence on public attitudes was not studied. The portion of the population adhering to traditional lifestyles is greater than those who pursue a modern lifestyle. The majority rural population and part of the urban population, due to their poor education, the nature of their daily work and their mentality, still pursue a way of life they identify as their own or the 'Muslim' way.

So, what is a traditional society? Traditionalism not only stands against the new, it demands a constant correction of lifestyles in accordance with the 'classical' model, no matter which model - Islamic, Christian or any other - society is based upon; what is important for traditionalists is that society must not move away from the 'ideal'. Traditionalism is maintained where there is a socio-economic basis for it¹. There is just such a basis in Uzbekistan, namely: a high proportion of the population is rural with few of the population employed in industry, among other factors. The influence of the rural population on the urban population is one of the factors that Uzbekistan's President Karimov has identified as a threat to national security, along with the shadow economy that developed during the Soviet period, the domination of clan identity over local politics, parochial tendencies, and corruption².

After independence, when the revival of national identity became a cornerstone of the new statehood, certain aspects of traditional society were given some degree of legal cover and traditionalism was ideologically rehabilitated. It is currently enjoying an upsurge.

1. S. Polyakov, *Everyday Islam: Religion and Tradition in Soviet Central Asia*, M.E. Sharpe Publishers, London, 1992

2. I. Karimov, *Uzbekistan on the Threshold of the 21st Century - Threats to Security, Conditions and Guarantees of Progress*, Uzbekistan Publishers, 1997

In the sphere of family relations, traditionalism is re-emerging with a vengeance. From 1989 the traditionalists began promoting their position through the mass media, mainly 'non-governmental' publications. Meanwhile the state initiated and promoted the concept of the modernization of society and economic policy; in order to be successful, it argued, reforms aimed at reviving industry and agriculture required the introduction of the modern way of life. Yet there is no open confrontation between 'modernists' and 'traditionalists', since the 'modernists' have accepted an ideological trade-off and have adopted some of the traditionalists' motifs.

Nevertheless, the state and traditional society appear to differ regarding the solutions to various social problems and open discord can be observed in attitudes towards women's issues. One of the first attacks on the Soviet model of women was a cycle of articles and other works by well-known literary figures of Uzbekistan during Gorbachev's perestroika. They targeted family planning and women administrators. These publications reached their peak in 1991-92 coinciding with the rehabilitation of Shariat norms regarding women's issues. Events in neighboring Tadjikstan halted the ideological advance of traditionalism in Uzbekistan. Nevertheless, the adoption by state 'modernists' of elements of traditionalism in order to strengthen support for state policy has meant that while Soviet achievements in modernization have remained targets for conservative criticism, traditionalism has become a 'sacred cow'. As a result, women's status fell in the period 1992-94, and it was only the return to the path of protectionism towards women in 1994 that enabled an increase in the number of women in state bodies and a real consolidation of their rights³.

It was in response to the situation in 1992-94 that the first non-governmental feminist organizations appeared, indicating that a stratum of women were against the revival of traditional society. However, in the mass media, especially in the Uzbek vernacular, there has been no promotion of modernization trends regarding women, and this is cause for concern.

The Decree of 2 March 1995 'On Measures Increasing the Role of Women in State and Public Construction in the Republic of Uzbekistan', signed by President Islam Karimov, gave impetus to women's committee activities at all levels. However as during Soviet rule, they use a formal approach and lack a clearly defined position on the issue of modernization. Moreover the committee women themselves are to a great extent influenced by traditional stereotypes, with some especially at the lowest level, being clearly adherents to traditionalism.

³ On Measures to Increase the Role of Women in State and Public Construction in the Republic of Uzbekistan, Decree of President I. Karimov of 2 March 1995

The transition to a market economy has resulted in the financial consolidation of the layer of petty bourgeoisie connected with the 'bazaar', business and services. This layer existed during the Soviet period, but under the aegis of the shadow economy. During perestroika and the transitional period, this sector was partially legalized and grew owing to the influx of a younger generation, thus giving rise to family enterprises.

The growing affluence of this section of society, which invariably only had a mediocre education, has strengthened the hand of traditional society. Its members started showing their strength through the open support of religion, traditional rituals and clan solidarity. It is in this section of the population that the trend of supporting women's return to the 'domestic' sphere, an increase in veiling and the withdrawal of women from the labor market became most evident. Several factors were involved: the real income of state employees fell dramatically, even if they were highly-skilled specialists; women with secondary education were dismissed (under Soviet rule there was hyper-employment as job positions were created for this part of the population). This relatively unmotivated section of the female population was unable to adapt to the new economic conditions. Home and family became not only a shelter from the storm of transition but also a means of self-assertion. The rights these women had enjoyed under the Soviet power were due to positive discrimination, but with the negative effect that they were considered unreliable employees for they abused their right to long-term sick-leaves, etc. An additional factor was that the traditionalist woman's focus on home and family left little time for improving their professional skills. Therefore, many of them were unable to compete not only with their male colleagues, but also with their modernist female colleagues. As a result, employment became burdensome and without reward leading them to prefer to be 'domesticated'.

The Soviet model in reality produced a kind of split personality among educated women, who appeared modern on the one hand, but who still found reference in their families and local communities on the other. The life of modern women in Uzbekistan has been full of contradictions, complexes, stress and dramatic social clashes. A woman was torn between the role dictated by the state and the role defined by the family. As a result, even educated women often hold strongly traditional views on women's status with only a half-hearted commitment to modernism.

Analyzing the current resurgence of traditionalism, one notices that there is almost no writings on social problems connected with traditionalism. In the post-Soviet period, information regarding 'national' traditions is merely a panegyric, with no analysis as to why traditionalism is not viable.

Women's Problems During the Transitional Period

Even a staunch supporter of traditionalism would agree that Uzbekistan today, despite all the difficulties of the traditional period, is significantly more advanced technically, economically and politically than the states that existed in the 19th and 20th centuries in Central Asia (Turkestan Province, the Bukhara Emirate and Khiva Khanate). Therefore, all current social problems must be solved at a level qualitatively different from solutions pertinent to the distant past. The urge to reintroduce polygamy is above a male obsession. It equates to a longing to establish societies such as those that currently exist in Afghanistan, Pakistan and the like. The call for a return to traditionalism for women witnesses the civil immaturity and patriarchal mindset of that part of intelligentsia which are essentially apologists for cultural values: the regard women's inferior position and the violation of their rights as the norm for Asian lifestyles. Such an approach to social problems contradicts the policies of the temporal state directed at the modernization of society and its economy through reform of the legislative, political and economic bodies, and at the building of a democratic society.

Traditionalism, however, opposes all these goals for it strives to preserve the status quo, seeking to replace statutory law with traditional norms dictated by clan politics, parochialism and corruption. The current state of society obstructs the dynamic processes of reform, initiative and pluralism in the economic and social spheres. The extent of women's rights in the public and private spheres are indicators of a society's readiness to face economic and social transformation and as the experience of the advanced states shows, without the active and conscious participation of women such positive change is impossible. Those who seek to make women 'domesticated' effectively deny Uzbekistan the opportunity to achieve the status of an industrially developed state and consign it to the status of Pakistan, Bangladesh and other impoverished countries.

Those working in local feminist organizations have observed that the principle of equality is violated first and foremost in the family. A girl is brought up to see herself as lesser than a boy. This is a violation of rights taking place within the home and in society that goes unpunished. In contrast, a boy is brought up so that he realizes that he is allowed to do many things girls are usually not allowed to do especially after they attain their majority. With such a consciousness, a man will never consider a woman an equal partner and will always restrict a woman's independence and choice, and particularly her promotion up the social ladder to a decision-making position. Society generally regards women as needing to be taken care of by a man or an older woman and hence they are denied the opportunity to learn to make independent decisions. Women too adhere to these opinions and therefore blame women themselves for the growth in the divorce rate and for poor upbringing of their children. They believe that

a woman does not deserve an administrative position, for professional responsibility is of only secondary importance to her. Statistical data show that in Kazakhstan every fifth man with higher education holds an administrative position, whereas only every seventeenth woman with the same education attains such a position (we are using data from Kazakhstan as there is no such data for Uzbekistan; indices for Uzbekistan appear to be even worse).

But let us return to the issue of a 'domesticated' woman. In most families, for a girl it is enough to be attractive and industrious and good at housework. In the traditional family interest in a daughter's education and the growth of her personality, both spiritual and physical, is either lacking or insufficient. Education is reduced to instructions such as "you are a girl, you must be obedient and modest!." Thus a girl's major merits are physical attractiveness and modesty, seen as the basis for a happy marriage. Marriage (and all that accompanies it - obsession with dress and ornaments, etc.) is her primary destiny, with even education considered just a means of finding a husband. This does not enable a woman to realize herself as an independent being. Without a good education and profession, without awareness of their individuality, women strive to realize themselves through the husband. If never married, such women seek to realize themselves through a 'beautiful lover' in the form of an elderly and wealthy man. So, those women who are stigmatized in the press as a negative model of female behavior are in fact the very same 'domesticated' woman, albeit in a different form.

Uzbek writers contrast the model of a 'domesticated' woman with that of a western (modern) woman, ignoring the fact that an independent career woman is not an obstacle to successful family life. This model is described only in a negative light provoking hostility among traditionalist men. Such women are charged with amoral behavior, but none note their positive features: professionalism, their responsibility for their behavior, the quality of their work, their active involvement in civic affairs, and their sense of women's and social solidarity. All of this is completely lacking in the 'domesticated' woman. While the 'domesticated' woman was a globally pervasive model at the beginning of this century, after two world wars and major crises the West has finally accepted the modern model of an equal woman - but thanks only to the efforts of the women themselves who strive for their rights.

The Soviet model of equality, despite its imperfections, gave Uzbek women a great deal. Their educational status has risen significantly and there is a wide stratum of the female intelligentsia - scientists, teachers, doctors and artists - which cannot be replaced in the country's cultural, economic and social life. While women have the right to be 'domesticated', they must not be deprived of their right to be equal with men in public life. The socialization of girls should provide them the opportunity to make

choices in life that strengthen their autonomy and economic independence. For this to be realized necessary to overcome patriarchal attitudes but the latter is as sacred as national and religious traditions, and is reproduced in the socialization process. Hence the predominance of patriarchal motifs in the mass media with the result that topics such as legal consciousness and the issue of maintaining a balance between one's personal, family and public interests are not discussed with reference to women. Only patriarchal solutions to social problems are discussed, i.e., women should be 'domesticated' and all responsibility for them lies on men. But under present conditions, not every man is able to provide a woman with an adequate living standard, hence the emphasis on polygamy. Yet there are too few princes to go round, a popular song goes.

Now let us discuss those women who are engaged in small business. They came to be called *meshochnitsa* (or women selling their goods from sacks) by authors who rage and fume against them. Admittedly, this kind of business (or 'shuttle business') does not appear to be part of a civilized society, and is in fact a typical feature of the traditional economy. But nobody remembers that it is these women who have clothed us all, and that their business is tough and risky. Nor has anybody mentioned the corruption that makes their goods more expensive. A study of this phenomenon would reveal that most of the women involved in the 'shuttle business' have a higher education and it was their sense of responsibility towards their families that made them enter this sphere.

On average, a 'shuttle' business woman provides employment to between 3 to 10 persons, her partners being mainly women. No longer 'domesticated', her business is connected with risk, as well as psychological and physical burdens. 'Shuttles' have achieved economic independence outside governmental structures, where there is no protection. In the course of their work, 'shuttles' gain a knowledge of the law and dealing with banks and there is no need for the state to waste resources on training her in economics. Supported by the state's economic policy, the 'shuttle' begins as a small business but through the accumulation of capital they can develop their activities into a medium-sized business. Instead of comparing how far these women conform to traditional stereotypes, writings on the phenomenon would do better to discuss their business problems, but instead of sound analysis emotions again prevail.

Another topic which merits serious discussion is that of women and crime, for during the transition to market relations it is inevitable that human conflict is aggravated. Living standards plummet and the worsening situation in the labor market forces some women to follow the road of crime.

Yet while the discussing the theme of woman and crime, writings in the mass media again fail to analyze the social grounds for crime. Before the transition to a market economy, women were primarily involved in crimes

committed in the home, but now they are involved in organized crime. As studies by lawyers have revealed, women criminals are found, as a rule, at the lower levels of the hierarchy of organized crime. They commit crimes, but are seldom the initiators or organizers, especially of crimes connected with drug trafficking and the arms trade. Women involved in prostitution should not be regarded as amoral persons, but as victims of organized crime.

Those authors writing about prostitution also emphasize the personal attributes of the women involved, with the problem being regarded as a moral issue concerning only the women themselves, whereas prostitution is a social problem concerns men as well. The problems surrounding prostitution are both economic and social. Prostitution is yielding enormous uncontrolled profits and has become an important feature of organized crime. Social environments sanctified by traditionalism create the conditions which allow this business to flourish. Poor regard for spiritual development and education, and a system of taboos create an atmosphere of sexual tension on the one hand, and encourage the sexual freedom of males on the other. Intolerance of 'mistakes' made by women, women low social status and poor self-esteem, coupled with the cult of wealth create favorable grounds for this phenomenon. Significantly, the women who advocate polygamy justify this precisely by referring to women's 'natural and biological' needs. In order to raise public awareness, publications on the subject of prostitution should contain the statistical data and an analysis of the psychology of social relationships but instead tend to focus on the titillating aspects, exposing the effective illiteracy of the authors.

In many publications the authors often address the subject of women's dress. And this question is again treated from the standpoint of women's conformity to the model of a 'gentle and modest' Asian woman. The position of the authors is traditional and is aimed against the western model. This problem, however, is much deeper than these authors' superficial approach. A woman's dress draws an invisible line between the traditional and the modern. There must be a clear position regarding hijab. The authors claim these are only white and black kerchiefs. But they mean hijab and the latter is not simply a form of dress, but a symbol of women's segregation. A woman wearing hijab recognizes her secondary status and dependence on men.

Hijab is not a passing symbol, but one of permanent adherence to a particular way of life which rejects contemporary change. Hijab can exist as a woman's choice, for it corresponds to the 'domesticated' woman's inner state and religious ideals. But this dress often belongs to a woman who is forced to be 'domesticated' or it can act as camouflage for the cynical manipulation of the symbol of a modest and religious woman. Whereas such cases might be a real topic for discussion, the authors of writings on the hijab have their own position.

Foreign radio stations also discuss the phenomenon of hijab, but here there is also a one-sided approach, i.e. the defence of the right to wear hijab. Nobody links the growing prevalence of hijab and the rise in early marriages and polygamy to a decrease in women's educational status; but there is an obvious link. Women are usually forced to wear hijab by their parents, husbands and in-laws. But nobody complains about this violation of women's rights as human rights, since for a woman it is easier to complain against strangers than her relatives. Women's committees are well acquainted with all these facts but do not make them public on the request of the women themselves because for the rest of their lives they have to live with those who violate their rights.

Violence against women is rarely discussed by the mass media, but if it is touched upon (10), it is regarded as merely the 'misconduct' of individual men. But this problem exists and it affects , first and foremost, 'domesticated' women. And on this point the authors are far >from understanding what human rights are. While assessing problems such as violence against women, authors frequently blame the women themselves, which bears witness to the lack of basic knowledge of international and national legal standards and a lack of civic consciousness on the part of the authors.

The issue of women's health is also ignored. However, this problem is directly linked to the state of women's rights. Cases of difficult pregnancy and labor, high maternal mortality and infant mortality are often the result of the unequal status of a girl or a woman in the family which lead to malnutrition, overwork, nervous breakdowns. Of course, this is coupled with the state of public health, but the key to their health lies in the acknowledgment of their rights and position in the family.

Conclusions

Journalists in Uzbekistan largely reflect the opinion of traditional society and fail to analyze issues from the perspective of economic, legal and social development. This analysis is instead replaced by myth and a superficial approach towards women's problems. There are a number of reasons why journalists are slaves to traditional stereotypes: - the Uzbek intelligentsia mainly consists of first generation urban citizens who have not lost their spiritual and social links with their rural background. The urban population is involved in the non-productive sphere while the 'hereditary' intelligentsia constitutes an insignificant part of the modern intelligentsia.

Legal illiteracy is characteristic of post-Soviet society. Laws and even the Constitution are treated with contempt, leading to the ignoring of the basic legislative principles of a secular state, a highly dangerous trend as the experience of such states as Algeria shows.

Captive to traditional stereotypes, the mass media in Uzbekistan tends to propose primitive solutions to women's problems: women's return to the

home and hearth, a revival of polygamy and the allocating of all responsibility for women's well-being to the husband.

As a recommendation, it would be sensible to involve journalists in the work of feminist organizations so that they, together with the activists of the feminist movement, will be able to mould public opinion in the direction of social modernization, and help defend the equality currently granted to women and protected under law.

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Under siege in Jerusalem

Three women caught between two cultures

David Sharrock

“Wanted: Flat for three twentysomething Palestinian women to rent; Must be in Jewish west Jerusalem and free from religious bigots and bombers”.

That would be an honest advertisement if Manal Diab, Sonia and Wafa Khoury wanted to be open about their recent travails on the top floor of No. 16 Iddo the Prophet Street. But perhaps their notoriety has already ruined all prospect of finding another place to live in Jerusalem?

Notoriety must be the wrong word, but how else can you account for three bombs outside their door in less than 12 months living on the fringes of what is supposed to be the trendy yuppiefied district of Musrara, with its fine views of the gilded Dome of the Rock?

Defying the conventions of both sides of this divided city, Manal, Sonia and Wafa rented the flat last summer. It seemed ideal, close to the Old City where Manal works as a Hebrew language teacher and close to the centre for its shopping and nightlife.

The only problem - and it didn't seem one when they signed the contract - was their neighbours. The narrow street runs between a mostly working-class Sephardic-Moroccan neighbourhood and the ultra-Orthodox Mea Shearim. Two tribes, little in common with one another except perhaps a hatred of Arabs. Even ones who dress in the latest stretch-Lycra fashions and who could easily pass for Israelis themselves. Which Manal, Sonia and Wafa all are - except that they are Israeli Arabs.

It's a term that Manal doesn't like - the map on the living room wall of Palestine showing all the villages which have been erased by Israel since 1948 clearly demonstrates where loyalties lie - but she and her friends are all passport-bearing Israelis, born within the 1967 Green Line separating the Jewish state from the Occupied Territories.

In any case, right now questions of identity are the least of their worries. Their ordeal began with swastikas daubed on their door and stones hurled at them by Jewish seminary students from the local yeshiva. But now

somebody is trying to kill them - or at best intimidate them out of their home - and the police don't seem to be getting anywhere with their investigation.

The third bomb went off on the night of Israel's big 50th birthday party. It was 12 . 40 am and because the city had been ablaze with fire-works all evening Manal wasn't sure what the loud explosion meant. "I went from my bedroom into the living room, and it was on fire; I couldn't call the police because the phone was in that room, so I began screaming for help from my bedroom window. And no one moved. They just watched me. I kept shouting at them to call the police and eventually they did, but it was unbelievable how long they took".

The entrance to the flat is now charred and evil-smelling for the third time. Two previous small bombs exploded outside the door in October and December. The second prompted some attention because a police explosives expert was injured trying to defuse it. Jerusalem's rightwing mayor, Ehud Olmert, even came to visit and get his photograph taken.

"Olmert asked me "Why don't you go and live in the Arab part of the city?" So I told him "Fine, but fix everyting there first, the buses, the potholed roads, the electricity supply". We are all very busy, career women who work late, and it's difficult getting back to the Arab districts where there are no real services, " says Manal.

There is another problem too. Career women who want to look cool and sexy, share a flat and generally run their lives the way they want to without any interference don't go down a storm in east Jerusalem. The women briefly shared a flat in the east Jerusalem neighbourhood of Beit Hanina, where they were harassed by men for flouting Arab tradition and dressing like Western women. The city's western quarters are more to their taste, even though only a few seriously wealthy Palestinians choose to live there.

Perhaps this also account for the indifference of the Palestinian media to the bombings, which seems to have ignored the plight of Manal, Sonia and Wafa. An ad hoc "Committee to Save the Women" was formed by well-wishers, and a Haifa-based feminist group dispatched a visiting American PhD candidate in modern jewish history to move in with the women as a volunteer security guard.

But, Manal wryly notes, all the initial enthusiastic offers of help evaporated like so much Jerusalem snow. "Somebody promised to pay our municipal tax, which we can't afford because we lost so many days work over this, but it never happened. We are alone with our suffering; it's the Palestinian fate".

The police put up a video camera to monitor the flat entrance, but it disappeared a few weeks before the last bombing and, oddly, a spokesman thought it was still there. "The last thing I said that night before I went to sleep was "They will bomb us for sure tonight because it's Independence Day". I'm scared, but they won't break me. This is giving me more strength",

says Manal. "The people who did this are weak who can't fight in a fair way.

"I just want to talk with them, to say to them "You want me to leave? Then come and sit with me and convince me". I believe that I have the right to live wherever I want in this land, which is everyone's land to share, even if it's not my country".

After the second bomb the women started looking for another flat to rent. Not because they were scared, but because their landlord asked them to. He has given them their notice, and when the 12-month contract expires at the end of this month they must move out.

"It is going to be difficult to find a new place to live in, because so many people have heard about us now and it makes me very angry because it's as if this is all our fault", said Manal. Not surprisingly, they have found nothing so far. "We went to look at another apartment in French Hill (one of east Jerusalem's oldest Jewish settlements, nowadays home to any liberal university professors and diplomats) and the landlord seemed terrified of us all the time he was showing us round.

"It makes me so mad. I want to shout at people "Why are you scared of some 26-years-old women who are just trying to build their careers. Why?"

During our talk a visiting New Yorker popped by to offer her condolences. "I read about it and was so appalled I had to come over and apologise for our so-called brethren," said Hanna Berman. "I'm modern Orthodox myself, and I think this is outrageous. It's like the blacks in the fifties in the States or the Nazis. If we do nothing then we too are responsible". She stalked off into the night promising to give the local rabbi an earful.

Nomi Bar-Yaacov, an Israeli human rights lawyer, says the attacks are symptomatic of the growing intolerance of Israel's religious community. "It's getting worse. If a Jewish woman wore a miniskirt in the same area she would face the same problem. I have personally been told that my Jewish blood is worthy of spilling. The combination of being Palestinian and secular merely doubles the problem for these women".

Manal grew up in the Galilee, Sonia and Wafa in Nazareth. Living in predominantly Arab regions of Israel, they never experienced discrimination until they moved to Jerusalem to study, work and get on. More than 90 per cent of Israeli Arabs live in segregated all-Arab towns and villages. In April severe rioting broke out in one village after the army demolished an illegally built home, raising the spectre of a new intifada, but this time one made in Israel among its disaffected Arab population. Opposition politicians urged the government to do more to improve relations.

For Manal, Sonia and Wafa it may be too late. They are thinking of emigrating. "I'm Palestinian and I identify with the Palestinian cause, but as

a modern woman I can't live with Arabs," says Sonia. "They are chauvinist, only like blondes and have totally different mindsets to ours." But she couldn't see herself falling in love with and marrying a Jewish man either, unless he was staunchly anti-Zionist.

Until the lease runs out they have somewhere to live, even if the door and walls are blackened by fire. "We won't be here much longer, and we don't know where we'll be next, but I'm still waiting for them to come and bomb me again," says Manal.

Source:
Guardian Weekly,
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Guardian Weekly,

164 Deansgate
Manchester, M60 2RR
U.K.

Palestinian women's model parliament

*By Dahlia Scheindlin**

The decision stunned even its leaders. During their model parliament held last April in the Gaza Strip, Palestinian women's rights activists first recommended that laws be enacted to restrain and regulate polygamy; that it be allowed only in exceptional cases and with the first wife being offered a divorce. But after the 126 "delegates" confirmed the vote, they dramatically invalidated the decision. Instead, a large majority called for a total ban on polygamy amid widespread applause.

The Islamic community called the vote a "slap in the face to the Koran," according to the Palestinian daily, "al-Ayyam." The activists were denounced as "devils, satans and demons," accused of desecrating and disrespecting the Shari'ah (Islamic law).

"Everyone was against us, and they were totally irrational and emotional. They feared that we were trying to undermine the whole religious court system, and simple religious people became truly scared," recalls Maha Abu Dayyeh Shamas, head of the Women's Center for Legal Aid and Counseling based in Palestinian-populated East Jerusalem which organized the parliament.

The polygamy vote was a highlight of the "Palestinian Model Parliament: Women and Legislation," a two-day forum to demand civil rights and equality for Palestinian women held in both Gaza and the West Bank town of Ramallah. For 18 months, the Women's Center for Legal Aid and Counseling prepared for the parliament by holding forums in cities and refugee camps throughout the Palestinian Authority on the status of women.

Gaza has operated since 1954 under the law of Egypt, with the West Bank under Jordanian law since 1967. Legal regulations and customs are also heavily influenced by the Shari'ah. Under these laws, women are treated like second-class citizens.

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"The parliament's goal was to change long-term attitudes that women aren't strong enough to decide anything, and that only their brothers or fathers can decide," said Murwa Kassem, the model parliament's Gaza coordinator. "We needed to start somewhere."

The delegates — equal numbers of women and men — included members of women's and non-governmental organizations who were picked by organizers based mainly on whether or not they were "outspoken and articulate," said Shamas. Members of Islamic fundamentalist groups were invited to participate as observers.

Whatever it accomplishes — and that remains debatable — the parliament in and of itself was a remarkable event. The majority of women in Gaza are traditional Muslims. Most wear headscarves, as did many at the mock parliament. The influence of Islamic fundamentalists was so strong here a few years ago that women who went out unveiled faced harassment. But Palestinian women have also long had an extensive organizational network and were active in the six-year intifada or uprising against Israeli occupation. With the establishment of the quasi-independent Palestinian Authority four years ago after the Israel/Palestinian peace agreement, feminists succeeded in abolishing some sexist laws, including one requiring female drivers to be accompanied by a guardian.

Still Palestinian feminists are struggling to prioritize their goals: Should they fight exclusively for Palestinian statehood, in the hope that this will further their goals? Or should they be social critics, promoting long-term issues of democracy and women's rights as national institutions and a constitution are being formed? In 1988, Palestinian leader Yasser Arafat proclaimed that "Palestine is a state...based on social justice, equality with no discrimination...on the basis of ethnicity, religion, color or between men and women." The mechanics of achieving such a vision were left undefined.

The Women's Center for Legal Aid and Counseling boldly opted for the role of social critic. "The Palestinian women's mock parliament has a role: to teach people how to give voice to democratic debate," said Kassem, an earnest, high-cheekboned woman with a BA in nursing and mental health, during an interview in her Gaza office with its staff of young, friendly and dynamic women and men.

The model parliament's agenda dealt exclusively with personal status, leaving aside labor, economic, and political inequalities in an attempt to defuse political differences. Gaza participants called for making the minimum age for marriage 18 for both women and men — under Egyptian law women can be married at age nine — and abolishing a law requiring women to get permission from a male relative to marry. They also collected 16,000 signatures for a social covenant calling for justice and equality between the sexes.

That's considerably more than the 170 imams (religious leaders) who signed a petition against the parliament, and yet their sermons could be heard throughout the Palestinian Authority. They claimed that the participants were against family values, dividing society, introducing foreign elements and "collaborating," although with whom it is not clear.

On the second day of the Gaza meeting, an Islamic cleric who is a member of the Palestinian Legislative Council, disrupted the proceedings to distribute a pamphlet that castigated the proceedings in the strongest language possible: "After al-Nakba [The "Catastrophe", referring to the establishment of Israel in 1948] of the land, comes the Nakba of religion and family purity," the pamphlet read, according to the Israeli newspaper "Haaretz." In Ramallah, participants convened under police protection after an Islamic demonstration was called, although it was cancelled at the last minute. A motion by Ramallah delegates to lessen the punishment for female adultery — which can be capital punishment — was denounced as encouraging immoral behavior.

Model parliament organizers insist they are not against Islam. "I believe that Islam has the capacity to make sense for our society," said Kassem. "All of our recommendations come from the Shari'ah. Our problem is not with religion, but with the politics of the religious: the leaders are against civil society." She furrows her brow and tries this point again, to ensure that she is understood.

"We are not against the Shari'ah. But even if we were, we have the right to talk and have a discussion among the people."

Some opposition against the parliament has decreased. Zuheir Al Daba'i, an official in the Palestinian Authority's Ministry of Religious Affairs and a preacher, stated publicly that much of the hostile sentiment against the parliament was based on misrepresentation, and he ultimately came to support it.

"Eventually, the religious leaders began to call us. They wanted to hear directly what we were trying to do," says Shamas, "We are building a stronger political base, and a number of political parties have even distributed leaflets in support." Most importantly, the parliament has government approval. In Ramallah, the area's governor himself attended the mock parliament's opening and conveyed Arafat's support of the event. Sessions of the parliament were broadcast on the government-controlled Palestinian television. Analysts believe such support is intended to counter the strength of Islamic fundamentalist movements who are critics of Arafat, as much as out of a belief in women's rights and equality.

Still, the women are hard-pressed to defend charges that their parliament will lead nowhere. Organizers plan to publish and distribute the decisions reached by the parliament, and to present some of the less controversial issues to the Palestinian Legislative Council (PLC). But several of the official

parliamentarians will likely be unsympathetic to a legislative competitor. (A Palestinian asked for the phone number of the model parliament, and a Gaza operator mistakenly gave the number for the PLC. When he called, an irate PLC receptionist snapped that it had no information whatsoever about some "women's parliament".) Moreover, the PLC is locked in its power struggle with Arafat, and much of its own legislation has not even been ratified.

Therefore, critics contend the model parliament as simply divisive and to no one's advantage. To what extent anyway, they add, were the Parliament's hottest issues, such as polygamy or child marriages a real problem? No more than four percent of men marry more than one woman; and only a very small percentage of girls were married below age 12 (although 46% of all marriages in Gaza involve girls between 13 and 17). The women have thus been repeatedly attacked for gratuitous internal division for the sake of minimal social change.

But even if none of their actions became law, supporters say such a model parliament fosters long-term democracy via women's progress.

"These are basic concepts to other people: the right to an opinion, freedom to debate opinions, and the right to hold a public forum. Democracy has to become cultural, it has to start in the home. Otherwise, you can build all the structures and they won't help," states Shamas.

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The Need to Unify Personal Status Laws in Arab Countries

Sami Awad Al-Deeb Abu Sahleya

In the Arab world, a woman must convince the court that she is 'harmed' by her husband to get a divorce.

The Current Status

The current status of personal status laws in Arab countries have three distinct flaws: the absence of a unified law, the absence of equality between men and women, and the absence of equality between people of different religious denominations. We shall speak briefly of each to explain.

1. Absence of a unified law and legislation:

To understand this point, we must show the reader what the current status is in a country like Switzerland, where there are different religious groups, all of whom have the Swiss nationality. There are Christians divided into sects, the most important of which are the Catholics, Protestants and Orthodox, and there are the Eastern Jews and Western Jews, and then there are Muslims of different denominations the most important of which are the *Shi'a* and the *Sunni*. Additionally, there are also a number of smaller denominations and sects whose origins are either Eastern or Western such as *Bahais*, *Yazidis* and the *Druze*. There are also those who refuse to belong to any religious denomination.

We may therefore say that Switzerland has at least twice as many religious groups as any Arab state, but in Switzerland there is only one law that governs matters of personal status (marriage, divorce, custody, inheritance and guardianship). This law is amended by the Swiss parliament from time to time to be more just and suitable to society. In cases of disputes among the Swiss in personal status matters, they all resort to the same courts whatever their religion, because in Switzerland there is one law and one judiciary.

If we go back to our Arab world, we shall find that its legal and judicial system are inherited from past ages with very slight differences from one country to the next. They may be categorized as follows:

- Some countries have neither a written personal status law, nor a unified one, and they do not even have unified courts for Muslim citizens. In Saudi Arabia, the Emirates and Bahrain, courts are still divided between the *Sunni* courts and Shi'a courts, and both have no written laws but instead depend on the old *fikh* (jurisprudence) books.

- In some countries such as Palestine, Lebanon, Jordan, Syria and Iraq, there are still different courts for different religions. In Iraq, for example, the law recognizes 17 denominations with their own laws and courts.

- In Egypt, the denominational courts were abolished after 1955, but the denominational laws remained for Muslims, Christians and Jews. The personal status for Muslims is not governed by one law, but by several fragmented and incomplete laws that force Egyptian courts to resort to very old *fikh* books, especially those prepared by Kadri Pasha in the previous century.

- In Tunisia, since 1956 all citizens have been governed by one law and one court which are the State courts. However, the personal status laws in this country kept some principles that differentiate between the different denominations and sects. It allows the marriage between a Muslim man and a non-Muslim woman, but does not allow the marriage of a Muslim woman to a non-Muslim man. It also prohibits inheritance between Muslims and non-Muslims.

We may also note that it is very difficult to research any denominational or sectarian laws. Religious courts rarely publish their verdicts, and articles of personal status for non-Muslims are almost never taught in Arab universities, almost never written about, and virtually unknown. To appeal against some of them, especially the Catholics, one must resort to a higher court outside the state.

Some might consider this system an expression of religious tolerance, but such a system has its drawbacks, because it amounts to going beyond the state's sovereignty in the law. It also emphasizes divisions within the state that decrease the feelings of citizens of belonging to their country, and weakens the spirit of solidarity within a society. Making societies strong requires this solidarity, without which the strength of a group will not be accomplished. Such divisions also encourage the loss of people's rights which will not be achieved except through a knowledge of the laws that govern them, and therefore fall prey to the courts, especially when there is a relationship between individuals belonging to different denominations or sects, which requires resorting to different courts and different verdicts. Even more dangerous is that the system used is most often biased towards those belonging to its denomination and against those who do not, which is contrary to the principles of human rights as we shall see later.

2. The inequality between men and women:

It is no secret that the personal status laws in the Arab world are the laws that mostly emphasize inequalities between men and women. If we talk

about Muslim laws as the laws of the majority in the Middle East, we shall notice the following:

- Some Arab countries have tried to limit the phenomenon of marrying little girls at young ages or marrying much older men, or marrying girls forcefully without their consent. But those phenomena are still widespread in several Arab countries, especially those countries without written laws preventing the practice.

- All Arab countries except Tunisia allow polygamy, although some countries have tried to halt this practice. Naturally, those laws prevent women from polyandry. This is completely contrary to the principle of equality, especially because a man's marriage is without the consent of his wife.

- All countries except Tunisia allow a man to divorce his wife without justification, but a woman who demands divorce has to convince the court in order to get rid of her husband.

- A Muslim man has the right to prevent his wife from going to work or even leaving the house. She may not travel without his permission. A woman, of course, has no right to object to her husband's going to work, travel or simply going out. A husband's wages are solely his own and if he divorces his wife she has no right to his money except what he promised to give her as dowry, though the courts may allow her certain expenses for a short time.

- In inheritance, a woman gets half of what a man gets, and this is true even in Tunisia.

3. Inequality between members of different sects:

We have noted the following:

- A non-Muslim may become a Muslim, whereas a Muslim may not change his religion or even express a religious opinion that is different from what is generally agreed upon. Anyone who dares contradict this principle is considered an apostate and thrown in prison, or is killed if he cannot escape to a foreign country. He is also separated from his wife and his money is distributed to his relatives as if he were dead.

- A Muslim man may marry a non-Muslim woman who belongs to one of the three religions, while she may still belong to her religion if she does not wish to embrace Islam. But a man who is of another religion may not marry a Muslim woman without becoming a Muslim. The non-Muslim who marries a Muslim woman without changing his religion has an illegitimate marriage and can be separated from his wife by force. Some even demand the murder of the man.

- In the case of a mixed marriage between a Muslim man and a non-Muslim woman, their children are considered Muslim even if they decide

otherwise. Children have no right to change their religion even when they become older, and if they do, they are considered apostates. Arab laws do not acknowledge freedom of religion and choice.

- Arab laws prevent inheritance between a Muslim and a non-Muslim. In mixed marriages, a Christian wife may not inherit the property of her Muslim husband, and a Muslim husband may not inherit the property of his Christian wife. The Muslim children may also not inherit the property of their mother. If a Muslim becomes an apostate, then his Muslim relatives take his money, but if a Christian becomes a Muslim, his Christian relatives may not inherit anything after his death.

This status is not only a source of discrimination against Muslims and men, but is also against the principle of freedom of religion in general which is the basic principle to protect the dignity of individuals. Denominational and sectarian identity is often not based on conviction, but is simply a necessity to exercise basic rights in personal status. Those who do not want to belong to any religious sects because they have no religious convictions have no rights at all. They may not marry or inherit property. That is how religion becomes a kind of thorn without moral value that threatens the rights of individuals, and will threaten society sooner or later. But how do we get out of this legal and religious impasse?

Changing the current situation

We mentioned that Egypt unified the courts but did not unify the laws. Although this is considered an important step, it is still incomplete, because it did not achieve equality between men and women or individuals from different sects or religions. It also legitimized legal chaos and protected sectarian laws. Egypt tried once to bypass this problem after unification with Syria in 1958. A committee was formed to draft a unified law for all non-Muslim sects, but it was never issued. Even if it had been issued, it still would not have improved the legal chaos because it would not have solved the problem of equality between men and women or members of the different sects and religions.

We saw in Tunisia that the judiciary and the legal system are unified. We may consider Tunisian law an important step in solving the problem of equality between men and women by preventing them from divorce at the will of the husband, without resorting to courts and preventing polygamy, but those laws neither solved problems of inheritance nor the problems of individuals from different religions and sects.

The Arab League tried once to unify personal status laws. The Council of Arab Justice convening in Kuwait in 1988 approved a draft law for an Arab unified personal status law. It was drafted by a committee of seven men, without any participation from women or individuals belonging to different religions. This project is considered an important step for countries that have not yet made any personal status laws for Muslims such as Saudi

Arabia, the Emirates and Bahrain, or those with laws that are not unified, such as Lebanon and Syria. But this project is considered a grave Arab mistake because it disregards the principles in the Tunisian law specifying equality between men and women, and it also did not present any solutions to the problem of religious inequality.

Here we must discuss an extremely important movement by a group of women from Tunisia, Algeria and Morocco who called themselves the '1995 Group for Equality'. They issued a document called 'One hundred changes for legislation in the spirit of equality in the matters of personal status and family laws'.¹ Members of this committee included a practising lawyer from Tunisia, a professor of law from Tunisia, another professor from Morocco, a female Algerian lawyer and a male Algerian lawyer, all of whom are Muslim. This document was presented to the Beijing Women's Conference in 1995, and Asma Khidr, a Christian lawyer of Palestinian origin presented the document. Khidr was born in Al-Zababda village from which I myself come. She now works as a lawyer in Amman and is the director of the Al-Haq Centre in Ramallah.

This document did not discuss the diversity of personal status laws, because this problem is not as important in the countries of the Maghreb as it is in Egypt and other Arab East countries (Palestine, Jordan, Syria, Lebanon and Iraq). It merely discussed the problem of equality between men and women, and problems between the different sects and religions. Appended to that document were clauses explaining the principles on which they based their document. Its aim was to convince the Muslim male that the document is not contrary to Islam.

I urge all Arab countries, including the Palestinian authority, to unify all courts and cancel all sectarian-based personal status laws, substituting them for this document which is considered the most important document presented in this matter that coincides with the principles of human rights.

1 'One hundred changes for legislation in the spirit of equality in the matters of personal status and family laws' Collectif Maghreb egalité 95 / Cent mesures Collectif Maghreb Egalite. (reprinted by WLUML)

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The Need for Codification and Reform in Muslim Personal Law in India*

Asghar Ali Engineer

The question of Muslim personal law has become not only a question of Muslim identity but also a question with deeper political implications. The Muslim leadership doggedly resist any reform in certain aspects of the law particularly pertaining to marriage and divorce and the Hindu communal leadership would not accept anything short of complete abolition of personal law pertaining to Muslims. As a result the Muslim women face problems and in some cases pretty serious ones.

The Muslim leadership resist any change on the ground that Muslim personal law is divine and no one can tamper with divine law and the Hindu communalists maintain that there should be one law for one country. Both positions are fundamentally flawed. The Muslim personal law is not divine in the sense the Quranic injunctions are. Firstly, Shariah is based on human interpretations of divine injunctions and is an endeavour to understand divine will and it is for this reason that there are several interpretations of Quranic verses and four different schools in Sunni Islam itself - Hanafi, Shafii, Maliki and Hanbali, besides Zahiri and Shiah Schools like Ithna Ashari and Ismaili.

These different schools of Shariah law came into existence as a result of different human interpretations and to that extent there is always a scope for new and creative interpretations in keeping with changed circumstances. A noted Islamic scholar and historian Muhammad Mujib who was also vice-chancellor of Jamiah Milliah Islamiah had described shariah as a human approach to the divine will. It is quite an apt description of the evolution of the Shariah laws. And, besides new creative interpretations there is tremendous scope for what is called borrowing from another school if ones own school is creating problem. This practice was followed in Turkey during the Ottoman period in as early as nineteenth century. This method was also followed in drafting the Dissolution of Muslim Marriages Act 1939. When Muslim women found it problematic to wait for 90 years if their husbands were missing according to the Hanafi School, the Ulama, in

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order to overcome this difficulty, borrowed the rule from the Maliki School which allows the woman to wait only for a period of four years.

According to this Act a Muslim woman can obtain decree for dissolution of her marriage on as much as eight grounds including disappearance of her husband for four years, neglect to pay maintenance by her husband for more than two years, if the husband has been sentenced for a period exceeding seven years, or if the husband is found impotent or insane or suffering from virulent venereal disease etc. This enactment immensely benefited many Muslim women who were unable to get relief within the Hanafi law.

It is important to note that the Muslim personal law is a British enactment and is being followed by Indian courts by virtue of this enactment and not because it is divine law. The British rulers had their own agenda and made personal laws totally static by this enactment. The Shariah law had been quite dynamic even during the Mughal period. The Fatawa Alamgiri, set of fatwas obtained during Aurangzebs period on various questions pertaining to Shariah are far more dynamic and liberal to women than the Muslim personal law enacted by the British. Even the provision for maintenance to women is much more progressive and if followed, could have avoided the Shah Bano movement.

The British themselves called the enactment - not shariah law - but significantly called it Anglo-Mohammedan Law which itself is indicative of the fact that it was a secular enactment by a secular government. Also, it must be noted that the British applied the western notion of Justice, equity and good conscience to all personal laws which itself is alien to the concept of Shariah law which Muslims consider as divine. The Shariah law is supposed to be inherently just and there is no question of any external notion of justice, equity and good conscience. This single phrase allowed, says Scout Kugle, a USA scholar, massive invasion of British juristic authority, despite caveat that English law itself was not to be introduced.

In this connection it is also important to understand that before the British the Shariah law was administered by the swell qualified Qadis who had properly imbibed the spirit of Islamic laws. They not only used to be thorough scholars of shariah and knew provisions of other schools of law and applied those provisions if justice so demanded. But the British judges, and following them other Indian judges, pronounced judgements in keeping with the letter of the law and followed them mechanically from Hanafi School based on Hedaya, a translation of compilation of Hanafi law by Hamilton. It is also important to note that the Qadis decided the cases by themselves and were not bound to follow their predecessors. However, the British and subsequently Indian judges decided cases on precedence rather than on the merit or situation of the case itself. The decision of one Qadi, in other words, did not bind the other Qadi. They followed the juristic principle of ikhtilaf i.e. mutual co-existence of differences in interpretation to give benefit to the victim. They always filled the space

between legal rhetoric and social reality with interpretation in favour of the sufferer.

As Aziz al-Azmeh points out in his 'Islams and Modernisms' The shari'ah is a nominal umbrella of a variety of different things and is by no means univocal. The majority of its rulings do not have the finality attributed to them by modern studies. With few exceptions, Islamic law is a body of differences and of general rulings...they (Islamic legal elaborations in addition to governmental statutes) adduce a multiplicity of conflicting precedents, rulings, deductions, all of which are considered equally legitimate.

A Muslim Qadi was well aware of these differences, conflicting precedents, rulings and deductions and thus ruled in a particular case in the best interest of the victim. However, such benefits were not available to the victim, particularly women in matters of marriage, divorce or maintenance, as after the British enactment of the Anglo-Mohammedan Law, the British judges began to treat law as quite static and went more by the precedents than by consideration of relieving the victims of suffering.

The Muslim leaders need to understand this today and work sincerely for much needed reforms in Muslim personal law particularly in matters of marriage, divorce and maintenance. They should not treat the enactment by secular government as divine and static. They should also note, as pointed out above, the cases are decided not by the Qadis but by secular judges. The secular judges, as is obvious, cannot follow the spirit of Islamic law but the law as laid down by the enactment. Unfortunately it is commonly believed by the Muslims that the personal law as enacted in India is divine. There is urgent need to remove this misconception and pave the way for necessary reforms within the Islamic frame-work.

It is also necessary to understand that the Caliphs also issued certain injunctions from time to time known in the shariah terminology as tazir which were necessitated by developing situation and these injunctions too, though not divine, became integral part of Shariah over a period of time. The triple divorce in one sitting for example, was not practiced during the holy prophets time, during the first caliph Hazrat Abubakrs time and during first two years of 2nd Caliph Hazrat Umars time. But the 2nd Caliph Umar enforced it in the third year of his reign to combat its misuse by some unscrupulous elements. But in certain schools of Sunni Islam it became a part of Shariah because of the rulings given by some noted jurists in its favour and today it is considered a part of divine law which it is not. Triple divorce, it must be noted, is not universally accepted by all schools of Sunni law, let alone Shi'ahs and Ismailis. The great theologian of 14th century Imam Ibn Taymiyyah decisively rejected it and considered it as against the principles of Islam. He wrote extensively refuting the practice.

Ahl-e-Hadis, among Sunni Muslims also reject it and question its validity. However, it has become an integral part of Muslim personal law in

India as most of the Muslims are Hanafis and Hanafi school accepts its validity. there are Sharii Muslims in South, particularly in Tamilnadu and Kerala and Shafii School also permits it. But today this form of divorce is causing suffering to many Muslim women and needs to be reformed. The Ulama should take initiative as they did in 1939 and got the Dissolution of Muslim Marriage Act. The Alim of the stature of Maulana Ashraf Thanvi had then taken initiative in getting this provision enacted to relive suffering of many Muslim women who had to wait for inordinately long period according to the Hanafi Law in case their husbands were missing.

Such an initiative is urgently needed today to relieve Muslim women of suffering due to triple divorce too. In fact the Muslim personal law as it operates today in India needs to be thoroughly overhauled and compiled properly. The British enactment cannot be perpetuated for ever under the misconception of divinity. As it results in injustices to women it loses its Islamic character. As far as Islam is concerned justice is the central value. One cannot think of Islamic value-system without justice.

No doubt it is an herculean task to undertake compilation of Muslim personal law and very difficult to evolve consensus but nevertheless it is highly necessary. One will have to borrow provisions from different schools of law to evolve a just compilation. and, as pointed out above, this practice is not alien to Islam. In fact it was resorted to from time to time to serve the ends of justice and give benefit of provisions of other schools to the suffering women. The precedent of Dissolution of Muslim Marriage Act is there to follow.

Unfortunately the Ulama, particularly the Muslim Personal Law Board has adopted very rigid stance on the question of reform. Their usual argument is that it will open floodgates of change and interference from government. This is not a sound logic in any case. Justice is far more important than imaginary fear. The Ulama took initiative in 1939 and it did not open floodgates of reform or interference. It did, on the other hand, immense good to hundreds of suffering Muslim women. No law can remain static over a long period of time without causing suffering to those for whom it is meant.

If the Quranic provisions of marriage and divorce are enforced it would do immense good to Muslim women. The Quran neither permits easy divorce nor unrestricted polygamy. It is true these verses pertaining to marriage and divorce have been differently interpreted, the Ulama will have to evolve a consensus around the interpretations best suited to the rights of women. Many Muslim countries have done it already and just because Muslims are in minority in India the ulama should not deer the process of reform and change within the Islamic frame-work. They should remember that Muslim women are also a minority within Muslim minority and they also need justice.

Post Divorce Maintenance for Muslim Women and the Islamist Discourse

*Dr. Faustina Pereira **

Introduction

We live in an era where relativism and humanism effect almost every facet of our lives. Not least among these facets is the discourse of Islam vis a vis women's human rights. The importance of such factors as relativism, humanism and gender sensitivity has not come about in a vacuum. It is fairly easy to find in the history of the evolution of the Shari'a, both ancient and recent (despite what the champions of the theory of the "closed doors of ijihad" propound), many useful examples where many welcome and significant interpretation and interventions have taken place. Unfortunately, however, only a handful of women interpreters have been active participants in this evolutionary process. The dearth of women Islamists up until today point out that women are the subject of the Shari'a but not its legislators.¹

Bangladesh, through some of its progressive judicial decisions has come on and off into the limelight of the discourse on Islam and women's human rights.² I would take the liberty to term "progressive" decisions as those which add to and complement, rather than take away, rights of women in order for them to live as complete, independent individuals as understood by the Constitution of Bangladesh and various international human rights instruments, particularly the Universal Declaration of Human Rights and the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women). Within the judicial arena a matter of crucial importance today for Muslim women around the world and in Bangladesh is the question of Muslim women's entitlement to maintenance from their husbands after their divorce.

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1. Bouthaina Shabaan, *The Muted Voices of Women Interpreters*, in Faith and Freedom - Women's Human Rights in the Muslim World 61-77 (Mahnaz Afkhami, ed., 1995).

2. See, for example, Nelly Zaman v. Ghiyasuddin, 34 DLR (1982), Jamila Khatun v. Rustom Ali, 48 DLR (1996), Jesmin v. Muhammad Elias, 17 BLD (1997), Muhammad Hefzur Rahman v. Shamsun Nahar Begum, 15 BLD (1995), Muhammad Serajul Islam v. Musammat Helana Begum, 48 DLR.

Maintenance Under Muslim Law and the Divorced Woman

It is unanimously agreed among Muslim scholars and jurists that the woman's right to maintenance arises upon marriage and that the wife is first in order of priority to this entitlement, even before the children, parents and relatives. What is not so readily agreed upon however, is whether this right is extendable after the marriage ends. It is the contention of a good number of exponents of Islamic law that it is.³

A constructive meshing of the several views that exist on this point would help lawyers, jurists and scholars to arrive at an agreeable plateau on the concept of post-divorce maintenance for divorced Muslim women. A common point of departure for some experts on this issue is the meaning of the term "mataa" or "mut`ah."

Mataa/ Mut`a, The Qur'an and the Principles of Justice and Reason

Literally taken, the word "mut`a" is "gratification" or "a gift."⁴ It has two distinct senses, one being a form of temporary marriage, the other, in referring to *mut`at al-talaq* or *nafaqat al mut`a*, is a payment by a husband to his wife upon divorcing her.⁵ Whether this "gratification," "gift" or "payment" has been intended as real compensation or simply a consolation to a divorced wife, and if so, whether such compensation and or consolation is compulsory, has been a matter of contention in classical and contemporary jurisprudence.

The Qur'an makes specific reference to provision for divorced women by way of maintenance. This is in Sura II (Baqara), Verse 241.⁶ However, in order to fully appreciate this provision, we need to read the preceding and following verses along with this verse, and not in isolation from them, as is the practice among some scholars. Verse 240 lays down the provisions for widows (a year's maintenance and residence), and then mentions women who leave the matrimonial residence on their own. After this comes the provision for women who have not left on their own, that is, those who have been divorced. The verse immediately after this provision, (242), begins "Thus doth God make clear his signs..." making it clear that it is a

3. See, for example, the works on this subject of Dawoud El-Alami, Abdullahi Ahmed An-Na'im, Lucy Carroll, Asghar Ali Engineer, Ahmad Ibrahim, Daniyal Latifi, et al.

4. Dawoud El-Alami, *Mut`at al-Talaq under Egyptian and Jordanian Law*, in 2 Yearbook of Islamic and Middle Eastern Law 54 (Cotran and Mallat, eds. 1995).

5. *Ibid.*

6. The Holy Quran, English translation by A. Abdullah Yusuf Ali. Sura II, Verse 240 : "Those of you who die and leave widows should bequeath for their widows a year's maintenance; But if they leave (the residence) there is no blame on you for what they do with themselves, provided it is reasonable. And God is exalted in Power, Wise." Sura II Verse 241 : "For divorced women maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous." Sura II Verse 242 : "Thus doth God make clear His signs to you: in order that ye may understand."

continuation of the theme of the previous verse (which specifies maintenance for divorced women). Therefore, on the one hand, the Qur'an is making a specific provision, on the other hand is also reminding us that God continuous to provide us signs for guidance so that we may comprehend and behave accordingly. A simple reading of the Qur'an shows that the various stages a divorce takes place have been covered. Dissolution of marriage, according to Muslim law, comes about in two ways: death or divorce. A simple reading of Verses 240 and 241 show that the Qur'an has made provision for women who suffer either widowhood or divorce. Whatever discussion takes place as to the nature of this provision, it cannot discard the simple meaning of these two verses. The Qur'an, by reminding us that God provides us signs to understand, also helps us to conduct our journey of interpretation and contextualisation. Surely this understanding ought be based on the precepts of justice, reason and sustenance of the spirit of the Qur'an. Here we may want to remind ourselves of the observations made in the Report of the Commission on Marriage and Family Laws,⁷ "Islam very justly claims to be a simple and liberal creed... . The Quran says that previous societies perished because they were burdened with too much inflexible law and too much unnecessary ritual... . No progressive legislation is possible if Muslim assemblies remain only interpreters and blind adherents of ancient schools of law."⁸

Despite what this Commission had to say in 1956, and before that prior to the Dissolution of Muslim Marriages Act in 1939 (where the Maliki School, rather than the Hanafi School of law was adopted), today most of the discussion on post divorce maintenance, which should have been fairly easy to garner from the Qur'an in the first place, has been filtered to whether *mataa* is optional or obligatory, whether it is a gift or a compensation. The 1956 Commission, on questioning its members and hundreds of Muslims, whether husbands should pay maintenance to the divorced wife for life or till her remarriage, part of the answer reads, " a large number of middle aged women who are being divorced without rhyme or reason should not be thrown on the street without a roof over their heads and without any means of sustaining themselves and their children."⁹

South Asia, Mataa and Judicial Decisions

The discourse on *mataa* and its import on maintenance and women's rights under family law, is not new in our sub-continent. Only recently in Pakistan a case¹⁰ raised the question whether the wife's maintenance is a

7. Gazette of Pakistan, Extraordinary, 20 June, 1956.

8. *Ibid.*, at 1231.

9. *Ibid.*, at 1215.

10. Iqbal Hussain v. Deputy Collector, PLD 1995 Lah 381.

gratuuity. I have already stated above that the 1956 Commission on Marriage and Family Law took into consideration the plight of women arbitrarily divorced and rendered destitute, and recommended that Courts should have the jurisdiction to order a husband to pay maintenance to his divorced wife for her life or till she remarried.

Looking back into our history, it is clear to see that there was never really a forum in which these questions could be argued. More than a century ago, the Calcutta High Court, in the case of *Abdur Rohoman vs. Sakhina*,¹¹ finding itself unable to sanction enforcement of a maintenance order issued in favour of a Muslim divorced wife, observed, "The fact that the power of divorce, given by the Muhammadan law, may be so exercised as to defeat the intention of the legislature as expressed in... [The Presidency Magistrates Act] and other similar enactments, may go to show that further legislation is required, but it cannot affect the [secular, statutory] law as it stands." It is clear to see that the magistrate's court did not have the authority to decide cases according to Muslim law. It may be argued that these issues could be raised in ordinary civil courts. But civil suits do not help the poor, divorced women who desperately need monetary sustenance for themselves and their children, instead of complicated, expensive and time consuming proceedings.

Prior to the Muslim Family Laws Ordinance on 1961, Hanafi Muslim women had no forum to raise the question of recovery of arrears of maintenance. Under this Ordinance, the Arbitration Council formed could and did deal with the question and found in favour of women's claims. However, we must note that the Ordinance, despite what was recommended by the 1956 Commission, only comprehended maintenance for married women, and not matala for divorced women. It has already been pointed out that jurists are in agreement that it is permissible to follow a non-Hanafi school when Hanafi law does not provide relief. This is how our 1961 Ordinance came to be based on Maliki law. Thus today cases coming before Bangladeshi courts should not have a difficulty in finding a forum to provide relief to divorced women. For example, in *Gul Bibi v. Muhammad Saleem*¹² the argument was based on justice and common sense and the position that it is possible to borrow from another school of Muslim law when one school does not provide relief. Thus the Court held "According to Shiah and Shafi law the wife is entitled to maintenance notwithstanding the fact that she was allowed to get into arrears without having the amount fixed by the Court, or by agreement with the husband... In the instant case the parties admittedly follow Hanafi school of thought... However, as some thinkers of Islam do favour the positive view and such view is also consistent with reason, logic and common sense, its adoption

11. ILR 5 Cal 558, 562 (1879).

12. PLD 1978 Quetta 117.

as a rule in case of such sects which do not strictly follow that school of thought, would not be unjustified.”

Today we have the Family Courts Ordinance of 1985, which not only has a streamlined procedure but also under which women have to pay only their minimal fees. Now that the question of *mataa* - post divorce maintenance, has been raised before the Appellate Division of Bangladesh, we can be hope that the question has at last found an appropriate forum for decision.

Some Muslim Majority Countries Where Women Enjoy Mataa

Prior to codification, Egyptian personal law had been primarily based on the Hanafi School. Judges found themselves being forced to apply manifestly unjust rulings in cases of maintenance and divorce.¹³ Thus Egypt adopted some of the principles of Maliki and Shafi Schools in cases of maintenance and some other matters. Jordanian Courts consider compensation for divorce a financial right of the divorced wife which is not forfeit in the case of death of the husband.¹⁴ The Egyptian and Jordanian laws determine cases where divorce is by the unilateral will of the husband and not by mutual agreement. Both laws stipulate *mataa* or *mut'a*, in addition to maintenance for a divorced women after consummation.

The Malaysian Islamic Family Law as regards post divorce maintenance is established on the Sura II Verse 241. The Islamic Family Law (Federal Territory) Act 1984 provides, in addition to the woman's right to maintenance, that a woman who has been divorced without just cause by her husband may apply to the Shari'a Court for *mut'a* and the Court may, after hearing the parties and after being satisfied that the woman has been divorced without just cause, order the husband to pay such sum as may be fair according to the *hukum syara*, which is based on Sura II Verse 241 of the Qur'an.

The Shari'a Courts in Malaysia have rightly highlighted the distinction between the *iddah* maintenance and *mut'a* or post divorce maintenance. Many scholars confuse *iddah* with divorce. In fact, *iddah* is a continuation of the marriage, being a waiting period during which a divorce pronouncement may be revoked. Thus during this time the husband and wife continue to be within a legally married state and therefore the question of *mut'a* at this stage does not arise. During the *iddah* the woman is entitled to maintenance as a wife. It is after the completion of the *idda* period that the divorce becomes effective and thus the question of post divorce maintenance where the divorce was arbitrarily brought by the husband.

13. Supra note ... at 55.

14. Supra note ... at 58.

Moreover, although not spelled out, a very logical distinction arises from the Malaysian, Jordanian and Egyptian situation. If the Qur'an has recognized two forms of dissolution (divorce and death) and has provided very important rights (inheritance etc.) to the woman divorced by death, would not it be logical to think that the Qur'an had manifestly intended that the woman divorced during the life time of the husband would also be entitled to some form of compensation? In both cases we are talking about a right which arises upon dissolution. It is therefore redundant whether the spouse divorcing is dead or alive.

Concluding Observations

We must remember that the main reason issues such as maintenance rights for divorced women in particular and reform proposals in personal laws in general, is taking place because Bangladesh, along with several other countries, Muslim and non-Muslim alike, is creating various forums in which these issues beg dealing with. It would be frivolous to say, as some sections of society do, that these issues are now coming up because of western/ feminist/ un-Islamic influences on our society. Significant sections of the Hanafi ummah have adopted non-Hanafi interpretation of *mataa* as well as important questions of Muslim women's rights. Bangladesh, which has a predominance of Hanafi adherents, implements Maliki based Muslim laws too. This by itself should be enough for us to realise that where borrowing from one school would be more consonant with principles of justice, fairness and equity, it would be erroneous not to do so.

Communalisation of Muslims in Sri Lanka:

An Historical Perspective

F. Zackariya and N. Shanmugaratnam

Introduction

The objective of this paper is to provide a historical overview of the processes of communal identity formation in Sri Lanka with special reference to the Muslim community¹. Sri Lanka is a multi-ethnic society in which Sinhalese, Tamils, Muslims and others have coexisted for centuries. However, in more recent times, ethnic relations on the Island have been consistently strained by the rise of communalist politics which have deepened ethnic and religious divides. Of course, communalisation and the rise of identity politics are not unique to Sri Lanka. Ethnic and religious identitarianism has acquired unprecedented importance in various parts of the world.

It is widely recognised that communal identity formation is a cultural-ideological process. However, this process is driven by conflicts over the distribution of political power and opportunities for and benefits of development among the different communities. The ideological fashioning of exclusive communal identities takes place in an environment of interaction generally characterised by mutual hostility. This interaction also provides models of myth making and identity moulding which the ideologues of one community may borrow from the other.

The Lankan polity and society appear to be divided into four main communal blocks: Sinhalese, whose identity is articulated in Sinhala Buddhist terms although there is a Christian minority among them; Tamils whose identity is defined linguistically and territorially with reference to a traditional homeland in the North and East although a considerable number of them are settled outside this region; Upcountry Tamils who are differentiated from the other Tamils because of their more recent Indian origin and geographic location in the plantation areas of the upcountry; and Muslims whose identity is expressed in religious terms and comprise Moors and

1. Throughout this paper, the term 'communal' is used as understood in South Asia where communal identity implies communalist segregation in the pejorative sense. An ethnic group may have a collective identity which is not communal in this sense.

Malays settled throughout the country with the largest concentration in the East. Today, these four groups are generally represented by communal political parties in the country's legislature.

Communalisation began in the British period when the colonial government imposed a classification of the Lankan society along ethno-religious and regional lines. Its character changed and its historical course became complex in the past hundred years or so as the originally imposed communal identities were modified and at times challenged and reconstructed by the emerging dominant groups within each community. During this period, ethno-nationalism became both a cross-class unifier of particular ethnies and a bulwark against the development of an overarching secular corporate Lankan consciousness. The post-independence history of Lanka has been characterised by the communalisation of the Lankan State by the rise of the Sinhala Buddhist ideology to hegemonic stature, the further deepening of the communal divides, and, in more recent times, the militarisation of ethnic conflicts.

Furthermore, the various ethno-nationalist projects in Sri Lanka have, as elsewhere, served to justify and reinforce the subordination of women. The gender dimension of nationalist ideological projects has remained neglected for too long by analysts of ethnic conflicts. This is surprising as the construction of nationalist cultural identity has almost universally involved the justification and reinforcement of women's subordination. In their search for symbols and traditions to construct a cultural identity that served their interests, the dominant groups in ethno-nationalist movements tend to treat women as repositories of tradition. Experience in many parts of the world suggests that even where women are part of the armed struggle for national self-determination along with men, their role as bearers of traditional values may not change so significantly. Thus one of the features of the conflicting communal identities in Lanka and elsewhere in South Asia is the conservation and reinforcement of patriarchal values.

After a brief conceptual note on communal identity formation, this paper proceeds to address the different phases of Muslim identity formation in Sri Lanka from the British period to the present. Treating the Lankan Muslim identity question as a subject dynamically linked to the formation of Sinhala and Tamil communal identities, the paper also attempts to highlight the patriarchal underpinnings of specific and selected issues, in the formation of the Muslim communalist ideology and identity.

Communal Identity Formation in a Multi-Ethnic Society. A Conceptual Note

A simple definition of a multi-ethnic society would be that it is a social formation with more than a single ethnic group sharing a common country. The vast majority of countries that exist today are multi-ethnic, a situation that has the potential for both ethnic conflicts and a harmonious pluralism. Unfortunately, the current dominant trend in many of the multi-ethnic

countries in the so-called Third World - not to mention Eastern European countries like the former Yugoslavia - is one of ethnic conflicts which have become militarised. Communalisation has been the predominant tendency in these societies, rather than the evolution of a multi-ethnic national identity enveloping the different ethnic constituents.

Communalisation is a process of formation of an exclusivist collective identity across class-caste-gender divisions on the basis of language, and, or religion in a multi-ethnic society, with the intent of mobilising the people for political purposes under given historical conditions. It is engineered by ideologues who construct an identity of segregation with the aid of cultural symbols and myths in such a way as to conscientise people as members of a community distinct from the others. Communal identities are characterised by varying degrees of hostility toward each other. They are not constants by variables, their changes being largely conditioned by changes in political economic conditions and the balance of political continuity. However, changing communal identities is not devoid of historical continuity. They are ideologically rooted in real and imagined histories, and history is often invoked to justify current ideological positions and shifts. An inevitable result of this is that history itself is written and re-written by the communalists to meet present ideological needs. Communalism generated its own historiography as it cannot survive without mythologising and revising history. In Sri Lanka, an enduring myth which is based on a real historical event is the communalist interpretation of the war between Dutta Gamini and Elara as something akin to a 'national liberation war' to free the Sinhala Buddhists, the real owners of Lanka, from the clutches of an alien Tamil ruler. Even though this myth was exploded many years ago by eminent Lankan historians, it continues to thrive as folklore and popular history.

In most instances, the establishment of modern multi-ethnic states did not occur through any form of voluntary association of the constituent ethnicities. The historical circumstances that brought multi-ethnic societies into being are diverse. For instance, in the former colonies of Asia and Africa, new states were often created by conquering Western powers carving out 'national' territories according to their perceived administrative convenience and without any regard for pre-existing territorialities and their autonomy. Many of these countries turned into hotbeds of ethnic conflicts and nationalist separatist agitations in the post-colonial period. While avoiding a sweeping generalisation of the patterns of genesis of ethnic conflicts in these countries as it runs the risk of leaving out important specificities, we may identify some communalities that can be helpful in conceptualising the historical processes of communalisation:

- Colonial incorporation of different groups into a centralised state while at the same time adopting racial, linguistic, and religious divisions for reasons of political control and administration;

- Competition between the dominant elites of different communal groupings for colonial patronage and recognition and to legitimize their status as leaders of their respective communities;
- The dominant elites of each community seeking to construct a cross-class communal identity in such a way as to serve their own class interests;
- The emergence of new ethno-nationalist/communalist elites with popular support who challenge the old colonial elites within their communities;
- The rise of a particular, often majoritarian, ethno-nationalism leading to a progressive communalisation and desecularisation of the State which in turn reinforces the former, and of the reactive ethno-nationalism of the other groups;
- Selective dismantling or modification of structures which served the interests of the colonisers and their local allies, while glorifying and reinforcing patriarchal values and symbols;
- Resurrection of old and invention of new myths of origin and heroism to serve communal identity creation.

That the construction of collective identities takes cultural forms, and that the hallmark of the hegemonic ethno-nationalist ideology is the cementing it provides across classes should not obscure the importance of economic interests. The history of communalist politics in Sri Lanka has always had strong economic underpinnings. In a fundamental sense, communication is about economic opportunities and distribution but it shifts class issues to a terrain of ethno-nationalism and heritage, thereby displacing class with ethnicity at the ideological level. It is not our point that nationalism and communalism can be reduced to class relations alone, but that the economic is one of the key variables in communal conflicts and that the ideological subsumption of class by communalism or nationalism should not be misconstrued as an elimination of the economic itself.

The Main Evolutionary Stages Of Muslim Communalisation

In the British colonial period, the construction of communal identity took place within a framework in which the political parameters were set by the needs of state formation and administration in a non-settler colony.

The British had to create local structures of political governance through which they could exercise power over the whole island. Their approach to this challenge was one of innovatively combining British and local institutions. The British divided the society into communal or ethnic groups since they saw this as a feasible way to organise a system of government. In Sri Lanka, this naturally took the most evident form: Upcountry and Low country Sinhalese, Ceylon and Indian Tamils, Indian and Ceylon Moors and Malays. Thus communal divisions were imposed for political and administrative reasons.

The history of Muslim ethno-nationalism follows a trajectory building on the existing social formations and systems of governance which accommodated the local power structures through communal representation. In this process the representation of the community was constructed by the elites as a top down ideological projection, which failed to address the internal social differentiation within the community.

The early phase of communal identity represented by the elites was of a passive and subservient form and not able to strike deep roots. However cultural revivalism as a form of resistance to colonialism leading to communalisation, actively promotes a cultural identity (like Sinhala Buddhism) which takes a more exclusivist form creating conflicts with other communities. In fact, the content and evolution of Muslim identity formation has to be understood in the context of the economic, political and social changes that underlie given moments of Lankan history. This paper attempts to examine critical components of this process through four distinct but overlapping phases mainly:

1. Arabisation of Moors and its Contradictions (1880s-1900)
2. Muslim Identity Formation in Reaction to Early Sinhala Buddhist Nationalism (1900-1920s)
3. Towards a Common Muslim Identity or a Misplaced Emphasis
4. The Rise of a Muslim Party

1. Arabisation of Moors and its Contradictions (1880s-1900)

In this phase the Colombo Muslim elites endeavoured to differentiate the Lankan Moors from the Lankan Tamils in ethnographic and racial terms. A major cause of this was the claim by Tamil (Colombo) elites as represented by Sir Ponnambalam Ramanathan² that the Moors of Ceylon were Tamils who converted to Islam. Ramanathan articulated this view in his thesis on the "Ethnology of the Moors of Ceylon" presented to the Royal Asiatic Society in 1888 [Journal-Royal Asiatic Society (Ceylon) Vol. X]. This led to the historic Ramanathan-Azeez debate in which the latter argued that the Moors of Ceylon were of Arab origin and therefore racially distinct from the Tamils who claimed to originate from South India. At the root of this conflict was the question of communal political representation in the State Council which will be taken up below.

This period was marked by an emerging consciousness, and Muslims began to formulate central symbols of their identity aimed at reviving religio-cultural traditions. Muslim personal law, religious education and Arabic language became important facets to be nurtured and protected.

2. Ponnambalam Ramanathan was the 'educated Ceylonese' member in the Legislative Council.

The very first piece of legislation was in the area of family law, to regulate Muslim marriages through the Mohammedan Marriage Registration Ordinance [No 8 of 1886 and No 2 1888]³. This Ordinance was intended to keep a check on customary marriages and divorces - an indigenous practice which existed among the Muslim community. The need for this Ordinance was expedited as it was felt that lawful divorces could still exist even outside the ambit of the "Mohammedan Code" of 1806⁴. The central concern of the colonial state was to formalise a customary practise thereby denying local agency to determine the affairs of its community. We also notice the beginning of a covert homogenising program on the part of Muslim elites intent on regulating 'tradition', primarily on the basis of religion⁵.

During this period the tendency of Muslims to pursue religious education at the expense of their secular education has been highlighted (Azad, 1993). Arabic colleges/schools, initiated as a reaction to the proselytising tendencies in Christian schools, were already functioning. The Muslim Educational Society was founded in 1891 by Siddi Lebbe, who emphasised the need for modern Muslim education and female education [inspired by Sir Syed Ahmed Khan and the Aligarh movement in India]. However the concept of seclusion of female education from the male was strictly maintained in the schools that were created for this purpose.

Inadequate facilities in Muslim schools and the presence of non-Muslim teachers in these schools acted as barriers, especially where the schools were for Muslim girls. Some of the schools had to be closed down due to internal conflicts and lack of sensitivity towards female education. In 1891 the literacy rate for Muslim men was 30.5 % as opposed to 1.5 % for Muslim women⁶. The Administration Reports have also pointed out that the attendance of girls in the outstation schools was satisfactory (though relatively low in general) while in the Colombo region, "...conspicuous by the absence of any formalised provision for education of girls of the Moorish community". This strongly contrasted with the "... energy displayed by the

3. This legislation was passed during the time of M.C. Abdul Rahman, the first Mohammedan member in the Legislative Council.

4. The Dutch initially brought the Code to the country from Batavia [in 1770] as the law pertaining to the followers of the Mohammedan faith. It was Sir Alexander Johnstone in 1806 who formalised the system of personal laws for Muslims with the approval of twenty signatories who were head Moormen of the district of Colombo! Initially the Code was restricted to the Colombo district and was extended to the whole island in 1852.

5. For a detailed analysis of the evolution of Muslim Personal law and legal status of Muslim women, see National Report - Country Study Sri Lanka, forthcoming publication of Muslim Women's Research and Action Forum.

6. The literacy rate of Sinhala women during the time was 25 % (Census report 1921).

*Malay*⁷ *community for the education of girls...*" (Administration Report 1892 - D14/Part IV).

The lack of access to education deprived the vast majority of Muslim women of a major opportunity for awareness development and social mobility. The Malay community favoured a more liberal attitude towards female education, thus providing for greater mobility in interaction and in securing employment, i.e. visibility in the public sphere.

Arabic was emphasised in the Muslim schools and study of the Koran was made compulsory. The importance of Arabic language denotes a preoccupation with the Arab heartland and concentration of Muslim civilisation around the Arab world and less concerned with the Island's cultural history interwoven with the Indian Sub-continent. Also, there emerged an interest and attention to Arab greatness through Orabi Pasha's presence as a revered personality with the community⁸. His social interaction with the outside world was through the community elites. Even the mode of dress acquired a new meaning with wealthy Muslims wearing the (Turkish) fez cap. All these point to the ideological underpinnings of a homogenisation of culture taking roots through such manifestations, while subsuming the variety of local histories in the Muslim ethno-social formations.

However the homogenising role of religion among Lankan Muslims was checked by the intervention of a racial myth when 'Ceylon Moors' claimed a status superior to that of Indian or Coast Moors and Malays. The Ceylon Moors felt a sense of racial superiority as 'indigenous Muslims' and always maintained this distinction very carefully, despite the common religious ties. This differentiation was maintained even officially, as the 1911 Census classifies Ceylon Moors and Indian Moors separately - a colonial distinction accepted and encouraged by the Muslim elite. This led to institutionalisation of intra-communal perceptions and was fundamental to the emergence of ethno-nationalist sub-categories as well, which later on provided the basis for competitive representational politics.

The arguments put forward could be further illustrated through the significant political factor during this phase which became a founding moment of "Moor" political identity, beginning with P. Ramanathan's thesis presented before the Royal Asiatic Society in 1888. Although evidence shows that there was a tradition that the Muslim ancestors came from South India and also a tradition that they originated from Arab migrants, it was the Arab tra-

7. Malays originally came as political exiles, but most of them were brought in as soldiers from Somalia, Java and Malacca in the late 16th century to help defend Dutch positions in Sri Lanka.

8. Orabi Pasha was an exile from Egypt who arrived in Sri Lanka with his entourage (1883-1901).

dition that took political meaning and importance in the context of the time (Samaraweera, 1979).

Muslim counter arguments (of which the most vocal has been I.L.M. Abdul Azeez)⁹ have been put forward and pointed out that:

- it cannot be denied that culturally there were similarities between Tamils and Muslims, due to the acculturation process;
- the use of Tamil language was for trade and interaction;
- physical resemblance to South Indian Tamils was strongly resented and Arab semblance emphasised (MICH, Colombo, 1957).

However, the proponents also claimed that there would have been a mixture of Arab and Tamil blood since very few Arabs brought their wives along. The original Arab descent was nevertheless upheld by the Muslim elites, which clearly denotes the patriarchal underpinning of ethnicity and the exclusiveness of this ideology to keep out the women as well as the Indian Moors (Ismail, 1995). By referring to Arab roots and ancestry from the Hashemites clan (descendants of Prophet Muhammed) Abdul Azeez in fact glorifies "*Moorish blood*" and racial purity, in similar vein as his elite counterparts from the Sinhala and Tamil communities¹⁰.

The contention of the Muslim elite was that Ramanathan's prime motive in drawing parallels with Tamil ancestry was to keep Muslim representation out of the Legislative Council. Created in 1833, the Legislative Council was a vehicle for unelected communal representation (nominated by the Governor). Originally there was no separate seat for the Muslims as this was satisfied by the Tamil member. Subsequently there was agitation for a restructuring of the Legislative Council on account of the predominance of the Sinhala Christians of the Govigama caste¹¹ by the Sinhala Buddhist revivalists. In 1889, when it was restructured, the Muslims and the Kandyan Sinhalese benefitted. M.C. Abdul Rahman (an elite merchant who remained loyal to the British) was nominated as the first Mohammedan member. The Ceylon Moors were thus considered a distinct race for purposes of colonial administration while defining out the Indian Moors.

The other issue of historic significance was the much publicised Fez issue of 1905, when the leadership was able to mobilise Muslim opinion on this question through public assertion. In this instance the Chief Justice for-

9. A. Azeez set up the Moors Union in 1900; he was a Trustee of the Maradana Mosque and editor of the "Muslim Guardian".

10. "... They adopted the doctrine of racial superiority, glorified and idyllic past an associated the Sinhala people with the chosen 'Aryan race' and the chosen Buddhist faith... Racial purity and religious purity were thus combined and the pure Aryan Sinhalese became the appointed guardians of Buddhism" (Jayawardena, 1985).

11. Govigama (Cultivator) is the uppermost category in the caste classification of Sinhala social organisation.

bade the Muslim Advocate from Batticaloa, M.C. Abdul Cader, from appearing before the High Court wearing his fez when he rose to address the court. It is interesting to note that the Chief Justice had this to say: "*In this case you have adopted an European dress and have your shoes on. One end of your body must be bare*" (Ceylon Daily News, 23.04.1969). Petitions were filed against this, and the final verdict of the Supreme Court ruled that wearing of the fez was prohibited in court.

The community leaders protested and organised a mass meeting at the Maradana Mosque grounds and even a Fez Committee (comprising members of the Legislative Council and prominent businessmen) was formed for this purpose. A lengthy memorandum was addressed to the Queen pointing out the unjust ruling to Muslim lawyers, whereas in other British colonies (India and Egypt) wearing the fez with European dress was allowed. The chief speaker to this meeting was invited from India, a Muslim lawyer (who was also a Moulavi), who claimed that he had worn the fez in the presence of the King and the Queen. It has been reported that over 30,000 Muslims voted for the memorandum and the result was that the judgement was reversed allowing the fez to be worn in court.

The consequent of all this was religious issues/factors became an established pattern in the Muslim ethnic formation with symbols of religious and ethno-identity drawn from the Arab world, beginning to be formulated by the leadership. Preservation of elite interests through assertion of an exclusivist community ideology becomes predominant and this takes place without any resistance. As we shall see in the subsequent sections, the boundaries and limits of this identity formation though historically produced are in constant process of transformation, its configurations being directly related to the other more comprehensive configurations of ethno-nationalisms and that of the State.

2. Muslim Identity Formation in Reaction to Early Sinhala Buddhist Nationalism (1900-1920s)

Muslims were the target of attack by early Sinhala Buddhist revivalists, and the anti-Muslim propaganda culminated in the riots of 1915 in which Indian Moors were the victims. A major causal factor in this conflict was the resentment of the Sinhala nationalist petty bourgeoisie against trading interests of the Moors. In this phase Muslim identity consciousness became highly conditioned by the rising majoritarian Sinhala Buddhism and its intolerance towards the non-Sinhala Buddhists of Sri Lanka.

Sri Lanka communal identities as represented by the colonial elites in the 19th century were rather articulated and in ways that did not question the authority of the State. Devoid of any elements of anti-colonialism, they merely served to confirm the basic divisions adopted by the British. However, the situation changes as we approach the turn of the century when Sinhala Buddhist cultural revivalism emerged both as a form of resis-

tance to colonialism and as a way of asserting an exclusivist ethnic identity. Anagarika Dharmapala was perhaps the first person to use the term Sinhala Buddhist in a racial-religious sense¹². The notion of a Sinhala Buddhist nation emerged in the early 20th century in the British colonial period, and in the decades that followed it went through an evolutionary transformation into a mass consciousness, overarching local, regional and caste identities.

Dharmapala and other Sinhala Buddhists like Ratnaweera (editor of the 'Aryan') propagated the myth that the Sinhalese were of Aryan origin and therefore racially superior to the non-Aryan Tamils and Muslims who inhabited the island. The ideology of Sinhala Buddhist revivalism was predominantly cultural, with mild political overtones directed on marginal issues like consumption of alcohol and privileges of Christians under the colonial rule (Jayawardena, 1985). Dharmapala stood for limited autonomy within the British empire with Sinhala Buddhists in key administrative positions. It would seem that the belief in the Aryan origins of the 'Sinhala race' made the Buddhist revivalists feel some sort of affinity for the ruling British. *"It is a consolation to see",* remarked Ratnaweera, *"that we are governed by an Aryan nation"*¹³. Anagarika once declared: *"True that I criticise in my articles the officials; but my loyalty to the British Throne is as solid as a rock and I have invariably expressed sentiments of loyalty to the King..."* (Guruge A., 1965:LIX). It is no wonder, therefore, as Gunawardene (1985) notes, *"that such an ideology did not produce an anti-imperialist movement of mass proportions"*.

Sinhala Buddhist cultural nationalism thus displayed a dual political character - it was more compromising towards British colonialism while displaying a growing intolerance towards the Lankan minorities. Anagarika Dharmapala stated in 1922: "Look at the Administration Report of the General Manager of Railways... Tamils, Cochins and Hambankarayas are employed in large numbers to the prejudice of the people of the island - sons of the soil, who contribute the largest share" (Guruge A., 1965:515).

Certain elements of Buddhist revivalism served the growth of anti-minority sentiments. The Moors became one of the first targets of Sinhala Buddhist intolerance. Dharmapala portrayed Muslim traders as unethical exploiters of Sinhala Buddhists. The presence of butchers' shops, which were mostly owned and run by Muslims, and of mosques in sacred Buddhist cities like Anuradhapura was regarded by the revivalists as an affront to Buddhism and Sinhala Buddhist culture. This kind of hostility was also extended towards the Christian churches. The Temperance movement and opposition to butchers' shops, churches, and mosques around cities

12. Dharmapala founded the newspaper Sinhala Bauddhaya in 1906. See Gunawardene (1985) and Jayawardena (1972 and 1985) for elaborate treatments of the origin and development of the Sinhala Buddhist ideology in the colonial period.

13. Cited in Gunawardena (1985).

like Anuradhapura were driven by strong anti-minority sentiments. The following quoted from Dharmapala's letter to the Secretary of State for the Colonies in 1915 epitomises this: "... *What the German is to the Britisher that the Muhammedan is to the Sinhalese. He is an alien to the Sinhalese by religion, race and language. He traces his origin to Arabian, whilst the Sinhalese traces his origin to India and Aryan sources*" (Guruge, 1965:540). In the period prior to 1915 these campaigns were so actively pursued that Governor Chalmers, explaining the animosity of the Sinhala peasantry towards Muslim traders, stated that they had "*always been viewed by the villager with feelings entertained at all times and in all lands towards transitory aliens who make money out of the local peasantry by supplying their wants at the shop...*" (Jayawardena, 1985).

The single event which became a landmark in Lankan history with profound impact on communal relations in the country was the anti-Muslim riots of 1915. At this time, Sri Lanka was not a communalised society as we speak of today. The outbreak of violence in Kandy, which spread to Colombo and the North Western, Southern, Sabaragamuwa, and Central provinces was targetted at the Coast Moors¹⁴; trading rivalry was the underlying and main cause of the immediate outbreak. According to Kearney, the riots and the way in which the British suppressed the violence led to a rise in anti-colonial feelings, and to the heightening of nationalist sentiments among the Sinhala Buddhists (Ceylon Studies Seminar, 1969/70).

Some historians have traced the background of the riots as flowing from the inflammatory statements against the Moors published in the Sinhala newspapers, especially the 'Sinhala Buddhaya' and the 'Sinhala Jathiya' which stirred Sinhala nationalist feelings. There is also evidence to support the connection between the Temperance movement¹⁵ and the growth of nationalism. The leaders who were arrested during the riots were those who had been active in the Temperance movement (Jayawardena, 1972; Azad, 1993).

It was Ponnambalam Ramanathan, the 'educated Ceylonese' member of the Legislative Council, who championed the cause of Sinhala Buddhists; criticising the colonial government for its treatment of the Sinhalese especially drawing attention to the Riots Damages Ordinance (though never published) which made provisions for the Sinhalese in specified areas (whether implicated in the riots or not) to indemnify all losses suffered by Muslims. He demanded a Royal Commission to inquire into the riots and the excesses committed by the British force on the Sinhala people.

14. The Muslim population at this time was 6.4 % of the total population, 267,000 at the 1911 Census. Of this 33,000 were Indian Moors, also called Coast Moors.

15. The Temperance movement was a means to express hostility to the government. Temperance society meetings attracted large crowds in both urban and rural areas. Though primarily religious, the movement was not without political overtones.

In Colombo, rumour mongering was typical of these times with the obvious cries that Sinhalese were being massacred, bodies being suspended and that their women were being raped. The Muslims decided to defend themselves if attacked, and a decision was taken at the Mosque congregation that they would fight to the last, "*... but if the tide turned against them, the women, rather than be ravished, should jump into the wells and commit suicide, leaving only the children...*" (Thawfeeq, 1986). From time immemorial, history has documented that women's bodies have been subjected to humiliation and attack in times of war and violence, so as to revenge the hostile party in a manner that would taint the honour and purity of their women. Muslim male thinking at this time was quick to decide that the best course of action for their women should be, not in the forefront of the struggle, but preservation of their honour and chastity even if it meant ending their lives! Protection in this sense implied exertion of male authority to which women had to submit.

It is worth noting that the Malay community was not attacked, nor the Borah shops and stores (Azad, 1993). The riots did not evoke strong emotional reaction among the Muslims in the North or the East or the North-West. Jayawardena (1972) has observed that labour unrest and political tensions contributed to the rioting in Colombo and concluded that it also had impulses other than religious tension.

The Ceylon Moor community panicked, and this marked the beginning of an awakening political consciousness that was to shape the course of events that followed. The Muslim elites had their own interests in mind, as evident from the following remarks by W.M. Abdul Rahman, the unofficial member in the Legislative Council for Governor Chalmers, in a report on the riot areas: "*... for the insult hurled at Islam some visible et abiding mark must be put upon Buddhist temples, if for no other reason, at least to preserve the prestige of the British Raj.*" (Blackton, 1970). The immediate response was for the Muslim leadership to strengthen their collaboration with the British.

The Sinhala parties were being defended by the well known Tamil leader who clearly showed an antipathy towards the Muslims. From a Muslim view point it appeared as though there was an alliance between the Sinhala and Tamil elites. So much so that the same alliance of Tamil-Sinhala elites founded the Ceylon National Congress in 1917¹⁶, the fears of the Muslims increased as memories of 1915 were still very strong and the Muslim leadership kept out of it. However the Sinhala-Tamil alliance was resting on fragile ground, as revealed by the subsequent events which related to seats

16. Inspired by the Indian National Congress, the Ceylon National Congress was initiated with professed liberal ideals, but could not be sustained as historical and political circumstances unfolded.

in the Legislative Council and other aspects of political patronage from the colonial government.

In the foregoing section we have seen that collective action - in this case by the Sinhala Buddhists through their communal ideology, was an attempt to create "legitimate space" in the public domain, while questioning the legitimacy of that very space which was occupied by the Coast Moors. They were at the same time expressing their protest against the colonial regime. The Temperance movement and Sinhala Buddhist revivalism have also demonstrated that movements outside the democratic process seek to expand their control over public life playing an instrumentalist role, drawing symbolic boundaries in which identities are being constructed and contested. In such a political configuration, the Muslims were deeply affected; forced to re-assess their role as a minority and grapple with the new facts of representational politics where the dialectics of their identity vis a vis the Indian Moors and the Malays had to be redrawn. Based on our understanding that contending notions of collective identity exist, and any one of these may become dominant over the other at a given point of time (Hassan, 1994), the fluidity of Muslim identity - its definition and redefinition - was essentially a function of the political and social circumstances.

3. Towards a Common Muslim Identity or a Misplaced Emphasis

Since the advent of universal franchise in 1931 and the politics of communal representation acquires a mass character, the upcountry - low country distinction within the Sinhalese becomes weaker. The Muslims on the other hand sought a unity between Moors, Malays and Indian Muslims. Yet the distinction between the Southern and North-Eastern Muslims remains, with the latter not enjoying any significant role in Muslim politics.

In this phase there was a tendency towards consolidating a community polity, the seeds of which had already been sown. Although seen as externally antagonistic, the ethno-nationalist ideologies were meant to be an internally homogenising project /process with the intention of narrowing down the diversities within the demarcated social boundaries.

- Constitutional changes, elite competition and communal politics

Muslim communalisation was initially loose and meant to serve the Colombo and Southern business elites. It did not grow of a mobilisation based on popular demands or real/imagined grievances of the larger sections of the population. But with time due to the deepening of the communalisation of society it was transformed into an ideology in a changed political context.

Further, the colonial administrative structures allowed the elites to sustain their positions of power and control in a mutually reinforcing fashion. For instance the voting criteria [1921-1924] laid down that only adult males

over 21 years, literate [English, Tamil or Sinhala] and in addition satisfied any one of the three economic criteria were eligible to vote, i.e.:

- a clear annual income of not less than Rs. 600/=;
- immovable property in one's own right or in one's wife's name (value not less than 1500/=);
- occupant as owner or tenant of houses valued at Rs.400/= or Rs.200/= according to urban or rural situations (Roberts, 1979).

Under such conditions, not only did the voter's class, status and sex matter, but also his social marital status which aggregated wife's property as husband's eligibility to vote¹⁷. Further, western education was one of the determinants of elite status, and elite families did not hesitate to consolidate through marriage their economic status, and accumulate capital and property, thus ensuring upward social mobility.

The Manning reforms of 1920 exploited existing or potential communal disharmony through their collaboration with minority elites. Communal electorates were brought about in order to adjust the balance in favour of minorities. For the first time, the Malays began to demand or thought it was opportune to claim a seat in the Legislative Council. Their greatest concern was that their *"ethnicity and identity was being overshadowed by the numerically superior Moors"*, who were trying to exploit them on the basis of a common religious identity. The Malays decided to form the first political association, following a mass meeting in Colombo in 1921, to agitate for a Malay seat in the Legislative Council (Hussainmiya, 1987).

All these events led to the emergence of the idea of Muslims as a minority to be distinguished from the Tamils. However, the Malay-Moor division¹⁸ persisted through the kind of stereotyping projected that the Moors were engaged in trade and commercial ventures and that the Malays were in government services such as the police and clerical services. The Moor-Malay dichotomy was further hardened by the belief among the Moors that they were of Arab origin, and the Malays of Javanese origin. The Malays ardently defined their identity in terms of an Eastern civilisation rather than inheritors of a Muslim civilisation who claimed to be 'descendants of Arabs'.

Perhaps it is important to note that the Malays and Moors, though professing the same religion, existed as two separate entities whose elites' inter-

17. In 1921, the total number of voters was 54,207 which was 5.2 % of the total adult male Ceylon population. By 1914 the number of voters had increased to 189,335 i.e. 18.2 % of the voting population (Roberts, 1979). In 1924, only 900 of the 76,000 Muslims had the right to vote (Rizwie, Muslim Ethnopolitics in Sri Lanka, unpublished thesis, 1970).

18. The Council debates, Maradana Ordinance July-August 1924 provide some very interesting insights into the tussle for Moor authority and its institutionalisation over the management of the Mosque.

ests overlapped at times for common political purposes. Malay elites like T.B. Jayah¹⁹ sometimes spoke in terms of a unifying Muslim²⁰ community primarily on the issue of representation.

Interestingly, though the two group leaders (Malays and Moors) had differed before, the coalition, i.e. formation of the Ceylon Muslim League in 1924 with a significant Indian Moor segment, was for collective agitation. This was in respect of increased representation; responsible self-rule; safeguarding the cultural, social, and economic interests of the Muslims; and, lastly, to promote inter-communal amity.

In spite of the hive of activity that was being pursued at the political administrative level, the disparities at the local level remained unaddressed. On the eve of the Donoughmore Commission (1927), the differences between the leadership in Colombo and the Muslims in the regions (living outside the centre), became sharper due to conflicts between the older and younger generations, on the issues of power and control over community affairs. The territorial system of representation (as opposed to the previous system of communal representation) recommended by the Donoughmore reforms was opposed by the minorities as well as the elites for their own class reasons. It is not surprising that the Muslims in the Eastern Province, being territorially concentrated, supported the Donoughmore proposals (Azad, 1993) and expressed their disappointment with the Colombo based leadership whose preoccupation was with trading interests.

While the Muslim leadership was battling with its own set of contradictions, the Sinhala masses were being mobilised through the Sinhala Maha Sabha (SMS)²¹. S.W.R.D. Bandarananaike (Founder of the SMS), while accepting the pluralist nature of the Lanka polity, concentrated on uniting the Sinhalese and forging stronger cohesion within the community. In his speech in the State Council (March 1939) and address before the SMS (December 1939), his intended course of action was clear: *"We (the SMS) saw differences amongst our own people - caste distinction, up-country and low-country distinctions, religious distinctions and various other distinctions - and we therefore felt that we should achieve unity, which is the goal of us all. Surely, the best method was to start from the lower rung: firstly,*

19. Leader from the Malay community, founder of the Young Muslim League and elected member of the Legislative Council (1924-1927).

20. This was a precursor to the usage of the term "Moor" and "Mohammedan" interchangeably in the official terminology which had been carried from the Dutch times. A Committee appointed in 1924 to report on the usage of the term unanimously decided that the correct expression should be "Muslim" to designate a "person professing the religion". (Sessional Paper No XXXV, 1924).

21. SMS formed in 1927 and Ceylon Tamil Congress in 1938 under GG Ponnambalam marks an important point in the communalisation of the Sinhala and Tamil elites.

unity among the Sinhalese; and, secondly, whilst uniting the Sinhalese to work for higher unity of all communities..." (Roberts, 1979).

The Muslim leadership was thus forced into emulating and responding to the strong communal overtones of the time. Historical circumstances demanded not only forging alliances with the Sinhala/Tamil elites, but also maintaining the general idiom of legitimacy within the Muslim community. For this purpose, mobilising Muslim opinion in order to safeguard political interests, uniting all shades of factionalism within (Moors and Malays) and taking a stand against the reforms proposed in 1937-38 was achieved through the Political Conference organised in 1939.

The events that shaped the course of history during the decade after the Donoughmore reforms further strained ethno-national relations, while the elites of the different communal groups consolidated their own political bases. The Language Bill [1944]²² marks a key event which set in motion a vociferous campaign by the elites of each community for maintaining their respective status quo.

J.R. Jayawardene in moving the Bill expressed the inherent fears of the Sinhalese, quite explicitly :

"... I had always the intention that Tamil should be spoken in Tamil speaking provinces, and that Tamil should be the official language in the Tamil speaking provinces. But as two-thirds of the people of this country speak Sinhala, I had the intention of proposing that only Sinhalese should be the official language of the Island; but it seems to me that the Tamil community and also the Muslim community, who speak Tamil, wish that Tamil should also be included on equal terms with Sinhalese. The great fear I had was that Sinhalese being a language spoken by only 3,000,000 people in the whole world would suffer, or may be entirely lost in time to come, if Tamil is also placed on an equal footing with it in this country..." (State Council Debates, May 24, 1944).

Subsequently, when J.R. Jayawardene wanted Tamil also included, the motion was vehemently opposed by Sinhala members in the Council with arguments that the fundamental condition for national unity was the existence of 'a national language' and not two languages. Accordingly it was expected that the Muslims and the Tamils would integrate into the mainstream Sinhala ideological thinking. The Tamil members were of the view that national unity or national cohesion cannot be imposed by suppressing one of the languages spoken by at least 2,000,000 people.

It is interesting to highlight that the colonial state was instrumental in reinforcing the fears of the Sinhalese and perpetuating the communal ste-

22. The focus of the Sinhala leadership in the State Council was to make Sinhala the national language. The motion put forward by J.R. Jayawardene was debated in 1944.

reotyping of the times. Evidence from the Soulbury Commission's report [1945] on constitutional reforms referred to:

"... Edward Stubbs, Governor of Ceylon 1933-37, my predecessors and myself have always recognised that, for good government of the country, the brains and industry of the Tamils were as useful in the past as they would be invaluable in the future. We shall always require their assistance..."

As for the Moors, *"... they had secured a virtual monopoly of the export and import trade [...] through a considerable number as many as one third are occupied as cultivators in the Eastern Province [...] they are thrifty and industrious people [...] for various reasons neglected their secular education and have not in that respect kept abreast of other communities [...] efforts are being made to remedy the errors of past years..."* (Soulbury report, 1945).

On the eve of independence, the Muslim leadership had politically and economically integrated into the Sinhalese dominated polity, in spite of displaying resistance to total domination by the Sinhalese. We see two trends within the Muslim elites: one that strongly advocated a Muslim bloc overarching the Malay-Moor division and strengthening communal representation, and the other, more nationalist, in fact serving the Sinhala nationalist cause. The traditional Tamil leadership was confronted with the emerging Tamil leadership the Tamil Congress. The Tamil Congress spokespersons were to steer the community's destiny over the coming years. Their specific concern was the rising Sinhala Buddhist cultural revival and its impact.

The contours of Muslim consciousness and evolution of "a Muslim identity" traced through the various historical epochs have been largely determined by the hegemonic control by the leadership purported to be inclusive of all classes. In trying to understand the interactive, shifting and selective nature of such a formation, elite competition not only intra-community but also inter-community were critical determinants. For the Muslim leadership, the preservation of a religio-ethnic identity has been a 'bargaining process' in terms of: what aspects to give up; what aspects to modify; what aspects to project, over given historical moments. The sense of the past has provided justification for the present and precedents for the future, by providing legitimacy to existing structures of authority even if it had been invented (mare, 1993). Consequently the boundaries of "Muslim ethno-nationalism" were defined through political moves which intended to balance the primordial sentiments/attachments of the community (for support from within) with the instrumentalist ideology of the leadership (Brass, 1991).

- The Franchise Issue, Converging Constructions and Competing Interests

The issue of universal franchise attracted the attention of the Donoughmore Commission, who had felt the need for a widening of power to the larger masses. This was a critical departure from the reforms of 1923-

24 where only 4 % of the population had the right to vote (Donoughmore Report, 1928; De Silva, 1981).

The recommendation was that all males over 21 and females over 30 years should be eligible to vote, but when it came to implementation in 1931, the colonial office decided to make the age limit equal for both men and women. Sri Lanka thus entered a historic epoch as the first British Colony in Asia and the first Asian country to advance political emancipation through the right to vote to all citizens (De Silva, 1981). However, there was agitation and protest against the extension of the franchise to females and to those of Indian origin. The question of suffrage and its relevance to women's democratic rights was not raised by any group that gave evidence before the Commission as a matter of political right, but only a concession at a more parochial level.

Goonesinghe²³ and some radicals (within the Ceylon National Congress) had continuously urged the Congress to take up the issue of adult "manhood suffrage" which was not a matter of priority for the Congress campaigners. When the Congress leaders had to give oral evidence before the Donoughmore Commission, their stand on the franchise was that it should be restricted to those with an income of at least Rs. 50/- per month. Their contention was that if this income ceiling was further reduced, then "there was the danger that they may get a class of person who could not use the vote with any sense of responsibility and whose votes might be at the disposal of the highest bidder" (De Silva, 1981). On extending voting rights to women, they recommended that the age limit should be 25 years with "a rigid literacy test of a property qualification"²⁴.

The other most disturbing issue for the Sinhala leadership was the granting of the franchise to the Indian immigrant plantation workers on equal terms. The immediate threat to the interests of the Sinhala population in the plantation areas was raised. The Kandyans were especially alarmed at the possibility of Indian domination of the highlands, if permanent citizenship rights were conferred to the Indian indigenous population. On the single issue of Indian enfranchisement, the CNC and Kandyan leaders came together, although the Kandyans did not support the demand for self government²⁵. The motives of the CNC were certainly aimed at preserving the sectional interests of the capitalists and landowners. Goonesinghe however

23. A.E. Goonesinghe founded the Ceylon Labour Union in 1922 - a leading Trade Union in the country at the time.

24. Given the low level of literacy among the female population spread amongst the various ethnic communities, this qualification would in fact mean that only a marginal population of the highest social class would benefit by this. The equally obnoxious property clause further reinforces the above.

25. The Kandyan Political Association kept its distance from the CNC. Their demand was for a federal political structure, following from the grievances caused by the amalgamation of government since 1833.

supported the principle of adult suffrage, on account of his activism in the trade union movement.

The minorities were bitterly hostile to the Donoughmore Report because of its condemnation of communal electorates. Elites representing minorities found that the safeguards to protect their interests had been inadequate. On behalf of the Tamils, P. Ramanathan came out strongly against universal suffrage (similar to the Sinhala leadership), but his main plank of opposition was that it would result in the permanent domination of the polity by the Sinhalese. T.B. Jayah became the protagonist of the Muslims and a memorandum on 'Muslims and Proposed Constitutional Changes in Ceylon' was addressed to the Colonial Office.

Ramanathan's class, caste and patriarchal values pervaded his statements on the voting right. He and his conservative colleagues believed that giving the vote to the non-Vellala castes²⁶ and to women was not only a grave mistake, leading to "mob rule" but, according to Ramanathan, "an anathema to the Hindu way of life" (P. Ramanathan, Memorandum on the Donoughmore Constitution, 1934, quoted by Russel, 1982).

Sandrasegera's²⁷ advice to the Jaffna male voters in 1930 was equally reprimanding: "*I would advise the people of Jaffna to see that during the next election they did not take their women to the polls. I would ask them not even to register women as electors. They should ask their women to mind their business in their own homes*" (Russel, 1982:87).

The Muslim elites echoed in similar vein on the franchise issue, that is would be a setback to their own political destiny. However, the Malay and Moor leadership was divided: the Malays favoured the franchise while the Moors expressed discontent, invoking 'custom and tradition' to prevent extension of franchise to women. Wickremasinghe, in her book 'Ethnic Politics in Sri Lanka' (1995), documents "... *it is the duty of men not to allow women to plunge into unavoidable anxieties*" and questions the praiseworthiness of femininity as an asset. Thus women's role as citizens tends to be circumscribed by notions of culturalism, and always subject to the customary definitions governing women's conduct. The instances highlighted below give some insights into this.

In the General Elections held in 1931, Macan Markar (Galle bred Gem Merchant, settled in Colombo) was elected to the State Council as Member for Batticaloa where the Muslim community predominated. This was the first occasion when Muslim women went to cast their votes, and Macan Markar took great pains to convince the Muslim women that they could go out and cast their votes, by getting Alims²⁸ from Colombo and Galle to

26. Vellala is the topmost layer in the Tamil caste hierarchy, to which Ramanathan belonged.

27. Was a prominent journalist at the time.

28. Teachers who were learned in Islamic laws.

issue a "*religious ruling*" to that effect (Thawfeeq, 1986). A phenomenon that is to be interpreted as legitimising women's secluded status and, at the same time, manipulating the female voter constituency²⁹ to exercise a "*hitherto guarded right*" which was exclusively male conditioned space.

It was documented by Thawfeeq that in the 1942 re-elections for Colombo Central, Muslim women came out of "*their secluded purdah*", wealthy Muslims supporting their candidates by providing "*heavily curtained cars, so that they (the women) may observe their cherished purdah while coming to the polling station*" (Thawfeeq, 1986). Norms of seclusion and honour are closely bound up with the status of the family in both an economic and social sense. The urban values and norms of seclusion were reinforced in this instance, through a subtle subversion so as to allow women to move into the political-public space.

A very important development in the agitation for universal franchise from women came with the formation of the Women's Franchise Union (WFU) in 1927, spearheaded by Agnes de Silva (Jayawardena, 1986). The WFU³⁰ was in the forefront demanding voting rights for women and their evidence before the Donoughmore Commission stands out in remarkable contrast (*vis a vis* the other groups that gave evidence) for its commitment to equal rights across class and ethnicity.

"We went in the spirit of crusaders and answered the questions in an inspired manner. Lord Donoughmore asked if we wanted Indian Tamil labourers on the estates to have the vote. I replied 'Certainly, they are women too. We want all women to have the vote'. Agnes de Silva, leader of the women's deputation to the Commission on Constitutional Reform, 1927" (Russel, 1981:58, quoted by Jayawardena, 1986).

The WFU clearly wanted a place in the established power structure, and they also represented a protest against the socio-political structures which excluded women's access to the seats of power.

The other vexed question - the status of the Indian Tamils and citizenship rights - had been a highly controversial one. Both the Sinhala and Tamil spokespersons have used the Indian Tamils as tools to gain political leverage. On the one hand, Bandaranaike used the Indian Tamils as a scapegoat to whip up Sinhala communalism; whilst Ponnambalam used the actions and statements of the Sinhalese leaders towards the Indian Tamils as evidence of Sinhala chauvinism. The problem of franchise for the Indians was therefore left unresolved.

29. No documented records are available to assess the number of female voters at this election and the actual number who voted.

30. WFU comprised of middle class and some professional women who were wives of recognised leaders in national and labour-union activities.

In 1948, the Citizenship Act, the Indian and Pakistani Residents (Citizenship) Act of 1949 and the Parliamentary Elections (Amendment) Act disenfranchised Indian residents of their citizenship rights. The background to the legislation was the deep sense of apprehension in the minds of the Sinhalese especially the Kandyans, of Indian domination of the highlands. The other fear amongst the Sinhalese was that Indian Tamils would add to the political strength of the Ceylon Tamils. Furthermore, the new Government was particularly concerned of the threat from the leftists and the trade unionists who were trying to win over the plantation workers from the Ceylon Indian which controlled them.

When the Bill came to be debated in Parliament Senator Razik Fareed had his own interests for supporting it.

"We the Ceylon Moors have suffered most in the past from want of a citizen bill. We [...] have been treated badly by other people under the guise of Muslim brotherhood. We have very unfortunately played ourselves into the hands of other people..." (Hansard, vol. ii, Sept. 1948, p 2718).

His emphasis on a nationalist tone later on was intended to appease the ruling Sinhalese elites and also we note an implicit attack on the Indian Muslims:

"The Ceylon Moors had a flourishing trade in Man street Pettah, barely forty years ago, but today you find the whole of the trade in the Pettah, even the property which the Moors owned in the Pettah, in the hands of non Ceylon Traders" (Hansard, vol. ii, Nov. 1948, p 1171).

As for the Muslim community, the disenfranchisement of the Indian Muslims significantly affected their electoral strength. The 1947 Delimitation Commission had found that in assessing the Muslim strength, the Indian Moors should be included under the category 'Muslims'. For instance, in demarcating Colombo Central, the Commission stated:

"... Without the Indian Moors the percentage of the Muslims is 23.6. It would not be too much to rely on the probability that there were would be added to this strength at least 1.5 out of the 7.4 percent of Indian Moors, and in this way the Muslim strength would reach the percentage of at least 25.1 necessary to secure a seat. We are however inclined to the view that the religious tie is stronger than the racial tie and that it is proper in assessing the Muslim strength to include Indian Moors under the category of Muslims, and on this basis the Muslim strength is 31.8 percent..." (Sessional Papers XIII, 1946 Report of the Delimitation Commission).

But the problem confronted was lack of documentary proof in the case of the Indian Moors as regards registration of births. Registration was made compulsory only after 1897, and that too was not perfect. Proof of citizenship was subject to production of the birth certificates of either the father and grandfather, or grandfather and great-grandfather, the paternal line being institutionalised as proof of birth. Such proof was required whenever

the Indian Moor sought government employment, import licenses, trade permits, registration for voting, passports, etc. It was regretted later that the Muslim leadership had supported the Citizenship Act without considering the problems of the Indian Moor population and, more important, the political implications for electoral representation (Rizwie, 1970).

The disenfranchisement legislation served to further distort the electoral balance in favour of the Sinhalese. As a result, the Sinhala voter became the decisive and instrumental force in the country's politics. Sinhalese over-representation enabled governments to enact legislation obtaining the two-third majority for constitutional changes, thus satisfying the demands of the Sinhala constituency. The United National Party (UNP)³¹ was thus placed in an advantageous position in the elections that followed.

Post-colonial phase and intensified ethnic relations

In the post-independence period, Tamil political parties in the North-East sought to incorporate Muslims as Tamil speaking people. Tamil-Muslim relations in the North and East remained harmonious, with cultural commonalities being naturally accepted by both communities. However, the resurgence of Sinhala Buddhism and its institutionalisation became central elements in the struggle for a democratic multi-ethnic polity. In fact, the very idiom of democratic politics has become communalised and has reproduced reinforcing communal ideologies.

The lack of a vibrant political culture that could relate to the problems and aspirations of the people and help to forge a multi-ethnic polity has been highlighted by many political analysts. We may quote from an earlier work by one of us:

"We may be justified in blaming the British for starting the dirty business of communal politics, but we cannot go on fooling ourselves by blaming them for its continuation and metamorphosis into militant and barbaric ethno-nationalist forms in the post-independence period. Communalisation transforms a multi-ethnic society into a hotbed of competing communal identities whose ideological consolidation relies on targeting the "other" as the "real enemy". As this leads to an unequal distribution of power between the different communal blocs, there is the real danger of those with power victimising the powerless. The Lankan society has become an extreme case of a vicious circle of communalisation and imagined enemies, beginning with the majority Sinhala Buddhists and inevitably engulfing the Tamils and Muslims" (Shanmugaratnam N., The Tamil Question in Sri Lanka. Some Reflections. Tamil Times, vol., 1993).

31. D.S. Senanayake formed the UNP with the CNC.SMS, the Muslim League, the Moors Association and the Colombo Tamil Union. The UNP's project was really an idealised perception of exclusive Sinhala ethnicity, through evoking the Sinhala heritage. The Indian Tamils were excluded.

Ethno-nationalism is the ideology of communalism. Sinhala Buddhist majoritarian communalism was institutionalised through parliamentary and other legal means. The majority ethno-nationalist parties used the Westminster model and universal franchise to further the communalisation of Sinhala society as a short cut to parliamentary power. The disenfranchisement of the Indian upcountry Tamils in 1948 was the first major instance of using the parliamentary system to manipulate the electoral balance of forces in ethnic terms to enhance the relative strength of the Sinhala constituency.

The victory of the Mahajana Eksath Peramuna (MEP)³² in the 1956 parliamentary elections signified the resurgence of Sinhala Buddhist ethno-nationalism and its institutionalisation. The MEP was a cross class alliance cemented by an ideology of Sinhala Buddhism and populist social welfarism.

In 1956, Sinhala only was declared the official language of Sri Lanka by a majority vote in parliament. In 1957 a separate Ministry for Buddha Sasana was established. Communalisation became intensified and 1956 signified the beginning of the desecularisation of the Sri Lankan State, with the revival of Sinhala Buddhist nationalism and the elevation of Sinhala Buddhism to the status of a state religion. This period also marks the rise of Sinhala Buddhism as the hegemonic ideology and the reactive nationalism of the Tamils of the North and East. Here we see a shift in the key actors with the constituency taking over the elites.

The institutionalisation of Sinhala Buddhism takes new forms which is different to the SLFP led Bandaranaike era, when the SLFP in opposition to the UNP takes on a Sinhala nationalist line, but at the same time anticipating minority support as well. In this phase, religion, culture and language emerge as central issues, in addition to land settlement and education.

The emergence of Dr Badiuddin Mahmud as Muslim leader marks a new trend in the Muslim political scene. Mahmud (supporter of the SLFP) becomes the spokesperson for the Muslims, a man who is not from the South but who reflects some of the reformist characteristics of the SLFP and the MEP. The dual character of the SLFP is worth noting here: on the one hand was the Sinhala Buddhist ideology, and on the other democratic reformism of a limited nature, for example in the field of social welfare, non alignment in international relations and sympathy towards national freedom struggles.

B. Mahmud also represents a shift from the Muslim business elites towards a more majority oriented leadership, a leader to whom the Eastern Muslims could relate to. In the late 1960's he formed the Islamic Socialist Front (with a rural base) which indicated his sensitivity to two main trends

32. This was a coalition of the SLFP, a section of the LSSP and two of the smaller Sinhalese parties.

of contemporary thinking among the youth and young Muslim intellectuals. This was a response to the widespread discontent among them with the traditional Muslim leadership from the South which had exploited the community for commercial concessions and special privileges (Ceylon Daily News, 09.02.1967).

The issues that affected Muslim communal sentiments were land policy and land settlement, especially in the Eastern province. Colonisation schemes that were developed in the area were largely for the benefit of the Sinhalese constituency. Available records showed that there had been a progressive increase in the Sinhala voter population from 1947 to 1980, a with a climax being reached in the 1960's and also an increase in the land area occupied by Sinhalese compared to Tamils and Muslims. This was the result of State aided illegal settlements in addition to the Government Settlement Schemes under the Gal Oya Development Project 1960-63 ('Problems of Muslims in the Amparai district'. All Ceylon Muslim League files, 1984). Takeover of lands used by Muslims had proceeded in stages from the 1960's for about two decades. The total extent of land taken over had been estimated up to 14,000 cadres (Hoole, 1993).

As regards education, the standardisation policy of the government in 1970-73³³, which introduced subject wise and media wise standardisation for admission to Universities aroused great controversy. In 1975 and 1976 came the district quota scheme where admission to Universities varied according to the district population. The Tamils were affected most adversely by this scheme while the Sinhalese benefitted, and the admission of the Muslims into Universities increased. The Government however was compelled to recognise that the University admission system had become a political liability and led to an aggravation of the ethnic conflict.

Tamil communalisation³⁴ sharpens with the problems thrown up as a result of the Official Language policy of the Government (Swabasha-Sinhala Only Act, 1956). At the time the bill was presented in Parliament, Razik Fareed and other Muslim representatives voted for the bill, but the Federal Party member M. Mustapha³⁵ voted against. It is obvious that the Muslims in the East had more in common with their Tamil counterparts.

The plantation Tamils however were marginalised, suffering from the disenfranchisement which was partially reverted with the Sirima-Shastri

33. B. Mahmud was Minister of Education from 1970 to 1977, when standardisation was introduced. It was during this period that Muslim schools were created as opposed to Sinhala and Tamil schools. He also tried his hand at introducing principles of socialism as a subject for the Higher National Certificate of Examination (HNCE) and Muslim Dancing which created a spate of protests from the Community.

34. At his historical juncture the Tamil leadership was very much Jaffna centric and engaged in consolidating the North-East blocks.

35. He was from the Pottuvil electorate in the Eastern province.

Pact in 1964³⁶. Tamil ethno-nationalism grows to be more and more exclusive turning very hostile towards the Muslims as it takes militant forms. New symbols are added and stated in Dravidian terms excluding the Muslims and gradually identifying them as a rival group, i.e. a redefinition of Tamil ideology in pure militant terms.

Against such a backdrop, Muslims began to feel their vulnerability as a minority. On the one hand was the State consciously promoting the Sinhala ideology of majoritarian communalism, and on the other the additional problem of majoritarian communalism of the Tamils in the North and East. In the early phase it was noted that Tamil-Muslim relations were never antagonistic, but in the post-1972 period the relations became more strained, sharpened and communalised.

The rise of a Muslim party

With communalisation of the Sri Lanka polity reaching a peak, the Sri Lanka Muslim Congress (SLMC) emerges as a logical phenomena in a country where parliamentary politics is run by communal parties.

In this phase the issues that are highlighted are more from an Eastern Muslim point of view, the centre stage of politics being shifted to the North and East. Issues relating to the social, economic and political structures are being articulated more concretely. Tamil-Muslim relations are affected with the intensification of the ethnic conflicts and increasing militarisation. The tragedy of multi-ethnicism in Lankan communalisation has only led to mutual reinforcement of age old reactionary and patriarchal values, strengthened the forces of religious intolerance, class disunity and disintegration, and negation of the possibilities for constructing a Lankan identity.

The Muslims (with the Sri Lanka Muslim Congress as spokesperson) begin their own redefinition with recourse to a religious identity and reconceptualisation in their search for a pure and exclusivist ideology. The SLMC has arrogated to itself the role of propagating Islamic values to the community (and to the country at large), whilst accepting the sovereignty of the Holy Quran. The SLMC had also promised to institute 'Islamic rule' if elected to power (Ceylon Daily News, 26.04.88; Personal Interviews, 1995).

The birth of the SLMC in the 1980's and its phenomenal rise in the past decade signified several things. Firstly, it meant a shift in leadership and the centre of Muslim politics from Colombo and the South to the predominantly Muslim rural East. This implied a dramatic alteration in the balance of political forces within the Muslim community. Secondly, the SLMC represented the arrival of a distinct Muslim political party in a polity in which all the major political parties have been communally based in the past four

36. An agreement between the two governments (India and Sri Lanka) for repatriation of a section of the Indian Tamils, while the rest would be conferred Lankan citizenship.

decades. Thirdly, and in our view most crucial, the SLMC is the Muslim reaction to Sinhala Buddhist and Tamil communalisms, and the expression of a collective religious identity which has been reconstituted so as to counter the threat of militant Tamil chauvinism in the North and East.

The birth and rise of the SLMC as a party of the Lankan Muslims based in the North and East which is largely Tamil speaking could be explained by:

- the growing gap between the Southern Muslim political elite and the Muslims of the East and the North in terms of political and economic interests. The Southern Muslim political elites had traditionally represented the interests of the Muslim business classes, whereas the Muslim in the East and North are largely farmers and fishermen;

- like their Tamil counterparts, Muslims in the North and East faced problems due to State aided colonisation and discrimination on the grounds of language. State aided Sinhala colonisation was perceived by the Muslims as a project undermining their future interests as it took away State land in their areas for alienation to Sinhalese from outside. There was also the growing fear among the Muslims in the East that Sinhala colonisation was reducing their electoral clout as Muslims. Their mother tongue is Tamil and the vast majority of them did not speak Sinhala (until very recently). These issues were not regarded as serious by the traditional Muslim elites whose interests lay in the South;

- Tamil ethno-nationalism became progressively communalist over the years, and it turned violently anti-Muslim since the mid-1980s. The myths and symbols of Tamil ethno-nationalism had little or no appeal to the Muslim people. The hard core of Tamil ethno-nationalism was reconstituted by the LTTE (Liberation Tigers of Tamil Eelam) and other militant groups to serve the ideological needs of the armed struggle. This reconstitution, which involved the adoption of new myths of Tamil heroism and martial exploits, made Tamil ethno-nationalism even more exclusivist;

- the ethnic cleansing campaigns of the LTTE took brutal forms which culminated in the expulsion of the Muslims from their traditional homes in the North in October 1990. Earlier in the same year, LTTE militants massacred 150 Muslims in prayer in two Mosques in the East. Such acts of the Tamil militants gave a strong impetus to communalisation of the Muslim people and therefore strengthened the justification for the SLMC's institutionalisation as a party purporting to represent the interests of the Muslim people.

However, the SLMC is not a Muslim version of the LTTE. It is rather a loose parliamentalist political party which may occasionally use militant slogans and may tolerate extremists within its ranks. The SLMC has still to consolidate a popular mass base and uses 'populist-fundamentalist' slogans as its political strategy. Muslim homeguards have been recruited and armed

by the government to confront the Tamil militant army. This was mooted by the SLMC in order to protect themselves in the face of violence and changed circumstances. The consequences of this action have been heavy on both sides.

There is a tendency among critics of 'Muslim fundamentalism'³⁷ to assert that the rise of fundamentalism among Sri Lanka Muslims is a direct outcome of a global phenomenon. We think this is too simplistic a view. It cannot of course be denied that the rise of 'Muslim fundamentalism' in the Middle East and elsewhere has had an influence on Sri Lanka, but its actual impact has been rather mild until the mid-1980s, when the Muslims in the North and East first experiences the intolerance of militant Tamil ethno-nationalism.

Today with its strategic position in the People's Alliance government, the SLMC has become a political party with young educated youth in its ranks, professing and using religious ideology to satisfy its political agenda. This has to be seen as a distinct departure from the "traditional religious right" groups who have been propagating religion (as faith) in their own design and pace, but not embroiled in direct political confrontation, due to a lack of power and access to resources including the popular media. Political parties or vested interest groups or even powerful individuals may use these groups to further their own political ends; such groups therefore tend to remain on the periphery - of being useful allies - for selected purposes. Nevertheless the SLMC's rise to power has taken place without a mass politicisation process and therefore remains elite oriented, but the potential for mobilisation of such groups through ideological moulding remains strong.

The SLMC behaves as if it is the sole arbiter of Muslim interests and is therefore duty bound to restore the purest and sacrosanct form of Islam to the people through its propaganda. With this motive, it has projected an image whereby the basic democratic freedoms of the individual have been subsumed and collective rights emphasised³⁸. The pace has already been set, where the party has categorically stated that any changes in the fundamental rights chapter of the Constitution (or introduction of a Bill of Rights) must not perforce allow any individual to challenge Muslim personal law (i.e. Family law) on constitutional grounds. Personal law is being upheld as

37. The term 'fundamentalism' cannot be defined in simple terms: as far as the paper is concerned we would confine ourselves to mean-political use of religion [i.e. return to a true Islam] that is internally homogenising and externally antagonistic while negating and suppressing the divergent interest and rights of individuals within the collective. The result could be grater or lesser degree of oppression of women.

38. The issue of collective vs. individual rights is highly complex. In the ethno-nationalist discourse, individual rights are subsumed into a vague notion of collective rights or altogether disregarded. At the other extreme is the liberalist position that rights by definition are individual rights and there is no such thing as collective rights. The correct position however lies somewhere in between.

the fundamental symbol of religious identity. This is clearly seen as an attack on women's rights to equality and identity. This is clearly seen as an attack on women's rights to equality and justice given the fact that personal laws as they now exist are discriminatory towards Muslim women, and no attempt is being made to reform such laws to make it more equitable. When the amendment to the Penal Code of 1883 was presented in Parliament (September 1995), vehement opposition by the Muslim lobby for excluding Muslims from the specific clause which related to violence against women within marriage resulted in a diluted version of the amendment being finally approved³⁹. It is thus clearly evident that there are calculated moves to legitimate the basis for religious arguments to be used against Muslim women exercising their rights as full citizens under the constitution.

This brings us to the question of the role of the state as an institution and the contradictory notions of equality and citizenship embodied at different levels of society. Of course the extent to which the State is capable of guaranteeing sexual equality to mean gender considerations across communities will matter only if this is in line with its own political goals. Our past experiences in the post-independence era have shown that the State and State structures have played a complementary role in reproducing and legitimising majority and minority ethno-nationalisms. This has invariably led to a further undermining of gender equity, negating social diversities, while strengthening the communal forces to reaffirm politicised and overarching identities.

The Challenge of Decommunalising the Lankan polity

The arrival of the SLMC in the political scene marks an important stage in the long process of communalisation of the Lankan society. It would seem that the division of political constituencies along communal lines has now been more thoroughly institutionalised. It was as though a tragic law of history was relentlessly working itself out to a finish. The Sinhala Buddhist nationalists are highly perturbed about the rise of the SLMC. The Tamil nationalists are perturbed too. However, if militant Tamil ethno-nationalism was a logical reaction to the institutionalised Sinhala majoritarian ethno-

39. The Amendment to the Penal Code was brought before Parliament after a process of consultation with women's groups, medical, legal and other professionals and the National Committee for Women. The bill covered wide ranging issues which had remained untouched for more than one hundred years, from incest, marital rape, sexual harassment to increasing the age of statutory rape and enhanced punishments. The intention was to recognise rights of women in situations of violence and crisis within the family. The bill which was finally passed recognised marital rape in situations of judicial separation only, which meant that the legislation failed to tackle the real problem of domestic violence in a situation of de facto separation, i.e. where due to irretrievable breakdown of marriage, the parties live separately without obtaining a legal separation. In the case of Muslims there is no concept of legal/judicial separation although breakdown of marriages could result in long years of separation.

nationalism, Muslim communalisation was the inevitable response to both Sinhala and Tamil ethno-nationalisms. Of course one communalism needs the other for survival although it is a game involving unequal players. The net result, however, is further disintegration of the Lankan social fabric and loss of opportunities for social change and progress.

We have heard from numerous Tamils and Muslims in the North-East that the deepening communal divide between the two communities is detrimental to their mutual interests as minorities and as people sharing a common region and language. However, at present, conflicts of interests and mutual distrust rather than complementarities and mutual trust dominate the political relationship between the two communities. Governments have often cynically exploited the Tamil-Muslim conflict in the North-East for short term political gains. The anti-Muslim behaviour of Tamil militant groups provided the justification for creating Muslim home guards. The escalating militarisation of the Tamil-Muslim conflict is threatening to destroy the collective memory of these two communities of centuries of harmonious coexistence. However, we do not think that this conflict can be resolved in isolation from the larger conflict that engulfs the whole of Sri Lanka. There are no piecemeal solutions to the ethnic conflict that characterise the Lankan national question.

There is a growing awareness among the progressive sections in the country that communalism cannot be eliminated without due recognition of the rights of the different ethnic communities and without creating an environment conducive to the blossoming of cultural and political pluralism. Devolution and power sharing are among the necessary means towards this end. In this regard, a fundamental need is the institutional and ideological reformation of the State to make it an ethnically neutral institution. Decommunalisation has to be understood as a process encompassing both the State and civil society. It involves the creation of symbols that express the multi-ethnic character of Sri Lanka. Reforms in the educational system particularly the school curriculum from the primary level upwards to inculcate respect for each others cultures are a prerequisite to eradicate ethnocentrism and intolerance.

Decommunalisation also implies an active reconstruction of ethnic identities not in mutually exclusive terms, but in a spirit of interdependence and mutual enrichment. After all, the history of interdependence and mutual enrichment. After all, the history of interdependence and cross cultural fertilisation between Sinhalese, Tamils and Muslims is longer than that of communalisation. Even though communalisation has seriously disrupted the integument of interdependence, the mutualities of survival in multi-ethnic areas serve to heal wounds and harmonise ethnic relations. This history of organic coexistence provides the seeds for regenerating the multi-ethnic consciousness that is no crucial to the formation of an all inclusive Lankan

identity. Class and gender are also two key areas which can lend themselves to building multi-ethnic bridges.

The decommunalisation process should effectively challenge the patriarchal values reinforced and sustained by communalism. It has to be linked to the ongoing discourse on human rights and gender relations. Communalism has never been an ally of the struggle for individual freedoms. It rejects or disregards the fact that individuals have multiple identities in real life. Decommunalisation, which seeks to provide a broader democratic underpinning to collective identities, should expand the space for the individual to live as a person with multiple identities.

Finally, we wish to reassert that decommunalisation is a process involving mass mobilisation, and attitudinal and institutional changes. While the process has its specific agenda for each ethnic group in Sri Lanka, it is guided by a common vision and a common project, and creating new multi-ethnic symbols. The challenge remains that only a secular State could create and sustain a truly democratic and multi-ethnic polity.

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Huge rise in forced marriages

a news report in The Independent, 20 July 1998

There has been a huge rise in the number of British Muslim women forced into arranged marriages following a decision by the government to liberalise the immigration laws last year.

Civil rights campaigners say hundreds of young women are being tricked abroad, mainly to Pakistan, where they are married and forced to live in remote villages. Women's groups have set up several new refuges to cope with the numbers seeking help and new identities.

Police say they have even come across "bounty hunters", men paid thousands of pounds by Muslim families to hunt down their daughters and help smuggle them to Pakistan.

The increase in forced marriages has two causes. Firstly, a growing number of second-generation Muslim girls are refusing to conform to their traditional roles and demand the right to choose their own husbands. And secondly, more women are used to obtain residence permits for family members or friends living abroad.

Home Office figures show that the number of Pakistani men using their wife's status to gain entry to Britain has more than doubled from 1,740 in 1995 to 3,510 last year.

The biggest rise came after the new Labour government, in one of its first measures last year, simplified the procedures for a British person wanting to bring their spouse to settle in Britain. They abandoned the hated "Primary Purpose Rule," which made consular staff rule on whether the main purpose of the marriage was to gain entry into the UK before issuing a visa.

In February last year, before the rules were changed, the High Commission in Islamabad, Pakistan, issued 255 visas to spouses. This year it issued 1,132, nearly five times as many.

Critics say the result is a flourishing trade in forced marriages, with British-born and educated women spirited abroad to lives of misery married to men they have never met. Often, they are virtual prisoners in remote villages.

Those that return to Britain while their new spouses apply for visas - which take about two months to process - often beg the Foreign Office to reject their husband's application.

'We've received 440 such letters in the past year,' said a member of the High Commission in Islamabad. 'More arrive each day. But there's nothing we can do unless the woman is prepared to go public.'

Women's groups and MPs last night called on the Government to provide more support for Asian women.

Margaret Hodge, Labour MP for Barking, has asked Baroness Symons, Minister of State at the Foreign Office, to intervene in the case of a constituent's girlfriend who vanished after what he fears was a forced marriage. She said the Foreign Office gave her the impression they would not help.

'The suspicion is that it isn't just a matter of culture which is influencing the Foreign Office but one of race.'

However, Baroness Symons, Minister of State at the Foreign Office, said the government unequivocally condemned the practice of forced marriage. 'You have a basic human right not to be forced into marriage. But this mustn't be confused with arranged marriages.

However, she rejected calls for embassies abroad to intervene to help British-Asian women forced into marriages. "They are not quasi-policemen who are able to go out and find people who have gone missing," she said.

In Bradford, a police-backed scheme - similar to a witness protection programme - helps women change identities, find new homes and encourages employers to erase them from personnel records and find them new jobs.

Jahangir Mohammed, deputy leader of the Muslim Parliament of Great Britain, said: 'There are problems in a tiny minority of marriages and perhaps they are increasing, but to force anyone into a marriage is totally un-Islamic.

'These are difficult times for the muslim community. We see problems with crime and drugs for the first time, but we believe these are linked to unemployment brought on by racism against muslims.

'The unemployment rate among muslim graduates is 60 per cent. That is a much bigger problem to be dealt with.'

Some women's groups say the increase of Pakistani men entering Britain using their wife as a sponsor reflects a failure by British officials in Islamabad to check if marriages are wanted or enforced.

Hannana Siddiqui of the Southall Black Sisters women's group : 'The British government could and should be doing more and their failure to act

to help Asian women who are kidnapped and taken abroad to be married is basically racist.

'They are saying 'we have to be sensitive and not criticise other cultures' but in doing that they are allowing violations of women's human rights to continue.'

Source:

The independent

Canda Square, Canary Wharf
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Exploring the Context of Women's Sexuality in Eastern Turkey

Pinar Ilkcaracan and Women for Women's Human Rights

Customary and religious laws and practices are often used as tools to control women's sexuality and to maintain the imbalance of power in sexual relations. This paper describes customary and religious laws and beliefs, and their impact on the situation of both rural and urban women in Eastern Turkey, based on a study among 599 women from the region, most of whom are or have been married. It shows that early marriage and polygyny are still prevalent, religious marriage still takes place earlier than civil marriage although the former is not legally binding, forced marriages still take place and arranged marriages are still the majority, though more younger women expected to be able to choose their partners. The study also finds that most women would feel unable to seek divorce if their husbands had an extra-marital relationship, but many women feared the custom of so-called honour killing if they are suspected of such an affair. Next to none of the women had ever sought legal recourse against domestic violence or marital rape, though these are commonly experienced. A human rights training programme for women, a public awareness campaign against honour killing of women accused of adultery, and a campaign to alter the Turkish Criminal Code have been set up to address some of these issues.

In Turkey, which has been a secular state since 1923, the impact on women's sexuality of the imbalance of power in sexual relations is clearly visible in the Eastern region, where a high rate of female illiteracy, a desolate economic situation, a variety of customary and religious practices which are often in breach of the official laws, and specific forms of cultural violence and collective mechanisms aimed at controlling women's sexuality, produce a wide range of violations of women's human rights. This situation has worsened as a result of the ongoing armed conflict between the Turkish security forces and the separatist Kurdistan Worker's Party (PKK), which started in 1984. Turkey is unique in the Muslim world with respect to the extent of secular and progressive reforms of the family code affecting women's lives¹. In 1926 the

1. The reform of the Civil Code, based on the Swiss Civil Code, was a major success of the reformists against the conservative forces defending the religious family code in 1926.

introduction of the Turkish Civil Code, based on the Swiss Civil Code, banned polygamy and granted women equal rights in matters of divorce, child custody and inheritance. However, even several decades after these reforms, customary and religious practices continue to be more influential in the daily lives of the majority of women living in Turkey than the civil code; this is especially the case for women living in Eastern Turkey.

This article examines consent to marriage, marriage customs, polygyny and potential consequences of extra-marital relationships for women as important elements of the context of women's sexuality in Eastern Turkey. The analysis is based on data from interviews conducted with 599 women in Eastern and Southeastern Anatolia, with the framework of a broader research study on the impact of official, religious and customary laws on women's lives in Turkey.

Eastern Turkey can at best be characterised as a semi-feudal, traditional, agricultural economy. The region has a multi-ethnic character. Besides Kurds and Turks, which are the largest ethnic groups, the region also includes Zaza, Azerbaijanis, Arabs, Christians who speak Syriac language and others². No precise figures on the Kurdish population in the region are available as the last population census, which collected data on population by mother-tongue, was conducted in 1965. In recent demographic research on the massive migration processes taking place within the region, Mutlu estimated the Kurdish population in the Eastern region at 7.046 million in 1990, about 65 per cent of the total population on the region³. Most of the Kurdish population living in the region are dominated by tribal structures, organised around 'big families', which have the characteristics of clans; the feeling of group solidarity involves a large number of members of the extended family and includes responsibilities towards the community⁴. The asiret (tribal system) is usually characterised by large land holdings held by a tribal leader, who is the landlord. The members of the asiret usually do not own land, but work the landlord's holdings.

Women in Eastern and Western Turkey

Turkey is one the countries most seriously affected by problems resulting from regional differences in socio-economic conditions, which are

2. At the time of the Islamic conquests, the term 'Kurd' meant nomad. By the mid-19th century 'Kurd' was also used to mean tribespeople who spoke the Kurdish language. At present, insider's and outsiders' views concur on the definition of Kurds as those who speak Kurdish as their mother tongue.

3. In this research, Kurds are defined as those who declared their mother tongue as Kurdish, including Zaza in the 1965 population census. Mutlu S., 1995. Population of Turkey by ethnic groups and provinces. *New Perspectives on Turkey*. 12 (Spring):33-60.

4. For more information on the Kurdish tribal culture, see McDowall D., 1997. *A Modern History of the Kurds*. IB Tauris, London / New York; and Unsal A., 1995. *Kan Davasi* (Original Title: *La Vendetta*). Yapi Kredi Yayinlari, Istanbul.

progressively worse as one moves from West to East. These have a negative impact on the overall standard of living, the effects of which are experienced more by women than men. The West of Turkey consumes most of the private and public sector resources and is also highly urbanised, while most of the population in the East lives in rural areas. Approximately three-fourths of the population in the West live in urban areas, compared with a rate of 46 per cent in the East. Although primary school education has been mandatory in Turkey since 1927, in 1990 half of the women in Eastern Turkey were illiterate compared to 21.6 per cent of men. The illiteracy rates are much lower in Western Turkey, 19.7 per cent and 7.4 per cent for women and men respectively⁵. As a consequence of the armed conflict in the Eastern region, the number and quality of educational institutions is declining, reducing women's educational opportunities still further.

Women's participation in the labour force in Turkey has been steadily declining from about 70 per cent in the 1950s to about 30 per cent in 1996⁶. Most of this decline is due to the high rate of rural-to-urban migration. When rural women actively working in agriculture migrate to urban areas, the fact that they are less educated than men virtually prevents them from finding paid employment in the official labour force. In rural areas, where labour-intensive technology is widespread, women together with their children work as unpaid family labour in agriculture. However, regional differences are also striking in this instance. In the West of Turkey the proportion of women working for pay is 40 per cent, while in the East approximately 90 per cent of women still have the status of unpaid family labour⁷.

The Eastern region is characterised by the highest fertility rate in the country, 4.4 in 1992 as compared to 2.0 in the Western region and 2.7 in the country as a whole. Approximately 11 per cent of women living in the East have begun their childbearing between the ages of 15 and 19, compared to 8.3 per cent in the West. Regional differences in use of contraception are also substantial. The level of current use of contraception is only 42 per cent in the East, whereas it exceeds 70 per cent in the West and 60 per cent in other regions of Turkey⁸. Some of the reasons behind the desire for a high number of children in the region are the desire for a

5. *II. ve III. Bülge İstatistikleri 1994*. State Institute of Statistics. Prime Ministry, Republic of Turkey, Ankara, 1996.

6. *İstatistikler Kadin, 1927-1992*. State Institute of Statistics. Prime Ministry, Republic of Turkey, Ankara, 1995.

7. Data from: *Censuses of Population*. State Institute of Statistics. Prime Ministry, Republic of Turkey, Ankara.

8. *Turkish Demographic and Health Survey 1993*. Ministry of Health Institute of Population Studies and Macro International Inc., Ankara, 1994.

powerful tribe, the expectation by family elders of a boy child and the belief that Allah will provide food for each person⁹. Boy children are valued much more than girl children, which is reflected also in the fact that mothers, when asked about the total number of their children, often mention only the number of boys, as girls 'do not count'.

In recent decades, the increased dominance of market mechanisms and the modernisation efforts of the state, including the construction of large dams and irrigation projects in Southeastern Turkey, have had a profound impact on the region and a process of dissolution of traditional social and economic relations has begun. In this process, the political instruments used by the state are mainly local organisations of the central bureaucracy and cooperation with local tribes and political parties, all of which are male-dominated. Most of the projects for technical training and development are planned for men, leaving out women. As a result, modernisation projects are reinforcing the traditional distribution of labour and women's passive role in civil society¹⁰. In addition, the ongoing armed conflict and the militaristic cooperation between the state and local landlords, sheiks and tribal leaders, has not only resulted in increased violence but also strengthened the male-dominated patriarchal structure of the society.

Study methodology and participants

The field research concentrated primarily on three subject areas: 'women in the family', 'women as citizens' and 'women's bodily rights'.

A weighted, multi-stage, stratified cluster sampling approach was used in the selection of the survey sample. The sample included 599 women, aged 14 through 75, living in 19 settlements in Southeastern and Eastern Turkey. (Table 1 gives background characteristics of respondents.) The sample was designed so that a variety of characteristics would be analysed for the region as a whole, urban and rural areas (each as a separate domain) and Eastern and Southeastern Anatolian regions (each as a separate region). The urban frame of the sample consisted of settlements with populations of more than 20,000 and the rural frame settlements with less than 20,000.

Three types of questionnaire were used: for women living in monogamous marriages, women living in polygynous marriages and women who were unmarried. All questionnaires included common questions on background characteristics, marriage customs, decision-

9. Yirmibirinci Y. zyilda Kadin vet GAP. GAP - G.neydogu Anadolu Projesi (Southeastern Anatolian Project), 1997. Prime Ministry, Republic of Turkey, Directorate of Southeastern Anatolian Project, Ankara and Sanliurfa.

10. See also: Ert_rk Y., 1993. Dogu Anadolu'da Modernlesme vet Kirsal Kadin. 1980'ler T_rkiye'sinde Kadin Bakis A_Aysindan Kadinlar. Tekeli S. (ed.). Iletisim Yayynlary, Istanbul, 199-210.

making mechanisms in the family, inheritance, political, social and religious participation, mobility, migration experiences, violence against women and the Trait Anxiety Inventory (TAI). Women who were either currently or previously married were asked about their husband's background characteristics, perceived and experienced laws and customs of marriage, divorce and remarriage, as well as reproductive behaviour. All three questionnaires were tested and improved on the basis of a pilot study.

The questionnaires were filled out by the interviewers through face-to-face interviews. The interviewers were all from the region and had undergone lengthy, intensive training in all of the issues covered by the questionnaire, as well as interviewing and sampling techniques, to ensure they would use a sensitive approach towards the women participating in the research. Face-to-face interviews lasted anywhere from 20 minutes to almost 3 hours.

The fact that 19.1 per cent of the women could speak little or no Turkish at all meant they had little or no possibility of applying independently to legal institutions in case of violations of their rights within the family, as Turkish is the official language in all governmental institutions, including the judicial ones.

The majority of women were married and only a small percentage divorced, indicating the rarity of marital dissolution in the region. Seven per cent were widowed, more than the average in Turkey as a whole (4.3 per cent)¹¹, probably due to the armed conflict in the region¹². Only 11.2 per cent of the participants worked outside the home and earned an income. The majority were homemakers (48.9 per cent) or unpaid rural workers (32.8 per cent).

Marriage and sexuality

According to article 88 of the Turkish Civil Code, the minimum age for a civil marriage, which is the only legally valid marriage ceremony in Turkey, is 17 for men and 15 for women. However, the age of majority for all other legal procedures except marriage is 18¹³. Despite this law, 16.3 per cent of women living in the region are married under the age of 15 and in a religious ceremony, although it is against the law to hold a religious ceremony of marriage before a civil ceremony has taken place¹⁴.

11. Main Women Indicators Turkey, 1978-1993. State Institute of Statistics, Prime Ministry, Republic of Turkey, Ankara 1994.

12. The conflict has taken an estimated 13,000 lives by 1994 according to: Turkey: forced displacement of ethnic Kurds from Southeastern Turkey. Human Rights Watch / Helsinki Reports. 6(12), 1994.

13. Arin C., 1996. The Legal Status of Women in Turkey. Women for Women's Human Rights and WLUML, Istanbul.

14. Article 110, Turkish Civil Code.

Ninety-seven per cent of women who were over 24 years of age, and all of the women who were over 34 years of age were or had been married, indicating that marriage is almost compulsory for women living in the region. The tradition of bride price, the sum given by the man to the wife's family for the realisation of marriage, is very widespread in the region and plays an important role in the attitude of men, who assume that through this payment they have gained all rights over their wives' sexuality and fertility. In fact, the tradition can be considered as the sale of women for marriage by their families. Although 78.9 per cent of all married women have indicated that they are against this tradition, 61.2 per cent have indicated that their husbands had to pay bride price for them.

Table 2 shows the types of marriage and related indicators. The institutions of polygyny, early and forced/arranged marriages, kidnapping and the exchange of women for marriage are widespread in the region.

Polygyny

One out of ten marriages in the region is polygynous, although polygyny was banned in Turkey in 1926. As a result, in the case of polygynous marriages, only one wife can have a civil marriage whereas the others can only have religious marriages. A religious marriage ceremony confers no legally binding rights under the Civil Code, such as the rights related to divorce, maintenance of inheritance from the husband. More than half of the women (58.2 per cent) in a polygynous marriage lived in the same house as their husband's other wives and a majority (65.3 per cent) said they had serious problems with the other wives. Despite all the disadvantages of a polygynous marriage, almost half of the women in such a marriage stated that either the marriage was arranged by themselves, or that they entered into this arrangement of their own will, which indicates a widespread acceptance of polygyny by women. The Islamic injunction that a man may marry up to four wives if he so wishes, and the cultural atmosphere which regards poly as a man's natural right, play an important role in the acceptance of the practice by women.

Civil and religious marriages and age at marriage

Almost one fifth of the respondents (19.6 per cent) had had only a religious marriage and no civil marriage. This percentage is much higher than the average in Turkey (8.3 per cent)⁽¹¹⁾. According to the Civil Law, only civil marriages are legally valid in Turkey, religious marriages provide women with no legal rights and a religious ceremony can only be held after the civil ceremony. Otherwise, both the couple and the religious official conducting the marriage are deemed to have committed an offence, which is punishable under the terms of the Criminal Code⁽¹⁵⁾. Despite these

15. Article 237, Criminal Code.

regulations, as Table 2 shows, both the mean and median age at the time of the religious marriage ceremony was lower than the age at the time of the civil marriage ceremony, i.e. the religious ceremony is often held before the civil ceremony. Early marriages are widespread in the region and holding a religious ceremony before the girl reaches the legal minimum marriage age of 15 is often a strategy applied by the families to bypass the civil law.

Forced and arranged marriages

Although under the Turkish Civil Code the consent of both the woman and the man is a precondition for marriage, women often have no influence over the choice of their prospective partner and frequently marry against their will. In fact, even in cases where women are consulted about the choice of husband, a high degree of social control over women's sexuality is maintained through a taboo on pre-marital sex, certain forms of religious and cultural practices related to marriage and severe violence, all of which limit the space for women to exercise their right to consent fully.

A majority of the marriages (61.2 per cent) were arranged by the families; only every fourth marriage was arranged by the couple themselves. However, even when the marriage is arranged by the couple, the agreement of their families is very often a precondition for the marriage. One in 20 marriages was a *berdel* case, a tradition where a woman is offered as compensation to the family of her father's or brother's wife. These marriages are based on the exchange of brides who have 'equal value', which means that if one marriage fails, the other has to fail too. Therefore, in this kind of marriage the women are more or less hostages and the families are not likely to allow the women to run away or divorce¹⁶. One woman was offered as a wife to a family as compensation for an offence committed against them by her male relatives, and another was forced to marry the younger brother of her deceased husband. The tradition of betrothing girls while they are still infants seems to be disappearing, although it continues to be practiced (0.9 per cent).

About 5 per cent of the women stated that they had asked their husbands to kidnap them or that they eloped with their husbands of their own free will. This is a strategy applied by women when their families do not allow them to marry the partner of their choice, or when he is not able to pay the bride money requested by her family. Although this might seem to be an effective strategy that allows women to select their own partners, there may be high costs involved for the women. YalÁin-Heckmann, in her research about women's strategies in tribal cultures of Eastern Turkey,

16. Extended exchange of wives is not a Muslim or Middle Eastern tradition. The practice exists also in other parts of the world, for example in China. See Wijers M. and Lap-Chew L., 1997. *Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution*. Foundation against Trafficking in Women (STV), Utrecht.

concludes that women who have been 'kidnapped by their husbands by their own will' are almost always considered to have eloped by their husband's families, which often leads to loss of prestige and status on their side and even to violence against them¹⁷.

More than half of the women (50.8 per cent) were married without their consent and 45.7 per cent were not even consulted about their partner and the marriage. Those who had not met their husbands before the marriage constituted 51.6 per cent of the participants.

Tables 3 and 4 show the expectations of unmarried women about their future marriages. The percentage of unmarried women who believed that they would be able to decide on their partner themselves was only 58.0 per cent. Of these, only 46.4 per cent responded positively to the question of whether they thought they could decide to have a boyfriend or not.

In fact, even if the marriage is arranged by the couple themselves, it is often the case that they can meet each other only after the marriage ceremony has taken place. Nonetheless, the percentage of unmarried women who thought that they could arrange their marriages themselves was much higher than the percentage of married women who had done so, indicating a perception of increasing autonomy over the choice of partner. This view is also supported by the mothers. When asked about who could decide on who their daughters' prospective husband would be, 52.5 per cent answered that their daughters would make the decision themselves. However, those who stated that their sons would themselves choose their partners independently was much higher at 75.5 per cent.

Of the women who thought that their marriages would be arranged by their families, 28.7 per cent believed that they would not be consulted about the marriage and 72.4 per cent that they could not be able to meet their husbands before marriage.

Extra-marital relationships

At the present time, there are no official laws in Turkey restricting the right of a woman to engage in a relationship with any man or woman of her choice before, during or after marriage. However, extra-marital relationships are an absolute taboo for women in the region, whereas men's extra-marital affairs are widely accepted through the institution of polygyny. The customary penalty for women suspected of such a crime in the region is usually death, the so-called honour killings. 'Honour killing' is a term used for the murder of a woman suspected of having transgressed the limits on sexual behaviour as imposed by tradition, specifically engaging in a pre-marital relationship with a man or suspected extra-marital affairs.

17. Yalın-Heckmann L., 1993. Asiretli Kadyn: Ger vet Yari ger Toplumlarda Cinsiyet Rollerini vet Kadın Stratejileri. In Tekeli S. (ed.), (10) above.

Until 1996, the Turkish Criminal Code made fornication a criminal offence and differentiated between men and women in the definition of fornication. In December 1996, the article which defined fornication by men and, in June 1998, the article which defined fornication by women were both annulled by the Turkish Constitutional Court on the grounds that the differences violated article 10 of the Turkish Constitution, which states that men and women must be equal before the law¹⁸. The annulled articles stated that for a woman one complete sexual act with a man other than her husband was sufficient for conviction of fornication. A married man could not be convicted of fornication unless it was proved that he was living together with a woman other than his wife. Since the annulment of these articles, fornication is not considered to be a crime in the official legislation.

Table 5 summarises the perceptions of women in the region as to the consequences of adultery, which are strikingly different from what is now decreed in the official legislation.

A majority of the women (66.6 per cent) believed that, contrary to the law, they could not divorce their husbands if they committed adultery, even if they would have liked to. Since religious marriages are legally invalid in Turkey, they ensure no right of legal divorce. Thus, more women who had had only a religious marriage (75.7 per cent) thought they could not divorce their husbands on the grounds of adultery than those who had had both civil and religious marriages (66.2 per cent), but the difference was not that great. Although the increase in women's educational levels increased women's perception of the possibility of getting a divorce, 31.5 per cent of women who had secondary or higher education still believed they could not divorce their husbands for adultery. Interestingly, there was no difference in the perceptions of women living in urban and rural areas on this issue.

On the other hand, the percentage of women who thought that they would be killed by their husbands and/or their families if they committed adultery was very high: 66.6 per cent. This perception was even more common among those who had little or no education, those who had only a religious marriage and those who lived in rural areas. Most of those who thought that their husbands would do something else other than divorcing or killing them, expected that they would be beaten up very badly by their husbands if they were suspected of an extra-marital affair.

The removal of fornication as a criminal offence in law is very recent, and although there are no provisions explicitly referring to 'crimes of honour' in the Turkish Criminal Code, this tradition is still supported in law. An extra-marital affair of a husband or wife is considered to be a

18. Articles 440 and 441, Turkish Criminal Code.

'provocation' and the sentence can be reduced by one eighth if such provocation is deemed to have taken place¹⁹.

Violence against women

Violence against women is one of the main tools used to oppress women socially and sexually. More than half of all married women living in the region are subjected to domestic violence by their husbands (Table 6). Those who are subjected to sexual violence (marital rape) constitute 51.9 per cent of the participants. As the educational level of women and their husbands increases, the extent of domestic violence decreases. However, one third of the women who have had a secondary or higher education are subjected to emotional and physical violence by their husbands and one fourth have experienced marital rape.

The Turkish Criminal Code does not contain special provisions relating to the use of violence against women in marriage. The husband is usually charged under the general provisions of the Criminal Code, including article 478, which provides for imprisonment up to 30 months for the maltreatment of a family member in a manner which contravenes the accepted understanding of affection or mercy²⁰. In order to make use of this law, a woman who is subjected to violence must file a complaint. However, only 1.2 per cent of those who have experienced domestic violence have notified the police that it has occurred, and those who have actually filed a complaint are even less 0.2 per cent.

The most common strategies used by women against the violence of their husbands is to leave home temporarily (22.1 per cent) or to ask for help from their families, friends or neighbours (14.7 per cent). There are no shelters or institutions offering help to victims of domestic violence in the region. This contributes to the helplessness of women who experience domestic violence. One of the reasons hindering women living in the region from filing a complaint is the mistrust towards security forces as a result of the armed conflict. This mistrust is not only due to the atmosphere of political and social suppression by the security forces, but also to the violence carried out by them. Those who have experienced physical or emotional violence on the part of the security forces constitute 1.3 per cent and 3.4 per cent of the participants respectively; 2 percent have indicated that they have experienced sexual harassment by members of the security forces.

Discussion - and some initial steps

The internalisation of gender roles by women in a particular culture is often directly related to the impact of specific mechanisms controlling women's sexuality, which are often of a 'collective' nature²¹. The findings

19. Article 462, Turkish Criminal Code.

20. Ilkkaracan P., G,IAur L., Arin C., 1996. Sicak Yuva Masali: Aile IAi Siddet vet Cinsel Taciz. Metis, Istanbul.

in this research are all reflective of a number of mechanisms of control on women's sexuality in Eastern Turkey. The social pressure on women to marry, early and forced or arranged marriages, the tradition of bride money, extended exchange of wives between families, and the extent of the threat of violence against women who transgress the limits on sexual behaviour as imposed by traditions constitute some of these control mechanisms. These are supported by customary and religious practices. Most of these practices, which represent or lead to serious violations of women's rights, still exist despite reforms banning them as long as 70 years ago, as with child marriage, polygyny or crimes of honour. The extent of domestic violence experienced by women, including marital rape, and the constant threat of violence are bound to affect not only their sexual health and perceptions of sexuality negatively, but also decrease their chances of creating and applying strategies against the violation of their rights.

As in many other countries, most women in the region are not aware of their existing rights and there are no services they can make use of in order to be informed about their rights. The expansion of such services for women in the region is one of the ways of supporting them to develop strategies to defend their rights. Since 1997, Women for Women's Human Rights, an NGO based in Istanbul, has begun to carry out women's human rights training programmes in the region in order to respond to this need. We are now cooperating with existing Community Centres in the region in order to establish such programmes for women on a long-term basis²².

In order to raise public awareness of and to create preventive strategies against these practices, it is essential to name and integrate them into a women's human rights agenda on the national and international levels as well. For example, since 1996 an ongoing campaign carried out by women's organisations in Western Turkey has been trying to raise public awareness to put an end to the so-called honour killings. One demand, considered to be a necessary and immediate step towards addressing this issue, has taken the form of a proposed amendment to the Turkish Criminal Code, to allow concerned women's organisations and individual women to be present at and participate in any court cases as interested parties. It is also proposed that the amendment would eliminate articles which serve as grounds for reduced punishment in the case of honour killings (eg. of the murderer is a minor). This proposal has also been submitted to the UN Committee for the Elimination of All Kinds of Discrimination Against Women, at the meeting for the periodic review of Turkey in January 1997 by Women for Women's Human Rights, in collaboration with the Purple Roof Foundation and Equality Watch.

21. See also Kandiyoti D., 1987. Emancipated but unliberated? Reflections on the Turkish case. *Feminist Studies*. Summer: 317-38.

22. Community Centres are established by the Directorate of Social Services and Child Protection.

Tables**Table 1. Background characteristics of respondents (n = 599)**

Age	%
14 - 19	21.1
20 - 29	28.6
30 - 39	18.6
40 - 49	12.6
0 - 59	9.6
60 +	6.1
Did not know her age	4.5
Education	%
No education	45.8
Primary incomplete	4.3
Primary graduate	33.5
Secondary graduate / vocational school	8.1
High school +	5.8
Other	2.6
Mother tongue	%
Kurdish	55.3
Turkish	32.8
Zaza	5.6
Arabic	3.6
Azerbaijani Turkish	2.0
Other / Not known	0.7
Civil status	%
Married	62.7
Widowed	7.0
Separated	3.9
Divorced	0.6
Single / Unmarried	25.8
Residence	%
Urban	42.3
Rural	57.7

Table 2. Type of marriage and marriage-related indicators

Monogamous vs. polygynous marriage	%
Monogamous	89.4
Polygynous	10.6
Civil vs. religious marriage	%
Only civil marriage	5.8
Only religious marriage	19.6
Both civil and religious marriages	74.4
None	0.2
Mean and median age at first marriage	Age
Mean age at first civil marriage	20.4
Mean age at first religious marriage	17.9
Median age at first civil marriage	19.0
Median age at first religious marriage	17.0

Exploring the Context of Women's Sexuality in Eastern Turkey

Realisation of marriage (%)			
	Monogam.	Polygyn.	Total
Arranged by the family	60.8	66.2	61.4
Arranged by the couple	25.6	16.6	24.7
Ran away with her husband	5.3	2.3	5.0
Berdel (extended exchange of wives)	4.5	6.5	4.7
Abduction	1.7	4.5	2.0
Betrothal while an infant	1.0	-	0.9
Other	1.0	4.0	1.3
Consent to marriage when not arranged by the couple			
	%		
Her opinion was not asked	45.7		
Married without her consent	50.8		
Did not meet husband before marriage	51.6		

Table 3. Expectations about marriage of unmarried women (%)

Realisation of marriage	
Education	
Most probably will be arranged by herself	
None / primary incomplete	39.9
Primary complete	52.1
Secondary +	88.7
Total	58.0
Most probably will be arranged by her family	
None / primary incomplete	57.4
Primary complete	46.6
Secondary +	9.3
Total	40.2
Other	
None / primary incomplete	2.6
Primary complete	1.4
Secondary +	2.0
Total	1.8

Table 4. Consent to marriage when arranged by the family (%)

Most probably her opinion will not be asked	28.7
Most probably will not meet husband before marriage	72.4

Table 5. Adultery if committed by the husband or wife and whether divorce would be possible (%)

Characteristics of the woman		If the husband commits adultery	
		I could divorce him	I could not divorce him
Education			
	Noce / primary incomplete	25.1	74.9
	Primary complete	41.4	58.6
	Secondary +	68.5	31.5
Marriage type			
	Only civil	63.5	36.5
	Both civil and religious	33.8	66.2
	Only religious	24.3	75.7
Residence			
	Urban	32.3	67.7
	Rural	35.4	64.6

Total		34.0	66.0	
Characteristics of the woman If the wife commits adultery				
		My husband would divorce me	My husband would kill me	Other
Education				
	Noce / primary incomplete	19.4	75.3	5.3
	Primary complete	39.0	75.3	5.3
	Secondary +	45.3	46.9	7.8
Marriage type				
	Only civil	53.3	26.8	19.9
	Both civil and religious	28.4	66.1	5.5
	Only religious	17.1	79.4	3.5
Residence				
	Urban	38.5	56.5	5.1
	Rural	19.2	74.3	6.5
	Total	27.5	66.6	5.9

Jihad International Inc.

Eqbal Ahmad

The violence of Islamism has roused anxious concern throughout the world, especially the Muslim world. In the United States, the media and policy makers wage a campaign to demonize Muslims and Islam as a threat to Western interests and civilization itself. This politically motivated propaganda has been aided by the Islamic resistance to Israel's occupation of Lebanon, the West Bank, Gaza, and Golan, along with such incidents as the plot to blow up New York's World Trade Center. The anti-Islam bias of media and policy makers is revealed in their double standard: They condone Israel's US-aided violence — conducted on an enormous scale — while denouncing Arab resistance to it. They condemn "Islamic fundamentalism" but ignore the historic role the West played in spawning the violence of the groups and individuals they now label and denounce as terrorist. And after the West promoted the violent ideological enterprise that served its short-term interests, it largely withdrew, leaving the native peoples to pay the heaviest price.

The propaganda in the West suggests that violence and holy war are inherent in Islam. The reality is that as a world-wide movement Jihad International, Inc. is a recent phenomenon. It is a modern, multinational conglomerate founded not so much by fanatic mullahs in Teheran as it is sponsored by governments including the US and its allies Pakistan and Saudi Arabia. It was the 1979-91 US-sponsored anticommunist crusade in Afghanistan that revitalized the notion of jihad as the armed struggle of believers. Israel's invasions and occupation of Lebanon, the West Bank, Gaza, and Golan continue to invest it with moral meaning and give it added impetus. Never before in this century had jihad as violence assumed so pronounced an "Islamic" and international character.

Nearly all the Muslim struggles of the 20th century were secular. The Ottomans fought their last wars on essentially secular terms in defense of a tottering empire and, at least in the Middle East, against predominantly Muslim foes. The Egyptian national movement — from the rise of Saad Zaghlul to the demise of Gamal Abdel Nasser — remained secular and explicitly Arab and Egyptian. This non-theological character was equally true of the Iraqi, Syrian, Palestinian, and Lebanese national struggles. The

Turks attained their liberation under the banner of intemperate secularism. Iranian nationalists fought and forged a Belgium-like constitution in 1906. In India, Muslim nationalism—opposed by an overwhelming majority of Indian Ulema (Muslim theologians)—defined the demand for and achievement of Pakistan. All these movements resonated among other Muslim peoples who were similarly engaged in anti-colonial struggles but none had an explicit pan-Islamic context.

Jihad — a noun meaning struggle, from the Arabic root verb *jhd* "to strive" — was a favored term among Muslims in their struggle of liberation from colonial rule. Its meaning was expansive and often secular. When my brother was expelled from school after raising the nationalist flag, for example, he was welcomed in our village as a *mujahid* — one who struggles, one who engages in jihad. In the Maghrib, Algerian nationalist cadres who warred against France for seven grueling years were called *Mujahideen*. Their newspaper *El-Moudjahid* was edited for a time by Frantz Fanon, a non-Muslim, and their struggle was led by a secular organization — *Front du Liberation National (FLN)*. In Tunisia, the national struggle was headed by Habib Bourguiba, a diehard Cartesian secularist who nevertheless enjoyed the title of *Mujahidul-Akbar*. And although the word *jihad* did occasionally appear as a mobilizing cry of the 1979 Iranian revolution, it was the cry of *Enghelab-revolution*—that sounded the uprising against the Shah. After seizing power, Iran's revolutionary government adopted *Jihad-l-Sazandegi-jihad* for construction—as its mobilizing call. Without significant exception during the 20th century, *jihad* was used in a national, secular, and political context until, that is, the advent of the anti-Soviet war in Afghanistan.

Reagan's Holy War

Then, for the first time in this century, the standard bearers of a Muslim people's struggle for liberation were Islamic fanatics committed to the violent overthrow of "godless communism" and dedicated to the establishment of an "Islamic state" in Afghanistan. Theirs was a *jihad* in the classical, strictly theological sense of the word. Ironically, they had the kind of support no other liberation movement had ever enjoyed: that of the Western powers. Washington and its allies supplied the *Mujahideen* with an estimated \$10 billion in arms and aid. They also invested in this *jihad* the legitimacy of their enormous power, and the luster of their media-made glory. President Ronald Reagan treated them as glorious freedom fighters. Similarly, the US and European media played up the war in Afghanistan as the greatest story of the 1980s. Foreign correspondents combed the Hindu Kush for stones of "Mooj" heroism. Competition for *jihad* narrative was so great that in one instance a major network, CBS, bought film of a staged battle between Islamism and Communism. As testament to the great importance and authority that Western media carry in the Third World, its Afghanistan war coverage made an enormous impact, especially on Muslim youth.

Within a year of the Soviet intervention, Afghanistan's struggle was on its way to becoming a pan-Islamic jihad. Hundreds, eventually thousands, of young Muslims, from as far apart as Algeria and the Philippines, Sudan and Sinkiang, traveled to Peshawar and Torkham, for military training. Under the strict guidance of various Islamic parties, they tasted the jihad-in-the-path-of-God and grew ideologically ripe. Washington and its vaunted intelligence agency saw in this process a Cold War opportunity to pit militant Islam against communism. Had the Soviet Union not collapsed unexpectedly, it is likely that the US would still be benefiting from this historic mobilization of jihad. As the Afghan war raged, many knew of the violent pan-Islamic character it was assuming-with US sponsorship. But no country-not Algeria, not Egypt-protested the participation of its nationals; all watched casually, then looked the other way. Pakistan, which served as a CIA conduit of US-supplied arms, was hospitable to a fault. In 1986, for example, Egyptian intelligence had an effective presence in the Pakistani border town of Peshawar and excellent information on the demography of jihad. But it could not interfere with the agenda set by Washington, which was, after all, an ally and benefactor. It was only after the US had cashed in its investments in Afghanistan and all hell broke loose in Algeria and Egypt, that demands for extradition started to reach Pakistan from Algiers and Cairo. But whom can Pakistanis request to rid its country of the thousands of armed zealots their own government has nurtured, and continues to nurture?

Transnationalization of Jihad

Not since the crusades in the Middle Ages has jihad crossed cultural, ethnic, and territorial boundaries with such vigor. Except for a brief emergence in the 19th century, Pan-Islamism survived only as the abstract agenda of a microscopic minority of Muslim intellectuals and as an influence on the works of some modern writers and poets including Mohammed Iqbal.

The generalized sentiment of Muslim affinity on which pan-Islamism relied was real nevertheless and from time to time manifested itself in peoples expressions of solidarity with co-religionists in Palestine, Bosnia, etc. Still, the national struggles of Muslim peoples remained national, and pan-Islamism endured only as an inchoate sentiment of solidarity Until Afghanistan. With that war, pan-Islamism grew on a significant scale as a financial, cultural, political, and military phenomenon with a world-wide network of exchange and collaboration. Myriad institutions-madrasas, Islamic universities, training camps, and conference centers-arose in Pakistan and other places. Sensing its enormous opportunity, traders in guns and drugs became linked to the phenomenon, creating an informal but extraordinary cartel of vested interests in guns, gold, and god.

Transnational involvement in the jihad not only reinforced links among Islamic groupings, but also militarized the conventional religious parties:

Pakistan's Jamaat-I-Islami is an example. Until its involvement in Afghanistan, it was a conventional party, cadre-based, intellectually oriented, and prone to debate and agitation rather than armed militancy. It now commands perhaps the largest number of armed and battle-hardened veterans outside of Pakistan's army and rangers. In 1948-49, its chief ideologue, Maulana Abul Ala Maududi had rejected, on theological grounds, the notion of jihad in Kashmir. Today, his party openly boasts of its militant involvement there. In recent years, other conventional Islamic parties the Jamiat-e-Ulama-I-Islam (JUI) and Jamiat-e-Ulama-e-Pakistan — have also been militarizing, thanks to their linkages with the Taliban; thanks also to their involvement in Kashmir. In addition, other armed sectarian groupings—the Sipah Sahaba, Lashkare Jhangvi, Harakatul Ansar, Sipah Mohammed, Lashkare Tayba, Anjumane Sarfaroshane Islam — have emerged to menace society no less than the state. They are all sectarian formations, apparently a far cry from Islamism as expounded by the older religious parties such as the Jamaat-I-Islami and JUI. Yet the fact remains that their antecedents lie with these parties, and they draw sustenance from the neighboring wars which are cast in Islamic terms. In effect, while Washington and the media blamed Iran as the source of organized Muslim rage, armed Islamic radicalism was actually nurtured in Zia ul-Haq's Pakistan with US funding and CIA help.

Divisions in the Ranks

The birth of Jihad International coincided with another development that has had a particularly unwholesome effect on Pakistan. Following the prolonged hostage crisis during which Iranian radicals held US diplomats captive in Teheran, a contest began between two versions of political Islam: The radical approach was supported by Iran; the conservative by Saudi Arabia and until 1988, by Iraq.

While Washington was involved in this development, its logic was essentially regional. Iran's revolutionary Islamists were quite uncompromising in opposing the US as an imperial power and in their rejection of monarchy as an un-Islamic form of government. As a pro-US conservative kingdom, Saudi Arabia felt threatened by Iran. Riyadh was quick to counter Iran's proselytizing zeal and found support in such Gulf sheikhdoms as Kuwait. With the start of the Iran-Iraq war in 1980, Saddam Hussein's secular government joined in the theocratically cast campaign against Iran. Islamic organizations all over the Muslim world became beholden to one or the other side of this divide.

In countries with mixed Sunni-Shi'a population such as Lebanon, Pakistan and Afghanistan, this development had the greatest impact as sectarian groups and individuals found new incentive to arouse old hatreds. Although the Americans, Saudis, and Iraqis may have promoted their brand of conservative Islam only to counter Iran's growing appeal, their anti-Iran campaign was easily translated into anti-Shi'a sentiments and actions. The

Sipah Sahaba, a die-hard anti-Iran, anti-shi'a terrorist group in Pakistan, is one such result. It was funded first by the Saudis and then by Iraq. The terror and counter-terror that followed have involved murders of Iranian diplomats and trainees, US technicians, ordinary people in mosques, and most recently, in a cemetery Battles for souls often degenerate into a hankering after body counts. As the chickens of jihad once nurtured by imperialism and the state come home to roost, Afghanistan threatens to become a metaphor for the future.

Pakistan: Islamism's Front-line State

In Pakistan, as in Algeria and Egypt, a virtual civil war is raging between the differing hues of Islamists and the secular authoritarian government. Among these countries, Pakistan is distinguished in several ways: It was the original staging ground of jihad as an international movement. Unlike Algeria and Egypt, votes for Islamic parties in the last four Pakistani elections since 1988 have declined. Also unlike Algeria and Egypt, Sunni majorities predominate, Pakistan is a multi-denominational country where about a quarter of the population is non-Sunni. Furthermore, even Pakistan's Sunni are divided by theological disputes (notably between the Barelvis and Deobandis) that have tended to turn violence. With Sunni against Shi'a, Sunni against Christians and Ahmadies, and killings across the Barelvi-Deobandi divide, the potential for devastating violence is enormous.

Pakistan's position is also unique in that it is Islamism's "front-line state" The war in Afghanistan continues and, in numerous ways, impacts on Pakistan's internal developments. Finally, Pakistan's is an ideologically ambiguous polity; here, political paeans to Islam have served as the compensatory mechanism for the ruling elite's corruption, consumerism and kowtowing to the West. As a consequence, the fervent Islamist minority keeps an ideological grip on the morally insecure and ill-informed power elite. It is this phenomenon that explains the continued clout of the extremist religious minority even as it has been all but repudiated by the electorate.

Pakistan is a prime example of the mayhem and official failure to address it. From the 1995 bombing of the Egyptian embassy in Islamabad to the recent massacre in Lahore's Mominpura Cemetery, this country is strewn with innocent victims of Islamist extremism. Yet, these tragedies have barely caused any reflection in Pakistan and other nations whose policies sowed the seeds of the so-called "Islamic terror"

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Pakistan

Attempt to exploit religion for political gain

The now aborted, 15th Constitution Ammendment Bill, 1988 caused much controversy. A concerted opposition stopped this Bill from becoming Law.

A collection of news, reports and analysis follows.

Attempt to exploit religion for political gain:

• ***Extracts from the text of the 15th Constitutional Amendment Bill, 1998***

“**W**hereas sovereignty over the entire universe belongs to Almighty Allah alone and the authority which He has delegated to the State of Pakistan through its people for being exercised through their chosen representatives within the limits prescribed by Him is a sacred trust; And whereas Islam is the State religion of Pakistan and it is the obligation of the State to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam set out in the Holy Qur'an and Sunnah;

And whereas in order to achieve the aforesaid objective and goal, it is expedient further to amend the Constitution of the Islamic Republic of Pakistan; now therefore , it is hereby enacted as follows:

1. Short title and commencement - (1) This Act may be called the Constitution (Fifteenth Amendment) Act, 1998 (2) it shall come into force at once.

2. Addition of new Article 2B in the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the said Constitution after Article 2A, the following new Article shall be inserted, namely 2B Supremacy of the Qur'an and Sunnah (1) The Holy Qur'an and Sunnah of the Holy Prophet (peace be upon him) shall be the supreme law of Pakistan.

Explanation: In the application of this clause to the personal law of any Muslim the expression "Qur'an and Sunnah" shall mean the Qur'an and Sunnah as interpreted by that sect.

(2) The Federal Government shall be under an obligation to take steps to enforce the Shariah, to establish *salat*, to administrate *zakat*, to promote *am bil ma'roof wa nahi anil munkar* (to prescribe what is right and to forbid what is wrong) to eradicate corruption at all levels and to provide substantial socio-economic justice, in accordance with the principles of Islam, as laid down in the Holy Qur'an and Sunnah.

(3) The Federal Government may issue directives for the implementation of the provisions set out in clauses (1) and (2) and may take the necessary actions against any state functionary for non-compliance of the said directives.

(4) Nothing contained in this Article shall affect the personal law, religious freedom, traditions or customs of non-Muslims and their status as citizens.

(5) The provisions of this Article should have effect notwithstanding anything contained in the Constitution, any law or judgement of any Court."

• **Pakistani Legal experts condemn bill**

Prominent legal experts declared the Pakistan government's move to enforce the 15th Amendment an attempt to alter the nature of the state.

Human Rights Commission of Pakistan Chairperson Asma Jahangir, said the passage of the constitutional amendment in this regard would mean that the fundamental rights of people were at one's man discretion.

Jahangir said: "I have no doubt in my mind that by undermining the supremacy of the Constitution and independence of judiciary, an attempt is being made to establish a Talibanish government headed by Mian Nawaz Sharif and overseen by President Rafiq Tarar."

The proposed amendment, by making judges the federal government functionaries, has put the judiciary at the mercy of the government which will be able now to send any judge packing, she said. "I can say with authority that, at least, four judges of various high courts and two judges of the Supreme Court are contemplating resignation if this bill goes through," she disclosed.

The amendment will destroy the balance among federating units guaranteed through equal representation in the Senate, the upper house of the Parliament, and will, therefore, revoke the entire Constitution, Asma pointed out and added the passage of the amendment would deal a blow to provincial autonomy and unleash a reign of terror in the country in the name of Shariah.

She wondered how Nawaz Sharif could emancipate people plagued by poverty, lawlessness and illiteracy by imposing his own interpretation of Shariah. Nawaz Sharif has suddenly discovered that he cannot tolerate crimes against women but, surprisingly, nowhere in the bill presented in the National Assembly protection of women is guaranteed, she observed. "In fact, after the passage of the bill, Pakistani women will be in the hands of local Taliban," she said. (The News, 30-8-98)

The 15th Amendment Bill is a recipe for social and political disaster. WAF urges political parties not to let this move succeed. WAF especially

calls upon nationalist progressive forces all over Pakistan to play their role to prevent the dishonest Punjabi leadership from injuring the interests of the whole country and to seriously address the severe crisis facing the nation - Women's Action Forum

• **Women's rights activists quit government committees**

On the call of Women's Action Forum (WAF), women rights activists of various NGOs sitting in the government committees on Beijing Platform for Action and implementation of CEDAW resigned from these committees in protest against the proposed 15th constitutional amendment.

Those resigned include Asma Jahangir, Hina Jilani, Shahtaj Qazalbash, Nigar Ahmad, Neelam Hussain, Insha Hamdani, Tahira S. Khan, Tahira Syed, Khawar Mumtaz, Farida Shaheed, Shahla Zia and Fariha Zafar.

They issued a joint statement which stated that the introduction of the 15th amendment makes it clear that the government was not serious towards its commitments to women's rights and democratic processes. The involvement of women and women organisations in committees regarding CEDAW and other commitments appeared to be a mere formality that were being carried out only for the sake of avoiding international embarrassment.

They said they were convinced that the modified 15th amendment bill still threatened the basic principles of the Constitution, the parliamentary process and the concepts of the federation.

"It is clear that those in the vanguard of pushing through the 15th amendment are the same elements who supported the various so called islamisation measures brought in by the dictator Zia-ul-Haq," they added. - (The News, 22-11-98)

• **Citizens rally against shariat bill**

A large number of activists from major opposition parties took part in an anti-Shariat bill rally organized by the Joint Action Committee for People's Rights which comprises 35 NGOs and human rights organizations.

A large number of women who took part in the rally declared that the bill was aimed at usurping their basic rights. Carrying placards and banners, the march raised slogans against the prime minister, saying that he was introducing authoritarianism and fascism and snatching the rights of women, minorities and provinces in the name of Islam. - (Dawn, 16-10-98)

• **Opposition vows to block amendment**

The Constitution (15th Amendment) Bill 1998, after having been passed by the National Assembly, is sure to be blocked in the Senate as the

government is short of two-thirds majority, despite winning over the votes of all parties except those constituting the combined Opposition.

In the House of 87, the government requires 58 votes to get the Bill passed. To be more precise and exact in the number game in the Senate, the government still falls short of two votes even if Senator Shafqat is not included in the combined Opposition camp.

The results of the voting for and against the Bill in the National Assembly must have been quite shocking for the government as except the FATA members and four minority members, no other party favoured amendment in the Constitution. - (The Nation, 11-10-98)

Women and the 15th Amendment

By Dr Farzana Bari

[DAWN - the Internet Edition 17 November 1998 Tuesday [Opinion]

WHY are women so fearful of the 15th Amendment?

This is a question, which has been asked by many. One has to be a woman of a free mind and soul to understand women's concerns about the proposed amendment.

Political use of Islam by many states in the Muslim world and its impact on women is more than enough to make women, who want to live as persons and not as sex objects in society, nervous and worried. Women's experience in Iran, Algeria, Saudi Arabia and Afghanistan shows that control over their lives is the most common obsession of all theocratic states irrespective of the differences in their political outlooks and orientations. Women are seen as a marker of the identity of a Muslim community, and hence, it becomes absolutely critical for patriarchal states to guard women's morality and to ensure that women behave according to the manner prescribed by religion.

Also it is easier for the state to target women in its official Islamization programme because of their powerlessness in the structures of the family, state and society. Despite their numerical strength in all societies, the male elite has always monopolized state power. In the absence of a women's power base in the socio-economic and political structures of society, they become vulnerable in the search for a national identity by the ruling elite.

Women who fear theocracy are not infidels. Most of them oppose political use of Islam primarily because of their own subordinate position in the popular Islamic discourse. Their social, economic and political subordination determines their role in defining and interpreting religious text and Shariah. So far, Muslim men have interpreted Islam. The efforts of Muslim women activists to reinterpret Islam from the feminist perspectives have not gone very far. Women in the Muslim world are not in a position of power or authority to popularize their version or interpretation of Islam. The existing interpretations by male Muslim clergy pose a threat to the status and potential of Muslim women who want to break with oppressive

patriarchal traditions. Since political and economic forces determine what and whose interpretation of religion in a Muslim state shall prevail, women find it safer to argue a case for a secular state. They know that from their subservient position they will not be able to influence the state's choice or a preference for a particular brand of Islam. Therefore, they oppose the political use of Islam.

Against this background, perhaps, it will be easier to understand why women's right activists in Pakistan so strongly oppose the 15th Amendment. They are rightly concerned that the amendment will erode the structure of democracy in the country. The ruling clique in Pakistan will be able to change and mould the constitution according to their own vested interests, as historically religion has been manipulated by the ruling classes in Muslim societies from the seventh century onwards. 15th Amendment will lead to sectarianism and religious bigotry and intolerance in society and make the federal government all-powerful something that will create further political disharmony and chaos in the country.

Another reason for women's apprehension with regard to the 15th Amendment is that they are not sure that what brand of Islam will be inducted in Pakistan to define *amr bil maroof and nahi anil munkar*. So far, all brands of Islam used by various states in the Muslim world have proved to be extremely oppressive towards women.

In view of the misogyny of the religious orthodoxy, the panic created by the 15th Amendment among women is quite legitimate and understandable. Unlike many in this country, women's right activists do not have short memories. They have not forgotten the so-called Islamization of the Zia era, when in the name of Islam the most oppressive legislation was introduced to discriminate against women. It includes the Haddood Ordinance, Law of Evidence and Qisas and Diyat. Women in Pakistan are still suffering physically and psychologically from such discriminatory legislation.

Today, the majority of women in prisons and those living in Dar-ul-Amans have cases slapped against them under the Haddood Ordinance. The Islamization process initiated by Zia-ul-Haq singled out women as its only target and created a social environment in which every man on the street had the power and entitlement to tell a woman how to and how not to dress herself. Couples in public places were asked to produce *Nikah Namas*. Women were harassed in public and were lectured by total strangers on Islamic norms of behaviour and conduct that they were to adhere to.

With the exception of the pronouncements on regulating women's morality, there was hardly any initiative taken by Zia regime to Islamize society and the state. Women were used as convenient targets of chastisement by the protagonists of that process of Islamization.

Similarly, with the initiation of a debate on the 15th Amendment, women have become the targets of many attacks by fundamentalists. According to their understanding of Islam, women's only legitimate place is within the four walls of their homes. Women's mere presence in public spaces, which supposedly are the preserves of men, upset men's religious sensibilities.

The opposition to the 15th Amendment has come from various political and social circles (25 political parties opposed it). Women have been at the forefront in demonstrating and articulating their disapproval in public. In the given political environment, they have to re-evaluate their relationship with the state. Women's rights activists have been collaborating with government trying to develop frameworks and implementation plans to fulfil international commitments, which bind the government to create an enabling environment whereby women could enjoy their social, economic and political rights.

The government of Pakistan is a signatory to many international instruments such as Convention on Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Political rights of Women, Beijing Platform of Action, etc. The proposed 15th Amendment is wholly incompatible with all these - a development which has made it impossible for women's rights activists to continue to collaborate with the government. Therefore, women's rights activists and some of the NGOs working for women's rights have taken a collective decision to resign from the committees to implement the Beijing Platform of Action, CEDAW, etc. It is absolutely essential that all democratic forces in the country should join hands to block the 15th Amendment that will mean death to democracy and all civil rights in the country.

(c) DAWN Group of Newspapers, 1998

Pakistan: Religious Intolerance Rides Over Freedoms

By Beena Sarwar

ISLAMABAD, Nov 10, [1998] (IPS) - Prime Minister Nawaz Sharif's attempt to Islamise Pakistan has been checkmated by the imposition of Governor's rule in the troubled Pakistani province of Sindh.

The controversial 15th Constitutional Amendment Bill, popularly called the Shariat Bill, has lost even the slimmest chance of ratification in the Senate, but rights activists who are alarmed by the loss of freedom say the reprieve is at best temporary.

Just last Wednesday, Prime Minister Nawaz Sharif made the bill the main plank of a public speech in the mountainous northern areas, where he urged listeners to "force the Senators into passing the bill."

"The very introduction of this unnecessary legislation has already caused immense damage and encouraged religious fanatics to physically threaten those who have a different world view," says Rubina Jamil of the Working Women's Association.

She said that one of the hostel's run by the association in Lahore was threatened by an extremist religious party, who pasted notices warning "hostelers ... not (to be) seen walking on the streets and asked if they had their burqas stitched yet."

Rights activists say the bill threatens the Constitution, as well as the principles of the federation and provincial autonomy, notwithstanding Sharif's protestations that Pakistan had made history by ushering in 'Islamic law' through democracy and not bloodshed, after it was voted through the ruling party-controlled National Assembly or lower house of Parliament in October.

Interestingly there was a significant number of abstentions to the vote (50), since members of the treasury cannot vote against government bills on pain of disqualification from the Assembly.

Nor was the bill debated in the house. "But then, why should it have been given any hearing at all? The prime minister is known for not

consulting even his own party members on important issues," says a bitter ruling Pakistan Muslim League activist.

Since he was sworn in last year, Sharif has taken momentous decisions without taking his Cabinet into confidence, like the enforcement of the Anti-Terrorist Act, the swearing in of right-wing Judge Rafiq Tarrar as Pakistan President, conducting nuclear tests, imposing Emergency and most recently, Governor's rule in violence-torn Sindh.

All these moves have systematically chiselled away the principles of provincial autonomy, say political activists, particularly those from the "smaller" provinces whose voices have been studiously ignored.

Sinking political differences, opposition political parties have joined hands with non-governmental groups and individuals against the Shariat Bill. Last month in Lahore they flexed their muscle at a large political rally.

Last week, hundreds of prominent citizens from Pakistan's big cities of Islamabad, Lahore, Karachi, Peshawar and Quetta rejected the bill in an open letter to the Senators, that was reported in papers on Nov.4. Informal surveys, including one conducted by 'The News' daily on the Internet, indicate that over 75.5 percent are strongly against the bill.

Many fear that its very introduction has intensified the threat of "Talibanisation" of Pakistan. "In this situation, women and religious minorities are particularly threatened, as is cultural and artistic expression," comments Mehboob Khan, a lawyer.

Many people are trying to counter the atmosphere of repression and fear by clutching at the straw of cultural expression. The rock band Junoon has never been as popular as it is now, since it was banned by the government for allegedly making anti-Pakistan statements during a recent tour of India.

Classical Kathak dancer Naheed Siddiqui from Birmingham, England, who is currently in Lahore, is overwhelmed by the interest in dance now that it might again become taboo as during the martial law rule of Ziaul Haq. "By word of mouth alone, students are flocking to me, even though they say their parents will never let them perform in public," she says, bemused.

The privately organised annual Music Conference in Lahore at the end of October drew record crowds the last night leaving not even standing room in the 3000-seat open air theatre and ending well past three in the morning.

Record numbers of people and performers attended the Fourth International Puppet Festival, which hosted as many as 38 troupes from 27 foreign countries, including India, between Oct. 17 and 27.

Each time the festivals of dance, drama and music have taken place against all odds, mostly on private funding since government support for the performing arts has always been almost negligible.

"Culture is the anti-thesis of anarchy," observes I.A. Rehman, director of the independent Human Rights Commission of Pakistan. "It has little chance to flourish in a society that has chosen the path of chaos and fratricide."

He warned those wielding the axe against artists "will not only harm cultural flowering in Pakistan, but will also aggravate society's state of debility." (END/IPS/bs/an/98)

15th Amendment: another look

*by Ras H. Siddiqui **

An Afghan singer/musician from Los Angeles recently performed in Sacramento. This writer went to see his performance for two reasons. First, that Afghanistan is very much in the picture again for all of its neighbors and that I had not seen anything from our North Western neighbors for quite some time. And second that friends dragged me along. Let us just say that the music was loud, the languages many and the few Afghans that made it there were dancing to songs in Dari, which I did not understand. Naturally the mind wandered as one could not but notice that young Afghans do have the capacity to have a great deal of fun. How tragic that these very attractive people have by now sacrificed two generations to war and are possibly in the process of sacrificing a third. The Anti-Russian Jihad has now turned inwards and has converted the victors into the victims. One can now only imagine what these dancing Afghans would do under the rule or misrule of tribal war or of the "Islamic" Taliban. A choice between perpetual war and fascism is no choice at all.

And now to the fallout of the Taliban victory in Afghanistan (for how long this time?) and to the possible Pakistani involvement in it. Let us at least admit that Pakistan is involved because a denial on this issue brings to mind the analogy of "if it looks like a duck" then it most likely is one. Between the Taliban victory and a US created Afghan adopted Arab (now) hero by the name of Osama bin Laden (the target of the Tomahawks that missed him and landed on everyone else), the only response from our cash strapped and the extremely worried Nawaz Sharif and PML led government has been the introduction of the 15th Amendment to the Pakistani Constitution. And if one is allowed another analogy within the same paragraph, the Hakeem is asking a poor patient, who is already burdened by several diseases along with his poverty if the spiritual well being of the country should become the prime focus of the law? And the poor patient replies "but I came here for some pills to kill the pain". Thus since Pakistan cannot find solutions to the freezing of Foreign Currency Accounts (FCA's), cannot pay it's international

* A Pakistani-American writer and journalist based in Sacramento California USA.

lenders, angers its traditional friends all over its neighborhood and its government spends most of its energy tarnishing the reputation of the previous prime minister while pleasing the very lobby that the people of Pakistan have been rejecting for decades (by voting for the likes of the PML, the PPP and other smaller parties) then why this move?

Someone should remind Mian Sahib that the reason the men and women (especially) of Pakistan voted to put the PML in office is that they continue to reject religious extremists and that they wanted to see an improvement in the economy. They wanted to see an end to the violence in the country, especially in Karachi and to vote in leadership that could improve their standard of living. People in Pakistan wanted MORE freedom not less. They supported the nuclear tests with whatever strength they could muster and are willing to be understanding on the need to go overtly nuclear and the price paid for it. But many Pakistanis are also beginning to wonder where the priorities of the present government are? Is this a repeat of General Zia's famous referendum of the mid eighties which asked Pakistanis if they considered Islam to be good? That is how a dictator legitimized his rule for a second time by hiding behind Islam. Zia needed to do something after the Sindh rebellion of 1983 almost got out of hand. The other "smart" move he made was the birth of the MQM. This is the legacy that Mian Sahib is pursuing today?

The nuclear tests had to be done. After the fact we now know that it is costing a great deal and that some would argue that they were a mistake. That is probably true, but Pakistan has made many mistakes in the past for the benefit of other countries. It was time that it made a mistake for itself. From now on, Pakistan should not make more mistakes on behalf of others just because they have cash to offer and it is poor.

And the same goes for the internal situation where the extreme right wing has historically provided "shock troops" for street agitation to bring down governments. The 15th Amendment will only delay their efforts. One should learn from Zulfikar Ali Bhutto's past attempts to appease this lobby. In the end he too was probably aware that if you cannot deliver on economic promises you go. The voting public wants more jobs, more housing, better food and education and above all freedom. Religion they already have. The constitution of the country already states that no laws will be passed that go against the Qura'n and the Sunnah. Nor should they be. But the imposition of the Shariah is going to be problematic. Religious interpretation brings individuals and groups into the picture. The next bottom line then becomes how far do you go and where do you stop? Maybe Pakistan has changed since this writer was last there but one has to assume that the Taliban model will not be acceptable to a great number of Pakistanis.

And now two more points before we head to the conclusion. It is not the intent of this article to go against the grain of Islam. It is this our wonderful

religion, which is practiced by over a billion people worldwide. But as a country, one has to be conscious of the religious minorities that live amongst us. Let us not forget the white part of the Pakistani flag, so carefully reserved by the Quaid and the other founders of Pakistan for people who do not follow the green of Islam. They too have to have a say in which laws are passed. Pakistan was born out of the reformist branch of Islam given birth at Aligarh. Sir Syed Ahmed Khan gave Indian Muslims a new direction after the defeat of 1857. It was the religious right of Indian Muslims that opposed the birth of the country. It is no wonder that Pakistani voters still reject them at the polls to this day. Unfortunately their ambition just might be to do away with future elections altogether.

In conclusion, one can understand that "desperate times call for desperate measures". The Taliban or the extreme religious right are just such a measure and cannot be the role model for Pakistan's future. Pakistan has to improve relations with Iran and the Central Asian Republics. It has to somehow maintain the moderate and progressive Muslim posture it once had, especially after its nuclear announcements in May. Otherwise it may end up as a sitting duck during hunting season. The 15th Amendment may just end up causing more problems than solutions. Pakistan will face more problems with minorities much to the happiness of India. The Shia/Sunni divide, which has been artificially enflamed will multiply. And one has to ask why this amendment is necessary at all and as to how Islam itself would benefit from its passage? Because as this writer has seen both here in the United States and in Pakistan, the strength of this religion lies not within the hands of the extremists and their guns but in the hearts of simple people who have decided to privately devote their lives to the worship of the one god Allah. Islam's strength is in the hearts of happy people. It cannot be imposed as a matter of law. Pakistanis should learn from the Afghan experience and defeat this amendment in Parliament. Islam can and will flourish in Pakistan without it.

(21 November 98)

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Somalia: Women's Role in Conflict and Peace

By Judith Achieng'

Nairobi, Jan 28 (IPS) - When the Somali civil war broke out in 1991, bringing to an end Dictator Siad Barre's regime, for many like 26-year old Halima, a revolution could not have come at a better time. The former bank cashier, who was sent to jail in 1990 for a crime she says she never committed after a sum of money disappeared from the bank she worked in, saw it as a time to fight despotic rule and look forward to the prospect of change and a better future. "They put me in jail along with eight others from my clan although my innocence was proven. We were in jail for six months without trial," she recalls.

When Halima was finally set free under Barre's Oct 21, 1990 amnesty, she used the opportunity to join the United Somali Congress militia which was then recruiting and arming at the time in Belent-Weyne, a town in northern Somalia, with an aim to topple Barre's regime. "At the beginning, I cooked for the militia, then I learned to use a gun, then I became a gun woman," she says. "We were five girls, I was the only one to become a gun woman. I liked how I was living. I was happy. We fought and defeated Barre."

Now Halima is disappointed that her liberation struggle has lurched into an escalating power struggle between rival militia commanders, claiming the lives of more than 500,000 Somalis and the state of Somalia.

Halima's story is told in the "Somalia Between Peace And War: Somali Women On The Eve Of The 21st Century", a book produced by United Nations Development Fund for Women (UNIFEM) to highlight the role played by Somali women in their country's eight-year old conflict and peace

process. The book, which is the first in a series of country case studies on women's role in conflict resolution and peace building, was launched in the Kenyan capital of Nairobi this week as the first phase of UNIFEM's African Women for Conflict Resolution and Peace Project, according to UNIFEM's regional programme adviser for Eastern and Central Africa, Lakech Dirase.

"The studies highlight several country-specific experiences and the particularities of war in each country. Yet there were many issues that were common to all women," she says.

Some of the countries included in the project include Rwanda, Burundi and the Sudan.

In the book, Halima, whose real name is not given for security reasons, identifies herself as "a mother, a youth and a gunwoman", highlighting the complex role women have played in Somalia since the start of the civil war in 1991. Her story raises debate over the extent of the role played by women in the fighting which has reduced Somalia into clan-based fiefdoms protected by warlords. Fadumo Jibril, a Somali, says women have played a major part in promoting and sustaining the war. "Let us not pretend innocence," he says. "Women must accept their share of violating the Allah (God)- given rights of others. Since 1991, women have been igniting fires that burn lives still. Women have empowered and encouraged their husbands, their leaders and their militia to victimise their fellow country people," he says.

Hodan Addou, who commissioned the book, agreed. "This publication attempts to describe Somali women in all their diversity and their complexity, it demonstrates that Somali women share responsibility for the war," she says, but adds that "it also examines women's potential role as peace

builders identifying positive ways in which the civil war has created space for women to circumvent contemporary and traditional strains."

But their efforts in peace building are hampered, as the book points out, by patriarchal aspects of the Somali society and how the clan-based nature of the conflict has been analysed, "as an almost exclusively male domain while the role of the other half of Somalia's population, both in sustaining the war and in containing it, has received only superficial examination."

"Somali women are typically cast in the role of mothers, wives, sisters and daughters - victims of circumstances beyond their control. Efforts to reinvent Somali women as breadwinners, negotiators and partisans of a lasting peace have tended to reinforce a simplistic division of gender roles, without recognising the many domains in which the roles of men and women coincide and even overlap," says Addou in the introductory pages of the book.

[...]

The book also describes the patrilineal structure of Somali kinship which has over time generated prejudices against girls and women as less important entities in society. They use certain Quran Hadiths, such as the one that stipulates that, "a people will not prosper if they let a woman be their leader" completes the picture of a Somali women as a marginalised lot in public life.

Fatima Jibril, a Somali woman working with Horn Relief, a Somali non-governmental organisation (ngo) based in Nairobi, agreed. "Women are currently the backbone of Somalia, the survival of Somalia depends on them, but they are locked out of decision making when comes to power sharing," she says.

Jibril blames the international community and Somalia's neighbours, including Kenya for supporting their country's numerous warlords and funding their activities which have led to the disintegration of Somali government structures. "The donors have

given the warlords red carpet treatment and have deliberately left out the women, some who are highly educated, selling things like tomatoes on the streets to sustain the country," she says.

The latest UNDP report on Somalia says the country's economy is crippled by the widespread destruction of infrastructure, lack of investment, rampant unemployment and environmental degradation worsened by the fact that the country remains without a central government. "Even in the best scenarios, the re-establishment of statal structures will be a slow process because of the country's poverty, a future Somali state will have only modest capabilities to start off with," says the report.

Source: IPS Gender and Human Rights Bulletin, 24-29 January, 1999

Bangladesh: Activists Demand Just Family Laws for Women

By Tabibul Islam

Dhaka, Dec 11 (IPS) - Rights groups in Bangladesh have expressed sharp disapproval of the recent Supreme Court order overturning a lower court decision to award maintenance beyond the 'iddat' or waiting time to divorced women.

"With due respect to the Supreme Court we feel that the deprived women's community did not get justice through this verdict," said prominent women's activist Kushi Kabir.

Rights organisations would continue to put pressure on Parliament to enact just laws for women as promised in the Bangladesh Constitution, she added.

On Dec. 3, the Supreme Court stepped in to undo a landmark decision on a case for maintenance filed by a divorced woman, Shamsun Nahar Begum, for herself and her minor son in a family court.

The family court had ordered her former husband, Hefzur Rahman, to return her

dowry of 50,000 taka (little over 1,000 dollars) and pay 3,000 takas as maintenance for the iddat period of three months and 1,000 takas monthly for their minor son.

Rahman immediately appealed against the order in the court of the district judge in Comilla in 1991, who reduced the maintenance amount. But a dissatisfied Rahman moved the High Court, which unfortunately for him, struck down the district judge's order and restored the order of the family court.

Justices Golam Rabbani and Sayed Amirul Islam ruled that a man who divorces his wife is bound to give maintenance until she remarries and their children turn adults - a decision that was set to change social relations.

But their order was set aside early this month by the full bench of the appellate division of the Supreme Court, headed by Chief Justice A.T.M. Afzal - after considering the views of jurists and eminent 'ulema' on interpretations of the Koran and 'hadith', Islamic laws.

Reaction to the ruling is divided. Orthodox Bangladeshis are predicatably pleased. "The High Court decision was wrong, and the Supreme Court decision is correct," said barrister Razzak.

But legal expert Dr M. Zahir underlined the need for enacting suitable laws to safeguard the interest of divorced women in Bangladesh.

Dr Zahir urged political leaders to assure rights of divorced women through legislation. "If military dictator Ayub Khan of Pakistan could make inroad into traditional Shariah law by introducing the Muslim Family Laws Ordinance in 1961, why can't a democratic government in Bangladesh do it?" he asked.

Another Dhaka-based lawyer Rafiqul Huq was of the view that the rights of divorced women should be decided by legislators and not by the Supreme Court.

"The Constitution clearly stated that laws should be updated in conformity with the basic fundamental rights guaranteed by our constitution," he stressed.

Shamsul Huda, director of ADAB or the Association of Development Agencies in Bangladesh, an umbrella organisation of non-governmental groups, said it is high time laws are changed, and urged the government to take up the issue.

Representatives of the people particularly members of Parliament should take appropriate steps to ensure equal rights for women as per the provision of the Constitution, Huda was quoted saying.

For years, women activists in Bangladesh have been campaigning for just laws for women in a country where ironically the two most powerful political leaders are women, Prime Minister Sheikh Hasina Wajed, and her predecessor, now main opposition leader Begum Khaleda Zia.

Activists stress the need for waging a relentless movement for the realisation of the rights of women in all spheres of life. Only a concerted struggle will change the status quo and return to women the rights of gender equality they deserve, they say.

Though women constitute roughly 48 percent of the population, they lag behind the men in all spheres. The social scales are tilted against women, who would generally never challenge divorce, or fight for maintenance and custody of their children.

Since polygamy is permitted under Islamic law, divorce has become commonplace. Disputes over dowry - the money given to the bridegroom by the bride's family - are the main reason for the break-up of marriages in rural areas, even as evidence of abuse, torture and humiliation of women whose families cannot meet the dowry demand go up.

Under this country's Muslim Family Law, amended in 1992, the Union Council will allow a man to marry a second time, if his first wife endorses the application. The Council takes a decision after consulting with an arbitration council which verifies

the man's reason for wanting to take a second wife that could range from claiming that his wife is mentally unsound or sterile to unwilling to live with her husband.

Only when a man marries a second time without permission of his first wife and the Union Council does the Muslim Family Law permit her to seek divorce and compensation. Family laws have to change to ensure gender equality, rights activists say.

Source: IPS WorldNews 02.1 Bangladesh:

Bangladesh: Women Suffer Most in Garment Sweatshops

By Tabibul Islam

Dhaka, January (IPS) - Her dark eyes revealing great anxiety, Marian Begum, a 27 year old garment worker in the Bangladesh capital says she has moved house three times this year with her two children.

She shifted out of the first house because it was only a shelter in name, with no ventilation or toilet and no space for cooking, she says. But she was back househunting for a third time before very long to escape the sexual advances of neighbouring men.

Now the young widow has rented a corner of the tin-shed home of a distant cousin. But at least "I am living in dignity and safety," Marian says.

Rents are steep in Bangladesh. Even a tin-shed can be beyond the means of factory workers and daily wagers who earn like Marian about 2,000 takes (38 dollars) per month.

Rural women who flock to the poorly-paying, monotonous and uncertain jobs in garment sweatshops in and around Dhaka end up living in squalid dormitory-type accommodation, 10 to 15 girls in one room.

The wretched living and working conditions take their toll of workers' health. A great majority of the estimated 1.5 million, mainly female, workers in some 3,000 garment factories across the country are at risk, according to several studies.

Long factory working hours, between 10 and 12 hours and seven days a week, in addition to the burden of household work and bringing up children, make them more vulnerable to disease.

Nari Uddug Kendra or the women's initiative centre, a non-governmental organisation with links to the North-South Institute in Canada and the Canadian International Development Agency (CIDA) which conducted a study of 1,720 mainly women workers found convincing evidence of their health having worsened.

As many as 68 percent of the women complained of weakness and lethargy, which is related to long hours of work, according to doctors. The second most prevalent problem was gastric ulcers - generally related to low incomes and irregular eating.

Chest pain, backaches, eye trouble, headaches and joint pain were other common occupational ailments.

In addition women were found to be more prone to urinary infections, according to the study conducted in March - a direct result of their lack of access to toilets at work and restrictions on the number of times they are allowed to take short breaks.

Nearly three quarters of the 43 garment factories covered by the study were found to be short of toilets for workers. In addition, only a third of factory owners paid workers to see a doctor if they were sick at the workplace, although the workers have to pay for the medicines themselves.

As a result the majority of workers said only when they were too ill to move did they take leave, while most women looked surprised when they were told that they were entitled to maternity leave under Bangladesh labour laws.

Exploited at work, and living in wretched poverty, many women workers have succumbed to prostitution to make some extra money, another survey on sexual behaviour of women and men in garment factories has revealed.

Sexual harassment is common place in garment factories and women are threatened with dismissal if they speak out. The study conducted by Action Aid Bangladesh, a British NGO, estimates at least 20 percent of women workers were engaging in sex at the workplace.

Even the journey to and from the workplace is fraught with danger. Women workers run the risk of rape and harassment.

The study revealed an alarming lack of awareness of safe sex practices and the likely spread of the HIV/AIDS disease. Sexually transmitted diseases (STD) are widespread. The number of infected people stood at 2.3 million at the end of 1996, according to official estimates.

The report also found a large number of young male workers - migrants from the country's villages - in homosexual relationships, a taboo among orthodox Muslims.

"Nothing tangible has been done to change our lot although a large chunk of the country's export earnings come from the garment sector," lamented Sheikh Nazma, president of the Bangladesh Independent Garment Sramik Union.

Asked what was the Union's main demand, she said housing was a major concern. "I think solution to the accommodation crisis is one of our major demands."

Now workers are wondering if they should take seriously an assurance made by the Bangladesh Garments Manufacturers' and Exporters Association (BGMEA) whose president Mostafa Golam Quddus recently said factory owners had prepared a master plan to relocate to several areas outside Dhaka.

"We will construct 80 high-rise buildings for garment workers with an

accommodation capacity of 4,000 families in each building," he said.

What the reasons behind this sudden generosity are is not clear.

(Source: *IPS Gender and Human Rights Bulletin*, 24-29 January, 1999)

Chechnya: Islamic Law Adopted in Chechnya

*By Ruslan Musayev
Associated Press Writer*

Grozny, Russia (AP) - Thousands of opposition supporters celebrated today in Chechnya after the breakaway republic's president bowed to their demands and ordered the adoption of Islamic law.

But 1,500 opposition leaders and representatives meeting in a stadium in Grozny called for more concessions, including the abolition of Chechnya's parliament and the presidency.

Outside the stadium where the congress took place, an estimated 7,000 people, mostly armed with rifles and clad in military fatigues, also celebrated the new changes.

The order by President Aslan Maskhadov was seen as a major victory for hard-liners, who have sought to establish an Islamic state since the republic won de-facto independence from Russia in a 1994-96 war.

Maskhadov on Wednesday revoked parliament's legislative functions and ordered the body to cooperate with Muslim leaders to write an Islamic constitution within three months.

His decision came after heavy pressure from the opposition, who accuse him of being too sympathetic with the Russian government and threatened to oust him if he didn't meet their demands.

Maskhadov has been unable to rein in armed gangs behind a wave of political violence and kidnappings. He passed the decree on the condition that the opposition

support him, though no official agreement was made.

Opposition leaders praised Maskhadov's move, but pushed for more concessions, including disbanding the parliament and getting rid of the presidency completely.

"If we do not introduce Islam now, under the next parliament and president things will get even worse," said Karavan Saiyev, a field commander with the government.

Already, the president's decree will change all aspects of Chechnya's life, including education and the military, the Interfax news agency reported.

Still, it wasn't immediately clear whether Maskhadov planned to introduce a strict version of Islamic rule - such as that imposed by Afghanistan's Taliban - or whether he intended to settle for a milder version.

Opposition leaders said the move would only make Chechnya more stable and establish its authority among other nations. No country has recognized Chechnya's independence, and Moscow still regards the republic as part of Russia.

Other Chechens were not as excited about Maskhadov's plans to throw out the region's present constitution, which outlaws anything but a secular state.

"I wish I'd been killed in the war," said a Chechen woman who asked to remain anonymous. "Those who could afford to leave Chechnya have already done so, and we have been left here absolutely defenseless."

Source: Los Angeles Times, Feb 4, 1999

Japan: In Two Years, a Tribunal on Violence Against Women

By Suvendrini Kakuchi

Tokyo, Dec 17 (IPS) - Women's groups across Asia have set December 2000 as the launch date for what will be the first war

crime tribunal focusing on violence against women during armed conflicts.

The Women's International War Crime Tribunal is actually a response to the cry for justice made by thousands of women forced to be sex slaves of Japanese soldiers during World War II. But women's rights activists say it will also address other conflicts during which women faced systematic rape, sexual slavery and other violence. "The tribunal is one of the most important initiatives in the struggle for justice for women whose suffering has gone and continue to go unnoticed by the world," says Yayoi Matsui, of the Japanese chapter of the umbrella group Violence Against Women in War Network (VAWW), which comprises women's organisations from around the world. She adds that while the tribunal will really be a formal legal proceeding, non-government organisations will nonetheless be presenting evidence that will support the points of view of women who have been abused but have been denied the opportunity to have governments acknowledge what happened to them, much less get justice. Foremost among these cases are those of the so-called "comfort women" forced to provide sex to the Japanese troops who had invaded and occupied their countries in World War II. Research by various scholars indicates that Korean and Chinese women made up the bulk of the comfort women, although many Filipino, Indonesian, Thai and even Dutch women also became the sex slaves of the Japanese soldiers.

Some were even merely girls at the time, with recorded cases of 11-year-olds among the soldiers' sex slaves. For several years, the Japanese government denied the existence of "comfort stations" set up by the now defunct Japanese Imperial Army all over Asia to service soldiers.

But following research by Japanese scholars that proved their existence as well as the growing international uproar regarding the plight of the comfort women, Tokyo decided to set up an Asian Women's Fund to provide medicine and social welfare and financial help to the ex-comfort women.

The Fund, however, is privately financed. Many of the comfort women, now in their late 60s and 70s, have said they want compensation to come from the Japanese government itself, as well as an official apology for what they had to go through.

Several lawsuits seeking precisely these have been filed against the Japanese government, but so far none have brought satisfactory results. According to Matsui, several court proceedings have been held in the past "to judge Japan's acts in Asia" but none of them — not even the most famous Tokyo Tribunal that held more than 400 hearings—really focused on the violence that had been done on the women. In contrast, the tribunal will not only address the issue of the comfort women, but also many instances of the violence women have had to go through in other armed conflicts across postwar Asia. Among these, say women's groups, are the rape some 200,000 women during the war for independence in Bangladesh in the 1970s and rape used as a means of torture in the hands of the military government during the internal conflict in Burma in the 1980s. Activists also hope the tribunal will tackle the rape and sexual enslavement of women in East Timor under Indonesian colonial rule and rape committed by the security troops during the India-Kashmir war conflict in 1990s.

Australian legal consultant Ustina Dolgopol, who co-authored the UN report 'Comfort Women: The Unfinished Ordeal', says the many legal disadvantages faced by women are rooted in discrimination and are inherent in the societal structure.

"The tribunal aims to change this attitude," she says. "By holding the tribunal, the Japanese people can say we do value women within Japan and elsewhere in the region, believe in the equality of women and want new laws based on the perspective of women's rights." Women's groups are now collecting evidence across Asia for presentation at the tribunal — an awesome task, considering much of crucial evidence in many of the cases have either been destroyed or are still being hidden.

Activists say this is especially true of the "comfort women" cases.

Lawyers and researchers working with Matsui say Asian comfort women will testify for the first time against ex-military police, top ex military men who were involved in the system.

Says Taiwanese lawyer Wang Ching Feng: "It is a civil case and will be a landmark not only the comfort women but also in the now increasing consciousness of people's power that hopes to change the world for the better."

Lawyer Apong Herlina, who is working with Indonesian comfort women, expresses firm support for the tribunal. "Former comfort women in Indonesia have kept their suffering silent for more than five decades," she says. "There is a lot of expectation for the tribunal because it brings them justice and restores their dignity."

Comments Apong: "The tribunal is important because it sets a precedent for achieving justice even today when ethnic Chinese women are struggling regain their dignity after being raped by Indonesian soldiers."

Meanwhile, Chinese historian Chen Lifei of the Huadong Educational College Press says Chinese scholars have started to collect evidence after years of suppression of pertinent data. Their research so far indicates that there were at least 77 comfort stations in Shanghai and that some 200,000 Chinese women were "conscripted" into the service.

Lawyer Wang, for her part, says there are currently 45 women in Taiwan who have revealed their stories as comfort women. Some researchers though say at least 1,200 women from the island were forced to become sex slaves of the Japanese soldiers between 1938 and 1945.

Source: IPS Gender and Human R140B140 13-18 December, 1998

Nigeria: Widows Tortured In The Name Of Tradition

By Remi Oyo

ABUJA, Dec 30 (IPS) - In Nigeria's eastern region, a widow is forced to drink the bath water of her husband's corpse to prove that she had no hand in his death.

Her hair is shaved and she has to sleep on a bare floor without any covers for at least a week.

In the Yoruba region, located in the south-west of the country, a widow has to wear the same dress for a year, and she must sit straight, not moving her head sideways, for a 'specified' period.

Nigeria, with more than 110 million people split almost 50/50 between men and women, has yet to address the controversial issue of bereavement where widows suffer untold emotional and physical pain following the loss of their husbands.

"I think the way widows are treated in Nigeria and in Africa is uncivilised," said Kathryn Hoomkwap, a leading Nigerian female activist and politician.

She told IPS from the Nigerian capital of Abuja this week that: "Apart from making them drink the bath water of their dead husbands, some cultures make the widows sit outside (the house) for seven to 14 days on a bare floor eating from (tree) leaves, because they are not allowed to use plates."

"They are made to swear they are not responsible for killing their husbands. Sometimes they are told they are mere human machines for producing children and when their brothers-in-law want to possess them, and the widows refuse, they are sent away and their children taken from them," she said.

Jadesola Akande of the Women Law and Development Centre (WLDC) said "the major constraint is the ignorance about the rights of widows and the (widows') fear of

what will happen if they refuse to perform these rituals."

Akande, who is a professor of law, said during an interview in the commercial capital of Lagos that one superstition that holds women from exercising their rights is the belief that if they do not practice their tradition, this might mean the death of a male child. "There is the need for public enlightenment about the plight of widows," she said.

"We have embarked on an enlightenment drive in all the 36 states of Nigeria telling people about widowhood rights. For instance, we tell the women, 'when it happens, open your eyes, even as you are depressed, see where you can help yourself and where others can help you'," Akande added.

The campaign, according to Akande, aims at educating women about their rights. "We tell them to assert their rights over their house and property," she said. "After that, we ask them to look for a lawyer for advice. It doesn't really cost money, there are many lawyers out there who will do it for free."

Hoomkwap agreed, but said that the judicial system does not favour women. "Only few judges can look at the problem of widowhood dispassionately. After all, most of the judges are still men and chauvinistic."

Hoomkwap believes that only the economic empowerment of women through training and education will produce better and lasting results.

At the moment, Nigeria's widows meet at the Pat Utomi Training Centre once a week, where the Lagos-based 'Widows Organisation International' publishes a quarterly magazine, 'Widows Voice', to provide a forum for them.

The centre, situated in the Surulere suburb of Lagos, also provides the women with basic skills. "We need to put the women in training to enable them to earn a living to get some income, and we give them advice of their legal rights," an official at the centre told IPS.

The women also share ideas through the 'Widows Voice'. Writing in the latest edition of the magazine, Patience Ifejika, who is a widow, said "when you lose a loving husband who has been a real partner and a provider, you feel as if you are decapitated, without a head."

"The feeling can be worsened by the sheer greed and envy of the husband's relations who want a firm grip on their late brother's assets, especially if the deceased was the progressive type."

Her view is shared by Chinasa Otuechere who said she is suffering, because her late husband, a truck driver, did not do enough for his in-laws. "My husband was sick for a long time before he died. Our situation was worsened by the fact that we had no property and no money."

"I felt like running away too...I don't know where," Otuechere continued. "When I looked at my five helpless children, I felt utterly confused and completely crippled. Since then, I have been giving my children out as househelp so that they can be sure of food, clothing and basic education," she wrote in the widows' magazine.

Cecilia Akuegbo-Onwu recalled her treatment at the hands of relatives after she lost her husband. "I was forced to sit near the corpse of my husband till day break. They (his relations) put kolanut on his chest and forced me to eat it. They made it compulsory that I must eat without washing my hands or cleaning my teeth for seven market weeks, equivalent to one calendar month," she said.

"On every market day, about three O'clock in the early morning, they sent an old widow to escort me with a lamp to a nearby river to take a bath. This according to them meant that if I killed my husband, he would come out of the river and avenge his death," she added.

"My husband's relations also threatened to take away his property, unless I paid the sum of 30,000 Naira (about 250 US Dollars)," Akuegbo-Onwu said.

Ifejika said that she now believes that the problems of widowhood can only be solved by "having a good education which enables one to stand up for one's rights despite all odds."(END/IPS/ro/mn/98)

Source: *IPS Gender and Human Rights Bulletin*, 24-29 January, 1999

Pakistan: Violence Against Women Remains Serious

By Beena Sarwar

Lahore, Dec 16 (IPS) - Munir Ahmed has been running from pillar to post in search of his 14 year old daughter who was abducted from his brother's home in this Pakistani city more than one month ago. The illiterate father, who has a serious kidney ailment, has been in and out of police stations - he registered a first information report at the Sarwar Police Station in early November - and government offices with no results.

Gaunt and unshaven, he pleads for help in rescuing his daughter Zahida Parveen who he says has been forced to marry one of her abductors - his "enemies" he calls them.

Cases like this are very common in Pakistan, where women and girls are the victims of many undemocratic norms, policies and institutions. Women are threatened, beaten and strangled. They have stove burst burns, are poisoned, or are left disfigured by acid thrown at them. Domestic violence is the biggest single cause of injury for women, accounting for more hospital admissions than rapes and road accidents.

During 1997, the independent Human Rights Commission of Pakistan (HRCP) said, eight cases of sexual assault were reported every 24 hours, while the incidence of missing women and "abduction" was even higher. Lawyers and activists blame Pakistan's feudal society where men consider women their property and ill-treat them with no fear of punishment.

Addressing a rally last week in Lahore, Nigar Ahmed, director of Aurat Foundation, said "women are not seen as human beings". Some 2,000 people participated in the rally organised on World Human Rights Day - the biggest women's rally seen in Pakistan - to protest continued violence and abuse of women and girls. The Dec. 10 march in Lahore, capital of Punjab, Prime Minister Nawaz Sharif's home province, was an impressive and inspiring sight with participants from all over Punjab - from women's organisations, grassroots groups, trade unions and four political parties. Women carrying infants on bony hips marched along carrying placards and banners denouncing violence against women. Groups chanted slogans against forced marriages, domestic violence and "black laws" - violative of fundamental rights.

"Please tell the photographers not to publish our pictures in papers," one woman said. "Our men will beat us up. They are very zalim (cruel)." The repeal of the Zina and Hudood Ordinances was one of the insistent demands of the rally, also the annulment of other 'black laws' including the 'Blasphemy law' and the Shariah Bill awaiting parliamentary clearance.

Women's groups have been campaigning for the repeal of Islamic Zina - when women who marry without their parents permission can be taken into custody - and Hudood laws concerning rape, under which a woman has to produce witnesses to register a case of rape. The ordinances are a legacy of Pakistan's martial rule past.

A commission of inquiry headed by a Supreme Court judge had said the laws were in direct conflict with Islam, Pakistan's Constitution and the country's commitments at the international level. HRCP, the rights watchdog, has urged its repeal in successive reports saying that enforcing human rights was the primary responsibility of the government.

However the present Sharif government has done nothing. Earlier in the year, Information Minister Mushahid Hussain

had said his government was planning to review the Hudood laws after consultation with representatives of women's organisation. Instead the government has moved to make the Koran and Sunnah (Islamic traditions) the supreme law of Pakistan. Women's groups say the proposed Shariah Bill will lead to the trampling of women's rights. Women's groups have had to fight hard for rights under a rigidly patriarchal system that draws its legitimacy from society and a narrow interpretation of Islam.

The right to marry according to their own wishes is one of the most contentious. Denied to the vast majority of Pakistani women, many have been killed by male family members for daring to defy the wishes of the family. Feuds have lasted for generation over such relationships, and have claimed many victims over the years. In February this year, Pakistan's biggest city of Karachi was brought to a halt by enraged mobs demanding police redouble efforts to track down a young couple who eloped and got married. Later 19-year-old Riffat Afridi insisted in court that she had married Kunwar Ahsan, yet at least one gunman broke through the police cordon and shot at Ahsan, leaving him paralysed. In a similar case in Lahore last year, a three-member bench of the Lahore High Court upheld the right of an adult Muslim woman to marry according to her choice. But the young couple has had to seek sanctuary in Norway as their lives were under constant threat. (END/IPS/bs/an/98)

Source: IPS gender and Human Rights Bulletin, 13-18 December, 1998

Pakistan: Madrasa Students Attack women

By Zahid Hussain

Karachi : Women shopping in Karachi's upmarket districts have swapped jeans and sleeveless dresses for the all-enveloping Islamic chador out of fear of knife-wielding religious zealots.

Several women have been threatened in recent weeks and in at least three cases had their arms slashed with knives. Armed police have been deployed in the city's main shopping areas.

Women's fears have been further fuelled by rumours that some young girls were pricked with HIV-infected needles in a cinema. However, no cases have been reported to police.

The attackers are students from local madressas - religious schools - who resent women wearing what they see as obscene Western dress.

"Next time you should not be seen here without properly covering yourself," one young mullah armed with a knife reportedly warned a teenage girl.

Similar attacks on women have been reported in Lahore and Rawalpindi. They come as the Government moves to enforce strict Islamic sharia law - a push that has given new ammunition to the Islamic zealots.

"This is an alarming situation. Women, particularly the working women, don't feel safe," said Rehana Hakim, editor of the English-language magazine *Newsline*.

Some commentators also blame the rise of Taleban rule in neighbouring Afghanistan for the new-found Islamic militancy.

"A large number of Pakistani religious students have fought in Afghanistan on behalf of the Taleban militia and are inspired by the establishment of a strict Islamic society in the war-torn country. They want to see in Pakistan the same laws restricting women to their home," said a senior member of the Women's Action Forum.

Pakistan's main Islamic party, *Jamaat-i-Islami*, plans a massive three-day rally from today in Islamabad as a show of strength against what it sees as Prime Minister Nawaz Sharif's efforts to increase his power by introducing Islamic law.

Source: South China Morning Post October 23, 1998 - 06.3 Date: Mon, 8 Feb 1999

Pakistan: Muslim Family Law: the latest assault on society.

By Khaled Ahmed

The Federal Shariat Court has started hearing petitions against the 1961 Muslim Family Law Ordinance in Lahore. Three judges, led by Chief Justice Mian Mahboob Ahmad, are hearing objections put forward by three Islamic scholars: Dr Nooruddin Jami of Bahauddin Zakariya University Multan, Maulana Fazlur Rehman, Naib Amir of Jamia Ashrafiya, Lahore, and Dr Mufti Ghulam Sarwar Qadri of Jamia Rizvia, Lahore. The plea before the Court is that sections 4,5,6,7 and 12 of the Muslim Family Law Ordinance (1961) be declared repugnant to Islam.

Section 4 of the Ordinance, after reinterpreting the tradition based on the Quran, had laid down that orphaned grandchildren may receive share from the property of their grand-parents. Section 5 had laid down that a nikah be registered with the union council to be legally valid. Section 6 had laid down that no married man contract a second marriage without the permission of Arbitration Council which shall ensure that the man had good grounds for second marriage and had obtained his first wife's permission to do so. Section 7 had laid down that a divorcing husband shall send notice of divorce to the union council and supply a copy of it to the divorcee wife, after which an arbitration council would try for reconciliation between the two parties. Section 12 had banned child marriage and set a minimum age for the marriage of boys (18 years) and girls (14 years), although marriageability is still adjudged many different ways in Pakistan.

The petitioners have opposed the above provisions of the Ordinance, in particular the irreducible legal requirement to register nikah and divorce at the union council, holding that unregistered divorce is not be invalid. They also favour the unfettered right of men to contract additional

marriages without intercession of the union council and consent of the first wife. They oppose the ban on child marriage and consider the right of the orphaned children to inherit from grand-parents' property as being against the Quran. As for the nikah document, they propose that each cleric solemnising the nikah be allowed to issue a personal certificate for legal purposes.

Codification problems of Islamic law: Islamic law is embodied in the 'fiqh' (case law) of the various historically revered imams (jurists). The imams differ in their consideration of the family law and have handed down verdicts rendered under different legal philosophies. For instance, the Hanafi fiqh does not mandate a 'wali' (guardian) for a daughter's marriage but the Maliki law does. Hanafi law has an elaborate doctrine about 'kufu' (suitability) under which an incompatible marriage can be undone, while the Maliki law is less developed on 'kufu'. Hanafi law was sought to be codified under Aurangzeb but the work of several hundred jurists, called Fatawa-e-Alamgiri, seems too inclined to favour the Mughal elite to be useful for today's egalitarian society.

No state can function without codifying its laws. And no codification is possible without suiting Islamic legal sources to modern times. This is where the problems arise. Reinterpretation of the Quranic 'nas' (clear edict), as achieved by the revered imams in the case of the Quranic modalities of divorce, is a case in point. (The petitioners before the Federal Shariat Court have objected to three simultaneous 'talaqs' allowed by fiqh, thus underlining a return to the 'nas' of the Quran.) It was the principle of 'nas' of the Quran that Allama Iqbal sought to reinterpret in his Sixth Lecture. Before him, Sir Syed had recommended this kind of reinterpretation. Pakistan's hudood laws suffer from errors of application because they are too literalist: like the law of the cutting of hands, the law about blood-money to be paid for death through accident, and the notorious Zina Ordinance that equates rape with

fornication and thus victimises the raped woman.

History of codification through Family Law Ordinance: The British left the Muslim Family Law pertaining to nikah and divorce uncoded. The problems that arose were thus bequeathed to the judiciary to sort out. Evidence of nikah was established through unreliable sources and divorce was allowed in the chaotic manner that characterised the male-dominated Muslim society. After 1947, after prime minister Muhammad Ali Bogra remarried against the wishes of his first wife (who was an APWA activist), an effort was made to codify laws pertaining to nikah, divorce and remarriage. In 1955, the Commission on Marriage and Family Laws prepared a Report safeguarding, inter alia, the rights of the woman. The Commission was headed by Justice Abdur Rasheed. It comprised seven members, three women and four men. The Report was written by Justice Abdur Rasheed while a dissenting note to the Report was appended by Maulana Ehtesham-ul-Haq Thanvi, the cleric member of the Commission. The said 'alim' was descended from the famed author of Bahishti Zavar, a guide-book for the married woman that denies her fundamental rights.

The Commission accepted the principle that Family Laws had to be liberalised in the light of modern times, but when it came to making recommendations it inclined to a conservative interpretation. For instance, it did not outlaw divorce pronounced by the husband in violation of the Quranic 'nas'. But it did rule that nikah, to be of legal value, had to be registered. Its other recommendations have been given above. The Report was passionately opposed by the ulema and orthodox Muslims in 1956 for being against Islam. The civilian governments after 1956 avoided legislating on the Report, but General Ayub Khan made selected recommendations of the Report into law through an ordinance in 1961. A resolution against the Muslim Family Law Ordinance was subsequently presented in the National Assembly but was not passed. The Ordinance never

carried consensus among the ulema and was considered by them as being against Islam. It was never presented in the parliament for proper legislation but stood as an indemnified law (by the elected parliament of 1970) of the Ayub era, like the Zina Ordinance of the Zia era, as indemnified by the 1985 parliament.

Non-acceptance of any reinterpretation of Muslim law to suit modern times has been the dominant trend among Indian Muslims. The famous Sarda Bill (made Act in 1928) against child marriage was supported by both Allama Iqbal and Quaid-e-Azam Muhammad Ali Jinnah in the 1920s while the ulema opposed it (including Maulana Muhammad Ali Jauhar). Marriage of under-age individuals is generally opposed by Pakistanis today who have tacitly superseded the fiqh version of the case, but the ulema have continued to support it as a part of the tradition of the Prophet PBUH. Errors in the enforcement of hudood laws by civilian governments have given grounds to the ulema, some also organised as militant jihadi outfits, to reject democratically elected governments as being too unacquainted with Islam to enforce real Shariat.

Conflicting case law on the Ordinance: Pakistani judiciary has had to set aside the condition of registration of nikah under Section 7 of the Muslim Family Law Ordinance in a number of cases where couples were saved from the punishment of stoning to death (not ordained by Quran). The Sindh High Court in 1988 decreed that since an unregistered nikah was acceptable under Shariat, the accused couple were not living in sin. Subsequently the Federal Shariat Court, accepting the Sindh High Court verdict, ruled against Section 7 of the Ordinance. The Federal Shariat Court didn't have the mandate to adjudicate on Family Laws but in 1985 the 8th Amendment inducted the Objectives Resolution into the main body of the Constitution and gave the Court the justification to consider Family Laws too. In 1993, the Supreme Court refused to accept the Objectives Resolution as a supra-constitutional provision. The

PML government wants to make Shariat the supreme law in Pakistan and is therefore in favour of the Federal Shariat Court hearing the Family Law case while defending the Ordinance.

While listening to the defence, the honourable Federal Shariat Court was pleased to set aside the Report of the Council of Islamic Ideology recommending that provisions against polygamy be further strengthened in Section 6 of the Muslim Family Law Ordinance. The ground taken by the Court was that the Report had had no effect and therefore could not be considered as binding. Conservative 'fiqh' inclines to the Quranic reference to polygamy in a number of verses but ignores verses that clearly prefer monogamy to polygamy. In 4:3 the Quran says '...but if ye fear that ye shall not be able to deal justly with them then only one, or that which your right hands possess, that will be more suitable to prevent you from doing injustice'. Then in 4:129, the Quran says, 'Ye are never able to do justice between wives even if it is your ardent desire'. Many scholars, including Syed Abul Ala Maududi who favoured the contents of the Muslim Family Law Ordinance, have inferred from these verses that the state should codify law against polygamy accordingly, but the conservative clergy is of the opinion that the above Quranic verses still do not constitute a clear order. In Tunisia and Turkey polygamy is banned under Muslim Family Law.

A retrogressive environment: Instead of reinterpreting the Quranic law and codifying it to suit the circumstances, the trend in Pakistan is to undo the progress made towards codification in the past. The assault on reform is intense and can be violent. The fundamental problem is that while men are free to be polygamous, women are not. Under the Ordinance the bride is required to state in the *nikah-nama* that she is unmarried, but the bridegroom is not. Thus men are not held liable if they misinform about their marital status. The resistance to reinterpreting the Quranic law is intense but the truth of the matter is that

Quranic law has been modified and reinterpreted in the past to suit men. The method of 'talaq' accepted by the Ordinance is violative of the method prescribed in the Quran. Allama Iqbal had written to Maulana Suleiman Nadvi to ask if it was right that Hazrat Umar as caliph had suspended the Quranic punishment of cutting of hands. In today's violent environment, it has become almost impossible to defend legal reform in favour of women. Important social development away from child marriage, slavery and unfettered polygamy may be undone simply because this retrogressive step favours men and further lowers the status of women.

*Source: The Friday Times,
Lahore, Pakistan
February 5 - 11, 1999.*

Zimbabwe: Gays and Lesbians Hit out at Former President

By Lewis Machipisa

Harare, Jan 28 (IPS) - Gays and lesbians in Zimbabwe have lashed out at former president Canaan Banana over his remarks that homosexuality is "deviant, abominable and wrong according to the scriptures and according to Zimbabwean culture."

In an open letter to Banana—who was himself sentenced to 10 years in prison for sex crimes of a homosexual nature on Jan 18 — the Gays and Lesbians Association of Zimbabwe (GALZ) say they are deeply offended by the remarks.

In an interview with the weekly 'Financial Gazette' on Jan 21, Banana, a former Methodist Clergyman, said "I do not believe in that practice (homosexual). It is a deviant social behaviour. It is abominable. It is wrong not only according to the scriptures but also according to our culture."

Keith Goddard, GALZ programmes manager, said in the letter, made available to IPS this week that rumours of Banana's

homosexuality have abounded within the gay community for many years. "It is one thing for you (Banana) to remain silent or neutral about homosexuality; it is quite another for you to castigate us when you have been convicted of engaging in homosexual activity yourself. To describe your own kind as deviant and abominable is to define yourself as a sell-out," said Goddard.

It took a murder for the complaints to become public. In August 1995 Jefta Dube, who had served as Banana's aide-de-camp, shot dead a fellow policeman who had called him Banana's wife. Dube admitted the murder but said in mitigation that he had been repeatedly raped by former head of state. Goddard says GALZ could have exposed Banana if they wanted, but "we have consistently maintained a policy never to out people, believing this to be highly dangerous in a homophobic climate which borders on hysteria. Now you have the audacity to contribute to the hate campaign against us."

"Even though you (Banana) do not wish to identify with us as a fellow gay person or lend support to this (GALZ) organisation and its activities ... You should hang your head in shame," says Goddard. According to Goddard, Banana's comments serve only to reinforce the prejudice against homosexuals in Zimbabwe and encourage persecution. Homosexuality is frowned at in this largely homophobic country. Resentment to the practice runs high. President Robert Mugabe has described gays and lesbians as being lower than pigs and dogs. Banana was convicted of using his position as president between 1980 and 1987 to force men-aides, bodyguards and a gardener-into submitting to sex with him. After he left the presidency, he was alleged to have sexually molested a job-seeker he met on the streets. During the course of the trial, the court heard how Banana once squeezed his aide-de-camp and kissed him. As he left, Banana patted Dube's bottom, saying: "This is the food of the elders." In one instance, Banana spiked Dube's drink and when he awoke before dawn, he was not wearing his trousers and there was

"slippery stuff" between his buttocks. Banana was standing over him "grinning" and said "We have helped ourselves."

Banana's conviction has driven Zimbabwe's small but vocal homosexuals underground as resentment towards them looks set to intensify. Homosexuality is outlawed in this southern African country. GALZ has taken offence at the choice of words such as 'deviant' and 'abominable' used by Banana.

In an apparent reference to Banana's court case which illustrated abuse of power and lechery, Goddard wrote: "deviant behaviour is that which harms others: abuse of power, assault, pedophilia and rape are wrong because they harm others. Why should a consensual sexual relationship between two people of the same sex be abominable when it is fulfilling and socially constructive?"

"It is homophobia which is deviant because it encourages hate and suspicion and destroys the lives of people who simply have a sexual orientation which differs from the so-called heterosexual norm," says Goddard.

As a man of the church, GALZ says it expects Banana to perform his "gospel duty by standing alongside the marginalised and the social outcast...and not to judge."

"To say that homosexuality is un-African is absurd. Same-sex activity is known to exist in one form or another in 55 African countries. It is homophobia that has been imported from the West and not homosexuality," said Goddard.

According to Goddard, Banana has never identified himself as homosexual, nor has he ever been a member of their organisation or appealed to for assistance from them.

"As an African elder and as a man of the cloth, you are expected to act with integrity. As a former leader of this country we expect better of (Banana)," says Goddard.

Source: *IPS Gender and Human Rights Bulletin*, 24-29 January, 1999

India: Fettered by Dogma with fatwas and punishments, a clutch of radical Muslim leaders holds the entire community to ransom.

By M G Radhakrishnan

Kerala: "For 12-year-old Safa Mariam Ahmed and her family the celebrations ended before they even began. Having won several prizes at the annual cultural competition at her Vocational Higher Secondary School at Payyanakkal, Kozhikode, she had just been chosen the festival's best artiste. To add to the family's delight, her elder sister Ofean also won prizes in the dance and drama competitions. Two days later came the bad news: a letter from the local Ihya-UI-Ulum Madarsa informed the two girls that they could no more pursue Islamic studies at the madarsa. The crime: performing on stage, considered to be against Islamic tenets by the local mahal committee. Their father Ahmed Koya approached the courts for justice after his pleas for mercy were rejected." Elsewhere in North Kerala, Tasnibanu, 20, a student of Manchery in Malappuram, wanted to marry Abdul Nasser under the Special Marriage Act instead of the traditional Islamic rites. It was then that the local masjid committee and some fundamentalist groups moved in. Banu was dismissed from her college by its Muslim management, confined to home by her father and tortured by her relatives. A worried Nasser filed a habeas corpus petition in the Kerala High Court.

Targeted by fundamentalist organisations, Tasnibanu and the Ahmed family at least looked up to the courts for justice. But in Kerala's Muslim-dominated Malappuram district and parts of Kozhikode, there are scores of others who submit to the tyranny in silence. The trend is alarming. The local masjid/mahal committees, backed by some Muslim extremist groups, have taken it upon themselves to impose Islamic law on the Muslims and punish those who are "wayward". The fundamentalist groups, led

by the National Democratic Front (NDF), have particularly targeted the liberals in the community: those who do not strictly follow Islamic laws like abstaining from liquor, fasting during Ramzan and wearing the makhna or the purdah.

The consequences for those who violate these orders can be disastrous: social ostracism and even attacks and arson. "The Muslim community is being terrorised by these fundamentalists as there is a well-orchestrated attempt to Talibanise it," says S. Jabbar, district secretary of the Kerala Uktivadi Sanghom (Rationalist Association). For his outspoken views, Jabbar had to pay a price: last month, his house was attacked. Says K. Natarajan, sp, Malappuram: "The extremist groups have taken over the role of the moral police in many places."

Ahmed Koya, father of the girls expelled from their madarsa for participating in a cultural festival, says the masjid committees have been hijacked by fundamentalist bodies like the NDF. "I am a devout Muslim and do not have to be told what is Islamic by them." But the masjid committee is adamant: "It is against Islam for girls or women to perform on stage," says P.K. Mohammed, president of the Madarsathul Alaviya.

"NDF activists imposed a strict vigil on her movements and even tried to molest her."

Abdul Nasser, fiance of Tasninbanu, 20

Case: Banu dismissed from college as she wanted to marry as per the Special Marriage Act. Recourse: Nasser filed a petition in court.

The NDF, a Kozhikode-based organisation, is currently said to be in the forefront of the extremist outfits working among the Muslim community. But unlike other fundamentalist groups like the Progressive Democratic Party and the Islamic Sevak Sangh, which are virtually defunct now, the NDF functions openly and has offices in several districts. Most of its office bearers are respected professionals in various fields. Says O.M. Abdul Rahman, NDF chairman and professor at Cochin University: "We are

an organisation committed to campaigning for the civil rights of the minorities and Dalits." Last year, Chief Minister E.K. Nayanar informed the state Assembly that the NDF was among the many organisations having links with extremists. According to an Intelligence Bureau (IB) official, three years after its formation in 1993, the NDF started a clandestine wing. "The overt wing organises seminars and holds adult education camps, while the covert wing is responsible for bomb attacks, stockpiling arms, training cadres and so on." It has also been charged with receiving huge donations from Gulf countries.

Most liberal Muslims, the Indian Union Muslim League, the Kerala Police and the IB concede that NDF is the main force behind the sudden increase in Muslim radicalism in the state. Police also say that some of the attacks against so-called violators of Islamic laws have been engineered by the NDF. The group has been behind the campaigns against school uniforms, singing Vande Mataram in schools and lighting of traditional lamps. "We have no evidence to show that NDF has been involved in this, but its emergence has certainly radicalised the psyche of the dissatisfied young people," say K.A. Siddique Hassan, the genial ameer (state chief) of the Jamaat-i-Islami.

"I am a devout Muslim and don't need to be told what is Islamic by them."

Ahmed Koya, father of Safa Mariam, 12 and Ofean, 14

Case: Mariam and Ofean were expelled from their madarsa for performing on stage in school. Recourse: Father moved court.

The victims too point an accusing finger at the NDF. Tasnibanu's fianc Nasser says the group was most active in Banu's persecution. "They imposed a strict vigil on her movements and also tried to physically molest her," he says. Tasnibanu also invited the extremists' ire by refusing to cover her head. But K.M. Ashraf, NDF Supreme Council member, denies NDF's involvement in the matter or in other incidents of violence against Muslims.

Admitting that some NDF members were involved in the murder of godman Siddhan and in attacks on some prostitutes in Malappuram last month, Ashraf, however, says, "They acted on their own and not under our direction. Action has been taken against them."

The virtual Talibanisation of the community has, however, not elicited much response from the state's major political parties. They seem keen not to offend the Muslim groups. "The CPI(M) and the Congress want to appease the minorities and do not dare say a word," charges Jabbar. However, Syedalikutty, the CPI(M)'s Malappuram district secretary, says, "We have been campaigning against the NDF and related extremist groups for long. But we do not want to meddle in religious and family disputes like that of Tasnibanu." When self-styled champions of a faith impinge on fundamental rights and hold an entire community to ransom, however, it's no longer a family dispute.

THE TARGETS

Fathima Suhara and her mother ostracised and prevented from drawing water from the community well in January after Fathima converted to Christianity to marry a Christian. She was back with her mother after her husband abandoned her. The two women have now moved court. Two muslim women, accused of prostitution, abducted by a mob, tonsured and paraded naked in Malappuram last month. Cases filed against members of some extremist organisations.

Godman Fakir Uppappa or Siddhan, killed in November last year for indulging in "un-Islamic spiritualism". Some NDF members arrested. Three hindu youth, killed last year for allegedly maintaining liaisons with Muslim women. No headway in the investigation. Popular reformist, the Moulvi of Chekannur, abducted by Muslim extremists some years ago, still missing. Believed to have been killed. A CBI inquiry is on.

Senior RSP leader of Kannur ordered to be socially boycotted by the local jamaat

committee for videographing a wedding ceremony in the family.

Muslim homes raided during the Ramzan month to make sure every Muslim observed fast and attended the Subah namaz at the local masjid. Liquor shops in Muslim areas ransacked and Muslims caught drinking thrashed. Hindu hotels which were open during Ramzan shut down forcibly.

From: India Today, February 15, 1999

Bangladesh/USA: Nahar Alam: Fighting for the rights of domestic workers

by Jessica Shattuck

At the age of 13, while still living in her native Bangladesh, Nahar Alam became the wife of a police officer through an arranged marriage. Their union was not a happy one—soon after their wedding, Alam discovered that her husband already had a wife, four children, and a violent temper. After four failed attempts to escape, Alam eventually fled Bangladesh for the U.S., settling in Brooklyn, N.Y., where she encountered a different type of abuse.

There, Alam found work as a domestic worker—often logging 12-hour days for as little as \$50 a week. Her own experience, coupled with her acquaintance with other South Asian domestic workers who were denied such basic privileges as using the phone or time off inspired her to learn English and become active in promoting economic justice for immigrant domestic workers from her region. "[They are] invisible," Alam says. "They are isolated, they can't use the phone, they don't know English.... Many come to America because of problems at home and are afraid if they complain, their employers will send them back."

Alam became active in Sakhi for South Asian Women, a nonprofit domestic violence prevention organization, and expanded Sakhi's scope to include promotion of fair working conditions.

While working for the group, she organized demonstrations outside the homes of exploitative employers, handed out leaflets publicizing minimum wage and federal labor standards, and conducted weekly workshops and meetings on workers' and immigrants' rights.

In 1997, Alam formed a smaller nonprofit group, Workers' Awaaz (Workers' Voice) that focuses exclusively on domestic worker exploitation. Workers' Awaaz now has about 30 volunteers and members and has helped dozens of women leave unjust work situations.

"I was like a prisoner," says Gurbachan Juneja, who used to work seven-day weeks as a babysitter for a family on Long Island and now works at a cellular-phone store. "I didn't know how to leave the house...or use public transportation." Thanks to Alam's intervention, she says, "now I can do anything."

Last year, Workers' Awaaz won its first court case against an abusive employer. At Alam's urging, one member who had been grossly underpaid by her employers sued for back pay. ACLU attorney Mike Wishnie handled the case, arriving at a \$20,000 settlement on her behalf. "Many of the women Alam worked with had learned their rights," Wishnie says. "Alam wanted us to set a precedent to demonstrate that they shouldn't be afraid to exercise them. She's courageous. The women of Workers' Awaaz are lucky to have her fighting for them."

But Alam says her fight is far from over. She would like to create a shelter for domestic workers and conduct more outreach in other immigrant communities.

"She worked like us," says Juneja. "She knows what we need."

From: Mother Jones, Sept./Oct. 1998

Organisations

The Working Group for Equality in Personal Status Issues

The Working Group for Equality in Personal Status Issues was established in 1996 by a group of associations working in the field of women's and human rights and by lawyers and social workers. The initiative for establishing the Working Group came as a result of existent problems facing Arab women in regard to personal status laws and as a result of the low status of women in Arab society in Israel.

Personal status issues in Israel are dealt with in religious courts, and the choice between religious and personal courts in such matters is open only for Jews and Druze. This is an illustration to the fact that the Israeli law, which is a continuation to the Ottoman one, discriminates against Muslim and Christians and prevents them from choosing civil courts in personal status issues. The problems resulting from the present situation in personal status issues are long and relate mainly to the status of women in religious courts, their rights in common property and in child custody, and their equal right of inheritance.

The experience of the associations and individuals, members of the Working Group, proves that many members of the Muslim and Christian community, especially women, would like to obtain the right to choose civil courts in personal status issues. The Working Group struggles against discrimination against women resulting from the current personal status laws, and aims to find ways to eliminate social ills as forced marriage, child marriage, and polygamy which violate Arab women's rights and lower their status in the family and society.

The Working Group is a coalition of the following associations: Women against Violence, the Association for Citizen's Rights, the Arab Association for Human Rights, Women's Network in Israel, AlTufula Pedagogical Center, the Equality Right's Project - Shatil, the Center for Family Development, Al Siwar - Arab Feminist Movement in Support of Victims of Sexual Abuse, the Haifa Crisis Center, and individual volunteer lawyers, social workers, and university professors. The Working Group believes that there is an urgent need for work on various levels to solve personal status problems and guarantee Arab women's rights in the family and society.

The strategies of the Working Group for Equality in Personal Status Issues

- Change laws to guarantee the ability for members in society to choose between religious and civil court in family issues.
- Increase awareness on personal status issues among the Arab community, especially among Arab women.
- Work on improving the governmental legal systems and the provision of legal counseling for women.
- Work on improving the current conditions in religious courts.

The Working Group attempts to achieve the above mentioned aims through establishing support systems and participation from the Arab community and from professionals and activists in the field.

The Working Group for Equality in Personal Status Issues
P. O. Box 313 Nazareth 16000, Israel
tel/fax: 972-6-6462138

Aisha: The Arab Women's Forum

Aisha is a network of democratic Arab women organizations established in December 1992. It is bound by the mutual objectives;

- Promoting the legal rights of Arab women.
- Advancing the principles of gender equality at all levels.
- Encouraging the increasing participation of women in social and economical development and decision making.
- Promoting the principles of democracy, and confronting all forms of discrimination and abuse against Arab women.

The members of the forum include organizations from Palestine, Egypt, Lebanon, Jordan, Tunis, Morocco, Sudan and Algeria.

*For more information contact
Sama Aweidah-Liftawi,
Tel-fax: 00972-2-2448848,
Email: wscad@netvision.net.il*

Autonomous Women's Center Against Sexual Violence

Activity report during the war time from 25 of March - 24th of April 1999

Active Support in Overcoming Fear of Women

After the first night of bombing, 24th of March the law of war was ordered. Fear became the fact of life overnight, and the activists of Women's Center decided to start calling women over the phone to ask them how are they, to give them space for overcoming fears.

Until this moment, already six years, the work of Autonomous Women's Center was based on ethical principle that implies that the service is give to women when they ask for it, when they call or come to the Center. The fear in the wartime has moved the borders of private and public and therefore we transgressed the principles of work. Every women became a possible client, at least for a moment. Connecting with each other, calling on the phone, asking women how do they feel... became legitimate activities of the Autonomous Women's Center. Once again, the women's solidarity inspired many women. That is how we started the active telephone support for women in overcoming fear.

Active phone counseling

The counseling phone work is based on the feminist principles of psychological counseling as well as on the experiences in working with women in fear in the war in Bosnia from the therapists in the Women's Therapy Center Medica Zenica in Bosnia and Herzegovina.

The Fear Counseling Team decided on active calling women for different reasons.

First because in the war situations women are less mobile and do not leave their homes often. Second, they feel their homes as the only safe place, most of the times, then, the telephone bill is paid by the Women's Center, which is a very important factor in the times of war when the poverty is increasing and women cannot relax to talk about themselves if they know they cannot pay the bill.

Documenting the feelings of fear

Autonomous Women's Center Against Sexual Violence, from its foundation in 1993, believes in the anti-war anti-military politics,

in multi-nationality as well as in spreading solidarity with women from the other side of the front line.

In the present situation Women's Center is documenting feelings of women who are in fear of NATO bombing and entire war situation, as well as feelings of women in Pristina and other parts from Kosovo that are going through particular processes of fear, terror and pain.

Documenting calls about women's feelings:

In the first 25 working days, five counselors gave 378 telephone counseling to women from 34 towns in SR Yugoslavia.

Statistics of Women's Center show that 232 counseling phone sessions were done with women in Belgrade and others from women in other towns including regions Vojvodina, Sandzak, Montenegro and Kosovo. From all the calls, 87% of calls were initiated in the Center.

Documenting statements of fear:

The Women's Center is documenting all types of fears and forms in which fear is manifested.. in body, in dreams, in behavior, in thoughts... From the statements it is easy to conclude that life of every women has changed, that emotional states are changing very often during a day, that emotions that are most dominant is the desperation and anxiety as well as tendency to survive and to adapt to the limited conditions of life.

"I am in a horrible fear" "i fear the night" "i am afraid to go out further than the grocery shop" " I don't go out" " I sleep in the house of my friend" " I cannot concentrate" " I am sensitive on all the sounds" " I have fear of mobilization for my brother" "when sirens starts I feel nauseatic" "i have lost 4 kilos, I broke down psychologically" " every night I go to the shelter, I feel bad" "when

I see soldiers on the street I shudder" " I feel I dropped out from the tracks, everything changed in my life" " I am worried for my future"

"I am constantly on the sleeping pills" " I sleep all dressed up"

"children in the shelter are very disturbed" "On my work place men started to drink intensively" "I am nervous" "I am not afraid of death but I am afraid of sudden sounds" "It is killing me that I cannot work anything any more" "My emotional state is changing every hour" "i threw out the TV set, I cannot listen to that language anymore" "neighbors are talking apocalyptic gossips all the time" " I am nervous, I go from the shelter to the flat three times in one night" " I feel like leaving this country forever, it is so nauseate" "new fears are coming"

- Documenting statements about mechanisms of survival: Active role of the Fear Counseling Team of the Women's Center is to support mechanisms of survival in women and their positive experiences. Supporting healthy dimensions of behavior, feelings and thoughts is the main form of the active support of women.

"I am feeling good, I have gone through one war already, I know the rules" " I am concentrated and rational I have enough information" " I feel good, I am supporting other women" " I am cleaning the house all day" " I am walking up and down the town all day" " I spend hours on e-mail" " I have planted many plants" " I am taking my children to the hills" "We are hugging all day" "I am taking sleeping pills, and it works for me"

- Documenting statements of women of Albanian nationality in Kosovo

The Fear Counseling Team has been calling women and activists in Pristina and on Kosovo actively first two weeks after the beginning of the NATO bombing. The Women of Serbian nationality have stated their fears of bombing, the women of Albanian nationality apart from fears of bombing had much stronger fears of serbian officials, army and police ("of green, blue and masked men").

After first two weeks many women of Albanian nationality have been forced to leave their homes, as they said, in front of the soldiers who had machine guns and spoke Serbian language. After that, with their families they were forced to go to the buses of trains that took them close to the Macedonian border. From Macedonia some of them have called us to tell us that they are alive and healthy and from some of them we heard parts of the humiliation stories and terror they had to go through in the meantime.

"I am terrorized" "strange silence is horrifying me" "we are sitting in the dark every night, I cannot sleep nor eat, but I have coffee and cigarettes" "we don't get out of homes at all, not even during the day" "I don't know what to tell you nor what to think, I am still alive".

Workshops about feelings:

In the first month the Women's center has organized four workshops with the title How do we feel. The exchange of negative and positive experience have been of paramount importance for participants to feel they are not alone in their fears and to be supported for their positive feelings.

Autonomous Women's Center Against Sexual Violence continues the active telephone support of women and will continue to issue reports and analysis of data obtained.

The Fear Counseling Team:

Biljana Maletin, Bobana Macanovic, Bosiljka Janjusevic, Lepa Mladjenovic, Sandra Tvitic

Autonomous women's center against sexual violence

Against Sexual Violence

Tirsova 5a, Beograd, Serbia

tel: 381.11.645.328, fax: 381.11.687.190, e-mail: awcasv@eunet.yu

Kosovo / Yugoslavia Motrat Qiriazhi (Qiriazhi Sisters)

[The below description of Motrat Qiriazhi dates to the period before the 1999 war in Kosovo; Since 1994 Motrat Qiriazhi has worked with women and girls in rural areas of Kosovo]

Why "Motrat Qiriazhi"?

The two sisters Qiriazhi, were the founders of the first school for girls in Albania over 100 years ago. Our group has chosen their name in recognition of their work and because the goal they dedicated themselves to - the education of women and girls - is still as important today. The name reflects our central priority to facilitate education, training and empowerment of rural women. " Motrat Qiriazhi " rural women activists formally began work in March 1995, with a core group of village women already experienced in community development.

Changing oppressive traditions...

At present Motrat Qiriazhi's 13 women activists are working in 23 villages in Has. This is an isolated mountainous region of western Kosova without roads, telephones and other facilities. Has still retains practices oppressive to women; more than 50% of the girls are promised in marriage by the time they finish primary school. Because of this few girls attend high school. After marriage, often arranged to boys they have never met, girls go to live in an unfamiliar village with their husband's extended family. Most women then have no chances to develop themselves except in the roles of wife, mother and daughter-in-law. Our program emphasizes the preservation of positive traditions and the drawing on traditional knowledge women hold and at the same time changing practices that undermine women.

How we work...

Our core strategy is to create and maintain weekly meetings in villages. These provide a forum where women and girls gather to exchange ideas and where they can begin to examine the parameters of their lives. In many cases they are one of the few occasions where women can meet with other women outside of their family circle. The meetings contain self esteem building elements and educational components, through them women and girls together develop sub-projects to benefit the whole community.

Motrat Qiriazhi is dedicated to the following principles:

- Understanding our problems, needs, and desires as rural women
- Strengthening our ability to organize and do things for ourselves and our communities
- Raising our consciousness and pride as rural women and breaking our isolation by facilitating the exchange of ideas, the learning of new skills and our self development
- Supporting the democratization of the family and aiding in the elimination of all forms of violence against women
- Addressing issues we feel are important to help improve the quality of our lives, including education and health issues e.g. encouraging women and girls to value their health, to understand their bodies, and to be able to assert their need for health care.

Activities 1995-1997

- The facilitation of women's meetings each month in every village in Has. Meetings contain education in self esteem, health care, women's situation worldwide. Between 30 and 240 women and girls attend the meetings. Since summer 1996 separate girls' groups are run.
- Skills training for rural women in sewing and literacy. We facilitate trainings in 7 villages with approximately 35 women in each group.
- Increased acceptance of the importance of educating girls as a direct result of our lobbying work over 80 girls were allowed to register in High School in one village alone (an increase from 12 the year before).
- Development of rural activists through: monthly training and evaluation, attendance at women's meetings and women's conferences, one off trainings.
- Community sub-projects: the building of 2 schools, construction of water pipes, setting up of the first clinic, furnishing and stocking of the first three libraries in villages.
- Community mediation: activists act as mediators to solve conflicts and to support women in developing and educating themselves.
- Home visits: activists visit families to keep an eye on the material and psychological welfare, and to provide support. Activists have worked on campaigns to register families for vaccination. They also arrange for women to attend the only Women only health center in Prishtina
- The publication of a rural woman's magazine " Të jesh Grua " (To be a woman) geared towards promoting the idea that education for girls is valuable and that women's human rights should be respected. It contains interviews, articles by village women, health information and information about women around the world.
- Media work: audio tape for the blind of the first book written about women's life by a Has woman, video work.

For more information:

We would love to have contact with you by email especially if you have examples of women changing their lives and their communities, in similar projects around the world.

You can contact us at:

Motrat Qiriaz

Zeflush Marku, 17

38000 Pristina, Kosova - Yugoslavia

Phone + 381 - 38 46 148

I.Rogova@zana-pr.ztn.apc.org

Gay and Lesbian Arabic Society

The Gay and Lesbian Arabic Society (GLAS), an international organization established in 1988 in the US with worldwide chapters. As our name suggests, we serve as a networking organization for Gay and Lesbians of Arab descent or those living in Arab countries. We aim to promote positive images of Gays and Lesbians in Arab communities worldwide. We also provide a support network for our members while fighting for our human rights wherever they are oppressed. We are part of the global

Gay and Lesbian movement seeking an end to injustice and discrimination based on sexual orientation.

If you are in the New York City area, you are invited to join us for our meetings at the Gay and Lesbian Community Center at 208 West 13th Street in Manhattan, New York, U.S.A. . We meet the 2nd and 4th Thursday of each month at 8:30PM. (Please note that our first meetings are open to Arabs only)

Our newsletter "Ahabab" is available on the web.

Featuring essays, news, and other items, Ahabab is more than a virtual version of the printed product.

For suggestions, comments, and inquiries, beirutigeocities.com

Periodicals

Awarenes

A Journal of the Association of Women for Action and Research

The Association of Women for Action and Research (AWARE) is a voluntary women's organisation founded in 1985. *Association of Women for Action and Research*

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Singapore 13000

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Indonesia and the Malay World

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Books and Papers

The Recovery of Internationally Abducted Children : A Comprehensive Guide

Maureen Dabbagh

This is a step-by-step guide for professionals ; as well as parents : It focuses first on prevention and then on initial steps to take if an abduction happens : Resources such as police ; the State Department ; the courts ; and private agencies are covered next : A detailed overview is given of organizing and coordinating the search for a child, from the cost of recovery to the effects on the child of the post-recovery period : Support services are covered ; followed by an examination of existing law on both the federal and international level : Directories of numerous agencies are included .

1997, 236pp
ISBN : 0-7864-0289-X

McFarland & Company ; Inc ; Publishers
Box 611, Jefferson NC 28640
USA

Unholy wars: Afghanistan, America and International Terrorism

John K.Cooley

To oppose the Soviet invasion of Afghanistan in 1979, the United States formed an extraordinary anti-communist alliance with militant Islamic forces in Central Asia. In this frightening and controversial book, John k.Cooley provides the first behind-the-scenes account of this alliance and of how the CIA planned and ran the 'holy war' in Afghanistan. Drawing on previously unpublished data, Cooley describes the development of US foreign policy and CIA covert activity in the 1980s, which facilitated the training and arming of almost a quarter of a million Islamic mercenaries drawn from across the Arab world. Linking this with specific acts of

international terrorism, Cooley marshals a wealth of evidence to demonstrate the devastating consequences of this training once the mercenaries returned to their own countries. UnholyWars seeks out the lessons to be learned from this still unfolding drama, and urges for a better understanding of the diverse world of Islam.

June 99, 256 pp
ISBN: Hb: 0 7453 1328 0

Pluto Press
345 Archway Road,
London, N6 5AA, U.K.
email: pluto@plutobks.demon.co.uk

Divide and Fall? Bosnia in the Annals of Partition

Radha Kumar

A provocative study of how partition exacerbates ethnic conflicts

Divide and Fall? analyzes the post-Cold War revival of what is essentially a British colonial theory of ethnic division In a timely and elegant intervention Radha Kumar looks at the Bosnian partition process in relation to earlier partitions of Ireland, India-Pakistan, Israel-Palestine and Cyprus. She traces the way ethnic mobilization developed in parallel with changing colonial policies of administration, contending that the shift from divide and rule to divide and quit, which was made between the two world wars, stimulated rather than diminished conflict.

Kumar points to the irony of reviving a British colonial practice to deal with a coun-try that was not a colony, in a period which is not only post-colonial but in which a post-Cold War vision of reintegration is being implemented through NATO expansion and the ending of Cold War partitions.

She raises the possibility that the Western powers' acceptance of Bosnian partition indicates that the reversal of Cold War partitions will be accompanied by the

revival of ethnic partitions. Kumar concludes that such an eventuality is unlikely because the revival of a colonial theory of partition in the present period would damage both NATO expansion and European integration, to the point of divide and fall.

Radha Kumar is the author of *A History of Doing: An Illustrated Account of Movements for Women's Rights and Feminism in India 1881-1990* (Verso).

November 1997, 160 pages
ISBN: Hardback 1 85984 852 4

Verso
6 Meard Street, London W1V 3HR? U.K.

Muslim Diversity: Local Islam in Global Contexts

Leif Manger (ed.)

Argues in favour of a focus not on Islam but on the lives of Muslims and to put their lives into the context of complex historical developments. Ranging across much of the vast extent of the Islamic world - from West Africa and the Near East to China and Southeast Asia - the cases provide material that allows for comparative discussions of Islam as lived religion in areas close to its heartland as well in distant parts where Islam meets and interacts with other religious and cultural traditions.

NIAS, 1998, 128 pp.

ISBN: Pbk 87-87062-66-6

Nordic Institute of Asian Studies (NIAS)
Leifsgade 33, 2300 Copenhagen S, Denmark
E-mail: books@nias.ku.dk

Against Islamic Extremism The Writings of Muhammad Saïd Al-Ashmawy by Muhammad Sa'id Al-Ashmawy edited by Carolyn Fluehr-Lobban

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Globalization , social movements and the new internationalisms

Peter Waterman

One hundred and fifty years ago Marx and Engels produced the Communist Manifesto. This ended with the stirring words 'Workers of all lands unite ! You have nothing to lose but your chains. You have a world to win !' Although this slogan inspired generations of unionists and socialists , the internationalism turned into nationalism, the worlds won did not loosen the chains and even the worlds themselves were lost .

This book examines the past internationalism of labour and socialists and the present one of the new radical-democratic social movements (such as women's movements and feminism) . It argues for a 'new global solidarity' that relates to a radicalized ,globalized, informatized and complex capitalist modernity . This new internationalism addresses multiple global social problems and democratic movements .It both learns fro, the social theories of today and provides a necessary complement to them .

August 1998, 320 pp
ISBN : 0 7201 2351 8

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290 pages
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The University of Chicago Press
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Thomas Harding

1997, 272 pp.
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Sites of Desire, Economies of Pleasure: Sexualities in Asia and the Pacific

Lenore and Margaret Jolly Manderson

1997, 367pp

ISBN: 0226503046

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Jewish Fundamentalism in Israel

Israel Shahak and Norton Mezvinsky

In this controversial new book, Israeli writer Israel Shahak and American scholar Norton Mezvinsky examine the considerable political influence and power of Jewish fundamentalism. The authors make a clear distinction between the fundamentalist ideologies of Israel's Ashkenazi and Sephardic Jews, examining the growing impact of the two movements on Israel's

political processes and at a grassroots level. Shahak and Mezvinsky argue that Israeli Jewish fundamentalism is closely associated with a new form of national religious messianism which has its origins in the settling of the conquered territories during the war of 1967 and which vehemently opposes the peace process.

May 99*192 pp *215x135.mm
ISBN; Pb: 0 7453 1276 4 Hb:0 7453 1281 0

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Alain Lefebvre

Rural poverty combined with Pakistan's labour-market policies forces many Punjabi men to seek work abroad. Remittances home have gone into conspicuous consumption rather than economic development; the validity of the use of migration as a development strategy is thus questioned.

ISBN (Hardback) 0-7007-0984-3

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Edited by Obioma Nnaemeka

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ISBN: 0865434395

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**Women in Modern Albania:
First-hand accounts of culture and conditions from over 200 interviews**

Susan E.Pritchett Post

Upon her arrival in Tirana, Albania, in April 1994, the author found a city unlike any other she had experienced. Rotting trash was piled in the center of the streets, animals shared the rutted roads with cars, and housing, when it could be found, was crowded and crumbling. But she found a people full of optimism, particularly the women. Despite their subservience, traditional Albanian women have increasingly become the foundation of their country. This work is a skillful, insightful, and often poignant look at a country that remains a mystery to many.

1998, 312 pp

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PhD. dissertation, Political Science, Princeton University, 1995

by Roxanne Leslie Euben

AAC: 9528922
*University Microfilms International
300 N. Zeeb Road,
Ann Arbor, MI 4806
U.S.A.*

Changing Position of Muslim Women in Punjab

1872-1947: A Study of the Forces Behind These changes

PhD. dissertation, History, Columbia University, 1995

by Dushka Hyder Saiyid

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300 N. Zeeb Road,
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Audiovisuals

On the Edge of Peace

Directed by Ilan Ziv
Produced by Daoud Kuttub, Ilan Ziv and Amit Breur
Duration 103 minutes
Date 1995, Format: Video

On the Edge of Peace has the distinction of being the first Israeli Palestinian co-production ever. This ground breaking documentary chronicles the first year of the implementation of the Israeli-Palestinian accords as experienced both by Palestinians and Israelis from all walks of life. Three Palestinianas and Three Israelis were given video cameras to document their lives and lives of their communities over a six month period during this turbulent and dramatic time.

Distribution:
First Run / Icarus Films
153 Waverly Place
New York, NY 10014, U.S.A.

Shrine Under Siege

Directed by Ilan Ziv
42 Minutes 1985

SHRINE UNDER SIEGE describes the colaition formed by Fundamentalist US Christians and militant Israeli Jews to destroy the Dome of the Rock, Islam's third holiest shrine, and to build a new jewish temple in its place.

The documentary explores the theological background to this unusual colaition and places it within the context the increased political power of fundamentalism in the US and the rise of extremist religious parties in Israel, as demonstrated by the election of Rabbi Meir Kahane to Parliament.

Distribution:
First Run / Icarus Films
153 Waverly Place
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Ami Nari (Women's Saga)

A telefilm of Bengali Women's movement for last 3 centuries. This film is an analogical record of the history of women's movement.

In the film, Satidaho (Bride Burning), Dowry, Child Marriage, Women's Right to Property, Hindu Widows Remarriage, Purdha System, Muslim Dissolution of Marriage, Muslim Personal Law (Shariat) Application Act, Women's Education, Women's Vote Rights etc... are highlighted.

Institute for Law & Development
52, Tejkunipura, Tejgaon, Dhaka - 1215, Bangladesh
Fax: 880-2-956 0210, e-mail: ild@bdmail.net

The Division of Hearts

A Documentary film, Directed by Satti Khanna and Peter Chappell

57 Minutes / colour - 1987

The 1947 British Subdivision of colonial India into Pakistan and India caused the loss of life of some 500,000 lives and the relocation of millions in what may have been the greatest movement of people ever.

After centuries of Co-existence, Hindus, Sihks and Muslims became victims of mutual suspicion as violence and murder swept through the countryside. The resulting mass relocations of these groups transformed village populations overnight.

In THE DIVISION OF HEARTS, ordinary people from Pakistan, India and Bangladesh- cartdrivers, labourers, tradespeople, farmers, - tell this story and recount their own tumultuous experiences. Their memories, combined with archival news film, bear witness to the traumatic birth of two independent nations

Distribution:
First Run / Icarus Films
153 Waverly Place, New York, NY 10014, U.S.A.

Declarations and Appeals

Indonesia:

Letter to United Nations High Commissioner for Human Rights

Palais des Nations, 8-14 avenue de la Paix
CH 1211 Geneva 10
Switzerland
Tel: (41 22) 9173456 Fax: (41 22) 9170213
E-mail: webadmin.hchr@unog.ch

Dear Mrs. Robinson,

We, as the International Community, are aware that, during the recent riots spread throughout Indonesia, Chinese-Indonesians have been tortured, killed, and burnt to death. Their houses and shops have been looted and burnt. Hundreds of Chinese-Indonesian women and even children have been savagely gang-raped in public by organized indigenous-Indonesian gangs with alleged links to security forces.

Human rights and women's aid groups have received telephone threats and even a hand grenade in the mail as a warning to stop the investigations and their aid to victims. So far little has been done by the government. Their denial and sluggishness in preventing the atrocities strengthen the public allegations that the riots were directed by the Indonesian political and military elites.

It is very obvious that organized sexual assault suffered by Bosnian-Muslim, Tutsi, and Algerian women has been used in Indonesia as a tactic in terrorizing and humiliating Chinese-Indonesians.

We urge the United Nations to:

1. Condemn strongly the savage violation of human rights in Indonesia.
2. Press the Indonesian government to conduct a thorough investigation to punish the perpetrators and the brains behind the ferocious racial attacks.
3. Charge the violators as international criminals to be brought to the International Crime Court in the Netherlands.

4. Press the Indonesian government to make guarantee that no such racial incident against Chinese-Indonesians will recur in the future.

5. Press the Indonesian government to protect Chinese-Indonesians and human rights and women's aid groups who are under constant threat and danger.

6. Impose political sanctions to the Indonesian government if such racial incidents recur in the future.

7. Grant refugee status to the Chinese-Indonesians whose lives are in extreme danger.

We, as the citizens of the world, do not deserve to emerge to the next millennium and claim a progress in civilization if we are ignorant and dormant to the atrocities against our fellow human being.

Thank you.

Yours sincerely,

ASEAN Region: The Jakarta Declaration of Islamic Religious Lead[ers]

The Jakarta Declaration which resulted from The First HIV/AIDS ASEAN Regional Workshop of Islamic Religious Leaders at the end of last year has just been posted to the ASEAN Website:

http://www.asean.or.id/function/hiv_wshp.htm

The following is the text of the Declaration:

The First HIV/AIDS ASEAN Regional Workshop of Islamic Religious Leaders Jakarta, November 30, to December 3, 1998

We, the Participants of the Workshop of ASEAN Muslim Leaders in Jakarta mindful:

That the magnitude of AIDS epidemic problem in the ASEAN region is creasing significantly. The increase has to be controlled in the time, otherwise religious, social and economic development in the r That very individual has the right to have an appropriate and right information on HIV/AIDS. Without having the information nobody will be able to prevent HIV infection,

That the biggest population in the region is Muslim, but most Islamic community members in most ASEAN Members Countries are not yet fully involved in HIV/AIDS campaign in their respective communities That IEC instruments and methods have to be developed to effectively reach each adult member of the Islamic communities in all ASEAN Member Countries, so that all the adult members of the communities That all Muslim Leaders in all ASEAN Member Countries have to be properly trained to use the IEC instruments and methods. The well-trained Moslem, leaders will then play their important role in HIV/A Mindful also That all governments of all ASEAN Member Countries have responded to the challenge of AIDS by launching both national and regional HIV/AIDS Programmes,

That the programmes have to be strengthened and fully supported by community involvement including Muslim community which is the biggest religious population in the region, otherwise the programmes w Solemnly declare

Our obligation as Muslim leaders to support both the national and the regional HIV/AIDS Programmes as long as the programmes' activities are not against Islamic teachings,

Our obligation to involve in HIV/AIDS Campaign in collaboration with Government and Non Government officials/workers at all (grassroots, local, national, regional and global) levels,

Undertake in our involvement in HIV/AIDS Campaign the following activities:

* Developing of IEC instruments and methods to effectively reach target population in our communities in an effort to give all of them appropriate and right information on HIV/AIDS, * Training IEC trainers and Muslim Community Leaders on HIV/AIDS Campaign, implementing the following Islamic guidelines on HIV/AIDS and PLWHA as follows:

- Attitude toward HIV/AIDS: HIV infection with its terminal state AIDS is a dangerous communicable disease that threatens the existence of human beings. The virus can infect anybody irrespective of g- Euthanasia, either passive or active is prohibited to be performed to AIDS patients

- Knowingly transmitting HIV is against Islamic Law. - Marriage between PLWHAs is permitted.

- Marriage between a HIV free individual and a HIV positive individual is not prohibited/against law but avoiding it is preferable. - Divorce due to HIV infection/AIDS is lawful. A HIV free wife can demands divorce from her HIV positive husband. But based on their consensus, their marriage may continue although the husband is alr- A married couple must use method, which can prevent H

IV transmission whenever one of them is already HIV positive. The wife is suggested not to be pregnant.

- Abortion is not allowed even if pregnant women is infected by HIV. - Pregnant women living with HIV/AIDS due to injection of prohibited drug contaminated by HIV must be humanistic treated, but she has to be made fully aware of her sin and guided to ask forgiveness f- PLWHAs staying in their families.

- Families having member/members living with HIV/AIDS to take care of the HIV infected member/members.

- Care of pregnant woman during delivery. The process of the delivery be preferably handled by a well-trained health personnel to prevent HIV transmission.

- Circumcision for children living with HIV/AIDS. Children living with HIV/AIDS must be circumcised as long as it is not dangerous for him and the process of the circumcision is preferably handled by- To properly help PLWHA who gets accident: PLWHA who gets accident, for example car accident on the road must be properly helped and all precautions and equipment must be used to prevent HIV transmi- Handling deceased AIDS patients:

Deceased suffering from AIDS have to be given proper Islamic burial.

Delegate Chairman,

1. Indonesia; Prof.Dr. M. Quraish Shihab
2. Brunei Darussalam, Dr. Awang Haji Besar bin Haji Abu Bakar
3. Malaysia, Dr. Ahmad Jusoh,
4. Singapore, Mr. Jaffar Mohd Kassim,
5. Philippines, Mr. Ali Mistul
6. Thailand Dr.Smai Kaovijit

PLAN OF ACTION

I. Background

There are many different religious populations in the ASEAN region. Among all of them, Islamic population is the biggest. Islam religious leaders in Islamic communities in all ASEAN Member Countries Therefore feasible methods and appropriate instrument have to be developed to empower not only them but also their respective community members with all necessary appropriate information on HIV/AIDS. The problem to be solved through the Seminar for Islam religious leaders is the gap between the existing unavailability and the expected availability of feasible methods and appropriate instruments

II. Problem Identification:

The following issues are identified: a.Basic knowledge that leads to misconception on HIV/AIDS among some Moslem leaders.

b.Sex education is not given systematically based on Islamic teaching. c.High risk

behaviors, continue to endanger community at large. d.Perinatal HIV transmission is generally neglected in their region. e.Cooperation between Moslem leaders and certain agencies government in relation to prostitution is not yet well developed.

III. Objectives:

1.To implement religious approach in HIV/AIDS campaign 2.To strengthen cooperation among Moslem leaders in ASEAN region combating HIV/AIDS. 3.To establish information network among ASEAN Moslem leaders.

IV. Activities

1.To hold seminars, workshop, training, symposiums on HIV/AIDS for Moslem leaders in the region to wipe out misconception on HIV/AIDS. 2.To establish expert committee on Sex Education based on Islamic teaching to develop guidelines, teaching modules for children, youth and married couples.

3.To establish Technical working Groups in accordance with Islamic teaching on high risk behaviors to develop risk reduction program focussing on homosexual, bisexual, transsexual behaviors. 4.To implement mother to child HIV transmission prevention 5.To strengthen cooperation between Moslem leaders and the government in solving prostitution problem by implementing religious and public health approaches.

6.To hold follow-up workshop in Jakarta in 1999 to assess the work plan implementation.

Recommendations

1.Dissemination of appropriate local version of Jakarta Declaration in all ASEAN Member Countries.

2.Intensifying the implementation of religious approach in HIV/AIDS campaign among Moslems in ASEAN region.

3. Strengthening cooperation between Moslem Leaders and the Government in combatting HIV/AIDS in the region.

Egypt: Squeezing the imagination

EGYPT Updated: 2 February 1999 Samia Mehrez, Professor of Modern Arabic Literature at the American University in Cairo, has come under attack for assigning her class the fictional autobiography of the Moroccan writer Muhammad Choukri, *Al-Khubz Al-Hafi*. This work is known as an important and powerful text that has been translated into many languages, including English by Paul Bowles under the title *For Bread Alone*. Several students probably complained to their parents about the 'pornographic' content of the novel. The parents brought the matter to the attention of a family friend, who is the university physician and who, in turn, brought it to the attention of the President of the AUC, presumably to hush up the matter and spare the AUC adverse publicity. On 17 December, while teaching her class, Professor Mehrez was whisked to the office of the President for an impromptu meeting with the President, Provost, the Dean and the said physician. In this meeting, she was informed of the nature of the charge against her and of the desire of the University to hush up the matter by having her withdraw the book and apologise to the class for assigning it. Mehrez, a tenured professor and a highly respected scholar of Modern Arabic Literature, declined to do either, but expressed willingness to exclude the novel - which she had already taught - from the examination. In the wake of this incident, a public campaign was launched by some Egyptian newspapers to discredit Professor Mehrez and to embarrass the American

University. One immediate consequence has been the removal from the shelves of the AUC Bookstore of works that are deemed by the self-appointed custodians of public morality as 'injurious to good taste'. Among these are Sonallah Ibrahim's *The Smell of Itand* Alifa Rifaat's *Distant View of a Minaret*. In addition, the committee for the core curriculum at AUC is now seriously considering removing al-Tayyib' Salih's novel *Season of Migration to the North* from its reading list for this coming semester. Meantime, the campaign against Professor Mehrez has grown steadily more vicious in the last few weeks. She is now being charged with sexual harassment for assigning 'pornographic material' to 'minors' and 'forcing' them to discuss it. From all appearances this is not merely a gross violation and infringement of the academic rights of one professor of Arabic literature - grave and unconscionable as that is - but a wholesale attack on the literary imagination and on the very foundations of modern Arabic literature. If it is allowed to go unchecked, this eager censorship will ultimately consign imaginative literature to the role of beautifying and consecrating the ugly reality of violence, oppression and injustice that prevails, alas, in much of the contemporary Arab world. We strongly urge all concerned colleagues to write directly to the President of the AUC to protest the campaign of terror and intimidation against Professor Mehrez and to support the principles of academic freedom and a liberal arts education on which American universities stand, at home and abroad.

Please e-mail President Gerhart at <jgerhart@aucegypt.edu>

(Source: Index On Censorship - Latest Censorship News)
