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SHARI'A AND THE CITIZENSHIP RIGHTS OF WOMEN IN  
A MODERN NATION-STATE:  
Grounding Human Rights Arguments in Non-Western Cultural Terms

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**1. Introduction**

**A**t the global level, the question of human rights is a controversial one these days. While there are few who seek to deny categorically that there can be any such thing as human rights, many thoughtful and also influential individuals, including leaders from the now more assertive nations of the non-European world, do question and even challenge the universality of Western notions of human rights.

They question not human rights *per se* but the imposition, under flawed claims of universality, of specific concepts of and approaches to human rights that are distinctively Western. They assert that these derivatively Western conceptions are just that -- Western, not universal. For them, Western conceptions are not necessarily wrong -- at least for those Western countries or any others that may explicitly choose to adopt them as appropriate to their own circumstances. But, these critics assert, claims that these Western notions are universal -- or somehow normative, setting the standards for evaluating other concepts of human rights that in historical and cultural terms are differently grounded -- are problematic, even compromised.

For them, Western conceptions are narrow, limited, even distorted because, for example, they are said to overvalue civil and political rights in comparison with rights to economic sustenance and survival. Any endeavour

to impose such derivatively Western views of human rights is, for these critics, not merely an ethnocentric arrogance but a political intrusion or imposition. That is, the critics do not merely question the selectivity or partiality, at the conceptual level, of Western notions of human rights. They also further suggests that Western notions of human rights are often invoked quite self-servingly as the screen behind which the world's dominant powers or external interests may deceitfully assert some more mundane and less attractive practical agenda of their own. Operationally, they insist, the rhetoric of human rights, Western-style, is or threatens to become merely an instrument of continuing Western hegemony.

Originally resisted by many human rights activists, East and West, these arguments are now widely recognized as having some considerable force. Even if such claims are exaggerated, they cannot simply be denied or dismissed. Recognizing their force does, however, place all human rights activists -- and especially those formed in non-Western contexts -- in a difficult situation and presents them with a real challenge.

It is not difficult to recognize the argument that Western notions of human rights may be culturally and civilizationally contingent, not universal. But conceding that point still leaves the non-Western rights activists faced with the question whether, historically, it has been the Western tradition alone which has formed an explicit concern with human rights, with the rights of people as individuals, as citizens within a political community, and as members of the important social grouping of which civil and political society is constituted. Does Western discourse alone, even if it is of compromised universality, have the capacity to generate such a concern with or a conception of human rights?

Or (what may be a more pertinent question here) can a concern for, an affirmation, articulation and defence of human rights be effectively and

autonomously generated from within other, non-Western cultural traditions, philosophical idioms, religious and civilizational frameworks? Perhaps such alternative formulations of ideas of generic human rights have already appeared and been historically elaborated in other cultural forms, grounded in different moral and ideological systems. But even if hitherto they have not -- or the potentials for their elaboration have been only partially, fitfully and imperfectly recognized and developed -- are such intellectual resources made available in other, non-Western contexts and traditions?

The concern of this essay is to consider that question through the exploration of one important and revealing case study, that of Islam. Internationally, so far as human rights issues are concerned, Islam frequently get a very bad press, sometimes unjustifiably so but all too often not undeservedly. Yet what is done in the name of Islam is often not Islam itself, certainly not normative Islam at the level of central ideas and animating principles. The present discussion takes what many, especially in the West, might see as the very unpromising case of Islam to explore potentials and realities of -- as well as the entrenched resistance to -- the generation and elaboration of an effective non-Western discourse of human rights: one that, while it may be as culturally contingent or conditioned in its own way as its Western counterpart, nevertheless has the capacity to yield a notion of universal human rights; the idea that in virtue of their intrinsic or generic humanity transcending all their contingent cultural and historically conditioned differences, people share certain essential entitlements. Whether embodied within the formal political constitutions of human communities or seen as inhering, by divine creation, within human ontology, the idea of human rights is too insistent to have been the intellectual discovery of only one of the many historic communities or civilizations of humankind.

2. **Islamic Reassertion *versus* Reasserting Human Rights on Islamic Grounds**

**R**eligious movements and authority have gained greater influence among the peoples of Southeast Asia as a consequence of modernization and nation-building projects in these states over the past three decades. Varieties of religious assertion together with a questioning of the existing social order have forcefully emerged in the past two decades. Foremost among these forms of religious questioning is the phenomenon of Islamic resurgence. The emergence of this religious resurgence is also related to the adoption and development of the state on the “Western” model. The organization of many Muslim nations over the last fifty years since the end of colonialism has been based on the “Western” state model. In the West the development of the modern nation-state is generally equated with secularization, but in the context of the East, the development of the modern nation-state has just, demonstrated that its consolidation may not necessarily be followed by a lessening of religious authority. In fact, its influence and importance has often grown in the process of modern state formation.

The postcolonial development of most Muslim countries saw increasing tension between this adopted political order and the renewed efforts of many of their citizens to define and strengthen their Islamic identity. In their attempt to find an alternative to that derivatively Western political framework, many Muslims have looked for guidance to their religious community's formative experience -- to Medina as a model society that was set up and headed by the Prophet Muhammad. Yet the vast historical and social changes which span the time between the establishment of the first Islamic community and the emergence of the contemporary world order require a creative and historically sensitive interpretation of that model. At the same time, because they see the typical citizen as a Muslim male, many contemporary Islamists tend to define rights and obligations of citizens

based on *gender* and *faith*. Their main justification is that Islam provides different conceptions of rights and obligations for Muslim men and women as well as for Muslims and non-Muslims. Women and non-Muslims become, if not "Others", then atypical members of society.

It is this Islamic interpretation and conception of human rights that is analyzed and challenged here. In the course of the difficult modernization process to which all Muslim countries have been subjected, traditional societies all over the Muslim world -- South and Southeast Asia as well as the Middle East -- have been undergoing transformations that have affected both those societies and their Islamic institutions and cultural heritage. Even as these societies modernize in their economic and political systems, Islam retains a great influence among the general populace so that the confrontation of modernity on the social level has also become a confrontation of Islam and modernity on the theological and ideological levels.<sup>1</sup>

This confrontation has recently accelerated the production of various forms of "Islamic" discourse about human rights. Contemporary Muslims, like followers of the other two great Abrahamic religious tradition (Christians and Jews), have shown a notable concern for human rights, but are not grounded within any borrowed "Western model". Instead, they have attempted to demonstrate that the original matrix for a culture based on human rights comes from the *Qur'an* and the teachings of the Prophet Muhammad. This drive to reclaim for Islam a vision of human beings and a practice of law and politics sustaining its own version of human rights has

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<sup>1</sup> There are many analyses of this problem. Among others see Fazlur Rahman, *Islam and Modernity* (Chicago: University of Chicago Press, 1982); Malek Bennabi, *Islam in History and Society*, Asma Rashid, trans. (Kuala Lumpur: Berita Publishing, 1991; orig. *Vocation de l'Islam*, 1949); Bassam Tibi, *The Crisis of Modern Islam: A Preindustrial Culture in the Scientific Technological Age*, Judith von Sivers, trans. (Salt Lake City: University of Utah Press, 1988) and *Islam and the Cultural Accommodation of Social Change*, Clare Krojzl, trans. (Boulder, Colorado: Westview Press, 1990); Mohammed Arkoun, *Rethinking Islam: Common Questions, Uncommon Answers*, trans. & ed. Robert D. Lee (Boulder, Colorado: Westview Press, 1994; orig. *Ouvertures sur l'Islam*, 1989).

resulted in abundant and extensive materials by contemporary Muslims dealing with the relationship of Islam and human rights.<sup>2</sup> However, most of this literature is dominated by two very problematic and, in many aspects concerning contemporary human rights principles, not necessarily opposed positions. On the one side are those Muslims who maintain that Islam already embraces human rights standards similar to derivatively Western international human rights standards. They go on to advocate various accommodationist or compromise positions asserting that Islam does accept human rights -- so long as the necessary Islamic rules and concepts are integrated in those rights in order to bring them in conformity with Islamic standards (usually and in particular conformity with the rules of *shari'a*). Close scrutiny of this approach and its literature reveals not only various shades of ambivalence toward the concept of rights, but also many reservations and qualifications. Numerous restrictions are imposed on broad notions of rights and freedoms, especially as they pertain to women and non-Muslims. At the other extreme, there are Muslims who claim outright that current human rights concepts and standards (especially those incorporated within prevailing international human rights documents) are completely alien to Islam and incompatible with Islamic law (as they understand it).<sup>3</sup>

Between these two positions lies a precarious middle ground -- a space within which some of the most creative and humanly inclusive Islamic sociolegal thought is now being created. But, like all forms of courageous and innovative thinking elsewhere, this sociolegal modernism is very far from dominant within the Muslim world, especially its heartlands. This type of contemporary Muslim discourse about human rights is advocated in the

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<sup>2</sup> See Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* ((Boulder, Colorado: Westview Press, 1991). Mayer provides a careful study and a critical assessment of the various Human Rights schemes and documents from both Islamic traditions--the Sunni and Shi'i. Foremost among them are the 1981 *Universal Islamic Declaration of Human Rights* (UIDHR) presented to the UNESCO in Paris, and the pamphlet by Sultanhussein Tabandeh, *A Muslim Commentary on the Universal Declaration of Human Rights* (1970, orig. in Persian, pub. 1966).

main by Muslim scholars and thinkers who are now forced to live in exile in the West, mainly because of the unfavourable response and the risks that would be invited by advocating their ideas in their home countries.<sup>4</sup> The approaches and positions of most of these thinkers are somewhat similar in the sense that they are advocating a review and critical reexamination of exegetical and jurisprudential texts as well as, wherever possible or pertinent, a reinterpretation of Islam's foundational religious texts. Similarly, Muslims advocating equal rights for women have significantly emphasized in their discussion the problematics of interpretation of texts and, from those interpretations, of the codification of laws on the rights of women. The call for a review of the long-accepted juridical opinions and interpretations established during the Muslims' classical age also characterises many contemporary movements promoting women's rights as well as those of non-Muslims coexisting in a predominantly Muslim country.

### 3. Women's Rights as Human Rights in Islam

**A**ccording to An-Na'im, most of the published expositions of human rights in Islam by contemporary Muslim scholars are not helpful because they overlook the problems of slavery and discrimination against

<sup>3</sup> See Ann E. Mayer, *op. cit.*, chapter 2.

<sup>4</sup> Among these Muslim scholars and their works, see Fathi Osman, *Jihad: A Legitimate Struggle for Human Rights, The Muslim World: Issues and Challenges* (1992) and *Shari'a in Contemporary Society: The Dynamics of Change in Islamic Law* (Los Angeles, CA.: Multimedia Vera International, 1994); Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (1990). Another scholar is the Egyptian Nasr Hamid Abu Zayd who recently had to flee from Cairo. With his hermeneutic approach to textual analyses, has opened the *Qur'an* to new interpretations; this approach has led him to voice trenchant criticisms of the position of some of the Islamists figures such as Shaykh Muhammad al-Ghazali, Shaykh Mohamed Metwali al-Sha'arawi and Yussef al-Qaradawi. (See Mona Abaza, "Civil Society and Islam in Egypt: The Case of Nasr Hamid Abu Zayd", *Journal of Arabic Islamic & Middle Eastern Studies*, vol.2, no.2 1995, pp.29-42). Mohammed Arkoun in many of his writings has also advocated similar positions: i.e., a new reading of the text based on his claim that the highest religious teachings and even the revelation itself of the three monotheistic religions (Judaism,

women and non-Muslims. Discussions by Muslim women scholars on the other hand have mainly highlighted those relevant verses of the *Qur'an* which are consistent with human rights standards, but a major problem still remains. We are faced with some crucial other verses which are inconsistent with or even contradictory to universal human rights conceptions.<sup>5</sup> An-Na'im has suggested that the only effective approach to achieve sufficient reform of *shari'a* in relation to universal human rights is "to cite sources in the *Qur'an* and *Sunnah* which are inconsistent with universal human rights and explain them in historical context, while citing those sources which are supportive of human rights as the basis of the legally applicable principles and rules of Islamic law today" (A-Na'im 1990: 171).<sup>6</sup> I have also argued elsewhere that: "The fact that a religion essentially consists of first and/or universal principles requiring human interpretation and varying forms of sociocultural realization ensures a *plurality of competing interpretations* of those fundamental principles. This process of giving particular form to central Islamic imperatives *in order to realize them in particular contexts*

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Christianity and Islam) are subject to historicity (see also Arkoun, *Lectures du Qur'an*, Paris, Alif, Les Editions de la Mediterranee, 1990).

<sup>5</sup> See for example, Riffat Hassan, "On Human Rights and the Quranic Perspectives", *Journal of Ecumenical Studies* 19 (1982): 12 [cited by An-Na'im, 1990 in chap. 7, p.171].

<sup>6</sup> This historical analysis and context is amply demonstrated by Leila Ahmed who argues that the problem of interpretation entails much more than simply the rendering of sacred text itself into a body of social laws. The status of the Qur'anic text itself needs to be addressed. She also asserts that the message of Islam as instituted by the Prophet Muhammad's teachings and practices in his lifetime include two tendencies which are in direct tension with each other. The *Qur'an* strongly advocated an ethical egalitarianism as a fundamental part of its broader or universal spiritual and moral message. Yet patriarchal marriage and male dominance were also basic features of the institution of family and marriage as established historically by Muhammad in the first Islamic community of Medina. The problem lies in the rule of the Prophetic *sunnah* or example that contemporary Islamists particularly and Muslims generally aspire to emulate [see especially Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale U.P., 1992) and also Leila Ahmed, "Early Islam and the Position of Women: The Problem of Interpretation", chap. 4 (pp. 58-73) in Nikki Keddie & Beth Baron (eds.) *Women in Middle Eastern History*, (New Haven: Yale U.P., 1991)]. On this rule of *sunnah* or example set by the Prophet Muhammad, Fathi Osman is one of the few Muslim scholars brave enough to assert that there is a real need to apply discretion in evaluating which practices of the Prophet Muhammad are human and therefore culture-based and which are prophetic in nature and therefore set the rule of *sunnah* which should be emulated. (See Fathi Osman, *Shari'a in Contemporary Society: The Dynamics of Change in Islamic Law*, (Los Angeles, CA.: Multimedia Vera International, 1994).



will confront us with a plurality of legitimate and authentic interpretations, all of them arguably valid for their own contexts but none of them absolute or transculturally authoritative. Giving some actualized form to these first principles is only possible within historical human understanding and in a socio-cultural context".<sup>7</sup> Religious doctrines as first principles are therefore perpetually conditioned by the socio-cultural reality within which they are actualized or realized (the life history and social action of the Prophet Muhammad himself attests to this fact). Herein lies the contradictory relationship between religion as text and religion as practice. A quite ahistorical disregard for the historical context within which the *shari'a* was constructed, and of the consequently historical character of the *shari'a* itself as it was developed and applied within early and classical Islamic civilization, has permitted "*shari'a*-minded" activists to perpetuate in our own times a premodern antagonism against women from which early Islamic societies were not exempt.

... with respect to the status of Muslim women: although it is true that they have full legal capacity under Shari'a in relation to civil law and commercial law matters, in the sense that they have the requisite legal personality to hold and dispose of property and otherwise acquire or lose civil liabilities in their own independent right, Muslim women do not enjoy human rights on an equal footing with Muslim men under Shari'a.

Abdullahi A. An-Na'im 1990: 171

It is rather ironical that this problem of consensus on interpretation of texts in Islam or among contemporary Muslims all over the world is a kind of "mirror image" of the "cultural relativist & cultural legitimacy" debates on

<sup>7</sup> Norani Othman, "Gender Inequality, Culture and the Historicity of Religious Interpretation" in Norani Othman & Cecilia Ng (eds.), *Gender, Culture and Religion: Equal Before God, Unequal Before Man* (Kuala Lumpur: Persatuan Sains Malaysia, 1995), chapter 1.

criticizing the primacy or pretended universalism of Western conceptions of universal human rights. What Muslims today have to confront is the fundamental claim by militant resurgent Islamist forces that only their perspective and interpretation of Islam, of its values and its view of human rights and women's rights, are the "universal" and legitimate view for all Muslims at all times. This claim of universality needs to be negotiated and challenged within the Muslim world-wide *ummah*. This rejoinder and challenge to be mounted against the claims of resurgent and militant Islamists is most relevant and appropriate in the context of An-Na'im's proposal that there is a need for "changing a cultural position from within, through *internal discourse* about the fundamental values of the culture [read religion as well] and the rationale for these values" before a cross-cultural dialogue can take place.<sup>8</sup> In this case then, one may also apply what John Rawls describes as an "overlapping consensus" in his account of political liberalism to the Islamic or Muslims' internal discourse.<sup>9</sup> The idea that human equality is pervasive in all religious ideals, with no special exceptions or exemptions being accorded as a matter of principle to gender differences, is also to be debated and negotiated within the internal discourse of modern/contemporary Muslim societies. Yet there often is a gap between ideal and practice of the Muslim *ummah*. This reality requires both Muslim men and women to make the choice of undertaking that internal debate, commit themselves to principled participation in challenging the narrowness of traditionalist and neo-traditionalist views of human rights in Islam, and in enlarging the contemporary Islamic discourse on rights.

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<sup>8</sup> Abdullahi A. An-Na'im (ed.), *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, (Philadelphia: University of Pennsylvania Press, 1992), p. 4.

<sup>9</sup> See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), Part Two, Lecture IV, "The Idea of an Overlapping Consensus", pp. 131-172.

#### 4. Human Rights as a Universal Concept in Islam

**T**wo main issues confront modern Muslims. First, there is a need to examine currently prevailing *shari'a* definitions of human and citizenship rights. What is at issue here is not the rights of Muslims, of non-Muslims, of majorities or of minorities but the rights of human beings as simply human beings, generically. Any consideration of the position of any special category or "sub-set" of human beings can only follow from, and within the parameters of, such an examination. This awareness is by no means alien to Islam but is grounded in the Qur'anic notion of a common human ontology [*fitrah*], couched in an Islamic idiom of moral universalism which predates much of the Western discourse about human rights. Like modern discourses about human rights, the Islamic tradition is centrally concerned with the human, moral and therefore ultimately religious meaning of human beings themselves. This question of the human meaning of human beings is a growing challenge to *all* theological traditions, cultures and civilizations. In the increasingly interdependent and globalised world which we all now inhabit and must share, human beings have rights simply as human beings, regardless of differences of race, gender, religion and the like. This, doctrinally, is the view that lies immanent but central within the Qur'anic "worldview" itself. The challenge to contemporary Islam, and Muslims, is to adopt that same standpoint as its, and their own. The challenge to today's Muslims, and especially the new traditionalist ideologues, is to begin to see humans, all humans, in the way that their faith insists Allah himself sees them.

Second, Muslims need to contribute their own modern and Islamically appropriate conceptions of social relations, established on a basis of equality, between men and women. Here again, Qur'anic conceptions of the rights and duties of men and women -- in the family, to own and manage property, and to participate in public life and to hold public office, for

example -- provide the basis for a far more enlightened and egalitarian view of gender relations than the regressive ideas that are currently offered, quite misleadingly in the name of Islam itself and with the supposed imprimatur of its faith, by resurgent Islamists and traditionalist ideologues the world over.

In debating these issues, Muslims must also recognize another dimension -- the dimension of existing international human rights documents with their own distinctive conceptual basis and perspective. But until the two main issues mentioned above are clearly defined, any Muslim critique or rejection of those documents remains premature, even questionable. Those instruments and their moral foundations, derivatively Western in their origins and history, can be neither embraced wholesale nor summarily rejected at the outset of such a process of consideration by modern Muslims. Only after a critical reevaluation of their Islamic heritage -- and especially the idea of an underlying common humanity that finds variable cultural expression within the differing societies of a diverse humankind -- can progressive Muslims decide in what ways and to what extent they should accept, reject, modify or renegotiate the stock of derivatively Western concepts and ideas that are now offered as the basis for a universal discourse or theory of human rights.

A major problem here -- and one whose existence and nature have been insufficiently recognized -- is that these various '*shari'a*-minded', 'traditionalistic' or 'fundamentalists' recodifications of modern state laws redefining people's, and especially women's rights, affect not just their personal but their social participation and citizenship rights. Yet these proposed *shari'a*-based recodifications are promoted, and also borrowed and imitated, from countries, especially in the Middle East, that entirely or largely lack any articulated and elaborated notion of citizenship rights. These are states with regimes, but without citizens or "civil society". They invoke and uphold the adequacy of conventional Islamic views of the purely personal status rights of women and non-Muslims; by this manoeuvre,

intentionally or by oversight, they set aside or rule out any consideration of the broader social, civic and political rights and full legal standing of women and non-Muslims as equal citizens of the state.

No wonder then, that the Islamist ideologues promoting these *shari'a*-based recodifications can blithely dismiss the serious disquiet voiced by modernist Muslim critics with empty assurances that “all will be well” under the new Islamist legislation. They are deaf and impervious to the expression of these modern “citizenship-oriented concerns”, since such concerns and their moral and intellectual foundation are way beyond the reach and range of the ideologues’ traditionalistic socio-legal consciousness.

Denying women’s citizenship rights is for them unproblematic, since they themselves have no modern experience or understanding of citizenship. We are entitled to wonder how appropriate, then, are their ideas and agenda, arising from their own limited and limiting circumstances, as a basis for modern social policy and legal reform under different, less restricted conditions.

A basic question is therefore posed to the leaders and citizens of those Muslim countries, such as Malaysia, that have successfully achieved some measure of socio-economic modernity and developed the basis for some definition, appropriate to their own historical situation, of democracy and citizenship as well as human rights: why should such countries, which are already successfully launched on a trajectory towards modernity, including modern notions of the nation as a national community consisting of people sharing “citizenship rights”, take their advice and take a lead in the elaboration of their modern “citizenship traditions” and their notions of citizens’ rights from religious ideologues and developmentally “deadlocked” nations that entirely lack any modern understanding of “citizenship”, of the modern individual enjoying rights as a citizen?

Precisely those Muslim countries that have achieved some degree of socio-economic, cultural and political modernity -- often on a historical foundation, as in Malaysia, that is outside the despotic grip of traditional Middle Eastern social structures -- are challenged for their insufficient or incomplete "Islamicity". Development has already distanced them to some degree from their traditional socio-cultural origins, and that starting point in their case was itself not paradigmatically 'Islamic' according to the dominant though parochial views of Islam's Middle Eastern heartlands, whose leaders and ideologues have always sought to define Islam authoritatively, for all Muslims throughout the worldwide *umma*, on the basis of their own (not very encouraging) historical experience.

That such 'Islamist' ideas, with their own yearning for some unrealized utopian ideal, should be able to exert a powerful appeal, even in rapidly developing countries such as Malaysia, among those social groups who see themselves as excluded from, or as the victims of development is not surprising but it remains troubling: not least to modern Muslims sensitive to the centrality and resonance of the issue of rights in both Western and Islamic historical consciousness and civilization.

What is a cause of concern in countries such as Malaysia is the apparent readiness of some national leaders, who at the very overt political level directly oppose the 'Islamist' agenda and the parties advocating it, to accommodate such 'Islamist' tendencies and to capitulate piecemeal to their demands in such areas as the recodification of modern state law--especially in areas most affecting women.

## 5. Citizenship Rights and the Position of Muslim Women

The equality of men and women is an Islamic concept, not just a Western idea.<sup>10</sup> There is a popular misconception, especially among the neo-traditionalists and those susceptible to their publicity, that equality of men and women is based on Western (and hence "unIslamic") laws and civilization. This misconception has been challenged by many Muslim women activists, thinkers and scholars in recent times. It is a great pity and that so many Muslims these days are trying to place barriers not only in front of women's faces but also around the rights of women and their activities. The same issue of the recognition and acceptance of human pluralism and difference is involved in the question of the gender gap. However, many contemporary Islamists see the typical citizen as a Muslim male and tend to define rights and obligations of citizens based on gender and faith. Their main justification is that Islam provides *different* conception of rights and obligations for Muslim men and women as well as for Muslims and non-Muslims.

Yet what is centrally at issue here, as already noted, is not the rights of Muslims, of non-Muslims, of majorities or of minorities but the rights of human beings as simply human beings generically. This awareness is by no means alien to Islam but is grounded in the Qur'anic notion of a common ontology (*fitrah*), couched in an Islamic idiom of moral universalism which unfortunately has been neglected in all contemporary Islamists' discourse and in their elaboration of classical interpretation of *shari'a* into living laws in modern times.

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<sup>10</sup> Part of this section is drawn from a presentation in a Panel Discussion "Women & Law" in the the Muslim Politics Study Group Series "Pluralism in the Muslim World: The Changing Roles of Women" at the Council On Foreign Relations, New York, 12 January 1996. [Norani Othman "Islam, Shari'a and Women in Contemporary Muslim Societies" pp. 7-10, (unpublished manuscript)].

This gap between the ethical principles of the *Qur'an* on gender equality and the kinds of retrogressive and male-centred interpretation which over time were codified into law provides a challenge for modern Muslim women's pursuit of equality. The endorsement throughout much of Muslim history of official androcentric or historically contingent interpretations of human social and legal realities has excluded many gender-neutral and other alternative interpretations from circulation.<sup>11</sup>

The socio-cultural bias built into the interpretive process and the exclusively or traditionally male composition of its permitted exponents among the *fuqaha* and *ulama*<sup>12</sup> worked to disqualify and even suppress not simply new interpretations but any endeavour to broaden interpretive practices and processes, especially by opening up the contextual and historical bases of interpretive reasoning. (The current debate in Muslim countries such as Malaysia and Indonesia on *hadith* is a case in point. The relevant issue here is not the rejection of *hadith* by some modern Muslims. Rather there is a real need in Muslim countries for a reexamination of the classical interpretation of *hadith*.<sup>13</sup> Tied up with this debate is also the yet unrealized need to review or provide a critique of the conventional theory of the Prophetic *sunnah*).

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<sup>11</sup> See Fatima Mernissi, *Women and Islam: An Historical and Theological Enquiry* (Oxford: Blackwell, 1991). [The American edition is entitled *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (Reading, Mass.: Addison-Wesley, 1991)]. Also Margot Badran & Miriam Cooke (eds.), *Opening The Gates: One Hundred Years of Arab Feminist Writings* (London: Virago Press, 1990) and Barbara F. Stowasser, *Women in the Qur'an, Traditions, and Interpretations* (New York: Oxford University Press, 1992).

<sup>12</sup> *Fuqaha* are masters or experts of interpretive legal reasoning; *ulama* are generally religious scholars.

<sup>13</sup> The debate on *hadith* is particularly relevant to the project of Muslim women's groups which endeavour to promote a more egalitarian interpretation of gender statuses and rights. Much of the gender-bias in historical *shari'a* and conventional theological views derives from traditionalists' interpretation of *hadith* texts. (See explanation in section 7 of this essay). See also Fathi Osman, *Muslim Women in the Family & Society* (Kuala Lumpur: SIS Fõrum Publications, 1996); Stowasser 1992 and Mernissi 1991 (cf. footnote 11).



## 6. Change in Islamic History, Law and Society

**A**s today's muslim nations modernize, social change inevitably occurs especially in the socio-economic circumstance of women including the majority of Muslim women.<sup>14</sup> Many Muslim scholars assert that the way to move forward is for Muslims to develop (or recover) the imaginative ability to grasp such fundamental change. I say here "recover" because from the inception of their common history, Muslims have always held, at least theoretically, that change (change in people and in society) is possible, part of the human condition itself. But while the Muslim outlook or worldview has encompassed this possibility as a matter of principle, most Muslims themselves as real historical beings have lost the practical ability to face, cope with, understand or master change.

There are many examples of Qur'anic foundation of the concept and principle of change: the *Qur'an* in taking humankind beyond the age of *jahiliyya* or ignorance, oriented human thinking towards change, a receptivity towards possibilities of change. There is also the idea of change through migration or *hijrah* in early Islam: a transfer not simply from one place to another (Mecca to Medina, in the paradigmatic instance) but from one social and moral plane to a higher one. In their own history, Muslims have changed from a city-state in Medina to a universal state; from a state with a central authority in Damascus or Baghdad to a polity with many autonomous governments and distinct political entities: change in the historical conditions of Muslim existence has been constant.

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<sup>14</sup> This section draws on the *Sisters In Islam* [registered name: SIS Forum (Malaysia)] Study Group's discussions with Prof. Fathi Osman, in August - September, 1994 and October - November, 1995 and also its series of public lectures on "*Shari'a* and Modernity" in 1995. Based on these intensive discussions, SIS Forum hopes to publish pamphlets on "Islam, *Shari'a* and Modernity" and "Islam, Human Rights and Democracy" as a continuation of their booklet series on the theme of a renewal of Islamic thought.

There has also been constant change in Islamic law itself. Islamic law consists of certain broad, general principles that have come to be realized historically in varying social circumstances. As those historical circumstances have changed, the details of codifications of Islamic law have also changed, among other things through the operation of *ijtihad* or informed, critical reason. Through *ijtihad*, through the practice and exercise of intellectual discretion, we as Muslims try to cope with applying those broad legal principles to emerging social and historical realities. Even so, despite these possibilities for flexibility and dynamism, stagnation set in.

For that, many Muslims are always ready to blame colonialism. Whether it is colonialism itself that is at fault or rather, as Malek Bennabi suggests, our own readiness to accept colonialism (or its twin phenomenon – *colonisibilité* -- the domination of our minds by alien ideas, and a habituation to passivity and acquiescence in alien cultural domination) is another debate.<sup>15</sup> Whichever is the case, we are now heirs to a history of centuries of stagnation. That is a legacy which must be overcome. We now need to regain a belief in change and in our confidence to manage it intelligently, to pursue our own agendas rather than to capitulate to those of others. In this context, modern Muslims, especially in countries such as Malaysia that lie outside the culturally Arabic heartlands of Islam, need to be wary of acquiescence in a new colonization: by traditionalistic Islam misunderstood as the transhistorically essential Islam, and by an archaizing Arabization proffered as embodying Islam in some pseudo-normative form.

Contemporary Muslims must learn to cope intellectually with the realities of change, which means overcoming the long-standing split in Islamic intellectual life between utopian and historical thinking -- or rather the domination of our social and historical thinking by utopian thought. This

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<sup>15</sup> Malek Bennabi, *Islam in History and Society*, Asma Rashid, trans. (Kuala Lumpur: Berita Publishing, 1991; orig. *Vocation de l'Islam*, 1949).

has long been our problem. We have held in such awe what might, or should, be that we have made ourselves unable to look squarely at what is.

This domination of realistic by utopian forms of thought may, of course, be a symptom or result of a long experience of powerlessness; but it is also part of the legacy of the intellectuals, especially the legal scholars, of classical Islamic civilization whose feelings of powerlessness, we should remember, came from their experience not of foreign colonial domination but of Arab despotism. Muslims have remained so preoccupied and obsessed with ideal or utopian thinking that we have lost the imaginative ability to think realistically about change. We often confuse the two: so far as the past is concerned, we often think that our path, because it is the path of Islam's history, is and must be the ideal path; hence we become apologetic and defensive about that past, even about those aspects of it that are quite negative and unideal.

Again, the consequence of this confusion in our historical understanding is that it denies us the imaginative ability to address and pursue change; confusion between utopian and realistic thinking in the historical past undermines our ability to cope with change in the present and immediate future. Yet change is now descending upon us in an overwhelming fashion, and unless we learn to cope with it intellectually, we will never be able to master it historically. If we fail to create the kind of thinking which gives us the ability to recognize what faces us, the Muslim world will be faced with an abject situation. Internal deliberation aimed at "opening up debates and encouraging the creation of a public reason" within Muslim societies will require a calm and reasonable debate on the issue of historicity and change about the Islamic heritage of contemporary Muslims. This in turn requires modern Muslims to act upon a basis which is historically informed and feasible, not one which is historically and religiously confused.

A necessary part of this choice turns upon understanding what is divine in the *shari'a* and what, in the scholarly tradition interpreting it, is of human origin. It is the choice between futility and creativity: between seeking to impose archaic and limited legal understandings upon the present or else seeking to understand the history of Islamic civilization so that modern believers, members of an interdependent humankind, may act authentically as well as realistically and effectively as Muslims upon the stage of global history.

7. **Gender Equality and Women's Rights in the *Qur'an* and *Shari'a*: Problems of Interpretation of Text and in the Codification of Religious Laws -- Some Malaysian Examples.**

**M**uslims past and present, from all *madhab* (juristic schools) and political persuasions including the orthodox conservatives as well as modernists, claim that Islam was the earliest religion to emancipate women, giving them rights at the time unknown in any other society. This general consensus is found among all students of Islam and of its history. Writers and scholars, Muslim and non-Muslim, routinely point out that the *Qur'an* introduced various positive changes and reforms for women. These Qur'anic reforms include a woman's right to contract marriage, to divorce, and the right to inherit and dispose of her property as she pleases. Early Qur'anic injunctions also called for the outlawing of female infanticide and enforcing the payment of *mahr* (the payment of male dowry) to the bride herself, rather than to the bride's father or guardian. Yet while progressive in tendency, these early ideas of the rights and status of women did not develop further or sustain any emancipatory or egalitarian impetus within the interpretation of *shari'a*: by later generations of Muslims throughout the period that saw subsequent evolution of Muslim civilization after the death of the Prophet Muhammad, or among contemporary Muslim societies.

What, as a totality, is at present accepted and established as a body of Islamic tenets and laws concerning women does not rest solely on the *Qur'an* or on direct interpretation of its text, but includes inferences and interpretations drawn from the so-called 'Traditions' (*hadith* and *sunnah* of the Prophet), as well as the accumulated *tafsir* (interpretations) of the classical Islamic scholars and exegetes. The Islamic paradigm of the ideal role, status and duties of Muslim women was largely derived from such *tafsir* of male jurists and scholars, particularly of the classical age of Islamic civilization.

This heritage has now become a bone of contention, providing a challenge for contemporary Muslim women as they do daily battle to reclaim their rights and assert their equal status with men in their own societies. For Muslim women in Southeast Asian countries such as Malaysia and Indonesia the struggle is doubly problematic. It not only involves the clash between traditionalist and modernist understandings of the Islamic social ethic and legal heritage. Also entailed is a conflict between certain Malay and derivatively Middle Eastern Islamic cultural traditions. In Malay society, as in other Southeast Asian systems, cultural traditions or customs known as *adat* define and affirm women's role and their public contribution or participation, often in positive, non-hierarchical ways.<sup>16</sup> This tension between Southeast Asian cultural definitions of women's gender roles and rights and traditionalistic Islamic formulations is most prominent in the rule of *hijab*. This rule entails not just covering of a woman's face but more generally female seclusion and segregation of social space -- a separation which characterizes gender relations throughout much of Islam's Middle Eastern heartlands but which is not a cultural characteristic of the "Malay world" or *Nusantara*. Other rules which have been codified into Muslim law

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<sup>16</sup> See M.B. Hooker, *Adat Laws in Modern Malaya: Land Tenure, Traditional Government and Religion* (Kuala Lumpur/New York: Oxford University Press, 1972); Wazir J. Karim, *Women and Culture: Between Malay Adat and Islam* (Boulder, Colorado: Westview Press, 1992).

include the right of Muslim men to practise polygamy and the *shari'a* principle limiting a female's inheritance right to the value of half of whatever her male siblings inherit. These have become controversial issues, particularly for Muslim women in Southeast Asia, since they often go against local *adat* or custom, especially the matrilineal *adat perpateh* rules of kinship and inheritance long practised in areas such as Negeri Sembilan in Malaysia and Minangkabau and parts of Aceh, in Indonesia. It is noteworthy that despite their emphasis on female property rights and women's unfettered social participation, these *adat perpateh* areas have been known historically as regional centres of Islamic activism and renewal.

### 7.1 Family Law and the Promotion of Polygamy

One aspect of recent Islamization in Malaysia has been the drive to introduce new rules or the proposal of various amendments to existing Muslim enactments. More "Arabizing" than merely Islamizing, these rules or proposals are often inspired by the Islamists' desire to imitate what they regard as authentic Islamic rule or precedent. As an illustration of this tendency, rulings on contracting polygamous marriages under the respective Islamic family laws of various states in Malaysia, for example, have gone through several amendments according to the ebb and flow of neo-traditionalist views of Islamist groups and their fluctuating political influence in Malaysian society.<sup>17</sup> In the early days of self-rule and throughout the first

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<sup>17</sup> Emerging from the former Federation of Malaya (which became independent from Britain in 1957 and which in turn had been formed from the coalescence of the various Malay States and British Crown Colonies on the Malay peninsula), modern Malaysia is a federation of states, most of which evolved from and are thus based upon the precolonial sultanates of peninsular Malaysia. Under its constitution, the powers of the central government, as in many new national development states, are overwhelming; but the constituent states of the federation do have some significant powers and constitutional prerogatives. Because they evolved from the former sultanates, these states express the historical continuity of Malay society and the primacy of the modern nation's indigenous Malay/Muslim population. The states are still headed by rulers who are descendants of their former ruling sultans. The states and their royal heads still enjoy a significant constitutional position: for while much of their roles is now decoratively ceremonial, the position of the Malay rulers as symbols of Malay continuity and ascendancy within modern Malaysia is

post-Merdeka decade of Malaysian political independence, the prevailing ruling on Muslim polygamy, in accordance with a modernizing ethos, was very restrictive. A Muslim husband who wished to contract a second marriage had to seek written permission from his first wife. In recent years the Islamic Affairs Department in almost every state in Malaysia has sought to amend this ruling and between 1988 and 1994 many of the Malaysian states gave recognition in the implementation of their Muslim law enactments to the right of a Muslim husband to contract second, third or fourth marriages without permission from any of his existing wife or wives, so long as he can furnish evidence that financially he has the means to maintain more than one wife.

In practice, a man is merely required to make a declaration, written or verbally in front of a *shari'a* judge, that he has the economic means to provide for the material needs of his wives and that he shall treat all his wives fairly and equally. The Qur'anic injunctions allowing men to take more than one wife explicitly place great and humanly impossible conditions [*Al-Nisa*, 4:3 and 4:29]. Yet Muslim theologians and masters of juristic reasoning (*fuqaha*) have interpreted these injunctions to allow polygamy virtually at will, leaving it only to the conscience of men to ensure that they treat their wives fairly, rather than stipulating the strict conditions of equal and fair treatment of all wives which are explicitly articulated and in effect express the Qur'anic conscience *against* polygamy. In fact, most modernist interpretations of the Qur'anic injunctions on polygamy find that since the conditions expressed by the *Qur'an* are humanly impossible to achieve, one may propose that polygamy be banned except under very extreme conditions.

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powerfully entrenched within their own constitutionally-based prerogatives, and those of their state governments, over the administration of the Islamic religion within their own domains. Needless to say, this division of powers between the central government, on the one hand, and the state administrations and their royal figureheads, on the other, gives rise to tensions and conflicts over competing *shari'a* jurisdictions. The political rivalry over Islamic legal administration to which this overlapping of federal and state concerns in

such as the need to take war widows as a second, third or fourth wife in order to take care of orphaned children [this, in fact, was the *asbab al-nuzul*, the occasion or context of the revelation of the Qur'anic verses endorsing polygamy]. In this view, the codified law should give expression to the Qur'anic view that polygamy is a contingent, occasional and circumstantially warranted *responsibility* rather than an inalienable right of a Muslim male and that monogamy is the expressed Qur'anic ideal.

Malaysia in the early 1970's and 1980's embarked upon a remarkable programme of reformation of Islamic family laws under the doctrine of *siyasa shari'a* (i.e., that, to serve the best interests of the community, the state in the codification of its laws may choose from among the opinions of differing schools of law or *madhab* and select the pragmatically most suitable option). Among the measures so introduced were restrictions on polygamy to ensure that justice is done as envisaged by the *Qur'an*. As interpreted into law, this meant that the decision to marry a second or subsequent wife no longer rested with the Muslim male himself who intended to embark upon that course of action. Vested with the responsibility for the administration of justice, the state was now entrusted with the task of scrutinizing an application for polygamy to ensure that it met with the notion of justice envisioned by the *Qur'an*. The law laid down a set of conditions upon which it sought to ensure that justice would be done. Under these provisions, consent of the existing wife or wives was just one of the factors to be taken into consideration by the court. Four other conditions also had to be met: that the proposed marriage was "just and necessary", that the applicant had the financial means to support his existing and future dependents, that he would be able to accord equal treatment to all his wives,

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Islamic religious matters gives rise profoundly affects all Malaysians, but especially Muslim women, as outlined in this essay.



and that the proposed marriage would not cause *darar syar'ie*<sup>18</sup> (or harm to the existing wife/wives) [see Selangor Islamic Family Law Enactment, 1984 (Section 23, especially subsections 4(a)-(e)]. To that end, the law required the court to summons the applicant and his existing wife or wives to be present *in camera* at the hearing of the application. For the court to have the opportunity to consult with the existing wife/wives was deemed necessary, since her/their experiences of living in the same household would surely assist it in ascertaining the man's character and whether he would be able to fulfill the conditions required under the law before permission for polygamy was granted. The intent of the law, so it seems, was to affirm that justice in Islam would not be gender-biased. However, in the actual implementation of the law, much of the spirit and intent of these reforms remains largely ignored because of the biased or prejudicial attitudes of an increasingly patriarchal society (many of these revived patriarchal notions of gender rights having been brought to Malaysia and Indonesia via Islamic resurgence since the mid-1980's).

While modernist views, resting on secure Qur'anic foundation, seek to ensure rights and gender equality in Muslim societies, many Muslims and the *shari'a* court officials often challenge such egalitarian interpretations. Either branded as too radical or deemed to be modern innovations veering away from the tradition of early or formative Islam, they should be rejected, the traditionalist insist. Indeed, the tendency is often to apply the general rule that since Islam does *not* reject polygamy outright, a Muslim male is therefore said to have "the inalienable right to practise polygamy".

The issue of polygamy is at present extremely contentious in Malaysia. Since the second half of 1980's and throughout the 1990's there have been many attempts by local *ulama* and other Muslim authorities in the

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<sup>18</sup> *Syariah* (other cognates: *syar'ie*) is the Malay transliteration of the Arabic word *shari'a*. In this essay the Malay transliteration (*syariah*, *syar'ie*) is only used when referring to any of

several Malaysian states' Islamic Affairs Departments to allow, widen and even encourage the practice of polygamy among Malaysian Muslims as a matter of principle and to ignore (or as in recent months, to remove) as many of the restrictions and conditions contained in the existing *shari'a* enactments of the thirteen Malaysian states. As recently as October 1996, two of the states (Selangor and Perlis) sought to amend the state *shari'a* enactments in order to facilitate polygamy by removing the condition requiring consent and evidence of the first wife and/or existing wives.<sup>19</sup>

Spurred into action, many women's groups questioned the wisdom and religious basis for such a move. In a meeting between a group of more than 50 women representing various Muslim women's associations and NGOs with the Chief Minister of the State of Selangor and several of its top religious officials--namely, the Selangor State Mufti, Selangor Religious Department Director, the Petaling Jaya Syariah Court Judge, State Muslim Marriage Registrar and the Selangor State Legal Adviser -- the focus of discussion was not the question of interpretation of Islamic foundational texts. Rather, the Qur'anic legitimacy of the proposed amendment removing those restrictions was the overriding issue.<sup>20</sup> This case demonstrates that the challenge by Muslim women since the mid-1980's to the religious authorities' interpretation of polygamy has been partially successful in so far as the view that "polygamy is a right enshrined in the *Qur'an*" is now no longer regarded as valid or acceptable. Efforts by women's groups and other Muslim modernist groups seem to have made some headway: in questioning entrenched traditionalist views, in opening up debate over some traditional

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the Malaysian or Indonesian *shar'ia* enactments, documents, etc.

<sup>19</sup> When the Selangor Islamic Affairs department announced its proposal to drop a legal requirement that husbands obtain the permission of their first wives before taking others, it claimed that this move was aimed at allowing men to "obtain their God-given right and to reduce adultery". Other *ulama* in the state also added that this will help to reduce the alarmingly high percentage of single/unmarried professional Muslim women in the economically booming Klang Valley surrounding Kuala Lumpur (a social statistic often quoted by male *ulama* since the 1990's whenever they bemoan the so-called lack of social morality and the breakdown of family values among urban Muslim population).

interpretations of text, and in challenging the codification of religious laws by the state Islamic authorities. Their argument that such codifications are often anachronistic rests on the "historicity critique", which seeks to show that, even in classical times, how the *shari'a* has been interpreted and promulgated into law has always been pervasively shaped by local conditions and circumstances. This kind of opposition to the instituting of regressive and anachronistic understandings of *shari'a* in modern times is not unique to contemporary or modern Malaysian Muslims but has been an ongoing discourse among Muslims in many Middle Eastern countries since the late nineteenth century, particularly Egypt and Syria.

The debate over polygamy in modern Muslim countries such as Malaysia is just one illustration of the main issues that are involved in the internal and cultural contestations for the assertion and establishment of women's rights in Islam.<sup>21</sup> This case study exemplifies the difficulties obstructing any realistic implementation of legal reforms in Islam in the face of the current resurgent Islamization movements, which remain strongly influenced by traditionalist and "retraditionalizing" Islam.<sup>22</sup> Even though the state has successfully mandated a more "open and egalitarian" reading of religious texts through its legal codification, the actual implementation of its

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<sup>20</sup> See *The Sunday Star*, 3 Nov. 1996 special article "Focus: Facing Up a Touchy Issue".

<sup>21</sup> Polygamy is an important issue of women's rights for women's groups in Malaysia such as *Sisters in Islam*. In their view acknowledging polygamy as an inalienable right of a Muslim male nullifies the Islamic notion of rights of a woman in a marriage. (Since in Islam, a woman cannot be forced into a marriage without her consent, how can there be a law which unilaterally gives a Muslim husband the right to change the circumstance of the marriage contract without her prior knowledge or consent?) Making polygamy an unquestionable right of a Muslim male also contradicts the general principle of equality between Muslim male and female. Many other Malaysian Muslim women's groups consider that making laws or regulations concerning polygamy on the basis that it is "an inalienable right of a Muslim male" contradicts the Qur'anic view of polygamy and at the same time entails a great injustice towards women in marriage, both the existing wife and the prospective one.

<sup>22</sup> See Norani Othman (ed.), *Shari'a Law and the Modern Nation-State: A Malaysian Symposium*, (Kuala Lumpur: SIS Forum (M) Berhad, 1994), chaps. 9, 13 and especially 14 (pp.148-9) for an elaboration of what is meant by "retraditionalizing" Islam--an anachronistic approach of Islamization which seeks to reaffirm and reimpose in the present the understandings of Qur'anic ethical imperatives of early formative Islam.

progressive stance and intentions remains obstructed, especially since male Muslims with decidedly traditionalistic and regressive doctrinal inclinations predominate among the decision-makers and office-holders within the various state departments of administration of Islamic affairs and the administration of the *shari'a* court system. This further underlines the urgency of the argument for the primacy of citizenship rights for Muslim women in their own respective countries. No simple internal reform of the *shari'a* court and administrative system will suffice to remedy these problems. Redress lies not within the narrow confines of the system of Islamic religious administration but by assuring and advancing the citizenship rights of Muslim women on a broad social front.

### *7.2 Gender Equality and Qur'anic Islam*

The muslim traditionalists' position on women's rights rests heavily on the argument that Islam recognizes no notion of gender equality. This assertion is based on two theological claims: first, that since in the creation of human beings, the female was created from a man's rib, she is therefore in her origins derivative and secondary, while men are inherently superior to women who are for men's use; and second, that men have authority over women, since men are *qawwamuna* ("have responsibility") over women (a claim based on the traditionalists' preferred interpretation of a key Qur'anic verse (*Al-Nisa*, 4: 34)). On these grounds, the general conclusion of the traditionalists is that in Islam all men are regarded superior to all women. The claim that men, individually and categorically, are superior to women, whose role is to provide for men's needs and continuing reproduction through loyal service to them in the personal and domestic realm, finds its expression in the interpretation and emphasis given by the traditionalists to

the Qur'anic injunction that "your women are a tilth for you to cultivate so go to your tilth as you will" (*Al-Baqarah*, 2:23).<sup>23</sup>

The theological foundations for this imposition of female social subordination have been critically and effectively challenged in recent years. For example, Fatima Mernissi from Morocco and other Muslim scholars from Egypt, India, Pakistan and the Sudan have provided cogent and convincing arguments that in principle and intention Islam actually recognizes and promotes gender equality.<sup>24</sup> The common assertion of Muslim modernist scholars is that Islam is a liberating religion that uplifted the status of women and gave them rights considered revolutionary 1,400 years ago. Their various arguments rest on the shared assertion that none of the Qur'anic verses which speak of the human creation makes any mention of woman as an inferior or derivative being. "There is absolutely no difference in the value given to the creation of woman and the creation of man. Biological differences do not mean that women and men are not of equal value".<sup>25</sup> Riffat Hassan, for example, has shown that "the story of the rib" was derived from the Old Testament which was later absorbed in some

<sup>23</sup> See Muhammad Assad's rendering as "your wives are your tilth; go, then, unto your tilth as you may desire, but first provide something for your souls and remain conscious of God", to which he adds the footnote "in other words, a spiritual relationship between men and women is postulated as the indispensable basis of sexual relations." In its context the injunction to individuals swept up in the dynamics of a pastoral military or derivatively tribal society, that they should go to their tillage can only be understood as a call to adopt a settled, stable, orderly and socially responsible form of life. It is not an injunction or authorization to men to treat women simply as the vessels of their personal gratification and of the social reproduction of their patriarchal clan groups (See Muhammad Assad, *The Message of the Qur'an*, Gibraltar: Dar-ul Andalus, 1980, p. 49).

<sup>24</sup> See Fatima Mernissi, *Women and Islam: An Historical and Theological Inquiry* (Oxford, Basil Blackwell, 1991) and *The Forgotten Queens of Islam* (Cambridge: Polity Press, 1993); Leila Ahmed, *Women and Gender in Islam* (New Haven: Yale University Press, 1992); Asghar Ali Engineer, *The Rights of Women in Islam* (London: C.Hurst & Company, 1992); Aftab Hussain, *Status of Women in Islam*, (Lahore, Pakistan: Law Publishing Co.) and Abdullahi Ahmed An-Na'im, *Toward An Islamic Reformation* (New York: Syracuse University Press, 1990).

<sup>25</sup> See *Sisters in Islam*, "Are Women & Men Equal Before Allah?" Booklet Series (Kuala Lumpur: SIS Forum (M) Berhad, 1991) pp. 3-12.

hadith literature.<sup>26</sup> The *Qur'an* itself states that "And of everything we have created pairs [zawjayn]" (*Adh-Dhariyat*, 51: 49). Several other verses in the *Qur'an* also note the characteristic of equal pairs in creation.<sup>27</sup>

Several other verses in the *Qur'an* (33: 35-36; 9: 71-72; 4: 124; 3: 195; 40: 40; and 16: 97) specifically address both women and men, giving them equal roles and responsibilities in spiritual life and in the Islamic struggle as well as equal rewards and punishment for their actions.

The Believers, men and women, are protectors, one of another; they enjoin what is just, and forbid what is evil; they observe regular prayers, pay zakat and obey Allah and his Messenger. On them will Allah pour His mercy: for Allah is Exalted in Power, Wise. Allah has promised to Believers, men and women, gardens under which rivers flow, to dwell therein...

(*At-Taubah*, 9: 71-72)

The ethical outlook of the *Qur'an*, which humankind is urged to adopt as its own, is uncompromisingly universalistic. It acknowledges no categorical precedence of men over women or Arabs over non-Arabs but instead insists that, regardless of particular identity, "the noblest in the sight of Allah are those who are most devoutly conscious" of Allah's omnipresent reality (*Al-Hujurat*, 49: 13). Since the equal status of women and men in spiritual matters is not only recognized but insisted upon in the *Qur'an*, can

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<sup>26</sup> See Riffat Hassan, "Made from Adam's Rib: The Woman's Creation Question" in *Al-Mushir Theological Journal of the Christian Study Centre*, (Autumn 1985), Rawalpindi: Pakistan.

<sup>27</sup> See *Qur'an*, 55: 45; 78: 8; 50: 7; 22: 5; 36: 36. In the creation of human beings described in the *Qur'an* the male and female make up the pair. Nowhere does the *Qur'an* say that one is derivative of and/or secondary to the other. Since everything created comes in pairs, one does not come from or before the other. Neither enjoys superiority or precedence over the other, nor therefore are women created for men's use. Both are created for each other's mutual benefit. The *Qur'an* speaks of *nafs* or soul (essence) as the entity in the creation of male and female human and no suggestion is made that the female was created from the male's rib.

the Islamic insistence upon the equal rights and obligations of women and men be any less in temporal matters?<sup>28</sup>

The assertions of the modernists and contemporary Muslim women scholars are based on a thoughtful, principled and context-sensitive reexamination of actual texts. Their objective and methodology is to reach beyond the kinds of essentialist and narrowly literalist interpretations offered by traditionalist scholars and ideologues and to provide instead culturally-situated, historically-contingent and contextualized interpretations of Qur'anic requirements and imperatives. The modernists do not just reject or criticize the adverse and inferior views of women's status that have held sway throughout much of Islamic history but seek to account historically for them. For example, the modernists explain the inegalitarian view of the status of women in Islam as arising from the persistent tendency of traditionalist exegetes or scholars to interpret Qur'anic verses concerning women and gender relations in isolation from their particular contexts. In this way, they inappropriately transform the specific *matna* (meaning) into a universal rule. The obligations of family economic responsibility, that are placed on men in *Surah Al-Nisa*, (4: 34) are understood, or misunderstood, by traditionalist *ulama* as endowing men with general authority and a superior status over women. Yet the economic responsibility for women that is mandated here must be related to "the occasion of revelation" of that verse: in relation to the need to secure maintenance and the economic welfare of women, especially widows and divorced women, within the clan-based patriarchal society of the Prophet Muhammad's time when women lacked full possibilities of autonomous economic participation and enjoyed only one-half of the inheritance rights of men. But this verse, the modernists argue, cannot be understood as instituting a general subordination of women

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<sup>28</sup> See also *Sisters in Islam*, "Are Women and Men Equal Before Allah?" (Kuala Lumpur: SIS Forum (M) Berhad, 1991) p. 4.

since the *Qur'an* and *sunnah* at the same time gave recognition to women's equal capacity to fulfill other roles --social, intellectual and spiritual.<sup>29</sup>

A common feature of the counter-arguments provided by these critical scholars is their persistent historical questioning of the bases of the standard male-supremacist and orthodox interpretations. In particular, they demonstrate that what was generally enshrined within and elaborated through the evolving Islamic legal culture failed to distinguish clearly between conservative Islamic social tradition and the normative Islamic legal principles expressed in the foundational texts. What has developed through time has been a theological-legal paradigm that is pervasively marked by the accumulated cultural accretions and biases of the premodern social world of the classical juristic scholars. In particular, the evolving Islamic legal code enshrined various then-conventional cultural assumptions about gender, women and the institutionalized structures governing male-female relations. Far from enjoying the legitimacy of any Qur'anic origins, those assumptions simply mirrored the social reality and practices of the post-conquest, acculturated Islamic world of the Abbasid and Umayyad periods.<sup>30</sup> These modernist critics argue that once formulated, this archaic and socially restricted theological-legal paradigm long prevailed within Islamic civilization, largely because of the absence of any large-scale external -- or even internal -- challenges or pressures to change. The need to review and change both conventional understandings of Islamic law and the social condition of members of the *ummah*, the modernists further claim, now urgently confronts Muslim societies worldwide.

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<sup>29</sup> In fact, during the Prophet's life-time Muslim women were engaged as nurses and volunteers in all the Muslim battles and military campaigns against their Meccan enemies.

<sup>30</sup> See Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992), p. 82.



### 7.3 Muslim Women and the Holding of Public Office

Gender equality and the equal citizenship rights of women in Islam are not merely consistent with but undeniably endorsed by numerous Qur'anic injunctions -- provided, of course, the *Qur'an* with its progressive social ethic and emancipatory legal intentions is understood in a historically subtle and discerning rather than in a narrowly literalistic manner. For example, the belief that only men can be leaders is regarded as a fallacy by the proponents of women's equal rights. Neither the *Qur'an* nor the *hadith*, they maintain, holds that a woman cannot be a leader or therefore, by extension, "hold a public office". There is no clear *nass* [Qur'anic injunction] either allowing or disallowing women to lead or be appointed judges. However, under existing juristic interpretations that prevail in Southeast Asian as well as Middle Eastern Islam, the criteria of eligibility for appointment as a judge are generally as follows: that a person be a Muslim, major, a free person, mature, just and of integrity, possessing a sense of hearing and sight, a *mujtahid* (proficient interpreter), and *male*.<sup>31</sup>

Even so, Indonesia today has approximately one hundred women judges (known as *Ibu Hakim*) in the *Shari'a* Court or *Peradilan Agama*. Their appointment came with the enactment of the Indonesian Marriage Law of 1974 (No. 1 of 1974).<sup>32</sup> In the face of these gender constraints in the traditionalist interpretation of *hadith*, the appointment of women *shari'a*

<sup>31</sup> A *mujtahid* is one who is proficient in all fields of Islamic jurisprudence (knowledge of the textual sources, methodology of arriving at a legal ruling, the differences of opinion among jurists and all branches of law). Where no such person is available, the best qualified person on these matters would suffice. See Mahmud Saedon A. Othman, *Kadi: Perlantikan, Perlucutan dan Bidang Kuasa* [Qadi: Appointment, Dismissal and Powers of Jurisdiction] (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1980).

<sup>32</sup> See Salbiah Ahmad, "The Judiciary and the Appointment of Women Judges in The *Shari'a* Courts of Malaysia" in Sisters in Islam (ed.), *Islam, Gender and Women's Rights: An Alternative View* (Kuala Lumpur: SIS Forum (M) Publication, 1993), pp.46-54. For an analysis of the origins and operation of the Indonesian Marriage Law 1974, see Nakamura Hidako, *Divorce in Java*, (Yogyakarta: Gadjah Mada University Press, 1983).

court judges in Indonesia is justified by modernist Muslim *ulama* and scholars as follows:<sup>33</sup>

1. However dubious it may be, the *hadith* which states that "a nation can never prosper if it is ruled by a woman" is not a direct prohibition on female political leadership. This *hadith* is interpreted as not prohibiting the appointment of women as military or executive leaders, still less as judges.
2. According to the views of the Hanafi school, women may be appointed to decide on matters other than *hudud* and *qisas*. (In other words, they may be appointed under *shari'a* to sit on civil but not criminal cases.) Since, in Indonesia, the jurisdiction of the Islamic courts covers only civil matters, it is reasoned on Hanafi grounds that women may serve as *shari'a* court judges. Quite independent of this *siyasah shari'a* reasoning, women may also be appointed as judges in Indonesia's criminal court system. But when a woman judge hears criminal cases, she operates under Indonesian state law--not as an agent of, and beyond any restriction emanating from, Islamic law. This rationale may seem casuistic, but it does provide a pragmatic way for women to be appointed as judges so long as Islamic traditionalist resistance seeks to prevent such appointments.
3. Their appointment is consistent with the fact that both men and women are enjoined to do good and prevent evil (*Al-Imran*, 3: 104).

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<sup>33</sup> The following passage is taken from Ibu Hakim Dra. Faizah Manshur "Kedudukan Hakim Wanita dan Peranannya di Lingkungan Peradilan Agama" [The Status and Role of Women Judges in the Indonesian *Shari'a* Court]. Yogyakarta, 1987 pp.12-17. Ibu Hakim Dra.Faizah Manshur is a judge of the *Peradilan Agama Rembang* [Religious Court of Rembang]. Her paper was prepared for discussion at a special meeting of Surakarta Women judges in Yogyakarta where Salbiah Ahmad, a member of Sisters in Islam, was an observer.

4. Since it is inconceivable that all women are incapacitated morally and intellectually, there can justifiably be no categorical exclusion of all women from eligibility to serve. The Prophet Muhammad himself acknowledged the intelligence of Aisha, his wife, declaring that half of the knowledge [about Islam] was in her hands. The *Qur'an* further affirms (*Al-Imran*, 3: 190-91) that "those who reflect" are those who "remember Allah when they (men and women) stand, and when they (men and women) sit, and when they (men and women) lie down to sleep". In characterizing and addressing "those who reflect or think", the *Qur'an* does not discriminate between men and women.
  
5. Contrary to traditionalist and neo-traditionalist assertions, the interaction of women and men in public does not necessarily bring about a corruption of morality (*fitnah*). One of the necessary qualifications of a judge is integrity. If the appearance of a woman litigant before him does not cause a corruption of morals of the male judge, it would follow that the appearance in her court of male litigants will not corrupt the morals of a female judge. Instead, the *Qur'an* (*An-Nahl*, 16: 97) states "As for anyone -- be it man or woman -- who does righteous deeds, and is a believer withal ... We shall grant unto these their reward in accordance with the best that they ever did."
  
6. The fact that the rightly-guided caliphs (the Prophet Muhammad's four immediate successors as political leader of the *ummah*) did not appoint women as judges does not mean that there exists any prohibition against their appointment. That the four rightly-guided caliphs made no such appointments is explicable simply in terms of the circumstances of the time. There is no clear or explicit *nass* in the *Qur'an* and *sunnah* to prohibit such appointments. Rather, the duty of arbitrating and settling disputes is a matter that is universally

enjoined on humankind as a whole by the *Qur'an* and *sunnah*. The *Qur'an* has left to humans the appointment of arbiters or judges (male or female) who, according to prevailing circumstances, can fulfill the requirements of the task of judging.

Judges must meet certain requirements if their appointment is to be legitimate, but there is no *a priori* reason, the modernists argue, why women -- some women, no less than some men -- should not fulfill those requirements, especially under modern social conditions. These modernist arguments serve to demonstrate how classical and historical juristic opinions are not immutable as some Islamists have claimed. As An-Na'im has argued "once it can be understood that (juristic opinion or historical *shari'a* is a construction by founding jurists), it should become possible to think about reconstructing certain aspects of (historical) *shari'a*, provided that such reconstruction is based on the same fundamental (revealed) sources of Islam and is fully consistent with its essential moral and religious precepts."<sup>34</sup> This again highlights the insufficiently recognized fact of the historicity of all human interpretations of the Qur'anic revelations.

Yet limiting the foundations for the elaboration of modern Islamic legal codes to the early interpretations of the era of the Muslim caliphate is what many contemporary exegetes, and especially those of a traditionalist or Islamist inclination, habitually do. In the process of elaborating the *shari'a*, authoritative precedence (second only to the Qur'anic injunctions themselves) is given to the Prophet's *sunnah* in Medina.<sup>35</sup> Yet even the classical interpretations take into account the "occasions of revelation" (*asbab al-nuzul*) of individual verses, recognizing that the meaning and

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<sup>34</sup> See Abdullahi A. An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (New York: Syracuse University Press, 1990), p. xiv.

<sup>35</sup> For a modernist approach to the rule or precedence of the Prophet's *sunnah*, see note (6) above. See also Fathi Osman, *Shari'a in Contemporary Society: The Dynamics of Change in Islamic Law*, 1994.

intent of many Qur'anic injunctions can only be found by considering the context, circumstances and the apparent or presumable reason for their disclosure at that specific time. In some instances recognition of these contextual conditions has led to modified interpretations within the parameters of the general principles affirmed elsewhere in the *Qur'an*.

While Muslim modernists and women, recognizing the historicity of interpretation, reason in this constructive way, today's traditionalists and neo-traditionalist resist this flexible approach in favour of rigid, ahistorical and literalist modes of interpretation. One aspect of the Islamic resurgence worldwide has been a growing tendency towards textual literalism and an ahistorical idealization of the Medina experience as a timeless ideal or enduring paradigm. The cultural and temporal specificities of Islam's formative moment in Medina are absolutised by the ideologues of the resurgence, who see the practices of the Medinan period as providing the basic tenets of law and obligatory practice for modern day Muslims in a final, sacred and immutable form. For the adherents of this restrictive interpretive approach, the early generations of Muslims -- being closer to the life and example of the Prophet himself -- were exemplars who knew better from their involvement in early Islamic history than the present generation of Muslims does or can ever hope to do. For them, therefore, the interpretations and practice of those early generations of Muslims are binding for all time.

Historical contingency also affects the question of Muslim women's human rights in a further way. The elaboration of ideas of female rights and status in Islamic thought and in the codified *shari'a* law was never simply a disinterested scholastic endeavour pursued solely by *fuqaha* and other Muslim scholars, nor was it at any time a pure process of interpreting divine intentions unaffected by the historical and social context in which those textual scholars operated. The exponents of the established schools of jurisprudence were, of course, men of their own times, necessarily limited in

their thinking by the social imagination and intellectual horizons of their own era. But many of those contemporary Muslims who seek the modern day enforcement of conventionally codified Islamic law fail to understand or even consider the historicity, and historical limitation, of their predecessors' formative labours in the creation of the Islamic legal tradition and its codes. Instead, they adopt literally and even absolutely the traditionally accepted interpretation and codification of *shari'a* provided long ago by the four principal Islamic legal schools or *madhab*.

#### 7.4 Enacting Traditional Shari'a against Women

The obvious lack of recognition of Muslim women's citizenship rights (and those of non-Muslims) is also evident in the endeavour of traditionalizing Islamists to uphold and advance the Islamic character of the laws of their countries. One such example is found in the recent efforts of some Islamists in Malaysia to introduce certain traditional Islamic forms of criminal law and punishments such as the *hudud* laws.<sup>36</sup> At the November 1993 sitting of the Kelantan State Legislative Assembly the *Syariah Criminal Code (II) of the State of Kelantan* was introduced. This act became the first piece of legislation seeking to institute the *hudud* and *qisas* provisions of Muslim criminal law as state law in modern Malaysia. Most contentious in this legislation are its provisions for enforcing the so-called *hudud* punishments. These require that those found guilty of certain offences (such as adultery, armed robbery and apostasy, for example) should be subjected in public to punishments including flogging, mutilation of limbs by amputation, stoning to death and crucifixion. The legislation also has other extremely troubling features, including the grounds for the presumption of

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<sup>36</sup> *Hudud* in its legal sense means a punishment prescribed by God in the revealed text of the *Qur'an* or the *sunnah* (of the Prophet), the application of which is in the right of God (*haqq* Allah). Meaning literally "limits", the *hudud* in their original legal sense and intent were instituted as a set of maximum, and in effect mandatory, punishments for various major categories of crimes. [See also Rose Ismail, *Hudud in Malaysia: The Issues at Stake*, (SIS Forum (M) Berhad Publications: Kuala Lumpur, 1995), pp. 1-50.

*zina* (illicit sex) by women in its clause 46(2); the inadmissibility of women as eye-witnesses in clause 41(1); the termination of a marriage by a husband's accusation (*al-li'an*), whether proved or not, of *zina* against his wife in clauses 14 and 15; and the implied endorsement in clause 2(i) of the view that *diyat* or compensation for death or injury to a woman should be *half* that for a man.

Throughout the extended period when introduction of the Kelantan *hudud* laws was being proposed, none of the Muslim population in Malaysia dared to question publicly the religious validity of the foreshadowed Kelantanese legislation. However deep and widespread their disquiet, most Muslims were reluctant to voice their doubts. Many either themselves believed or else were hesitant to challenge the belief of others that such laws are God's laws as specified in the *Qur'an* and, as such, unchallengeable. Some were also intimidated by the possibility or threat of being accused of apostasy should they raise any doubt about the validity or wisdom of the laws proposed for immediate implementation. Any such questioning was likely to be treated not just as a challenge to the *shari'a* and its moral ascendancy but also to the proclaimed standing of the traditionalist *ulama* as its exclusive guardians and sole legitimate and authoritative interpreters. This discouraging of enlightened public opinion is in itself an affront to the Islamic notion of the rights and freedom of the whole *ummah* in a Muslim country. The initiative of a small group of Muslims such as *Sisters in Islam* in encouraging public debate on this significant matter of public policy highlights the importance of such debate.<sup>37</sup> But it also demonstrates that the

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<sup>37</sup> In December 1993, *Sisters in Islam* submitted a memorandum to the Prime Minister of Malaysia (Datuk Seri Dr. Mahathir Mohamad) urging the federal parliament not to endorse the Kelantan *hudud* law. Though passed by the Kelantan's state legislature, the law cannot be implemented unless the federal parliament endorses it. Under the constitutional divisions of powers between the federal and the state governments, a state law with criminal provisions can only take effect through an amendment to the Malaysian Constitution. The passing of such an amendment by the federal parliament would require the support of the Prime Minister's ruling party, which held a massive majority in the federal legislature. The passing of the enactments by the Kelantan legislature and their impending referral to the

grounds for the *ummah*'s right and freedom to discuss the religious basis of state legislation has to be constantly established in the face of the assertively authoritarian position and persistent influence of traditionalizing Islamists in many contemporary Muslim countries.

### 7.5 *Shari'a-based Opposition to Ensuring Women's Rights*

Efforts to have legislation on domestic violence passed by the Malaysian parliament in 1995 are similarly instructive. The Domestic Violence Act 1995 had been drafted following multilateral consultation and widespread discussion among Islamic religious authorities and organizations as well as women's groups in the country. The much revised final draft of the act was approved by all the various bodies which the government had consulted before it was presented to parliament.

Then, at the very last minute, some influential figures in the federal government's Islamic Affairs Department opposed the intended legislation: not just some of its details but -- in the name of the *shari'a* whose guardians they claimed to be -- its entire jurisprudential foundations. After all the details had been patiently negotiated they now argued that the Domestic Violence Act contradicted the *shari'a* and undermined its supremacy in its designated domain, for it would enable Muslim women to invoke the application of a law other than the *shari'a* against their husbands. This

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federal legislature for approval produced a tense stand-off in Malaysian politics: did Dr. Mahathir and his party dare to approve Kelantan's *hudud* law legislation or did they dare to reject it? Either way the political implications were profound. In a high-profile public campaign in the late 1993 and throughout 1994, *Sisters in Islam* sought to provide a principled and intellectually coherent case against the endorsement of the Kelantan enactments: a case grounded in modernist Islam which, by invoking the modernist "historicity critique", rejected the crude equation of *hudud* with *shari'a*, and *shari'a* with Islam upon which the support of the Kelantan enactments was urged by the traditionalist Islamists. Consistently arguing on religious (Islamic), legal, political and human rights grounds against the endorsement of the Kelantan *hudud* law, the campaign waged by *Sisters in Islam* demonstrates again the need for a human rights activism grounded in non-Western terms. Where religious orthodoxy is an influential source of the political impetus to impose



would compromise the Islamists' contention that the existing *shari'a* enactments should have exclusive application to family or domestic matters among Malaysian Muslims; and that only through recourse to those in the *shari'a* court system charged with administering those enactments should Muslim victims of domestic violence be permitted to seek protection and redress.

Islamists who opposed the Domestic Violence Act in effect argued that Muslim women should not have the right to any effective protection against violence perpetrated in the domestic realm. The insistence that they must employ only the existing Muslim family laws in the country for all such matters would often leave a woman unprotected, since the *shari'a* courts are generally more concerned to persuade both partners to preserve a failing marriage than to ensure a woman's rights and personal security within it. Until they reluctantly agree that divorce is inevitable, the *shari'a* courts will generally require a victimized woman to return to her conjugal home and reconcile with her husband, whatever his imperfections, and even if his violent treatment of her is the immediate reason and cause for her situation coming to the court's attention.

Its opponents' arguments totally disregard the fact that the Domestic Violence Act is part of the Penal Code of the country which in no way, in intention or implementation, would replace the application of any existing Muslim family laws in matters of marriage and the family. The existing Muslim family laws do not, in fact, provide any effective legal procedures for the protection of, or legal redress for, Muslim women who become victims of domestic violence. Since, in consequence, the Domestic Violence Act deals with matters which lie outside of the concerns which the *shari'a* law system and its legislation wish to treat, it cannot be said to encroach

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laws which transgress contemporary notions of rights and freedom, internal cultural and religiously-informed contestation is pertinent and urgent.

upon their area of jurisdiction. By opposing the Domestic Violence Act and in blindly upholding the sanctity of *shari'a* over the legal rights of Muslims, many Malaysian Islamists have proved themselves incapable of addressing contemporary social problems. They are prepared to tolerate widespread abuse and violence against women in marriage and the family as the price for maintaining the principle of *shari'a* supremacy -- the supremacy of the *shari'a*, that is, as they anachronistically understand it, and as the bulwark for their own political interests.

Despite their claims and rhetoric that within Islam's foundational texts there are principles and teachings of timeless guidance in the lives of humans, these Islamists have failed the test of implementing those ideas. They have failed that test because they have been unable to recognize the many vast changes that have occurred in the lives of all Muslims, and especially Muslim women, during the 1,400 years since the formative moment of Islam.

#### **8. Reconciling Cultural Sources of Human Rights and International Human Rights Regime: The Case of Contemporary Muslim Women**

**T**he efforts of modernist and women's groups in Malaysia such as *Sisters In Islam* seek to justify and ground human rights arguments in non-Western terms, within Islam's own formative religious social ethic. This approach provides experiences which are relevant and applicable worldwide to the broader struggle to achieve Muslim women's rights in other Muslim countries through the adoption or ratification of a universal human rights instrument (such as the *International Convention for the Elimination of All Forms of Discrimination Against Women* -- the United Nations Organization's Women's Convention or as it is more popularly known --

CEDAW).<sup>38</sup> The adoption of CEDAW has been problematic in most if not all countries in which Muslim law is applied to all or part of the population. Resistance to CEDAW is offered by certain influential Muslims who object to it on religious or *shari'a* grounds. Their critique and opposition must be addressed at a fundamental level.<sup>39</sup> Towards that endeavour Muslim women need to seek, devise and explore acceptable answers to a basic question. At a time when so many activists in the worldwide Islamic movement are presenting nostalgic, even regressive, and authoritarian or repressive views of Islam, we need to remember (as demonstrated by the modernist approach mentioned above) that the central values and ethos of the Qur'anic worldview are rational, activist, egalitarian, emancipatory and justice-oriented. How, we must therefore ask, are contemporary Muslims to understand and realize those powerful Qur'anic ideals, to interpret the eternal Qur'anic teachings, and find new and ever more inclusive ways of giving effect to enduring Qur'anic social and moral imperatives?

One approach in this enterprise is advocating that Muslims themselves, especially Muslim women in this instance, begin to examine and evaluate the premise of the *shari'a*-based arguments that are invoked to support those regressive Muslim critiques of human rights: especially of the *universality* of the human right to protection from discrimination or discriminatory laws.<sup>40</sup> Many of Muslim women's organizations have come

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<sup>38</sup> In 1994-5, *Sisters in Islam* also campaigned to urge the Malaysian government to ratify the convention (CEDAW) before the *Fourth World Conference On Women*, convened in Beijing (in Oct.1995). [See also, Norani Othman, "Shari'a Law and the Rights of Modern Muslim Women: An Overview of the Implementation of CEDAW in Muslim Societies, With Special Reference to Current Developments in Malaysia", a paper presented at the *International Women's Rights Watch (IWRAW)*, a Round Table Meeting on *Women, Islam and CEDAW*, New York, 14 January 1995 (unpublished)].

<sup>39</sup> See also Aihwa Ong, "Globalization and Women's Rights: The Asian Debate on Citizenship and Communitarianism" a paper presented at a *Symposium on Feminism and Globalization*, USA, Sept. 1996; also L. Amede Obiora, "Feminism, Globalization and Culture: After Beijing" an unpublished manuscript presented at the same symposium in response to Aihwa Ong's paper.

<sup>40</sup> As a crucial example, around the same time that *Sisters In Islam* was working with other Malaysian women's groups to campaign for the ratification of CEDAW by the Malaysian government (before the Beijing Fourth World Conference on Women), on the domestic

to recognize that generally there are two main approaches to implementing Islamic law: (i) the literal *shari'a*-minded approach; and (ii) the modern internal renewal (*islah* and *tajdid*) approach.<sup>41</sup>

There are several important factors which we must take into consideration if we are to examine clearly how *shari'a* law as implemented in most contemporary Muslim countries may pose problems for the universal acceptance of the Women's Convention (or CEDAW) by all state parties, actual or prospective, to the convention. Foremost among them, it is important always to remain mindful of the difference between *shari'a* in the *Qur'an* and *fiqh* or the interpretation and codification of the Qur'anic *shari'a* precepts, as has been explained above. Most of the objections posed by Muslim critiques of CEDAW (or for that matter of any view that uphold the principle of equality between gender) are grounded not within the *Qur'an* itself but based upon certain classical, which is to say humanly produced and historically contingent, interpretations of *Qur'an* or the *shari'a*. In the name of Islam they demand exemptions and protections not for the core religious and spiritual values of the Qur'anic revelation but for the historically contingent edifice of codified *shari'a* (and often also the various iniquities and abuses that managed to survive in Islamic history alongside of the

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front, the group like a majority of other women's groups in Malaysia, had also to contend with the increasing opposition by the local and state *ulama* to the newly debated legislation in the Malaysian Parliament (i.e., the Domestic Violence Act [DVA] which was finally passed just before the Malaysian general elections in April 1995). Again those Muslims who criticized and opposed the DVA did so mainly on the basis that many provisions in the Act, which give women and wives legal protection and redress to take action against men or their husbands as perpetrators of violence, are unIslamic. The *ulama* proposed that the Act can be passed but shall *not* apply to Muslim women on the basis that personal status laws of Muslim women are under the jurisdiction of the *shari'a* court. The problem that women's groups in Malaysia confronted in their campaign for an early enactment of the Domestic Violence Act is indicative of the kind of challenge that they also had to face later in campaigning for the ratification of CEDAW.

<sup>41</sup> For arguments and explanation for the need of an internal Islamic renewal approach in contemporary Muslim societies, see Asghar Ali Engineer, *The Rights of Women in Islam* (London: C. Hurst & Co., 1992, pp. 154-171); Norani Othman (ed.), *Shari'a Law and the Modern Nation-State: A Malaysian Symposium* (Kuala Lumpur: SIS Forum (Malaysia) Berhad, 1994 pp. 147-153); Barbara F. Stowasser, *Women in the Qur'an, Traditions, and*

*shari'a*, even though they affronted the core religious and social ideals of that revelation).<sup>42</sup>

The *Qur'an* itself, we must remember, explicitly enjoins gender equality as a universal principle (see for example the popular presentation of these issues in the two booklets issued in 1991 by *Sisters In Islam* on gender equality and the unacceptability in Islam of domestic violence described above). All exceptions to this moral imperative are always historically contingent and therefore to be explained contextually: they have arisen from local conditions of time and place, not as essential or obligatory manifestations of normative Islam. These deficiencies are themselves not justifiable in normative Islam, and they cannot be invoked to justify or legitimate what normative Islam disallows. Much of the traditional Islamic critique of CEDAW has precisely this character, of invoking the contingent historical shortcomings and departures from normative Islam that have typified so much of Islamic history in an effort to resist the recognition of rights and protections that are exactly those mandated by Islamic ideals. Who and what, we must always ask, stand to benefit from these improper invocations of Islam's needs in the defence of customary practices and entrenched interests.

As an instrument for women's rights, CEDAW will naturally have to confront these implications and issues. It is naive to expect that most state parties will readily accept the standards set by CEDAW. In this context, the vulnerability of instruments such as CEDAW on two grounds can be readily recognized: (i) that women's enjoyment of the rights and of the autonomy from immediate male control that these instruments promise can be readily

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*Interpretations* (New York: Oxford University Press, 1994) and Fatima Mernissi, *Islam and The Fear of Democracy* (London: Virago Press, 1993).

<sup>42</sup> See Leila Ahmed, 1992. See also *Sisters in Islam*, "Are Women and Men Equal Before Allah?" and "Are Muslim Men Allowed to Beat Their Wives?" (booklets published by Sisters in Islam/SIS Forum Malaysia, Kuala Lumpur, 1991).

depicted, on purportedly religious grounds, by those who resist them as 'shameless'; and (ii) inasmuch as these international instruments are experienced as entailing conformity enforced through outside interference, they can also be represented on nationalist, culturalist or religious grounds as an affront to the autonomy and dignity of the society as a whole and to the masculine pride of its menfolk. There are simply no short-cuts around these obstacles. But in the long run, before instruments such as CEDAW (or even those recent domestic laws in Muslim countries which provide for rights of women) can have a positive impact in these societies, women and women's movements in them will have to ensure first of all that the source of all the various forms of women's subordination which arise from culture, religion, custom and tradition are identified, addressed, and overcome *locally or nationally*. Once the parochial or contingent historical sources of these abuses are clearly identified and understood, they can not only be differentiated from what Islam enjoins. They also stand exposed to thoroughgoing criticism, leading to rejection and abolition, precisely on the grounds of what Islam enjoins.

This seems to be the most effective strategy for ending women's subordination within their own local and national cultures. Having in this way promoted the emergence of locally acceptable cultural and moral systems favouring recognition of women's rights, women and women's movements will then be in a position to advocate women's equality in cultural terms that are locally persuasive and authentic. They then will be able to argue that women's emancipation as required by international human rights instrument such as CEDAW is consistent with local and national cultural values. In that way, they will avoid placing themselves, or being placed by others, in a position where their challenge to women's subordination and their support for women's full enjoyment of human rights are seen as merely an imposition of outside western cultural ideals.

These women's movements have an important initial task: that of undertaking a project of fundamental social and cultural reform aimed at changing social attitudes towards women's rights; and of thereby ensuring that their society comes to recognize clearly that the inequalities and discrimination suffered by women are mainly due to an *unquestioning* social acceptance of some traditionalizing and conservative interpretations, long fashioned under customary masculinist custodianship, of their society's moral traditions and religious values. Only in this manner will women's groups be able to challenge those forms of opposition that would like to claim that CEDAW -- and other similar measures aimed at redressing female subordination and discrimination -- represent merely an importation or imposition of western cultural ideas, in contradiction to locally binding and morally superior religious norms, requirements and laws.

In most societies -- especially those that perceive themselves as vulnerable to outside forces and those that have bitter experiences and memories of foreign (colonial) domination -- the question of women is tied up with the integrity of that society's ethnic or cultural identity (including the security of male social and political identities). Fundamental to its culture, the society's religious traditions are routinely invoked in such circumstances to buttress precarious notions of autonomy and dignity: both of the society as a whole *vis-à-vis* outsiders and of the men in that society, in their relation to its women and children whose protectors they wish to be.<sup>43</sup> Further, in many such cultures women are made the locus of family life, held responsible for its social reputation and moral integrity: there is a complex reciprocal relationship between the honour of men, both towards outsiders and among themselves in their own society, and the shame of women,

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<sup>43</sup> On this dynamic throughout the Mediterranean region in general, see Germaine Tillion, *The Republic of Cousins: Women's Oppression in Mediterranean Societies*, trans. Q. Hoare (London: Al Saqi Books, 1983). See also David Mandelbaum, *Women's Seclusion and Men's Honour*, (Tucson: University of Arizona Press, 1988) and Valentine M. Moghadam (ed.), *Gender and National Identity*, (London, Zed Books, 1994). [See also footnote 19, above].

including their vulnerability to accusations of shamelessness. Women in this way become charged as the 'guardians' for the maintenance of important cultural values and of the society's moral integrity as a whole.<sup>44</sup>

The examples above of how Muslim women's groups in Malaysia attempt to negotiate the legal proposals which promote equal rights for women as acceptable to Islamic view and in so doing they actually foster the recognition of rights and gender equality promoted by CEDAW amplifies the need for a sensitive internal cultural consideration, a discourse that is capable of engaging in a debate and challenging a perspective which has not been sufficiently questioned and analyzed. Ultimately, the primary project for Muslim women's groups in their struggle for women's rights is not the recognition of CEDAW *per se*. More important is the need for consensus within their own culture that the kinds of women's rights they are advocating are indeed acceptable on the grounds of a social or public ethic derived from their own cultural and/or religious sources.

## 9. *Qur'an* and the Universality of Humankind

**T**here is no question of the urgency of a 'reconsolidation' or 'reconstruction' of Islam's religious or textual heritage (Arabic: *turath*). This approach of initiating a change, a shift in the Islamic paradigm, is quite consistent with the Qur'anic foundations of the faith. This emphasis

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<sup>44</sup> See Askiah Adam, "Malay Women in Islam: Adat and Islam--Conflict or Conjunction?" in Sisters in Islam (ed.), *Islam, Gender and Women's Rights: An Alternative View* (Kuala Lumpur: SIS Forum, 1993); Deniz Kandiyoti (ed.), *Women, Islam and the State* (London: Macmillan, 1991); Julie Marcus, *A World of Difference: Islam and Gender Hierarchy* (Sydney: Allen & Unwin, 1992); Salbiah Ahmad, "Are Religion and Culture Factors Prohibiting Women's Participation in Politics?" in *Creating Political Awareness Among Malaysian Women* (Kuala Lumpur: AIDCOM, 1994); J.G. Peristiany (ed.), *Honour and Shame: The Values of Mediterranean Society* (London: Weidenfeld & Nicholson, 1966);



on a Qur'anic orientation and receptivity towards change is also consistent with the lessons customarily drawn by Muslims from the life and practice of the Prophet Muhammad himself. A readiness to accept, embrace and even consciously shape change is a cultural 'sunnatic' lesson. Throughout his life the Prophet Muhammad's work clearly demonstrated "an emancipatory impetus" or character. Islam developed in the time of the Prophet Muhammad as a democratic religion, a morally energetic religion of committed participatory activism that was open to all who believed in Allah, the one God, and were ready to share in the divinely ordained pursuit of justice, fairness and virtue. This underlying notion of rights and freedom open to all faithful believers and to all who may yet come to recognize the supremacy of Allah (that is, all of humankind), is not dissimilar to the modern one. A Muslim person according to the *Qur'an* who suffers oppression and does not do anything about it is to be treated as a sinner. Such a person is encouraged to migrate elsewhere if he/she is unable to fight against an oppressive system. The Qur'anic term *ibn-al-sabil* refer to someone who is forced to move from place to place in order to seek a more peaceful life free from oppressive regime. To endure oppression, that is, involves a double violation of divinely-ordained human nature and autonomy: by the oppressor and by the victim. Implied, if not explicit, in this is a profound affirmation of human freedom, dignity and autonomy--and of the human as a rights-holding and rights-sustained being.

Apart from the concept of *fitrah* which refers to humankind as an undifferentiated whole, the *Qur'an* also speak of human dignity. The Qur'anic term "descendants of Adam" is to be understood as referring to all humankind. It does not refer just to Muslims, or particular section or special group of people, but to humanity in general: "We have conferred dignity on the descendants of Adam") [*Al-Isra'*, 17: 70]. There is also the notion of

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and Germaine Tillion, *The Republic of Cousins: Women's Oppression in Mediterranean Societies*, trans. Q. Hoare (London: Al Saqi Books, 1983; orig. French edition, Paris 1966).

pluralism and diversity in the one humankind, i.e. on the basis of their differences, humans are to come together not just in a superficial way but in profound human and cultural contact [*Al-Mai'dah*, 5: 48]. The notion of *ummah* refers to humankind in its entirety and diversity [*Maryam*, 49: 13] and they are given the right of religious conscience, an entitlement to their respective religious views and commitments. This is the capacity for spirituality which all humans share. It is not a Muslim monopoly but is immanent in every heart and mind of humans according to the *Qur'an*. As humans we not only enjoy a generic equality but also ontologically common ground.<sup>45</sup>

In their social relations humans are urged to respect freedom of expression. The *Qur'an* also supports the principle that no hurt should be meted out to a person on account of her/his testimony. In *Surah Yunus*, the *Qur'an* emphasizes that differences between humans are God's will. Difference is a part of human condition and therefore there is to be no compulsion of faith. God allows humans to choose what he/she likes to believe.<sup>46</sup> This religious freedom affirmed by the *Qur'an* is the basis of human right and freedom.

The cultivation of an internal discourse within Islamic civilization about the meaning and interpretation of Islamic texts, as with all other texts, is fraught with many problems. For Muslims the *Qur'an* is the word of God, revealed to the Prophet Muhammad as a guidance to all people. Contemporary Muslims have to acknowledge that there are problems with interpreting that message. The *Qur'an* is and gives a message to humans

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<sup>45</sup> See the *Qur'an* (*Al-Baqarah*, 2: 283) which says "Conceal not evidence; for whoever conceals it--his heart is tainted"; see the *Qur'an* (2: 282) which urges that "neither scribe nor witness suffer harm. If ye do (such harm), it would be wickedness in you" (cf. *The Holy Qur'an: Text, Translation and Commentary* by Abdullah Yusuf Ali, Brentwood: Amana Corporation, revised edition, 1989).

<sup>46</sup> *Yunus*, 10: 99; also see the commentary for this verse in Muhammad Assad *The Message of the Qur'an* (Gibraltar: Dar Al-Andalus, 1980) p. 308.

for all time, but it is also *immediately* concerned with and addressed to the Arabs of Muhammad's time. It has two needs to fulfill--as a guide during Muhammad's time and also for Muslims in the future. The historicity of the *Qur'an* does pose difficult problems to modern Muslim of conscience.

The society in which it was first revealed was qualitatively *different* from Muslim societies today. However flexible the words may be, they sometimes are problematic -- in their form and content. The *Qur'an* is not organized chronologically but topically, another consideration one needs to be reminded of when interpreting how rules and laws were devised and changed. Language is another problem. The medium is in the form of classical Arabic poetry with a long story. This form is not immediately accessible or transparent to many modern persons. It is too allegorical, consists of too many parables, metaphors and similies. Its literary structure is based on the Arab environment and experience. Therefore once the divine manifested itself, in the form of the Qur'anic word, among humans -- and was launched by the Prophet, as the bearer and messenger of that word, into human history--everything in Islam is undeniably historical. There can be very few literal interpretations or interpretations of enduring, immutable validity. Muslims have to be clear of general principles and have to work out for themselves the two levels of the text--the transitory or contingent and the permanent. This ultimately relies upon the human practice of *ijtihad*.<sup>47</sup> It is this urgent need for and the immediate relevance of *ijtihad* that can give modern Muslims the potential and promise to devise a useful debate among themselves which will enable them to effectively participate in the cultural mediation of human rights with others.

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<sup>47</sup> For an explanation of *ijtihad*, see section 6 of this essay, pp. 17-18.

## 10. Conclusion

The struggle for human, especially women's, rights in Muslim countries is a complex one. It involves questions of religion, the validity and hegemony of certain religious interpretation over others, gender bias, patriarchy, the politics of gender and identity. The often-heard criticism that derivatively-Western conceptions of women's rights and gender equality contradicts Islamic principles of gender relations can no longer be accepted at face value. Yet because of the currently-pervasive influence of the narrow and literalist Islamic resurgent movements in many Muslim countries, women and women's groups struggling for recognition of their rights, both personal and public, have to make common cause with and strengthen whatever existing modernist religious impulses are to be found in their own societies. By making common cause with other modernist streams of Islamic thought and action, they not only strengthen the religious foundation and enhance the Islamic legitimacy of their cause. They also thereby ensure their endeavours are seen not just as some sectional, and hence easily marginalized or dismissed, preoccupation of women but are recognized as an integral and central part of the overriding question facing contemporary Islam: the attainment, on cultural and ethical foundations that are grounded in Islamic history, of modernity within contemporary Islamic civilization, within and in engagement with an emerging universal "civilization of modernity" embracing all humankind. Negotiating space for the expression and public debate of the many issues relating to women's rights and freedom is a task that Muslim women can most readily achieve not in solitary, separatist struggle but in concert with other Islamic modernists and human rights activists who recognize their cause as an inescapably public, not merely a sectional, concern for twenty-first century Islam.

The view of some human rights activists that women's rights movements are better served by utilising the "secular" approach -- one which

ground its arguments upon the supposedly universal basis of the rule of law and democratization -- is not at all pragmatic, nor is it as easily implemented as its proponents claim. The experience of many women's groups operating in Muslim countries these past two decades demonstrated that in their daily battles a great deal more progress is achieved by working within their respective religious and cultural paradigm. This perhaps give Muslim women's movements a distinctive character of its own when compared to Western women's movements in this century. A Muslim women's rights activist have to employ a wide variety of approaches in their project to advance the status and rights of Muslim women. Their ideas, conceptions and recommendations for rights and social emancipation must be religiously and culturally informed as they confront the challenge and opposition from their own religious, political and community leaders, male or female. A common thread between Western and non-Western women's movements is found only within a social fabric or against the background of persistent gender-bias in the assertion of a modern-day patriarchal ideologies.

Patriarchal notions of gender relations in Southeast Asian Muslim societies are intertwined with the issues of Islamization, nationalism, state-building and rejuvenation of "Asian values" and culture. Within these political projects women are linked to the 'demands' of modernization and progress, yet are also charged with ensuring cultural continuity as the basis of society's moral integrity. Women are regarded as central to their country's projects of both cultural rejuvenation and religious orthodoxy. Questions of morality, sexuality and the search for cultural authenticity and religious legitimacy are all implicated in various, and often contradicting, conceptions of the ideal society and in competing agendas for state-building and the pursuit of modernity. Defining Muslim women's rights and freedom is a task that occurs not in isolation but on this complex cultural and political battleground, in the midst of acute polemical contests over Islamization, modernization and cultural relativism.

## References

- Abdullahi Ahmed An-Nai'm. 1990. *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*. New York: Syracuse University Press.
- (ed.). 1992. *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*. Philadelphia: University of Pennsylvania Press.
- Abdullah Yusuf Ali. 1989. *The Holy Qur'an: Text, Translation and Commentary*. Brentwood: Amana Corporation, revised edition.
- Aftab Hussain. 1987. *Status of Women in Islam*. Lahore, Pakistan: Law Publishing Co.
- Asghar Ali Engineer. 1992. *The Rights of Women in Islam*. London: C. Hurst & Co.
- Askiah Adam. 1993. "Malay Women in Islam: Adata and Islam--Conflict or Conjunction?" in Sisters in Islam (ed.), *Islam, Gender and Women's Rights: An Alternative View*. Kuala Lumpur: SIS Forum (M) Bhd.
- Badran, Margot & Miriam Cooke (eds.). 1990. *Opening the Gates: One Hundred Years of Arab Feminist Writings*. London: Virago Press.
- Bassam Tibi. 1988. *The Crisis of Modern Islam: A Preindustrial Culture in the Scientific Technological Age*, trans. Judith von Sivers. Salt Lake City: University of Utah Press.
- , 1990. *Islam and the Cultural Accommodation of Social Change*, trans. Clare Krojzl. Boulder, CO: Westview Press.
- Deniz Kandiyoti (ed.). 1991. *Women, Islam and the State*. London: Macmillan.
- Faizah Manshur (Ibu Hakim Dra.). 1987. "Kedudukan Hakim Wanita dan Peranannya di Lingkungan Peradilan Agama" [The Status and Role of Women Judges in the Indonesian Shari'a Court]. Yogyakarta: n.p..
- Fathi Osman. 1994. *Shari'a in Contemporary Society: The Dynamics of Change in Islamic Law*. Los Angeles, CA.: Multimedia Vera International.

- , 1996. *Muslim Women in the Family and Society*. Kuala Lumpur: SIS Forum (M) Bhd., reprint edition.
- Fatima Mernissi. 1991. *Women and Islam: An Historical and Theological Inquiry*. Oxford: Basil Blackwell. [American edition entitled *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam*. Reading, MA: Addison-Wesley, 1991].
- , 1993. *The Forgotten Queens of Islam*. Cambridge: Polity Press.
- , 1993. *Islam and the Fear of Democracy*. London: Virago Press.
- Fazlur Rahman. 1982. *Islam and Modernity*. Chicago: University of Chicago Press.
- Hooker, M.B. 1972. *Adat Laws in Modern Malaya: Land Tenure, Traditional Government and Religion*. Kuala Lumpur & New York: Oxford University Press.
- Leila Ahmed. 1991. "Early Islam and the Position of Women: The Problem of Interpretation", Chap. 4 in Nikki Keddie & Beth Baron (eds.), *Women in Middle Eastern History*. New Haven: Yale U.P., pp. 58-73.
- , 1992. *Women and Gender in Islam: Historical Roots of a Modern Debate*. New Haven: Yale U.P.
- Mahmud Saedon A. Othman. 1980. *Kadi: Perlantikan, Perlucutan dan Bidang Kuasa* [Qadi: Appointment, Dismissal and Powers of Jurisdiction]. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Malek Bennabi. 1991. *Islam in History and Society*, trans. Asma Rashid. Kuala Lumpur: Berita Publishing [orig. French edition entitled *Vocation de l'Islam*, 1949].
- Mandelbaum, David. 1981. *Women's Seclusion and Men's Honour*. Tucson: University of Arizona Press.
- Marcus, Julie. 1992. *A World of Difference: Islam and Gender Hierarchy*. Sydney: Allen & Unwin.
- Mayer, Ann Elizabeth. 1991. *Islam and Human Rights: Tradition and Politics*. Boulder, CO: Westview Press.





- Moghadam, Valentine M. (ed.). 1994. *Gender and National Identity*. London: Zed Books.
- Mohammed Arkoun. 1994. *Rethinking Islam: Common Questions, Uncommon Answers*, trans. & ed., Robert D. Lee. Boulder, CO: Westview Press [orig. *Ouvertures sur l'Islam*, 1989].
- Mona Abaza. 1995. "Civil Society and Islam in Egypt: The Case of Nasr Hamid Abu Zayd", *Journal of Arabic, Islamic & Middle Eastern Studies*. 2, ii.
- Muhammad Assad. 1980. *The Message of the Qur'an*. Gibraltar: Dar-ul Andalus.
- Norani Othman. 1995. "Gender Inequality, Culture and the Historicity of Religious Interpretation", chap. 1 in Norani Othman & Cecilia Ng (eds.), *Gender, Culture and Religion: Equal Before God, Unequal Before Man*. Kuala Lumpur: Persatuan Sains Sosial Malaysia [Malaysian Social Science Association], pp. 1-12.
- (ed.). 1994. *Shari'a Law and the Modern Nation-State: A Malaysian Symposium*. Kuala Lumpur: SIS Forum (M) Berhad.
- Nakamura, Hidako. 1983. *Divorce in Java*. Yogyakarta: Gadjah Mada University Press.
- Peristiany, J.G. (ed.). 1966. *Honour and Shame: The Values of Mediterranean Society*. London: Weidenfeld & Nicholson.
- Rawls, John. 1993. *Political Liberalism*. New York: Columbia University Press.
- Riffat Hassan. 1985. "Made from Adam's Rib: The Woman's Creation Question" in *Al-Mushir: Theological Journal of the Christian Study Centre* (Rawalpindi, Pakistan), Autumn.
- Rose Ismail (ed.). 1995. *Hudud in Malaysia: The Issues at Stake*. Kuala Lumpur: SIS Forum (M) Berhad.
- Salbiah Ahmad. 1993. "The Judiciary and the Appointment of Women Judges in The Shari'a Courts of Malaysia" in Sisters in Islam (eds.), *Islam, Gender and Women's Rights: An Alternative View*. Kuala Lumpur: SIS Forum (M) Berhad.

- , 1994. "Are Religion and Culture Factors Prohibiting Women's Participation in Politics?" in *Creating Political Awareness Among Malaysian Women*. Kuala Lumpur: AIDCOM.
- Sisters in Islam, 1991. "Are Women & Men Equal Before Allah?" Kuala Lumpur: SIS Forum (M) Berhad [Sisters in Islam Booklet Series].
- , 1991. "Are Muslim Men Allowed to Beat Their Wives?" Kuala Lumpur: SIS Forum (M) Berhad [Sisters in Islam Booklet Series].
- (eds.). 1993. *Islam, Gender and Women's Rights: An Alternative View*. Kuala Lumpur: SIS Forum (M) Berhad.
- Stowasser, Barbara F. 1992. *Women in the Qur'an, Traditions, and Interpretations*. New York: Oxford University Press.
- Tillion, Germaine. 1983. *The Republic of Cousins: Women's Oppression in Mediterranean Societies*, trans. Q. Hoare. London: Al Saqi Books [orig. French edition, Paris 1966].
- Wazir J. Karim. 1992. *Women and Culture: Between Malay Adat and Islam*. Boulder, CO: Westview Press.

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