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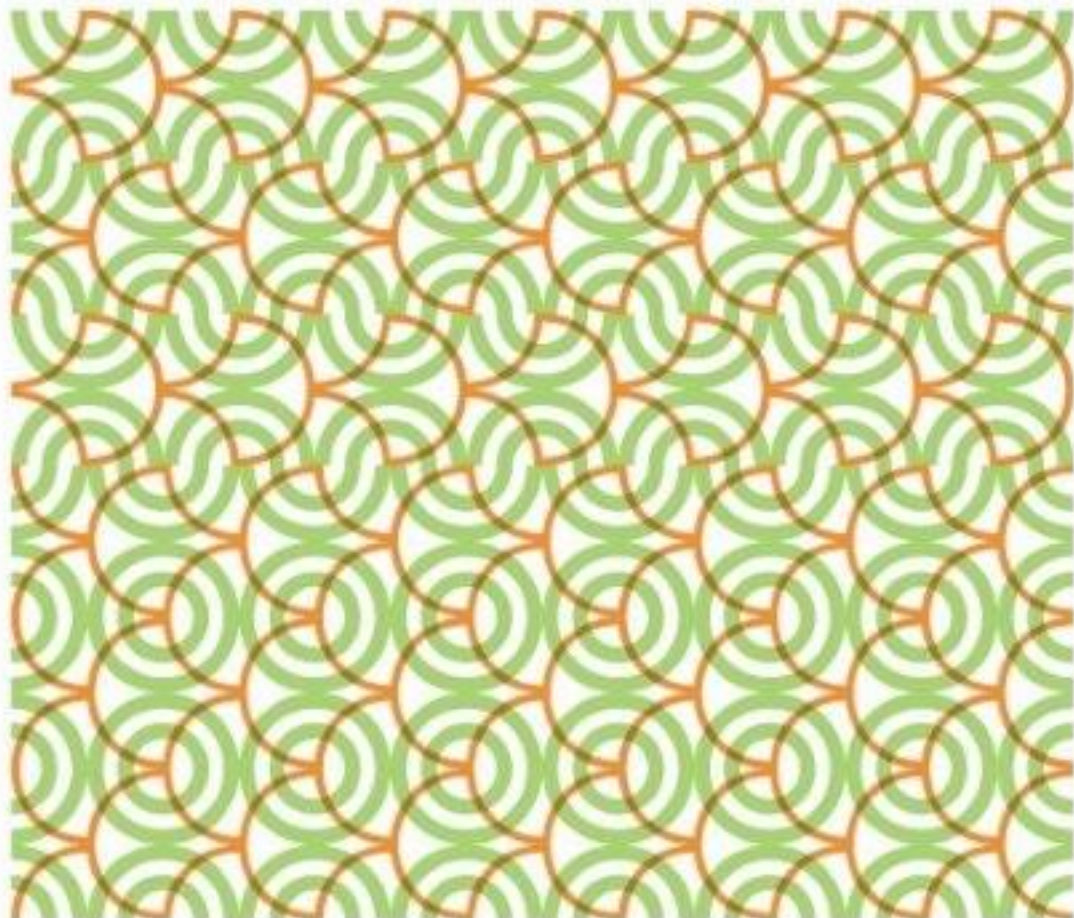
 **HEINRICH BÖLL STIFTUNG**



Gender, Religion and the Quest for Justice in Pakistan

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Introduction

This paper explores how Islam in Pakistan metamorphosed from the religious identity of the majority population (the *raison d'être* of its existence as a nation for Muslim Indians), to become the central defining parameters for state and society. This privileging of religion as the yardstick for all activities from politics to judicial structures, from entertainment to women's rights in the 1977-88 decade seriously undermined women's already weak position in society and even today challenges the quest for gender equality. Frequently, the impact on women of fusing politics and religion is considered as a self-contained matrix. This paper starts from the premise that the ultimate aim of politico-religious elements is to capture state power in which disempowering women is only one effective tool in seeking legitimacy and asserting influence; women becoming markers of appropriated territory in wider power contestations. It is therefore not possible to understand the impact of fusing politics and religion on women, without understanding the context within which this takes place. The paper suggests that in culturally traditionalist societies like Pakistan, already subject to constrictive gender rules, women become easy victims of retrogressive socio-political religious projects but, at the same time, that women are not an undifferentiated unit. The usage of Islam by diverse regimes has not impacted women in like manner. Women were victims of gross negligence and paternalistic attitudes but rescinding women's rights was never a main objective until General Zia-ul-Haq (1977-1988). Under Zia the systematic and aggressive inscription of Islam into the body politic and social fabric had devastating consequences for the polity in general and women and non-Muslims in particular. His era thus marks a qualitative realignment of forces. Gender cross-sections other deeply entrenched social inequalities so that 'Islamization' measures have impacted diverse groups of women differently. Further, the pursuit of gender equality is greatly impeded by the vast chasm separating *de facto* from *de jure* rights in Pakistan thanks to which only a small minority of women knows of their rights. The fewer the people who enjoy rights, the more vulnerable they become. The state's failure to deliver on its promises of equal opportunities, benefits and justice has created a vacuum into which the religious right inserted itself and was able to project itself as the harbinger of justice in a visibly unjust world. In the final analysis, regardless of the claims to the moral high ground of authenticity, the paramount concern of religious political projects is power – not religion, or ethnicity, or culture.

Section 1 gives the political context: the political actors and forces involved in the fusing of religion and politics from 1947 to 1988. Section 2 provides an overview of women's disparate realities and goes to explore the implications of this interfacing for women's rights and gender inequality during the Zia years and subsequent developments. Section 3 problematizes the role of civil society in this process and questions some of the facile assumptions that are often made about the socially-progressive role of civil society actors. The final section provides some overarching conclusions.

1. Inserting the Islamic into the Republic of Pakistan (1947-1988)

A Homeland for Muslims

Created as a homeland for Indian Muslims, Pakistan was still very much a nation-in-becoming at independence, August 14th 1947. It would have required a territorially-rooted nation-building to meld together the half dozen linguistic and many more ethnic populations. (Alavi 2004) Instead, successive elites in central power have "played upon

religious sentiment as an instrument of strengthening Pakistan's identity.”(Haqqani 2005:2) The contours and contents of Pakistan's 'Muslim nationhood' – with debates over 'womanhood' a recurrent motif – have been incessantly contested in the discourses verbalising political tussles for power.

Initially, counter-posing a 'Muslim Pakistan' to a hostile 'Hindu India' was facilitated by the acrid legacy of partitioning the sub-continent: the two-sided butchery caused one million deaths and many more injured.(Nawaz 2008: xvii) Women, as the symbol of the 'other', became special victims: countless were raped, mutilated, forcibly captured and sold into prostitution, hundreds of thousands became untraceable.(Jillani 2007:xiv)¹ The trauma, especially severe in Punjab, left indelible scars in the psyche of state and society. Overnight, the largest recorded transmigration of some 14 million people, blanched Pakistan to a religiously monochromatic population. From comprising almost a fifth of the population (18.5%), non-Muslims were reduced to an insignificant 1.6%. Change was most dramatic in urban centres where almost half the residents had been non-Muslims.²

The resort to Islam was convenient for entirely secular reasons. For most of Pakistan's history the real power contestation has been between the military-dominated centre and the sub-national political elites. In this, the arithmetic of democracy did not suit those acceding to central power: the Punjabis and Urdu-speaking migrants or Mohajirs in West Pakistan who even together did not constitute the majority. In a typical post-colonial state with a relatively over-developed state structure, a weak political framework and a comparatively powerful military and civil bureaucracy, (Alavi 1973) a dominant presence in the civil and military bureaucracies enabled the Punjabi-Mohajir elite to wield power to the detriment of the severely under-represented Bengali-speaking majority. Democracy became 'unsuited to Pakistan,' and considerable time and effort was spent in devising ways to circumvent the logic of universal franchise. Religion provided a convenient cover. The invented parameters and imperatives of a 'Muslim nationhood' were regularly flourished to deny greater autonomy and share in power to the ethnically diverse units constituting Pakistan. As early as 1966 the federal law minister, a Punjabi, warned East Pakistanis that "demanding greater provincial autonomy" would be considered "a treasonous act;" protagonists "would be identified, hunted, crushed and destroyed."³ Discontent at Punjabi-Mohajir domination was expressed first by Bengali East Pakistan, and then by Sindhis, Pashtuns and Baloch⁴, that is by all those excluded from central power. Islam was also used to counter largely imaginary socialist threats, especially after the failed 1951 military conspiracy. Successive governments tasked intelligence agencies with infiltrating and disrupting socialist-leaning as well as sub-nationalist groups. Religiously defined groups were supported to attack "unIslamic and foreign-inspired" left-leaning groups. (Haqqani 2005, Abbas 2005, Hussain).

¹ Some 33,000 Hindu and Sikh women were located and repatriated to India, some 50,000 Muslim women from India to Pakistan. (Jillani *Partition*, xiv). Pakistan continued to receive migrants well into the 1960s, by mid-1960, some 10 million people had relocated from India to, largely, West Pakistan. In the initial years 6.5 million of the migrants settled in West Pakistan compared with 0.7 million in East Pakistan.

² In Lahore, for example, only 1,000 of the 500,000 Hindus and 100,000 Sikhs remained.

³ S. M. Zafar speaking in Dhaka on 15 December 1966 (Abbas: 58).

⁴ Sindhi language riots erupted in the 1970s, the demand to rename the Pakhtun-dominated North West Frontier Province (NWFP) to Pakhtunkhwa remains an unresolved contentious issue; while the 1970s armed insurrection in Balochistan was crushed by brute military force, there is a movement for independence Balochistan today.

Without the consistent - often cavalier - use of Islam in the pursuit of power by more secular elements, politico-religious groups would not have been able to so steadily push their agenda, progressively inscribing religion into the body text of politics, state and society. Religiously defined political parties have been decisively rejected by the electorate.⁵ Elections have been rare, however, and Pakistan has spent more time under military dispensations than civilian ones. Furthermore, independence saw the “uncertain liberalism” of those acceding to power immediately confronted by strong willed “religious orthodoxy.” (Rashid 1985) So that the question became: how ‘Islamic’ should the Islamic Republic of Pakistan be, and, of course, who would determine this? Political manoeuvring and manipulations seeking to concentrate centralised power and side-step the logic of democratic processes, have left the country osculating between a presidential and parliamentary form of government, between long periods of martial law and short bursts of unstable civilian rule; currently it is more presidential than parliamentary.⁶ Pakistan’s third, extant, 1973 Constitution has been so frequently and radically amended as to raise the question of whether it can still reasonably be called the same constitution.

The assertiveness of religious orthodox political parties (as opposed to today’s armed militants) has never been directed against the military per se. The military has alternatively countered religious groups and parties by force and re-configured them as allies as suited its purpose at a particular moment. The emphasis throughout has been on keeping society under control through a strong militarised state, with every military ruler making use of Islam. It is important to clarify that if, until General Zia-ul-Haq (1977-1988), the Pakistani army never assumed the role of ‘defender of the faith,’ unlike its counterpart in Turkey, it also never played the role of the ‘upholders of secularism’ even though the officer corps tended to have a secular outlook. The Turkish army’s defence of secularism derives from its Kemalist roots and Ataturk’s radical, systematic, and wide-ranging measures to eliminate religion from state and society. This has never been the agenda of the Pakistani armed forces.

Finally, the hasty division of assets between Pakistan and India, that gave Pakistan 30% of the British Indian army but only 17.5% of the total assets and liabilities of undivided India (Jalal 1991: 42, 47) had serious repercussions. The perceived imperative to fill this financial deficit, an obsession of each successive military commander, became a driver of both foreign and internal policy. (An early dispute with India over Kashmir guaranteed public support for a strong military.) Fuelled by a primordial and antagonistic relationship with a far larger and militarily better equipped India, and a desire to achieve ‘strategic depth’ by exerting influence over neighbouring Afghanistan, the quest for military funds led Pakistan’s military rulers to peddle the idea of an “Islamic barrier” against communism and the USSR, especially to the US. (Jalal 1991) Ayub was to go so far as to tell the US “[o]ur army can be your army if you want us.”⁷ Of course, the defense against India plea partly functioned as a defense against internal threats to central authority (Jalal 1991: 49). The conflation and intricate interweaving of Pakistani nationhood with Islam facilitated the condemnation of any questioning of official doctrine as subversive, even treacherous, and quite possibly sinful. The perceived

⁵ Exceptionally, religiously defined political parties won substantial seats in the 2002 elections. But this victory has to be seen as one fall out of the US-led bombardment of Afghanistan and the supportive role of Pakistan’s military-run government in late 2001.

⁶ The first 1956 constitution provided for a parliamentary system but empowered the president to dissolve the National Assembly and to appoint the prime minister at will (Article 50) – a feature which kept resurfacing in Pakistan’s chequered history.

⁷ General Ayub Khan cited in Abbas 2005, p26.

funding deficit is also credited for the later development of a conscious strategy to train and use non-regular combatants, justified as the religious duty of *jihad* (holy war) (Abbas 2005, Haqqani 2005, Z. Hussain 2007). The net result is that “rulers have attempted to ‘manage’ militant Islamism, trying to calibrate it to serve nation-building without destabilizing internal politics or relations with the Western countries,” (Haqqani 2005: 2-3) a task that has proved to be impossible.

If Pakistan’s genesis ensured Islam’s early inscription into politics, Islam’s shift from merely being the religious identity of its majority population to becoming the reference point for all political discourse came later. The mostly politically motivated use of Islam peaked under General Zia-ul-Haq (1977-88): legislative changes negated state promises of an equal footing for female and non-Muslim citizens and simultaneously encouraged the most bigoted sections of society. But, the ground had been prepared by others who, using Islam instrumentally, paved the way for politico-religious forces to assert hegemonic control over the political discourse.

The state envisaged by Pakistan’s founder Mohammad Ali Jinnah, popularly known as Quaid-e-Azam (Great Leader) was a secular not a theocratic one. This he elaborated in his presidential address to the Constituent Assembly on 11 August 1947, the full text of which was subsequently suppressed:

You may belong to any religion or caste or creed that has nothing to do with the business of the state... there is no discrimination, no distinction between one caste or creed and another...[The] fundamental principle [is] that we are all citizens and equal citizens of one state... in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.⁸

The difference between an Islamic state and one for Muslims may have been self-evident to Jinnah, but the inevitable connection between Muslims and their religion enabled politico-religious groups to subsequently elide ‘the creation of a state for Muslims’ into the creation of an “Islamic” society and state with some semblance of credibility. (Rashid 1985, Shaheed 2002) Significantly, this eliding was managed despite the fact that, in the early years, most politically active *ulema* (religious scholars) having opposed the creation of Pakistan, enjoyed little credibility.

Maulana Abul A’la Maududi, the founder of the Jamaat-i-Islami (JI), was a key protagonist. His political acumen and intellectual abilities,⁹ combined with the organisational strength of the JI and a dedicated cadre enabled Maududi to play a key power-broker role.(Abbas 2005:30) Having disparaged Jinnah as the Qafir-e-Azam (leader of the infidels), bare months before independence, Maududi reversed his opposition to Pakistan as against the interests of Indian Muslims. He redefined his objective as making the *shariah* which “Muslims consider to be divine” the foundation of the state’s constitution and laws, and set out to occupy “a significant position in the effort to provide the specifics of an Islamic state.”¹⁰

Over the years, the JI and other religiously defined actors created sufficient confusion over the *raison d’être* of Pakistan to enable minority elements to override majority views. The adoption, soon after Jinnah’s death, of the Objectives Resolution as a

⁸ Quaid-e-Azam’s Presidential Address to the Constituent Assembly of Pakistan in Abbas Rashid (ed) Pakistan: Perspectives on State and Society, 79-84

⁹ Maududi laid out his ‘religious’ ideological agenda in political terms in his 1960 book: *First Principles of the Islamic State*, still required reading in many *madrassahs*.

¹⁰ Maududi quoted in Abbas Rashid “Pakistan: the Ideological Dimension” page 83

preamble to the 1949 Constitution marks a crucial first victory of politico-religious actors. The resolution affirms that “sovereignty belongs to God Almighty alone” with authority delegated to the State of Pakistan to be exercised through chosen representatives. Stipulating that “Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah,” it stipulates “adequate provision...for the minorities freely to profess and practice their religions and develop their cultures”¹¹ and safeguarding the “legitimate rights of minorities and backward and depressed classes.” (Inserting the qualifier “legitimate” automatically limits the scope of such rights.) Adopted despite opposition by all non-Muslim members (and a solitary Muslim parliamentarian), the preamble was retained in all subsequent constitutions. It became a substantive part of the Constitution in 1985.¹² The Resolution’s adoption is not reflective of the *ulema*’s power, which was negligible at the time. Rather it suggests the inability – or unwillingness – of “uncertain liberalism” to directly confront and question the authority of religion in the political sphere. In any case, as was to become evident, political leaders were far from averse to using religion to further their own non-religious ends as illustrated in the following examples.

Behind the first religious riots in 1952-1953, for instance, lay the political ambition of the western-educated Punjab Chief Minister, who helped to convert the entirely secular issue of food scarcity into a religious crisis. Seizing the opportunity to flex political muscle, the JI vociferously supported the demand that a minority sect, the Ahmadi, be declared non-Muslims. Riots led to the imposition of the first-ever martial law. The initial problems were hardly insurmountable: similar protests in Karachi in the Sindh province had been quickly curtailed. The report of the court of inquiry established to investigate the causes and consequences (commonly referred to as the Munir Commission after the presiding judge) makes excellent, if sobering, reading. Riots, it concludes were “encouraged by the Chief Minister’s public utterances supporting the view that the Ahmadis were not Muslims.” (Government of Pakistan 1953: 386) Of deep concern was that the Objectives Resolution, intended in the court’s view to guarantee equality, was being used by the *ulema* to argue that non-Muslims were not equal citizens. Further, no *ulema* accepted the framework of a modern nation-state which, in the view of the Jama’at-i-Islami “is the creature of the devil... [and no] *ulama* can tolerate a State which is based on nationalism and all that it implies.” (page 249) Neither the incumbent nor subsequent governments paid heed to the Court’s urgent warning that nothing short of a “bold reorientation of Islam to separate the vital from the lifeless can preserve it as a world idea and convert the Mussalman into a citizen of the present and future world from the archaic incongruity that he is today.” The Chief Minister had to resign, but no attempts were made to even censure the *ulema* for inciting people to violence in the name of Islam.

Assuming power in 1958, the socially liberal General Ayub Khan (1958-1968) who briefly removed “Islamic” from the official state name still used Islam when it suited his purpose. Having promulgated the 1961 Muslim Family Laws Ordinance that gave women key rights in marriage, he responded to the vociferous protests of religious elements by banning their parties, freezing their funds, closing their offices and publications and unceremoniously throwing leaders into jail. Social liberalism evaporated,

¹¹ Under General Zia-ul-Haq the “freely” was deleted.

¹² Hassan Abbas considers that Maududi astutely settled for inserted the ‘Islamic nature,’ ‘Islamic Republic’ and ‘nothing repugnant to Islam’ rather than risk his suggestions being completely rejected and replaced by constitution drafted by the Law Minister, Ismail Ibrahim Chundrigarh, assisted by the British parliamentary consultant, John Rowlett (Abbas: 31).

however, when it came to basic issues of power as evidenced in the 1965 Presidential elections. Opposing Ayub was a coalition led by politico-religious parties that, on the sudden death of their candidate, fielded a woman: Fatima Jinnah, the sister of Pakistan's founder, commonly referred to as the *madre-e-millat*, or 'mother of the nation.' Overturning their previous censure of women in public spaces, let alone politics, politico-religious parties issued post-haste *fatwas* (religion opinions) to the effect that, in exceptional circumstances, a woman could become head of state. Ayub responded by mobilizing his own *fatwa*, promptly declaring it unIslamic for a woman to be head of state.

In the 1970s, Islam's presence started to be institutionalised. Z.A. Bhutto's rule in a truncated Pakistan (1971-1977) heralded a time of progress for women, but in the name of 'Islamic socialism'. A 1976 Declaration on the Rights of Women of Pakistan launched in 1976 averred in its first article that "Discrimination against women is contrary to the injunctions of Islam, violates Constitutional guarantees and constitutes an offence against human dignity." Z.A. Bhutto was the last politician able to casually brush aside accusations of not being a good Muslim, famously retorted in a massive public rally, "they say I drink, but I only drink alcohol; not the blood of the people." But, the 1973 Constitution privileges Muslims: Islam is the state religion (Article 2); the presidency reserved for Muslims (Article 41); the state required to ensure that Muslims are able to live according to Islam (Article 31).

Moreover, for reasons that remain unfathomable, what the religious right failed to achieve through the 1953 riots, i.e. declaring Ahmedis non-Muslims, was instigated by the popularly elected government through its first constitutional amendment in 1975. Equally inexplicably, Bhutto instituted a Ministry for Religious Affairs. Separately, seeing in the petrodollar power a means of diversifying Pakistan's financial support base, Bhutto acted to forge an alternative Muslim axis of international alliances through stronger linkages with the oil-rich Middle-East.¹³ Within Pakistan this unhelpfully created space for people to refashion a collective identity in the likeness of those with oil power. Avoiding direct confrontation with the military establishment, Bhutto by-passed several senior generals to appoint Zia-ul-Haq as his chief of army staff, perhaps believing that with a more modest class background, Zia was less likely to conspire against him. It was a mistake Bhutto paid for with his life; and Pakistan's women and minorities paid for in rights.

Convinced of his popularity, Bhutto held early elections in 1977 only to be confronted with allegations of rigging followed by mass agitation under the banner of the Pakistan National Alliance (PNA). The PNA was a motley collection of political parties; some defined as secular, others in religious terms, with most defying such a clear classification. Despite diversity, it was the politico-religious parties that supplied the movement with its slogans and organisational underpinnings. Calling for *Nizam-i-Mustafa* (system of the Prophet of Islam) they coined the phrase that has subsequently become such a mantra, equating Pakistan with the Muslim creed (*Pakistan ka matlab kia: la i'llallah il'allah* What does Pakistan mean? There is no God but Allah.) Perhaps believing he could out-manoeuvre and placate the religious rights, Bhutto hastily passed a series of cosmetic 'Islamic' measures: alcohol, gambling and betting on horse racing were banned, Friday made the weekly holiday. In the event, just when an agreement amongst the political parties seemed likely, the army stepped in.

¹³ Bhutto organised the widely acclaimed 1974 Islamic Summit as a means to both launch the Muslim alliance axis internationally and to recognize Bangladesh, closing that chapter.

Islamization according to General Zia

Under General Zia (1977-1988), aggressive state measures and state-supported non-state actors working in tandem reconfigured the social environment as well as the legal and political systems. The far more rigorous inscription of religion into all fields constituted a virtual paradigm shift. Previous governments had tended to neglect rather than actively engage in the social sector and kept political manipulations and manoeuvring more or less out of public view. In contrast, on taking over on July 5th 1977 Zia informed the people that “Pakistan was created in the name of Islam and will continue to survive only if it sticks to Islam...I consider the introduction of [an] Islamic system as an essential pre-requisite for the country.”¹⁴ All state institutions were re-shaped towards this end. Human rights were suspended, military courts displaced civilian ones, political activists were unceremoniously jailed and tortured, including for the first time, women political activists. Growing intolerance marked the era. Legal changes accompanied by social rules and strictures seemingly unleashed the most base instincts of marginal groups, encouraging acts of wanton violence and intolerance by bigoted sections of society, while paralysing the saner elements.

Religiosity - overt and usually public acts and signs of piety - became a government hallmark, profoundly altering the socio-political and judicial landscape: from Qur’anic recitations on the national carrier before take-off and the start of every state function, to the establishment of the parallel ‘shariat’ court system and so-called Islamic laws largely relating to criminal and sexual offences; from making Islamiyat a compulsory subject and changing all the textbooks and course curricula, to the official projection that to be a ‘good Pakistani’ was to be a ‘good Muslim’ as defined by the state. Today, Pakistan’s political, social and judicial systems remain firmly chained to this legacy; the greatly increased space for Islamised discourses in politics and society, intact.

Importantly, the 1978 ban on all political parties did not apply to the Jamaat-i-Islami. Exempted from media censorship and inducted into the government as junior partners, the JI was given free rein and full access to, and influence over, the influential state controlled television and radio. The arrangement suited both sides: it gave the military rulers a modicum of political credibility and the JI access to power consistently denied it through the ballot box. Even as other voices were silenced, the JI’s ideological take on Islam – self-serving, misogynistic and bigoted – flourished, dominating the airwaves and progressively transforming state institutions. In terms of social configuration, this was an opportunity for the emerging class of traders and entrepreneurs to make their mark on the political power structures and it is amongst this class and rural-to-urban migrants that the religious idiom, intersecting with political ambitions, found the greatest resonance and support. The regime adopted a number of JI agenda points, notably with respect to dress codes and gender segregation.

The JI student wing, the Islami Jamiat-Tuleba (IJT), also exempt from the ban on student unions, set about establishing a stranglehold in colleges and universities, employing physical force and weaponry with varying degrees of success. Wherever it managed to establish its writ, such as in the Punjab University, the IJT brushed aside official authorities to enforce its own ‘morality’ rules in which strict gender segregation (on and off campus) and dress rules for female students figured prominently. Contraventions were frequently dealt with physically.¹⁵ The significance of the IJT extends beyond the collegiate population. It provides training for future JI cadre: the majority of

¹⁴ Cited in Hassan 2005, page 92.

¹⁵ Only in 2007 was the IJT hold over the Punjab University finally challenged through the lawyers’ movement for the restoration of the judiciary.

the JI members elected in 2002 had IJT training.¹⁶ Such recruitment was denied other parties that were banned.

The Military-Mosque Nexus & Trans-national developments

It is impossible to understand the inscription of Islam in state and society without taking into account the military-mosque nexus in Pakistan and the reorientation of the armed forces that left the military high command sounding “more like a high priests than soldiers”¹⁷ even before Zia. The military is the state’s most powerful institution; the armed forces have ruled Pakistan directly or indirectly for most of its history; and the sheer number of armed forces personnel (the sixth largest in the world with more than half a million people¹⁸) means that changes in the armed forces inevitably filter through into societal changes. The soft-peddling discourse on Islam sold to northern states with the purpose of mobilising financial and military support assumed more virulent dimensions within national boundaries. Linkages forged with religiously defined actors – both mainstream political entities and para-state armed militias – have helped to re-orient attitudes amongst the armed forces’ rank and file.

Short-sighted attempts to harness the emotive appeal of religion completely failed to foresee how much more effectively religiously-defined political elements could use this strategy than those who opened the doors, such as the whiskey drinking General Yahya Khan (1969-1971). As early as July 1969, Martial Law Regulation 51 introduced 7 years rigorous imprisonment for publishing or possessing any material offensive to the religion of Islam. The military was re-invented as defenders of ‘the ideology of Pakistan,’ an utterly ambiguous if patriotic sounding term used to victimize all sorts of political and social activists. When the first elections based on universal franchise in 1970 rejected the establishment’s favorites wholesale¹⁹, ham-fisted interventions attempted to deny victory to the East Pakistan based Awami League. The resultant Bangladesh war of independence led to “privatising jihad,” (Z. Hussain 2007) with the state supporting autonomously run militias to function as ‘irregular forces.’ Yahya proclaimed that the “duty of self-defense (jihad) which Islam ordained” justified the creation of irregular forces because “[i]rregular warfare can help in reducing the critical nature of initial battles of Pakistan.”²⁰

Zia’s tenure (1977-1988) is usually reviewed from the lens of democracy and human rights (especially those of women and minorities). More recent work brings into sharp relief concerted efforts to transform the armed forces. (Abbas 2005, Haqqani 2005, Z. Hussain 2007) The army’s secularist tradition, carried forward from the days of the British Indian Army, was effectively dismantled. Previously, army officers had retained their personal secular outlook regardless of their selective public use of Islam. On becoming Chief of Army Staff, Zia immediately changed the army creed to *Iman, Taqwa, Jihad fi Sabil Allah* (faith piety and *jihad* for the sake of God). Later, he

¹⁶ See “New Men In” *Newsline* November 2002

¹⁷ Brig. (ret) Aziz Siddiqi, quoted in Haqqani page 55

¹⁸ http://www.nationmaster.com/graph/mil_arm_for_per-military-armed-forces-personnel

¹⁹ All Muslim League factions were routed; East Pakistan massively endorsed the full autonomy platform of the Awami League; West Pakistanis voted in the newly emerged Pakistan People’s Party of Zulfikar Ali Bhutto; Balochistan and the North West Frontier Province (NWFP) brought in the strange alliance of the left-leaning National Awami Party and the politico-religious Jamiat-e-Ulema-Pakistan (JUI).

²⁰ Yahya Khan cited in Haqqani 2005, page 56.

launched an all-out offensive to institute a conservative religious-minded officer corps: Friday prayers became compulsory with officers encouraged to lead their men in prayers;²¹ religious credentials deemed essential for selection and promotions, bypassing more secularly-inclined men. Recruitment patterns changed. The military stopped attracting - or possibly refused to accept - the sons of the urban and rural elite, traditionally the mainstay of the officer corps;²² the JI influence grew especially amongst officers from rural or semi-rural areas (Hussain 2007, Abbas 2005).

In parallel and of equal long-term impact, the state extended support to *madrassahs*, or seminaries; the focus of so much anxious attention as training grounds for armed militants today. *Madrassahs* have always been part of the landscape in Pakistan (and South Asia more generally); Jinnah himself studied in one,²³ but their salience changed under Zia. In the pursuit of non-religious aims centred on Kashmir and Afghanistan, intricate connections were forged between specific *madrassahs*, armed militant groups, the *mujahideen* and the military state during and after the Afghan war, as effectively documented by several authors.²⁴ Under Zia, *madrassahs* erupted across the country. Official patronage (e.g. financial infusions, land endowments, bachelor's degree equivalency to *madrassah* graduates, making many teachers government employees) radically changed the status of the average *mullah*, or preacher, from being a person dependent on social charity and occasional government honoraria whose company was suffered rather than welcomed, to being far better resourced and linked to circles of influence. Since then systematic linkages have grown rather than abated. It was fortuitous for Zia – and disastrous for Pakistan – that his tenure coincided with the US-USSR proxy war in Afghanistan.

It is hard to over-state the impact of Pakistan playing cat's paw in the US proxy war with the USSR. The paramount objective of the US being to "draw the Soviets into the Afghan trap,"²⁵ human rights were irrelevant and inconvenient truths disregarded. Amongst the inconvenient truths swept under the carpet by the international community was Zia's wide-ranging use of Islam to justify his illegal regime, to rescind women's rights, to introduce undemocratic and barbaric punishments. Similarly over-looked was the rampant abuse of human rights by the *mujahideen* or 'holy warriors,' their utter disdain for democracy and its principles, and their total contempt for women. Also ignored was sporadic news coverage of the resurrection of the horrific treatment of 'enemy' women as spoils of war (*mal-e-ghanimat*) (justified as an Islamic license) to be distributed and used at will and of prostitution slave camps set up in Jalalabad by these 'freedom fighters.' Instead, led by the US, the international discourse promoted, lauded and

²¹ Islamic teachings were inserted into the Pakistan Military Academy and the Command and Staff College; a Directorate of Religious Instructions instituted for the officer corps, religious questions added to all promotion examinations. Preachers were appointed to work among the troops. See Hussain op. cit. 19-20

²² The principal of the country's premier male school in Lahore complained at one point that every single applicant from the institution had been rejected.(Abbas __)

²³ *Madrassah* previously a generic term for a school, is now used to denote seminaries. Substantial growth in numbers notwithstanding, *madrassah* students account for only an estimated 3 percent of the student population,

²⁴ Amongst these: Hassan Abbas *Pakistan's Drift into Extremism: Allah, the Army, and America's War on Terror*; Hussain Haqqani: *Pakistan: Between Mosque and Military* and Zahid Hussain: *Frontline Pakistan: The Struggle with Militant Islam*.

²⁵ Human Rights Watch Report "All Our Hopes are Crushed: Violence and Repression in Western Afghanistan" Afghanistan Vol. 14, No. 7(C) October 2002 www.hrw.org/rdeports/2002/afghan3 – page 1 of summary Printer-friendly copy [pdf, 54 pages]

legitimised the *mujahideen* as freedom fighters. Overthrowing Hafizullah Amin's "godless" (*la-deeni*) Marxist government seamlessly transmuted into eradicating the "godless" Soviets and their Afghan "puppets." The rhetoric remained constant because the 'fight against the godless' was such as an effective mobiliser. In Pakistan, the call for holy war against the godless enemies of Islam in Afghanistan was to inspire a whole generation of born again Islamist army men (Z. Hussain 2005).

International support came with serious money: Between 1980 and 1985 covert CIA controlled money grew from a small \$500,000 to \$1 billion. (Crile: 22, 277-278) In the end it is estimated that the amount funnelled by the USA and Saudi Arabia into Afghanistan and Pakistan for this war was US \$3.5 billion.²⁶ With much of the arms finding their way back into the local domestic market, military aid left Pakistan awash in state-of-the-art weaponry, accentuating the militarised and violent nature of the state (Khattak 1997). Groups armed and trained by the US and Pakistan never handed in their weapons and, far from giving up their agenda for Islamisation after the defeat of the Soviet Union, they expanded their scope to encompass the state of Pakistan (Stern 2000).

With respect to women, religion and the body politic, in some ways, the resultant shift in discourse and legitimacy granted by postulating the *mujahideen* as *jihadists* fighting a 'just war' was even more significant than the actual fighting, entrenching itself well beyond the cessation of the financial influx from foreign countries replaced by funds mobilised from non-state actors (Bhatt 2007, Haqqani 2005, Hussain 2007). Today, the vast majority of Pakistan's women are caught between the rigid controls of social customs imposed in the name of tradition by family and community gatekeepers on the one hand, and the new restrictive hegemonising discourses of the religious right, sometimes supported by state laws and policies, on the other. Finding or creating the space and means to resist both simultaneously is an enormous challenge. Given that armed militants using Islamist rhetoric are strewing havoc throughout the country, moving it ever closer to a war zone, it will be a major challenge simply to maintain previous gains, much less make progress as a whole.

2. Contested Rights: Women, State and Islam

Disparate lives, disparate impact

During the independence movement, Jinnah described the closeting of women "within four walls of the houses as prisoners" as "a crime against humanity."²⁷ Sadly enough, the situation for the vast majority of Pakistan's women remains unchanged despite a host of *de jure* rights at par with men conferred at independence: to vote and run for office, to employment and education, constitutional guarantees of fundamental rights. The constitution upholds non-discrimination on the basis of "sex alone" and provides affirmative action (e.g. reserved seats in parliament for specified groups, including women),²⁸ but discriminatory sub-constitutional laws privilege men over women and a vast chasm separates *de jure* from *de facto* rights.

²⁶ Figure according to Milt Bearden, CIA station chief for Pakistan from 1986-1989, quoted in Jessica Stern 2000.

²⁷ 1942 public meeting.

²⁸ Article 25 guarantees equality of all citizens, prohibits discrimination on the basis of sex alone, and states that 'nothing shall prevent the state from making special measures for the protection of women and children;' Article 27 prohibits discrimination on the basis of race, religion, caste, sex, residence or place of birth in government appointments and employment and provides special quotas/reserving parliamen-

The reconfiguring of gendered boundaries during the independence movement that had enabled women to change their everyday lives “to an extent hardly credible” (Cousins: 57-58), faltered at independence. Until the 1970s, largely absent from the civil bureaucracy, poorly represented in the political process, and with little organisational strength, women leveraged change through personal connections to powerful males. Success depended on negotiating rights through personal channels of influence and effective mobilization of political allies, but eventually on the responsiveness of policy-makers. Such benefits and rights as were achieved accrued to only a very few. In general, a deficit of political will coupled with poor governance has impeded any effective tackling of deep rooted systemic and structural problems.²⁹ The net result is women’s disparate realities.

Sharing the disadvantages stemming from gender, women are divided by the disadvantages/privileges and social exclusion/inclusion conferred by their non-gender identity. In Pakistan this includes not only specific class but also, ethnicity, religion or sect, as well as rural/urban location and province. Non-gender identities, mediate citizens’ access to legal entitlements and state benefits. Hence urban based market savvy young professionals and high profile politicians in Pakistan contrast with the majority: rural women whose lives seem petrified in another century - untouched by events and developments outside their immediate circles tightly controlled by traditional family and community male gatekeepers. Exceptional women occupying preeminent positions in public office³⁰ and those who break through glass ceilings are tolerated because they are exceptions who do not affect a structural configuration that only enables a miniscule minority to excel and condemns the majority to a life of unchanging deprivation.

All too frequently, policies, affirmative action measures and laws supporting women have remained paper statements without substance. Frequent martial law regimes, causing women to disappear altogether from the ranks of policy-shapers and decision-makers for extended periods of time, have not helped. Periodically, commissions on women have been appointed but their recommendations largely ignored. The permanent National Commission on the Status of Women promulgated overnight in 2000 lacks the powers and resources to be effective. A 5% quota introduced for women in the public sector is poorly complied with; women’s police stations have been established, but their authority remains unclear, the number of police women abysmally low and the police institution largely unchanged. The women’s ministry (previously cabinet division) has never enjoyed the political backing, financial resources and personnel that would make it effective. Pakistan ratified CEDAW in 1996, launched a National Plan of Action (NPA) to give effect to the Beijing Platform for Action (1998), and a National Policy for Women’s Development and Empowerment in 2002), but few steps have been taken to give effect to the Convention or to implement the NPA. This is reflected in a GEM value of 0.377 that puts Pakistan at number 66 out of 75 countries (UNDP 2006).

The complex intersections of formal and non-formal decision-making in which women’s lives are embedded prevent supportive policies and improved legal rights theoretically achieved through women’s activism and offered by state measures from reaching the general populace. Further, complicating matters, non-state dispute resolution and governance mechanisms parallel - and often override - the state’s mechanisms;

tary seats for specific classes, areas and women; Article 26 reserves the state’s right to make special provisions for women and children.

²⁹ NGO Coordinating Committee for Beijing +5 (2000) and Shaheed & Zaidi

³⁰ Women have served as ambassadors since the 1950s, twice as Prime Minister and been leaders of large all male trade unions (steel mills, railway and textile workers).

patronage systems premised on kinship, tribal and ethnic affiliations discriminate against women, and now, militant often armed political groups outside the electoral process have been targeting women.

Gendered rules in the family and community most immediately control women through local customs and practices that override state laws and religious tenets alike. Importantly, decades of grassroots work by Shirkat Gah–Women’s Resource Centre indicate that even customs diametrically opposed to the tenets of Islam are inevitably presented, perceived and internalized by women as well as men, as being ‘Islamic’, that is ordained by religion. Furthermore, decision-makers in traditional community dispute-resolution/self-governance mechanisms help to perpetuate such misconceptions by blocking knowledge of legal entitlements and access of the poor and less powerful to state benefits (Tambiah 2002). Still, Shirkat Gah’s legal consciousness work across the country as well as empirical research provide compelling evidence that despite critiques of Pakistan being a fragile state, the state and the norms and rights it sets out are important influences in people’s lives. Research suggests that what people want is not so much the imposition of religious laws but an assurance that existing and proposed laws are not against their religion (Shaheed 2002). The fact that customs are often far worse than the state laws - inadequate and imperfect as these may be - makes it all the more frustrating that state authorities and institutions fail to inform people about their entitlements under the law. Widespread ignorance about state laws as well as religious precepts allows players using the rhetoric of ‘Islamic justice’ to silence potential opposition while mobilising support. The struggle for gender equality has been waged from a narrow class-base of the relatively more privileged, and although robust and vociferous, is numerically small.

For the majority, rigidly upheld customs in a gender-segregated society continue to impede women’s mobility, blocking access to information, health, education and employment opportunities. Female life expectancy now marginally exceeds that of males (63.6 years vs. 63.2), but the Planning Commission of Pakistan estimates that maternal mortality actually *increased* from 350 in 2000-2001 to 400 per 100,000 live births in 2004-2005.³¹ One out of every twenty women in the world who die in childbirth and related complications is a Pakistani. Rampant neglect and gender-segregated schooling means only 36% of girls and women are literate (almost half the male literacy rate of 63%) and that sparse, grossly inadequate, funds are funnelled into male institutions. Calls to integrate primary schooling and to staff all primary schools with women teachers - starting in 1955³² and regularly reiterated - have just as regularly been ignored. Actions have never matched stated policies, and “programs expected to benefit women most have been subject to the most drastic cuts.”³³ Zia’s military rule with its retrogressive ‘Islamic’ rhetoric saw a drop in girls’ education.

Economic disparity is even starker. A bare 2 percent of women own land; female earnings are estimated to be less than one third of male earnings.³⁴ Of the 32.0% economically active women, the vast majority is occupied in agriculture (73%); one third comprises family workers with little access to cash income. Only 9% are in the industrial sector, 18% in services. The majority of rural women contribute directly to household income but few receive cash in hand; fewer still are counted as employed so that

³¹ *Pakistan Millennium Development Goals Report* 2005. pp. 45.

³² Pakistan’s first Five Year Development Plan (1955-1960).

³³ L. Qureshi; p. 61 *Development Planning and Women*, Development Studies Institute, Lahore. 1984.

³⁴ \$977 per annum for women and \$3,403 for men.

Pakistan's female labour force participation rate is one of the lowest in the world, though slowly increasing. Paradoxically enough under Zia, despite exhortations for women to return to their homes, economic imperatives pushed an unprecedented number of women into the formal labour market while profit motives propelled some factories to end segregated work floors for men and women workers.

Marginalised, women exercise little influence over the state of affairs in either the bureaucratic or judicial arenas. Women only comprised 5.4% of federal civil servants in 2000; a 5% quota introduced in September 1989 failed to ensure women's presence in all sectors and levels. Only 20% were employed in professional grades. Few women reach decision-making posts in the health and education departments which employ half of all female federal employees.³⁵ Provincial bureaucracies have even fewer women; a maximum of a bare three percent in Sindh (NCSW 2003). In 2006, women accounted for only 26% of professional and technical workers (UNDP 2006). No woman has served as a Supreme Court or Federal Shariat Court judge; there are 4 female High Court judges out of a total of 113.

Pakistan's GEM ranking would have been worse still had relatively recent measures not boosted women's presence in all legislative assemblies from less than 3 percent at the national level and 0.4 percent in the provinces.³⁶ In 2008, women constituted almost 22 percent of the 342-seat National Assembly (15 women on general seats and 60 on reserved seats). But the reserved seats, filled by an electoral college of directly elected assembly members, render such women accountable not to the female citizenry but to the mostly male party members who voted them in. Without vote banks in the general population, women are usually side-lined within their own party structures. Often reduced to tokens, they pose no serious threat.

Given disparate realities, it is less surprising that the political use of Islam has not impacted women in like fashion. Diverse regimes' views and use of Islam were also dissimilar. Before Zia-ul-Haq's martial law, the use of Islam to further political agendas had not focused particularly – or at all – on women. Women's issues were victims of gross negligence and paternalistic views, but there is little evidence to suggest purposive intent to systematically rescind women's rights or curtail their activities. Still, religion has always been the basis of gender inequality as, for instance, in personal status law derived from religion and as early 1954, an outcry by politically peripheral, conservative religious elements led to the closure of the Women's National Guard and Women's Naval Reserve. This heralded in the pattern of leaders regularly sacrificing women's rights, not out of theological convictions, but as a means of appeasing or side-stepping conservative forces with a propensity to use the religious idiom.

Under Zia, sporadic back-sliding was replaced by the systematic and aggressive inscription of Islam into the body politic and social fabric with devastating consequences. Consequently, while the usage of religion by Zia may have continued an earlier tendency as argued by some (Haqqani 2005), his tenure marks a qualitative, not merely incremental, change. Unlike the earlier sporadic, almost whimsical, use of Islam, Zia unleashed a full scale 'Islamisation' campaign to revamp state and society. The campaign, with a particular focus on women, progressively reversed gains, many con-

³⁵ Amongst the 'professional' category of employees, in 2000, women accounted for 52% of the education department; 28% of those in health and 34% in population welfare in federal services.

³⁶ Shirkat Gah Women's Resource Centre. *Newsheet*, 2002, vol. xiv, no. 4, pp. 1. There are 60 reserved seats in the National Assembly, 128 in the provincial assemblies and 17 in the Senate. Ministry of Women Development, Social Welfare & Special Education, GoP. *Implementation Matrix Pakistan's National Policy for Development & Empowerment of Women 2002*. pp. 27

sidered secure. The sudden shifting of ground, like quicksand under their feet caught women unawares. Past experience had not prepared women for the lethal military-state-religion combo and, marginalised in the power matrix, women were severely handicapped in countering this onslaught. It did not help that hardly any women were even aware of the state-granted rights now under threat. The sheer speed with which rights considered secured were over-turned attests to the vulnerability of rights when these are only enjoyed by a miniscule proportion of those affected and, of course, the generally disempowered position of women.

Previously, women from the middle and upper classes had been able to largely ignore the normative prescriptions articulated by the religious right since the latter had little leverage with those in state power. By the late 1970s, urban middle and upper middle class women had managed to substantially alter the gender rules applicable to them. This was achieved largely through slow processes of change, rather than as the outcome of collectivized demands for rights. Women's demands for rights and more women-appropriate development interventions were sometimes ignored, but more usually paid at least lip service, particularly as those articulating demands tended to be connected to those in power by family and social networks. For instance, demands for reforms in Muslim family laws were sparked off by the incumbent Prime Minister second polygamous marriage in 1955 and started as a social boycott by his first wife's well-heeled friends who refused to attend any functions where the second wife was present. Eventually, popular support from women of diverse classes led to a sizeable public demonstration demanding an end to polygyny. The combined outcome of social boycott, public protest and private lobbying was the establishment of the Commission on Marriage and Family Laws that culminated in the Muslim Family Laws Ordinance (MFLO) under General Ayub Khan (based on only some of the Commission's recommendations),³⁷ despite protests from religious elements. The broader underlying problem was that the introduction of an official marriage form (the *nikhanama*) and the appointment of state officials as marriage registrars, provided for under the MFLO, effectively rendered the average preacher redundant. This threat to the social power base of the *ulema*, I believe, is the root cause of the religious elements opposition to this legislation, rather than any concern for whether or not men marry more than one wife, or whether grandchildren inherit from pre-deceased parents, the ostensible cause of protest. The threat to their power base explains the persistence arduous attempts to overturn the MFLO, starting with the very first assembly session following its promulgation.³⁸ The MFLO survived only because the law enjoys constitutional protection.

Two final points: In the early decades of independence, those responsible for decisions, the opinion-makers as well as the trend-setters belonged to fairly narrow and intersecting circles in which the influence of the *ulema* was minimal. This configuration changed in the 1970s. Pockets of economic prosperity threw up new classes; traders in particular acquired more economic clout than ever before. The petrodollar Middle-East boom in the 1970s opened up unprecedented large-scale migrant work opportunities; migrant workers returned with money and new ideas borrowed from the more socially conservative societies they worked in. Second, it has to be said the battle over women's rights, usually couched in religious terminology on the one hand and that of human rights on the other, has seen women of one class pitted against the men of a different

³⁷ See *On the Path of Women's Empowerment- A Synthesis of Reports of Commissions/Committee on the Status of Women*, Government of Pakistan, Ministry of Women Development, Social Welfare and Special Education: Islamabad. 2003

³⁸ For a review of the arguments within parliament see Khawar Mumtaz: "*Political Participation: Women in National Legislatures*"

class – an issue that deserves greater attention. The religious right organisations draw its leaders and cadre from the lower middle class desirous of upward mobility, while women’s rights activists belong largely to the professional middle and upper middle class. This divide was thrown into sharp relief during Zia era that saw intense polarisation around the issue of Islam and women, as discussed below.

Rescinding women’s rights & undermining justice under Zia

Under Zia, the state “arrogated to itself the task of Islamising the country’s institutions in their entirety” (Khan: 127). It was the first time that a government adopted an aggressive anti-women stance on all fronts. A series of highly publicized measures rescinded or curbed women’s legal rights, reduced their public visibility, and made an all-out effort to restrain women within the strict confines of *chador* and *chardiwari* (the veil and four walls of the home). Targeting women, who are politically unorganized and amongst the least powerful groups in society was easy. Given deeply entrenched patriarchal norms, it was unlikely that such moves would evoke any significant political or social opposition.

Zia’s version of Islam was “regulative, punitive and extractive.”³⁹ The new ‘Islamized’ laws lent religious gravitas to brute force. Legal changes commenced in February 1979, with a few ‘religiously inspired’ criminal laws banded together as the infamous Hudood Ordinances that introduced inhuman punishments: amputations, public whipping, and stoning to death. The laws criminalised consensual sex (*zina*) and also covered a number of sexual crimes including rape and abduction; theft, drunkenness (newly criminalised) and perjury. The most widely applied Zina (Enforcement of Hadd) Ordinance section was also the most problematic.

Fundamentally flawed, the law caused immense injustice. Rape and other sexual crimes were confounded with *zina*, that is consensual sex outside marriage, and the police authorised to decide which section to register a complaint under. Hence, parents attempting to annul their daughter’s ‘unsuitable’ marriages by filing complaints of abduction, found their daughter instead accused of having committed *zina* and jailed when police failed to find documentary proof of marriage and any evidence of coercion.⁴⁰ *Zina* became a crime against the state and the principle of presumptive innocence was overturned. Anyone could register a complaint and, as no prima facie evidence was required, all those accused were automatically punished: by the time superior courts over-turned sentences, the accused had been jailed, socially condemned and stigmatized. The law guaranteed that no rapist could ever receive the maximum punishment by applying rules meant to safeguard women from false accusation of adultery (derived from the Quran), to rape. The death by stoning punishment could only be awarded in two circumstances: either a non-coerced confession by the accused before a competent court (implying a driving death-wish); or the eye-witness evidence of “four Muslim male adults of good repute” to the act of penetration, begging the question of how so many respectable men could ever be mere spectators to such a crime.⁴¹ The strict requirements ensured that the punishment of stoning was never carried out by the state. But, attesting to how state measures legitimise norms, two cases were reported during

³⁹ Askari Rizvi cited in Abbas, Chapter 6 footnote 32

⁴⁰ For detailed discussion and specific cases see Mumtaz and Shaheed, Jahangir & Jilani, Hussain

⁴¹ In the case of consensual sex, death by stoning only applied to married persons. After the Women Protection Act 2007, the sentence no longer applies in cases of rape.

the Zia period of people taking the law into their own hands, and applying the punishment. Alarming, in 2007-2008, media reported several such incidents.

In a travesty of justice, rape survivors unable to provide sufficient evidence to convict the accused, were themselves sentenced for *zina* because they had ‘confessed’ to the sexual activity, or because they were pregnant (see Jahangir & Jilani, Mumntaz & Shaheed). Disturbingly, the laws eliminated the provision of statutory rape⁴² and, because girls were held to be liable as of ‘puberty or 16 years for girls’, girls as young as nine were prosecuted as adults.⁴³

The laws were promulgated in great haste, essentially to establish the ‘Islamic’ credentials of Zia’s regime since ‘Islamisation’ was forwarded as the excuse for reneging promises of elections. No consideration was given to any potential conflict with existing laws. Inconsistencies between the *zina* laws and the provisions of Muslim family law enabled men to use the *zina* laws to penalise and persecute women they had orally divorced (as well as their new husbands).⁴⁴ Misuse was rampant and the Chief Justice of Pakistan estimated that some 95% of the cases implicated “wrongly accused women.”⁴⁵ By 1991, a superior court observed that “such reckless allegations are being brought so frequently that something should be done to stop this unhealthy practice.” (1991 Pakistan Criminal Law Journal: 568 FSC) As most laws promulgated by Zia in Islam’s name, the *hudood* laws undercut the basic principle of equality before the law. The law was no longer indifferent to the identity of the accused and accuser, the law varied depending on the gender and religious identity of the accused, the victim as well as those providing evidence. Maximum punishment could not be awarded, for instance, if the accused was a Muslim while evidence was provided by non-Muslims, or if the witnesses were all female.⁴⁶

Zia restructured the judiciary. A new Federal Shariat Court (FSC) was mandated to decide whether laws and provisions were in accordance to Islam. Deeming himself the ultimate authority however, Zia was not pleased when the FSC immediately took *suo motto* notice and declared death by stoning punishment unIslamic. The government appealed, but not to the Supreme Court as would have been the normal course of action. The decision was returned to the FSC that, henceforth, included *ulema* with the status of judges. A parallel judicial system was erected to administer new ‘Islamic’ laws. The lower tier of magisterial and sessions courts remained integrated but the appeals procedures were bifurcated. Civil and most criminal matters proceed in the regular High Courts, followed by the Supreme Court. Appeals under ‘Islamic’ laws go to the shariat benches of the high courts, from there to the Federal Shariat Court, and, eventually to the Shariat Appellate Bench of the Supreme Court. (Only Muslims can serve on the FSC and the Shariat Benches.)

Reviewing FSC case law on *zina*, Nausheen Ahmad noted the “disturbing... moral judgment which the court seems to be making about the woman victim/accused.”

⁴² Statutory rape makes any intercourse with a minor a criminal offence, regardless of circumstances and consent.

⁴³ The equivalent age for males was 18 years; no mention was made of puberty.

⁴⁴ The MFLO requires registration of marriage but does not render invalid unregistered marriages. See *Why the Hudood Ordinances Must be Repealed* Shirkat Gah: Lahore.

⁴⁵ Mohammad Afzal Zullah stated that 95% of the cases were overturned in favour of wrongly accused women. *The Muslim*, Islamabad, March 9, 1993.

⁴⁶ Non-Muslim judges were barred from hearing cases under these laws and non-Muslim lawyers could no longer appear for Muslim clients.

(Ahmad: 13) The new laws, she notes, led to confusion: in one judgment the FSC held that the fact of living together was sufficient proof of marriage, in another that it was not. Confusion was not limited to the FSC; it permeated all courts. Legal text and legal precedent were overtaken as touchstones for judgments and replaced by individual judges' personal interpretations and views on Islam. The situation was compounded after the Objectives Resolution was made a substantive part of the Constitution in 1985.⁴⁷ The unprecedented primacy granted to an undefined *shariah* opened a Pandora's Box as exemplified in the famous 1996 Saima Waheed case in the Lahore High Court on a woman's right to marry regardless of parental approval. Technically, the case should not even have been entertained for, as one judge stated without further elaboration, as a legal major Saima was entitled to marry anyone she pleased. But, a second judge opined "We are national Judges and as such custodian (sic) of the morals of the citizens," and, in complete contradiction of the law, insisted that a marriage contracted without the consent of a male guardian had "no legal or moral purchase in Islam." The third judge granted she was entitled to marry whom she pleased under current law, but proposed in his ruling that the law be amended to make parental guidance mandatory (see N. Husain 1997).

The Hudood laws had the most damaging ramifications in practical terms; other new laws had less visible impact but carried the message that the status of Muslim women and all non-Muslims was half that of Muslim men. In 1984, a new Law of Evidence applicable to civil and criminal matters was introduced, holding that whenever future financial obligations were involved the testimony of two men or four women was required.⁴⁸ This was followed by introducing a law for bodily harm, murder and abortion that provided an 'eye-for-an-eye' type retribution or monetary compensation (*Qisas and Diyat*). Incredibly, the original proposal priced human life: adult male Muslims weighed in at 30.63 kilograms of silver; Muslim women and all non-Muslims were valued at precisely half that amount. This was later amended but the message was clear: only Muslim men were truly human, all others 'half a human.' Underlying these laws was the intent to terrorise the populace and to brutalise their sensibilities.

Legal changes effectuated two critical shifts. First, by obfuscating legal parameters changes allowed personal views on Islam to over-ride the text of the law. Second, the changes shifted the onus of (a) determining and (b) enforcing what was legally licit/illicit and socially acceptable/unacceptable from textual law and state institutions to the public at large. Supported by the state turning a blind eye to violence-prone bigotry, new provisions seemed to imply that to uphold so-called Islamic laws and values it was acceptable for people to take the law into their own hands. Ahmedis were targeted when the erstwhile paper law declaring Ahmedis non-Muslims was given nasty teeth by criminalizing everyday actions.⁴⁹ Amended blasphemy laws making it possible for anyone to construe anything as blasphemous,⁵⁰ led to numerous attacks and the murders of several Christians and at least two Muslims. Bigotry and violence continued long after

⁴⁷ Presidential Order No 14 of 1985 as Article 2(A)b.

⁴⁸ In practical terms this has meant that senior lawyers and bankers, for instance, stopped signing contracts for fear they could later be challenged.

⁴⁹ Pakistan became the only Muslim society that made it a crime for some people to recite the *kalma* (Muslim creed), to call their places of worship 'mosques', to invoke the name of Allah.

⁵⁰ The new Section 295(c) reads "Whosoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Mohammad (peace be upon him) shall be punished with death." The law is inherently unjust because it fails to define the boundaries of law within which citizens are expected to live and also fails to attribute significance to motive.

the demise of Zia and his regime. Thus, in retrospect, the most damaging legacy of the Zia period may not be the laws, but the reshaping of the social fabric that reconfigured people's psyche and everyday norms, such as the premise that all citizens were not equal.

Permeating the entire state edifice, changes simultaneously seeped into society to water the roots of the worst bigotry. If previously, open discrimination - to say nothing of violence - was at least considered politically incorrect, that modicum of restraint was swept away thanks to state measures that lent legitimacy to the worst elements of civil society. The laws, directives and propaganda proposed in the name of Islam, including ostensibly gender-neutral measures, ricocheted through society producing an ever tighter web of control over the state's female population and non-Muslims. Seeing women's rights directly threatened by any measure proposed in the name of Islam whether gender-specific or not, women's rights activists made common cause with non-Muslims. Women initiated the Joint Action Committee for People's Rights that brings together diverse human rights groups and is still active today.

A number of seemingly cosmetic 'Islamisation' measures, e.g. propagating dress codes for women and mandatory recitations from the Qur'an at every function, were critical to a reorientation of society. Accompanying the laws, this apparent 'window dressing' imperceptibly but inexorably tweaked society into a new state-sponsored 'look:' readjusted societal norms fit ever more constrictive rules of appropriateness that, forwarded as religious, put non-conformists on the defensive. A severe clampdown on the independent print media through heavy censorship and intimidation helped muffle and muzzle dissent and alternative views (Niazi 2004).

Islamiyat was made compulsory in all schools,⁵¹ passing an oral and written Islamiyat test a requirement for higher education (including for technical and science subjects) and for all public sector jobs. Rewritten textbooks ensured a 'correct' perspective: the founder's speeches were censored; history refashioned as an 'Islamic' narrative overriding inconvenient truths. The *ulema's* wholesale opposition to Pakistan, for example, was omitted and religious actors were instead projected as the country's standard bearers. (These textbooks remain largely unchanged.)

Sexual mores were a particular focus: from the Hudood laws to apparel; from decision-making on marriages to the imagery of women, tightening controls were justified by Islam. Early on, the government questionnaire solicited opinions on the 'correct' status of women in an 'Islamic society' and licit illicit activities. The notion of a 'Pakistani woman' was replaced by that of an 'Islamic woman' who dressed in a particular manner, was educated - if at all - in certain subjects and preferably in segregated institutions, and who was largely silent as well as invisible. 'Islamic dress' was prescribed for women, a 'national dress' for men. Disregarding that Pakistani women (and men) are covered from neck to ankle, chadors became mandatory for all female students, their teachers and women government servants. The media harangue and harassment in public spaces led Parsees and Christians to abandon skirts and dresses (until then common in Karachi), and peasant women in south Punjab to abandon their traditional sarong like apparel. Bleaching out diversity, the official discourse on Islamic dress transformed into a cultural norm.

Gender segregation was a central pillar: ranging from prohibiting joint male-female stage shows and performances in colleges, to seeking to ban male gynaecologists and male doctors from autopsying female cadavers. Female athletes were prohibited

⁵¹ Technically, non-Muslims have other options but few schools are equipped to provide such courses.

from competing in the presence of males. As in most instances, implementation was imperfect; authorities conveniently ignored male maintenance crew and judges in 'women-only' national games. The primary intent seemed to be the imposition of a new ethos rather than the enforcement of each particular measure. State monopolised television and radio relentlessly promoted the new gendered ethos. The government campaign to end obscenity and vulgarity (a favourite topic of the religion right) managed to suggest that women *per se* were somehow obscene. All women on television (newscasters, hosts and actresses in commercials or television plays etc.) had to cover their heads at all times – even when shown to be asleep in bed. Women who refused to comply were dismissed. Directives prohibited TV scripts in which women opted to leave marital homes. Clearly, 'good' women submissively accepted all manner of abuse, be it physical, mental or emotional. Women's employment options narrowed. Foreign Office women were no longer posted abroad, some were actually recalled. Recruitment in nationalized banks slowed down and female bank employees found promotions blocked. State broadcast media extolled the virtues of the good self-sacrificing woman, domestic or domesticated and blamed 'other' publically visible women (particularly working women) for the disintegration of societal norms and values. Foreign scholarships were channelled to male students; the government adopted the JI manifesto promise of a separate university for women with discussions about limiting the subjects women could study.⁵²

The resultant oppressive atmosphere insidiously encouraged a public belief that individuals were entitled to take direct action whenever any woman transgressed their personal conceptions of 'Islamic morality.' With state propaganda seemingly licensing any male on the streets to admonish, even physically assault any woman *he* regarded as being improperly dressed, sexual harassment in public spaces spiralled (see Mumtaz & Shaheed). Over-zealous teachers refused to teach girls not 'properly attired'; others segregated their classrooms; a few refused to teach female students at all. An entire generation grew up on propaganda suggesting that women's only place was in the home, their role that of reproduction and motherhood, and their status and rights in all aspects subservient to men.

As strongly entrenched as patriarchy, class cultures dictate sometimes radically different rules for women, and the impact of Zia's 'Islamisation' was not alike for differently situated women. Poor illiterate women experienced the brunt of the Hudood laws; no case of *zina* has ever been lodged amongst the urban elite, although several prominent cases have involved urban middle class families and rural well-off and well-connected landholding families.⁵³ Sexual and social harassment, on the other hand, transcended class barriers. Variations in the extent, nature and consequences notwithstanding, all women confronted greater hostility in public spaces and all working women experienced increased obstacles. Urban middle and upper middle class women who had successfully negotiated the greatest expansion of their space and rights suddenly found themselves having to confront a barrage of state measures and proposals threatening rights presumed to have been secured years, even decades, ago. Some issues, e.g. a woman's right to drive a car, had never been a point of contention. Led by working professionals, resistance emerged from amongst this class of women; in other words women who had most effectively redefined the gender rules in their own lives and therefore stood to lose the most. Such women were also better placed to take the risk of confronting the state. While they prevented the passage of some proposals and managed

⁵² A separate Women's University became a reality many years later in the late 1990s.

⁵³ Saima Waheed's father of the Ropri clan and the family of Humaira Butt were both financially well-off and the latter had direct connections with the Chief Minister, Shahbaz Sharif.

to have others amended to limit the potential damage, they were far too few in numbers to prevent the revamping of society and the entrenchment of attitudes under Zia.

Post-Zia developments: Democratic Interlude & the Return of the Military

Between 1988, when the sudden death of General Zia-ul-Haq precipitated elections, and 1999, when the military again directly assumed reins of power, Pakistan went through a quick succession of governments. None of the four elected ones lasted for more than two-three years. Two governments were under the premiership of Benazir Bhutto (1988-90 and 1993-1996), two under Nawaz Sharif (1991-1993 and 1996-99). Little substantive changes were made in terms of Islam's inscription into the state: heading minority governments, Bhutto was unable to and Sharif disinclined to.

Against the odds of a greatly strengthened presence of politico-religious parties and groups (old and new) and eleven years of a misogynistic rule wrapped in Islamist rhetoric, Pakistan elected a woman, Benazir Bhutto, as Prime Minister in 1988 - the first woman to head government in Muslim majority countries. Reluctantly asked to form government, Bhutto's first tenure was a shift from direct to indirect military rule (Z.Hussain 2007). Neither term saw any changes in so-called Islamic laws. Not only is extremely difficult to challenge a law labelled or passed in the name of religion, all legal measures instituted by Zia were indemnified by the 8th Constitutional Amendment. As such these required a two-thirds majority in the parliament, something Bhutto's minority coalition governments were unable to muster. Moreover, distrusted by the military that continued to wield the real power, her first government was also beleaguered by spiraling ethnic violence and obstructive non-cooperation from the largest province, Punjab, ruled by her rival, Nawaz Sharif. Her party manifesto promise to repeal the infamous Hudood Ordinances never materialized, but procedural directives did reduce the abuse of the law and the number of registered cases. The blasphemy law remained intact although government support enabled the first-ever acquittal under this law despite threats to defending lawyers, the accused and judges hearing the cases.⁵⁴ Armed policemen had to be posted across the rooftops and within the premises of the high court to enable the hearings to proceed. Sadly, attesting to the changed times, no contempt of court was served to the prosecuting lawyers and their companions for openly declaring they rejected the court's authority or for the disorderly conduct within and outside the court premises in the name of 'God'.

More progress was made on non-legal issues, amongst which an all-women's bank, a 5% quota for women in all federal services, a tax rebate for women, women's police stations and the elevation of several women to high court judges. More important than the specifics, however, was the transformative impact of a woman head of government that instantly eased the hitherto oppressive atmosphere. Women re-emerged from relative obscurity. Sharply contrasting with the Zia years, state broadcast media launched numerous programmes promoting women's rights and/or highlighted their problems. These 'soft' measures provided relief to women but Bhutto's short tenures, less than three years each, could not be expected to make more than a minor dent in the societal attitudes entrenched under Zia. A re-orientation of the religion-politics-culture nexus would have required a reorientation of the military that retained real power and maintained links with politico-religious groups. This was not within her power, nor was she willing to test the waters at the risk of losing power.

⁵⁴ This was the Salamat, Rehmat and Mansir Masih case in May 1994. Mansur was killed outside the Lahore High Court Premise; one of the two judges was subsequently murdered.

As the political heir to Zia, Sharif could not be expected to undo Zia's 'Islamization.' Sharif first came to power at the head of a coalition cobbled together by the Inter-Services Intelligence, the Islami Jamhoori Itehad (Islamic Democratic Coalition), in a victory considered to have been managed by the interim government with 'remarkable deftness'. (Newburg: 216) Numerically, the coalition was dominated by Sharif's Muslim League but, as always, the JI played a key discursive and agenda-setting role that precluded promoting women's rights and curtailing the activities of politico-religious groups. With a two-thirds majority in his second round, Sharif moved to consolidate absolute power. The media was hounded and journalists arrested, measures sought to close down thousands of non-governmental organizations (NGOs); intra-party dissent was gagged through a constitutional amendment.⁵⁵ The *piece de resistance* was the 15th Constitutional Amendment Bill propagated as the 'Shariat Bill.' The rhetoric and actions taken by an elected civilian government to centralize absolute power in the name of Islam were disturbingly similar to Pakistan's worst military dictator. Purporting to enforce Islamic law (as finally interpreted by the prime minister and his government) the Bill in fact proposed unfettered power for the prime minister whose actions would be exempted from judicial review.(Lodhi)⁵⁶ Passed by the assembly on 9, October, 1998 to the consternation of minorities and public protests by moderates and social activists,⁵⁷ the Bill failed to muster the necessary support in the Senate before General Pervez Musharaf ousted Sharif.

Musharaf took power on 12th October 1999. Stating in his first speech that "Islam teaches tolerance not hatred", he promised all citizens equal treatment regardless of province or religion. Referring to the misuse of Islam by politico-religious groups, Musharaf called upon the clergy to "curb elements which are exploiting religion for vested interests and bring a bad name to our faith."⁵⁸ In the aftermath of Sharif's ever closer resemblance to Zia, the speech came as a relief. Relief was short-lived. The tactical mistake of first announcing then retracting intentions to amend the blasphemy laws was seen as a sign of weakness; the retraction bolstered the religious right - unarmed and armed alike. Subsequent speeches started being peppered with favourite expressions such as "Islamic Moderation" "needing to improve Pakistan's image abroad", and, not to forget, "true and appropriate democracy suited to the people of Pakistan". The socially liberal personal views of Musharaf did not prevent him from making arrangements with the politico-religious parties. The 2002 elections held under Musharaf returned an unprecedented number of politico-religious elements. Partly this was due to the huge anger at the US-led military attack on Afghanistan, but at least in some measure it was facilitated by Musharaf exempting madrassah educated people from his newly imposed rule that only university graduates could stand for elections. Neither were armed militants curtailed and the period saw an alarming Talibanisation of Pakistan, especially in the northern areas where a full-fledged armed insurrection is dangerously close to becoming a civil war. The violence perpetrated by the Taliban, *jihadi* outfits and Al-Qaeda now forming a loose nexus (Z. Hussain 2007) periodically erupts across

⁵⁵ The 13th constitutional amendment rescinded presidential power to dismiss the Prime Minister and gave the latter new powers to dismiss and appoint chiefs of the three armed services. The 14th constitutional amendment bill de-seated anyone voting against the party line.

⁵⁶ The proposed Bill was so drastic that even Abdul Hamid Jatoi of the ruling party reacted.

⁵⁷ Minorities felt increasingly vulnerable and disenfranchised, even though the government said there would be a clause for non-Muslims, a measure lawyers felt was only eyewash as they would still be subject to public law. Asma Jahangir *News*, 3-9-98.

⁵⁸ <http://%20server1.pak.gov.pk/PresidentAddresses/presidential%20addresses%20index.htm>

the country. In the first eight months of 2008, more people died as a result of suicide bombings in Pakistan than anywhere else in the world, including Iraq.⁵⁹

Musharraf did however institute several important changes for women (and minorities). Several long-standing demands of women were addressed.⁶⁰ Women's significantly increased presence in the assemblies enabled female legislators to successfully table bills amending family law procedures and introducing legislation addressing so-called 'honour' crimes. Also tabled was a bill to repeal the infamous Hudood Ordinances. In terms of religious inscription, by far the most important legal reform was the Women Protection Act 2006 which finally removed the teeth, if not the entire text of the infamous Hudood Ordinances (consensual sex remains technically criminalized but virtually impossible to prosecute). Over and above the specific changes, the Act finally overturned the belief that labelling a law 'Islamic' renders it sacrosanct and unchangeable. Of course, being President and the head of the armed forces Musharraf was all-powerful so he could ignore the religious right in parliament. Even the best intentioned civilian governments have never enjoyed such power.

3. Gender, Justice and Civil Society in Unjust Societies

The blending of religion and politics has to be seen, I believe, within the nation-state paradigm of a social contract between the state and its citizens: the state promises people security of person, rule of law and opportunities and benefits in exchange for a monopoly over violence and compliance with state laws and regulations, with predetermined modalities for expressing dissenting opinions. While there is no written contract, the parameters of governance are usually, though not always, formulated in a constitution which is a legal document. This may explain the concentration on the law and legal measures by progressive activists as well as those pushing conservative, sometimes retrogressive, agendas, including those articulated in religious terminology. When official promises of equality, equal opportunities and justice for all as delineated in constitutions and policies remain unfulfilled and people's lived reality is characterised by the injustice of deprivation and discrimination, this produces a vital gap. The disjuncture between promises and reality, particularly in the absence of progressive social movements for change, allows religiously defined political agendas to emerge as significant forces in people's lives.

When religion shifts from social private spaces into the public political arena, the blending of religion and politics has an effect on religion itself. Hence, the preponderant emphasis on religious laws by politico-religious elements pares down the faith of Islam to Muslim jurisprudence, i.e. *shariah*. Those politicising Islam actively simultaneously seek to de-legitimise and crush the diverse perspectives of the faithful, especially the mystical Sufi traditions. Ironically in this they have been helped by the modernization ethos that gives unprecedented, and increasingly exclusive, pre-eminence to the written word as the only authentic knowledge base. Leila Ahmed eloquently describes how the pre-eminence of scriptural interpretation displaced women's traditions with "their own understanding...that was different from men's Islam." As received from women, Islam was gentle, generous, pacifist, inclusive, somewhat mystical...Religion

⁵⁹ http://www.thaindian.com/newsportal/india-news/pak-tops-list-of-countries-in-number-of-suicide-bombing-deaths_10095940.html

⁶⁰ Amongst these a permanent women's commission (2000), amendments to the Family Courts Act (1964) in October 2002, the restoration of greatly increased reserved seats for women, including for the first time in the Senate(2002), 33 percent reserved seats for directly elected women in the local bodies.

was above all about inner things. The outward signs of religiousness, such as prayer and fasting... were certainly not what was important about being Muslim. What was important was how you conducted yourself and how you were in yourself and in your attitude toward others and in your heart. (Leila Ahmed, 2003: 2)

In contrast, the men's mosque centred and institution-based religious tradition was more narrowly focused on the word of scriptures, propelling a more literalist interpretation of faith. Reinforced by the modernist ethos, this literalist interpretation has steadily gained ascendancy, bolstering politico-religious groups commonly referred to as 'fundamentalist.' These are modern political forces seeking to capture state (and/or world) power. Such movements (whether within Islam or other religious traditions) are bent upon forcing people into accepting ever more narrow definitions of self, in which their multiple, non-antagonistic identities based on gender, citizenship, class, religion, ethnicity etc. are replaced by one single identity: the one imposed by actors who have usurped the right to speak for the willing or unwilling 'members' of that group (Helie-Lucas). And the issue is not limited to male vs female interpretations of Islam. These groups are antithetical to mysticism-centred Sufi traditions that dominated many parts of Pakistan but are now being eroded by the inroads made by political Islamists. Indeed any and all versions of Islam that do not fit the orthodoxy of political groups are targeted for elimination, as are their adherents.

Another insight from Ahmed is that alphabetization has not necessarily played a positive role. In countries like Pakistan the focus on literacy has tended to reduce the education to alphabetization and skill acquisition. The very ability to read has enabled the prolific writings of religious conservatives to reach ever-wider audiences. Significantly, in Pakistan religious materials, for the most part narrow minded and conservative, if not outright bigotry, and almost uniformly misogynistic, have replaced the thrillers, Reader's Digest-style publications and fashion magazines of yesteryear at corner shops, bus-depots, railway stations and airport lounges.

Fractured Civil Society & the Search for Justice

Bridging the social and political arenas, civil society institutions are "civic associations" or un-coerced, voluntary associational life not limited to engagements in overtly political activities (Young 2002). The dividing line between the social and political is porous, and actors mainly located in one sphere or the other can transmigrate more easily than is usually acknowledged (see Philipps 2002 and WEMC 2008). Before the Jamaat-i-Islami entered electoral politics it would have qualified as a civil society organization. Second, there is a need to question the current tendency in development discourse, as also in much of human rights discourses, to view civil society organizations as uniformly progressive: democratically inclined, firmly founded on principles of equality and striving to eliminate all forms of inequality including those based on gender. This is not true in Pakistan where a substantial portion of civil society is concerned with carving out niches of influence and privilege at the expense of other people's rights. Hence, many politico-religiously defined groups refute the rights of women and people of other faiths and exclude them from the purview of 'the community' deserving benefits. And, of course, civil society is shaped by the society in which it is embedded. It is to be expected therefore that it will reflect hegemonic contestations over cultural and social meanings, to which gender relations are a vital component.

Some religiously defined civil society institutions have an essentially social and not political agenda. Religious instruction (*dars*) is the objective of both traditional informal social groups and new *dars* academies (e.g. Al-Huda) both of which have prolif-

erated since Zia and are extremely popular amongst urban women of different classes. Following a liberalization of policy and the advent of cable networks, a substantial number of channels are devoted to religious instruction. Though socially active groups are not examined here, it is important not to factor them out of the framework. Such groups play an important complementary role to more politically engaged groups, to which they are connected by actual or discursive links. For instance, while the vast majority of *madrassahs* are not directly involved in militant activities, they impart an education which produces narrow-mindedness and a propensity to view anyone from other perspectives as suspect. Brought up with a particular worldview, *madrassah* graduates are likely to be more receptive to similar-sounding, albeit more radical, views expressed by other more militant groups. The new Muslim preachers on television - some with styles resembling those of Christian televangelists - and women's *dars* institutions likewise help to promote a religiously defined discursive environment in which issues are projected as sins and evils, not merely rights, laws and social norms. Situated in the social rather than political sphere, these components of civil society influence and shape the cultural environment in which the political and legal discourses and battles are embedded. As such, they form a vital part of the dynamics of religion and politics. In my view, they are indeed a part of civil society, and a significant part at that. The tension between this part of civil society and those groups normally referred to as 'civil society' in Pakistan needs to be examined in greater depth.

While social and economic disparities and deprivations underlie discontent and propel a desire to change ground reality, I focus on the justice system since discontent often finds expression as demands for changes in the law and legal framework as well as polices. Implicit in this contestation are issues of governance. Politico-religious elements contest the basis of a legal governance framework and the basis of rights, as seen in the history outlined in Section 2. Human rights activists tend to focus on realigning and redefining rights towards greater equality within the current governance framework; grinding poverty, class and other discrimination tend to receive less attention that is critique rather than concrete proposals. The law, both as a means of setting universal standards and a system for delivering such entitlements, has always been the principle framework for human rights activism and, for many years, the women's rights movement in Pakistan has tended to focus rather narrowly on legal rights. The law is also a focus of politico-religious parties and, interestingly enough, of militant armed groups Chetan Bhatt terms 'religious absolutist groups' (Bhatt 2007:1091). Bhatt suggests that rights activists and 'religious absolutist groups' both tend to view people in narrowly juridical terms. Whether articulated or implicit, notions of conceptual frameworks for justice underpin this focus. In Pakistan, the basis for a justice and governance framework has been contested from the start; rather than abating, disputations have become increasingly acrimonious leading to polarized views. The state's justice system has been inadequately resourced. Frequent disruptions, suspensions and other tampering by military regimes have further impeded effectiveness, growth and institutionalization. Moreover, formal decision-making structures notwithstanding, governance in Pakistan is based less on laws and rules than on patronage. Traditional systems of self governance and dispute resolution have continued to function in parallel to the state. In a society that is visibly unjust both economically and socially, perceptible justice has been notably absent.

Exemplified by the Jamaat-i-Islami, mainstream politico-religious groups have arduously pursued the aim of reconfiguring Pakistan's legal framework, with initial victory achieved *before* the Jamaat entered the electoral process. The passage of the Objectives Resolution in 1949, mistakenly considered by many an astute compromise appeasing both the religious elements and the modernists amongst the politicians (see Mehdi),

in fact opened the door for the instrumental use of Islam by diverse political forces. This inevitably privileged religious scholars who were in their own element. Its subsequent elevation to a substantive clause further expanded space for the *ulema* and politico-religious forces – both those inside and outside the mainstream political framework - to colour the polity with religious discourse.

For political Islamists, especially those outside the electoral process, projecting the existing social and legal orders as incoherent and ineffectual is an essential counterpoint to their own promises of speedy ‘Islamic’ justice. The strategy is not limited to ‘religious absolutist groups,’ but extends to other actors. The supposedly ‘Islamic’ laws introduced under Zia that obfuscated legal provisions and enabled personal beliefs to override the text of law, undermined coherence in the state legal system. Hinting at a possible need to shift the foundational basis for legal justice and structures, the changes created a tussle over what should be the basis for existing laws and who was (and ought) to be the deciding authority permeated society. Exceeding its mandate, in 1991 the Federal Shariat Court (FSC), arrogating to itself the right to legislate, banned interest as ‘*riba*’ (usury) to the deep concern of two former justices of the Supreme Court.⁶¹ Dorab Patel protested that legislation was the prerogative of the parliament not the FSC (*The Nation* 25-9-92). Qadeeruddin Ahmed in an extended two-part article pointing out that the constitution is a secular law, said it was not for the FSC “to assume the role of a defender or promoter of the views of the [Council of Islamic Ideology] or make grievance that the government did not act on [its] advice.” “Fiddling with the system of secular law,” he said could not change ingrained attitudes and “will not make the people of Pakistan better Muslims.” He concluded by noting that “When laws and courts become inaccessible or become indifferent to the needs of the people, human ingenuity invents and will continue to invent ingenious ways of self-help” (*Dawn* 25-7-92 & 26-7-92). The absence of visibly delivered justice is critical. Promising justice in a patently unjust world is part of the appeal of the religious militants in Pakistan, whether armed or not; it forms part of what Chetan Bhatt calls ‘the religious right methodology of social governance’ (Bhatt 2007). The propensity to focus on ‘Islamic’ justice and *shariah* complemented by visible forms of marking collective identity, in which gender plays a pivotal role, may be propelled, as suggested by Samir Amin,⁶² by the absence of a common political economy agenda of the diverse actors pursuing power in the name of religion.

The critical role of justice and the focus on legal institutions is reflected in the large number of supposed ‘shariat courts’ installed by non-state religious right groups, as an alternative to, and in lieu of, the regular court system. According to a 2007 report, at least 54 private ‘shariat’ courts were known to be operating in the country; 29 operated by organizations that were banned or in danger of being banned.⁶³ This excludes the Taliban style of (in)justice meted out in Pakistan’s northern areas (*The Herald* May 2007). A side effect of the use of diversely defined ‘religious law’ is that while it is supposed to “to bring order, [it] instead tears apart existing sociality, leaving it fragmented into antagonistic sectarian enclaves.” (Bhatt 2007) These new adjudication forums further confound the existing complexities of parallel justice systems in the country. Their emergence is made possible by the gulf separating the state judicial system from its in-

⁶¹ Justice Patel, an outstanding jurist, refused to take an oath of allegiance to General Zia and gave up his seat on the Supreme Court. He went on to become only the 2nd Pakistani elected to the International Commission of Jurists. Justice Qadeeruddin Ahmed was the Chief Justice of the Sindh High Court before being elevated to the Supreme Court.

⁶² Amin, Samir. 1989 “Eurocentrism” *New York, Monthly Review Press*, 1989 cited in Sadia Toor “The State, Fundamentalism and Civil Society.”

⁶³ 24 run by the Jamaatul-Dawa, 5 by the Sipah-e-Sahaba Pakistan.

tended users, citizens who remain unaware of state laws and therefore unable to access their rights under these. Until recently, traditional forums of dispute resolution that were never entirely displaced by the state judicial apparatus, used to fill this gap, especially in rural areas. Culturally distinct regions have their own self-governance mechanisms such as the collectivised decision-making of *jirgas* (tribal assembly) and *panchayats* (five-person group), but also individuated decision-making by tribal leaders (*sardars*, *waderas* or *maliks*). Traditionally, women are excluded from all these forums. Moreover, their decision-making is unrelated to the legal provisions of the country. Such forums have become infamous for rulings and punishments that both contravene laws and even the basic modicum of human rights and dignity. Women are regularly bartered off to appease one party, or retrieve ‘male honour.’⁶⁴

The gap is now being captured and filled by non-state actors. The new forums instituted by politico-religious forces, in addition to bringing into question the state’s prescribed legal framework, simultaneously seek to supersede the earlier authority of such traditional self-governance mechanisms. Encountering resistance, they try to eliminate traditional mechanisms altogether sometimes by physical eliminating local leaders (e.g. in the northern tribal areas of Pakistan) including those who governed the traditional forums.

In calling for justice, religious defined groups feel no obligation to elaborate the system of justice they have in mind. Resonating deeply with the cultural lexicon of the people addressed, the term ‘Islamic justice’ is projected as self-explanatory. In contrast, human rights activists expend considerable time painfully explaining in lengthy details the exact phraseology of human rights standards that references an entirely different, and mostly unknown, world. Largely irrelevant to people’s social belief systems and life experiences, this referencing is more easily refuted and/or rejected as belonging to the alien world of ‘others.’

The persistent and increasing attacks instigated by the religious right on civil society actors promoting human rights, particularly those promoting women’s rights, have to be viewed in the context of alternative societal visions but also justice. Rights activists do not possess the power to present any real threat to the far larger, better resources and organized politico-religious parties. They are, however, seen as principle opponents in discursive contestations i.e. the articulation of ideas and visions that accompany activism. The purpose of labelling rights activists ‘western agents’ is intended to undermine credibility and public support; verbal assaults, backed by physical harassment and attacks in a repertoire that now includes bombing, are intended to intimidate and silence. Previously, rights activists felt reassured by the lack of public support for politico-religious parties as reflected in ballot box rejections, and took some comfort from the sharp rivalries between politico-religious groups. There is no longer any room for reassurance after the 2002 electoral success of the multi-party Mutehida Majlis-Amal (United Council of Action) evidences an ability to overcome differences in perspectives and the details of ideology to unite on a common platform.

The framework and tactics of human rights groups differ sharply from those promoting an exclusivist vision of religion and state, especially those outside the electoral process. Where the former accord primacy to the state as the principle guarantor of rights and formulate the legal rights agenda within state structures, the latter question the legitimacy of the state along with its structures. The former eschew violence and coercion and speak of freedoms of individual choice; the latter have shown little compunction in resorting to coercion and violence, many have a propensity for it, and tend

⁶⁴ See Nafisa Shah 2001.

to posit collective rights as overriding individual rights. Finally, evidence suggests fairly significant linkages between armed 'illegal' militant groups and religious political parties, regardless of whether the latter take recourse to 'plausible deniability' or not. Hence while the Jamaat-i-Ulema Pakistan denies official links with the Afghani Taliban, there is little doubt that links have existed (Z. Hussain 2007, Haqqani 2005, Bhatt 2007). For its part, the Jamaat-i-Islami on occasion even denies connections with its student wing, the Islami Jamiat-i-Tuleba, as well as its newer, affiliated youth groups, the Pasban and Shabab-e-Milli. A pivotal difference of course is the extent to which either set of contesting groups can exercise (or access) power and state support. In this there is little contest between under-resourced women's rights groups and fully armed militants who often have the tacit, if not overt, support of the state. State reluctance to censure *ulema* first evidenced during the 1953 riots, has persisted. Reaching unprecedented levels under Zia, this impunity has emboldened and encouraged groups articulating their political and social agendas in religious idiom to become ever more strident and uncompromising in not only their demands but also their actions. (NGO Coordinating Committee) For their part, while the 'NGO'⁶⁵ section of civil society is able to access funding from bilateral and multi-lateral development agencies, and enjoys the support of the international community, neither kind of support protects them from attacks within the country. For this they are dependent on the state apparatus. Separately, the very fact that such NGOs do have funding from 'external' sources is used against them so that they stand accused of promoting a foreign agenda. The argument sometimes forwarded by NGOs, that the government itself is dependent on external funding is not terribly effective given that in popular perception successive governments are considered to be both corrupt and ineffective. In the midst of NGO-bashing, the fact that religious civil society groups are also funded, not infrequently from outside, is conveniently forgotten by the media as well the general population.

This is not to suggest that human rights activists abandon their international human rights standards and referencing. Rather I am suggesting the need for human rights activists to embed their messages not only in terms of the UN Charter but equally within the people's more liberal social traditions. For this they need to redirect their attention from a preponderantly state-exclusive focus to exploring and developing means to reach the general population through socio-cultural intervention, such as the creative arts. Equally important is for groups to retrieve history from the distortions instituted under Zia that can help to highlight other rooted realities. During the Zia years, women's rights activists found that one of the few tactics they could employ with some effect (other than more liberal interpretations of religion) was the reference to history, especially Pakistan's founder and early leaders. This may not be easy, but without such enterprises there is a danger that rights activists and those struggling for gender equality will continue to be increasingly marginalised and de-legitimised within their own societies.

The following case study of the Red Mosque complex illustrates several key aspects and different dimensions relating to politicised Islam and gender. Women played a prominent role in what turned into an armed stand-off between the politically-connected religious complex and the authorities that turned into an armed conflict. Poor governance and the lack of law and equal treatment by the law were part of the discourse

⁶⁵ The term NGO only makes sense in the context of the United Nations and other international bodies to distinguish government representatives from non-governmental ones. Usually I use the term civil society groups or CSOs, but will use the term NGO in this paper to distinguish non-religiously defined groups from religiously defined ones, even though this is somewhat problematic because obviously the latter are equally non-governmental entities.

adopted by the mosque protagonists. It also illustrates the duplicity of the state regarding militant religious groups (wanting to use them but also control them).

The Red Flag of the Red Mosque

The Lal Masjid, or Red Mosque, is situated in the capital city Islamabad at a stone's throw from the office of the government's all-powerful Inter-Services Intelligence (ISI). Trouble started when the government issued orders to demolish 11 unauthorised mosques in late 2006. Protests that started as a demand to retract government orders escalated into an armed stand-off that only ended in July 10 2007 after a full scale military operation that, according to official figures left 80 security personnel and 50 militants dead. Journalists put the death toll in the hundreds; the politico-religious groups in the thousands. Many questions were never answered, including: how the mosque's *madrassahs* expanded from two modest 500 square yard plots to occupying 6,500 square yards, housing some 10,000 students, half of them female, with no apparent authorization or payments; how in the heart of the capital the clerics amassed sufficient arms to state "we have enough weapons to fight for 25 to 30 days;" (Ghazi *Newsline* July 2007); the number and role of foreign militants.

Built in 1965, the Lal Masjid was just another mosque until Zia appointed Maulana Abdullah the *imam masjid* or mosque leader, and granted land for two associated *madrassahs* (one each for males and females, the latter abutting the mosque). Under Abdullah's tutelage the Lal Masjid apparently served as a base camp for local and international *jihadi* outfits and "hosted hundreds of Arab *mujahideen* on their way to holy war in Afghanistan and boasted friendship with the likes of Osama Bin Laden and his associates" (*Newsline* May 2007). After Abdullah's 1999 assassination, the mosque and its two seminaries were 'inherited' by his two sons: Maulana Abdul Aziz and Abdul Rasheed Ghazi, the former a *madrassah* trained cleric became the mosque leader; the latter a university graduate with additional religious schooling, its public face and voice. Links with *jihadi* outfits seem to have continued since an explosives-laden car impounded by authorities in 2005 turned out to be the property of the mosque's clerics. Disturbingly, it was the incumbent federal Minister of Religious Affairs who arranged for the clerics release simply on promises of good behaviour.⁶⁶ Indeed, media reports attributed the confrontation to a falling out between the government and the mosque's clerics after the latter issued a *fatwa* calling for a boycott of the funeral prayers of soldiers killed in the fight with 'Islamic' militants in the tribal areas (*Newsline* July 2007). But little of this was public knowledge in 2006-2007.

The Lal Masjid came to public notice by assuming leadership of the campaign to prevent the demolition of unauthorised mosques and *madrassahs*. Confronting protest, the state unhelpfully dislocated the discussion from one of law to one of religious tenets. Instead of categorically stating that illegal actions would – and had to – be dealt with under the law, state officials engaged in theological debates: first saying that forcibly occupying land was not permissible under Islam; then suggesting that, actually, the mosques were not being destroyed ('martyred' or made *shaheed* in religious terminology), only relocated. This gave clerics within and outside the Red Mosque an opportu-

⁶⁶ The incumbent Minister for Religious Affairs, Ejaz-ul-Haq (General Zia's son) arranged for the brothers' release on promises of good behaviour. In February 2007 Haq, having negotiated a deal that retracted the government stand, personally laid the foundation stone for the reconstruction of one of the mosques the government had demolished.

nity to counter the government's 'ignorance' with 'authoritative' theological lecturing, and hectoring.

The female Al-Hafsa *madrassah* shot into the public eye in January 2007. In the wake of the demolition of the first mosque, young *madrassah* women uniformly shrouded in all-encompassing opaque black chadors armed with thick bamboo staves forcibly occupied the state-run children's library abutting their *madrassah* and averred they would remain until the government recanted its orders. Officials ignored news footage more than one man toting a semi-automatic weapon amongst the women, because according to the President these 'young innocent women' were like 'our own daughters.' Inaction only encouraged male and female students to take direct action to bring about 'moral rectitude.' CDs and tapes were burnt in publicised media-event bonfires, vigilante policing started and music and video shops were threatened. In March, female students supported by male colleagues kidnapped a woman, her daughter and daughter-in-law along with a six-month infant. When students refused to release the women, the police picked up two of the seminary's female teachers and two drivers said to be intimidating music and video shopkeepers. In an instant tit-for-tat, students kidnapped two policemen and hijacked two police vehicles. Teachers, drivers and policemen were released within hours, but the kidnapped women, accused by Al Hafsa women of running a brothel and immoral activities, were kept in illegal confinement for several days. They were only released after a press conference in which the older woman, Auntie Shamim, draped in the Al-Hafsa uniform black chador, was forced repented for her sins. (Government response was more focused when students later kidnapped several (male and female) Chinese nationals from a beauty parlour they claimed was providing sexual services.)

In April, amid escalating confrontation, the clerics announced they were opening a *shariah* court "because the present system of governance has collapsed and is no longer working. The present system is the root of all problems. The elite class is benefiting from the system but the majority is being suppressed. The rich are becoming richer and the poor more penniless. Only an Islamic system can guarantee everyone justice." (Ghazi) The first widely publicized case was that of a woman allegedly raped by a policeman said to be enjoying the protection of local officials. But, attesting to how much more difficult it is to ensure justice than to loudly protest its absence, Ghazi sent the case to the government "as a test case" in hopes "that justice will be provided to the victim on a priority basis," but warned, "Otherwise we will be compelled to take action." (Newslines, May 2007) Justifying students taking the law into their own hands he said: this Shamim has never had an F.I.R. [police report] registered against her! She has never been sent to jail...because she has links to the Higher-Ups in the government...the current system of our own government is so corrupt. It is lawless. No one fights for the rights of the poor and the downtrodden. The Pakistani government today serves the interests of only an elite class (Afzal-Khan 2007).

This position is disconcertingly similar to statements of human rights activists as for instance "We have a culture of silence. People continue to suffer in silence. No one gets justice unless someone powerful intervenes."⁶⁷

Women militants also picked up the themes of sexual 'corruption' and government failure to address people's needs and deliver justice. "It is the duty of the government to clear the rubbish," said a female Al-Hafsa teacher, referring to "whorehouses"

⁶⁷ Rashid Rehman speaking about the murder of a woman by her family in which the President had to intervene before the police registered a case. Salman Masood, *The Price of Love*, *Newslines* June 2004 page 98.

and “brothels” not poor sanitation, “if the government is not doing its job and I’m trying to clear away the rubbish, I am in a way assisting [the government]. So why are they creating hurdles for us? We have closed a factory for AIDS” (*Newsline* May 2007).

The image of hundreds of uniformly black cloaked women brandishing bamboo staves, riveted the public. Al Hafsa actions evoked a short-lived debate on whether these women could be called activists, whether they were brainwashed or independent minded, whether they were expanding women’s rights or undermining them. Crucially however, “the primary discourse of the Hafsa brigade [was] violence,” (Siddiq 2007) and, chillingly, Umm-e-Hassan, Rashid’s wife and unquestionably an influential leader in the complex and head of Al Hafsa, boasted she had trained many of them to become suicide bombers”(*Newsline* July 2007). Taking up arms female students clarified was “not for ourselves, but for the sake of the women and men in our country who have been victimized by a corrupt system.” “We will not put down our batons because we do not have protection in this country and neither does anyone else,” including those “black-mailed into prostitution”(Karrar 2007).

Reports by female journalists visiting Al Hafsa convey a sense of pride and achievement, sometimes defiance, of the young women studying there. But equally, the journalists noted that the donning of their black uniform of the chador transformed the students from everyday women seen in any college to colder, more distant, as well as a more strident and uncompromising part of a wider collective, transforming as it were from autonomous individuated persons into the mass protected anonymity of an army or mob, depending on your point of view. Veering away from difficult questions, students steered conversations back to the oft-stated - and therefore unquestioned - positions of the male clerics. Nonetheless, some did claim to be “proud flag-bearers of women’s rights and empowerment, freedom, social equality and democracy,” aiming to “end the exploitation of women” for which they were willing to face bullets (Salahuddin 2007). That ‘exploited women’ were largely defined as ‘other’ often sexually abused and exploited women was not discussed; much less the possibility that the mosque complex leadership may be exploiting the students for their own political agenda, including as suggested by media as ‘human shields.’ With a violent end increasingly eminent, there was an element of self-determination in students’ refusal to leave the complex. But there is also enough evidence of the coerciveness used by those in charge in refusing meeting with parents anxious to get their children out of the besieged mosque-*madrassah* complex.

In the context of a system that fails to deliver and where the state and its resources mean one thing for the poor and another for the rich, the rhetoric of politico-religious elements can be “seductive,” for as astutely observed by one student “Even if people don’t want Islam, they do want justice.” *Shariah* becomes a “one-stop window” that would “provide justice for all, respect of life and property” (Karrar 2007). Hence, in the absence of an alternate ideology people have begun to see a return to sharia and the rule of Islam as the only way out for an embattled common citizen...what the common man in Pakistan is looking for under the garb of the rule of law of Islam is justice, fair play, better law and order and access to opportunities (Siddiq 2007).

Rampant and class-biased injustice does enable better connected, more affluent people to regularly flout the law while penalizing the poor. Siddiq maintains that this discrepancy was reflected in the Lal Masjid standoff since the government was proposing the closure of a *madrassah* servicing people unable to afford the regular education, while ignoring similarly unauthorised schools servicing the upper classes in the same city. Surprisingly, while Lal Masjid spokesmen consistently dilated on the injustice stemming from the selective implementation of the law, they never highlighted this discrepancy. More worrying perhaps, is that this was also not picked up by rights-oriented

civil society actors protesting the unfolding events. Their statements focused on the state's complicity in allowing the problem to grow into such a catastrophe and its refusal to act to the flouting of the law by those in the mosque complex.

The government's attitude to Al-Hafsa students was radically different from its treatment of 'secular' women's rights activists who, had they occupied a government building would have been promptly and unceremoniously arrested. Two years earlier, the police manhandled women (and male supporters) and threw them into lock-up for merely for organising a women's marathon race to protest an earlier attack by politico-religious elements on women marathon runners participating in a state-sponsored event in a small town.

In conclusion, many sections of civil society (in this case the mosque and the *madrassahs*) are characterised by decidedly uncivil behaviour with no compunctions about directly attacking, harassing and threatening other citizens. Coupled with state support, usually in the form of a refusal to act, these groups have been emboldened in their propensity to take direct, often violent, action to forcibly impose their thinking and social parametres on everyone. The tension between these groups and the rest of civil society is an uneven one. The state's radically different treatment of civil society groups who self-identify as religious and those that don't makes it that much easier for the former to operate and propagate their views.

Unexpectedly, there is a remarkable resonance between Antonio Gramsci's definition of *critical civil society* as autonomous groups aiming to challenge the state without being a part of this apparatus and Maududi's self-defined aim to "try to awaken and guide the popular will to base the foundation of our state on the law and constitution which we Muslims consider to be divine"⁶⁸ and to "shape the ideas beliefs and moral viewpoints of the people into an Islamic mould, reform the system... and revive the Islamic...attitudes in general"(Maududi). That Maududi and his Jamaat-i-Islami opposed the very basis of the existing state was clear in 1953. The Munir Commission reported that the Jama'at-i-Islami aim to establish "the sovereignty of Allah throughout the world" meant the establishment of a religio-political system which the Jama'at calls Islam. For the achievement of this ideal it believes...in the acquisition of political control by constitutional means and where feasible by force. A Government...not based on the Jama'at's conception...[is] a Satanic Government, and...*kufir*, all persons taking part in such Government...or willingly submitting to such system being sinners. (252)

Maududi, whose texts are standard reading for both para-state armed groups and regular politico-religious parties, assiduously pursued these aims. Primacy was placed on legal measures revamping the political, administration and judicial systems. To garner support for this project the JI strategically focused on gaining control over educational institutions (greatly aided by the strong arm tactics of the IJT) and making inroads and consolidating influence in the civil and, especially, the military bureaucracies. Maududi viewed Muslims in India (and probably elsewhere) as falling into one of three categories: 'oriental occidentals,' 'lip-service Muslims' and the "foolish and thoughtless...who cannot think and form independent opinions"(Maududi 1939). Maududi ignored the 'foolish and thoughtless' masses who followed rather than formed opinion, and as such did not deserve attention. It was the 'evil' influence of the 'oriental occidentals' (i.e. the Anglophile modern section) "trying their utmost to spread and propagate [the Western creed] in the Eastern countries" that needed to be countered by converting 'lip-service' Muslims into true believers, mostly consisting of the emerging middle classes of India at the time.

⁶⁸ Maududi quoted in Abbas Rashid "Pakistan: the Ideological Dimension" page 83

Indeed, it is precisely from the educated upwardly ambitious middle class, many rural-to-urban migrants that the religious right finds its strongest support as reflected in the backgrounds of the men who came into political office in the 2002 elections. This includes the current heads of the Jamaat-i-Islami and Jamiat-i-Ulema-Islam, respectively Qazi Hussain Ahmed who is the son of schoolteacher, was a lecturer for a short while before setting up his medical shop, and Fazl-ur-Rehman who is also graduated from and then taught in a *madrassah*.⁶⁹

A final word about the religious right and the politics of sexuality: Maududi's 1939 *Purdah and the Status of Women in Islam* makes for interesting reading, setting out his reasons for the strict gendered division of labour and social organization. It is important because his opinions are incessantly copied or, echoed, by so many of the current protagonists who define their agendas in religious terminology, with only minor changes. Largely addressed to the same broad audience of the newly emerging middle classes, the emphasis on controlling sexuality and dress codes, the equation of the West and selected elements of modernization with decadence, often depicted in terms of sexual mores remain exactly constant in the discourse. It is worth quoting Maududi at some length because this passage contains the gist of all the current debates. Maududi condemned 'modernists' who, he said,

"abhor Purdah because the ethics underlying it is radically opposed to the Western ethics which they have accepted blindly...[and] want to mould the social pattern of their respective homelands also after the same Western pattern. They sincerely believe that the real aim of education for women is to enable her to earn her living and to acquire the arts of appearing attractive to the male...dance them to the highest pitch of pleasure and excitement...They think the woman's role in national life consists of doing social work, attending municipal councils, participating in conferences and congresses and devoting her time to tackle political, cultural and social problems..In short she should do everything outside the home...these people have changed the old moral concepts with the new ones, just as Europe did...[for them] the sense of honor, chastity, moral purity, matrimonial-loyalty, undefiled lineage and the like virtues, are ...worthless... and antiquated whims which must be destroyed for the sake of making progress" (Maududi 1987: 72-73).

Maulana Abdul Aziz of the Lal Masjid averred "We will not allow dance and music in Pakistan, those interested in such activities should go to India." The difference with Maududi is the level of direct violence and coercion the present-day leaders are willing to engage. Hence Aziz asserted "We will not wait any more...it will now be Shariah or shahadat [martyrdom]," "if a few pious men [the Taliban] can take over Kabul, why can't we bring about the Shariat law in a country where we number on the thousands" (Newsline May 2007 page 37). Red Mosque residents likewise declared "If [immoral sexuality is] what liberal people want, they should... leave Pakistan. Pakistan is ours, and we will live here. It is our home and we will cleanse it ourselves."

Significantly, visiting the Lal Masjid complex, women journalists⁷⁰ were made acutely conscious of their own sexuality, as one said:

With my head uncovered while I film, I feel the burden of being a woman, of my morality being under scrutiny. I am extremely conscious of my sexuality which, I learn, through my interaction with my Hafsa sisters, is a possible threat to a pristine world. And I thought only men could make me feel so vulnerable! (Salahuddin).

⁶⁹ For details see "New Men In", *Newsline* November 2002.

⁷⁰ Rubarb Karrar; Aliya Salahuddin; Ayesha Siddiqa; Fawzia Afzal-Khan.

As I have argued elsewhere, the definition of gender is integral to the formulation of collective identities simply because, in addition to birth and death, the existence of sexes is something all societies are obliged to address, regardless of differences in history, economic and political systems or religion. Because they are applied to all members of a society, the rules governing gender are all pervasive and, in that sense, lie at the heart of all social organization. Underlying the virulent attacks by conservative groups on women's rights activists trying to change the system is the fear that, by example, they will open the doors to change for all women, including the female relatives of the more conservatives. The subtext of labelling women's rights activists 'western' or 'westernised' is that these people are 'aliens' and, much as germs diseasing the body, need to be expunged from society.

Conclusion

The interface of religion, politics and gender illustrates the impossibility of separating out the realms of the social and the political, the public and the private for, as stipulated by Dorothy Smith, the "relations of ruling" that govern gender and encompass power, organization, direction, and regulation are "more pervasively structured than can be expressed in traditional concepts provided by the discourses of power".⁷¹ Far from being neatly bounded into self-contained spaces, everyday life flows freely, impacting different dimensions simultaneously, blurring the lines dividing conceptual separations of political from cultural, social and economic. Public political contestations over women are often provoked by women's actions in what are defined as social, rather than political spaces, and conversely, political discourses impact the everyday; both are of course affected by cultural and economic factors.

The political use of religion is part of a wider global challenge: that of identity based politics replacing ideological political agendas; of force replacing conversation and discourse in a new world order which actually suggests that effectuating regime change by war is a legitimate action. Whereas ideological agendas aim to change underlying structures and systems, identity politics mostly promise a better deal for a particular group – defined by religion, ethnicity or language. But this better deal comes with conditions. It is only available if you give up your agency and let self-appointed spokespersons appropriate your voice, only if you divest yourself of all other markers of identity, and only if you buy into the proposition that your interests are threatened by other identity-based groups rather than by, for example, the capitalist system and patriarchy. Advocacy for women's rights, it should be noted, does not fall into 'identity politics' since it is addressing the structural imbalance between the genders, and offers no benefits or privileges on the basis of female identity.

In essentialist identity politics, symbols and signifiers resonating with people's lived realities, or collective identities, are harnessed to promote political agendas frequently couched in religious idiom, but also in the idiom of ethnicity, culture and race. Partly, people may hesitate to reject this agenda because to do so feels like rejecting essential parts of their own identity (e.g. faith or culture). The silencing is also accomplished by the unbridled violence meted out by such groups to those who dare to differ, and the ensuing fear instilled in society. Such political projects sometimes aim to maintain existing power and sometimes to challenge it, but it is power – not religion, or ethnicity or culture – which is the paramount concern, regardless of claims to the moral high ground of 'authenticity.'

⁷¹ Cited in Neelum Hussain, *The Narrative Appropriation of Saima*, pp204-206.

In this paper, I have tried to illustrate how the inscription of religion into the state apparatus and the legal framework has impacted the social and political contexts. In this, the nature and role of the state has been pivotal in determining the outcome of attempts to meld religion and politics. Some academics argue that Pakistan never became a ‘post-colony’ but continued to function under the guiding hands of Anglo-Americans.⁷² Less than independent, the state became overdeveloped and dysfunctional, allowing other non-state actors to assert themselves by delivering on services that are the responsibility of the state. Primary among these non-state actors, and the best organised, were religious political parties (that subsequently developed militant wings) and some ethnocentric militarist parties. The all-powerful military itself may act whimsically and, as in the case of General Ayub Khan introduce progressive family laws in 1960s, or, in the case of General Zia rescind rights and introduce pre-Islamic tribal customs as the brutal face of Islam that particularly targeted women and other vulnerable communities. Meanwhile, the state structure was held in place by successive military regimes that were acceptable to corporate capital and neo-conservative regimes in Europe and the USA. So, in a sense, Pakistan never developed as a modern nation-state and, if anything, over time the thrust towards non-modernity and anti-modernity has deepened in the social structure.⁷³

While most of the focus on public religion leads with a political perspective, in the case of Pakistan, evidence suggests that the mere presence of religion in the political arena would not have sufficed to inscribe religion into the legal apparatus. This required the active support, or collusion, of groups not necessarily defined as having (or considered to have) religious agendas. Indeed, perhaps the most long-term damaging impact of the various ways of inscribing religion into society and state are those seemingly small insertions into everyday life that oblige, reward, or instigate individuals to become complicit in the state’s machinations. This is accomplished in a number of ways that include providing either benefits or punishments.

One example of punitive coercion in the case of Pakistan is obliging all Muslim citizens to sign their agreement with the state’s demeaning ex-communication of an entire sect from Islam, with failure to comply translating into a forfeiture of basic documents of citizenry (national identity cards and passports). Other actions inscribing the ‘Muslim’ nature of the state were more subtle as, for example, the incessant airing of Quranic recitations in airports and other government venues. Government sponsorship promoted recitations as part of ‘good citizen’ behaviour, and soon the practice was adopted by private shops and enterprises. The practice of Quranic recitations has even been adopted by human rights oriented civil society groups in public functions to avoid appearing ‘alien,’ to pre-empt the audience becoming antagonised and the hosts accused of being unIslamic. Shaping the dominant discourse such practices enable messages of what constitute ‘acceptable modes of behaviour’ to be internalised almost subliminally, sinking into the public psyche. Official textbooks and television programmes, whether state owned or not play a similar, if less subtle, moulding role. Once norms are changed, the enforcer need not be the state. Penalties can be – and are – meted out by non-state actors in consequence of state measures. During Zia’s era, women were penalized more by men in the public arena than by the state for contravening the ‘Islamic’ dress code suggested as by the state. An important determinant of the ability to mobilize on the platform of religion is the extent to which groups receive the support of state authority, or not.

⁷² See Rubina Saigol, *Colonial Roots, Postcolonial Realities*, Simorgh Women’s Resource Centre, Forthcoming.

⁷³ Based on discussions with Samina Choonara.

A separate critical factor is the issue of justice. The inability of the state to deliver justice and to educate people about existing laws and citizens' entitlements has enabled traditional structures to continue to operate outside the state structures. The sense of injustice is profound in regions excluded from the purview of the fundamental rights clauses of the constitution and the mainstream judicial and political systems, but resentment at the non-delivery of the justice system is widespread across the country. Ironically enough, the inadequacy of the state apparatus to effectively respond to the needs of its citizens that would encourage a disengagement from tribal and sub-state affiliations by offering equivalent opportunities to all citizens, has provided the impetus for new parallel structures being erected by urban populations. In urban Sindh these parallel structures have been created by political elements rather than by social organizational engagement (Rashid & Shaheed). Until recently these non-formal structures relied neither upon Islam or *shariah*, however that is defined, but on the local traditions of the tribe, clan or ethnic group in question.

A word of caution: there are of course numerous groups who define their agendas in religious terms, but it has to be said that the binary categorization of institutions as 'faith-based' versus 'non-faith based' – often used by bi-lateral and international donor agencies- is unhelpful. Imposing such a binary definition feeds into the agenda of the self-appointed guardians of religion (in this case Islam) who promote themselves as 'faith-based' to the exclusion of all others as non-believers. In much the same way that the term 'fundamentalist' has been appropriated in translation as 'those who adhere to the fundamentals of religion', such a false bifurcation automatically relegates all groups who do not use 'faith' in their self-definition into a 'non-faith-based' category. It also feeds the discourse of essentialist identity politics.

Contributors to *The Desecularization of the World: Resurgent Religion and World Politics* argue that religion is well and alive – and sometimes kicking - in many parts of the world. In the case of South Asia, and in contrast to Christian Europe, the traditional pre-colonial state was always a secular institution. Whether *pundits* or *alim*, religious scholars were subservient to the ruler. Religious institutions did not possess independent means as happened in Europe where one sixth of the land was owned by the church as an institution allowing it to wield enormous power. It is only in the nation-state era that religious political actors have seen the possibility and sought to transform religion into a vehicle for accessing state power. Right up to independence, religious reform movements tended to focus on the social arena in attempts to reform the society of the faithful. In some sense what we are witnessing in the attempts to inscribe religion into the state, is an attempt to convert secular states into a 'sacred' state, for the first time. This may be one factor driving the "religious right methodology of social governance."

The ability of women and men to resist the discourse and influence of the religion-political nexus depends on several key factors. Regardless of how flawed and imperfect it may be, democracy is a critical factor for gender equality and women's inclusion. Military dispensations exclude women from the ranks of decision-makers while democratic spaces potentially allow space for change. But to be meaningful, democracy has to go beyond electoral politics to encompass meaningful inclusion in decision-making in all aspects of life, starting with control over bodily integrity and an equitable share in family resources and decisions. Resistance is also about power. Women's deficit of power means that their ability to resist becomes contingent upon borrowed power, that is, on mobilizing allies. Significantly, at the height of Zia's 'Islamization' programme, women's protests around the proposed *qisas* and *diyats* laws were easily dismissed by the regime. Such a casual dismissal was not possible, however, when a lightning nationwide strike called by transporters brought the country to a halt after the acci-

dental death of a pedestrian knocked down by a truck driver led to his facing the death penalty under the new law (Zia). As a group, regardless of personal connections to power, women simply do not have this capacity. Strength would be increased by the number of women engaged in resistance but, of course, 'women' is not a real category of people. Women do not form a homogenous collective: they are divided by class and privilege and distinguished by culture, upbringing, personal experiences and life choices, to name but a few differences. It is utterly illogical to presume that a shared chromosome will propel differently located women to think alike. They don't think alike. And, while the majority may feel unable to participate in resistance, a significant numbers of women themselves subscribe to the views of religiously defined groups. Indeed many women are active proponents of such views. And, as seen in the Al-Hafsa case, a number of women experience activism that seeks to control women as a group, as a personally empowering process. In the final analysis, it is well to remember that women inhabit the same social political spaces as men (even if with different gendered rules of belonging, so that their problems are formulated and contested within the reality of the broader state and society. It seems appropriate, therefore, to conclude with a comment from the 1953 Munir Commission regarding the tension between theocracy and democracy in Pakistan.

It is [a] lack of bold and clear thinking, the inability to understand and take decisions which has brought about in Pakistan a confusion which will persist and repeatedly create situations of the kind we have been inquiring into until our leaders have a clear conception of the goal and of the means to reach it. It requires no imagination to realise that irreconcilables remain irreconcilable even if you believe or wish to the contrary. Opposing principles, if left to themselves, can only produce confusion and disorder, and the application of a neutralising agency to them can only produce a dead result... as long as we rely on the hammer when a file is needed and press Islam into service to solve situations it was never intended to solve, frustration and disappointment must dog our steps (141).

Had Pakistan's rulers heeded the important lessons of this early analysis of the dynamics of religion and politics, we would have been a very different country indeed.

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