

Abstract

This paper is concerned with the current position of women in Pakistan, focusing particularly on the changes that the current program of Islamization undertaken by the Pakistani government has had and potentially may have on women's lives. After providing some background on Islamic legal theory and the historical conflict of interpretation of that theory in South Asia, I address the relationship between the new Islamic laws (both decreed and proposed) and women's position in Pakistan. The implications of the implementation of the government's program of "nizam-i-islam" on women and the variety of responses to these actions are analyzed, as well as the effects of these laws on the social environment they are attempting to shape.

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Women in Pakistan: Implications of the Current Program of Islamization

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WOMEN IN PAKISTAN: IMPLICATIONS OF THE CURRENT PROGRAM OF ISLAMIZATION¹

The position of women in Pakistan is hardly different from that of most women throughout the Muslim world. Burdened by household and familial obligations and low literacy levels, the women have rarely been able to mobilize and collectively stand up for their rights. The past two years, however, have witnessed the emergence of grass-roots movements in urban areas of Pakistan whose aim is to attract attention to the effects of the government's Islamization program on women. The complete program, unparalleled in the modern history of Islam in South Asia, would systematically reduce women's power and participation through established social institutions (e.g., legal, educational, political). The government did not foresee the demonstrations in Lahore and Karachi in February 1983 in which prominent women, female lawyers, and others vehemently protested the proposed Law of Evidence (which would limit women's testimony in legal matters). These women broke through the veil of silence that had fallen over Pakistan since the 1979 execution of former Prime Minister Zulfikar Ali Bhutto. Their actions are significant as they publicly exposed the controversy regarding interpretation of Islamic law. The political realities were suddenly changed in this country, where opposition was strictly prohibited and the military was seen as all powerful.

After providing some background on Islamic legal theory and the historical conflict of interpretation of that theory in South Asia, this paper addresses the relationship between the new Islamic laws (both decreed and proposed) and women's position in Pakistan as of early 1984. It then discusses the variety of responses to these actions and analyzes the effects of the laws on the social environment they are attempting to shape, focusing on the conflicting social forces at play.

OVERVIEW OF ISLAMIC LEGAL THEORY AND THE HISTORICAL CONFLICT OF INTERPRETATION IN PAKISTAN

The foundations of political authority in Islam can be traced to the early community established by the Prophet Mohammad in Mecca. The purpose of the state was to enforce the divine law as revealed in the Qur'an and Sunnah. Together, the Qur'an and the Sunnah contain God's treatise on what man should be and do and show a segment of God's plan for creation. An individual alone cannot conform entirely to the injunctions of Islam unless and until the practical affairs of his society are in line with God's revealed plan.

Two sciences, tafsir (Qur'anic commentary) and fiqh (jurisprudence) were stressed in the early period of the religion's development.² Leonard Binder, writing on Pakistani society, clarifies the concept of fiqh:

Jurisprudence, fiqh, was the preeminent Islamic science. All law is pre-existing and eternal. Right and wrong are known by revelation (the Qur'an) and through reports handed down by tradition of the sayings and doings of the Prophet (hadith). (Binder 1963: 23).

As Goldziher (1981: 55) observes, however, the early scholars of fiqh did not intend to "embitter the life of the Muslim by imprisoning him in a stockade of legal restraint." The niyya, intent of the law, is fundamental to its validity. The spirit behind the religion--to obey God's laws in accordance with the shari'a--can never be forgotten when passing or enforcing any law.³

Ibn Khaldun, the great classical Islamic theorist, defined the state primarily in terms of its capacity to maintain justice and to defend the Muslim religion.⁴ If the state fails to enforce the divine law, the believer still remains under the obligation to observe the law (Khadduri 1955: 24). The Amir (i.e., ruler, king, caliph, etc.) is given authority in the shari'a to do whatever is necessary to enforce the law and provide for the well-being of his citizenry. The Amir does not rule alone; he must consult (mushwarat) others who are concerned with the affairs of the state (Ahmad 1975: 144). Responsibility lies equally with the ruler and his counsellors, but no decision can be reached that is in conflict with the divine law or the traditions of the Prophet. The Qur'an is very clear on this point:

Obedience is obligatory until the ruler orders the commission of a sinful act. Those, who would accept their [rulers'] falsehood as Truth, and help them in tyranny and oppression, have no relation to the Prophet...In case the Amir violates the shari'a, the millat [community] is released of its allegiance to the Amir. (as quoted in Ahmad 1975: 161)

Penalties in Islamic law correspond to the two sources from which all penal law is derived: punishment of crimes against religious and military discipline and private vengeance (Schacht 1964: 175). There are three types of penalties: hadd (pl. hudud); ta'zir (p. ta'azir); and qisas. These differ not only in quality and justification but in philosophy as well. Hudud punishments, the severest category, form the basis of the Islamic penal code in contemporary Pakistan and are meted out for commission or omission of an act in contradiction to any divinely ordained command. These crimes include theft, adultery/fornication, the consumption of alcohol, slander, robbery and apostasy and apply under specific circumstances with specific evidence to support the crime. Hudud crimes are regarded as being against God's commands and are consequently normative and absolute (Kara 1977: 139). Ta'azir punishments are for wrong acts that are in a lesser category. These punishments are left to the discretion of the community leaders. Qisas concern laws of retaliation and blood money; substantial controversy has surrounded the proposals that have been forwarded to the Federal Council by the Council of Islamic Ideology.

The patrimonial nature of Muslim political institutions is said to preclude the emergence of capitalist pre-conditions (Max Weber, as quoted in Turner 1974). Under the Mughals, India's indigenous economy was not transformed into a capitalist one, despite profound changes occurring elsewhere in the world. The Mughal state was constantly searching for a

durable base for stability, since four-fifths of its subjects were non-Muslims.⁵ Though administration and revenue collection were conducted according to classical Islamic tenets, no satisfactory basis for governing the country could be found within Islamic law as it had originally been codified (Faruki 1971: 86). Therefore, when the Indian economy was finally transformed by colonialism, other social institutions necessarily underwent profound change as a result of having to cope with the newly superimposed structures. When the British organized the zamindari and ryotwari taxation systems, Western laws were imposed to enable these systems to function. In time, contracts had to be signed, districts had to be ruled, criminals had to be punished; except in the sphere of family law, British law was imposed wherever the British Raj reigned. A clearly defined separation between religion and the state emerged, underscored by the presence of secular non-Muslim foreign rulers. The Muslim community was essentially powerless against the British throughout most of the nineteenth century.

During this time, however, the Hindu community was undergoing a revitalization. Religious leaders such as Roy and Tagore, who promoted the "rediscovery" of classical Hindu culture were soon followed by secularizing "moderates" (deBary 1958: 109), promoting nationalism, social progress, and economic improvement. The British contributed to this revival by often favoring the Hindu community in sociopolitical affairs. They regarded the Muslims as their political opponents, especially because they had led the unsuccessful Revolution of 1857.⁶

Much can be written about the varied historical dimensions that culminated in the formation of an "Islamic homeland," Pakistan, on the subcontinent. Different leaders held different ideas when they called for a separate state for Muslims.⁷ This question of interpretation provides the backdrop against which the present government's Islamic laws are being promulgated. Ever since the demand for a Muslim state arose, the role Islam should play in its political structure has been a problematic issue.

It is important to note that these early leaders did not call for an "Islamic state." That would imply that they intended to adopt Islamic laws and establish some form of a theocratic state based on classical precedent. Most historians claim that Sayyid Ahmad Khan, Mohammad Iqbal and Mohammad Ali Jinnah, the three men regarded as the major leaders behind the Muslim nationalist movement, were clear on this point; they wanted to establish a secular state, but one in which Muslims would not be dominated by any other group, especially by Hindus. Islam was to be used as "a motivating force to rally the Muslims to the cause of Pakistan politically" (Hasan 1980: 3) but the result was to be secular state. Adherents to such notions have often been referred to as "modernists" or "progressives," the descendants of the western-educated students of the Aligarh Movement (founded by Sayyid Ahmad Khan) who refer to the West for its legal codes, industrial modes, and social norms. These westernized Muslims accept a demarcation between religious and political life; that is, they support the notion of a secular state. This is a modern conception in that traditionally Muslim society does not divide into separate institutional spheres (Gellner 1981). Many

religious leaders during the Independence struggle did not, however, subscribe to the secularizing philosophies prevalent in the Muslim League. Instead, they argued that Islam could not be confined within national borders as a separate Muslim state. These members of the Deobandi school and the Jamaat-i-ulema-i-Hind claimed that as Islam was an international religion, it could not be said to be embodied in only one state.⁸

Members of the latter groups had been located in eastern Punjab in 1947; because of anti-Muslim sentiment in that area, they migrated to Pakistan. The Jama'at was soon transformed into a political party, demanding the establishment of an Islamic state in Pakistan. Members of the Jama'at were the first to seek to redefine tradition in the context of the new state.

All of the above movements, although they advocated different goals, sought to mobilize Indian Muslims to reach aims that were neither originally nor ostensibly political (Minault 1982: 9). The movements promoted greater Muslim self-awareness and, in doing so, shaped the conflict that ultimately arose between those promoting a Muslim-led secular state and those demanding an Islamic state.

In the thirty years since partition, Islamic principles have increasingly been included in the state's political apparatus, and the slogan "Islam in danger" has solidified public sentiment behind the state when its stability was threatened. Through the years, important questions concerning what an Islamic state is, who is to participate in it, and the degree to which Western law is to be a part of the state have been raised. Nevertheless, all regimes preceding the current government have been clearly secular, generally focussing attention on their relationship with the international capitalist system or on the coalescence of their internal power base. The governments of both Ayub Khan (1958-68) and Zulfikar Ali Bhutto (1971-77) did incorporate aspects of Islamic doctrine into their state's apparatus (Weiss 1983) but with minimal impact on the prevailing social order.

The Zia government, having come to power in a coup d'etat on July 5, 1977, first introduced its Islamization program in February 1979.⁹ The true goals of the program are still unclear. On one hand, government supporters (often associated with the ultra-conservative Jama'at-i-Islami) claim that Pakistan is finally addressing its raison d'etre by having all laws be in conformity with Islamic tenets. On the other hand, opponents claim that the Islamization program is simply a ruse by which an illegitimate military government is trying to legitimize a garrison state.¹⁰ Both explanations are inadequate, for they fail to recognize either that these changes are being imposed from above without significant grass-roots support or that they are having substantial institutional impact regardless of motivation. In addition, neither position considers the significance of Zia's actions in 1980 when he established the Women's Division as part of the Cabinet Secretariat. The stated purpose of the Women's Division is to safeguard and advance the position of women in the country. There is an apparent contradiction in policy as well as in thought

regarding women's ideal and objective position and role since their status has been simultaneously uplifted by the establishment of the Women's Division, diminished by the incorporation of some Islamic laws, and further threatened if the much-disputed Law of Evidence and the Qisas and Diyat Ordinance are decreed into law.

The conflict that has emerged throughout the Muslim world has developed in Pakistan: the push of modernity (i.e., industrialization and emphasis on the realization of human potential) versus the pull of redefined tradition (i.e., Islamization). Pakistan has often identified itself as the fort on the eastern front of the Muslim heartland. Yet the conditions that exist for women within that heartland are by no means uniform. These range from the radical reforms of family law and inheritance adopted in Tunisia and Turkey to the more moderate stands seen in the policies of Egypt and Morocco and the religiously conservative governments of Iran and Saudi Arabia. The latter two states incorporate comprehensive Islamic laws into their systems to the extent that each claims to embody the essence of Islamic principles of statecraft. But the fiqh (jurisprudence) of Wah'habism in Saudi Arabia differs vastly from fiqh Jafaria in Iran and both differ from fiqh Hanafi, the dominant school in Pakistan.¹¹ As there are many paths that "resurgent Islam" follows in the contemporary world, there are also differing opinions regarding the possibility of continuing ijtihad--interpretation of Qur'anic teachings and injunctions--at present. Some leaders (as in Libya and Tunisia) claim the doors of ijtihad are wide open, encouraging new interpretations of Islam for the modern era. Others (as in Saudi Arabia) insist that they closed some three hundred years following the death of the Prophet Mohammad.¹² The Zia government has said that it too feels that there is still scope for reinterpretations of Islam, for:

Islam is an eternal and immortal religion. It is eternal in the sense that there is no scope for any alteration in the absolute injunctions of the Qur'an; it is immortal in the sense that the doors of Ijtihad, in the light of the Qur'an and the Sunnah, are open for all times.¹³

In her discussion of legal decisions regarding maintenance payments for separated and divorced wives, Lucy Carroll shows how the government has practiced this:

The Pakistan courts, having opened wide the door of ijtihad, claim and assert the right to reinterpret the classical commentaries on Hanafi law in the light of the social circumstances of the 20th century, and to adopt tenets of one of the other schools of Islamic law on specific questions when such a course is dictated by considerations of reason and justice (1981: 111).

The government has been inconsistent regarding when to appeal to ijtihad and when to apply a strict traditional Hanafi interpretation of the law.

There is no consensus among the many Muslim states as to how Islamic laws should fit into a contemporary institutional framework. Islam, like other world religions, is no longer tied to only a small group or tribe; instead, it addresses very diverse peoples. As people and their indigenous customs differ, so too do interpretations--even acceptance of the possibility of interpretation--of the religious legal code. What is accepted as doctrine is often a combination of the indigenous cultural values and mores combined with the type of interpretation of Islamic law prevalent in that area. In a larger theoretical sense, it is important to compare how Islamic laws are applied in different contexts,¹⁴ but more compelling to the scholar of South Asia is how its application has been discussed and enforced in Pakistan since Independence. We must question why the more rigid interpretation of the conservative school has come to dominate the program of legal reforms currently underway in the country. Nationalist and religious symbols have become nearly synonymous; we must try to differentiate between them and understand why this has become so.

THE POSITION OF WOMEN IN PAKISTAN SOCIETY PRIOR TO THE ISLAMIZATION PROGRAM

Contradictions inherent in Islamic law extend to the position of women. This is evident in two of the strongest symbols of Islam: the Qur'an, which advocates the improvement of women's position and was a radical document for its time; and the veil, which physically limits women's participation in the larger society, effectively symbolizing their powerlessness.

The legal position of Muslim women is guaranteed in the Qur'an, as it acknowledges, for example, that women may inherit (albeit half the share that a man inherits), that a woman must consent to her marriage, and that widows and divorcees may remarry. Muslim women's options have been traditionally limited in northern India more by customs and attitudes than by religious law, so that these legal rights have not always been enjoyed. In addition, whereas Islam encourages a woman to be literate so she can read from the Qur'an and educate her children, the gender discrimination in Pakistan is apparent in the fact that the literacy rate for men is more than double that for women. Barely one-sixth of the female population has had a minimum of three year's schooling, one of the lowest levels for women in the world.

The most obvious restriction on women stems from the institution of purdah, the formalized separation of women from the world of men. Though purdah literally means "curtain" in Urdu, it has come to connote both the physical and practical separations between the activities of men and women (Papanek 1973). Although not all women observe the restrictions purdah imposes, most do embrace the inherent values, such as that a woman preserves her family's honor by not mixing with unrelated men and by not wearing revealing clothes. Poorer women, because they have had to engage in subsistence activities, have never had the leisure to observe purdah or to wear the veil, so it has been an issue largely for the wealthier classes. Of these, many women in urban areas no longer strictly adhere to such customs of modest dress, as seen in the current usage of the dupatta (scarf used as a headcovering) as a colorful accessory as opposed to a functional piece of clothing.¹⁵

Only two substantial legal reforms affected women's position in Pakistan between Independence in 1947 and 1979. In 1961, the Ayub Khan government introduced the Muslim Family Laws Ordinance, which reformed the Muslim Personal Law (Shariat) Application Act of 1937. This progressive document ensured women's rights in divorce, inheritance by grandchildren, and the written consent of a man's first wife before he could marry a second one.¹⁶ Later, the 1973 Constitution advanced women's position by prohibiting discrimination on the basis of sex. Despite the Bhutto government's slogan of "Islamic Socialism," no other legal changes specifically addressed the position of women.

THE LEGAL IMPLICATIONS FOR WOMEN OF THE CURRENT ISLAMIZATION PROGRAM

In February 1979, General Zia announced a series of reforms called "nizam-i-islam" aimed at bringing all laws into conformity with Islamic tenets and values. The stated intent was to mandate the kinds of economic, political and social institutions that had been established and encouraged by the Prophet Mohammad during his decade-long reign over Medina (622-632 A.D.). Four aspects of secular life were slated to undergo Islamization: 1) the economy, through the establishment of zakat and ushr funds, the abolition of interest, and the subsequent adoption of an interest-free banking program based on the Saudi Arabian model; 2) the judicial system including the formation of a Federal Shariat court and lower gazi courts as well as the inclusion of a Federal Mohtasib (ombudsman) to address complaints concerning the courts; the penal code with the implementation of the Islamic penal code; and educational system with the issuance of a new education policy.

The introduction of Islamic economic measures has had minimal impact on women since few women are employed in the cash economy and those who are rarely enjoy enough surplus to enable them to pay an alms tax or open a savings account. Instead, women have been the recipients of the zakat funds. General Zia (1983: 16-18) reported that Rs. 2,550 million has been distributed among widows, orphans, and the needy since the beginning of the program.

Judicial reforms include the incorporation of a Federal Shariat Court and the appointment of religious scholars as gazis (judges) to the Supreme Court. Initially, conservatives insisted that women could not serve as a gazi. In August 1982, in a case brought before the Federal Shariat Court, the Attorney General quoted shari'a sources and proved that there was no ban on women functioning as gazis. Military courts, however, can overrule decisions taken by the Shariat and civil courts which can not contest the military courts' actions. In December 1983, General Zia announced that in order for Pakistan to progress, due rights and status must be given to women and that it is not possible to confine them to the four walls of the home. It was decided that separate courts would be set up to deal with cases involving women and female staff would be employed for them so that women can have the power to secure the rights and status provided to them by Islam.¹⁷ This decision, however, has not yet been implemented.

Related to the issue of judicial reforms is the establishment of a consultative federal assembly, appointed by the government to offer advice on debate issues. This Majlis-e-Shoora presently consists of 273 men and 16 women. Most of the women, such as Begum Razia Aziz-ul-Din (president of the NWFP Red Crescent Society) and Begum Massod Sadiq (President of the Punjab Red Crescent Society), are active in social welfare organizations. Only one woman is directly from the Jama'at-i-Islami while another is president of the Pir Pagara Muslim League's Ladies Section in Karachi. At the time of its inception, there were no restrictions on who could be appointed members.

The implementation of the Islamic penal code and enforcement of hadd punishments have concerned crimes such as burglary, murder, intoxication, adultery, and perjury. Women are most affected by the promulgation of the Offense of Zina (adultery) Act. The legal definition of zina liable to hadd punishment is:

a (sane) adult man and a (sane) adult woman are said to commit "zina" if they wilfully have sexual intercourse without being validly married to each other. (Ordinance #7 of 1979, Part 4).

There is legally no difference in punishment for a man whether or not his zina (adultery) offense constitutes a rape. If the accused woman is a virgin or is married, the maximum penalty is death by stoning; if she is widowed, divorced, or a prostitute, the penalty is 100 lashes.

Another part of the ordinance addresses zina-bil-jabr, which consists of four types of sexual intercourse without consent, i.e., rape. General Zia (1979: 19) has pronounced that a person may be proven guilty of zina-bil-jabr "with or without the consent of the parties." However, evidence for zina-bil-jabr remains the same as for any other hadd crime; the severest punishment (death by stoning or 100 lashes) is invoked with either the accused's self-confession or by the testimony of four salah (morally upright) adult Muslim males. Without such evidence, the penalty is at the court's discretion.

During 1983, such punishments were meted out in a highly discriminatory fashion. Women were proven guilty of zina-bil-jabr through medical examinations following the rape, or because they became pregnant and were unmarried. The most well-known case is that of Safia Bibi, a young blind woman who had been hired as a domestic servant and became pregnant following a multiple rape. She was given the punishment of fifteen lashes for zina-bil-jabr. The two men involved--a father and his son--were not punished; the first was not charged on lack of evidence, while the second was acquitted by being given the "benefit of the doubt." Heated disputes have erupted regarding this policy. Besides the issue of making a woman suffer twice, it was considered by many that this law was unfair toward women if illegitimate birth could be used as a criteria for "self-confession" thereby proving a woman's guilt while the man goes away unpunished.¹⁸ Yet it is nearly impossible to prove a man's guilt without his verbal confession, for what four salah Muslim men would stand by and let a woman get raped? In

August 1983, the Federal Shariat Court did reverse the ruling of the session judge in this case and distinguished between rape and adultery, dismissing Safia Bibi's sentence. A thirty-five year old woman, Lal Mai, in Liaquatpur (Bahawalpur district), was not as lucky and was the first woman publicly whipped for adultery on September 30, 1983. Eight thousand people are said to have watched her receive fifteen lashes. A woman in Swat was later sentenced to receive eighty lashes. The men in both cases were acquitted. The Women's Action Forum and the Pakistan Women's Lawyer's Association protested the floggings as:

degrading, unnecessary, brutal and a direct violation of the International Declaration of Human Rights, to which Pakistan is a signatory.¹⁹

The new educational policy has also had important implications for women. Compulsory courses in Qur'anic studies and Islamiyat have been introduced throughout the educational system, and Urdu has become the official language of instruction. Textbooks have been revised to be in conformity with Islamic teachings. An Islamic University has also been established. The most important change for women has come via a presidential proposal advocating the establishment of a women's university. This will consist of university colleges throughout the country. The home economics colleges at Karachi, Lahore and Peshawar are slated to be upgraded and affiliated with the women's university. Women, however, will still have the option of seeking admission to co-educational universities. Dr. Afzal, former head of the University Grants Commission in Islamabad, has said that the women's university should open in late 1984 or early 1985. Critics of the proposal claim that a women's university will only increase the isolation of women and especially of the brightest, most educated women. The university will stress home economics, medicine, and teaching, leaving women's education deficient in the fields of technology and the physical and social sciences.

Besides legal changes, the government has supported its Islamization program through a number of directives and official positions. In terms of women's work options, thus far the effects have been minimal. Social values often serve to constrain women from wanting to mix with men at the workplace while economic and political priorities tend to make unions exclude women from membership in their ranks.²⁰ The effects of Islamization at the workplace are largely at the level of appearance: employers set aside an area of the factory for prayers or women are advised to dress modestly, often even to wear their dupattas upon their heads. Female newscasters on television have had to have their heads covered since 1979. No mention, however, is made of proper attire for men, who by any strict interpretation of the Qur'an should also wear loose, non-revealing clothes, and most certainly not tight blue jeans. By not even raising the question of proper dress for men, singling out women can only be regarded as discriminatory.

The fiat potentially most damaging to women's equity is the proposed Law of Evidence, recommended by the Advisory Council on Islamic Ideology to the

President in late January 1983. The Ordinance would modify the evidence law enacted during the British Raj which is still in use. The Majlis-e-Shoora approved it in February 1983, except for one controversial clause. Two versions of the clause were under discussion: the first would allow for two witnesses under most instances (except where other requirements were invoked); the second would necessitate the evidence of "two Muslims and in the absence of two male witnesses by the evidence of one male and two female witnesses." The clause finally included reads as follows:

The number and particulars of the witnesses would be in accordance with the Holy Qur'an and Sunnah, the details of which are as under: in Hudood, according to the Hudood Ordinance. In Qisas, according to the Qisas and Diyat ordinances. In other matters, two men or one man and two women. If the said witnesses are not available, the court shall decide on the evidence of one woman or such other evidence and circumstances as may be available.²¹

According to this Ordinance, women would be prohibited from testifying in hadd cases.

Demonstrations protesting the ordinance broke out in Lahore and Karachi, led jointly by women of varying political and social backgrounds. After police lathi-charged some of the female demonstrators in Lahore on February 12, 1983, the assault on the women was also denounced by politically diverse groups.

There were a number of arguments forwarded showing that the proposed Law of Evidence was not the only acceptable evidence law in Islam. Members of the Women's Action Forum and the Pakistan Women Lawyers' Association contested that there is only one instance in the Qur'an, Ayat 282 (Sura al-Baqr), in which two women are called to testify in the place of one man. This is in a specific financial arrangement, however, and the role of the second woman is to remind the first on points which she may have forgotten. In numerous other ayats, men and women are referred to as being equal in matters of witness.²² Critics also note that the testimony of Hazrat Khadija, the Prophet's first wife, asserting that Mohammad was the Prophet of God, made her the Prophet's first disciple. On the single testimony of Hazrat Aisha (another of the Prophet's wives), hundreds of hadith have been verified. In addition, a rigid interpretation of the Qur'an, such as would support the Law of Evidence (i.e., meaning "male" whenever the generic word "man" was used) would exclude women from being members of the religion.

Regarding the exclusion of women's evidence as inadmissible in hudood cases, it has been charged that the sole evidence of Hazrat Naila, the wife of Usman (the third Caliph) was accepted by the Prophet's companions regarding Usman's murder.

Opponents argue that the criteria for witnesses, as stated in the Qur'an, are possession of sight, memory and the capability to communicate. As long as a person--male or female--has these, his/her testimony should be equal to that of any other acceptable witness.

Another law proposed by the Council on Islamic Ideology but not yet decreed is the Law of Qisas (retaliation) and Diyat (blood money). If a man is murdered, the law allows for a diyat equivalent to 30.4 kilos of silver; if a woman is physically harmed, the compensation is only half that which would be given to a man.²³ Critics claim that it is illogical for the punishment for murder to be equal for men and women (a woman found guilty of murder is also sentenced to death), yet the diyat is different if the victim is a man or a woman.

The Ansari Commission was assembled last year to inform the President as to which aspects of contemporary society were repugnant to Islam. It has since recommended a number of controversial measures. These include: disqualifying women from ever being the head of state; requiring a woman to be at least fifty years of age (a man need only be twenty-five) and securing her husband's permission before becoming a member of the Majlis-e-Shoora; guaranteeing that 5% of the general membership of the Majlis-e-Shoora for the next ten years be reserved for women (to be appointed by the President); prohibiting women from leaving the country without a male escort; and refusing to allow an unmarried, unaccompanied woman to serve abroad in the foreign service.

The above three proposals--the Law of Evidence, Law of Qisas & Diyat, and the Ansari Commission's--all met with substantial resistance from educated women throughout Pakistan. Cries of discrimination against women were raised as concern mounted that women were officially being relegated to second class status. Syeda Abida Hussain, Chairman of the Jhang District Council, said that women in Pakistan are now in the midst of fighting the biggest jihad (holy war) in history and that "Islam enjoins rights and responsibilities on Muslim women which are not subject to any dispute."²⁴

The Women's Action Forum, composed of female lawyers and other concerned women, has taken an active stand against these three proposals. Other women are studying Islamic laws and their application towards women throughout the Muslim world. Begum Ra'ana Liaquat Ali Khan, President of APWA (All-Pakistan Women's Association), has also taken a strong stand against their promulgation. She asserts that:

Some clauses about women in the Ansari Commission Report are repugnant to the Holy Qur'an and Islam, which gives women equal rights with men in all public matters.²⁵

Other critics of the Ansari Commission Report have noted that there have been women rulers in Muslim history, such as Bilquis, Queen of Sheba, and two queens in Yemen during the Sulaihid dynasty.²⁶ They have also used the example of Miss Fatima Jinnah, the sister of the Quaid-e-azam, who ran for the office of the presidency against Ayub Khan in 1963. The most recent action against the proposals was on December 17, 1983, when over sixty members of the Women's Action forum picketed and demonstrated in front of the Governor's house in Lahore.

Not all segments of the society reject such reforms. The Majlis-e-Khawatin-i-Pakistan, another women's group, has dismissed the validity of the U.N. Charter for the rights of women, calling it an anti-Islamic document, and wholeheartedly supported the police lathi-charge of the protesting women in Lahore. The student wing of the Jama'at-i-Islami, the Jama'at-i-Tulaba, long a supporter of the conservative policies of the government, including the dismissal of left-oriented faculty members from the universities and demanding separate women's educational institutions, has also taken an affirmative stand on these issues. Regarding the criticisms levied against the proposed Law of Evidence that it is based on only one Qur'anic ayat, some ulema asserted that "disagreement with any verse of the Holy Qur'an is tantamount to rejecting the whole of [the] Qur'an."²⁷

ISLAMIZATION AND SOCIAL CHANGE FOR WOMEN

The government, in response to its critics, has maintained that it is simply trying to get rid of anti-Islamic elements in the society. It has claimed that, under its tutelage, the position of women has in fact improved. Mahbubul Haq, Chairman of the Planning Commission responsible for the Sixth Five-Year Plan (1983-88), has said that Islam is a great liberator of both men and women and should never be used for oppressing either and that, in fact, a quiet revolution has been occurring in Pakistan over the past twenty years with the enrollment of females in primary schools, colleges and universities as well as the numbers of women competing in the job market.²⁸ He emphasized that the government remains supportive of these goals.

The report of the Working Group on Women's Development Programmes for the Sixth Plan mentioned the invisibility of women in the areas where they are in actuality contributing to the country's economic development. The report recommended Rs. 5,000 crore (about \$385 million) above that already being spent on ongoing projects be used for development programs in education, culture, health, population welfare, agriculture, employment, industry and mass communications which focus on women. Although Mahbubul Haq had initially agreed with the report, very limited resources have been set aside for women's projects.

The Women's Action Forum criticized the planners of the Sixth Plan for not providing adequate funds and for failing to recognize women's work and contributions to the national economy. The planners had estimated that only .5 million women (out of 18.3 million adult women) in rural areas are economically active and that there were only 176 female workers in agriculture and animal husbandry. Any observer of the Pakistan situation can easily note that women engaged in subsistence economies have been omitted from such analyses.

Pakistan faces many other social problems such as: institutionalized gender inequality in access to health resources; an appallingly high population growth rate of 3% annually, causing the population to double

every twenty-three years; 90% of all women suffer from some sort of anemia during their child-bearing years; the role that Islam may play in alleviating these problems remains unclear. One popular belief that has been beneficial to poor, rural children in Pakistan concerns breast-feeding; many people claim that the Qur'an states that children should be breast-fed until age two. In 1975, the Pakistan Fertility Survey (part of the World Fertility Survey) found that 99% of rural children were being breast-fed for such long durations. For this reason, problems associated with infant formula diets are not as pervasive in Pakistan as in other Third World countries.

The issue of family planning can be approached from two directions using an Islamic perspective. Some claim that Islam supports family planning on the basis that it protects the health of the mother. Others claim that Islam strictly forbids family planning. Pakistan does have a relatively successful family planning program in progress, headed by Dr. Attiya Inayatullah, who has been lauded by the United Nations for her work. The program has been successful in that clinics have been established throughout the country, in urban as well as in remote rural areas. Nevertheless, longstanding misconceptions regarding virility and family planning remain. In addition, agricultural settings often make large families an economic necessity. Women often find it difficult to secure permission from their husbands to use family planning measures, and when they do, the procedure selected is, by and large, female sterilization.

A final change that has occurred in Pakistan because of the government's efforts towards Islamization cannot readily be observed, but can be discovered only through discussions. At least in urban areas, people are now thinking in an unprecedented way about where Islam fits into their "secular" lives. Because of the government laws and directives, many people are discussing and trying to decipher what Islam means to them and the extent to which they wish to integrate Islamic teachings into their lives. Members say that the Women's Action Forum is planning to run Arabic classes to counter the charges by the fundamentalists that they are a small minority of westernized women who neither understand nor care about Islam. Instead of responding to the assault on the women demonstrators in February 1979 by appealing to parliamentary law and civil rights doctrines, the Pakistan Women Lawyers Association brought suit against the government on Islamic legal grounds that the police, as unrelated men, had no right to touch the demonstrating women. Although women have not yet lost any rights, many of them are thinking about the implications of the current proposals and taking an active stand one way or the other. While in the past APWA was regarded as an organization made up of "begums" with time on their hands, its activist position against the proposed Law of Evidence and the Ansari Commission's Report is changing the way people think about it and increasing its potential as a facilitator of social change.

SOME POSSIBLE REASONS BEHIND THE PROPOSAL ON WOMEN

Particular kinds of social relationships are encouraged by the types of laws in every society. Traditional Islamic law as applied in the South Asian context has favored the maintenance of extended patrilineal kinship networks and the control of women through male members in these networks, primarily in a rural subsistence economy. Reforms generally occur because of changes in political and economic institutions. Anderson and Coulson write that it is "obvious that the future of Islamic law cannot be separated from the economic, political and social future of the countries in which it is applied."²⁹ David Taylor believes that Pakistan's problems stem from trying to reconcile and integrate "a set of not always fully consistent ideological perspectives with the political legacies of the past and the constraints of the present" (1983: 182). Therefore, to what can we attribute affirmation of Islamic law and its integration into the Pakistan government's legal apparatus and, in this instance, of a conservative interpretation of Hanafi fiqh?

Informal sanctions in Pakistan have historically played for more significant roles in restricting women's position than have the recent parcel of official directives, which have affected women in three major areas: education; legal participation; and punishments (especially regarding adultery).³⁰ For example, even before the new laws, women would rarely testify in the courts except under extreme duress. Few women are concerned about the issue of a woman's university, since the majority are poor, illiterate inhabitants of rural areas, eeking out a subsistence from the land and from the remnants of traditional craftsmanship on the side. Lucy Carroll (1982: 66) argues that the present government is taking the constitutional mandate that all existing laws be brought into conformity with the injunctions of Islam much more seriously than have any of its predecessors. This is occurring despite the fact that the government has suspended the 1973 Constitution.

We must surmise that there are reasons motivating the government to enact these measures other than simply religious or parliamentary ones.

The first is that the Islamization program is being used as a means of placating the government's political supporters, particularly the Jama'at-i-Islami. By proposing laws based on religion yet not enforcing them, the fundamentalists are appeased but other powerful groups (consisting of men) in the society are not challenged. The government could have focused on so many other areas (e.g., redistribution of wealth, especially of rural land-holdings; establishment of an Islamic-based political decision-making process; social programs stressing man's obligations to God's creation, that the fact that women have been singled out is significant. General Zia recently said that the government's first priority is to:

carry forward the process of Islamization and to consolidate the measures already taken in this behalf to a degree that no future Government can reverse them (1983: 35).

But he then proceeds to mention goals similar to those of most developing Third World countries, concluding with the wish to accelerate the pace of development programs so that the "maximum possible area may be provided with the amenities of (the) modern age in the minimum possible time" (1983: 37).

On December 20, 1983, General Zia announced that the Law of Evidence would be sent to the provincial governments before it was approved by the Federal Cabinet. Sources high in the Women's Division feel strongly that it will not be passed into law but that General Zia is appealing to the fundamentalists by his attempts. Victims of adultery/rape cases who have been tried in court have all been poor, rural women or members of destitute families unable to hire lawyers or have any political influence. Unfortunately, no one in power appears to be addressing the issue of which segments of the female population are most affected by the new laws and the fact that these laws are upholding class distinctions as well as gender discrimination.

Another possible reason behind the government's proposals concerning women is that by enforcing traditional law, a certain type of economy is being sustained. Social scientists generally agree that the secularization of society is an indicator of the transformation from feudal relations to capitalist ones. In Tunisia, for example, the Code of Personal Status (a reinterpretation of Islamic law which gives women full rights and responsibilities in the society) affirms the nuclear family, which is fast becoming the more popular form. Mounira Charrad believes that the Tunisian state changed the law so as to break down the internal solidarity of kin groupings, which were already broken down enough to make this possible.³¹ The movement toward the nuclear family, which strengthens the husband/wife relationship, and away from separatist kinship groupings helps the development of secular, centralized institutions. By also making a woman responsible for the needs of her family (if she is in a position to be so), the Code of Personal Status in Tunisia not only affirms the nuclear family, but underlines the transformation of economic relations (i.e., the capitalization of the economy) by including women and recognizing their economic importance. This is not being done in Pakistan, perhaps because of the as yet incomplete transition to a capitalist economy which has meant that Pakistan's greatest export and source of foreign exchange is migrant laborers to the Gulf States. Therefore, favoring secular laws that promote capitalist relations would be difficult in an environment where few are benefitting from them.

A final contributing factor to the government's position on women is one that plagues most other governments and international organizations as well. There is little factual knowledge regarding what women do. The dispute about the proper role for women in Pakistan is familiar throughout the Third World. International development agencies such as UNDP, FAO, and USAID have done much to perpetuate the western stereotype of women's position being in the home and nurturing her children. This is a role that is in fact alien to most Third World women, including a majority of Pakistani women, who must toil in the fields or trade in the marketplace for

their family's subsistence.³² Only wealthier women have the leisure time to participate in the kinds of projects these agencies usually design; such projects ostensibly help poor women but in actuality only serve elites. APWA has also implemented such programs in Pakistan, establishing income-generating projects such as tablecloth-making, baking, and rug weaving without ensuring adequate local mass-marketing networks. The products were instead oriented toward the limited and unreliable tourist and overseas specialty markets.³³ The government's proposal for a separate women's university would merely perpetuate this lack of knowledge about women's needs. Women in rural areas who must forage for firewood, transport water from wells, transplant rice, cut alfalfa for their animals, and perform other tasks, do not need lessons in home economics nor do they need to be told to wear their dupattas on top of their heads. They need to be put into contact with new forms of technology which will help them to survive, to learn how to read so as to implement their newly learned skills, perhaps freeing up some time so they can send a child to school.

Social scientists have documented the problems in projects such as family planning and health care when they are organized by men without the immediate input of women.³⁴ Such projects designed by men to control women's fertility are often doomed to failure, for they are not aware of the primary concerns and fears which the women may have. Likewise, a weakness can be seen in the procedure of men adapting Islamic laws to women. At least, women educated in the study of the Qur'an should be invited to offer suggestions. Instead, they have been excluded from this process. The Special Committee on the Evidence Act of the Federal Shariat Court is made up of four men: three judges of the Supreme Court and Tanzilur Rehman, Chairman of the Council on Islamic Ideology. They are the ones who have decided that a woman's testimony should not be admissible in a court of law, are questioning if she can study with male students, and are even announcing how she should act to preserve her modesty. The lack of input by women becomes evident when one reviews the contradictory proposals.

NOTES

1. This paper is based on earlier drafts, "The Transformation of Religion into Political Ideology: The Islamic Laws in Contemporary Pakistan" presented at the Annual Meeting of the Association for Asian Studies, March 1983, and on "Women's Position in Pakistan: Sociocultural Effects of Islamization" in Asian Survey (in press), initially presented at the Annual Meeting of the Association for Asian Studies in March 1984. I am grateful to the Center for South and Southeast Asia Studies, University of California, Berkeley, for its administrative support.
2. Four Sunni schools of thought have survived. Malikite fiqh has been popular in Egypt, North Africa and Spain. It permits the principle of ijma (collective reasoning), but only as an extension of the Qur'an and hadith. The Hanafi school, which became the most widespread and which is dominant in South Asia, allows for the introduction of qiyas (analogical deduction) as well as ijma. Shafi'ite fiqh, popular in pre-Shi'a Iran, restricts the application of qiyas by a more extended application of hadith. Hanbali fiqh (which provides the basis of Wahhabism, found in Saudi Arabia) opposes the usage of both ijma and qiyas, because man-made analogies are fallible.

The jurisprudence of Shi'ism, fiqh Jaf'aria, does not regard the era of ijtihad, independent judgement, as having closed, as do the four Sunni schools. There are many substantive differences between Sunni and Shi'a law, including those laws pertaining to punishments and revenue collection. These differences form a basis for the objections by Shi'as in contemporary Pakistan regarding the imposition of Sunni laws on the Shi'a community.
3. For further elaboration on basic concepts of Islamic law, see Joseph Schacht Introduction to Islamic Law (1964), especially pages 116-211; and Ignaz Goldziher Introduction to Islamic Theology and Law (1981), particularly pages 31-66 and 230-267. Asaf Fyzee (Outlines of Muhammadan Law, London, 1964) delineates how the British interpreted Islamic law in South Asia.
4. This statement is simplistic, but any brief analysis distorts the true concept. For a succinct elaboration of the Traditionalist's view of the state, see Maulana Abul Ala Maududi Islamic Law and Constitution (Lahore: Islamic Publications Ltd., n.d.). The contradictory Modernist interpretation is seen in Fazlur Rahman "Implementation of the Islamic Concept of State in the Pakistani Milieu" (Islamic Studies, 6, 1967: 205-224).
5. The dilemma of the Mughals differed greatly from the situation of the Ottoman Caliphate. Indian non-Muslims were predominantly Hindus, kafirs, who were not protected under classical Islamic law (although

Hindus were de facto treated as el-e-kitab). Only dhimmis (el-e-kitab, people of the book), e.g., Jews and Christians, who made up the Turkish minority, have a protected legal status.

6. Allama Iqbal's famous poem "Shikwa and Jawab-i-Shihwa" (English translation by Altaf Husain "Complaint and Answer," Lahore, 1943) gives a sense of the sociopolitical constraints Indian Muslims were facing under the British.
7. Ahmad and Von Grunebaum (1970) have compiled writings from all perspectives of modern South Asian Islamic thought. Their bibliographic study is especially valuable, presenting an overview of the major actors who participated in the historical dissonance.
8. Manzooruddin Ahmed discusses the Two-Nations theory and includes a lucid discussion of Muslim nationalism in the subcontinent and the demand for a separate state in his article "Iqbal and Jinnah on the 'Two Nations' Theory" (in C.M. Naim 1979: 41-76). For further historical analysis of this time period, see A.H. Alberuni, Makers of Pakistan and Modern Muslim India (Lahore, 1950); and J.M.S. Baljon, Jr., The Reforms and Religious Ideas of Sir Sayyid Ahmad Khan (Leiden, 1958).

For more information on the Deoband movement, refer to Ziya-ul-Hasan Faruqi, The Deoband School and the Demand for Pakistan (Bombay: Asia Publishing House, 1963); and Barbara D. Metcalf, Islamic Revival in British India (Princeton: Princeton University Press, 1982).

9. Richter (1979), Carroll (1982), Taylor (1983), and Weiss (1983) all present analyses of the general characteristics of the current Islamization program.
10. The conflict between those advocating a liberal interpretation of Islam and those supporting a more literal interpretation is as old as the demand for Pakistan. Fazlur Rahman offers the former position in his "Implementation of the Islamic Concept of State in the Pakistani Milieu" Islamic Studies, 6, 1967: 205-224). The late Maulana Abul Ala Maududi's well-known Islamic Law and Constitution (Lahore: Islamic Publications, Ltd., n.d.) presents the basis of the latter interpretation. See Ahmad and Von Gruenbaum 1970 for a compilation of writings from all perspectives of modern South Asian Islamic thought.
11. The issue regarding the closure of the "doors of ijtihad" is only relevant when discussing Sunni Islam. Fiqh Jafaria of the Shi'as has always accepted new interpretations of the sunnah by learned religious scholars.
12. Government of Pakistan, 1983: 6.
13. For a discussion on Islamic laws in different contexts, see John Donohue and John L. Esposito (eds.), Islam in Transition: Muslim

Perspectives (Oxford University Press, 1982); John L. Esposito, Islam and Development: Religion and Sociopolitical Change (Syracuse University Press, 1980); and James Piscatori (ed.), Islam in the Political Process (Cambridge University Press, 1983).

14. The dupatta serves a very important function in traditional society, as it assists women in covering both their hair and their "bodily ornaments." Thin scarves are now occasionally substituted for the dupatta, merely as a fashionable ornament.
15. My purpose here is not to elaborate on the various rights which women received under the enactment of the 1961 law. For further information, see Carroll (1981). It has been shown that few women have benefited from the family laws pertaining to maintenance after divorce.
16. The Muslim, 12/20/83.
17. Viewpoint (7/14/83) poignantly addresses the issue of flogging rape victims. Another case was reported in The Muslim, 2/21/83.
18. The Muslim, 10/3/83.
19. In an earlier study of women working in the pharmaceutical industry in Lahore, women often told me that they preferred conditions under which purdah could be observed (e.g., separate rooms in which to work). For further information see Anita M. Weiss, "Tradition and Modernity at the Workplace: A Field Study of Women in the Pharmaceutical Industry of Lahore" (Women's Studies International Forum, 1984 (7)4, in press).
20. As this Ordinance has not been signed into law, it is unavailable for public review. Dawn (3/5/83) published this quote from the Ordinance.
21. See for example sura Al-Noor, verses 6, 7, 8 and 9.
22. Dawn (Supplement), December 1983.
23. The Muslim, 2/17/83.
24. Dawn, 9/5/83. See also Dawn, 9/9/83 and The Muslim, 9/14/83 on this issue.
25. For further information on women Muslim rulers, refer to Waddy 1980: 91-98. See also Parveen Shaukat Ali, Status of Women in the Muslim World (Lahore, 1975).
26. Dawn, 2/18/83.
27. The Muslim, 5/17/83.
28. M. Farani, 1983: 86-87.

29. Michelle Maskiell addresses the issue of culture and tradition preventing women from participating fully in legal, educational and other institutions in "The Effects of Islamization on Pakistani Women's Lives, 1978-1983," Working Paper on Women in International Development No. 69, Office of Women in International Development, Michigan State University, East Lansing, Michigan, 1984.
30. Mounira Charrad, Professor of Sociology at the University of California, San Diego, has written extensively on legal reforms and women's rights in North Africa. This information on the Personal Code in Tunisia was relayed through personal discussions.
31. Rogers 1980: 79-120.
32. Rogers (1980: 95) reports that this fact haunts the marketing structure of women's projects throughout the Third World. However, recognizing this problem, the Women's Division in Pakistan is actively seeking assistance to hire a marketing consultant for these products.
33. Pat Barnes-McConnell and Dora G. Lodwick discuss these kinds of problems at length in Working with International Development Projects: A Guide for Women-in-Development, Office of Women in International Development, Michigan State University, East Lansing, MI, 1983.

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