

For Ourselves:

Women Reading The Quran

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The views expressed by the participants in the Qur'anic Interpretations by Women Meeting and presented here as transcripts of the Meeting do not necessarily represent the views and positions of the network Women Living Under Muslim Laws.

Introduction to the Reprint

Since the first printing of *Women Living Under Muslim Laws*, 'For Ourselves: Women Reading the Qur'an' in 1997, there has been a growing demand for this publication from women working within Muslim contexts as well as from those beyond. This reflects the determined survival of alternative and plural voices against global and national trends of rapidly shrinking spaces for dissent and discussion. We are delighted that this publication evidently contributes to strengthening women's struggle to preserve such spaces.

At the same time, we hope readers of the reprinted version will continue to see this publication and the diverse opinions it contains simply as a reflection of the many voices of women who interpret the Qur'an and engage with it in the context of their lived realities. As such it does not offer an alternative blueprint for a brighter future for women in Muslim countries and communities, but simply forms part of the many challenges to monolithic, often male-dominated interpretations of the Qur'an and Muslim laws.

Women Living Under Muslim Laws
2004

Errata

- 1.) On page 5, paragraph 1, Column 2:
'hadith
singluar of ahadith'
should read:
'hadith
singular of ahadith'
- 2.) On page 116, Footnote 23.:
'Subsequently published as An information Kit: Women in the Qur'an.
(Qur'anic Interpretation by Women meeting)'
should read:
'Subsequently published as Talaq-i-Tafwid: The Muslim Woman's
Contractual Access to Divorce: An information kit.'
- 3.) On page 128, last paragraph, line 5:
'In the earlier case of Fazlul Bibi..."
should read:
'In the earlier case of Fazlunbi..."
- 4.) On pages 128 and 129 the names:
'Justice Krishna Aya' and "Justice Chanderchot's"
should read:
'Justice Krishna Iyer' and "Justice Chandrachud's"
- 5.) On page 187 paragraph 6:
'...Mulla's Mohammedan Law, Justice Hidayatullah Fyzee, etc.,"
should read:
'...Mulla's Mohammedan Law, Justice Hidayatullah, Fyzee, etc.,"
- 6.) On page 237, paragraph 3.:
'Thomas Cohn in a book called The Nature of Scientific Revolutions'
should read:
'Thomas Kuhn in a book called The Structure of Scientific
Revolutions'

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Glossary

ahadith

saying and traditions of the Prophet as reported by generations of followers

burqa

a form of veil consisting of a long, fitted or loose coat-like outer garment with a separate attachment for covering the head and face

chaddar aur char deewari/char deewari (Urdu), literally 'the veil and four walls' signifying purdah and seclusion of women

chador

a broad sheet of cloth used by women in orthodox Muslim societies to cover their heads and bodies, but that leaves their faces open

darajah

degree, extent

dhoti

long strip of cloth worn wrapped around the waist as a lower garment by both men and woman in many parts of the sub-continent

dupatta

long strip of cloth worn either over the head or over the shoulders and across the chest as part of a woman's shalwar kamiz suit

Fiqh-e-Jafria

the Shia fiqh

hadd

the maximum punishment provided under Muslim jurisprudence

hadith

singular of ahadith

haq mehr

dower; an essential element of a Muslim marriage contract

Hijrat

the year of the Prophet Muhammad's migration to Mecca, 622 A.D,

hilala

obligatory intervening marriage (to a third person) for a woman seeking to re-marry her ex-husband

iddat

the compulsory aiting period for a woman who has either been divorced or widowed; during this time she cannot re-marry

ijma

the third foundation of Islam; the unanimous consent of the learned. Ijma can be expressed through declared opinion, unanimity of practice and by silence/non-interference

ijtihad

logical deduction on a legal or theological question

istidlal

a term used in exegesis for a statement requiring certain proof

kurta

long shirt worn by both men and women in many parts of the sub-continent

maulvi
the regular prayer leader at a local mosque, or any religious man

mehr
see haq mehr

mullah
religious man; often used in the pejorative

nikah
marriage, pairing

nikahnama
Muslim marriage contract

qazf
false accusation, related specifically to crimes liable to hadd; qazf itself can be liable to hadd

qazi/qadi
a judge; usually of a shariat court

qismat
fate, luck

qiyas
the fourth foundation of Islam; analogical reasoning with regard to the Qur'an, ahadith and ijma

ra'y
a jurisprudential term signifying personal opinion or individual judgement not based on any recognised source of law

shalwar kameez
long shirt and baggy pants worn by women in parts of Pakistan and India

shalwar kurta
long shirt and baggy pants worn by men and women in parts of Pakistan and India

shariah
literally 'the path';

shura
consultative council

sunnah
the traditions of the Prophet; these include what the Prophet himself did, what he enjoined, and what was said or done in his presence and he did not expressly prohibit

tafsir
commentary, exegesis of the Qur'an

talaq
a man's unilateral right of divorce

talaq-i-tafweez
a woman's delegated right of divorce; the husband may at any time during the marriage grant the wife or any third person the unconditional or conditional right of divorce

taqlid
a jurisprudential term signifying uncritical dependence on past precedent and the existing schools

ulema
plural of alim, the learned, with specific reference to jurisprudence

ummah
the community, the people

umra
pilgrimage to Mecca

vozoo
ritual purification; required before prayer

zina
sexual intercourse outside of marriage; includes both fornication and adultery

Preface: An Introduction to Women Living Under Muslim Laws

The network Women Living Under Muslim Laws (WLUML) was introduced by three of the participants.

The network WLUML started, not out of big theoretical considerations but as a response to urgent cases. In 1984, three feminists were arrested in Algeria for having read to other women the proposed draft bill of the Family Code.⁽¹⁾ They were kept in jail for seven months, incommunicado. It is through campaigning for their release with lots of other organizations that for the first time support not only came from the liberals and progressives in the West, but also from within the Third World and Muslim countries; we thought it would make a big difference to the campaign if we could also get support from within the Muslim world. In the event, they were released within a month and a half which is exceptional as most of you may know.

During the campaign we received support from women in Bombay who shortly after wrote back to say that 'A young, Muslim woman is going to the Supreme Court challenging the constitutionality of the Muslim laws that were applied to her in her divorce. Can you get signatures from the Algerian women to campaign for her?' Most of you may know the case of Shahnaz Sheikh, a 24-year old Indian woman.⁽²⁾ And that really was the beginning of our network because we fully realized the enormous capacity we had if we could relate to each other, keep a flow of information and support going between us.

The network WLUML started from the premise that while it is often presumed that there is one homogeneous Muslim world, interaction between women from Muslim societies has very clearly shown us that there are some things that we share - indeed many things - but that there are also vast differences in the situations in which we find ourselves, in the lives that we live, in the options made available to us. We have situations in the Muslim world where women are extremely restricted, very closeted

1 Passed on 9th June 1984

2 In December 1983 Shahnaz Sheikh, an Indian Sunni Muslim who sought to divorce her husband but retain her right to maintenance, filed a petition in the Indian Supreme Court on the plea that Muslim personal law was discriminatory to women and hence violated the fundamental right to equality guaranteed to all citizens of India under Article 19 of the Constitution. She ultimately withdrew her petition after being targetted by Muslim 'fundamentalist' groups and also discovering that her lawyer was a member of the Hindu 'fundamentalist' group the RSS who sought to use her case to feed into anti-Muslim communalist propaganda.

where we have very little space, but also other situations where this space is much wider. For example, meeting women from Tunisia in 1986 for many of us from other parts was a revelation; their entire way of being was so different, there were so many more possibilities than we had.

We have also discovered that there are many customs, many rituals, many attitudes which, in our respective countries we are told are 'Islamic' and yet when we discuss and come together across cultures we discover this is not what happens somewhere else. The most vivid example from the last interaction was that of female circumcision in Africa being justified as 'Islamic' - utterly shocking to those of us who come from parts of the Muslim world where this is unheard of.

So, one of the attempts of the network is to just promote and facilitate interaction between us so we can make out the difference between what is religious, and what is customary related to that particular culture in which we live. This, in turn, makes it easier for us to see just how strictly we are prevented from fulfilling our potentials because we are told if you do X this is not Muslim; if you do Y this is not Pakistani, and if you do Z this is not part of the eastern culture to which we belong. In the last 15 years, in Pakistan we have felt this very strongly. Everything we do, if we try and raise our voice and object to something, we are always told: 'You are unIslamic, anti-religion, anti-state and, furthermore this is not our culture.'

It seemed to us far too easy for people to silence us like this. We have accepted for too long what other people (i.e. those with the social, political, and economic power) tell us we should be doing through the dominant culture.

In July 1984, ten of us met on the occasion of a feminist gathering in Holland and set up an Action Committee of Women Living Under Muslim Laws and made a commitment to support each other's struggles. By January 1985, the need for a permanent structure to allow a constant flow of information and interaction was identified and the network was set up. Formally the network first met in Aramon in April 1986 when ten of us together drafted WLUML's first Plan of Action.

The first Plan of Action defined the following needs: first, to regularly exchange information on our situations, our struggles and our strategies at various levels, partly by producing and circulating the *Dossiers*.³ Second, to exchange support through 'alerts for action', meaning whenever a case or issue relevant to all of us arises, we circulate it and ask everyone for their support. But it is not compulsory. Because you are part of the network you don't 'have to' support this case or that case. The network is not a +, it is not a prescriptive organization. It is fluid, it is the linkages between us when we feel the need. It doesn't tell anybody what are the priorities in your country, in your personal life or in the political circumstances that you live in. So the network only links us and assists us in supporting each other. Third, to organize common activities that benefit all of us as

³ The *Dossiers* are an informal networking tool, aimed at providing information about lives and struggles and strategies of women living in diverse Muslim communities and countries the world over. Sixteen *Dossiers* have been produced to date.

defined by us. The first two pinpointed in the Aramon Plan of Action were: an exchange programme (held in 1988); a women and law project.

The Exchange Programme took place in 1988 on the understanding that merely reading about the realities, strategies and struggles of others is not enough. We also need first hand experience of living with other women in their own realities to be inspired by whatever other women do and, also to be able to see for ourselves that in a different context women deal with problems similar to our own in ways that may be different from our own action in our own context. Activist women working with women's groups in one Muslim country or community were sent to women's groups in another country.

Being transposed from what one is used to into a different but nevertheless Muslim set-up allows us to separate things we normally assume to be a whole, i.e. on the one hand religion, on the other hand traditions and customs, and finally the political use of both of these. These differences appear so much more clearly in a country other than our own. For example, women from countries where women are veiled going to countries where they are not veiled and still declare themselves to be Muslims - this kind of experience is extremely enlightening with respect to what is tradition, and how Islam through its expansion has absorbed various traditions which were not part of the initial concept.

Before the Exchange Programme participants went to the field, they interacted with resource persons representing a wide spectrum of approaches to the problems women face in Muslim cultures and communities. So, for instance, we invited a feminist theologian who spoke of what could be a feminist interpretation of the Qur'an but we also had someone who focused on women being oppressed by patriarchy, an Iranian who spoke from a Marxist point of view, etc. This way, women were exposed to a variety of analyses that showed there are many paths to deal with the same problem. They could then make their own choices. The field visits generated many ideas of working groups shared by women on their return: a working group on "Why women join 'fundamentalist' groups" (Of course there is a lot of controversy about the use of this word so please bear with me and we'll find a proper one later), another on the financial power of 'fundamentalist' groups: where do they get their money from; what do they do with it. (So much more than what we can do!); a working group on feminism in our own contexts; and finally, a research group on Women in Islam, which led to the present workshop on Qur'anic Interpretation by Women.

This we hope will lead into the next WLUML collective project on Women and Law where we want to compile and compare laws (including customary laws) specifically affecting women and to try and find out what the origin of these laws was historically and from the point of view of religion. We would like to compare them in such a way that in the end we could produce a handbook by which we could say that if you fight a case of, I don't know, custody or divorce or whatever, these are the differences in the laws throughout the Muslim World. This is how people have been trying to fight these oppressive laws, and with what success, etc. and how to contact them for strategy. We also hope that all of you at this meeting who are especially interested in Qur'anic interpretations will also help each in their own capacity in the Women and Law in the Muslim World programme which will be the following common project

As most of you would know, there are very few *ayaat* in the Qur'an that refer to women. Yet, as pointed out by scholars, there is such a huge amount of Muslim jurisprudence relating to women, and male-female relationships that it leaves me reeling. Why is there the need to devote so much time to controlling Muslim women? There doesn't seem to be any other religion which places as much emphasis are always told: "Ah! this is Islamic you cannot touch it." The Hudood Ordinances⁽⁴⁾ for instance, which in my opinion and that of many scholars as well, are on jurisprudence; it may place it on other aspects but not the law. And once it is law we a travesty of justice, have been put forward in the name of Islam. Therefore, because the inter-linkage is so close, we would also like this workshop to be moving towards law and Islamic scholarship.

One thing I think we need to remember in all our work and in this meeting is that the many similarities between what I call the obscurantist religious groups are not just within the Muslim world. There are enormous similarities between the people in Christianity who take the same line and again say the same things vis-a-vis women who tell them: "You don't have these rights," and say "Our religion is threatened and our culture is threatened," etc., etc. So the parallels go beyond just the Muslim world. To us it is therefore logical that we should link up not just within the Muslim world - which is important - but also with those who are working outside the Muslim world on similar issues. I have just been given the slogan of one religious obscurantist or 'fundamentalist' group in France which is: "Catholic and French forever"

⁴ The Hudood Ordinances were promulgated by martial law administrator Gen. Ziaul Haq in 1979 and included the notorious Offence of Zina (Enforcement of Hudood) Ordinance.

For Ourselves - Women Reading the Qur'an: Introduction

The following are the transcripts of a 6-day workshop, 'Qur'anic Interpretation by Women Meeting' held in 1990. The idea of such a workshop was originally conceived of during the Women Living Under Muslim Laws Exchange Programme in 1988.⁵ During the Exchange and subsequently, a number of women and women's groups expressed a strongly felt need to break the monopoly of male interpretation. In the words of one of the participants at the meeting:

We are always being told what is 'proper' and what is 'improper', are always being threatened with the idea that "if you don't follow this, this and this, and we have told you what 'this' is, then you are excommunicated" - if I can use that word in the Islamic context - "you are no longer part of the Muslim fold." This is very threatening. And those of us who have lived under the martial law regime of General Ziaul Haq in Pakistan can tell you that it was extremely threatening because it was not just a question of a particular type of Islam - and in many cases I would call it an abuse of Islam - being established and spread in our country but horrendous laws passed that enforced this particular interpretation. And, we have discovered that once the laws are passed it is extremely difficult to get them amended or repealed. It is easier we found (the hard way in struggling against proposals) to prevent a law from being passed than it is to get it amended. Apart from the need for Qur'anic interpretation by women, there was also a felt-need for bringing together women currently working - or who would like to work in the future - specifically on the Qur'an. This is because the few women scholars we have are scattered in different countries. We want many things out of this workshop, one being a possible collective effort to continue working on the Qur'an. There are many *ayaat* which are relevant so this work may take not 6 days but 6 years, 16 years. Another desire is to establish links between women's groups at the grassroots and scholars working on the Qur'an and Sunnah.

A more personalised explanation of the rationale for the meeting and the problems facing those who seek to reinterpret the Qur'an was presented by one of the meeting's

5 See Preface for details regarding the network WLUML and the Exchange Programme.

six resource persons, who explained that when she started researching the subject of women in Islam:

Most of the work was for myself in response to a strong existential need. I did not think this would have relevance for anyone else. Then in 1983-84 the whole so-called Islamization process was at its height and there was a tremendous wave of violence against women both verbally in the press and physically. When these laws are debated, etc., the rationale is always given on the basis of religion, and you cannot defeat a religious argument with a political argument. You can only defeat a religious argument with a better religious argument.

At that time I started to reflect in a totally different direction. One way was to take the specific verse in the Qur'an and say this is wrongly interpreted and to take it verse by verse. But it's like a game of domino. You have the first line of defence: there are these verses that are being quoted to keep women in 'their place', so you struggle to present an alternate interpretation, and you're very happy. But this doesn't last very long because behind this line of verses there's another line of verses and so on. Then there are millions and millions of *ahadith*, so it's endless. We have to conceive this in a different way. Someone here has said they did not want to challenge Islam, but what is meant by 'Islam' is the crucial question. It is certainly not one thing. Like most religions, it has many sources, the primary one that everyone agrees to is the Qur'an, then the *ahadith*, then *fiqh*, *ijma*, *ijtihad* and jurisprudence. Not only are all these sources not a homogeneous body, not only do they not say the same thing, but there are a lot of contradictions I can cite off the top of my head, which are in contradiction to the Qur'an and to each other. How does one deal with all the internal contradictions?... We have to define the parameters of Islam.

Most of my work is on women in the Qur'an because to me that is the primary source. Even then there are problems of language because Arabic and Hebrew do not work like other languages. In Semitic languages you have to know the root of the word, and under the root there will be hundreds, sometimes thousands of words which are all interlinked. For instance the word '*kufr*' that occurs almost in every verse of the Qur'an has at least eight distinguishably different meanings. So there is no translation of the Qur'an, only interpretations. The fact of multiple possibilities is a blessing.

The Qur'an unfortunately has always been interpreted through the lens of the *ahadith*. While all scholars of Islam agree that the overwhelming part of the *ahadith* are false, the *ahadith* certainly represent the thinking of the Muslims of the 8th century. A lot of that thinking has been incorporated into what people regard as an interpretation of the Qur'an. After some time the *ahadith* become invisible.

There is no short cut and it is imperative at this time to avoid male interpretation. Whether we know the answers or not - we must find and search for ourselves.

The Participants and their Contexts

The women who took part in this search through the six-day 'Qur'anic Interpretation by Women Meeting' represented a variety of Muslim communities including: Algeria, Bangladesh, Egypt, India, Indonesia, Malaysia, Pakistan, Sri Lanka, Sudan, and the United States of America.

There was a similar diversity in the professions chosen by the participants: Islamic scholarship, linguistic expertise in Arabic (in addition to many others), law, history, education, sociology, anthropology, social psychology, philosophy, international relations, journalism. All of the women were activists. Almost without exception, the participants were actively involved in women's organizations focused on the advocacy of human rights (and women's in particular), and developmental activities - whether in terms of research, legal literacy and legal aid, consciousness raising, training, shelters for women, or any combination of these. The length of their association with WLUML differed enormously from those who constituted the core group to those for whom this was a first face-to-face interaction with others in the network.

Islamic scholars, lawyers, and an historian on Muslim jurisprudence were present as resource persons, but all participants were experts on the living realities of women in different Muslim communities. Just how different these realities are and how varied women's responses can be, found expression in the first session in which women talked of their lives and their concerns. Some of the diversity of backgrounds and concerns in their own contexts is reflected in the following extracts from the participants' personal introductions:

"Originally, I am a sociologist and a social anthropologist. I was teaching methodology of the social sciences for twelve years in Algiers University. I'm now happily working full time in the network, WLUML... I'm the daughter and granddaughter of feminists and my elder daughter who is 26 is also a feminist involved in various things."

"In Sri Lanka I am involved in organising programmes for school drop outs and school leavers, young innocent girls. That's my job. Besides that we work on a voluntary basis in a new group which is still struggling to grow... We don't have a place but we have a lot of plans and ideas and we hope dreams will become a reality some day."

"I represent the Muslim Women's Research and Action Forum, I also work as a labour relations person - that's my full time job. Our organization's programmes are for Muslim women and for women in general and we have been involved in social awareness programmes. The subjects we have taken are wide-ranging like women's stress and women's household work, also women and law. We have an ongoing women and law project which is going to be a feeder to the WLUML Women and Law Programme. The moment we started our activities there's been a curfew somewhere and a war somewhere and we are handicapped... We also do work with other communities too."

"I was fortunate to participate in the Exchange Programme and what I liked most about it was the first two weeks of the orientation programme where we were exposed to so many countries and so many things that we hardly knew existed. For instance, female circumcision. Well, I had read about it but it was never a reality until the Exchange. That Programme led us to realize that we have common grounds with others. In almost all countries women suffer from most of the disabilities that we suffer, though of course to various degrees."

"I am a student of international relations and that's what I taught at University for over ten years, but parallel to that was the awareness of what is happening to women and I have now been writing more and working on issues related to women. Most of my activities are with Shirkat Gah which does so many things at the same time, but I'm also a member of the Women's Action Forum and founder-member of WAF-Lahore."

"In Sudan, I'm teaching women's studies at the University. I participated in the Exchange Programme in 1988 which was a very interesting experience for me, it was my first time to be outside and in Muslim countries... to see the differences and similarities and how Islam had been used by politicians, for their own interest."

"I have taught law for 14 years, Muslim law for eight at the University - where I am the only female professor - and have been writing on women's issues and rights. I have survived in an all-male domain in a very conservative society, and this I feel depends on the way you strategize to survive."

"My discipline is philosophy. I am also running a development project in a Karachi squatter settlement."

"One of the suggestions we are going to make to the Haj Committee is that at least women at the Haj camp should be allowed to pray in the mosque because when they go to Mecca they have to pray behind the Imam and we women in Pakistan do not know how to pray behind the Imam. When I talked to a journalist he was shocked, he actually started shivering. I told him that women in Mecca and Madina are allowed to pray in any mosque and he just couldn't believe it. He said 'No it can't be true'."

"I taught family laws for four years but recently was told this was not allowed. When I confronted the Dean with this I was told 'you're not married'. I was also considered too young."

"I began my graduate studies in Islam in 1980, focusing particularly on women in the Qur'an, and I am currently teaching at the International Islamic University. My own particular concern with regard to Qur'anic research is that the standard by which we judge the Qur'an was

developed primarily by men. Even though women had some voice, had some contact with the text, their voice was not part of what we consider as recorded history and so when we try to understand what our place is in the Qur'an, we do not find our voice available in written documents, they do not include our experience with the text. What I'm trying to do is to recreate a context of contact with the text to fill in a fourteen hundred year gap." [laughter]

"We conduct training for women and started a campaign against rape and to reform the law in Indonesia since so far there is nothing protecting women. Then in an informal organization of about 10 women, we have been discussing women and Muslims in our country. In this we got support from a Muslim men's group, who belong to a big Muslim party for a meeting on women, religion and culture."

Whether they were approaching the question of reading the Qur'an from a faith or non-faith perspective, all acknowledged the impact of the male domination of interpretation on women's lives. After a free-wheeling preliminary discussion on various issues surrounding interpretation, women's personal experiences regarding the impact of religion on their lives at both public and private levels, and their relationship with activism and feminism, the Meeting's Chairperson summed up the approach to the Meeting:

The reality in most of our countries - what we do, how we live, how our business is run, what banking systems we have, what forms of crime exist - really has nothing to do with the intentions of Islam, however it may be defined. If we look at the laws that are supposed to be Islamic in any given country, like the Hudood Ordinances etc., I don't think they have very much to do with the process of evolving an Islamic society.

I also want to remind us all that this working meeting is on Qur'anic interpretation, and not on women in Islam *per se*. Because in our lives the Qur'an is linked to other things, we will touch on other aspects too, but the main focus is going to be - and I think should be - the *ayaat* in the Qur'an itself which more concretely affect us in our everyday life, and then how these have been interpreted to affect us. Personal laws in most of our countries (inheritance etc.) are all presented as interpretations of the Qur'an.

It was then decided that starting with a presentation on interpretation, the Meeting would go on to Surah Al Nisa (4): verse 34 and that the agenda would then be decided on a daily basis, intending to address other *ayaat* and issues over the remaining days.

As the 'Qur'anic Interpretation by Women Meeting' was envisaged as a preliminary exercise in a largely unexplored field, the interpretations that were tentatively presented were neither meant to be definitive nor necessarily academically watertight. With this in mind, the editors of *For Ourselves: Women Reading the Qur'an* have deliberately decided to reproduce the transcripts of the six-day meeting in a largely unedited form,

avoiding imposing external comment or analysis, and leaving occasional contradictions within and between the participants' contributions intact.

However, the order in which the sections and their contents have been presented here is not necessarily the order in which the discussions occurred in the workshop. Although keeping as close as possible to the original transcripts, some rearranging of the order of discussions has been done for the sake of clarity and easy reference.

NOTE: While care has been taken to ensure that all Arabic and foreign words used during the discussions have been accurately transliterated, there remains the possibility that words have not been rendered properly for which the reader's indulgence is requested.

The English translation and Roman transliteration of the Qur'an used in this volume have been taken from Abdullah Yusuf Ali, *Roman Transliteration of the Holy Quran, with full Arabic text*, pub. Sh. Muhammad Ashraf, Lahore, no date, 1st edition 1934. The *ayaat* reproduced here in the original Arabic have been taken from Marmaduke Pickthall, *The Meaning of the Glorious Qur'an: text and explanatory translation*, Taj Company Ltd., Lahore, no date.

The opinions and presentations included in this volume do not necessarily represent the views of the organizers of the 'Qur'anic Interpretation by Women Meeting' or of the network Women Living Under Muslim Laws.

Part 1 A: Interpretation and Jurisprudence

On the Question of Interpretation

Chair: On the question of interpretation and the methodology of interpretation... one thing which is a problem for people like myself who have no knowledge of Arabic is: does this eventually mean then that I can never be a good or proper Muslim because I cannot understand for myself what the book says and will always have to refer to secondary sources and their interpretation of what has been said? (And I agree these are interpretations.) My feeling on this is that since these are interpretations and I also have some intelligence that was given to me, I should use my intelligence and decide which interpretations I agree with; which seem to me logical and which seem illogical. This is a question which has come up on several different occasions in the last few months. I personally have not opted to spend 10 years learning Arabic. This has not been my priority, nor is this the direction in which I want to head in the future. However I do feel that there are scholars whose speciality is language, that we should link up. Whether we accept their interpretations or not is something else. We can accept their expertise, but not necessarily accept what it is that they say.

The statement "Ah! you don't know what the Arabic says, what's in the Qur'an" bothers me. This is true, but I can say what I believe is correct or incorrect otherwise the Qur'an and Islam would be addressing itself only to the Arab - speaking world.

I feel that over these few centuries of development of Islamic law, one point we get mixed up, is we feel that everything that is Arabian or Arabic is Islamic. This is one thing we just have to get out of our minds. Islam started in Arabia. The base was pre-Islamic Arab tribal society where they had their own centuries old culture, civilization etc., etc. I wonder if you noticed on the 14th of August(6) you find people wearing those Arab robes, for no rhyme or reason. I don't know what they are trying to prove. This is just one silly little example. I mean just by wearing that head-dress and robe we think we have become Muslims. This is exactly the problem that one resource person pointed out with respect to differentiating between *sunnah* and *ahadith*: one definitely has Arab undertones and overtones; the other is not supposed to have that. So in developing a strategy for the interpretation of Muslim jurisprudence, we have to try and steer clear of those kinds of interpretations which are going to lead us back into pre-Islamic Arab tribal

customs. That is our problem. You look at the Hudood Ordinances; you look at all those discriminatory and repressive laws against women, and basically at the root of all you'll find pre-Islamic Arab customs and the degraded status of women. It's important that we differentiate between the way we are going to interpret *ahadith* and *sunnah*.

Participant: Two short comments: about the Arab customs, it seems very clear to me and we can see this in relation to the fact that Islam now presently absorbs all sorts of local customs like female circumcision that are not Islamic.

The second point is that being from an Arab country doesn't help to understand the Qur'an because the languages which are spoken and known as Arabic in North Africa and Middle East are not the language of the Qur'an. A lay person cannot understand the language despite its common roots, nor can they read it easily. It is also important to understand that Arab people cannot read the Qur'an because Arabic is written without vowels.⁽⁷⁾ So if you don't know the word, you cannot read it. If I don't know a word in English, I can read it and pronounce it and therefore look it up in the dictionary but that is not the case with Arabic without the vowels. If you want to have books that are accessible to everybody you need to put the vowels in, and for that you need to print without and then add by hand the upper and bottom lines. I am just trying to say that it is only accessible to an elite. Not to everybody who speaks Arabic, far from it. This is to demystify what most of you people who are not from Arabic countries think.

Participant: In Pakistan the Qur'anic script that we use for the Qur'an does use the vowels; otherwise it would be impossible for us to read.

Participant: We also use the Qur'an with vowels in Sri Lanka.

Participant: From personal experience I find that when you try to debate or talk to the *maulvis* about the injustice of their rules and their interpretations of what the Qur'an says, and what the Qur'an actually doesn't say, there is always their dismissal of you by the fact that, "What do you know? You don't know Arabic. You don't know the Qur'an. You have not been trained in the Qur'an. You had a secular education. You studied in the West." They use all these things to demolish the credibility of what you understand Islam to be. I have been in situations where I am discussing an Islamic point or law with someone who was trained at Al-Azhar⁽⁸⁾ and he keeps bringing out one *kitab* after the other. "Look at what it says in Arabic." And it is all marked with yellow markers and green markers and I don't have that kind of expertise to argue with him, to justify and try and convince him that what he is saying is not in the true spirit of the Qur'an. If I want to have some influence and contribute to this process of change that we are trying to bring about, I would have to turn to the Qur'an. And to do that I would have to learn Arabic. If not, in their eyes, you don't have the right to speak, you don't have any authority and any credibility to talk about the Qur'an and Islam.

7 Without the *zer*, *zabr* (signs or accents below and above Arabic letters which function as vowels), written Arabic cannot be properly understood as the vowel-less combinations of consonants can have a wide variety of possible meanings.

8 Al-Azhar is Islam's most famous University, founded by the Fatmids in Cairo after the conquest of Egypt in 969.

Resource Person (2): I am sure you are already convinced of the answer: if you don't know Arabic doesn't mean that you can't be a good Muslim. This is a problem in the modern context. In Malaysia, Turkey, Iran and the Indo-Pakistan sub-continent, they use the Arabic script, but in other countries they use the Latin script. So it's not even a question of script anymore. If you believe that Allah is just, it must be that Allah intended for everyone to be able to follow His guidance.

What happened in the initial period of Islamic intellectual development is that people became categorized into this class of *alim* or *ulema* and, as a result, the common person said, "I don't need to know all of this," and the *alim* (or the plural '*ulema*') said, "We'll tell you what it is." As a consequence of that, there is a lot of stuff that has entered into the tradition that we are trying to break away from.

So no, it doesn't make any difference to whether you can be a good Muslim, but there are some issues we want to be able to resolve, for example, Qur'anic interpretation; you are not going to be able to resolve things by choosing the best translations out of English translations. That is just going to give you something you can be comfortable with so you can go a little distance. But the actual interpretative process is more than just Arabic, which is something which just gets kind of left out. There is the *nasiq wal-mansuq* (9), the whole historical, chronological context in which certain issues and aspects were left out, or changed, or abrogated. There was also the idea of how certain things interacted.

The process of interpretation officially is different from the process of being a Muslim, and the large majority of people would be Muslim and hopefully good Muslims, based upon, hopefully, a class of people who will have an interaction with the text and real problems. Not just this class of people who exist now, who exchange with the text and never relate it to what's going on in the real modern context.

Then you have people who are living in this modern context and they find nothing in the textual interpretation that helps them resolve their problems, and this is the relevance of Fazlur Rahman's(10) comment. Somewhere there has to be a meeting between modern needs and interpretive skills. Or the problems have to be put before people and they have to be forced to make it real, to keep it from "Oh! this is just too complicated for you to understand ..." In Malaysia someone once told me at a talk, "They say the Qur'an is too much for you to understand: so let us interpret it for you."

To be a good Muslim, you do have to have some sense of the book, but it doesn't mean you can resolve all the issues of jurisprudence, all of the fight on the question of gender without a certain skill. There must be some exchange.

Participant: Most Muslims today are Muslims either by birth or by passport claim and do not necessarily follow the Qur'an, either because they don't read it or they can't understand it. They are Muslims by virtue of what they are born into and they express it through, essentially, customs and ritual. So whether they are aware of it or not - apart from the ritual side - they are practising Islam by common sense, by instinctive or natural justice. Islam came at a certain point of time, in continuity with events, and

9 *Nasiq*: a term used for a verse or sentence of the Qur'an or ahadith which abrogates a previous one, the one abrogated being called *mansuq*.

10 Director 1962-68 of the Islamic Research Institute in Pakistan, eventually forced to resign under pressure from the obscurantist lobby. See p. 24

natural justice is part of that continuity. Yet your arguments always go back to what is naturally right and what is naturally wrong. My assumption has been that verses were revealed in the context of something that had happened that needed some clarification.

My understanding is that each clarification is a reiteration of what is already known as natural justice. I do not envisage that each and every one of us, millions of Muslims around the world are ever going to get through the Qur'an because it is such a complex study and we have to get on with life also. Many verses are repeated and are a reiteration of other verses although in another context. My question is two - fold: can we simplify this and follow the spirit of Islam if we synthesise some of the revelations into a concise form. And secondly, if there is a question of doubt anywhere on what is right and what is wrong, can a reference to natural justice be enough?

Resource Person (2): Your question is very profound. Sometimes the profundity will pass over people unless they can concretize it so I'll give you a kind of story.

A young man at the University whose training as a philosopher stays very strong in his approach, will write a paper and say "I want you to find the Qur'anic verses that support this, this and this." This is taking an exterior reality that he has or believes in and then trying to plant it into the Qur'an. My experience is that the social justice model in the Qur'an exceeds the external experiences we have. From the inside of the text going out it blows the heads off of some of the arguments that make us think we are so radical with regard to human rights, etc. The way to resolve it is to be able to understand something more inside the text than we could normally understand. And to develop a Qur'anic ethics which we do not have. This is something we Muslims never did, concentrating instead on actual deeds that people did and how they performed things. We put the quality of effort into the performance of deeds and not into the ethical principles. There is a Qur'anic ethics and very little work has been done on it.

I think the Qur'anic models of justice are much stronger than the ones that we have understood on our own. And if, on the basis of *tafsir-al-Qur'an-bil-Qur'an* - analysis of the Qur'an based on the Qur'an itself - something comes out from a certain verse that is limiting, you are then further allowed to limit that verse to be inapplicable to your particular situation based on a higher principle in the Qur'an itself. That is why in some *ayaat* woman is included in what is explicitly mentioned as well, for fear of what would naturally occur at the hands of people who say "God didn't say anything about the feminine at all..."

The overriding principles in the Qur'an with regard to social justice, human rights, etc., need to be brought out a lot more and utilised as evidence, counter balancing parts of the Qur'an that are restrictive. And I do say there are parts of the Qur'an that are restricted to contexts and even more explicitly to particulars. I haven't done all my homework with regard to it so I can't give as good an example as I would like.

Resource Person (1): Let me recap on what I hear you saying, and please correct me if I am stating your position incorrectly. What you are saying is that if one is a Muslim by birth, one grows up in a culture and an environment where somehow one learns what a general Islamic way of life is. This even without an obvious effort to dig into the sources, or become a scholar or think very deeply about religious matters one can still somehow lead a reasonably good life, following one's, what you have described, instinctive justice, or common sense, or own intelligence.

My response to you would be as follows: there are many ways in which one can identify what being a Muslim means. And I would not at all like to say that there is one

way. What I would like to share with you is something I have also recently written up. This is that for me, to be a Muslim today or any day is to live in accordance with the will and pleasure of Allah. Now, Muslims often say with joy and pride that it is easy to be a Muslim since Islam is the straight path leading to Paradise. In other words, the principles of Islam are simple and straight forward. Free of ambiguities, confusions, inconsistencies or mysteries. And comprehending them or living in accordance with them is not difficult. The assumption here is that if one somehow comes to the straight path by accepting Islam, which is Allah's last and final revelation to humanity, one will fairly effortlessly arrive at the destination: the state of eternal blessedness in the presence of Allah.

I must confess that I am totally amazed by this assumption. To me, to be a Muslim today or any day seems to be exceedingly hard. For, to be a Muslim one has to constantly face the challenge first, of knowing what Allah wills or desires not only for humanity in general but also for oneself in particular, and then of doing what one believes to be Allah's will and pleasure each moment of one's life.

So my answer is that one does not really become a Muslim just by birth, or by accident or effortlessly. It takes a lot of positive commitment and work to be a Muslim. Islam, like other religions, is not only a matter of professing belief; it's a matter of living it out because in the Qur'an every time you have the word '*aminu*' (which means to believe) you have the word '*amal*' which means to 'live it out'. In Islam belief and action are absolutely and totally inseparable. It says in a *surah* "Woe! to a person who believes but does not pay attention to his neighbour."

I am not for declaring people to be nominal Muslims. I would not have the audacity to say that they should not call themselves Muslims. But to use the word 'Muslim' in the Qur'anic sense is a very tough and constant job.

From a different standpoint: people spend years and years acquiring different kinds of proficiencies; to become a sociologist, an engineer, a doctor and all that effort seems to be well expended because you are arriving at a career. Why do you think being a Muslim should be so easy, requiring no effort whatsoever?

And for the concept of natural justice and common sense: natural justice is very unnatural and common sense is very uncommon. They don't really work.

Participant: Muslims everywhere objected to the use of the term 'Mohammedanism,' right? But when you speak of *sunnah*, which is what the Prophet did, in a manner of speaking it sounds like Mohammedanism. In the Qur'an, Mohammed is referred to constantly as 'Messenger'. Where does it say that we should refer to his acts? It is a totally different thing to refer to his acts, as a good example set by a good man. I bring this up because this has been referred to as *sunnah*. I am merely asking is this a must for a Muslim? If this is a must, why? Where does it say so?

Participant: In the Qur'an many times it has been said that "Obey God and obey the Prophet." So if you obey the Prophet, naturally you follow his *sunnah*.

Participant: "Obey the Prophet" may be in terms of his being a messenger; if you are talking in terms of him being a messenger, obedience to God is the message he brings. He was, after all, a man.

Participant: You see, if you restrict yourself just to the Qur'an, you can say that the Qur'an came from God and Mohammed did not add a word to it. It is even said in the

Qur'an that the Prophet does not speak his own mind, he speaks whatever is revealed to him. So that means that the Qur'an is purely from God according to Muslim belief. But when you say '*Ati ullah wa attiur Rasool*,' it means that there is something additional besides the Qur'an. We believe that is the *ahadith* and *sunnah*. Besides, you cannot practice Islam completely just by reading the Qur'an, because the details are not there. For example, the simple process of saying your prayers; the details are not given in the Qur'an. If you want to say your prayers, you have to refer to the *sunnah* and the *ahadith*.

Participant: This is a personal response, not a scholarly one: the way I have always taken it is that you follow the *sunnah* of the Prophet in so far as it relates to something that will amplify the Qur'an. But it is certainly not to be followed like people tell you, 'This is *sunnah*,' while they are pressing sweets on you that you don't want. Or the wearing of perfume, which was something the Prophet was supposed to do. I think these were purely personal things. I myself don't find this type of practice at all acceptable because then you are going against what the Prophet himself said which was that he was merely the messenger of God, and that he had no divinity. Therefore you follow the *sunnah* when it relates specifically to areas where you need clarification within what was revealed to the Prophet through the Qur'an. But you can't be a perfect model about eating sweets and wearing scent.

Participant: He was a perfect embodiment of complete humanity. It is impossible to find any fault with him. If you think that he has weaknesses that means this order '*Ati ullah wa attiur Rasool*' is not complete. This does not specify follow the Prophet as a prophet, or as a messenger, or as a leader, but simply says "Follow him" So in every respect he is a perfect guide for us.

Resource Person (1): I wanted to say something about an earlier point then I will try to respond to this question which is again a big question.

The point about not knowing Arabic being in some ways a handicap: in some way, all of us who are non-Arabic speaking, are confronted with that. I've had that thrown in my face so many times. I have been asked, "Who gives you the authority to interpret the Qur'an? You are not a man and you don't speak Arabic. You haven't been to Al-Azhar and so on." And I said, "Thank God I haven't." That's precisely why I want to do it. They say, "Who gave you the authority?" and I say, "I myself, gave myself the authority. Who else should give me the authority?" This is what is so good about being a Muslim. We don't have a Church. We don't need anybody's authority to validate our need to study.

I think of this collective effort as a sort of a relay race. Everybody cannot be a specialist in everything. If you look at the vast corpus of feminist theology in the West, you will find that there are just a handful of people who do the basic stuff. There are a few people who do the primary sources and then there are people specializing in various areas. It's like a relay race. You run the race a certain distance and another person runs the next lap. I think if we start thinking of ways to divide up our tasks accordingly, we can get somewhere.

Participant: It was mentioned that there is no Church in Islam. Well, it may be so in principle, but in fact it's less and less true. Not only do we have a clergy, but this clergy in many instances is acting as a political group. I don't think we should ignore this. This leads me back to the question of Arabic. Nawal el Sadawi and Fatima Mernissi know Arabic and they can quote the Qur'an back and forth, but still their input is dismissed by

the clergy. So one way or the other we have to deal with this question.

Resource Person (1): I want to read to you a couple of statements from Allama Iqbal's lecture on the 'Principle of Movement in the Structure of Islam', which has an important bearing on the methodology of interpreting the Qur'an:

"I know the *ulema* of Islam claim finality for the popular schools of Mohammedan Law, though they never found it possible to deny the theoretical possibility of a complete *ijtihad*. I have tried to explain the cause which in my opinion determined this attitude of the *ulema*. But since things have changed and the world of Islam is confronted and affected today by new forces set free by the extraordinary development of human thought in all its directions, I see no reason why this attitude should be maintained any longer.

"Did the founders of our schools ever claim finality for their reasonings and interpretations? Never. The claim of the present generations of Muslim liberals to reinterpret the foundational legal principles in the light of their own experience and the altered conditions of modern life is in my opinion perfectly justified.

"The teaching of the Qur'an that life is a process of progressive creation necessitates that each generation guided, but unhampered by the work of its predecessors, should be permitted to solve its problems."

This is the clearest statement Iqbal made on this problem in which he says two very important things. One, that the foundational principles can be examined; not just the superficial; not the superstructure. And second, that every generation has the right to solve its own problems. These are extremely important points.

But in general what is happening in many countries - particularly in the sub-continent, from Sir Syed Ahmed Khan to the modern period exemplified by scholars like Professor Fazlur Rahman - is that people are saying there is a lot of confusion in Muslim societies about what is Islam, in view of which it is very important to go back to the foundation of Islam - to the Qur'an. But the question is of how are we to study the Qur'an, and as said earlier, knowing Arabic is just one part of it. You also have to know what those words meant to a particular cultural milieu, how they were interpreted by people living in that area. Once we know what these concepts meant at that time, we can then bring them forward and see how they would apply today.

It's not that we want to recreate the conditions of the 7th century as some people do; we want to see how those concepts fitted into those conditions. For instance, it is a proven fact that Islam and the Prophet of Islam gave women many more rights than women had at that time. Historically, we know that. This means that in every generation Muslim women must have more rights than they had previously; not less rights. That is the principle of analogy.

These scholars are talking about a movement back to the Qur'an, and then a movement forward from the Qur'an to the present time. I think this is what we need to do in our work here.

Now your question about what is the position of the Prophet of Islam. I think this is again a part of the very complex question of revelation. On the one hand, I think Muslims give the Prophet of Islam very little credit. I make a diagram when I am

teaching this in class: you start from God and enter Gabriel, Prophet Muhammad and Muslims. It's a straight line. Muslims say that the Prophet is a receiver and transmitter - in terms of modern analogy, he is like a tape recorder: you speak, it's recorded, it's transmitted. That means that the Prophet had no input into the Qur'an. However, because the Prophet is the vehicle through which the Qur'an has been transmitted, the whole testimony, the whole evidence of the Qur'an rests on the Prophet.

Let me give you an example some of you might remember from the time of General Ayub Khan¹¹ who was, relatively speaking, a progressive Muslim - I emphasize relatively speaking. He invited Professor Fazlur Rehman, (in my opinion the best Islamic scholar of our times) to come and assist the government of Pakistan in liberalizing the laws. Professor Fazlur Rehman remained in Pakistan for several years and did a lot of good work. He was instrumental in the progressive Muslim Family Laws Ordinance of 1961 and so on. As a result of his progressive thinking all the *mullahs* got after him. What they finally got him with was a statement he had made about revelation in his book written 20 years earlier. In explaining revelation he had said, "Insofar as the source of the Qur'an is the word of God, it is entirely the word of God. Insofar as Muhammad was the transmitter of the Qur'an, it is the word of Muhammad because he was the vehicle." That was a statement. The *mullahs* translated that into Urdu as saying Fazlur Rehman says that the Qur'an is the joint work of God and Muhammad - which is not what he had said at all. That was enough. Within 24 hours Fazlur Rehman had to leave the country. This is just to emphasize, especially to those of you who are not from Pakistan, that it is highly dangerous to talk of revelation. Because any statement that you make becomes a challenge to the basic articles of faith.

But the question remains what is the importance of the Prophet? I think the Prophet is enormously important in understanding Islam. The Qur'an says that there was a series of prophets; that the Prophet Muhammad was not the first prophet. He is believed by Muslims to be the last prophet. There is no hierarchy of prophets in the Qur'an. The Qur'an says many times that, "We make no distinction between them". The Prophet is described in the Qur'an as a model for Muslims, since he is the Prophet who mediated this particular revelation and is the closest in time to the Muslims.

It is important to remember that in Christianity you have the concept of Jesus as divine human - which means that he could not sin. This is also the Shia perspective on the Prophet Muhammad and on the Imams; that they cannot sin.

Participant: Excuse me, but this is different from divinity.

Resource Person (1): Yes, I know that. What I am saying is that he was a 'complete person'. What makes him so special is that he exemplified in his life the role of a husband; of a father; of a general; of an administrator; of a recipient of the Qur'an; of so many things that he is seen as a complete human being. That's what makes him so important. It is very unfortunate that because of the confusion that exists in our general state of Islamic knowledge, we have lost sight of many facts of the Prophet's life. For instance, we have forgotten how compassionate the Prophet was. I mean we are living in a society where on a slightest suspicion a woman should be stoned to death. And we have traditions of the Prophet that when somebody went to him and said, "I have

¹¹ Pakistan's first military dictator who ruled from 1956 and was subsequently elected President in 1962, an office he held until 1969.

committed adultery," he sent him home three times, and said, "Go and think about it."

There are so many stories about the Prophet's compassion; about his enormous mercy to people who were antagonistic to him; about his liberalism; about his generosity; about his treatment of women; about his treatment and respect for his wives. All of that we have forgotten. Instead we have all the negative *ahadith* which are attributed to him and they are being used against us.

Somewhere along the line we have to understand the importance of the Prophet Muhammad as a feminist. I see him as a feminist. Iqbal was a scholar in Arabic who had a very fine understanding of the Qur'an. One of the things he said was that if he was reading the Qur'an and he did not know who had written it, "I would assume it would have been written by a woman", because it is so pro-feminist.

Participant: I came across a *hadith* which said, some people came and asked the Prophet for advice on bettering the date palms which were not bearing fruit. He told them to use a specific method of growing. The next year they came and told him there were still no fruits. Then he is supposed to have said, "In the matter of worldly things, don't listen to me." The *ahadith* is in the WLUML Dossier No.2. I agree that on certain matters we can't take the entire practice as if it was ordained.

Resource Person (1): Amongst the various sects there are people who call themselves *Ahle-Sunnat*, who want to follow everything he did; that means they grow a beard, or for instance, the Prophet did not like the colour yellow, so you should not like the colour yellow. I think it is quite irrelevant whether you like it or not. Use your common sense. In what ways is he to be followed? He was a human being. And this is a statement the Qur'an makes endless number of times. He walked; he talked; he slept; he did everything as a human being. You could respect him because he was a fine man, but you were not supposed to do everything he did. As a prophet his stature was different from his stature as a person. All of us have personal likes or dislikes.

Resource Person (3): How does distortion come? We have the Qur'an which we Muslims believe to be the word of God, but later on even the word of the Prophet Muhammad began getting incorporated within a corpus of Islamic jurisprudence.

What the Prophet said and what he did were two things but what he remained silent on became a portion of the tradition which was exploited by the later Caliphs, and later kings of Islam so that when they wanted something to suit themselves, they asked a jurist, "Now you say it this way because the Prophet was silent on this matter" and it was made into a *fatwa*, later into piles and piles of *fatwa* - in India it came to be known at the time of Aurangzeb as *Fatwa-i-Alamgiri*, and Imam Abu Hanifa's traditions as the *Hidaya* - there was no scientific sifting.

There is no positive understanding of what is meant by the 'traditions of the Prophet Muhammad', by '*ahadith*' because *ahadith* is what A said to B, and the process goes into three generations. In the generation of the Prophet, there were certain people who learnt what the Prophet said and they passed it on to the next generation, '*tabiun*' who passed it on to the third generation: '*taba'u't-tabiun*'. Mind you, they passed it on mainly through words. Then there was the text of the *ahadith* and there was the person who transmitted that *ahadith*. Many times you find that the transmitters were neither scholars nor intellectuals nor people based in knowledge and understanding but simply people, who were good at heart but their memories could have failed them. There was no scientific sifting of *ahadith*, and today you have a *hadith* which is passed by 72 people to

4 people known as a *hadith-i-muta'awatil*, meaning that there could be very little doubt about this particular tradition because 20 or 30 or 40 men (or 10 or 5 men) have said it not only in one generation but from 1 to 2, 2 to 3, and even 3 to 4 generations sometimes. But there are very few *muta'awatil*; most of the traditions were *ahadi* meaning 'singularly promulgated'. That means a single man from generation 1 said it to a single man in generation 2, who said it to a single man in generation 3 and it was absorbed. In this too there was a lot of distortion because some are known as 100% right, some are known as 75% right and some are known as 50% right, some are known as 40% right and there are differences of opinions.

All these confusions have been created on the superstructure of Islamic jurisprudence. These sorts of conflicts and tensions which come in the verses of the Qur'an - that we are trying to interpret and re-interpret - are there simply because of these trends that have been introduced into the traditions of Islamic jurisprudence. These traditions were crystallized in the 4th century of Islam by the Sunni *maulvis* who call it *taqlid*, which means that you no longer have the authority to question this. For Shias, the authority rests with the leaders. But the principle of using your own judgement has been lost. So the process of *ijtihad*, and the process of learning and the process of personal opinion and personal sanctions, has been lost and that, unfortunately, has created the conflict.

Nonetheless in the early 1850's in Egypt, there was a revival by people like Muhammad Abdu-Wa Jamaluddin Afghani, who started the Salafiyya School of thought. From '*salaf*' ('ancestors'), Salafiyya means going back to the original text of the Qur'an, using only those traditions which reflect the Qur'an to make a reinterpretation. They brought out a well-known magazine called *Al-Minar*, which carried a lot of verses by these people. Egypt is one of the first countries that took a step towards this liberation. They started reinterpreting the text in keeping with modern times, modern situations, in consonance with what has been said and tried to bring equality of status, which was, of course, then taken up by the North African countries and South East Asian countries. Of course, changes have been very slow. Some of them, like the changes that were brought about in 1961 in Pakistan (Muslim Family Laws Ordinance) were to a certain extent very progressive but then in 1979 Pakistan's trends were reversed.

The Qur'an, within its own lifetime, teaches you to reform yourself. Take the verses on alcoholic liquor. The first is "in this there is more harm and less good". The second is that when you're drunk do not go near your prayers, and the third is that it is the act of the *shaitan* (the Devil), so do not drink. So within its lifetime, you find that the Qur'an is showing a trend, it is training the human mind to accept certain norms as it progresses. Therefore, it is teaching you that - on the basis of the principles that it has set up - you can make a superstructure on the jurisprudential level which you can further enhance and further re-interpret to bring about a closer understanding of the principles.

Resource Person (5): What interests me in relation to Qur'anic interpretation, and also to what the network is going to do in Women and Law is the codification of certain Qur'anic injunctions; why there should be a particular interpretation in a particular Islamic country and so on. I would like now to look into processes of how this is made legitimate by the traditional kind of Muslim jurisprudence. The presentation is not going to be very scholarly, is very general and is the standard kind of input given to universities on the methodology of interpretation. The missing links will be the gender issue, or a particular kind of perspective of male dominance. This group can discuss the missing links of who says what is Islam in between.

Usually, when we begin a jurisprudence class, they will say that the sources of Islamic law will be: Qur'an, *sunnah* of the Prophet, *ijma*, *qiyas*. *Sunnah* are the established customs of the Prophet. While most textbooks say the sources of Islamic law are Qur'an, *sunnah*, *ijma* and *qiyas* in one breath, basically the sources that are undisputed are the Qur'an and *sunnah*. The process of interpretation through *ijma* and *qiyas* is always subject to interpretation because it is itself a tool of interpreting the original sources in the Qur'an and *ahadith*.

Ijma is the consensus of the jurists - meaning the Sunni schools, for example of Shafei, Maliki, Hanafi and Hanbali; all come together and all of them agree. This is *ijma*: the consensus of the community. But, when you look into it, there is actually no such consensus because who is the community? At which point do you become a community, and so on. These are all controversies.

Then there is *qiyas* - meaning 'by analogy'. For instance, there is a specific injunction in the Qur'an, supported by the *ahadith*, prohibiting the drinking of wine. Then, is the drinking of wine made from dates *haram* (forbidden)? If drinking wine is *haram*, then by analogy the drinking of wine made from dates is also *haram*.

Then they go into the process: if this is the Qur'anic injunction, then how do you know this is the injunction? So they go through the process of the revelation of the *ayat*: at what point of time was it revealed etc., to look at the authenticity. This is followed by *annasa* which is when there is conflicting evidence of competing *ayaat*: which *ayat* will abrogate the other. Then there is controversy on whether the *ahadith* can abrogate the Qur'an. If so, then you go into "When can a *hadith* abrogate the Qur'an?"

This is the standard kind of thing we do if we go through law school. There is actually a LOT of literature on this. It is a new thing to introduce gender and to query: "Is this Islam?", "This is not Islam", "Who says what is Islam?" You find that because of the available literature - whether it is *ijma* or varying opinion or majority opinion - the question of implementing Muslim law becomes very difficult because this process is limited to a very few people. The *allamas* or *maulvis* in Pakistan who have gone through five, ten years of law school are supposed to know everything. For most of us this is unreachable. We always have to go to people who are learned in such things, who master all this literature on this subject. The problem in implementing the law emerges where a few people are the only ones who really know what is happening and they say: "This is the law. This is Islam. And this is how it should be" while the rest of us do not know any better because we do not have knowledge of all this literature.

Therefore at least from my experience in South East Asia, there is a need to ensure public access to the law and to perhaps assist in the administration of the codified Muslim law in a particular country.

Codification began a long time ago in the Ottoman period, in Algeria, in Tunisia and so on. The basic idea of codifying the laws is to state which particular law is now the law of the land in a particular country. In a way this limits the jurisdiction of the *qazis*, or of particular institutions, or limits the jurisdiction of interpretation of a particular situation or issue. The state decides this is the interpretation for the land and the *qazis* have to apply that and people will accept this as the interpretation. This is normally done for family laws. This is legitimized by a process in jurisprudence called *siyasa-i-shariah*, in essence meaning it is the right of a ruler, state or particular political institution - depending on who is running the state - to determine the principles to be used in implementing a particular Muslim law in that particular state. There has been a lot of discussion about whether this is open to abuse, and about who decides.

Even if the state decides, or the *ulema* or the *maulvis*, they are all supposed to be

guided by this principle: "what is supposed to be good for the community"; the *maslahah* of the community. But that is where the problem arises. Who is going to decide who the community is? Is it the *mullah*? Is it the people? So you run into a lot of problems. Nevertheless, from my own experience I cannot say that all the codification has for instance gone against women. In South East Asia, we are not in a situation where we had, for instance, the Pakistani experience of Hudood laws.¹² Therefore, the reaction has not been confrontational to this institution. Our codification of Muslim laws is according to this concept of political authority in Islam and *siyasa-i-shariah*. Take gender issues such as polygamy. In Malaysia, you have 13 states: some states restrict polygamy and some states allow polygamy through this process of *siyasa-i-shariah*. That made me wonder how is this so? Not just among the schools, even within the Shafei law there are differing opinions. Malaysia may be entirely Shafei, but some Shafei states allow polygamy and some Shafei states do not.

Participant: As regards *siyasa-i-shariah*, the catch seems to me: who decides who the rulers are? Because if the rulers are people who have usurped power, who have no authority over the people that they rule by force, then where would that leave us in terms of interpretation and progress? Where do we go from there?

Resource Person (5): When you talk about reinterpretation, a fresh look into this, is this allowed in the process of *siyasa-i-shariah*? Or do you just return to the corpus of law that you have from all these *ulema* since time immemorial and select from that? This is always the problem with respect to *ijtihad*, it has always been a controversy.

But I do know that some of the interpretations in favour of women used in Malaysia are not fresh interpretations, rather, they are taken from different opinions which may not be the majority opinion of the Sunni school, or even the majority opinion of Shafei, even though Muslims in Malaysia are Shafei. For instance, the imposition of a minimum age of marriage came from a very minor variant of the Shafei school which today they felt should be the law of the land because they said, "it would suit our social conditions today." Therefore I'm not sure whether one should query every particular interpretation. A lot of people here are very angry with people who gave their opinions a long time ago but we do have pockets of very interesting and variant interpretations which we could also use, in addition to a fresh look.

Apart from this, Malaysia has not only taken Shafei but also Hanafi and Maliki views on certain things in her process of *siyasa* and codification, and looked at the corpus of interpretations. I don't think there has been an *ijtihadic* fresh interpretation yet. But I think it has been done in Pakistan in the landmark Khursheed Bibi case (1967) regarding the woman's right to *khula* - dissolution of marriage - saying a woman can ask for divorce and she doesn't have to go through the process of court to get a divorce. I think that's a fresh *ijtihadi* interpretation.

Participant: But that goes back to the *hadith*, and she still has to go to a court. The only difference is that prior to the Khursheed Bibi case, a woman had limited grounds, subsequently not liking her husband's face was accepted as sufficient grounds for *khula*.

¹² Subsequent to this meeting, in 1995 hudood laws were introduced in Malaysia's Kelantan state.

Resource Person (5): Well, she does not need her husband's permission for *khula* while in Shafei countries she must get the permission of the husband to secure a *khula*. It goes through a whole long process, but we have adopted the Maliki view that in the end it goes to the court. The court must grant the divorce. The husband has no right to consent or not consent, if the court so feels it must grant the divorce. This is an example of how the law has been changed by bringing in a Maliki concept.

Lately, I have come across this issue of domestic violence that relates also to whether the husband has the right to beat his wife, and this is new because there is nothing in the *corpus juri* - the law developed by the jurists on this point - as yet. I guess it was not raised as an issue at the time they had to make all this law. So it is not covered, that I know of, and perhaps we could also discuss it in relation to 4:34. This is really where we have to break new ground: to look at the gender perspective.

I think that what the group has to discuss is all those traditional interpretations of specific issues on male-female relationships, gender bias, and so on.

That was a very brief run down of jurisprudence. What might be of interest because Pakistan is facing the new Shariah Act is that the International Islamic University drafted a new set of family laws under the doctrine of *siyasa* for the interests of the public, but then discovered changing the law itself is not good enough, because who is going to implement it? It is not a question of having women as judges, sometimes you may have women but they are not conscious of certain gender issues so it doesn't help at all. So the *shariah* court in Malaysia has sent the *qazis* back to school - the *qazis* in Malaysia actually have a minimum standard of training and then they have to go back to law school to learn how they must implement the laws and how they should exercise discretion. This because some of them do whatever they want because they think they are *Mujtahid*, they have studied everything. The state has decided to restrict their discretion on certain things through the law of the land. Sometimes the *qazis* still use the old interpretation, so they have to go back to school and be retrained.

We have yet to monitor how they perform afterwards but we have heard instances where they deny women their rights. Thus, the law may say Muslim women have the right of injunction against molestation in the *shariah* courts. But when the women come to court, sometimes the *qazis* say: "You are a mother of children. Who will look after the children now?" and they send her back. They have not given her the redress that is supposed to be her right under the law. The problem is that in training the *qazis* they forgot to discuss gender issues: how do you see a woman and her role in the family and her right of access to the law. They don't go that far. They teach purely what the law is.

Another interesting point: in the Islamic University training programme the *qazis* especially said, "We do not want women to teach us." So all the teachers have been male and it's all very secret. I have not had any access - yet - to what exactly they are teaching them, or how they are assessing them or monitoring graduates when they leave. This is one area that should be of interest to women where I come from and that has not yet been considered in terms of action or strategy.

Resource Person (3): How would you see the usefulness of other secondary sources that were used at one point or the other in Muslim history, like *istihsan* [legal discretion] and *istislah* [taking into account the public good]?

Resource Person (5): This again relates to the issue of the interest of the public at large. For instance, in the case of the Caliph Omar and the theft: theft is a clear offence in the Qur'an. It says in clear terms if theft is proved and the conditions are met, then the

penalty of that is cutting off of a certain anatomy of the right hand. Omar, despite the fact that he knew of the Qur'anic injunction, put the punishment into abeyance since there was a famine. So this is a case of the public interest where even specific things are overruled in view of what is in the public interest. It was done and accepted as part of the law and everybody agrees that Omar was right in doing that because it was in the interests of the public.

Resource Person (3): Under present conditions, we do have specific cases where *istihsan* and *istislah* are translated as 'public good'. If that was used in the interests of the public good, don't you think that doctrine needs to be developed more? Because it was a clear deviation from the Holy Qur'an, from the Qur'anic injunctions. If that was justified on the grounds of being in the interests of the public, couldn't we build on that methodology?

Resource Person (5): Well, it's logical. It could be done if it was done in the past and they managed to get away with it because of the situation of a particular country. I don't see any reason why it cannot be done, but what everybody is worried about is how we go about it.

Participant: I was wondering whether one could say it was a clear deviation. I am not a Qur'anic scholar, but even where the punishment is clearly specified it is then followed - and I think this happens everywhere in the Qur'an - by the statement 'God is merciful and God is all-forgiving'. So as a corollary to the punishment there is always the possibility of mercy and judicial discretion. I would have thought it is not a deviation or a contradiction but understanding it in its entirety...

Resource Person (5): The point is that it was looked at as a whole picture and what was the spirit, what was the rationale.

Resource Person (3): The need is to develop a clear methodology because unfortunately throughout the development of Muslim jurisprudence we have indulged in ad hoc measures. A problem has come up and on the spur of the moment you decide something and that evolves into a rule. Like the instance of *qamar* (intoxication). Originally there wasn't any prescribed punishment and then Omar prescribed it as 40 lashes, and Ali increased it to 80. So as a student and teacher of law, I feel we need to really develop proper scientific lines of methodology.

Resource Person (5): This is what I think most teachers of jurisprudence did suggest since even without looking at the women's issue and gender, the Muslim world is having this problem. How do you decide? As and when you like? Over the years, they developed a fragmentary system: they decided to take Maliki here and Hanafi there or they decided to borrow a whole concept from a particular school. It was haphazard. They have not actually developed a strategy as yet, but to make it easier they say the political authority will decide whatever is to be applied for a particular situation in a particular state. It is not universal. People are asking should there be a universal *ijma* now on strategies, and on what points of law, on what issues (like what the women here want to do). Perhaps at the end to develop a code and say: "Look, we want *ijma* on this, we want consensus. This is what the interpretation of this particular issue should be."

Resource Person (1): I would like to put a question to the people here who deal with Muslim jurisprudence. I am sure you have all heard the story of the young man, Ma'ad, who was appointed governor of Syria. Before he took up his position, he went to the Holy Prophet and the Prophet asked him: "How are you going to govern?" He replied: "By the Book of God." And the Prophet said, "Well, what if you don't find the answer in that?" He said, "By the example of the Prophet." The Prophet said: "And what if you don't find the answer in that?" He said, "Then I will use my own judgement."

There is a clear process involved here that theoretically *ijma* and *ijtihad* can only be exercised within the parameters of the Qur'an, the *ahadith* and the *sunnah*. (By the way you did not mention *ahadith*, you just said *sunnah*. *Sunnah* and *ahadith* are not the same thing.) When you talk about strategies, it seems to me that most people in Muslim countries who are trained in law mostly study western law and are basically not grounded either in the Qur'an or the *ahadith* or *sunnah*. So there is a severance between the source of Islam and what becomes law because theoretically to study the four schools of Sunni law or any schools of law means studying a secondary source, not a primary source of Islam.

One of the things we need to consider here as women who are challenging - certainly questioning - a lot of laws, is that there is a need to go behind all these schools of law. To go back to the primary sources. Among the many statements Professor Fazlur Rehman made, the most meaningful was that "the problem with modern Islam is that those who know Islam don't know modernity and those who know modernity don't know Islam". I think there is a very strong need to establish this linkage.

For example, the case of theft, it says in the Qur'an that first of all if it's a person - man or woman - who is a habitual thief and it says if he or she insists or persists in committing this crime, you may cut off his or her hand. The very next verse says, but if he or she repents, forgive. You can't forgive them if you have already cut off their hand, which is what they do. They read the first line and they don't want to read the second one. The statement: "if they repent, forgive them" is as concrete as the first statement which says, "cut off their hand". Unless you have a grounding of the foundations how can you go forward with Islamic Law. This is my question.

Resource Person (5): When they established the Islamic University that was the need they felt. Before we had the traditional *qazis* from the Middle Eastern universities, and lawyers representing clients were people who basically knew western law. So it was a problem to try and introduce modernity to these people who did not even understand the concepts used. In introducing the Islamic University the intention - I don't know whether they managed to do it - is to have this Islamic groundwork. So every law student must do some papers for the Centre for Fundamental Islamic Knowledge. That means they must take up Arabic etc., otherwise you still have to rely on secondary sources. This is a new process, but at least the idea is there that it is still not sufficient to know what Shafei or Hanifa says. You still have to make the effort to go back to the original sources. I don't think they have achieved it yet, but it is in the process.

Participant: We are talking a lot about scholarship and the authority of interpretation and change in Islamic jurisprudence systems. Based on something said before, if we can establish in the pluralistic Muslim communities that exist today - for our practical use - the commonality of women's oppression and from there just realize that we have to assert women's rights to some basic human rights. All of us have that need, no matter what kind of community we are living in anywhere in the Muslim world today.

From there instead of getting involved in the technicalities of jurisprudence we can go to our primary sources and say that these rights should be assured for any woman anywhere in the Muslim world, because the Qur'an is not against them. In fact it supports these principles. And no matter whether we are under a Hanafi or Shafei or secular or Islamic rule we can have that as common knowledge. And with the help of Arabic scholars, this is just the kind of forum that we need: where people who are familiar with social sciences and sociological methodology can come together with scholars of language and law and together make a manifesto; not necessarily a formal one. Spread this message that we need to secure these basic rights for women in Islam. That no matter what kind of a Muslim community there is, this would be a general right that a woman would have. Then we can really do something here.

Discussion on the History of Jurisprudence and *Ijtihad*

Participant: Interpretation never takes place in a vacuum. It has to take place according to whatever knowledge base prevailed at that time. Confusion prevails due to multiple customs and the purpose of codification, which was to bring about a greater cohesiveness, fails precisely because of the variety that keeps coming up.

In the pre-codification period, customs prevailed. There was not one universal code but a number of customs. (One very minor point I feel a little uncomfortable about is when all customs prior to codification are put down as bad. I think there are always customs which, according to their own tradition, could be good or bad and I feel at this point in history we can't just throw all of them aside.) Perhaps I'm over simplifying it but in the post-codification period despite the codification a great deal of confusion still prevails. How do we explain this confusion? Perhaps the codification was being interpreted according to the customs that had prevailed.

In that context we need to look at why this happened at that time (and even today) and see whether we can very broadly classify those issues which are dealt with clarity and those with confusion. It's always a minority which seems to feel very confident with the clarity. Yet the confusion and the oppression that comes in with it seems to become the fate of the majority. It seems that those with clarity right from the time of the codification and the post-codification period of immense confusion fail to communicate what that codification is.

Communication is always a two-way dialogue not one person saying, "This is it and take it." I wonder whether it's a failure of the communication of the period and of those with clarity that perpetuated confusion and whether it is now possible to step outside this and try to see things in a simpler light whereby the clarity can expand and take more people into its embrace instead of having those with clarity debate among themselves as to what that clarity really is.

Resource Person (2): There's a little bit of confusion about the four schools that I want to try and clarify. First of all, the people whose names are attached to the four schools in the Sunni tradition did not start schools of their own. Malik (who was closely related to the people of Madina) believed that on the basis of the *amal* of Madina, i.e., what people were actually doing, that you can surmise what it is that the Prophet was doing and therefore make decisions on what should be done in the contemporary period. He was very against hypothetical reasoning. He was not trying to develop a theoretical school at all, he was actually trying to deal with the real things that occurred, and he said the way to resolve them is based on the actions of the people of Madina because these people, who are acting in the wake of the Prophet's life, are probably acting closer to how the Prophet would act himself. The same thing is true with the other schools: after the person dies the people take and codify the decisions that he made and all the principles

that he said he used with when making those decisions, and they pass this on and it becomes the school of law after his death. But the concerned person himself didn't do this.

The point I want to make is that the intention was not to develop a strict school to the extent of excluding wisdom and/or communication with other ideas. A case in point is when Malik went to Egypt to visit Shafei. He prayed the way Shafei did and this was reciprocated when Shafei came to visit Malik because the intention was not 'This is the only way in which you're supposed to do Islam'. That came later.

Rather than confusion there was a kind of reciprocity and sharing. The schools were not antagonistic towards each other. Rather they were all striving to realize their Islam; to live out the Qur'anic essence; to emulate the actions of the Prophet; and in their efforts to try to do this to the best of their ability, certain people, who were thinkers said, "Well, you know, if this was going on and this was going on, then this means that analogically, this is how we should be able to do this". The efforts were sincere.

We get the idea that Shafi and Hanifa and Malik and Hanbal were staunch enemies; and had nothing to do with each other because sometimes now that's how people who follow the Shafei school react to the people who follow the Hanafi school. But these people were not like that at all. There was an intellectual climate of expansiveness. The techniques and the jurisprudence principles that they developed was a sharing of wisdom between people who did not have the exact same opinion about, for example, how marriage should be concluded.

The atmosphere wasn't so much confusion as a wide open, thriving intellectual climate in which a multiplicity of things was happening. So the codification took a multiplicity of things (some of them were also more into hypothetical circumstances than say Malik was) in order to get to the essence of the living of the Islamic intention. Unfortunately, the heart of what they thought was supposed to happen was based on the actions and statements of the Prophet. I say 'unfortunately' because not having the Prophet himself to do it led to problems of how to decide which thing should be codified and therefore considered as 'the law'.

And later on, their followers closed off the possibility of anyone doing anything other than how they had interpreted what the original founding fathers were doing.

Resource Person (3): Imam Shaltut from Iran, passed a *fatwa* on the doctrine of *taqlid*¹³ which becomes very important in the process of unification of these doctrines. Previous to this the trend by which a Hanafi could borrow a thought of a Maliki and a Maliki could borrow a thought of a Shafei excluded borrowing a thought from the Shias and the Shias could not borrow from Sunnis. If Abu Hanifa's tradition did not favor women, you could adopt from Maliki traditions but the Shia traditions were not allowed to come in. Imam Shaltut came out with this decision that even Shias should be able to take and give. Thus a bridge was formed even between the Shia-Sunni relationships at this stage.

Resource Person (3): Schools of thought began to develop as soon as the Prophet Muhammad died. Sixty years after his death, i.e. 85 years after the *Hijrat*, you have the Iraqi school of thought which tries to reflect and produce a certain understanding on a certain legal concept. This school in Iraq was started off by a scholar by the name of

13 Uncritical dependence on a precedent in jurisprudence and law as expounded by the Schools.

Ibrahim Lakhai, who was one of the teachers of Imam Abu Hanifa. Imam Abu Hanifa's other teacher was the sixth Imam of the Shias called Imam Jafar As-Sadiq.

Founders of schools were people who were learned in legal aspects and concepts of jurisprudence. When Abu Hanifa began to formulate a school, he began to question tradition. A very interesting thing about the Hanafi school is that Hanifa was a very revolutionary man but today his entire corpus of jurisprudence is contradictory to his entire character.

How did that happen? History books say that Imam Abu Hanifa never accepted *ahadith*. He only took seventeen traditions altogether and based his judgement on *qiyas*, that is on analogical reasoning, on parallels drawn from the Qur'an, *sunnah* and *ijma*, and on *ra'y*, that is on personal opinion or speculation not based on a recognised source of law. But he did not base his judgement on the basic traditions of the Prophet.

Simultaneously, you find there is another school in Madina, that of Imam Malik. Now Imam Malik was the son of Anas ibn Malik, a contemporary of the Prophet Muhammad, who used to sit at the *Sufa* and collect traditions. You find that the Maliki School incorporates traditions, while the Iraqi school rejects this.

Let us come back to the Iraqi School. A study of Abu Hanifa's work indicates that towards the end of his life he took 40 disciples and took 30 years to write a corpus on jurisprudence which ultimately was destroyed during the reign of Halaku Khan in Baghdad. When the libraries were burnt, his books were destroyed, and two of his famous disciples by the name of Muhammad Abu Muhammad and Abu Yusuf then reconstructed his entire philosophy of thinking on the basis and formulation of those traditions which he had not accepted. Hanafi died in prison after his conflict with the rulers.

Malik equally faced problems because when the King, the Khalifa of the time, wanted to hang his photograph and his teachings on the Ka'aba, he said, "Nothing doing. My word, if it is against the word of the Qur'an, should be thrown out and the word of God should always be taken" Unfortunately what happened was that these schools started to become crystalized. You find that very shortly after Imam Abu Hanifa, Shafei who tried to reconcile two schools, takes to *usul al-fiqh*. This is not very simple to present in one small talk because once *fiqh* - the superstructure of jurisprudence - began to be formulated, a lot of opinions started coming in. Later, there were fifteen other schools which would be formulated and even Imam Ghazali wanted to start his own school but did not because he realized that this is what was happening.

Even at this juncture, before the doctrine of *taqlid* and before *ijtihad* was brought to a halt, there was a stage when the rationalists and the orthodox were constantly in conflict. You find people like Hasan al-Basri, you find the Muta'a'azilite school of thought, you find that the Abbasid Khalifas are killing people, including Shia Imams because they were saying things that the Abbasid Khalifas didn't agree to. This constant conflict about assertion of power, about overcoming the rational element, and subjugating things to power, (what I meant by power politics today) was played out even in those days. That is why you find that the superstructure of jurisprudence came through political motivation, through political pressures and when these were built up, the kinds of *ahadith* were taken where the Prophet was silent, things that the Prophet Muhammad never dreamt of saying. Secondly, you see, a lot of people who were very anti-Islamic used to brew up these kinds of traditions which were also used. So thousands of things came in, thousands of words that the Prophet really never uttered came into existence and these were incorporated.

Fifteen schools would be formulated even after the four basic Sunni schools but

they were brought to a stop through the doctrine of *taqlid* which said, "Now stop! No more further opinions and no *Mujtahid*." After that, when you had to have an *ijma* and an *ijtihad*, the *Mujtahid* had to undergo a terrible process because the *Mujtahid* had to have A qualities and B qualities and had to know by heart Hanifa, had to be a disciple and if he didn't do this and he didn't do that he couldn't be a *Mujtahid* and only if a group of *Mujtahids* got together could they give a judgement, and the *ijma* gave in to that. Only then could all this be incorporated as a single legal system.

It is unfortunate that neither men nor women have really looked into this problem with any seriousness. But unless we question this information, research it and sift what is right and what is wrong, we cannot really come to any conclusions and we cannot fight the problem in totality.

After all, what is the making of a law? One formulates a law but the society's thinking and traditions also have to be formulated so that the law can be effective.

Participant: When were the doors of *ijtihad* closed and what was the reason that this was done and who decided it? Secondly, where does the concept of *fatwas* come from when did it come into practice and what exactly is the authority of a *fatwa*?

Resource Person (1): The word '*ijtihad*' comes from the root word '*jahada*' from which the word '*jihad*' also comes and it literally means 'exerting with your mind'. *Ijtihad* is considered to be one of the four sources of law. The other three being the Qur'an, *ahadith* and *sunnah*, and *ijma*. Basically *ijma* and *ijtihad* are both the same thing in that they are the exercise of reason. One collectively and one individually.

I want to refer you to Allama Iqbal's lecture on "The Reconstruction of Religious Thought". The sixth lecture is on the principle of movement and the structure of Islam. The principle of movement is the principle of *ijtihad*. So this essay is about *ijtihad* and Iqbal gives the three major reasons for the ending of *ijtihad*. Basically you have the answer there. What I would like to do is to explain what happened in a very simple way. If you look at the early centuries of the development of the major religious traditions of the world, you find that some splits develop very early. For instance, in the history of Christianity you have a split developing between the followers of St. Paul and the people who were called the Judaists. One school of thought gave primacy to Jesus, the historical Jesus of Nazareth, and the other gave primacy to Jesus, the Risen Christ who was spiritualized, theorized and so on. A battle raged between them for 200 years, at the end of which the Pauline Christians won. What you have then is known as Protestant Christianity. The mainline Christianity is Pauline Christianity.

Similarly, in the history of Islam, you have a split which develops very early. If you look at the intellectual history of Islam you find a tripartite division: there's mainstream, the center piece of which is what came to be known as the *shariah*, which is law, and then on either margins you have mysticism or sufism, and philosophy. I want to focus particularly on the latter, the Rationalists.

What is important and interesting is that the first 300 years of Islam were periods not only of physical and territorial expansion (in the first 100 years Islam spread from a very small desert territory to Spain in the West and India in the East, territorially the largest empire the world has ever had) but they were also centuries of great intellectual development. During those centuries you have the development of philosophy, of theology, of art, of literature and so on. Everybody knows about the glorious period, the Golden Age in Spain and the importance of that period for the European Renaissance.

Something happened after that which brought about what is called the "closing of

the gates of *ijtihad*." There were certain internal factors and there were certain external factors. Let me talk about the internal factors first. There were three things here. The *shariah* was that part of the law which dealt with legal things. Mysticism was one orientation, one approach to understanding, focusing on the personal relationship between the believer and God. This was the heart of it: there is a misunderstanding in the minds of many people who think that the Sufis did not care about the *shariah*. This is not at all true.

In the early centuries, Sufism started as a puritanical movement, as a reaction to the fact that during its expansion Islam became an empire, from being centered in God it became very empire minded, very power minded, very corrupt. Personally I think that the greatest tragedy of Islam is it became an empire too soon - before it really had the time to consolidate its spiritual heritage. Sufism had originally started as a puritanical movement to purify that. It was God centered and it was not the case that the Sufis were saying, "Don't obey the law; don't say your prayers; don't do that." They were saying remembering God is not only a matter of saying five prayers, you have to remember God all the time. So they were doing more not less.

Then there were the Rationalists. These were the philosophers. It's very important to understand that in original Islam the use of reason was very heavily emphasized because it is very essential to the Qur'an itself. If you read the Qur'an and count how many times the Qur'an says, "Think about it" the emphasis is on acquiring knowledge. God is described in the Qur'an a hundred and fifty times as '*al-Aleem*', one who has knowledge. So, the acquisition of knowledge, the use of reason is very heavily emphasized in the Qur'an.

One very important aspect about philosophy and mysticism is that they are the two sources of liberalism. Mysticism is liberal essentially because mysticism takes the position that there are many ways to God. You cannot circumscribe the way and say there is only this one way to God. Philosophy takes the position that every question can be looked at from various points of view. The first thing that you learn in philosophy is, 'Whatever you can prove you can disprove.' So philosophy is essentially anti-dogmatic. If you're trained in philosophy you cannot be dogmatic. So these were the two sources of liberalism and early Islam was very liberal. You have so many different opinions at this point.

As pointed out, Sahih Bokhari and Sahih Muslim's work has become set and concrete for us, but this was not the case during the early centuries of Islam and one of Bokhari's contemporaries wrote a book, "Refutation of 200 *ahadith* by Bokhari." What happened was a power struggle between what Professor Arberry calls 'the *shariah*-minded' Muslims, and these people on the other side. These two were very strong in early Islam but with time, they become subordinate to the *shariah*-minded Muslims, and for the last thousand years *shariah* has been dominant.

The internal reason for the degeneration: the sources of liberalism in Islam were systematically rooted out, particularly the philosophers. They were literally taken one by one and killed and exiled and sentenced. So it is not at all surprising that today intellectuals are being exiled and put in jail and being killed. It has been going on since the beginning of Islam. It's part of our Islamic history.

The external factors. First, as Islam became a big empire it became subject to external dangers. It was being attacked in Europe by northern tribes, particularly by the Tartars in Central Asia, and the fall of Baghdad in the middle of the 13th century was a very important event, because it gave to these people a sense of insecurity. When people become insecure they become conservative, and so the reasoning was, "Okay,

we've got this huge empire. We've got these schools of thought. We've got everything that we basically need. Now why should we think any more? And especially if we allow thoughts to happen, there's danger... These Sufis are saying, 'There's many ways to God' and the Rationalists are trying to look at things intellectually and saying, 'Well, you know, you can't be dogmatic. They might triumph.' So to stifle all that, external danger was used, reinforcing this internal desire on the part of the *shariah*-minded Muslims to stifle this.

But it's important to note that in every age there have been Muslim thinkers who have claimed the right of *ijtihad*. Sometimes in a strange way. For instance, Imam Ibn-i-Tehmia, who belonged incidentally to the Hanbali school - which is the most conservative of the schools - was an innovator who claimed for himself the right of *ijtihad*. In the 16th century Soyuti claimed the same. There have always been people. It's very important to note that in the 19th and 20th centuries, when all of the Islamic world came under colonialism, there were two kinds of movements: the Reformist and the Revivalist movements.

The difference is that the Reformist movements were self-critical. They were saying there's something wrong with us; that's why we've all lost power and that's why we've been conquered by the West. They had a mixed attitude towards the West. On the one hand obviously they resented the West for conquering them, but they also had an attitude of admiration toward the West. These people include Jamaluddin Afghani who was known to be, in a sense, the most violent agitator against the West. These people were always admiring the West for its scientific knowledge, its hard work, its discipline and so on. They said, "The West has good things. Let's learn those; let's acquire them."

But the Revivalist movements on the other hand were only self-adulating, self-idolizing and utterly uncritical who said "We are wonderful. We are perfect. Everybody else is an infidel. We don't have any need to be critical." During the late 19th and 20th centuries, the Reformists were definitely in a much stronger position. It was the Reformers in the Indo-Pak sub-continent, in Turkey, in Egypt, who actually liberated the Muslim world. But since the middle of this century in the post-World War II period, colonial rule was unfortunately superseded or succeeded by neo-colonial rule. So we have the Shah of Iran, and all these people who are more imperialistic than the colonial power. Then this leads to a renewed struggle and in this struggle something else happened which led to the success of the Revivalists.

One other point which is important to understanding this whole process has to do with the self-image or self-understanding of Muslims. Every group of people sees itself in a certain way and how it sees itself has important implications for how it behaves. A couple of examples? The Jewish people have in their long history always seen themselves as 'the Chosen People.' Now 'chosenness' to many Jewish people has always meant two things. On the one hand it has meant to many that they have a rather special or monopolistic relationship with God. On the other hand it has meant the principle of election, which means that they have been elected by God to suffer for the sake of God. So when the Jewish people in their long history have suffered persecution - let us remember that few people in the history of the world have suffered as much persecution as they have - what has kept them intact is that they have seen that persecution as a part of their self-understanding, their self-definition. Another example, is that of the Hindus in India. Historically speaking the Hindus are a people who have been conquered over and over again and the typical reaction of Hindus to being conquered was not one of anger but always one of assimilation. In the 6th century B.C. when Hinduism was confronted by Buddhism, which historically was perhaps the

greatest challenge it had ever known, its answer was, "Okay, what is it that you have that I don't have?" and they continued to assimilate it and finally Buddhism died in India. The typical Hindu response in the face of persecution and suffering is accommodation and assimilation.

What then is the Muslim self-perception? Because the early history of Islam was such a fantastic success story, the greatest success story in the history of the world, the perception that developed in the Muslim mind was: Islam is the religion of success. And the Muslims did not develop the psychological resources to deal with powerlessness, to deal with defeat.

This is a very big assertion and we need a lot of time to justify all of it, but let me give a couple of examples. There is a positive and a negative way in which it works. The positive way: take the case of Afghanistan. I know the situation in Afghanistan is very complicated, with superpowers and so on. Nonetheless, it's an astounding fact that the people of this, perhaps, most underdeveloped country in the world were able to fight a superpower for so many years. Millions of people were fighting for their faith because these people could not accept the fact that they could be made powerless. Muslims do not accept powerlessness sitting down or just passively. If you put a Muslim in a corner and attack, the typical Muslim response will be to fight back. We see that illustrated in the case of Iran. When there was a dictatorship - and the Shah of Iran was the worst dictator in the world since Hitler - the people of Iran did rise up and they would not take it lying down. So when Muslims are confronted with the sense of their own powerlessness the typical Muslim response is to fight back. I think that's a positive thing.

But on the other hand, Muslims are absorbed with the notion of success and unfortunately identify this success with material success. It doesn't have a spiritual content so they do not take care to develop their spirituality; except the Muslims who are living under non-Muslim rule. In my experience amongst the most deeply spiritual Muslims I have met in my life are the Muslims living in the Soviet Union. Now I've had experience of meeting them and I am aware of the deep spirituality because they are politically powerless. Perhaps that's why they can focus on developing their spiritual element.

In the modern situation we are confronted with this whole challenge of what do we do, where do we go from here? First we have to understand that mainstream Islam is dominated by the *shariah*. The *shariah* is not divine; it's all human. It's full of flaws but this is what dominates, and has dominated the Islamic tradition for the last thousand years. We need to understand the importance of bringing back into Islam these two elements (mysticism and philosophy) which were very foundational in the formative period of Islam.

Let me give you one actual example of what is going on. In England, for instance, there is a huge problem for Muslim women; most of these Muslim women are Pakistanis. Young girls have grown up in Britain, and have been through the British system, but nobody is willing to marry them. Their parents will not allow these girls to marry British Muslims because we've got an inverse racism going on there. You can't marry a white man. On the other hand, Pakistani men will not marry these women because they're "too fast". If they want to marry a Pakistani woman, they want to marry one from their village back home. So there are thousands of women sitting there who nobody is going to marry. This is one problem of the Muslims in Britain. There are huge problems of education, of how these women are locked up and are not sent to school and so on. An interesting thing is that an increasing number of these women are now becoming Sufis. They are saying, "We are not Pakistanis; we are not Iraqis; we are

Muslims; and we are going to practice our Sufi way because it's going to liberate us from all this nonsense."

We have to reintroduce the element of rationalism. All the effort that we're making at re-interpretation of the Qur'an, development of theology, interpretation of history, is all in this area. I think we have to also ponder very deeply this whole question of the Muslim identification of Islam with success and this very macho notion of success that Muslims have. It's not a profound concept of strength and success. These are just some things that I'd like to put up for your consideration.

Participant: Among some people, *ijtihad* was never stopped, for example, among the *Fiqh-e-Jafria* who even now interpret Islamic laws. I think if we try to take advantage of this interpretation it may be helpful for us. For example, about Hudood, let me read one or two rules:

"Whenever a man or woman who has performed sexual intercourse claims to be labouring under a misunderstanding, or ignorance his or her claim shall be accepted without any witness of both, and the *hadd* shall be set aside."

"Whenever a person confesses to having committed *zina* which is punishable by *hadd* and then subsequently retracts, the judge may acquit him or her of *hadd* punishment."

I think these are different interpretations. If we just try to find the different interpretations, our job may be easier.

There is another section about witnesses:

"The witnesses shall give evidence without any interval so that if some of them give evidence while the others do not appear immediately or fail to give evidence immediately, the *zina* shall not be established. And the witness shall be liable to *hadd* for false accusation of *zina*."

This may stop people from giving false witnesses; that is, if it is not proven then the witness himself will be punished. This is in the Qur'an and these interpretations may be helpful for us - especially Dr. Sharyati and Ayatollah Murtiza Mutahhari (14) who have done a lot to reinterpret and to provide new interpretations.

Resource Person (1): We should take whatever seems more reasonable. I don't believe in identifying myself as Hanbali or Hanafi anyway. I think we are Muslims and if we could get back to that it is enough.

Participant: The question of *fatwa* still remains unanswered.

Resource Person (1): In general, a *fatwa* is the opinion of a person who is supposed to be learned. When *ijtihad* was allowed to be practiced, a person who could practice *ijtihad* was called a *Mujtahid* and this person's opinion carried a lot of weight. Of course,

14 Dr. Ali Sharyati: a French-educated Iranian sociologist and progressive scholar of Islam who opposed the Pahlavi regime in Iran. Supported a radical interpretation of the Shiite School and the concept of a 'monotheistic classless society'.

Ayatollah Murtiza Mutahhari: influential critic of the Pahlavi regime.

in Shia Islam, you have had *Mujtahids* to this day; and in Iran, for instance, these are people who go through the whole education curriculum, sort of like acquiring a degree after which they are called *Mujtahids* and then they are considered competent to give opinions. In Sunni Islam you don't have that mechanism, but if for instance there is some issue that you want an opinion on, you go and solicit that opinion from the Mufti of Al-Azhar or some place like that, a recognized scholar. The *fatwa* is actually a proclamation. It is not binding. It's a recommendation. It has no legal force and you may or may not accept it.

Resource Person (2): *Fatwa* is a Qur'anic term. It says *yustaftinuka alnisa'*, "They ask you to give a *fatwa* concerning the woman." It is in Surah Al Nisa. The term exists early in Islam and all it means is to be able to give your opinion on a certain matter. When it became fossilized you have a *fatwa* meaning a legally binding edict, this is where it is now. Having started off as a term in the Qur'an; somewhere between where we are now and the Qur'anic time it came to mean that only these people, who had certain types of training and had this title of *Muft*, could issue something that they consider a legally binding edict with regard to modern issues or whatever. But, I'm not clear on when exactly.

Participant: I'd like to throw a little bit more light on India. Most of us have this perception about Islam as a very militant force coming in, conquering the whole continent, but I would like to cite one instance of how accommodating early Islam was in India. There's this text written in medieval Bengali known as "The Victories of the Prophet". This is a part of what is known as "The Puthi Literature". It used to be sung. Now, very recently, it has been edited and published in two huge volumes by the Bangla Academy. It's written by a 15th century poet, Sayed Sultan, who probably came in with the conquerors. In his preface to the poems he begins by saying that, "I'm a sinner and I beg forgiveness from God that I've written this whole thing in Bangla but I'm appalled when I go and see that the Muslims, or the so-called Muslims in this country, they all know the Ramayana and the Mahabharata by heart but they don't know anything about the Prophet. So I hope that because I'm writing this for the Hindus I'll be forgiven". It's so beautiful because he brings all these stories from the Middle East and culturally fits them into the Bengali background. For example, on how the Qur'an was revealed he says that this Qur'an is not something new, it has been there from the time of Vishnu, from the time of the other gods and this is just another holy book God has sent down through the ages with the prophets. Vishnu himself was one of the prophets and all these holy books have been sent, but because man is so evil these books have become polluted and once more it was necessary for another great prophet to come. He cites particularly the example of Krishna as one of these prophets who was sent down by God but he was so handsome that the women started falling in love with him and he very soon forgot what his true, divine vocation should have been. Then suddenly one day, he heard this divine voice reminding him of why he had been sent and realised his failure and he was taken up again. But women couldn't forget what a great guy Krishna was so they made idols of him and started worshipping the idols. It goes on until he comes to the actual wars that Muhammad fought.

Reading the book nobody will think that these wars were fought somewhere in the Middle East. I mean, he encounters tigers and lions and goes through jungles and there are storms. It's all very much Bengal but the hero is the Prophet. Then when Fatima has just heard that Ali has been killed and she's so grief stricken, she's tearing her hair,

she's wiping away her *sindoor*¹⁵, she's breaking her bangles [general laughter with "Oh my God!"] because she's appalled. She's almost mad with grief that her husband is dead, and these beautiful women are all wearing saris and, they're all eating *paan* (betel leaf) [general laughter]. The environment is absolutely Bengal. So, this man in the 15th century knew that he had to interpret the religion in terms that were acceptable to the people around him. There is no question of forcing. He knew that to make it acceptable, he had to talk in terms of what these people understood. They had never seen a desert. When we talk about cultural accommodation, I think a lot of people still don't know about Sayed Sultan. I'm sure there must have been several other authors who wrote at that time. (In fact medieval Bengali literature was advanced to a great degree by the Muslims because to Hindus the sacred language was Sanskrit, and Bengali as it was spoken was not patronized by the Brahmins because of control.)

These traditional stories and transmitters were the torch bearers of a new kind of cultural pluralism. I think we cannot define what is pure Islam and be rigid about it. I don't know about the other areas of India but I know that this kind of literature does exist in Gujrati Islam. For example, one of their sacred books is called the 'Safatar', where the Prophet is cited as one of the reincarnations of Vishnu.

Participant: Such traditions have also existed in Sufism in Sindh where stories of Lal Shahbaz Qalandar, Darya Badshah, all had a Hindu God and a Muslim God at the same time or a Muslim deity almost. There are a tremendous number of such stories.

Participant: I would like to go back to self-image. This is perhaps a very critical element to look at in order to make sense of what's happening today and find space within today for creating a better future.

You say that if we look at the self-image, then there is amongst the Muslims an obsession with success. I was wondering whether you would equate this obsession with success to this self-image of superiority. With superiority then comes ... a certain sense of arrogance and that itself has an adverse effect because everything else then becomes secondary and then can be treated as an object, not having equal rights with that superior people.

Two questions: one is: this notion of self-image reminds me of a very interesting analysis made of the concept of self-image within the Hindu tradition. This writer has very elaborately, very convincingly argued and shown how British colonialism - within the sub-continent the Hindus have been ruled by Muslims before that, but he makes a specific point about British colonialism - at a certain point in time changed its own focus and how then that had an impact in turn on the self-image of the Indian. The forces of colonialism have played a major role in the shift in self-image. It would be interesting to see what sort of impact colonialism had on the Muslims' self-image.

Secondly: whether within the tradition there is material to counter the negative aspect of the arrogance and the superiority within the self-image which becomes self-destructive and from where does one then begin. Specially vis-a-vis men, because within that structure we find our behaviour pattern and sense of superiority being like a schizophrenic split within the Muslim concept.

15 A red colouring applied to a Hindu woman's hair parting, signifying her status as a married woman.

Resource Person (1): It's interesting: this obsession with success and power is understood in the colonial period in a very male-chauvinistic sort of sense. Your initial question was the impact of colonialism. Until the modern period, even though Muslims were losing power here and there the Muslim world or the Muslim people collectively did not experience a sense of total powerlessness because as far as the 16th-17th centuries, you have still two great Muslim empires: the Ottoman Empire and the Mughul Empire. Only after the colonial period starts do Muslims everywhere begin to experience powerlessness without having any historical or psychological resources to deal with it. It came as a tremendous psychological jolt to them.

There were different reactions to this shock. I just described the two most dominant reactions. One was that, "Okay, we've arrived at this sorry stage and we have been stripped of power and what are we going to do now?" The reaction of the Reformists was, "We need to look within ourselves, we need to reform ourselves, there's something wrong with us." There was also another reaction which was total pacifism and fatalism that you find very much in India. This whole notion of *qismat*, everything that happened is the will of God. Just think about it: these 1,400 people died in this tunnel and King Fahd not only said it's the will of God, he said, "These 1,400 people, if they had not died here, they would have died somewhere, so..." Can you imagine? To say this is the will of God, what a mockery. But this was a reaction: fatalism, there's nothing we can do: let's go to the mosque and pray and pray and turn our thoughts to God. During that period, it was the Reformists who were successful in awakening and mobilizing people into action (e.g. Sir Syed's Aligarh movement and Allama Iqbal in the sub-continent).

But then you have the rise of the neo-colonialists and the Revivalist movement. For the last 20 years there is, again, this whole process of Islamization: "We have to make Muslims Islamic because if we make Muslims Islamic we'll be successful, we'll be powerful in the world." This is also a lesson that many people derived from the Iranian revolution. One of the reasons so many Muslims who were not even Shia began to identify with the Iranian revolution was because Ayatollah Khomeini was the first person in the neo-colonial period who took a stand against the West, especially America. There's this tremendous anger of the subjugated people against the colonizing power and so, he was able, in a sense, to represent emotionally the resentment of the people.

But in terms of our collective thinking what is very important is that it is this notion, this Muslim obsession for power which is being understood in very crude, male-chauvinistic, macho-types of ways which is leading to all these acts of violence against women.

Participant: I'd like to share something about traditions. If we go back one or two generations for instance, if I go back to the time of my father, my father was a very conservative Syed of the old school and most of my life I spent fighting against him and I really did not understand him very well. He was to me a dreaded figure of authority, who sacrificed his daughters on the altars of convention and I had a very hard time dealing with him. It was much later, perhaps even after his death, that I began to understand certain things about him and about tradition. We often use the word 'tradition', 'traditional Islam', 'traditional Muslims', but tradition actually works in very subtle and complex ways. My father was a very conservative Muslim i.e. he did believe that he was the patriarch, the head of the family, he did have a notion of the place of the woman and the place of the man. He did think that the best thing for his daughters, was to be married at the age of 16 to people who were chosen for them. He did believe in these ideas (over which I fought with him all my life) but at the same time, he was bound by

tradition. He believed that women were to be honored and he honored my mother all his life although my mother never honored him. My mother was a radical feminist. She's a very unusual woman. Not only did my mother never respect my father, my mother always insulted my father because my mother is non-traditional. But because my father was traditional, he always honored her. He was bound by his tradition and till the last day of his life, he remained gracious and courteous and chivalrous and took care.

When I look at my brothers, who claim the same privileges as my father, they are a very cheap imitation of my father. While they are claiming the privileges of tradition, they have none of his graces, they have none of his values. What we are seeing is machismo, its not traditionalism. I think we have to distinguish between these things. Traditionalism had a different aspect and that same lack of traditionalism is also found in today's so-called liberated women. There are a lot of women in the world, including a lot of Muslim women, who think being liberated is to have the freedom to do absolutely nothing. To sit all day long, read magazines and have no obligations and do whatever you want. I don't subscribe to that notion of liberation. I think liberation entails tremendous responsibility. I think that a liberated woman is a woman who takes time to develop herself, who takes responsibility for herself, who works, who pays her bills. It's a spiritual thing, a moral thing, an intellectual thing and a woman who sits around all day wasting her life or goes out all the time or whatever, to me that woman is not liberated at all, that's not my notion of liberty, liberation and emancipation. I think everybody has to live within a framework of duties and responsibilities whether they are derived from the Qur'an or someplace else. But I think that something terribly wrong has happened in the last 20 years in Islamic society which is a total erosion of values and I think that is very relevant to what is going on here.

Participant: It seems that there is a tremendous amount of literature and emphasis on specificities, on particulars, on, "Okay, there's this instance and there's this *ayat* and this we derive". But there seems to be a lack of having evolved a general ethical framework within which you could then continue to derive laws. The broad outline as said seems to be missing. I would tend to agree.

Resource Person (2): The tendency in the development of Islamic *shariah* was to codify particulars. The ethics of the Qur'an were never developed. In order to be able to liberate some of the laws from the chains of the particulars that hold so tight a noose around our necks, we would have to go back and establish ethical principles of both Qur'an and *sunnah* that can then be established into hypothetical case scenarios. However, we have a large repertoire of real cases to apply them to. No, it's hypothetical based on cases. To be able to effect this kind of change requires a development of a section of Islamic thought that for fourteen hundred years has not been developed i.e. ethics. There is no Qur'anic ethics. There is no ethics of *sunnah*. Other religious traditions actually have a subject called Ethics. Within that context they have established certain principles. These are not 100% transferable to the Qur'an. The Qur'an needs to evolve its own ethics but this requires that we study the Qur'an. There's a very good article on this by Fazlur Rehman called, '*Theology: The Theory and Implementation in History*'. It's a very dense article, not something very easy to read, but he does trace the tendency of the Muslims to codify the particulars as opposed to the ethical principles and the question of ethics is wide open.

Participant: A very minor addition. If you look at *The Hedaya*, for instance, as evidence,

people are so concerned with particulars. They have a book of sales, a book of this a book of that. That's how it has been in most sects. Reform and codification - some people call the period of the codification of Muslim laws '*nec-ijtihad*' - are guided by certain principles but I'm not sure whether they are universal in the sense that they are a code of ethics guided by certain principles, by 'public interest'. But what is public interest? People need to know the law, for instance, and therefore they codify the law in the interests of the public and in the interests of the public, polygamy must be restricted because you have too many children if you are not careful. Things like that have been going on under principles of codification, principles of public interest which is a very new thing. But, I'm not sure if this public interest is Pakistani public interest, Malaysian public interest etc. So I'd agree with you: we have to at least have this universal code of ethics. Like this concept of *ijma* contemporary jurists are concerned about. Can you have this concept of universal *ijma* so that wherever you are, it is this one code that we are looking at.

Participant: While talking about law I was concerned that we remind ourselves that there is a difference between law and justice. What law strives to do is to ensure justice but very often in that striving one loses sight of justice and I'm not very sure whether we are all in agreement as to what is justice, especially social justice, and how (somehow or the other) that has to be the guiding principle, instead of getting into the nitty gritty of clauses and sub-clauses within the legal framework that emerges.

One can easily say that the dynamism of Islam really lies in comprehending and understanding justice as justice for all human beings, not as men, women separately; that would give us strength. While focusing on codifying things if there is also a parallel stress on keeping open the debate of how justice and purity can be retained and carried along with it. The question is how do we deal with it.

Interpretation & jurisprudence - looking back before we move forward

Chair: We have had quite a wide ranging and free-wheeling discussion on different points and it has been extremely useful to me, but as today's session is coming to an end we have to decide what have we agreed upon.

In my view, we seem to have agreed that women in reality are oppressed. There is no difference of opinion on that. Secondly, religion is used to oppress women also. In reality this has been a fact and is continuing. I think it has also been agreed that this has been done through the way the Qur'an has been interpreted - and mostly by men. Therefore taking the next step logically, we all agree on the need to reinterpret those verses which are used to make women subservient. If there is a difference with this assessment I would like the difference to be expressed now so that we can move to the next step.

The next thing under discussion was 'What is going to be the methodology of the interpretation?'. We have identified at least one verse which we want to focus on for reinterpretation. But there are also other verses. Most importantly, I am not quite clear on what methodology we have identified as appropriate for dealing with interpretation. For the next five days, do we interpret these verses relying on the Qur'an alone? Do we look at the *sunnah* or history? How do we relate it to our present contemporary situation? Could we come to some sort of summary of what we plan to do in the next

few days.

Resource Person (1): According to my schedule, we are supposed to deal with a particular verse to be discussed not only in terms of meaning, but also in terms of methodologies employed to get at meaning. I think it is a little bit abstract to talk about methodology outside of real verses, outside of real context. I don't think we want to finalize methodology before we actually start to talk about verses.

Participant: I would like to go from the reality of what happens in our society or country and then try to reinterpret the Qur'an. Of course we need to focus on 4:34 and then other *ayaat*.

Participant: The scope of the work that you have identified in the programme is very good, and serves what we are trying to achieve. *Hadith* literature is still important to look at because the men always throw one *hadith* after the other when we come up with an argument on the status of women that is different. And maybe identify what ways we could learn more about the *ahadith*.

Participant: We need to identify gender oppression from an Islamic perspective and the links it has with other structures of oppression: social, political and economic.

Resource Person (1): I don't think realistically that we are going to come to the end of the Qur'anic *ayaat* tomorrow, because we have at least three presentations: first of all on 4:34. Of course, history and the *ahadith* are all going to keep coming into it because in each of these interpretations you can't understand the interpretations unless you know something about these elements.

Participant: People say that our main focus is this particular *ayat*, and within this we are looking at all these things instead of saying, "Now, you stop here and start talking about gender equality in history."

Chair: As said in the morning, this agenda is tentative. The idea was just not to forget history.

Part 1 B:

The Foundational Myths and Surah Al Nisa (4): verse 34

Resource Person (1): It is a given in all Muslim societies and all Muslim communities that men are superior to women and that women therefore are inferior to men. I have been very interested in trying to investigate the theological sources for this assumption.

Let me make a couple of basic distinctions here before we get into the text. Yesterday there was some discussion or reference to the notion of revelation: the Qur'an is the word of God and so on. I suggested that we not get into it because it is a very complicated theological question which cannot be discussed without adequate ground work, which I think we do not have time for in this workshop. But what we need to bear in mind before we look at this actual text is that we are dealing here with two different bodies of text.

First there is the Qur'an in Arabic: the written text which Muslims believe is the accurate rendering of the oral tradition. Then we have interpretations of the Qur'an. Now one basic problem is the majority of Muslims of the world - who incidentally are not Arabic - speaking and don't understand Arabic, but this even applies to people who may read and understand Arabic - do not adequately distinguish between the Arabic text and the interpretation of the text.

As a result in discussing something they say, "The Qur'an says such and such," and you ask, "Who said so?" and they say, "Yusuf Ali said so." But what Yusuf Ali said is not the Qur'an. A very basic point we have to make with emphasis, is that what anybody is saying - be it Yusuf Ali or Pickthall, Maududi or Pervez, or anybody else - what they are saying is their understanding of the Qur'an. It is a human understanding and no understanding of the text is equal to the Qur'anic text, and no human understanding of the text can obscure the Qur'anic text itself. You can never say about any interpretation of the Qur'an: "This is it. This is what this *ayat* means" because it is not one person, or one group, or one movement's understanding of the text that is valid.

Another very basic point is that Semitic languages don't work the way English or many modern languages work. In order to know what any Arabic word means you have to know its roots, and every Arabic word has multiple meanings. You cannot say in the case of any Arabic word that "This means this only and nothing else." Its meaning depends on the context, and interpreting the context is again a subjective activity because different people may interpret the same text in different ways. These are some basic things that need to be kept in mind.

Now I want to introduce you to 'textual analysis' which has been done for quite a while in the West, but it is still something that is not generally done in Muslim societies, though in the past there have been instances of its usage.

Firstly, when we read any sacred text - not just the Qur'an, for the Jews and

Christians it is the Bible, for the Hindus the Vedas, etc., - we read it differently from the way we read other texts. Our intellectual, or emotional attitude is quite different because we believe that it is sacred; which means we do not subject it to critical analysis the same way as we would study any other text.

One of the results of that reading is that sometimes we either miss things which are in the text or we read things into the text which is isogesis (when you read things back into the text which are not in the text - exegesis is bringing out the implications of what is in the text).

There is another problem. There is a difference between studying the Qur'an and studying the Bible. Everybody knows that the Bible has several authors, some of them known and some unknown. For instance, once I was talking to a Christian theologian at Harvard and we were discussing certain stories, such as the stories of Mary's immaculate conception and the Virgin Birth, etc., and I said to her, "Well, what do you do about such stories? There are passages in the Bible that are just unbelievable. They are horror stories. What do you do with that?" And she said, "I just read what I like." We don't have that option: we have to take the Qur'an in its entirety. Because we believe the Qur'an is the word of God, we cannot just leave any passage out and say, "I don't like that so I don't have to accept it."

Presentation and discussion on Creation

Resource Person (1): There are three foundational questions to the issue of women in Islam.

1. The belief that God's primary creation was Adam and woman was created from a male's rib therefore she is secondary, derivative and subordinate.

2. The question of the Fall i.e. that Eve - Hawwa, a creature never mentioned in the Qur'an - was instrumental in the exit of Adam from Paradise, therefore no daughter of Eve is to be trusted, and

3. The purpose of woman's creation, i.e., the belief that not only was woman created from Adam but for man, which means that only man is of fundamental value and that woman is instrumental to man.

We have to understand that all of these things are intertwined. Therefore it is very strange that in identifying the problematic *ayaat*, the ones that refer to the Creation and the Fall were not considered problematic; whereas they are the most problematic because it is the assumption that man and woman are unequal from the point of creation; that woman was in fact responsible for the fall of man that is at the root of the other sources of inequality. These are the most foundational myths. These are much more important theologically and philosophically than any of the other *ayaat*. If you look at 'woman and creation' you put this thing into some sort of a context.

If you ask the average Muslim how was woman created, the answer comes back in a flash: she was created from the rib of Adam. I have put that question to many Muslim audiences in various countries and I have always received the same answer without any hesitation; to which I said: "You are very good Jews and Christians: this is not in the Qur'an." Not only is it not in the Qur'an, it is against the teachings of the Qur'an. In the Qur'an we have thirty passages or so relating to the creation of man and woman - the same passages for the creation of man and the same passages for the creation of woman.

Let me give you a little historical background. This story that Eve was created from

the rib of Adam is one of the two creation stories in the book of Genesis which is the first book of the Bible. There are two creation stories: The first story is in Genesis 1: verses 26-27. The second is in Chapter 2: verses 21-25.

For a long period of time it was believed that the first five books of the Bible were written by the Prophet Moses. It is now no longer believed that that is the case. We don't know who wrote the first five books of the Bible. The authors are identified by code names: and these two creation stories are attributed to the 'Priestly Writer' and the 'Yarvist Writer'. The first story of creation is totally egalitarian and says: "and God created Adam, man and woman. And they were both created in God's image and they were given dominion over the sea, the land" and so on. It is totally egalitarian: God created man and woman at the same time, in the same manner and gave both of them power over everything else. The second story is the Yarvist story in which God created Adam and Adam was lonely, so God tried to find a companion for Adam. He was not successful. And then God put Adam to sleep. Out of the rib of Adam God created a woman. And when Adam awoke and found a woman he was delighted and so on. The second, Yarvist story is five hundred years older than the other story, written in the 10th century.

In the Christian tradition the first story - which is the later story - has in fact been forgotten. When you ask them about the story of creation everybody will tell you the Yarvist's story of creation: woman being created from the rib of Adam.

I cannot over-emphasize to you the important impact of the story on the status of women in the Christian tradition. If you read Christian writings starting from St. Paul down to the 20th century, in each and every one of these writings there is an argument which is along the lines of 'man is the head of woman for woman came from man; not man from woman'. These are the words of St. Paul, but they have been repeated over and over by St. Augustine, St. Thomas down to the 20th century, including all the Catholic fathers; all the Protestant theologians including Martin Luther. It is a refrain that runs through the entire body of writings, which means that the superstructure of man's superiority over women rests on this one idea more than anything else.

The second idea, which reinforces this first one, is: she was responsible for the Fall. These are the two ideas that are the basis for asserting that man is superior to woman. Now let's look at the Qur'an.

The Qur'an is not chronological like the Bible, so if you want to know what the Qur'an says about creation, you have to look at all of the thirty or so passages that relate to creation. It is important to note that in all of these passages of creation the words that are used for humanity are three generic terms: *al-insaan*, *bashr*, and *an-naas*, and none of these three words mean only 'male' or 'man'. They all mean 'humanity'.

There are various ways in which creation is described in these passages: sometimes as spontaneous: "God said be and it was"; sometimes in stages: the growth of the embryo, the fetus and so on; and sometimes in terms of progressive evolution. But no matter how it is described it is always the creation of the human race. Never only male or female.

Now about the word *aadam*. Most people assume that the word '*aadam*' refers to a man. This is the first mistake we have to correct because the word '*aadam*' in Arabic is the co-opted form of the word '*adaam*', which is a Hebrew word. The root of the word is '*adama*', which means 'earth'. The word '*adaam*' means 'from the earth' or 'of the earth', in other words it means 'the human' and is also a generic term for humanity. It does not mean 'man'; it does not mean 'male'. Even in the book of Genesis where it is

translated "and God created man", it is wrong because in the Hebrew Bible it says, "God created the *adaam*" which means God created the human. It does not refer to man.

If you look at the context, the word '*aadam*' is used in the Qur'an 25 times - and 21 times out of 25 times as a term for humanity. Only twice is it used as the name of an individual. One, Surah Ali Imran (3): verse 59 says God created *aadam* from the earth, that is what the word '*adam*' means. The word '*aadam*' does not appear in the creation passages of the Qur'an. It does not say anywhere in the Qur'an that Adam was the first man, or that Adam was a prophet or anything like that. The first reference to Adam is in Surah Al Baqarah when it says: "and God said to the angels I will appoint *adam* as the *khalifat ul fil arq*" It's not about the creation of Adam, is about the installation of *adam*, as *khalifat ul arq* (viceregent on earth).

Surah Al-i-Imran (3): verse 59

The similitude of Jesus
Before Allah is as that of
Adam;
He created him from dust,
Then said to him: 'Be':
And he was.

'Inna maṣala 'īṣāa 'īndal-
laahi ka-maṣali
'A d a m;
khalāqahuu min-turaabiin-
sum-ma qaala lahuu
'KUN' fa-yakuun.

إِنَّ مَثَلَ عِيسَىٰ عِنْدَ اللَّهِ كَمَثَلِ آدَمَ خُلِقَ مِنْ
تُرَابٍ ثُمَّ قَالَ لَهُ كُنْ فَيَكُونُ ﴿٥٩﴾

The question then arises: if in the Qur'an there is no Eve story at all (since *aadam* stands for the human species what need do you have for Eve?) and not the faintest 'rib story' how is it that the Muslims believe in it? I want to pull out one very quick, extremely interesting exercise concerning one of the problematic verses pointed out. Surah Al Nisa (4): verse 1 says: "O mankind! (the word is '*an naas*') reverence your Guardian-Lord, Who created you (plural) from a single Person...

This creation passage says God created *khalaka qom* (all of you) from one single *nafs* - there's a lot of literature on *nafs*. Prof. Fazlur Rehman translates it as 'being' or 'self', let's go with that for the time being. Then it says God created '*minhaa zawjahaa*'. And Yusuf Ali's translation says: "created, of like nature, his mate". If you look at all the other translations, you will see that 90% of them translate '*minhaa zawjahaa*' as 'his mate'. But the word '*ha*', as anyone who knows basic Arabic knows, means 'her'. So that literally it means 'created from her, her mate'. In Arabic every word is feminine or masculine and the word *nafs* is feminine, and the *minhaa zawjahaa* refers back to *nafs* - all in the feminine. Grammatically, the original *nafs* is feminine, not masculine. How is it then that all these great scholars of Arabic have translated it as 'his mate'? When people say "this is the word of God, we must not take any liberties with it", how come we are correcting the grammar of God? This is a very serious question.

One or two translations I have come across, translate this as 'its' mate, which is grammatically not possible in Arabic. It has to be 'her mate'. If something is grammatically feminine it doesn't mean that it is actually feminine, we all know that, but why is it that the translations are wrong? There is sexual politics entering into the language here.

Surah Al Nisa (4): verse 1

O mankind! reverence
Your Guardian-Lord,
Who created you
From a single Person,
Created, of like nature,
His mate, and from them
twain
Scattered (like seeds)
Countless men and women -
Fear Allah, through Whom
Ye demand your mutual
(rights),
And (reverence) the wombs
(That bore you): for Allah
Ever watches over you.

Yaaa - 'ayyuhan-naasut -
ta-quu Rabbakumullazii
khalaqa-kum - min-
Nafsiñw - waahida - tinw-
wa khalaqa minhaa
zawjahaa wa baṣṣa
minhumaa ri-jaalañ -
kasiirañw-wa nisaaa- aa.
Wattaqulaa - hallaḡii ta-
saaa-'aluuna bihiñ wal-
'arḡaam: 'innallaaha kaana
'alay - kum Raḡiibaa.

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّ الَّذِي خَلَقَكُمْ
مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَ
بَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ
الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ
عَلَيْكُمْ رَقِيبًا ①

Maulana Maududi is the only person that I have found who gives a reason. He says here in his commentary, "At first one human being was created and then from him the whole human race spread over the earth ... We learn from another part of the Qur'an that Adam was that 'single sou'." Please note Maududi doesn't say which part, there's no reference. He goes on: "He was the first man from whom the whole of mankind sprang up and spread over the earth. We have no detailed knowledge of how his mate was created of him." There are thirty creation passages, but he says we have no knowledge. "The Commentators generally say that Eve was created from the rib of Adam and the Bible also contains the same story. The Talmud adds to it that she was created from the thirteenth rib of Adam. But the Qur'an is silent about it, and the tradition of the Holy Prophet that is cited in support of this has a different meaning from what has been understood. The best thing, therefore, is to leave it undefined as it has been left in the Qur'an, and not to waste time in determining its details." (Maududi: 1990: 94)

Don't you think that's marvelous? Having made the deadly statement, then he doesn't want to discuss it. Let's examine what he's saying. One point here is that there is nobody, but nobody who rejects the Jews and the Bible like Maududi does, but here he has absolutely no hesitation in citing them as authorities because there is no Qur'anic authority for this story.

There is a mental process at work here. It says *nafs* equals first *nafs*, equals Adam, equals man, therefore it's all right to translate 'her' as 'him'. That's the process that is behind this translation. Just to point out that we have to be aware of this, because we usually just swallow it, but the grammar does make the difference.

Returning to the question that if there was no rib story in the Qur'an, then where did the story come from. The story could have come from two sources: either it came from Muslims reading the Bible, which I doubt very much, or it came from the *ahadith* literature, which is in fact what I think happened.

Let me read to you two *ahadith*, found in many collections, which tell the rib story.

"When God sent Iblis out of the Garden and placed Adam in it, he dwelt in it alone and had no one to socialize with. God sent sleep on him and then He took a rib from his left side and placed flesh in its place and created Hawwa from it. When he awoke he found the woman seated near his head. He asked her "Who are you ?" She answered "Woman". He said "Why were you created?" She said "That you may find rest in me." The angels said: "What is her name?" He said "Hawwa". They said "Why was she called Hawwa?" He said "Because she was created from a living thing."

This is very close to the Biblical text, except:

1) In the Biblical text, there is no reference to the left. In Arab culture, anything that is good and auspicious is associated with the right and everything that is unhealthy and inauspicious is associated with left. So left rib is as about as bad as it can get.

2) The other difference is in the Book of Genesis, when Adam names Eve he says "You shall be named Eve because you are the mother of all the living." The word *hawwa* actually means the source of life. Now here it says she is to be named Hawwa because she was created from a living thing. This makes Adam the primary creation, whereas in the Bible Hawwa is the primary creation, not Adam. So there is a subtle reversal. In Islam we have inherited the collective anti-feminist biases of the Jewish and the Christian traditions and the Bedouin Arab tradition, which is even now modifying these stories.

The most dangerous thing is that there are six *ahadith* - three from Sahih Bokhari and three from Sahih Muslim - which are really the source of the problem. Every *hadith* as you know has two parts: the *isnaad* which consists of the names of the transmitters, and the *matn* which is the content. I will read to you the content first.

First, three from Bokhari:

1. Treat women nicely for a woman is created from a rib, and the most curved portion of the rib is its upper portion. If you should try to straighten the rib it will break, but if you leave it as it is it will remain crooked. Treat women nicely.

2. The woman is like a rib. If you try to straighten her she will break. If you want to get benefit from her, do so while she is still has some crookedness.

3. Whoever believes in Allah and the Last Day should not hurt his neighbour. And I advise you to take care of the women for they are created from a rib, and the most crooked part of a rib is its upper part. If you try to straighten it, it will break, if you leave it it will remain crooked, so I urge you to take care of women.

Sahih Muslim:

1. A woman is like a rib. When you try to straighten it you will break it and if you leave it you will benefit by her and crookedness will remain in her.

2. Woman has been created from a rib and will in no way be straightened for you. If you wish to benefit from her, benefit by her while crookedness remains in her. And if you attempt to straighten her you will break her, and breaking her is divorcing her.

3. He who believes in Allah and the Hereafter and witnesses any matter he should talk in good terms about it or keep quiet. Act kindly towards women for woman is created from a rib, and the most crooked part of the rib is its top. If you should attempt to straighten it, you would break it, and if you leave it its crookedness will remain there.

Now this is the source of the rib story, but a big question here is how did this rib story get to the *ahadith*? I don't have the answer. This needs a lot of research because for the majority of Muslims in the world, the two books [of *ahadith*] which are most authoritative are Sahih Bokhari and Sahih Muslim. And what is considered to be *sahih* (correct) is not to be challenged. It is a fact, unfortunate as it may be sometimes.

Are these *ahadith* compatible with what the Qur'an is saying about human creation?

When I first found these *ahadith*, I did content analysis. It is very hard to analyze something which is illogical and these are illogical. They don't make any sense if you really start looking. For instance, if women are crooked, why should you be kind to them? Is crookedness a handicap, are they mentally handicapped? What is the problem? We don't know. I tried to analyze it because I felt that if I can show that the content of these *ahadith* are in clear contradiction to the Qur'an, we can dismiss them, since one principle accepted by all exegesis of the Qur'an is if any *ahadith* is in contradiction with the Qur'an it can be rejected. But some Muslim scholar friends of mine said "Who's going to accept that? The only traditional way in which you can break or reject a *hadith* is if you show that there is a weakness in its *isnaad*. The *matn* can be as ridiculous as possible, but if the *isnaad* is accepted as sound, you cannot reject the *hadith*."

Looking at the *isnaad* takes a long time, and I did that. Let me point out to you a couple of very interesting things about the *isnaad* of these *ahadith*. The most interesting thing perhaps is that all of these *hadith* start from one companion of the Prophet called Abu Hurara. I looked up the *Encyclopaedia of Islam* and in the article on Abu Hurara it says that during his life time he was a very controversial narrator of the *ahadith*, and that his contemporaries used to question him. But I can't cite that because the *Encyclopaedia of Islam* has been written by Orientalists, who are mostly Christian. I had to find Muslim sources. I found the work of Nizam, an 8th century Muta'azilite philosopher who said 'I reject the canon of *ahadith* because of Abu Hurara'. I thought I can use that but Muslims have absolutely no confidence in philosophers, (who are often considered heretics anyhow) so I can't even use that. Iqbal had made a statement in his lectures in which he said Abu Hurara was a controversial figure but a lecture is not much help. Finally, after much searching I was able to locate a statement by Imam Abu Hanifa. He came to my rescue because he said that he would not accept *ahadith* which were narrated on the authority of three companions and the first one he named was Abu Hurara.

I'm telling you this to illustrate the problems of Islamic scholarship, amongst other things. The point is, all scholars of Islam agree that the great majority of the *ahadith* were fabricated and are not genuine. Imam Bokhari himself knew that better than anybody else. He is reputed to have known over two million *ahadith*. He examined sixty thousand *ahadith* and he accepted less than three thousand. What was happening was that when, for whatever reason, you manufactured a *hadith* you could also manufacture the entire *isnaad*. Which means that perhaps Abu Hurara didn't say any of this. I cannot be sure. But in Islamic scholarship, it has not been possible to make a statement against anybody designated as a Companion of the Prophet. I want you to understand this was not the case in the early period of Islam. In fact there was a contemporary of Imam Bokhari who wrote a book called '*Refutation of Two Hundred Ahadith by Bokhari*'. During the early years of Islam none of these writings were considered sacred. But now it's considered a capital crime (by some) to say anything about any Companion. I want to point out that there is no clear definition of who is a Companion. We know the names of some of the people who spent a good portion of their lives with the Prophet but there were also other people who might have just spent an afternoon with the Prophet or one week, or one month who have been included in the list of the Companions. The whole area of who is a Companion is itself very problematic. But certainly nobody has the right to question them. Which means there is really no way to break these *ahadith* now.

In the case of these six *ahadith* if you look at the transmitters there are some very strange characters. For instance, one person by the name of Maithera who is a

transmitter of three of these *ahadith*. Fortunately in the 14th century when the *ahadith* were being compiled, there were also these encyclopaedias compiled in which you can find references for all of these transmitters. There are two stories about Maithera:

"Once Maithera who used to paint decorative designs on chairs was working in a house where a feast was being prepared for about thirty persons. After preparing the food for the guests, the cook went outside for some business. Seeing that the food was unattended, Maithera descended and ate all of it. After that he returned to his painting. When the cook returned, he found nothing in the kitchen except the bones. He brought the matter to the notice of the host. In the meantime the guests began to arrive. The host was puzzled and did not know what to do. The guests wanted to know what had happened, and on hearing that the food had disappeared were generally inclined to blame the cook. However when they saw the left-over bones they were struck down with amazement and they said that some *jinn* (evil spirit) was responsible for what had happened. One of the guests however spotted Maithera painting the ceiling. He knew Maithera and told the host that it was he who had eaten the food. Maithera was asked to come down and questioned about the food. He admitted that he had eaten the food, and said he could have eaten twice as much if it had been there. He said they could test him if they wanted."

This story has been cited by Bin-Geban, one of the most reputed scholars of *ahadith* literature. Then Al-Ismai, a great scholar of Arabic language, reports this story:

"There was once a woman and she made a pledge that if Allah granted her wish, a certain wish, she would feed Maithera to his satisfaction. Her wish was granted and she prepared a meal for Maithera. Although she requested him, because she was poor, to be moderate in his eating he ate food that was sufficient for 70 persons."

Now I'm not arguing that gluttony is necessarily akin to being a liar, but I would sure hate to give much weight to the testimony of that kind of person. It's not only that he's eating the food, but the manner in which the whole story is narrated. These stories were put in it because they were considered evidence of his character. The average Muslim has no notion of who these people were who were transmitting the *ahadith*. It's very important to know, there were not one but many people like this.

The *isnaad* of these *ahadith* is weak, and therefore these *ahadith* can be rejected.

Now what is the conclusion of all of this? The conclusion is as follows: these *ahadith* have actually superseded the Qur'an in terms of the thinking and the belief system of the Muslims. Muslims believe in the *ahadith* and not the Qur'an as far as the creation issue is concerned. So they believe that woman was created from the rib of Adam which is not in the Qur'an, but in these *ahadith*.

I will tell you why I attach so much importance to this issue. If God created man and woman equal and God is the ultimate arbiter of value, if two things left the hands of God absolutely equal - and it is stated in the thirty creation passages of the Qur'an that they were created absolutely equal - then if subsequently in human society, they become unequal, this has to be seen as a subversion of the plan of God. Because God created them equal, therefore their inequality in society is against the will of God. However if man and woman were created unequal by God then trying to make them equal is

against the will of God.

Thus, the ontological, the fundamental, question is "Did God create them equal or not?" Because if God created them equal there is no justification for making them unequal. The evidence is very compelling: it is impossible to reject the fact that God has created man and woman equal.

I also think it illustrates the methodology - this is a concrete example of interpretation of the Qur'an and how we can use it. I don't think we are stretching the text in any way. We are looking at the text very comprehensively, applying all the modern methods of interpretation. But I hope that the feminists work with this.

When I was doing work on this, my feminists friends in Lahore kept saying, "But what does this have to do with us?" You have to establish a link between law and theology, you have to know this is the basis. If we don't know the ground work then we're lost, but if we can establish from the moment of creation that man and woman were equal, we take care of a lot of problems.

Brief comments on the second foundational myth: The Fall

Resource Person (1): There are many examples of things that have happened to the Qur'an where either things have been left out or put in. For example, in the story of the Fall in the Biblical text, it says that there was the couple and God told them not to eat the fruit of the tree in the middle of the garden, and then they are tempted by the serpent. It says (Genesis: Chapter 3: verse 6) the serpent talks to Eve (we don't know why he chooses to talk to Eve) and says, "You know, if you eat that fruit you will not die. Your eyes will be open," and so on. Then verse 6 says, "and so she took the fruit and ate it and gave it to her husband who was with her." That expression '*emma*' in Hebrew, which means 'who was with her', has been omitted in centuries after centuries of translations - and most Jews and Christians do not know that. Why was it left out of the text? Interesting isn't it, because it reverses the meaning of the whole story if the man was with her all the time. According to the Hebrew text he was there all the time, but that is not there in the translations.

Then in the same passage if you go on the assumption - certainly of the majority of the Christians and certainly the majority of the Muslims also - that the first thing that happened after the Fall, according to St. Augustine, was that they had sex. This is also not in the Biblical text; this is also not in the Qur'anic text. But Maulana Maududi also says the same thing. He is very close to St. Augustine, especially in his attitude towards women.

The point is that it is imperative for women who are doing any kind of study on the Qur'an, to read the Qur'anic text very carefully. If you study the Qur'an you will be greatly reassured because the Qur'an is so much more liberating than the interpretations of the Qur'an.

In fact this is what the reformers in India and Pakistan and Egypt and other parts of the Islamic world in the 19th and 20th centuries have been saying. I am not the first person to say that we have to go back to the Qur'an and read the text.

We do not need to be afraid of the text but we have to read the text with our own eyes. We have not to read the text through the eyes of all of these male commentators or anybody. This doesn't mean that we reject the work of any of them. We have access to their work; we should study it; we should reflect on it, but it is imperative at this point of our struggle for self-identification; for liberation from centuries of oppression that we read the Qur'anic text.

Thank you very much for your patience.

First Presentation on Surah Al Nisa (4): verse 34

[The remainder of this section on the Foundational Myths is devoted to the third myth - that of women's inferiority to men.]

Chair: Our next session is on Surah Al Nisa (4): verse 34. We are going to have three speakers on the issue.

Resource Person (1): Asalaam-o-Alaikum.

In this session we turn to the third ontological question, namely, the purpose for women's creation. This has the greatest relevance in terms of actual life, because it deals with the issue of man-woman relationships in society, and particularly the relationship of husband and wife. We are going to focus on this issue this morning as we reflect together on Surah Al Nisa (4): verse 34.

If you ever get into a discussion on the question of equality between men and women in Muslim societies, people refer to two particular passages in the Qur'an in which it is stated - in the words of many translators - that "Men have a degree of advantage over women." These are the precise words. In Urdu it is said that '*Aadmi aurton say afzal hai.*' ('Men are superior to women.')

This assertion means that a hierarchy is set up in which man is superior to woman. My work has been done in a historical context and I have spent a good amount of time on the Biblical text, and on the Jewish and Christian traditions. This hierarchy is found in all of these three monotheistic, patriarchal traditions. In Christianity it is God, Christ, Man, Woman. So there are four strata in the Christian tradition, while the Muslims have at least these last two.

Yesterday, it was said that pre-Islamic Arab culture is responsible for the ills of women today. I think this is simplistic because it is only one of the things that has affected the status of women. There were other traditions - both religious and philosophical - such as the Jewish, the Christian, the Hellenistic Greek intellectual traditions, and the dualistic tradition from Persia - that created a certain environment in which sexist statements could be made. So we have to deal with a whole world view in which it is assumed that men are superior to women.

Bringing the discussion into closer focus, there are two statements in the Qur'an in which this particular expression is used, that men 'have a degree of advantage'. One is 4:34 which we will look at first and which is far more important than the other: Surah Al Baqarah (2): verse 228 which is in the context of divorce.

There are some of my friends round this table who spent yesterday afternoon doing their homework, and at the end of the day were totally stunned and shocked and getting a bit hysterical (if I may say so) because this interpretation just seemed so incredible looking at it from a 20th century humanistic perspective.

Surah Al Nisa (4): verse 34

Men are the protectors
 And maintainers of women.
 Because Allah has given
 The one more (strength)
 Than the other, and because
 They support them
 From their means.
 Therefore the righteous
 women
 Are devoutly obedient, and
 guard
 In (the husband's) absence
 what Allah would have them
 guard.
 As to those women
 On whose part ye fear
 Disloyalty and ill-conduct,
 Admonish them (first),
 (Next), refuse to share their
 beds
 (And last) beat them (lightly)
 But if they return to
 obedience,
 Seek not against them
 Means (of annoyance):
 For Allah is Most High,
 Great (above you all).

'Ar-rijaalu qawwaamuuna
 'alan-nisaaa - 'i bimaa
 fazzalal-laahu ba 'za hum
 'alaa ba 'ziinw-wa bimaaa
 'aafaquu min 'am-
 waalihim. Fas-Saalihaatu
 qaanitaatun haafi-zaatul-
 lil-gaybi bimaa hafi-
 zallaah. Wallaati takhaa-
 fuuna nushuu-zahunna fa-
 'izuuhunna wah-
 juruuhunna fil-mazaaji- 'i
 wazribuu - hunn. Fa-'in
 'ata 'nakum falaa tab-guu
 'alayhinna sabiilaa : 'in-
 nallaaha kaana 'A-liyyaā-
 Ka-biiraa.

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ
 عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالطَّيِّبَاتُ
 قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَحَافُونَ
 فَمُزَوِّجْنَ فَعُولَهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ
 وَأْخْرِجُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ
 سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ۝

This passage in the Qur'an, 4:34, became for me a test of faith because no matter how I tried to read it, there was no way I could accept it. I could not accept the idea that there was this hierarchy.

This passage is always thrown in your face. You start a discussion on equality and the answer is, "but don't you know 'ar-rijaalu qawwaamuuna' alanisaaa'." End of argument. In several years of struggling with it, the basic problem was that I kept on reading this in translation, simply because it is easier for me to read English than to read Arabic. After several years I saw that there was no hope at all of understanding what was going on here unless I went back and read the Arabic text and reflected on certain basic concepts in it. Once I started to do that the mystery began to unravel itself and the conclusions that I arrived at were astounding for me. Now, I can say that this verse which had brought me to the point of heresy is now the passage which keeps me faithful. So there has been a 360 degrees change. If we can really begin to understand what is being said here, we will get a totally different perspective on many things and I hope I can bring that out.

What I would like to do first of all is to go through the key concepts of this passage. Let me read to you this translation by Yusuf Ali (the most common English translation used) then go back and look at some of the basic concepts.

Among translators there is a range from ultra-conservative to ultra-liberal, and Yusuf Ali is a liberal translator. Notice that in this text whenever any word is put in parenthesis it is the author's own explanation of the text; it is not in the text.

I told you he was a liberal, Maulana Maududi doesn't say that 'lightly'.

Now, who do you think this verse is addressed to. Men, women, children? To men, right? It seems obvious but which kind of men? Fathers, brothers, sons, husbands? The assumption made by people who read this is that it is addressed to husbands.

But *'ar-rijaal'* does not mean husbands. It means 'men' and there is a difference between men and husbands. All right, let's go through this now.

Ar-rijaal means 'the men', *an-nisaaa* means 'the women'. The men and the women together, of course, comprise the Islamic *ummah* to whom this verse is actually addressed, not to husbands. There is no word for husbands or wives in this entire passage. It is addressed to the men and women of the Islamic community.

This is also supported by the grammatical construction of the passage. In Arabic you have three forms: the singular form of reference to a person, the dual form of reference to two persons and a plural form of reference to more than two persons. When reference is made to husband and wife, the Qur'an generally uses the dual and not the plural form. But throughout this passage the plural form has been used.

In the first part, the key word is *'qawwaamuun'*. You have these 29 or 30 interpretations of *'qawwaamuun'* that give you a fairly good idea of how this word is understood: 'in charge of', 'protectors', '*hakim*', 'rulers', 'managers', 'supporters', etc. If you read the translations of this passage in languages - such as Urdu or Farsi or Turkish - the most common translation of the key word *'qawwaamuun'* is '*hakim*,' which clearly means 'ruler'; in fact more than ruler because in Islam '*hakmiat*,' (sovereignty) belongs only to God. (In America's democracy, power is of the people, for the people, by the people, but in Islam sovereignty belongs only to God.)

Therefore to call somebody '*hakim*' is to use the equivalent of the word 'lord'. The word 'lord' was a name for God, then it was assimilated to 'the lord of the manor' in feudal society, then it became 'the lord of the house'. Hence, the attributes of God were gradually assimilated - indirectly and symbolically - in patriarchal society to become the attributes of male heads of the family. The same thing has happened in our society. By making the men '*hakim*' (ruler) you ipso facto make women '*mah'koom*' (ruled) don't you? If one is the master, the other one automatically becomes the slave. And that is what is meant when they use this phrase: 'men are hierarchically superior to women'.

The word *'qawwaamuun'* is a very key issue here. The root of the word is *qama* in Arabic. Basically, it means to support something; to hold something up. This word is used in many other contexts, but certainly one of the most important ways in which the word '*qama*' is used is in the economic sphere; it means the breadwinner, the supporter. For this interpretation there is support amongst many classical Arabic scholars, e.g., Imam Bokhari, in his commentary about this passage, uses the word 'breadwinners'. Yet it is very seldom used in this passage by translators. Since we are going back to the original sense, I will translate it as 'breadwinners'.

When I make the statement "men are breadwinners with regards to women" or "provide means of livelihood to women," what kind of statement is that? In philosophy, we distinguish between descriptive statements and normative statements. For instance, if I say this is a table, or this table cloth is white, I am making a descriptive statement,

describing the quality and attribute of this table cloth. But if I say I am a teacher, that is not a descriptive statement because teaching is not an attribute. Teaching is a function. It's a function that I perform. If I quit teaching today, I am not a teacher anymore.

Breadwinning is not an attribute. Breadwinning is a function. When this statement says, "men are *qawwaamuun*" - their relationship to women is as breadwinners - it cannot be saying that all men are breadwinners in relationship to women, because we all know some men who are not. What it is saying in fact is that men ought to be breadwinners. It is stating a function that is being assigned here to men in an Islamic community by God. We shall see why.

"Because God has given the one more (strength) than the other." The word strength is not in the text. There is an idiomatic phrase here *'ba 'zahum 'alaa ba'*, which literally means 'some in relationship to some', generally used in a comparative sense, to indicate when comparing two kinds of things, 'this is better than this in some ways and this is better than this in other ways'.

In the words *'fazzala'*, the word *'fazl'* also is used most of the time in an economic sense. The way that is understood here is that men are managers, rulers over women because God has made them superior - *afzal*. But literally if you read this text it says that God has blessed some more than others. That is what this passage literally means. The 'some' is indefinite and does not refer either to men or to women. There are variant readings possible. You can say 'some men are better than some women', and even vice versa or you could even say 'some men are better than some other men', which is the reading I will take, for reasons I will explain.

It is not a comparison between men and women but between men in terms of their ability to be breadwinners. This is absolutely and clearly admitted even by people belonging to the Jamaat-i-Islami, e.g. Abdul Hameed Siddiqi (who did very valuable work in translating Sahih Muslim). He says very clearly in his commentary that there is no way you could translate this passage to mean that men are superior to women. Textually, it is impossible.

Okay, to men is assigned the function of being breadwinners to women, and some men are better equipped, more blessed by God in doing that than other men. Let us continue. Therefore "the righteous women are devoutly obedient in guarding in the husband's absence what God would have them guard."

There is a patriarchal environment in which this passage was read and translated, so that prevailing assumptions influenced the translation of *'qawwaamuun'* as *hakim*, creating a hierarchy. Once you have created a hierarchy, you are going to interpret everything in that context: here is the man; he is the ruler and here is the woman and he provides for her and therefore she should be obedient to him. This is the traditional concept that has prevailed in Islamic society for at least a thousand years, if not more.

Let us see if this is in fact what is happening. There are three words here: *saalihaat*, *qaanitaat*, *haafi-zaat*, one after the other. The word *'saalihaat'* is translated as 'righteous women'. We all know that words are human instruments that change their meanings. What a word meant in the 7th century is not necessarily what a word means today. This is proven by the fact that few Arabs know how to read the Qur'an today. It's like few people who know English know how to read Shakespeare, and Chaucer doesn't even seem like English.

'Saleh' is today generally translated as 'good'. But one of the primary meanings of the root of the word is 'potentiality', 'capability' (we still have the word in Urdu and Farsi). The special potentiality that women have is bearing children. Theoretically, women can do anything that a man can do - fight wars, climb mountains, earn a living -

but men to date cannot bear children. This is one function that is gender specific.

The next word '*qaanifa*' generally translated as 'obedient' also has many meanings in Arabic. One of the meanings comes from the word '*qaanif*'. The Arabs used to live in the deserts where there was great shortage of water and water used to be transported from one place to the other in this thing (called '*mashak*' in South Asia) which in Arabic was called '*qaanif*'. It has a very similar shape.

'*Haafi-zaat*' means 'to protect' '*haafi-zaatul-ili-gaybi*'. The translation here says 'in the husband's absence'. '*il-gayb*' doesn't mean 'absence', it means 'that which is hidden', that which you can't see. There are two parts to this verse. The first is saying to males, they are assigned this function of being breadwinners to women, and God has blessed or enabled some to do it better than others. The second part says why the function of breadwinning is assigned to men, because to women is assigned the function of being child bearers since only women can bear children. And women carry the embryos in their bodies hidden from sight. They carry it until it is safely delivered like a water sack delivers water when it reaches its destination. What is happening here is a division of function.

Please keep in mind the fact that this verse is addressed to the Islamic *ummah* and the context is very specific: of childbearing. Later, I want to come back and explain to you why I think this passage is so crucial in a general feminist understanding of the Qur'anic concept of women. For the moment let's just focus on the text.

"As to those women on whose part you fear disloyalty and ill-conduct," - what does that mean? The word '*nushuuz*' means 'rebellion'. Does it mean that if the wife puts too much salt in your food, you have the right to beat the daylights out of her? Some people think that. They think any kind of thing they don't like is '*nushuuz*'. But it is not. This word is 'rebellion against God'. It does not imply what the husband wants you to do. God has assigned the function of breadwinning to men because the function of child bearing has been assigned to women. I read this passage very strictly in the context of child bearing. This is not a general statement of the relationship of men and women. This is only in a certain context, and reference is made to all men collectively. Whether a woman has a husband or not, Muslim society as a whole becomes responsible because only women can bear children and while they are going through this process of bearing children, they must not have the additional obligation of being breadwinners.

Now suppose there are women who rebel against this function, and say we are not going to have children; that must have perhaps been very surprising in the 7th century but it is certainly not surprising today. Certainly in the society in which I live there are many groups of women who are saying: "We will not be married. We will not have children, because marriage and children have been the greatest instruments for women's exploitation."

Suppose women en masse say, "We know God has assigned this function to us but we are not going to accept it." Please keep in mind this is not in reference to a woman who for any particular reason, health or whatever says this, or a small number of people, this is a mass movement - if this happens what is the Islamic *ummah* to do? Three steps are suggested:

1. Talk to them and find out why are they saying this. Do they have a grievance? It's a rather strange position to take. So why are they taking it?

2. "Refuse to share their beds," according to Yusuf Ali. This is a very promiscuous translation; extremely bad because this line more than any other line in this passage creates the impression that it is the husband being addressed because it is only the husband who shares the bed. The text doesn't say that. '*Wajuruuhunna*' is a very mild

form of command. It says, 'leave them alone in their beds'; solitary confinement. That is why we lock people up: we think that might induce some rethinking. So if they take up this position you should then leave them in solitary confinement.

3. And last, "beat them lightly" or "beat them." Now this root 'zarba' is one of the commonest roots in the Arabic language. If you look at *Taj-ul-Uroos* which is the most authoritative Arabic lexicon - there are four pages of meanings of the root word 'zarba'; there must be hundreds. How is it that all these men have arrived at one meaning, which is 'to beat'? Let me correct myself. There were two variations in the selections I gave you. One gentleman thought it meant to have intercourse and I don't know how he arrived at that either, and one said to propound parables. Those are the two variations but everybody else said to beat, whether it is beating lightly or beating soundly, or beating with a feather.

The idea of anybody beating anybody, to my frame of mind, is an act of oppression; an act of injustice; an act of violence. I don't care with what you beat another person, I think it is an act of injustice which is not to be tolerated and I don't think that is what this verse is saying. It doesn't make it better to say 'beat with a feather', or 'symbolic beating'. There is still the idea of beating.

If it doesn't mean beat what does it mean? Again in the same dictionary *Taj-ul-Uroos* it says that if the word is used in the legal context, it means to confine, to restrain. Now one principle of interpretation of the Qur'an which everybody accepts is that the Qur'an is to be explained in terms of itself. For instance, if an idea or word occurs many times in the Qur'an you have to look at all the contexts and see how it works. There is another passage in the Qur'an where it is stated that if women are guilty of 'fahasha' - immorality although it doesn't specify what kind - you shall confine them to their homes. Let me make one point here very relevant in today's Muslim societies. It has become very fashionable to assert, especially if you are in Pakistan, that if you are a good Muslim woman you remain within the *char deewari* (four walls of the house). I want to point out that according to the Qur'an, confinement to the home is a punishment for unchaste women.

It is saying here that if women are rebellious against this function, you should first talk to them, then leave them alone for a short period of time; if they still persist then you shall leave them there for a longer period of time; it is an indefinite confinement, but if they reconsider their position, then God is forgiving.

I have to tell you nobody else has interpreted this passage in this fashion so I am not going to claim a majority position here. But I am very convinced that this is a plausible interpretation and definition or explanation. The only thing I need to do is present a *prima facie* case. In fact, the more you think about it the more plausible it becomes. And I want to present a few arguments in that light.

One of the major concerns of Islam as a whole, as a way of life, is to create a just social order. Different religions have different goals. The goal of Christianity as a religion is redemption from the burden of original sin. Everybody is born in original sin to be redeemed from it by believing in the atoning sacrifice by Jesus Christ. The goal in Hinduism is freedom from rebirth: *moksha*. The goal in Buddhism is freedom from suffering: *nirvana*. What is the goal in Islam? The goal in Islam according to the Qur'an is to create a just social order. I think this is the primary emphasis in Islam. From the very first chapter of the Qur'an to the last there is the insistence on creating a just society.

This passage is fundamental because it talks about some very basic things. First of all, it puts tremendous emphasis on the centrality of bearing children. Suppose all

women in the world took the position that they will not have any children? So the centrality of this function is recognized.

For one whole year I had a running battle with the feminists in the Harvard Divinity School over this passage because they kept saying "You are saying that women are only mothers. And you are defining womanhood in terms of motherhood." I said, "I am not doing that and the Qur'an is not saying that women are only mothers. Or that women should do nothing but have children." It is a descriptive statement. Only women can have children and because only women can have children they must have support for that very important function which they are performing in society. If you are bearing a child you deserve the support of society. And to men is given the function of being breadwinners. I live in America which considers itself a very liberated society. What I am very aware of is that women in the West have undoubtedly won many rights that women in the developing world do not have and one of the most important is the right to work - the right to work themselves to death. Those of us who live in the West know what that means existentially. When I have worked 18 hours a day - which I normally work - my perception when I go to sleep at night is not, "Hah! look at me how liberated I am." I feel like a total slave of the institutions. There is absolutely no sense of freedom or exhilaration at all.

This freedom; this right to work; to be single parents; to be supermothers; to be super career women has actually produced in the women in the West a tremendous sense of exhaustion. Basically this situation is unjust. It is not right for a woman anywhere to have to bear all of these burdens. Many of us have no choice. I am a single parent. I have raised my daughter by myself since she was three months old and I have lived in the West. It is the toughest thing I have ever done in my life. I don't want to romanticise that. I think that it is unfair that I had to do this and that millions of women have to do this. I think that in a just society this ought not to be necessary, there ought to be a just division of functions. If not, what you produce is insanity; ill-health, lack of balance and oppression. Oppression has many faces. Women living in this society might think that oppression means confinement to the home; lack of opportunity. Let us make no mistake: it is oppression to deny women the right to be educated; it is oppression to make women feel inferior to men; it is oppression to tell women they can't do so many things which they can do. What I am saying is women are also oppressed if you expect them to do everything. To make them totally responsible for everything in the world is equally an oppression. Here, the Qur'an is presenting the paradigm of a just society in which there is a basic division of functions. Nobody says to anybody, "Look, I am doing you a favour." The men don't say to the women "Here you are sitting on your butt all day long and here I am slaving all day long" because they honour the function the women are performing.

This kind of justice is in-built in this passage and this is not the only passage. If you read the Qur'an, this is in all the passages relating to dower; to marriage; to divorce; to child bearing. For instance, within the context of child bearing, a beautiful verse in the Qur'an: if a divorced couple have a child, you shall decide by mutual consent if the child is to be weaned; if the mother is going to suckle the child, or whether the child is to be given out for weaning. It says in that passage, the father is not to be exploited on account of the child; the mother is not to be exploited on account of the child. There is enormous justice in the Qur'an and this constant balancing of things. I see in this passage a tremendous emphasis on justice which, of course, had all been lost because these patriarchal societies have made this passage - which to me epitomizes the Qur'anic idea of justice in this human society - the instrument of the greatest oppression

for women. If one reflects on this, great changes are possible. I do not know how we change society, but I think textual analysis reveals quite astonishing things. This is just one passage. Go through the Qur'an and you will find absolutely amazing things. Let me stop here.

Second Presentation

on Surah Al Nisa (4): verse 34

Resource Person (2): Sisters, Asalaam-o-Alaikum. I begin in the name of Allah whose guidance I seek in this and every other matter.

I have spent a certain amount of my academic career concentrating on this verse, among others. My Ph.D. dissertation was 'Woman in the Qur'an,' which examined the Qur'anic concept of woman. I felt that it would not be possible to elucidate that concept if I restricted myself to those things in which women were mentioned explicitly or those things that had some gender notification. But, of course, the problems that arise with regards to Muslim women in real life - and their textual basis - requires a certain amount of energy to go into: the problematic verses that actually mention women and that are interpreted to indicate some type of a hierarchy between males and females.

A very important aspect of my consideration of the verses and the Qur'anic concept of women has to do with methodology, a question that came up yesterday. I want to address the question of methodology in the context of this verse because it is easier to understand method when you have something concrete; I will try to synthesize this information as simply as possible based on what may be useful.

First of all, we have the text itself. Secondly, we have a corpus of material that proposes to tell us what that text means. This is natural and this is good. In other words, Muslims have, for fourteen hundred years, been trying to figure out what the text means in abstract forms, theoretical forms, in legal forms as well as in real life; in mystical forms, grammatical forms, etc.

My major argument is that this proliferation of literature is intimidating to Muslims to the extent that they spend all their time on the information generated from the text and do not spend as much time on the text itself. Plainly enough we all see the need for going back to the text.

Qur'anic understanding, (interpretations, exegesis, etc.,) has several layers. At the very core is the text itself, an Arabic text. From that text many things have evolved. Entire grammatical lexicons have been constructed based on the language that is in it. And we have textual literature that is based on the statements made by the Prophet and/or his companions and/or people who came after him and/or people who came after them, etc. We have mystics who say that when the Qur'an says it has verses that are '*muhkamaat wa muta'ashaabihaat*', verses that are precise and ambiguous and verses that are allegorical, they want to arrive at the allegorical meaning behind everything. Each of these efforts have some meaning and some purpose.

In the 1990s I want to understand the Qur'anic meaning with regard to me as a woman, or with regard to me as a woman from the modern Muslim context, or with regard to me as a mother of other women (because I have three daughters) in the modern and western context. Is this a book, I say, that can be of any use to me in my real life context? Some people would have it that it has no meaning. This is just a divine

book: we just accept the whole of the book and that is it. So I approach the book with the potential apprehension voiced by a sister at another point: suppose I find something in there that I just can't swallow. What am I going to do?

I also approached it, as part of my Ph.D. requirement, under the tutorship of two traditional male Muslims (one a Pakistani, the other a Palestinian), one conservative orientalist (white male), and one very profound thinking linguist who knew nothing about Arabic although he had some contact with Muslims before. (He turned out to be the best person of my committee). The advantage of these conservative people was that they did not allow me to say just anything that I wanted to say. I had to go back and look at material in great detail, mainly at how the text relates to itself, and relates to humanity at large.

The scholars of *tafsir*, or Qur'anic exegesis, agree that the first principle of Qur'anic interpretation is *tafsir-al-Qur'an-bil-Qur'an*, the exegesis of the Qur'an based on the Qur'an itself. This is very interesting with regards to the verse *u qawwaamuuna 'alan-nisaaa'* (4:34) because some of the problematic terms have been used elsewhere in the Qur'an in ways different from how they have been translated or interpreted in this particular verse. That was very important. I will give you some examples as we go along, but we can start with '*nushuuz*'.

People say '*nushuuz*' means a woman's disobedience to the husband. But what happens in Surah Al Nisa (4): verse 128?

Surah Al Nisa (4): verse 128

If a wife fears
Cruelty or desertion
On her husband's part,
There is no blame on them
If they arrange
An amicable settlement
Between themselves;
And such settlement is best;
Even though men's souls
Are swayed by greed.
But if ye do good
And practise self-restraint,
Allah is well-acquainted
With all that ye do.

Wa 'inimra-'atun khaafat
mim-ba '-lihaa nushuuzan
'aw 'i '-raazañ falaa
junaaha 'alay-himaaa
'afty-yus-lihaa bayna-
humaa sulhaa; w a ş - Ş u
l h u khayr ; wa 'uh-ziratil-
'aifu-sush-shuhh. Wa 'in
tuhsinuu wa tattaquu fa-
'innal-laaha kaana bimaa
ta '-maluuna Khabiiraa.

وَأِنْ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا
فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ
خَيْرٌ وَأَحْضَرْتِ الْإِنْسُ الشَّحَّ وَإِنْ تَحْسَبُوا
تَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا ﴿١٢٨﴾

This says when a woman is afraid of '*nushuuz balihaa*': the '*nushuuz*' of her husband? It can't mean disobedience to the husband because it is the husband that is being discussed and the term '*baef*' is exactly a word for '*husband*'. It is not a term that can be used for just any relationship like '*zoaf*' can.

The idea that we take a meaning for a word and the meaning becomes the word has imprisoned us from being able to unveil the wisdom in the Qur'an.

For me the Qur'an is like an onion: when you look at the shiny outside, it is a

corpus, whole, and people say 'This is what it is.' But as you unpeel it you find that there are many levels. Not only that, but each level has a stronger and stronger smell to it. So what I have tried to do is to go under and see the layers of the book itself by examining words not only in the context in which they are written, because the Qur'an does have a sense of organization called a *'nazf'*. Many times the Qur'an may repeat the same phrase but after a different discussion which in that context means something specific. Hence, you have pages and pages of verses that say, *'wa-min-aayaatihii'* or *'min-aayaatihinna'*, i.e. 'among His signs is this'. Then it says, "Verily in that is assigned for those who use their *aql'* or 'who think'. The fact that sometimes it will say *aql'* and sometimes it will say *tafakarun* (who think) means something. The particular discussion that has preceded it and the concluding remark for those who use their *aql'*, or who 'think' or who 'reflect' are all related to how the wisdom in the text is supposed to open itself up to you. It is a beautifully cohesive text.

Unfortunately the major criticism that I would make of the feminist work that has been done in the modern context on issues related to women is that we have broken the Qur'an up into little pieces just as the men have done. We take a verse out and say 'This means this and that,' rather than to take the verse within the entire Qur'anic world view in which the first thing of importance is social justice. All Muslims who give commentary on the Qur'an agree that social justice is a major concern, yet they do not push this term of social justice to the extent where women are actually allowed to experience full equality and the status of human beings when they go about their lives. In other words, the general position is to say the Qur'an is just as far as economics goes and politics goes and inheritance goes, but you stay in your house. They don't say that you, as a full fledged creature of Allah, have the right to make choices just as men have the right to make choices. The choice is supposed to be made for you and they say that is 'just'. For me, the basic concept of Qur'anic justice meant that those things that have been passed down to me - as this is how you are supposed to look at the book - that did not smell of justice to me had to be discarded, and the only way to discard it was to go back to the book itself and unpeel its layers as much as possible. So you have *tafsir-al-Qur'an-bil-Qur'an*: taking the terminology that is used and understanding it in the context of the book itself and in the context of its overall objective of social justice and equality and peace and harmony and belief in God, etc.

The other thing is that the Qur'an is in Arabic. It was revealed in the Arabian peninsula. Mohammed was an Arabic-speaking person, an Arab. Does this mean that the Book can describe situations in such abstract terms as to be applicable to us in Pakistan, in America and Malaysia in 1990 and, at the same time, mean something to these people who were supposed to be elevated into the essence of Islam? By necessity, the answer is sometimes, "Yes," sometimes, "Impossible".

In textual analysis with regards to linguistics and discourse etc., one of the things they tell you to do is see who is the speaker and who the audience. If you do not accept that the context of the patriarchal, Bedouin, sexist, racist Arabs comes into the text, you may be tempted to reject those things that come out of that context. The value of those things is not the literal word, but how they affect the objective of the Qur'an: social justice in the context of patriarchy, sexism, racism, etc., where the images portrayed are sometimes specific and sometimes universal. According to Prof. Fazlur Rahman, underneath each of the specific things are universal principles which must be understood and re-applied by people in varying contexts, not only by people from that context.

Much as I like reading the works of certain scholars, all of them did what they could

based on the intellectual context in which they lived. Certain things were going on; certain questions were being asked; certain needs were being addressed. The needs of Muslim women of the modern context were not part of what their experience of the text was. What about the people who come afterwards? Suppose we make progressive interpretations that apply more to our lives, are they going to be progressive to someone two hundred years down the road from us? No. Therefore, we just go back to the position: "This is one of many possibilities" - possibilities which, by necessity, must continue to occur. The book is supposed to be a guidance for all people and since people, places and times change, the book is supposed to be able to adapt itself to those people, places and times. It cannot do that based on the literal models of Arabia fourteen hundred years ago. But it can do that on the basis of universal principles.

Universal principles are not always stated out loud. Sometimes they are submerged in discussions of particulars. It is no problem for even male or sexist people to accept that some of the Qur'an is specific or particularised and some of the Qur'an is universal. Consequently, if the Qur'an says, "Oh! Prophet tell your wife this", or says about the Prophet's wives "You are not like anyone from among the women", it has said: this is a particular situation which has to be handled this way. If we take the particulars and apply them universally to every circumstance, we come across a major problem. That is another thing to bear in mind: the particulars and the universals.

The last thing is related to the major disparity that exists between men and women in social systems all over the world, whether they be Muslims or non-Muslims and has to do with the standard of evaluation. Value is attributed to what people do in society in such a way as to be disproportionately to the advantage of men. There is an unlimited amount of literature on this, on why this happens. It doesn't just happen to Muslim women. It happens even if the men do in one society what the women do in another. For example, when the men take care of animals in one society it is given the greatest value, and the women taking care of the agriculture is of less value. In another society where the men do the agriculture and the women take care of the animals, agriculture is regarded as the most important part of it. This is what I call a single standard and that standard of evaluation is from the male perspective, i.e. whatever the men do, they say is the most important thing.

We have also suffered from applying a single standard of evaluation to things that have been discussed in the Qur'an; different for women than for men. For example if the men stand in front when you have public prayers, then that means that they are in a better position. Who says? Why does standing in front mean better? We have applied a value to a functional order that should not be valued necessarily better or worse, higher or lower. Sometimes we have difficulty accepting that the Qur'an would choose things that would distinguish women and distinguish men, saying that there are values implied. In fact the Qur'an has a system of evaluating that goes like this: [in Arabic]... "Men have a portion of what they earn and women have a portion of what they earn." Everybody does something and everybody gets something... [in Arabic]: "I do not suffer the deeds of anyone to be lost be it a male or a female." The Qur'an is very specific: whoever does something including the male, including the female, Allah is not going to be unmindful of the deeds. And they will be rewarded for it if it is good. Very explicit. There is no single standard of evaluation except Surah Hujuraat (49): verse 13, where it says that the one in the sight of Allah who has the most value, is the one who has the most *taqwaa*. So the single category of determining the value of the individual in society is *taqwaa*, and *taqwaa* is a non-gender specific term (meaning literally 'abstinence', but implying righteousness, a life of piety). If you limit yourself to verses from the Qur'an that have

things about women, you will exclude this verse; which basically says that the value of an individual in society is not based on gender. To understand the Qur'anic values of individuals, you must also stop thinking in gender terms.

Surah Hujuraat (49): verse 13

O mankind! We created
You from a single (pair)
Of a male and a female,
And made you into
Nations and tribes, that
Ye may know each other
(Not that ye may despise
Each other). Verily
The most honoured of you
In the sight of Allah
Is (he who is) the most
Righteous of you.
And Allah Hath full
knowledge
And is well acquainted
(With all things).

Yaaa-'ayyuhan-naasu
'innaa khalaqnaakum-miñ-
zakarínw-wa 'unsaa wa ja-
'alnaakum shu-'uubanw-
wa qabaaa-'ila lita-
'aarafuu. 'Inna 'akra-
makum 'indallaahi
'atqaakum. 'Innallaaha
'Aliimun Khabiir.

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَى
وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ
أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاهُ إِنَّ اللَّهَ عَلِيمٌ
خَبِيرٌ ﴿١٣﴾

The Qur'an does something very interesting. It sometimes uses generic language - 'Oh, you believers' and at other points specifically says, 'al-muminiina va al muminati' - 'the believing men and the believing women'. Why is it that sometimes the explicit feminine is included and sometimes not? It means the Qur'an never fails to mention the women as being included in the category of humanity because if the Qur'an did not explicitly use the feminine at certain times, believe you me, the men would never include us at all. Therefore, the Qur'an says explicitly 'women'. We are not excluded from the Qur'an nor are we excluded from the category of humanity. Those of you who know something about Arabic, will know that the masculine plural form applies to a group of people whether they be all men or women and men mixed, i.e., there is no form that means only men. There is a form that means only women. According to the grammar books, if you have both the masculine and the feminine plural form, then the masculine plural form is exclusive to men. In other words, when both men and women are explicitly mentioned, they are both included. Alternatively, a term which applies to humanity at large includes both males and females. These are a few of the methodological points in the work that I did with regard to this verse and other verses in Qur'an.

My analysis is a little more language oriented so you are going to have to bear with me regarding certain Arabic terminology in the verse. I sometimes take a word and use the Arabic word all along because once you translate it into something then you are stuck with an interpretation, while the word has a root that has many possible meanings.

So 'ar-rijaalu qawwaamuuna 'alanisaaa': you have *ar-rijal* (the men) and *al-nisa*

(the women) and between these two a function is described: *qawwaamuuna*. *Qawwaamuun* comes from the word *qama* which means 'to stand up'. The Qur'an has other words derived from the same root like '*aqama*', which means 'to hold something up'. But in Arabic, words sometimes have prepositions that go with them, e.g. *aqamabi*, *qamabi*, *qamala*, *qamali* but the Qur'an uses the same term '*qawwaamuun*' in some interesting verses. Mainly it says '*kunu qawwamina bil qisti ill ilahi*': 'Be you with justice for Allah'. Already we take the term and show that it is not just something about men and women. The term has other possible meanings. It is the value of the other possible meanings that keeps us from thinking this necessarily says something about men and women, and that therefore the relation between men and women is set in gold and that is it.

So, there is something of this 'standing uprightness' and mostly what is being established, what is being upheld are the rights, the protection, the well being, the material support, etc., of women. Notice, I can't take a single word so I stick with *qawwaamuun* or *qiwwama* which is the *masdar*: you have to have a word within the one that acts as the person because the men are '*qawwam*'. But the thing they are doing is *qiwwama*. So *qiwwama* is something that is a function of the relationship between men and women, directed towards the men. The men have a certain function with regard to women and, in my opinion, the men have a functional relationship to women and that relationship has to do with protecting, providing for them, etc. However, *ar-rijal wa-al-nisa* being the plural forms of male persons in society and female persons in society - sometimes restricted to the men as husbands, the women as wives - has also a range of possible meanings.

If men in society in general have a responsibility to women in society in general, then the word that could best be used to describe that responsibility, would be '*qiwwama*'. The generalising of *ar-rijal* and *al-nisa* means that every female in society - whether she bears children or not, is married or not - has a right to a certain type of responsibility fulfilled by the men in her case. It does place responsibility on the men, and the catch-word we use in the work we have been doing with regard to male-female equality, is 'responsibility'. Men have a responsibility for women. The terms of responsibility we don't try to encapsulate because if you say that men have a financial responsibility for women - what happens in my case? I make more money than my husband. Does that mean that he doesn't have any kind of responsibility for me? Absolutely not. What's his is his and what's mine is mine. So you keep a psychological, social, spiritual, financial sense of responsibility for the men.

This verse is directed towards men. This biological function of reproduction is not by choice (i.e. you can't do anything about it and for those of us who have more children than they want, you realise that not to have children is a lot more difficult than having children because the body will take over even when you don't want it to). The men don't have anything like that so the Qur'an explicitly reminds them of their relationship in society to other beings. The interesting thing about responsibility in the Qur'an is that if you have a certain amount of authority you have a certain amount of responsibility; the more *taqdeer* Allah gives you, the more responsibility you have. Hence, the Qur'an says that the free are more responsible than the slaves; the wealthy have more of a responsibility with regard to financial matters than the poor. People who are in a position of authority have more responsibility than the people who are governed, and even when some people are in a weak situation, be it male or female, children or adults, certain rights are due to them. [quotes a verse]... Responsibility goes with this *taqdeer* or preference - the preference is stated in general terms.

I looked in grammar books for a long time. '*Baad*' is one of two words in Arabic that can mean any possibility: male, female, plural, singular, etc. It means all. Some words can only be used with a certain gender but *baad* can be male or female; it doesn't matter. So what it says is some of them have preference over others. The Qur'an never rejects empirical evidence. What you see in real life, the Qur'an is not going to say something that totally contradicts it. In real life some people have a situation that is better than other people: some men have positions better than other men; some women have positions better than other women; some women have positions better than some men. Especially if you use *taqdeer* to talk about the economic aspect, some women even have more money than some men. The whole purpose, in my mind, of keeping this general terminology is that the Qur'an is trying to say that in real life some people have a situation better than other people. And that with that better situation comes some responsibility. The other important thing is that *taqdeer* is not saying a whole category of people is better in everything than a whole category of other people. *Taqdeer* is used with specific things.

The Qur'an uses *taqdeer* with regard to certain specific things and then it says: "and what they spend from their money". Remember the context of Arabia at that time was marriages of subjugation. The woman was subject to the husband and the husband paid. That's what happened, but does that mean that the Qur'an is saying you must establish marriages of subjugation? No, it is simply saying that in a situation where this did occur, where men provided, etc., this is a symbol/sign/indication of a preferential situation, an example and not 'You must do this' or 'You must not'. This is very important because it also contradicts the understanding that the Qur'an says men have to be the breadwinners. Although I say the Qur'an establishes responsibility on men for the women, I do not restrict it just to 'men have to pay'. Men have to have a psychological, social, political, economic sense of responsibility with regard to women which is very different.

That men did pay in that society - also in the marriages of Christians, Jews and non-believers - does not mean the Qur'an says this is the only type of marriage you can have. You can have marriages of egalitarianism where you can both agree to come together and you work for twenty years, and save your money and buy your house and whatever. The Qur'an is flexible to whatever type of social system you decide to establish for the benefit of society. It is also flexible with regard to marriage relationships. There are many possibilities: if the woman wants to make more money, or wants to be the prime minister, she can be that. The man still has responsibility but it does not mean that if his job is not always above her job, she has to quit her job. The Qur'an is more flexible.

It however reminds you that when you have a certain preference, you also have an increased responsibility. I have an increased responsibility in my family at present because I make more money. And if you do not see that the Qur'an allows for a multiplicity of contexts in real life and honours the woman and gives her a certain authority in that, then the Qur'an is frozen into a single standard of evaluation. In America, the African-American woman freed from slavery was given the job and the African-American man was denied the job. And because the African-American woman had the job, she had more authority than the man had, but the man still had a responsibility to keep the family going. It is not that if he doesn't have the money then his whole role is lost. So with regard to the economic situation my interpretation extends the flexibility even further. There is not a single economic model that I see from this verse.

Then the verse says certain things about women. For *salehat*, I stick pretty much to the standard interpretation of 'a person who does good or believes in righteousness' because of the way the Qur'an uses it again and again. It doesn't just use it about women so it's not a term that means women are a certain type of goodness. Then it says that good women are *qaanita*. '*qaanit*' has been explained as a woman's obedience to her husband. Why then does the Qur'an use the term '*qaanit*' with regards to the earth at large, with regard to men? '*qaanit*' means a certain attitude of subservience and belief or obedience to Allah. So good women have this characteristic. A very interesting example of *qaanit* is in Surah Al Tahrim (66): verse 12

Surah Al Tahrim (66): verse 12

And Mary the daughter
Of Imran, who guarded
Her chastity; and We
Breathed into her (body)
Of Our spirit; and she
Testified to the truth
Of the words of her Lord
And of his Revelations,
And was one of the
Devout (Servants).

Wa Maryamab-nata 'Im-
raanallatii 'ahṣanat
farjahaa fanafakhaa fihi
mir-ruuhinaa wa ṣaddaqaat
bi-Kalimaati Rab-bihaa wa
Kutubihii' wa kaanat minal-
Qaanitiin

وَمَرْيَمَ ابْنَتَ عِمْرَانَ الَّتِي أَحْصَدَّتْ قَرَجَهَا
فَنَفَخْنَا فِيهِ مِنْ رُوحِنَا وَصَدَّقَتْ بِكَلِمَاتِ رَبِّهَا
وَكُتِبَ عَلَيْهَا وَقَانِتٍ مِنَ الْقَانِتِينَ ﴿١٢﴾

When it talks about Miriam (Mary), the *ayat* says *wa-kaanat minal Qaanitiin*: that she was among those who have this characteristic of *qaanit*. But it uses the masculine plural form. Every time people talk about Mary, they say Mary is an example for women but the Qur'an doesn't say '*wa kaanita*' (she was amongst those women who have *qaanit*) but says she was in the classification of all the people who have this characteristic of *qaanit*, which, means a certain relationship to Allah. It uses a term with regard to the universe, to the world and not just people. It doesn't mean a woman's obedience to her husband, which is what they would have you think it means.

So the good women have this characteristic of *qaanit*, and the important thing for me in her protecting in private (or in absence) in this verse is that it says 'that which Allah would have protected'. Again, it is not restricting the protection to something in the relationship of a woman to her husband. It means that you keep a certain standard of dignity and morality no matter where you are because this is what Allah would have, and this is something you would want to have for yourself if you are someone who has *qaanit*, a certain relationship with Allah. And modesty is not just outside. When the doors are closed, in private, are you someone who still protects certain parts of yourself? It's not as if 'as long as they don't see me, I haven't done it.'

Then something is discussed which is extremely important to me, and also to a lot of battered women. It says "as for those from whom you fear *nushuuz*..." [in Arabic]. Here is a discussion that actually talks about a certain relationship of men to women, very particularly: men being afraid of women having *nushuuz*. Now *nushuuz*, is used for women as well as for men, so it cannot mean women's disobedience to their husbands.

I go back to the lexicon and '*nashasa*' means to elevate yourself to a high ground; an animal being *nashis* is one that refuses to do what the animal should do with regard to carrying or whatever. Saeed Qutib says that *nushuuz* is a state of disruption of marital harmony. *Nushuuz* is used for the husband (the *bael*) in 4:128; so you have a context by which you understand the disruption of marital harmony can also be caused by the man. However, this verse is talking about if a woman does it. I combine the two verses and look at the solutions that the Qur'an proposes in order to regain marital harmony.

The first one is discussion, that you talk. The other verse (4:35) also says to talk but it takes the talk beyond the level of a discourse between the two people and says "an arbiter from her family and an arbiter from his family". And an arbiter can be a professional, and how many marriages need professional guidance, counseling and the like? In the verse 4:128: "And if you want a settlement, you can find one, you can resolve it". Resolution by discussion is the same as *sulhaa*, i.e. the solution that the Qur'an gives for solving the problem in the micro level of the family is the same one you use in politics, through discussion, through arbitration.

Two other things have been mentioned here and a hierarchy is given. This discussion is number one. In the event that this doesn't work, you do have this *fa wa'* time out, a little separation. I know that for my husband and me when things get real bad and everybody is elevating themselves to a ground higher than the other one, then the best thing is to have a little time out. It can simply be the woman going to her mother's house for the night. The time out can be extended to a long time, and the ultimate time out, from the Qur'anic perspective, is divorce. If you extend these two possibilities to their furthest, you need never get to the third one. But the Qur'an did say the third one, so what does it mean?

The Arabic lexicon has more than four pages on '*barrata*', but the number one meaning is 'restriction to a single blow', 'single strike'. What it means is this: if men are battering their wives mercilessly (domestic violence happened in 7th century Arabia where they were killing girls, were taking women from their fathers as if they were a gold watch; there were no holds barred), if women are being battered now in the modern technologically advanced context when they have begun to have a voice, what do you think happened to women then when they had no voice? Allah knew. Allah says 'do not beat them mercilessly'. It represents a restriction rather than a recommendation. It restricts abusive violence.

Then it says 'if they obey you...' This is in the conditional. This means that in that context obedience was practiced. It says '*tab-guu 'alayhinna*'. This is a negative command, explicitly to NOT seek a way against them. What the Qur'an says is if they do obey you, don't abuse that, don't abuse them. This is the only command that's in the verse: NOT TO ABUSE them. I believe that the verse is addressed to men, telling them of the responsibility that they have towards women and commanding them to get their act together with regard to how they are treating their women.

Discussion on the First Two Presentations

Participant: You see, a whole board of ulema has written this *tafsir* that I have and all the translations say that men are '*sarparast*' (people who look after) and '*khidmat guzar*' (providers) for women.

Participant: If the woman is the breadwinner of the family then what would happen? Or the *khidmat guzar*: how would you interpret or translate this then, for there is another *surah* on inheritance.

Participant: If one says that men too can have this type of lack of control, rebellion, and do wrong (*ziadti*), then on whether men should also be given the same type of punishment, we would say "yes". If men do not fulfill their duties then they too are liable to the same type of punishment, exactly like the woman. To the extent that they too will get corporal punishment. However since this work (bread winning) is outside the realm of women's responsibilities, therefore it is the duty of the government in power to ensure that those men who transgress this duty are made cognisant of this duty through punishment - even to the extent of physical punishment.

Participant: No but if you look at the verse on inheritance, the translations I went through give two reasons for giving a greater portion of the inheritance to the man than to the woman. One being that he was able bodied and he was able to go to war for Islam (I mean the physical *jihad*: the sword and spear and stuff). And the second was the capability of the man to earn in the economic sense. These were the main two reasons given for giving men a greater proportion in the inheritance and position of superiority generally. Now the question arises: if you have women who are also capable of participating in *jihad* and earning. For example, where I live, so many of the surrounding villages are known for drug addiction. Women are obliged to go out and work for they are the sole breadwinners of the family and in fact they provide for their men. So is economics all there is to the difference in superiority ?

Participant: In the explanation of the Qur'an that I have, it says that if men do not fulfill their duties that they, too, will be punished equally, to the extent that the women should also punish them physically. According to *miras* (what is traditionally inherited) in Islam, in fact the financial responsibility lies wholly on the man. If we women earn anything, it is wholly our own property, i.e. our husbands have nothing to do with it. So, of course, we are free to earn anything and that is our personal property.

Participant: But there are many women who are not so fortunate to be able choose whether they can earn or not.

Another thing is that: there was a case before the Federal Shariat Court in Pakistan

in 1983 on the question of whether women could be judges, *qadis*. The judgement on the case is very interesting. I want to read to you a few lines here the court said...

"So the only point to decide ... is namely that there was no precedent of female judges in the time of the Holy Prophet and his companions. This argument as such carries no weight since the general rule to be followed is that 'what is not prohibited by the Qur'an and *sunnah* is permitted'".

"The question, therefore, is whether in the Qur'an and *sunnah* there is any injunction explicit or implicit which will disallow the appointment of female judges. The petition council had quoted 4:34, 'Men are the *qawwaamuun* over women' and the text is often referred to as 'giving men an edge over women, even establishing men's natural superiority over women'.

The court judged at length on this text and decided that no argument can be derived from it in favour of women's subordination to men. They rejected the idea of master and held '*qawwama*' to mean 'provider' only. "No prohibition of female judges can be inferred from this text."

The court quoted other Qur'anic texts which expressed the mutuality of equality of men and women also in the obligation to judge with justice. The famous *hadith* that "a nation which is ruled by a woman will not prosper" referred, the court said, to the then female ruler of Persia and no general rules can be taken from it. The court pointed to historical precedents for women as head of state without *ulema* objecting to it as well as to the Qur'anic precedent of the Queen of Saba [Sheba].

The court also dealt with the *hadith* that women are deficient in intelligence and religion. It observed that this was an isolated *hadith* and that deficiency in intelligence could at most be in relation to evidence and not to any other function or attribute. This is in relation to the sex of a woman and the court said there may be women having more intelligence than men. The Court stressed the fact that "the first to accept Islam was a woman and that there are many precedents during the lifetime of the Prophet where the opinion of a woman prevails. There have been many female transmitters of *ahadith* and while a large number of male reporters were charged with petty *hadith*, no such charge or blame lies against any female."

Resource Person (3): There is a Muslim woman judge of the Supreme Court elected in India right now, and you have Benazir Bhutto in Pakistan as a Muslim leader. ...[exclamations]...

Participant: I would like a clarification on the word for 'banishment'.

Resource Person (1): The whole passage is plural; all the words are plural. When I said '*wahjuurhunna*' it doesn't mean, 'banish'; it means, 'leave them alone'. There is a tremendous difference between 'banishing' and 'leaving them alone'. According to my interpretation, it means, 'leave them alone'. The point is, if you are going to keep on reading Pickthall, you are never going to get out of it.

Participant: The first interpretation is a very heartening one, but my question is in terms of the passage as a whole. It speaks in terms of men punishing women or them making a decision about women. It doesn't work vice versa. I don't mean merely a wife

punishing a husband. It could be a mature woman, an adult, a woman of wisdom, of responsibility, punishing a younger person, or a junior, a child, or someone who is in the wrong. Is there any other *ayat* which qualifies...?

Resource Person (1): Yes, there is another passage which uses the word '*nushuuz*' in the context of men, and it says that if men are guilty of it, the matter must be referred to the *ummah*; again, the same thing.

Participant: What I mean is that the woman doesn't seem to come out in a parallel situation, where she can also be a judge or punish.

Resource Person (1): The point is that it is not the men who are allowed to punish. It is the *ummah*, which consists of men and women. The *ummah* must take some steps if this kind of situation happens. These people who are rebelling against the law of God must be confined. They must not be allowed to spread or propagate their views because they are against the laws of God.

It is a mistake to think that the Qur'an is a textbook of law. It is not setting it out in Chapters One, Two, Three: this is what applies to men and this is what applies to women. If you read the Qur'an as a whole, you have precisely the same word '*nushuuz*', which is being used here with regards to women, with regards to men.

Resource Person (4): I want to later share with people another possible interpretation of this *ayat*, which takes it along a completely different, but equally progressive interpretation. What we are trying to establish is a *prima facie* case that this passage can be read in more than one particular way; that if we could break our minds out of the straitjacket of reading it in terms of usual translations, you would see the fantastic variety.

I am not a scholar of Arabic or anything but I can read it and looking up the word '*zrba*', for example, find that even in the tiny dictionary that I have, it has different meanings. One of the meanings is 'chastise'. If you go back to the Biblical phrase: "Them whom the Lord loveth, He chastises," you don't in that context think in terms of God coming down with a stick and physically laying about the shoulders of the people. It means that they are put under stress or trial. So even the word '*zrba*', can be 'rebuke', 'chastise'. There is enormous scope for different translations of that particular word even within the context of a more conventional translation. It still doesn't get away from the hierarchical convocation. But then the discussion would follow on who exactly is the 'they' - whether it is male or female - because the translation or explanation that I was reading gives a completely different insight [presented below].

Participant: I have never heard the verse translated in the way the first resource person has - which I find really interesting and enlightening - however I am worried about the implication of this translation on single women; those who are not married; who don't have children. If you put the centrality of child-bearing so high and accept that the community, or the *ummah*, has the right then to punish women who do not bear children, what does that mean? Does that mean the community has the right to take all these steps against women who choose not to have children?

Resource Person (1): Again, the way that this has been traditionally read is as if this were the definitive verse that makes the whole statement about women. It's certainly not

saying that all single women should have children. But it is saying that since only women can have children, please remember that women who are having children should be supported. It is not saying all women should have children.

- You have to keep this distinction in mind because there are so many other passages in the Qur'an which will tell you all the human rights that people have. I'll tell you another interesting historical thing. In the early centuries of Islam, for instance in the 8th century - called the Age of Saints because that was the rise of Sufism in Islam - there were many women Sufis, and the most eminent of the Sufis of that entire century was Rabia. She was recognised as superior to all male Sufis, including Hasan of Basra, who was also a very celebrated Sufi; who wanted to marry Rabia. He was always sending proposals, and Rabia had a very good line. Every time he sent a proposal, she said, "I have given my life to God. You ask my hand from God." So there were women who were celibate. I think this is one of the questions we also need to discuss in this conference: the option of celibacy for women, which does exist in some religious traditions but which Islamic tradition has never considered because to be celibate is considered to be totally out of focus. But the option of celibacy not only existed in early Islam but these women were celebrated. They were honoured. It was not the case that if you were not married or you chose not to have children that something was wrong with you.

Participant: I have no problems with the concept that men should be breadwinners because only women can bear children. I have problems with the second part of it, when it is '*nushuuz*'. If the woman does not want to bear children, and then you take these steps, how does that then apply within society? What does that mean to women who are not married?

Resource Person (1): It doesn't apply to women who are not married. It only applies to women in that class of people who can bear children, which means that they are married. Why are you trying to find in this passage implications for everybody who is outside of this passage? This is a very limited context. Look, for example, there is another passage in the Qur'an which says, "To men is allotted what they earn and to women is allotted what they earn," which means that the Qur'an is recognising that women should be allowed to work; to earn. There are so many other passages which relate to other situations about women.

Participant: You are saying that the passage does not refer to husbands and wives, it refers to men and women. Are you saying the point about '*nushuuz*', (about women who don't bear children) doesn't apply to women who don't want to get married or women who are not married, only to women who are married ?

Resource Person (1): The emphasis is on '*nushuuz*'. It is not that you don't want children. It is that you reject the function assigned to you by God. There is an element of rebellion. If you lived in America you would have no problem understanding this, because this is what radical feminists are saying all the time: "Getting married, having children is an instrument of exploitation. Therefore we will not." Mary Daly says that; all these people say that. (16) But other reasons can be valid, like I gave you the example

of Rabia who dedicated her life to God. She didn't get married; she didn't have children, and I think she definitely went to Paradise. I don't care whether she is married or not. So I don't think it refers to everybody.

Participant: Several issues: how do you see this verse somehow reconciling with the whole issue of women's control over their bodies and their sexuality, because celibacy can be an oppression too. For example, in Sindh (Pakistan) some women are forcibly kept celibate and that is an oppression, and to be forced to have sex is also an oppression. Here, certainly, there is a context for a woman to refuse to share her body even if she is married; you can have rape under marriage also. I am sure you are aware of these issues. It is considered a rebellion. While all of us sitting in this room would be very satisfied with your interpretation - and I am, and I would love to adopt it and believe in it with very minor changes - the same passage certainly may be construed as meaning that for a woman not to share herself under conditions of marriage is a rebellion.

Resource Person (1): There are three steps. The first is talk to them which relates to a point brought out yesterday, which has to do with rationality. Many people, unfortunately, have come to think that reason has nothing to do with Islam, or Islam has nothing to do with reason. As a historian of religion, I study all major religions of the world and think that there is no religion that I know that has put a greater emphasis on rationality than Islam and specifically the Qur'an. The Qur'an says over and over again, 'Think about it', 'Reflect on it'; don't even accept this book without thinking about it; check it out. It says this over and over again.

There is this very interesting scenario in the Qur'an where there is the scene of Hell and there are these guards, and people are going to Hell, and the guards say to the people, "Why are you going to Hell? What is your crime?" and these people say, "We're being sent to Hell because we did not use our *aq'l* (intelligence)." It is very interesting. If you apply that to modern Muslims you'll find a lot of people going to Hell.

But the point is that the first step is 'talk to them'. It is obvious that if a woman has had eight children and her body is debilitated, it stands to reason. She has performed her function, and enough is enough. Of course there are *ahadith*. There are a whole lot of them: "You never refuse yourself to your husband even if you are sitting on the back of a camel, and your husband wants to have sex." That is, of course, very silly. This *ayat* is not saying that; it is within the realm of being just. The concept of justice refers also to the body. You have to be just. So, first, 'talk to them'. If a woman has a legitimate reason, a health reason, then that is not '*nushuuz*'; that is not rebellion; that is a legitimate reason. Rebellion is something else. Rebellion is when you say, "I don't accept that this is a function that I have, or that I can perform."

Participant: In a materially and socially unjust society, when a woman says, "I do not accept that having a child is my function because society as it is, is materially and socially unjust," is that still '*nushuuz*'? Is that a rebellion? People, or I, or someone else here says, "This is an unjust society. I will not perform my function as a woman in this society because to do so is to oppress myself."

Resource Person (1): That is a question in abstraction. If a woman says, "The society is unjust," that may be her subjective perception. And if we assume that it is, then my position on it is that there are certain matters of conscience and they are between you

and God, and that God decides. I cannot decide that.

Resource Person (2): Also you stated a condition. In other words, you did not say that she just arbitrarily says that she will not. She says that society is unjust. So by stating a condition, in fact, it is not *nushuuz*.

Resource Person (1): Right.

Participant: I was wondering whether you have written up this interpretation.

Resource Person (1): I have written something on it which is in manuscript form. There are three, four pages. Let us photocopy them. Then you read them.

Participant: Do you think that this verse prescribes that since, as you said, women have the potentiality of child bearing at that time only they may not work.

Resource Person (1): During that time only. I think that it is specific. Because only women have biologically been constructed, fashioned by God in this way. While they are performing this function, they ought not to have the additional obligation; meaning that they should not have the pressure that they have to do these other things. It's not a gender role in general.

Resource Person (4): Is it also not a possibility - taking the interpretation just given - that the rebellion is not a general rebellion, but in the context of the husband and wife relationship when they have entered into a matrimonial obligation which husband and wife both think is going to have some mutual benefits, and one of them for arbitrary reasons says, "I will not do such and such." Like, for instance, the husband says, "I don't want to have any children and you have maternal instincts," and vice versa. I mean within the context of an unjust agreement between the spouses; the rebellion then would be that within an agreement you are rebelling.

Resource Person (1): You see this particular passage is men and women in the presence of God rather than men and women in relation to each other. There are other passages where you have that focus of inter-personal relationships and you have mutual obligations. Also, there are so many passages in the Qur'an which say women have rights against men as men have rights against women. But in this one God is protecting this function of motherhood which is very central; which is not making all women mothers and making it necessary, etc.

Participant: In the second presentation, I see a lot of problems. Number one if you interpret '*qawwaamuun*' not as 'the guardian' but as someone 'responsible', the moment you make someone responsible for somebody, you are determining a relationship of dependence or of inferiority. Number two, saying "if they obey you, don't abuse or misuse" means that women are supposed to obey, and if they don't, it restricts the use of physical violence saying 'do not beat them mercilessly', but they can be beaten up mercifully. I distinctly remember a judgement by the Shariat Court of Kuwait two years ago and it said that if the wife does not obey then she can be beaten up and if it is a grievous hurt or injury then the husband is responsible for the expenses of the treatment. So I'm really confused.

Resource Person (2): One, you are putting a value on responsibility and one of the principles of the methodology that I use is to not value certain things in a singular fashion. Responsibility doesn't mean that therefore they are better. As the fact that men can't have a child bearing experience doesn't mean that therefore they are less. I don't attribute values to the function and I'm very consistent about sticking to the Qur'anic system of valuation which is on the basis of *taqwaa*. I'm saying there is no value to it, there's a function.

With regard to the second: be very careful about the association of the previous perception to the discussion that I gave. I never said "if women do not obey you then you can beat them". There is no place before this *aya* in the Qur'an where it says anything about obeying men. The only place where it says anything about obedience, it uses a word which is used for following what someone says - whether it be a man following what other men say, or a woman following what other women say, whether it be a woman following what a man says, or vice versa. The Qur'an doesn't say 'obey the man and therefore...', it says 'If they are obeying, *'fala tab-guu 'alayhinna sabillaa*: 'do not do this'. There is no commandment, only a recognition of a system that was established and still exists in many situations where women are obeying. The commandment is for the men not to beat them mercilessly. The Qur'an doesn't say at any point 'If a woman does not obey her husband, he can do these things' It does not use those words in any fashion at all.

I argue on the basis of the hierarchy presented within the text itself: advice, separation and the 'whatever'. I argue that people who abuse their wives don't follow that hierarchy. They start right away with hitting. And this is very important to real life situations and legal cases. The justification with reference to the Qur'anic text of a man's incompetence with regard to his anger is something that I hope Allah makes him burn in Hell for the longest period of time for. Their approach is backwards: they say this while they have never followed what the Qur'an says. If they were truly following what the Qur'an says they'd never get to that third possibility because they'd be out of the house way before they could raise their hands.

So I believe 1) that it doesn't recommend it at all, 2) that because wife beating was in existence the Qur'an tried to restrict it - like it restricted the number of wives and at the same time placed a condition by which you understand 'only one'. It's trying to restrict something that existed, and not trying to recommend something that should exist. The recommendations proceeded this statement.

Participant: What if that one blow is fatal? Is there anything in the Arabic text to qualify that blow? No? Then it's just as bad.

Resource Person (2): It's just as bad if that's your first step anyway. It wouldn't be just as bad if you followed the steps of the Qur'an. A case can be made for the punishment of any person who perpetrates violence against his wife before discussing the matter separately or with an arbiter, or having taken any time out (someone who has not gone out of the room, or the house, or spent the night at his mother's house or whatever). A case can be made that the hierarchy established in the Qur'an was not performed and therefore the man had misused it and will burn in Hell for it.

Resource Person (1): Where in the text, however, is there a word for 'husband'? There is a shift in the second half of the verse and '*ar-rijaal*' definitely means 'men'. Even if one accepts that the verse is oriented towards men (whereas I think it's directed towards

the Islamic *ummah*) 'men' does not mean 'husband'. As you move from the first part of the passage to the second, you are giving the authority of judgement to the man, the husband, to decide whether he spends the night in his mother's house or not, etc. The point is that you are accepting that there is a hierarchical relationship between a husband and his wife. He is higher than her which means that he is superior to her, which means that he has the authority to strike her. It doesn't matter how he strikes her and I think that is a moot point here.

I do understand the point you are making about restriction. There are contexts in which it applies, for instance, the Law of Moses which says 'an eye for an eye and a tooth for a tooth'. Most people think that it's advocating that if somebody takes your eye, you must take that person's eye, whereas in fact what it means is that you cannot take more than an eye for an eye, a tooth for a tooth. It is a restrictive law as interpreted by the rabbis, though that's not how the Christians interpreted it. But I don't think that this applies in this context. I think that once you give a person authorisation to strike another person, you are establishing an oppressive relationship - just the sanction of it is oppressive.

Resource Person (2): The fact that the relationship between male and female comes in has to do with the language itself which says: '*Wallaatii takhaa-fuuna nushuu-zahunna*' and then it gives a certain prioritized order when it says '*qaanitaatun haafi-zaatul-lil-gaybi*' - feminine plural.

Resource Person (1): Yes, but where's 'the husband'?

Participant: I still feel we are giving man a position of superiority when we say he is responsible for us. If there is a conflict between us, who is the one responsible for initiating talk? Then if we still continue not obeying, he is responsible for going outside the house, for leaving us. This implies that the woman is the one who did something wrong. He is the one who is responsible for disciplining her, by talking or secondly by leaving the house or leaving the bed or whatever, and thirdly by beating her one time or more than that.

Resource Person (2): This verse has a limited parameter in the particular instance of a woman's being *nushuuz* with regards to the husband. There is another instance in the Qur'an of the man being *nushuuz* with regard to the wife.

Again I think this calls for the specific because in fact, he did have the power to do certain things. And he continues to have a certain position over women. People say with regard to divorce that a man can make a divorce on his own but a woman needs to go to the judge. Why, because the man can physically force her to have a relationship with him. He can rape her, a woman cannot rape a man physically. So there is a protection for her in the event that she wants to have a divorce.

If you exclude certain differences that have certain consequences with regard to how people relate to each other, then you are going to look for something that I can't see an answer to.

Resource Person (1): About *nushuuz*: you said whatever passage we see in the Qur'an we have to put it back in the framework of the Qur'anic world view. The point is that we are talking about two kinds of things: *haqooq Allah* (rights of God) and *haqooq-ul-ebad* (rights of human beings) that are intertwined in the Qur'anic framework. So *nushuuz*

may, in the context of some Qur'anic passages, relate to relationships of husband and wife but it is not a direct relationship. It's not the case that, for example, if the wife is doing something not pleasing to the husband, like wearing a dress he doesn't like, he then has just cause against her. It is in relationship to God's laws ordained for men and women - if husband and wife do not treat each other justly - that this word is used. Therefore even if you are arguing that it is in the marital context - something I interpreted differently - the primary reference is to God and not to the husband and therefore the question has to be resolved not by the husband but by the *ummah*. The same applies where *nushuuz* occurs in the context of men. It says that if men are guilty of *nushuuz*, the question must be taken back to the *ummah*. The *ummah* decides what is to be done, not the husband.

Participant: Regarding the first presentation: who is the Islamic *ummah* today? Does it exist and how relevant is it in today's context? Who has usurped the role of the *ummah*? How do you apply the concept of *ummah*?

Resource Person (1): The Islamic *ummah* consists of all men and all women who call themselves Muslim. How it actually works is a very interesting question. Allama Iqbal did a lot of work on the issue and he thought the best way the power of the *ummah* could be exercised would be through a legislative assembly, through parliament. That is one of the most important political questions that Muslims need to talk about because the *ummah* is much larger now. At that time there were two, three hundred Muslims, now we have one billion Muslims. You could think of the *ummah* in terms of the context of particular societies, the *ijma* of a particular society relating to the problems confronting that particular society. For instance Pakistan has an enormous population problem so the *ummah* in Pakistan should be concerned about this but this problem does not exist in Saudi Arabia. Trying to understand the *ummah* collectively is sort of unrealistic.

Resource Person (2): I don't even restrict the *ummah* to Muslims. The Qur'an says to be a community that goes towards justice, any one who believes in the middle path as the path of justice and righteousness in society becomes a part of the *ummah* and you can go to that *ummah* for protection of your rights.

Participant: If the most frequent meaning given for the Arabic word *zrba* in the lexicon was 'strike' or 'one blow', what other meanings were there?

Resource Person (2): Things like 'to give an example', or 'Allah gives an example', things which are more abstract. '[in Arabic]' means 'to hit the roof with your foot', 'to start walking'. I don't remember everything because they didn't have very much to do with the relationship between two people.

Participant: Related to 4:34, it was said that words were mistranslated, but if you read the verse the superiority and slavery is very clear. Within the context of the *surah* it seems to me evident that the *ayat* says men are superior to women therefore our reinterpretation ends up being almost apologetic. Why the whole exercise of interpreting? My first point therefore is questioning this whole exercise because, from my point of view, the verse is very clear: that we're giving concessions, compromising.

Secondly, in the context of Arabia when the Qur'an was revealed, this *ayat* was a concession to women, an improvement on their situation as it existed where women

could easily be killed or whatever, a blow was a lighter punishment - to limit it to only beating - it being better to beat than to kill, this is being very large-hearted and is an improvement in an existing situation.

Third; today educated women in Europe, anywhere, are at a par with men, e.g. they have the same brains, they are philosophers, poets, everything. So how do they relate to their religion in their real life? Is religion generally relevant to our existences nowadays, and are we being hypocritical talking about religion in this modern context?

Resource Person (1): If it is in the context of the *surah* how do you know that the *surah* says that in Arabic?

Participant: I've read a translation, several translations. In the discussion this morning, did all the words have a different meaning because I understood that there were only some which could have different possible meanings like 'qawwaamuun'.

Resource Person (1): That's the critical word. That's the word that we dispute means 'ruler'.

Participant: No, my point is not limited to words: 'What does this mean... What does that mean... that it does not mean 'hakim'.' What I was saying was that in terms of whatever has been written, whatever we have read, there will be some difference on what this or that means. But in totality what we have read gets communicated as men's superiority and women's slavery.

Resource Person (1): One of the methods in which the Qur'anic tradition has been understood is to take a particular verse and see how well known commentators have interpreted this. Then if 15 commentators have interpreted an *ayat* in one way and 25 have interpreted it in a different way, generally speaking, the attitude of the Islamic tradition has been the majority opinion wins. It's a quantitative method weighing how many people said this and how many people said that.

In the case of 4:34, if we start counting I would say 99.9% have said the same thing. So the weight of tradition is certainly against what we are trying to do here today, no question about it. Nonetheless, the text is not the same thing as tradition. You are referring to the tradition, not the text. The text is separate. When we say the Qur'an is the word of God we are talking about the Arabic text, not the tradition. No matter how many people say one thing, the tradition is not God's words. Tradition is the word of different human beings who were just like us. Maybe they were better informed than us. Maybe they were not.

Another thing, the environment in which these sciences developed were definitely and markedly patriarchal, dominated by certain views of the world, of the relationship between human beings, between men and women and so on. This resulted in an orientation on everything. The first discipline to develop within Islam was *hadith*, and *ahadith* literature has been the lens through which the Qur'an has been interpreted. It is not really possible to arrive at any kind of progressive interpretation of any Islamic issue (not only those relating to women) unless we can take the position that the *ahadith* literature is not sacred. To say that the *shariah* is divine is incorrect because the *shariah* is made up of many sources, including the Qur'an, the *ahadith*, the *sunnah*, of which only the Qur'an is believed to be divine. Yet somehow the *shariah* gets to be called divine. The *ahadith* are not divine, tradition is not divine. Any and all of these things can

be questioned, and we are questioning them. It doesn't matter how many people have reiterated these things.

As far as the issue of concession is concerned: given that in 7th century Arabia the situation was exceedingly bad, conceding that it was considered legitimate to bury female children, certainly the Qur'an gave women many rights including fundamentally the right to life itself. That's a fact. In other words, in relationship to the status of women in 7th century Arabia, the Qur'an is far ahead of its time, giving women far more rights than existed at that time. But that doesn't mean that we can be satisfied by the situation depicted as existing in 7th century Arabia. The principle inferred is that in every age the Qur'an must be ahead of the times. The Qur'an cannot go back and say 'slapping a woman once is egalitarianism' or is consistent with human rights. It is not. I think the sociological principle here is that the Qur'an must give human beings more and more liberation, not less and less.

Participant: You use the word 'tradition' in the sense of the 'traditional translation' while normally 'tradition' means the *sunnah*.

Resource Person (1): I am using the word 'tradition' as the commentaries. I am not talking about the Prophetic tradition. By tradition I mean different people's reflections on the Qur'an.

Participant: First of all, I think the interpretation of the Qur'an or *ahadith* is very difficult whether it be linguistically or philosophically. Let us start from *tafsir al Qur'an-bil-Qur'an*, and that the Qur'an means social justice. The spirit of social justice should be our framework because if we are going to interpret every word, this '*harfat-e-nushuuz*' is the traditional way. I think this is the wrong way because you will encounter a lot of arguments from people.

Secondly, when speaking of functions, I think the function of the husband and wife has also changed. I believe that the Qur'an mentioned this equality between women and men [quotes in Arabic]. The main goal of our work is in line with the principle of social justice because the Prophet Muhammad also said: '*um-tum alim jasho-ne-dunia*', i.e. "Well-known to you are the conditions of the life you have", and our life today is very different from before.

If the husband once had the function of maintenance, the situation is different now. You said "Don't put a value on the man's responsibility for maintenance". For me it is the main value of society because if a man maintains me, and feeds me, he has the right to tell me what to do. But if I maintain myself, life is different, the conditions are different and the situation is totally different.

Another point: now we live a different life, in a different place, at a different time. So it is not against the Qur'an or Islam when we say that we are going to act according to the spirit of social justice even if maybe we come up with something that is a sort of contradiction with the *ahadith* or *sunnah*, or perhaps something that is paradoxical.

Resource Person (2): About maintenance: what happens if a woman cannot maintain herself? For you I guess the situation is different now, but for most of the women it is not. Are you saying that the only way for her to have equality is for her to maintain herself?

Participant: Yes, to be independent. Because you said not to put a value on the

responsibility of maintenance.

Resource Person (2): Again, I go back to this historical social context. In America, black women had no option but to support themselves. As a consequence, when the feminist movement came to America (in the 1960s and 1970s) the white suburban women, who had not been doing anything, said "we ought to have a chance to work". While all these black women who never had any choice about working said, "Forget it. I want to be able to sit in suburbia like you do". Because of the context, especially of the historical social past, the idea of having to work to maintain yourself is not alien to black women. And, I know the working black women had to do it without any psychological, spiritual and moral support from the men. I don't like the idea of making money being the overriding principle by which if you can make money then you're okay, and if you can't make money then you are not.

Participant: No it's not that. Even in our society, the women work and maintain themselves, but still the men are superior to the woman because the women lack awareness. But logically, for me, I cannot be equal with the man without maintaining myself. This is reality.

Resource Person (2): This is very economic, very limited. As if there is nothing to empower except money. I think we have to remember that there is a lot more to the value and quality of a human than money.

Participant: You mean you are against the woman being independent?

Resource Person (2): I am against money as the criteria for determining values.

Participant: Money not as money, but in the shape of independence for the woman.

Participant: I feel what she's saying is that she feels equal to men regardless of whether she is economically independent or not, while also advocating economic independence.

Participant: One of the factors needed to have equality with the man is to be independent.

Resource Person (1): I think that we are coming to a very important point because we are now beginning to reflect on the various ways in which the concept of equality is to be understood. We have to distinguish essential equality - fundamental equality like when we say all people are equal before the law. It is a general statement that essentially all human beings regardless of sex or other characteristics are equal. In that way of course all people are equal, but in a sociological sense the situation is quite different. It is also important to remember that Qur'anic legislation and Qur'anic statements in general proceed on two planes: first there is the Qur'anic vision of how an ideal Muslim society should be organised which is futuristic: the sort of society you ought to create. Secondly, there is always also a recognition of what kind of society already exists and its existing problems. So, in the context of polygamy, the Qur'an is making laws for the future but at the same time also dealing with unlimited polygamy which existed at that time.

The point about economic independence is very important and relevant to our

condition today. On this I want to take you back almost a hundred years to the writings of Qasim Ameen, one of the two men feminists who have existed in the Muslim world. (There have only been two men so we need to recognise them. One was Qasim Ameen in Egypt and the other one was Mumtaz Ali in India who wrote the book *Haqooq-e-Niswaan*.) Qasim Ameen began his great work, *Emancipation of Women* with the statement: "There is no independence without financial independence". He was a sociologist and this is a statement from a sociological perspective. It doesn't necessarily mean that a woman has to go out to work. It means that the labour that women expend must be valued. For instance, in Pakistan, rural women work 16 to 18 hours a day but are not shown as wage earners in the Census and are therefore seen as non-productive.

In an ideal Islamic society the labour that women put in should be seen as productive. In 4:34 the work of bearing children and raising children ought to be valued. But it is not. Therefore at this point of our evolution, where Islamic society exists nowhere, it is mandatory for women to have the capacity to earn because if they don't have it, they are going to be treated as chattel.

This is a sociological reality; whether it ought to exist or not is a separate matter. When a rural woman who is illiterate is given the knowledge whereby she can earn a hundred rupees, it changes her attitude towards life. When she is taught that she can spend one year of her life without a pregnancy, that changes her perspective towards life. These are real things that we have to consider. While we are dealing with all these elevated principles these are the mundane facts of life.

Participant: I understand that many *ayaat* came, based on particular events in the Prophet's life at different periods of history. In what context was this particular *ayat* revealed? And, at that time, was there any collective action by women to assert their rights?

Resource Person (1): I am not aware of there being a particular context. However most of the early *surahs* of the Qur'an, such as Surah Al Nisa, were revealed after the *Hijrat* at Madina and most of these early *surahs* deal with how Islamic society is to be organised. The naming of the various chapters of the Qur'an was done later and arbitrarily. If you read the chapter on women, of which this passage is a part, it is not mostly about women. But it is interesting to note that if you go through the whole chapter you see that it is about minorities, orphans, women, and slaves. This is what makes me think that the historical context of this entire chapter is social justice because social justice has to do with the disadvantaged people, not with the advantaged. That's the general context. Of this particular *ayat* I am not sure.

But I can tell you there are certain *ahadith* which relate something like this: there was this woman who was beaten and slapped by her husband and she was very offended. Her father took her to the Prophet and she said, "My husband slapped (or beat) me. Can I seek revenge?" The Prophet said, "Yes, you can seek revenge." And then this *ayat* was revealed. If you want to take this as the context, it is up to you. But I would say that the concern here is social justice in general. This is after the *Hijrat*. The first Islamic state was established in Madina after 622 and this is one of those *surahs* which has a lot of legislation relating to minorities.

Secondly, I am not sure exactly what you mean by 'collective action'. One thing that we know for sure is that after the coming of Islam the consciousness of women who became Muslim changed dramatically in many ways. Because women felt that they

were not only freed from female infanticide but because, for instance, marriage in Islam is a social contract, not a sacrament, which gives women a say in the matter. In the Qur'an there is not one single statement which says anything negative about divorce (there are some *ahadith*) because it is seen as a social arrangement. The Qur'anic formula for marriage is extremely good and for divorce it says "live together in kindness and separate in kindness." It's a very egalitarian, very progressive, forward looking book.

Women were free to engage in trade. The purpose of the various laws relating to women's dress was to make it possible for women to go out and engage in their business and so on. The Prophet encouraged women to go to the mosque, again very important because in subsequent centuries it didn't happen. There are many traditions which show that there was intense conflict within the Prophet's close circle on this. Omar was very much against women going to the mosque. He did not like to see a woman outside her house and was constantly arguing with the Prophet on the fact that one of the Prophet's wives used to go to the mosque. Despite the fact that Omar kept making this fuss, the Prophet's wife continued to go to the mosque, even after the Prophet died. When people asked Omar, "Why don't you stop her, if you hate it when she goes?" He said "I cannot stop her because the Prophet allowed it." So even within that time not all were in agreement. Women and children went to the mosque and often made a big noise in the mosque. The Prophet often abbreviated the prayer to accommodate all these people because he wanted them in the mosque. There are many traditions like that. Women were not mass activated - not like today - but I think they changed their role very much in that society.

Participant: This morning you presented the analysis of the text as the way to reinterpret the Qur'an which is both a new translation and a new interpretation. This afternoon it seems you are giving more importance to the historical analysis and more in keeping with the spirit of Islam. Will you combine these two techniques? Is it a more complex methodology than the one we heard of this morning.

Resource Person (1): I never said that this is the anything; I don't believe in that. I was trying to show that that particular passage can be interpreted differently. You have now heard two different interpretations, both feminist and both certainly different from all the others. I am sure there are many other possibilities. What we are trying to show is that it's not set in concrete that this text means this: it can be interpreted in ways that support the idea of equality, which I believe very strongly is the spirit of the Qur'an. In fact it is more than egalitarian: the Qur'an is biased in favour of the disadvantaged. All the scriptures talk about the rights of the poor, the rights of the orphans, the rights of the slaves. That's more than egalitarian.

We need to go back to history but we also need to go back to the text because Muslims are People of the Book. In the same way we can interpret the text from so many points of view, we can interpret history from various points of view. It is a great illusion to think that history is only one-sided. I think we definitely need both.

Participant: Just a minor question, a concern expressed yesterday that struck me again today. I think we all agree that we do not want to rely on the translations we see around us, (the 39 given us are all male interpretations) and, we should go back to the Qur'an itself. But a lot of us are just not capable of devoting our lives to going back to the Qur'an and making some interpretations ourselves. Can't we rely on some female

theologian to do that for us?

Resource Person (1): What this group needs to do is to find the funding to create a committee from people sitting around this table right now - those of us who have worked on it - and enable us to produce an interpretation of this verse which you can publish. It can be done with relative ease and we are here to work. But, for instance, - if I were to actually write it down in a systematic way - I would need the assistance of people who are more proficient in Arabic than I am. You see, the moment you start saying this people target you. So we have to do it very carefully. We have to make this thing scholarly solid. I mean, it is still a *prima facie* case, but it ought not to be rejected on the basis that, "This is all wrong. Your Arabic is wrong here and your grammar is wrong here and it is not 'zer,' it is 'zabr.'" We have to ensure that both linguistically and philosophically it is sound and that we present it in a way that it is sound. For that we need some research time and resources.

I have spent so many years of my life on this one verse - maybe it is not perfect. There are days when I think I am missing something; I have doubts about my proficiency in the Arabic language. What we really need is a team of people with some time to work on it, and maybe when we feel more confident to present maybe one or two counter interpretations with a degree of confidence that, "It is going to hold; it is not going to be easy for people to knock them out in five seconds."

Third Presentation on Surah Al Nisa (4): verse 4:34

Resource Person (4): I don't have an enormously long presentation to make and I also don't have the ability to do the kind of textual analysis we heard this morning. But there are two things to share.

A few years ago I was asked to contribute a chapter on Muslim family law for an ecumenical book on various religions and their possible forward looking perspective on family laws. It was within that context that I started looking into the various texts to try and clarify my mind by supplementing the information I already have as a lawyer about what Fyzee calls Anglo-Mohammadan law, which is technical rather than jurisprudential. In this context, I came across something that I want to share with you on the first part of this same *surah* up to the point where it is a question about 'they spend their property in support of women'. I didn't deal with the latter part because I was discussing the *surah* from a different point of view.

The general proposition I made then is that you have to look at the Qur'an in its entirety and you have to also look at the duties that are enjoined upon human beings in the Qur'an. If you leave out the temporal, i.e. the rules of law that regulate your day to day life, and you go to the rules that regulate your spiritual life, it is very significant: there is no difference between a man's and a woman's duty. A woman is equally responsible for her spiritual salvation as a man is for his. She is equally liable to punishment or meritorious reward according to what she does. Even within the orthodox, conventional belief, I think it would be generally accepted that from a religious point of view, your spiritual duties have to be the criterion by which you judge whether men or women are regarded as equal in the eyes of Islamic jurisprudence in the Qur'an. It seemed to me that when men and women were absolutely equal on the spiritual level then whatever the apparent inequalities within certain temporal spheres, these were not of the essence. The essence was the spiritual equality that both the sexes enjoy.

Then I elaborated on this with a point made earlier this morning, i.e. when we assume that because X can do this and Y can do something else or cannot do it and vice versa, it is we who are imputing a value judgment to a capacity, which does not necessarily have anything to do with the concept of equality. This, I feel, should be the focus of the way we look at the problem. The assumptions we make that somebody's capacity necessarily determines something else about them is an erroneous or fallacious way to look at it because the question of a person's ability to do something and a person's status don't necessarily coincide. One can be different without it necessarily impinging upon a person's right to be regarded as equal.

These are just broad interpretive points that are not based on textual criticism but provide the guidelines with which you need to look at texts. Even if you were not looking at the Qur'an as the Qur'an but as any document, you cannot in your mind preempt certain attitudes. You have to keep an open mind when you start analyzing. Quite often

when certain things strike us as being unequal, the inequality is something that we perceive from a very narrow point of view: what exactly this particular phrase meant in that particular context.

I would like to read out to you a textual criticism from a writer on 4:34. I am not in any position to comment on the grammatical points he makes: the Arabic speaking amongst us will have some idea. What I find interesting is how it is possible at several points to take a phrase and read into it something completely different from how the commentators have translated it or commented on it. This is somebody who in fact is a man, Hommudah Abd Al Ati. He was a sociologist and author of *The Family Structure in Islam*.

"The explanation of the degree of men above women still remains to be sought. Neither the giving of testimony nor the differentiated distribution of inheritance seems to be a satisfactory explanation. The Qur'an is, Muslims believe, self-explanatory in many respects. Some of its passages explain and are explained by others. A case in point is the question of the degree (2:228). There is a suggestive insight into the nature of that degree in the passage (4:34), the second of the two statements providing the textual basis of obedience. Here, the Qur'an states that men are *qawwaamuuna 'alan-nisaaa'*, which in all probability means that men are guardians over, protectors and maintainers of, or responsible for women. The degree of men above women is the former's guardianship over and responsibility for the latter because, as the passage has put it, God has made some of them excel others and also because men expend their means. The degree is "operationalized" as the man's role of guardianship, a role which is based on the differential capacities of men and women. It is this role differentiation, together with differential capacities, that may provide a satisfactory explanation of the degree."

He is referring to the other *ayat* - the one about *darajah* (2:228):

"It is probably interesting to note that the Qur'an does not state it categorically that men are superior to women or that God has made excel women. The passage (4:34) is unequivocal in specifying the financial role of men as a factor in their designation as guardians of women."

That, as already pointed out in our meeting was purely a situational factor then and even today for a large number of women. But it is not something that is intrinsic in the nature of men.

"But when the verse speaks of excellence, it does not allocate it to any particular sex. Much less does it associate excellence with men exclusively. The interesting fact is, however, that almost all writers, Oriental and Occidental, classical and modern, have, with varying degrees of emphasis, interpreted the verse in question to mean the superiority of men to women. This interpretation is probably better understood as a reflection of certain psychological dispositions or of the actual status of women, which has been low on the whole, at least on the surface. The assertion, by some observers, of the categorical superiority or excellence of men is difficult to explain in terms of the spirit or even the letter of the verse."

Surah Al Baqarah (2): verse 228

Divorced women
Shall wait concerning
themselves
For three monthly periods.
Nor is it lawful for them
To hide what Allah
Hath created in their wombs,
If they have faith
In Allah and the Last Day.
And their husbands
Have the better right
To take them back
In that period, if
They wish for
reconcillation.
And women shall have rights
Similar to the rights
Against them, according
To what is equitable;
But men have a degree
(of advantage) over them.
And Allah is Exalted in
Power, Wise.

Wa l - m u t a l l a q a a t
u y a t a r a b b a s n a b i - ' a n f u s i -
h i n n a s a l a a s a t a q u r u u u ' .
W a l a a y a - h i l l u l a h u n n a
' a n y - y a k t u m n a m a a
k h a l a q a l l a a h u f i i ' a r - h a a -
m i h i n n a ' i n - k u n n a y u ' -
m i n n a b i l l a a h i w a l -
Y a w m i l - ' A a k h i r . W a b u -
' u u l a t u h u n n a ' a h a q q u b i -
r a d d i h i n n a f i i z a a l i k a
' i n ' a r a a d u u u ' i s l a a h a a .
W a l a - h u n n a m i s l u l l a z i i
' a l a y h i n n a b i l - m a ' - r u u f .
w a l i r - r i j a l i
' a l a y h i n n a d a r a j a h .
W a l l a a h u ' A z i i z u n H a k i i m

وَالْمُطَلَّقَاتُ يَتَرَكْنَ ثَلَاثَةَ قُرُوءٍ وَلَا
يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ
إِنْ كُنَّ يُؤْمِنْنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلَوْ كُنَّ أَحَقَّ
بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادَ الْأَصْلَاحُ وَلَهُنَّ مِثْلُ
الَّذِي عَلَيْهِنَ بِالْمَعْرُوفِ وَالرَّجَالِ عَلَيْهِنَ دَرَجَةٌ
وَاللَّهُ عَزِيزٌ حَكِيمٌ

"The verse declares that men are guardians, etc. of women. Guardianship entails authority of the guardian over the person(s) guarded. But authority is not the equivalent of power, much less of absolute power. Nor does it necessarily mean a dichotomous, absolute ascendance-submission relationship. The verse does not mention authority in any direct sense; at most, this can only be inferred as a function or consequence of guardianship. But authority is not the only function, because guardianship also entails responsibility. The distribution of both authority and responsibility is a dimension of the division of labour; it is not an affirmation of "instinctive" or absolute or mutually exclusive characteristics of the sexes.

"Moreover, there is a grammatical point that may be suggestive. The verse states that men are guardians, etc. of women because God has made some of them excel others. The Arabic original of the objective pronoun (them) is the plural masculine. If taken literally, it would mean that God has made some men excel others. But if it is interpreted in conjunction with the first part of the verse, where men and women are mentioned, the pronoun them, though strictly masculine, can be taken so as to refer to both men and women. In this case, excellence is

attributed to some generalised men and women. This would be based on the grammatical rule of *taghlib*, according to which a plural consisting of singulars differentiated on some levels may be identified by one of its components and still include the rest. For example, the sun and the moon may form a plural which can be called the "two moons". It would seem that the referents of the objective pronoun *them*, of whom some excel, include members of both sexes for at least two reasons. First, if excellence is conferred by God on some men to the exclusion of other men and also of all women (a necessary conclusion of taking the original pronoun literally as a plural masculine), it would be difficult to explain why the Qur'an clearly designates men in general as guardians of women, or why it allocates rights and duties to the male sex on the merit of only some members thereof. Secondly, the object of the verb 'excel' is defined neither by the masculine nor by the feminine pronoun, nor is the content of excellence specified in the verse. There is no direct indication of who is excelled or what excellence is. Furthermore, it is a grammatical rule that the pronoun refers to the nearest preceding noun unless otherwise indicated. The nearest referent of the pronoun 'them' in the verse is actually women, not men. If the interpreters of the Qur'an adhered to this rule of Arabic grammar, they would have concluded that God has made some of them, i.e., women, excel. But they, instead took the verse to mean that God has made some men excel. They went further to specify or define those who are excelled as women, and further still to conclude that men as such, not only some of them, excel and hence are superior to women as such, not only some of them. Such an interpretation and conclusion seem to draw no substantiation from the verse. They must have been reflections of the prevailing social conditions and mental dispositions."

"Not originating in any textual authentic declarations, they must have been adopted by men who actually believed themselves superior to women, in an age when external appearances probably lent support to such a belief, and in places where instrumental authority overcast expressive authority. The verse, which is somewhat equivocal, was adduced perhaps to rationalise those contemporary conditions and to give those men at least the appearance of evidence in support of their views, so that they would not be taken as contrary to the principles of religion."

[comments: 'We like it', 'Who is it?']

The reason I quoted this is because I found it interesting to see that there is this whole purely technical, grammatical way in which you can deal with the text. No one really seems to look into the straight forward rules of textual interpretation. Not the historical aspects, or what the spirit of the Qur'an is, not any of those, but just reading as you would construe any legal document say, even on those bases, the traditional interpretation is an inaccurate rendition. And those 39 translations handed out, and I am sure there are 339 translations, none have ever referred to these rules of grammar. I know enough about Arabic to know that, unlike English, Arabic has very strict rules. You

can't play around with words in the way you can in other languages and still be grammatically correct in Arabic.

So the point I made was in several parts: firstly that we should not confuse two different things in order to try and assess whether men and women are equal. Secondly, if the spiritual responsibility of women is equal to that of men, it is a far more important indicator of what the role/status of women is than other things. And, thirdly, there are only two *ayaat* in the whole of the Qur'an that one can pick out: one is 2:228, the *darajah* (degree) one, and the second is 4:34 which can, theoretically, give you any kind of support for this idea that men are superior whereas in fact, when seen from the point of view of straight forward grammatical construction - nothing else - you cannot justify the traditional translation or the interpretation.

I would like some feedback from people on how far anyone felt that the points I presented have any validity.

Participant: The problem in 4:34 is not only of language; the language of course is very important since it shows you how a society thinks and contains the customs, traditions and values of the society. It is important, but only to a certain extent. I have all these Arabic interpretations of this *ayat* and none of them is liberal at all - even though it is an Arabic interpretation - except only two, which are a little bit liberal.

One of them speaks about the word '*qom*', '*qawwaamuun*'. The first says that the word '*qom*' means 'group of men without women', for the identification that this is man and this is woman. I think this word is more liberal than the interpretation. And I was very satisfied with the first interpretation presented that this *ayat* is for the *ummah*; 'the penalty for the wife violating her function as a woman is for the *ummah* to impose/decide. In the last verse, '*baynihimmaa*' means 'between': between the husband and the wife. It means this penalty is for the *ummah*. It is the duty, the function of the husband and the function of the wife. It means the penalty for one (or the other) of them - and not for the wife - is for the *ummah* to decide.

Chair: We invite comments and questions from the floor.

Resource Person (1): We have been looking at 4:34. If we look at the next verse, 4:35, see what it says. I argued that 4:34 is addressed to the *ummah*, and whatever action has to be taken has to be taken by the *ummah*. If you look at this verse in continuation of that it says to the *ummah*: if you fear conflict between the husband and the wife, you do this. If 4:34 were addressed to the husband it couldn't say that, because the husband is the object of 4:35. This lends support to the argument that 4:34 is addressed to the *ummah*.

Participant: I couldn't follow your argument on 4:34. What did you mean about the point on '*himmaa*'?

Resource Person (2): Your point was that because that section of the next verse is referring to the *ummah*, therefore the earlier verse i.e. 4:34 refers to the *ummah* as a whole. I agree. The only problem is that the verse is talking about the '*himmaa*': the 'two', and what are the two?

Surah Al Nisa (4) : verse 35

If ye fear a breach
Between them twain,
Appoint (two) arbiters,
One from his family,
And the other from hers;
If they wish for peace,
All ah will cause
Their reconciliation:
For Allah hath full
knowledge,
And is acquainted
With all things.

Wa 'in khiftum shiqaaqa
baynihimmaa fab - 'aṣuu
haka - mam - min
'ahlihii.wa ḥaka mam-min
'ahlihaa. 'Iny-yurii-daaa
'islaahañy-yuwaffi-qillaa-
hu baynahumaa :
'innallaaha kaana 'Aliiman
Khabiiiraa

وَلِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ
وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ
بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ۝

According to you the discussion is about the 'himmaa', (the husband and wife) even though it is directed to the *ummah* at large. In the Qur'anic text, discussions involving the concerns of particular sections of the society were directed to those members of the society. When it says, "they ask you concerning *al-nisa*". It is they, masculine plural, etc. If the women were asking about their own selves, then the book would have said "the women ask you". There is a language by which if the parties concerned were the women themselves it would refer to them. If the party concerned was the *ummah* at large it can refer to that by certain generic types of terminology. Here the parties concerned were the men in how they were treating women. The Qur'an directed itself towards that.

In fact, because of the existing patriarchal society - this is the bulk of the direction - when it refers to the 'you', it is referring to the you-plural: those people who dominate in the social order. But it does not mean that the wisdom that is contained in it is restricted to just them. You can, therefore, by extension, say you-plural means the *ummah* at large. The you-plural means the females in the *ummah* as well as the males in the *ummah*, because the wisdom that the Qur'an is portraying is not restricted to just this person.

I am trying to show how the Qur'an, in the context of the patriarchal Arabia at that time, dealt with certain issues and took into consideration what was really there: taking the wisdom that underlines it or the principles upon which it is based helps somewhere else, in another context. Fazlur Rehman suggested a methodology of taking the verses in the context they were revealed: understanding what social justice, for example, was enacted by a particular verse. Then how do you bring in this same social justice in a new context? Also, the text has some kind of restraints on it. In other words you look at what was there in the context; you surmise the principles, and by necessity in a different context only those people in that different context can tell you how to enact those principles at that particular time.

With regard to language, I was trying to say that there are certain restrictions based on a real context. This is not a bunch of metaphors. There are metaphorical values and examples. There are concrete examples. The problem has been: do we transport those

concrete examples or do we transport the essence of what was being discussed. The essence of what was being discussed applies beyond that particular context. I have no problem with what you are saying about this verse being directed towards the *ummah* as a whole. However, what I am saying is that it is discussing a problem between '*himmaa*'. The point made that when you are talking about people at large you are using a terminology that is plural etc., is fine. What are you going to do with '*himmaa*'? You have to tell me who that '*himmaa*' is. And, if that '*himmaa*' is referred to somewhere else you have to tell me where. So the direction is to the *ummah* at large, and the discussion is about the husband and the wife.

From Qur'anic Principles to Codification

Participant: At one point in the discussion you said the concept of spiritual equality that is maintained in the Qur'an in a sense is more important and supersedes issues of temporal equality. Since we started this workshop, we started with the idea that women are oppressed in the here and now, and that religion is used sometimes as a medium of oppression of women. Today, we have said over and over again that the Qur'an emphasizes social justice. Social justice occurs presumably in the here and now - not questioning the divine reality of Heaven and Hell and so on. Then how can we be so comfortable? At least it makes me uncomfortable to think that somehow I can subscribe to this idea that the concept of spiritual equality, which presumably takes place not in the here and now, supersedes or is more important than temporal equality.

Resource Person (4): No, it is more important from the religious point of view. But I was using this as a basis for the argument that temporal or apparent inequalities have to give way before the emphasis on spiritual equality which lays down the ground rules in which the rights of men and women have to be adjudicated. I was using that as the yardstick for saying that men and women have to be equal and if there are temporal inequalities, they were sociologically part of the situation. Then people were being addressed in a particular context, and when the context is changed these things are capable of being reinterpreted and changed.

The touchstone for this argument is the state of your soul and if that is equal, then there is no way that you can be said to be inferior. I am not saying therefore you should be comfortable because when you die, you are going to heaven straight. What I am saying is these temporal things are not the important things.

Interpretation & Codification

Participant: Most of us agree that most *ayaat*, except for maybe one or two, speak about equality: as you pointed out very clearly that your rights and your obligations, your duties and your rewards, everything is equal. The problem is that this verse 4:34 is the one that is thrown back at us when we say, "But we want to do this" and then it's end of discussion.

The other thing is the interpretations that are used are codified and the codification is limited in time. It does not change for a long time if you don't agitate to get a change. For instance it was pointed out that marriage in Islam is a contract in which you can write in whatever you so desire to reflect what the two people who are getting married want to see their relationship together as. However the reality in most of our lives is that this is not an option open to us. We already have an option defined, through family laws,

or some other legislation, which means I am being denied my Islamic rights because that is being codified into law in a specific way. For example if I or my husband want to put specific conditions into our marriage contract, it is no longer valid as a document in the court. I was specifically told it was not.

Participant: The *nikahnama* (marriage contract) allows for 'any other conditions'.

Participant: the point I want to bring out is that there are very often contradictions between what is contained in the text, or what is the spirit, and what we live with, because it becomes translated and codified in a particular way; such as, the whole question of divorce or other issues which are contained both in the Qur'an and in our legal systems.

Resource Person (4): I think that you have to realize that there are only about 80 verses in the whole of the Qur'an which deal specifically with any kind of legal questions and these are not comprehensive. There is no way that you could have developed the kind of very complex legal system that has developed, i.e. Muslim jurisprudence, without this kind of interpretation.

Some argue that this is the way the whole of the body of the *shariah* has developed, and the thing is that codification or jurisprudence is a dynamic and evolutionary process, and capable still of developing because it had to develop in the beginning. Otherwise it would not have been possible to have done anything very much with the few verses that were there. Again an ordinary rule of interpretation is that where you want to find out what was the intention, or what does this mean, you have to go back and see what was the objective. The objective as one of our resource persons has pointed out was to improve not just the condition of women, but of orphans, of disadvantaged people and of the poor in general. Therefore, always in keeping with the spirit, or situation, there should always be an evolutionary process in the interpretation of the Qur'an.

That is how the whole of the legal system has developed. What is now being presented to us as orthodox and traditional was, in its day, as innovative as anything we are asking for; and all we are saying is that we don't see why the innovation should not go on. The people who say "That is it" are denying the very creative process that took place, and needs to go on taking place. My theory is, just as human beings are supposed to be evolving towards a degree of better behaviour or striving towards excellence, so they were given a revelation on the basis of which they would draw, in order to be able to help them in this. To reach that situation, it seems to me, there is no logical contradiction between believing that this is the word of God directly, and still believing that it was capable of this evolutionary development.

Resource Person (4): The thing with marriage is, Muslim marriage is a contract and, as with any contract, if two parties fall out it has to go before a judge who will try to understand what was the presumed intent of the parties. I am not talking about the civil law contract - I am talking about the marriage as such - and see how far this intent has been infringed upon or whatever. Now there are certain rules e.g. that you cannot make a contract for moral or illegal purposes or where you don't have the capacity to make a contract. For example, I cannot make a contract in respect of your house to give it off to somebody else. These are some of the basic fundamentals. In the matter of polygamy for instance, my mother insisted that during the tenancy of the marriage, my father was not to marry a second time. There is a difference of opinion in the text books as to

whether this is validly enforceable. If it ever got to the crunch it would depend really on whether the judge who was hearing the case leaned to the arguments of one jurist who thinks this is validly possible or to another.

Participant: It is very important to take into account the differences from one country to the other. For instance, in Pakistan you have this delegated right of divorce which is written in your *nikahnama*. In Algeria, not only do we not have it, but when we tried recently to have friends married with this clause in their *nikahnama*, first of all, the state represented by the city council refused to accept that this could be done. Then they turned to the religious authorities, and at that point it was the family of the bride which refused that this right be granted to the daughter.

I think this is in the whole of Africa. It is not only that we do not have the delegated right of divorce, but we don't even know about it. The intervention of the state is crucial in preventing some of these rights from being written down in a contract. The contract tends to disappear, and the real thing now is what the state thinks the contract should be. There is a tendency not to put in any clause other than that written in the official form. State intervention not only limits us but limits us in different ways in different countries.

Participant: But you have seen state intervention operate in a restrictive light. I would like to tell you how state intervention has worked favorably in Singapore. Singapore restricts polygamy, which means the right to decide whether a man can or cannot have another wife does not belong to him; it belongs to the court. Because the legislation has said the right belongs to the court, if the judge allows the man the discretion to decide, you can use it as a ground for appeal. It is double edged. But the real issue is who decides which particular opinion should be the law of the land. We have varying opinions on this and that is the problem. So if I understand *siyasa-i-shariah* as a *shura*, it is not actually what the state decides. Through *shura* what the people want in the law should be the law of the land, and not what a political authority states. This is the problem.

Now I think there is legitimate room for people to decide: "We want a particular view to be the law of the land." It should not be the political authority because the concept of *siyasa-i-shariah* is by consultation. People should come up and say: "This is what we want." Like, for instance, in Malaysia, in the state of Pera, all the man has to do is make a declaration to be fair to his wife to get away with his second marriage. But just across the other border in other states it's the court who decides.

The state of Pera did not consult the people. Some fellows in the Majlis decided that all the man must do is just make a declaration that he can be fair. But in Malaysia the court decides. The court says, "We have the power to tell you whether you can be married or not." It is not up to the men. But like I said, there is still room in the doctrine of *siyasa-i-shariah* of consultation of the people, and we must insist we have the right to be consulted on our laws; and which of the differing opinions we want to choose to be the law.

It should be that way but it is difficult because it is political. Also like another participant said, if we do not agree with the particular view that is the law of the land, what happens? Because there are other views, it can be used both ways, both restrictive or in favour of women also.

Resource Person (4): Well, I think this is a problem you will always have, not just in

relation to gender relationships: that eventually there are always going to be some rules, some laws that women disagree with which become part of the law of the land, and the only way to deal with that is to campaign and make your disaffection with the law and the reasons for it known, so that the inequity of the law or the injustice of it is demonstrated and the law is taken off.

I suppose the real problem is, in the context of the discussion that we are having, that we find ourselves pre-empted from the discussion. This is what is the more serious problem. Not so much that a judge may give a biased decision. That is bad enough, however you can go in appeal; you can campaign; you can write critical points. But in certain areas there is a sort of no-go situation. We are trying to challenge that particular attitude so that one has the capacity to be able to understand and then make one's own views known and effective - not to be pre-empted, "It is written; it is interpreted in that way and that is it."

Participant: I come from an educated family. In my own *nikahnama* I don't have the right of divorce because nobody bothered. It was just not considered. Maybe it was considered inauspicious. I just know I signed the marriage contract. But I think that has a lot to do with our position in society, the extent to which we are able to exercise our rights.

A lot of this has to do with our own consciousness, our awareness about asserting our rights. I think that comes into our own assertiveness as a community, as a group or whatever, because we are fighting for our rights at all levels; political rights as deprived communities in our own systems. We are fighting at the same time as educated women for our employment, or as uneducated women. I think this is part of our larger struggles.

I think the first thing is to get 'equal rights' into our statute books, and then our next step is to see that those get implemented. I don't think this will come to us automatically.

Participant: First of all, I am not convinced that spiritually men and women are equally free. In my experience women are not free at all. They are paralyzed and restricted. They cannot express themselves. They do not have access to what they want, etc.

Secondly, on the issue of divorce, rural women from where I come have no idea of what the rules are, and the customs are so restrictive that they cannot even approach courts, or have recourse to any of the legal measures that are provided.

I myself didn't know the kind of rules that existed. I think it is very important, from the perspective of the women I work with, for all these women here, who are experts in so many fields to make known, to popularize these rights of women so that they can utilize them. This is my appeal to you.

Participant: Could one of the resource persons share with the others what she said to me at lunch on the role of conscience in the Qur'an.

Resource Person (1): Well, in the Qur'an you have this statement many times "For itself lies every soul" which means that you are responsible and accountable for yourself. Also, a reference was made earlier to how important it is to use your intelligence, your reason. What distinguishes humanity not only from animals (what the Greeks said was what makes human beings superior to animals), is the fact that they have reason. But according to the Qur'an human beings are elevated even above angels because they have reason.

This is the first story in the Qur'an, which is in Surah Al Baqarah(2), when there is a

contest between Adam and the *malaika* (angels). What makes human beings the highest of creations, or created in the best of moulds, is the fact that they are supposed to exercise reason; they have the ability to know what is right and what is wrong and so on. So there is a very, very great emphasis on accountability, on free will, on choice in the Qur'an.

The Qur'an states that the Qur'an is a confirmation of what went before and the Prophet is part of a series of prophets. He is not the first prophet. He is believed to be the last prophet. But there have been prophets and the essential message of all the prophets has been the same. They came at different historical periods, so they may have different historical missions. But as far as the teachings, ethics, philosophy is concerned, there is no fundamental difference. Many Muslims take the position that the Qur'an negates, invalidates all the previous scriptures and only Muslims have a passport to Heaven. Actually this tendency which is very exclusive, very imperialistic in a religious sense, is found in all the three major religions.

As the historian Professor Toynbee has pointed out, it is a special feature of Judaism, Christianity and Islam that each claims exclusive truth and finality, and condemns other people. But if you read the Qur'an itself, it contradicts that. For instance, twice you have a particular verse - very important - which says to those who believe in the Jewish Scriptures, to those who believe in the Christian Scriptures, to Muslims, to the Sabians(17), to anyone who believes in God and does good, God will reward him.

This is a very clear statement. About the Prophet Mohammed, the Qur'an says he is the 'seal of the prophets'. The discussion revolves around what is meant by the word 'seal', because according to the way the Islamic dogma developed, it was so explained that a seal is something like a stamp, like a document is completed and then sealed. Also in the Qur'an there is this statement that, "This day we have completed your faith for you." (Surah Al Ma'idah (5): verse 3). So there is this idea that the oral revelation of God through various prophets is a process that has now been completed. There has been a lot of discussion through the centuries about this.

For instance, Iqbal has an interesting position on this question in his *Reconstruction...* lecture. He says that the reason the Prophet Muhammad is believed to be the last prophet is because in a way he stands between the ancient and the modern worlds. There is no need for further prophets because now you have the Qur'an; because what the prophets were doing was bringing the messages, the teachings, over and over again. The position that many Christian theologians have taken is that human beings are essentially sinful. Therefore, they have need for redemption. The position that the Islamic tradition in general has taken is not that human beings are essentially sinful, but that they are forgetful. So they forget again and again. God has to remind them.

In the Qur'an you have a book which sort of crystallizes and consolidates everything that has gone before. Not only do you have a book, you have an exemplification of the book in the life of the Prophet. He received it and he lived it. Not only that, you have God's permission, rather God's imperative, that you use your 'intelligence' to interpret this book.

17 The Sabians are mentioned three times in the Qur'an (2:62; 22:17; 5:69). There is a dispute over the exact nature of their theology, according to the *Dictionary of Islam*, "from (these) verses it would appear that Muhammad regarded them as believers in the true God."

Wilfred Cantwell Smith, an orientalist scholar of Islam, has made a statement which I think is hugely important. He said "Original Muslims believed in God. Modern Muslims believe in Islam." Now, I want you to think about that. Original Muslims had this kind of understanding of Islam. There is Allah, Center of Life, Center of Reality: ultimate principle. The Qur'an, which is the word of God: revelation, guidance given to humanity by God. So they said, "Okay, now we believe in God. We believe in the Qur'an. Now, what we have to do is, we have to go into the world and try to implement the Qur'anic vision. Construct a society in conformity with the will of God as revealed in the Qur'an." So they went forward and constructed a society which they called 'Islamic', according to their understanding of the Qur'anic principles.

Now, fifty years, one hundred years or twenty years later something didn't work. They said, "Okay, we didn't understand the Qur'an properly. Our *ijtihad* was somewhat flawed. So we scrap this. So we go back again and we construct another society and call this 'Islamic' because what is 'Islamic' is a socio-political cultural system." It is important for us to understand that the word of God is the Qur'an and not Islam. Islam is a system which is constructed on the basis of a particular understanding of the Qur'an at different moments in history. Now again, if fifteen, twenty years later this doesn't work, you can scrap it. You can go back, start another system and call it Islamic.

The point of this is as long as you are centered in Allah, the possibilities of development are infinite. You can go back again and again. This is what was happening in the first 400 years or so of Islam. There was no such thing as fixed Islam. It was just people doing *ijtihad*, understanding and trying to construct different models.

What has happened in the modern period is that there is a severance. What we have now is massive apologetic literature, which deals with Islamic economics, Islamic geography, Islamic science, Islamic anthropology, Islamic everything because they have lost their connection to the center. Fundamentally, unless we can re-establish the link we have no hope of getting anywhere. Original Muslims believed in God. If you believe in God the possibilities are infinite. That is why we have to go back to the text that came from God. But as long as we believe in Islam as particular interpretations, we are absolutely lost.

Participant: I realized when I was in Malaysia that everyone has his own Islam: there is Malaysian Islam, Pakistani Islam. That is why I appreciate the title 'Women Living Under Muslim Laws' which means they are human laws, not divine laws. It seems to me one gets confused about what religion is and what is tradition and custom. That is why everyone has their own Islam, which is why we have to go to the original source and that is the Qur'an and the *ahadith*.

Participant: This is what I meant yesterday when I was referring to *sunnah*. Wouldn't you agree that when we encourage *sunnah* unless we specifically say it is only in reference to get guidelines and examples and inspirations it is a dangerous trend?

Resource Person (1): Yes, it is. When I say being centered in God, God is by definition unbounded, unlimited, infinite. You can't put a boundary on it. When the Sufis say God has ninety-nine names, and in Hinduism they say there are three hundred and thirty million gods, it really means that God is infinite. It is infinite reality and we can only try to name a little part of it, to give it a name because we have to relate to it. Our human need is that we name it. So we have all these names for Him, but God is beyond any limitations. But we don't realize that. So much of how we understand Islam and being Muslim depends on how we understand God.

Resource Person (2): There are a couple of things that I did not bother to discuss earlier with regard to what it is that we are proposing to do and why it is that we are proposing to do so. What we are proposing to do should be looked at with regard to why we are doing it. As women living under Muslim laws: we propose to do this, but we do not at same time present a very clear, concise and consistent methodology of how to do it.

We say we want to look at the text and the Qur'an is after all a text. By text I mean anything that uses words to communicate ideas. The Qur'an is a text whether we refer to the oral part of its tradition or the written part which we were dealing with now. Other forms of art, such as a painting express an idea but are not a text.

Therefore, in discussing a text, we are stuck with the number one definition of a text i.e. that it is language. If we are going to discuss the Qur'an and we believe that we can in anyway arrive at the spirit of the text without the text itself as the embodiment of it's own spirit, we are fooling ourselves. The Qur'an does express the principles of social justice and does it in words. We must understand how it is expressed and then utilize it in a very concise and consistent manner in order to counter-balance the misuse of the same text against women living under Muslim laws. Therefore the idea that we can decide on anything or to give an opinion on anything about the text without in fact referring to what is actually there in the whole of the text is a mistake.

For example, for us to be able to decide what the position of women is in the Qur'an only by those verses that say something about males and females, or females, is a misuse of the social justice of the text. Not only that, it is a repetition of the methodology used by male and/or anti-female type of interpreters.

The Qur'anic concept of women as a creative being from Allah is not something that is always exclusive of the Qur'anic concept of Allah as a creative being.

A very short, very sweet example is, "that Allah sets forth an example for those who believe and He talks about the wife of Pharaoh...". The Muslims in the past gave the impression that this was an example of the role model for women. If it was an example of a role model only for women, the language would have been something else. It said for all those who believe, and that it happens to have been a female that was used to exemplify individual responsibility with regard to belief is the same as saying for men this is an example of belief as it is for women. The plural form is used to address the *ummah* at large with regard to a particular issue. Take the next verse, 4:35, which says something like "if you are afraid of a split between the two", '*baynihimmaa*', '*himmaa*' means only 'two'. As a consequence we have only justified that the '*humah*' can only refer to two persons. In other words although the verse is directed to the *ummah* at large it is in fact concerning relationships between the two. The idea that we can understand all that is intended by changing our methodology whenever it pleases us (i.e. in this instance we refer to historical context, in an another instance we won't; this is what we want to hear, so therefore we accept it) is a fallacy. My objective was only to be able to create more available material for the battle that is ahead of us.

This means that the verse on inheritance includes those people who are not given specific inclusion in the '*warisa*'. It is meant as an addition and not as either/or. And that is why it is said that the Qur'an has more than one use of terms to indicate this difference. We have to consider that there is tremendous amount of material in the text, but there is a very limited amount of experience we have of the text. And as a consequence we keep referring back to the spirit. The spirit of the text is in the fact that it is a text. Therefore we have to understand the text well enough to get at the spirit.

Participant: I think what is being said is that we should deal with the text on more

scientific lines. If we have an *ayat* which needs clarification, or sharing of views, we should go about it step by step; go back to the text and share our various experiences.

Participant: This has validity. This is a text which is supposed to guide our lives and we are looking at it in a fragmented manner. On the other hand there is also the reality of how to make this five day workshop more effective.

I think both things will have to go side by side. As a task we should identify the diversity of all our Muslim societies, and how Islamic law that has been codified in our various societies affects us directly; to see them in the context of the entire book; not in isolation and unrelated with the verse before and after. There must be some methodology, and this is my suggestion.

Resource Person (1): It is very important to understand that all the women who are sitting around the table are at different levels of understanding, and exploration of some very complicated matters. Some of us have been more fortunate in that we have had more time and opportunity to study the text.

It is very important that we maintain in this meeting a spirit of humility and sharing rather than assuming - any of us - that we really have got all the answers, which I certainly don't have at all. I still consider myself very much a seeker. Methodology simply means your method in interpreting a certain text. And unless you have been studying in a systematic way for several years you don't have a methodology. I would be very surprised if everybody around the table even understood what the word means. I think it is presumptuous of us to even expect that there should be a methodology; I think part of our task here is to arrive at some sort of method. My methodology is three-fold. I have three principles which I employ.

One, I am concerned with linguistic accuracy. When we look at a certain word in the Qur'an, it is very important to know what that word meant in 7th century Arabia, in the historical, cultural milieu of the *Hijaz*. How was that word understood by the people to whom the Qur'an was first revealed? We have to establish that and we have to use various means, by reference to lexicons, etc. If a word is used many times in the Qur'an we have to examine the use of that word in order to understand how that word is generally used in the Qur'an.

Two, is philosophical consistency. If a word is used several times in the Qur'an what is the philosophical meaning of that word (not just the linguistic meaning) that comes through.

Three, very important for me, is the ethical principle. And that ethical principle is that I believe that God is just. And I believe that the Qur'an which is the word of God must reflect that justice of God. If there is anything in the Qur'an that is unjust from our very human standards, it cannot reflect the justice of God. The justice of God must be in excess of our human justice. Therefore, if we see something in the Qur'an that has traditionally been interpreted in a manifestly unjust manner, that cannot be the will of God. We must therefore return to the text to find a more just and equitable interpretation of it.

At the Harvard Divinity School I had a very hard time with western feminists who thought my methodology was all wrong because it wasn't the same as theirs. But this is the methodology that works for me, and I think will work in the Islamic and the Qur'anic context for a lot of women, so I want to work with that. If you think that there is anything wrong with it I want you to tell me what's wrong, and how we can improve it.

Someone said: "We have to find feminists". My response is: "We don't have to find

feminists. We have to create feminists". This is something in the making. We don't have it. We have to create it. If we get impatient with the process, we will never get anywhere. We have to keep the holistic perspective in mind, but we have to start someplace. Personally I think we have accomplished a lot in the last few days. We simply must proceed. We have a long way to go. There is a methodology that is evolving; we just have to help it along.

Part 2 A:

The Process of Muslim Jurisprudence: Women in the Family

The Example of Divorce

Resource Person (3): I have been asked to address the historical perspectives and the formulation of Islamic jurisprudence, and to trace where distortions emerged, e.g. today the three-*talaq* concept remains, despite being restricted by the Prophet Mohammed and not being permitted by the Qur'an. My Ph.D. thesis was on the subject. Before I come to the main corpus of what I have to present to you, there is a little background that I should like to offer. This is not the easiest subject because it's very difficult to analyze the *talaq* concept, it took me two years to understand only one single word.

God created all creatures, does he make distinctions? Does he not give equal rights and principles? I went back to the original source, that is the Qur'an, and with my small understanding began to explore it. I found that unfortunately, to a very great extent the patriarchal societies and tribal customs have been responsible for distortions. I should like to start off by reading you an extract of a paper I wrote:

"The development of Islamic jurisprudence began during the lifetime of the Prophet Muhammad but the need for legislation increased after his death with the expansion of the Islamic empire. With the conquests made by Muslims and the rapid growth of their political power, the development of Islamic jurisprudence was spectacular. Just as the state was founded upon overcoming the bifurcations created by the tribal system, similarly a sophisticated and highly complex legal system was developed within a short span of time through the process of refining the tribal customs and levelling the imbalances created by the many ways of life. The attitude of the Prophet Muhammad towards the enhancement of knowledge and learning in general was responsible for the development of Islamic jurisprudence. It is not surprising therefore that there emerged a team of Muslim scholars who equalled the jurists of any age. They diligently followed principles set forth by the Prophet that the rules of law should suit the exigencies of any situation.

"The well-known traditions regarding Muad Ibn Jbal clarifies this issue. The latter was appointed a judge in Yemen and on the eve of leaving to assume his office there, the Prophet asked him, "According to what

shalt thou judge?" He replied, "According to the Book of God". "And if thou findest not therein?", "Then according to the *sunnah* of the Holy Prophet". "And if thy find not therein?", "Then I will exert myself to form my own judgement." Thereupon the Prophet said, "Praise be to God, who has guided you." It is mainly through this maxim of the Prophet and his approach towards the power of interpretation that Muslim jurists in the past successfully developed principles of law into an intelligent and cohesive system. The abandonment of such a system which initiates the spirit of inquiry would amount to going against this precept set forth by the Prophet Muhammad.

"Legislative enquiry is essential in every age, since the intense pressures of the social conditions of life, requires a new understanding for a vivid appreciation of the true spirit of Islam. It is therefore incumbent to turn to the Qur'an and the Prophet... To continue to activate such a process is as necessary now as it was in the past. And to limit juristic discussions therefore to a definition of terms and scholastic refinements or the doctrinal differences and the hair-splitting dialectics of a period so remote that it can hardly have any direct bearing upon this present set up, is not in consonance with the teachings of the Qur'an and the traditions.

"It is therefore insufficient to live in the shadow of past thoughts which undoubtedly belong to some of the greatest minds who, however, neither pretended to be infallible nor assumed responsibility to have their views endorsed as final. They, more than anyone else, understood that the teachings of Islam could never be exhausted in their depth and that new discoveries, new meanings, and new interpretations in the word of God and in the example of the Prophet would bring new light and new dimensions into this world. This undoubtedly was their endeavour and in keeping with the spirit, the door towards effort - legislative or otherwise - should always be kept open. It is not surprising, therefore, that a wave of enthusiasm to return to the Qur'an and the Prophet's dictum is being felt.

"No revival is possible without an intense inquiry into its original spirit and thereby to build further on the foundations erected by past generations... For Muslim lawyers to contend that the door to legislative enquiry and effort stands closed with the four great Imams is to conceive that the exposition of the law by the application of private judgement has ceased to be effective since the 3rd century of the Islamic era. Such a notion would result in bringing law to a state of immobility and to deprive the followers of Islam of the means of adapting its doctrines to changing circumstances in the light of Qur'anic traditions.

"During the process of the development of Islamic jurisprudence, several difficulties were undoubtedly encountered by the jurists in adapting the original material to various climates and conditions. And this ultimately led to the foundation of several schools of thought in Islam. Also the schism dating back to the martyrdom of Caliph Ali and later his son, Hazrat Imam Hussain, divided the Muslims into two sections. The differences created between these sections relates more to political events of the past rather than to the principles of jurisprudence.

"One section believes in the infallibility of the Imam and strictly adheres only to those traditions which emanate from the line of the descendants of the Prophet Muhammad. And the other system developed two divergent views in regard to the principles of law. These latter diversions represent the upholders of private judgement and analogy known as 'the School of Iraq' to which Imam Abu Hanifa belongs and 'the Followers of Tradition' who were mainly natives of Madina to which the school of Imam Malik belongs. The differences between the offshoots of these various sections relate more to the details of law rather than of jurisprudence.

"It should be borne in mind that in spite of the differences in details in enunciating the law, the entire Muslim world is ruled by the Qur'an. Unifications of ideas could therefore be arrived at without encountering too much difficulty. A mature jurisprudence always foresees that it has an object to accomplish and, hence, experience shows that if discussion is not confined to the letter of the law but is understood with liberality and flexibility without turning a dictionary into a fortress while interpreting words and terms, the goal to unification seems far more simple.

"The attempt to formulate a unified approach encountered many difficulties. The translation of technical terms was not always easy. Some rules I have endeavored to show are also obsolete by the changes wrought about in the cultural and economic structures of the various Muslim countries."

Now where did the distortions come in? To understand the Qur'an, in my opinion, you have to understand the situation that pertained at least 200 years before the Qur'an was revealed. What was the tradition of Arabia? What were the forms of marriage? I'm going to speak specifically about the areas of divorce and marriage because this is where I can speak with some sort of authority.

When I began to study pre-Islamic tribal customs, I discovered that marriage, the *nikah* in pre-Islamic Arabia had many forms. Before the Prophet Muhammad was born, society consisted of the tribal system where little chiefs ruled. A smaller tribe was dominated by a stronger tribe and the stronger tribe was also absorbed by the larger ones. Then vendettas occurred if one person of one tribe violated any principles or any person from another tribe; the feud went on for generations. This was the cultural identity of the Arab in pre-Islamic Arabia, who was violent, strong, he may have been very hospitable and very loving, he needed his women and he needed a patriarchal set-up.

The various forms of marriages: there was a marriage in which a woman could officially marry ten husbands, and if she got pregnant by any one of those husbands she could say, that A, B or C was the father of that child. Then there was the kind of marriage where there were prostitutes who had tents that faced in a particular direction. When the tent had the face in one direction, the man could enter and when the tent's face was turned in another direction he could not. When such a woman got pregnant there was a man called the *qailf* or 'one who recognized', he would identify that this child belongs to so and so. Therefore, paternity, which is a very jealously guarded concept today, did not exist in pre-Islamic Arabia at all. Anyone could be anyone's child and nobody really bothered.

As far as divorce is concerned, you find that a man said, "You are unto me like the

like of my slipper", he took his slipper and threw it and she was divorced. This was the concept of *khul*. Another form of marriage was known as the *muta'a* form of marriage, where a man travelled, he picked up a wife for two or three months and then it was the end of the relationship. Another form of divorce was called the *ila* where if a man got upset with a woman, he abandoned her bed for four months. Then afterwards she was kept in suspense: she didn't know if she was his wife or not, whether she could marry another man or not. So these concepts existed and a man could divorce his wife by three *talaqs*.⁽¹⁸⁾ He could divorce his wife by saying, "You are to me like the back of my mother", he could abandon her bed, he could turn around and do anything and that was divorce. I'm giving you a brief summary, if you study this further you will find examples of how female infanticide also took place. Even when a man didn't want to, tradition and custom made him bury this little girl. This was what pre-Islamic Arabia was all about, where women were concerned.

When the Prophet was inspired to introduce restrictions to crystalize and make the law into a single cohesive whole, you find that only one form of marriage was accepted and that was the *nikah* form of marriage where a man could marry a woman under contract with a particular gift, a *nehla*, a *sadaqa*, what you call a *mehr*, was given to her at the time of marriage. When the Prophet Muhammad married Hazrat Khadija, (which was a pre-Islamic marriage, because he was 25 and she was 40 and *wahi* [revelation] had not yet come upon him) he still gave her 400 dirhams from his own earnings. Later on, in other marriages he continues to do that. Today when we talk of the *sunnah* of the Prophet Muhammad, we talk about how long you should grow your beard or how women should be in *purdah* or how you should wear your pyjamas three inches long or short when you go to the mosque, but nobody says what the *mehr* the Prophet gave his wives was. Instead, today, the majority of the Indian Muslims believe that *sunnah* in this matter is giving the wife 125 rupees and then he *talaqs* her three times⁽¹⁹⁾ and says no maintenance for you. But the Qur'an doesn't say anything of the kind.

Another kind of divorce also prescribed was that if a man and a woman could not get on, then there is a verse in the Qur'an (Surah Al Nisa (4): verse 35) which says, 'If you fear a breach between them twain, appoint an arbitrator from his side and appoint an arbitrator from her side...' ⁽²⁰⁾ That means that if there is a quarrel between the husband and the wife, the husband can't get up one fine morning and say, "*Talaq, talaq, talaq*" to his wife. An example of this: one day a bus driver who was very orthodox had gone out somewhere. At the Opera House in Bombay he saw a woman who he thought resembled his wife in a *burqa* because according to him the feet of the woman were like his wife's. Seeing her step into a bus, he got into the same bus and followed her. She got off at a particular point and he found her going with another man. He was furious, he didn't calculate. He came back home and his wife was sitting with a few of her friends. He told her friends, "Get out", and to his wife he said "*Talaq, talaq, talaq*". The wife was shocked and said, "What are you saying?" He said, "Now you're *haram* to me, I can't make love to you anymore because now you're *haram* to me". Finally, after he realized

18 i.e., divorce through oral repudiation

19 i.e., divorce through oral repudiation

20 see page overleaf

his mistake, he confronted this question of *hilala*(21) - if he wanted her back, she'd have to marry another man - please note again: not an Islamic but a pre-Islamic practice - and then she marries him. He went to a lot of *maulvis* who said, "No, you've got to marry and you've got to do this and..." But when the man came to my teacher, he said, "For God's sake, I take the onus of all the blame that you might have when you go back to your wife, that you are completely allowed. This is a meaningless *talaq*".

Surah Al Nisa (4) : verse 35

If ye fear a breach
Between them twain,
Appoint (two) arbiters,
One from his family,
And the other from hers;
If they wish for peace,
All ah will cause
Their reconciliation:
For Allah hath full
knowledge,
And is acquainted
With all things.

Wa 'in khiftum shiqaaqa
baynihimmaa fab - 'asuu
haka - mam - min
'ahlihii wa haka mam-min
'ahlihaa. Iny-yurii-daaa
'islaahaany-yuwaffi-qillaa-
hu baynahumaa :
'innallaaha kaana 'Aliiman
Khabiiraa

وَلِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِ
وَحْكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدُوا إِصْلَاحًا يُوَفِّقِ اللَّهُ
بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

When a man and a woman want to part company, this is a very serious decision, a decision not to live together for the rest of their lives. It has serious repercussions for the society that Islam and the Prophet was trying to build. Therefore, you find that these kinds of "*talaq, talaq, talaq*" concepts do not exist and the Prophet speaks against them.

To the best of my ability I have tried to give the exposition in the light of all the Hanafi, Shafei, Maliki and the Shia schools of thought in this regard.

Similarly today a number of women want to leave their husbands and cannot simply because they say that a man demands a large chunk of money, the children or X, Y, Z. The son is taken away from the mother at the age of two and a half under Shia law, and seven years under Hanafi law. These concepts and these traditions which are considered binding are not Qur'anic. The Qur'an's stand is that a woman can divorce a man with as much or as little integrity as a husband can divorce a wife; I don't think that either of them has the arbitrary power to divorce. The divorce has to go before a council, and the council makes a judgement. All the schools that have accepted the triple *talaq* as a single concept, call it the *talaq-i-bidaat*. "*Bidaat*" means something that the Prophet never did, so even they accept this - but do not remove it. All the laws that you find related to *hilala* have nothing to do with the Qur'an or the *ahadith*, but they have entered the corpus of your jurisprudence.

I will try and trace how this came into existence and where this conflict arose. The

21 An intervening marriage required by Muslim jurisprudence for the wife before a husband and wife can remarry each other again after three complete divorces between themselves; in many communities, *hilala* is regarded as necessary even after a single divorce.

Prophet Muhammad took very revolutionary measures and as, pointed out, you have to regard the Prophet Muhammad as pro-feminist. The major reforms that were introduced were for the women in a society where they did not work, where they were not educated, where they were down trodden, where they had no respect, where they were used as chattel - and this is where this concept of modesty is also brought in because they were used as chattel. Men used to make love with women's bodies and to discard them and that was what women were meant for. The Prophet removed these concepts and he introduced concepts of great respect and equal status for women.

During his lifetime this respect remains but the Prophet Muhammad's first *wahi* came to him at the age of 40. He died at the age of 63, so there were only 23 years; 13 years were spent in Mecca and 10 years were spent in Madina. And in Madina, when the state of Islam was being formulated there were so many parallel changes that political, social, economic, and reformist movements were constantly taking place. After his death, you find that during the 40 year period of the *Khulifa-i-Rashideen*, which means the period of Abu Bakr, Omar, Usman and Ali, a lot of the spirit of his laws is maintained but later on the spirit is lost.

There are two views as to how the triple *talaq* concept was reintroduced. One is that the second Caliph, Hazrat Omar, saw that men, to insult their women, said "*talaq, talaq, talaq*" 50 times and then slept with them so the *talaq* was nullified, and then when they wanted to insult them again, they would say another 20 *talaqs* and then again make love to their wife... This went on and on; his main purpose being to insult the woman. According to many historians, Omar introduced the concept that if you say *talaq* more than thrice this woman is no more going to be your wife. When he introduced this law, mind you, it was for the protection of women from insult that had become part of that tradition. So even when the concept was reintroduced it was only understood for his period of time. Omar made nine radical changes in the law and all those changes have not been sustained, they have been overcome with time but this particular change has been retained and not challenged.

Once established, it went under the Farooqi ruling i.e. if Omar Farooq said it, one can't dispute it. When I started studying this law there was a group of scholars who broke up this tradition and published a pamphlet in which they came to a tradition where Omar said "Even if I did for the right, it was wrong. I should not have done so".

Participant: You spoke of infanticide being common in the pre-Islamic period. I would like to know if you have done any research about infanticide: to what extent was it prevalent.

Secondly, about remarriage, you said if a man divorces his wife, according to the Qur'an, 2: 230, a woman must marry someone else before he can marry her again; if I understood correctly you said it's not necessary. I'd like you to explain that.

Resource Person (3): Regarding female infanticide: I can't give you the number of children who were killed, or the exact population that existed in pre-Islamic Arabia, but the practice in general was definitely on the higher side.

Your second question, which interests me much more, is a reference to the intervening marriage. These verses have to be looked into very carefully.

The reference is Surah Al Baqarah (2): verse 229 - 230.

Surah Al Baqarah (2): verse 229

A divorce is only
Permissible twice; after that,
The parties should either
hold
Together on equitable terms
Or separate with kindness.
It is not lawful for you,
(Men), to take back
Any of your gifts (from your
wives)
Except when both parties
Fear that they would be
Unable to keep the limits
Ordained by Allah.
If ye (judges) do indeed
Fear that they would be
Unable to keep the limits
Ordained by Allah,
There is no blame on either
Of them, if she give
Something for her freedom.
These are the limits
Ordained by Allah;
So do not transgress them.
If any do transgress
The limits ordained by
Allah,
Such persons wrong
(Themselves as well as
others).

'At - ṭalaaqu marrataan:
fa-'imsaakum-bima'ruufin
'aw tasriihum-bi-'ihsaan.
Wa laa yaḥillu lakum 'aā-
ta'-khuzuu mimmaā
'aatay-tumuuhunna shay-
'an 'illāaa 'any-yakhaafāaa
'allāa yuqiimāa
Ḥuduudallaah. Fa-'i
khiftum 'allāa yuqiimāa
Ḥuduudallaahi falāa
junaahā 'alayhimāa fiimaf-
tadat bih. Tilka
Ḥuduudullaahi falāa ta'-
taduuhāa. Wa māñy-yata-
'adda Ḥuduudallaahi fa-
'ulāaa-'ika humuz-
zaalimuun.

الطَّلَاقُ مَرَّتَيْنِ فَأَمَّا إِذَا كُسِرُوا فِي أَوْتَرِ مَرَّةٍ بِإِحْسَانٍ
وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِنْهَا شَيْئًا إِلَّا
أَنْ يَخَافَا أَنْ يَقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمَا أَلَّا يَقِيمَا
حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ
حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ
فَأُولَئِكَ هُمُ الظَّالِمُونَ ﴿٢٢٩﴾

I shall just give you the bare explanation of how I come to my conclusions. When it says in the first instance that you should have an intervening marriage, it is after three marriages and three divorces in a full lifetime. Please note this does not refer to a single *talaq* at a single sitting in which you divorce one wife. See, there is Wife No. 1, who Husband No. 1 divorces: "*Talaq, talaq, talaq*" That is no *talaq* at all. It is an invalid form of divorce according to the Qur'an and the Prophet Muhammad's practices. So the question of having to have an intervening marriage there does not exist.

But if a man and a woman don't get on, an official divorce is effected which takes three months and there is arbitration after which the divorce is complete. At the end of those three months there is a document that A and B are now divorced. Now, say, after six months A and B decide that we were silly fools, we should not have divorced each

other and we want to remarry each other. Under the Qur'anic law, they are absolutely at liberty to remarry each other. After that, say they again fight over something and they divorce each other and after two years they want to marry each other yet again. They are again permitted to marry each other but after divorcing each other in a whole lifetime on three different occasions - now that can persist after 6 months, after 2 years, after 5 years - but whatever the couple does, it's after you've separated three times, then something must be wrong with you. So you must now try and marry somebody else because there seems to be some imbalance in this relationship and it is only after that that the woman is recommended to marry another man to see if she can live happily with him at least.

Surah Al Baqarah (2): verse 230

So if a husband
Divorces his wife
(irrevocably),
He cannot, after that,
Remarry her until
She has married
Another husband and
He has divorced her.
In that case there is
No blame on either of them
If they reunite, provided
They feel that they
Can keep the limits
Ordained by Allah.
Such are the limits
Ordained by Allah,
Which He makes plain
To those who understand.

Fa-'iīn-tallaqahaa falaa
ṭahillu lahuu mim-ba`-du
ḥattaa taḥkiḥa zawjan
gayrah: fa-'iīn tallaqaḥaa
falaa junaaha `alay-himaaa
`aāy-yataraaja-`aaa `iīn
zannaaa `aāy-yuqīmaa
Ḥuduudallaah. Wa tilka
Ḥuduudullaahi yubayyi-
nuhaa liqawminyya`-
lamuun.

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَنْكِحَ زَوْجًا
غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا
إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَذَلِكَ حُدُودُ اللَّهِ
يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ ﴿٢٣٠﴾

Participant: I think we would all like to know at what point in history and for what reasons has it become such a generally accepted rule in so many Muslim societies that the woman, not the man, must get married to some other man and then get divorced from him before she can re-marry her first husband.

Resource Person (3): This trend is prevalent only in the Sunni schools of thought. Please note that the Shia schools of thought - the Ithna `Ashariyya School, the Ismaili School, the Bohra School(22) - do not accept the *talaq-i-bidat*, i.e. the triple *talaq*, and

22 Ithna `Asharis: 'Twelvers' - the majority branch among Shias; so named because they acknowledge twelve principal Imams after the death of the Prophet Mohammed - see page overleaf

so this kind of consequent action is not accepted by the Shia schools at all. The Sunni schools have accepted that during the rule of Omar Farooq, when this happened, the entire corpus came back.

You find that later on during the Umayyad reign also, when the kings wanted to divorce... How did the harem concept come in? How is it that today, kings have a number of women and they import women from all parts of the world - I don't know what they do with them; they have so much energy... - nonetheless they do have these women to show off, or for whatever reasons. But where did these concepts come from? These are concepts which came in historically. When somebody wanted to prove something there was always a *qazi* who made a judgement. However to trace the exact point at which each law crept in, would not be possible for me. Nonetheless, you'll find that immediately after the *Khulifa-i-Rashideen* and with the Umayyad Caliphate, a lot of these trends already started coming in. They already existed in the Abbasid period.

Resource Person (1): I would like to add the following. I think resource person (3) is perfectly right in saying that the concept of divorce in the Qur'an is that if there is a couple, if there are problems, every effort should be made to solve the problems including arbitration. If it doesn't work and there is final separation, this is a single divorce.

A very interesting point here is that in another place in the Qur'an it is recommended that during that first *iddat*, the period following the divorce, the women should continue to live in their homes and homes belong to the women. The implication is that when a woman gets married to the husband, the home becomes the woman's home. Only Libya under Colonel Gaddafi has implemented that. The idea is that if they continue to live under the same roof, there will be chances of reconciliation and if there is a reconciliation they don't even need a formal ceremony; they can remarry of their own accord, re-establish their relationship. If there is a second divorce then they have to go through the procedure again until they come to the third one.

Now, the third divorce is considered irrevocable in the sense that then they really have to separate. Okay? You can still ask the interesting question: if this is the Qur'anic procedure of divorce then how come you have this concept of the triple *talaq*: "I divorce you. I divorce you. I divorce you"? See how cleverly the patriarchal system has assimilated Omar's triple *talaq*, which was introduced for totally other reasons, into these three divorces. What is common is the number three but the whole procedure is very different. So it means that when it suits the man, when it suits the patriarchal system, they can take a very small thing which is the number three. The same thing has happened in the case of polygamy: see how that has been misused. Take the number three from here, take the number three from there and they say it's the same thing. It's not at all the same thing if you read the Qur'anic text.

Another question is why should the woman remarry, not the man? The answer to that is because the man can remarry anyway, because polygamy is allowed. Even if he

Ismailis - a minority branch among Shias named after Ismail, eldest son of the Sixth Shia Imam Jafar al-Sadiq who was the last Shia Imam to be commonly recognised by both Ismailis and Ithna 'Asharis.

Bohras - a smaller minority branch among Shias, who do not recognise the Ismaili spiritual leader, the Aga Khan.

has a wife he can remarry. But the woman cannot remarry until she is officially free. So this so-called *hilala*, is for the sake of the woman, to give her an opportunity to try marriage with another person. This is not discrimination against women, it's giving women an opportunity, which otherwise they could not have had.

Resource Person (3): Three procedures for divorce have been accepted by jurists generally, but the Prophet has given only one procedure, which is the procedure the Qur'an lays down. There is a very distinct example in 2:232 of the Qur'an, where there's this woman who wanted to remarry her husband. But she was not allowed to because of this tribal custom and it was here that the clarification was brought that 'Do not prevent them from marrying their (former) husbands if they mutually agree on equitable terms'.

Surah Al Baqarah (2): verse 232

When ye divorce
Women, and they fulfill
The term of their (Iddat),
Do not prevent them
From marrying
Their (former) husbands,
If they mutually agree
On equitable terms.
This instruction
Is for all amongst you,
Who believe in Allah
And the Last Day.
That is (the course
Making for) most virtue
And purity amongst you,
And Allah knows,
And ye know not.

Wa 'izaa tallaqtumun-
nisaaa-'a fabalagna
'ajalahunna falaa ta'-
zuluunhuunna 'any-yañ-
kihna 'azwaajahunna
'izaataraazaw baynahum -
bil-ma'-ruuf. Zaalika yuu-
'azu bihi mañ-kaana
miñkum yu'-minu billaahi
wal-Yawmil-'Aakhir.
Zaalikum 'azkaa lakum wa
'aṭhar. Wallaahu ya'-lamu
wa 'antum laa ta'-lamuun.

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ
أَنْ يَتَّخِذْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُنَّ بِالْمَعْرُوفِ
ذَٰلِكُمْ يُوعَظُ بِهِ مَنْ كَانَ مِنْكُمْ مُّؤْمِنٌ بِاللَّهِ وَالْيَوْمِ
الْآخِرِ ۚ ذَٰلِكُمْ أَزْكَ لَكُمْ وَأَطْهَرُ ۚ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ ﴿٢٣٢﴾

Participant: I wasn't sure whether the type of marriage that existed in pre-Islamic Arabia, with regards to tents and their openings, was restricted to prostitutes. I have read that they existed but I wasn't at all clear that this was restricted to prostitutes.

Participant: The tents of prostitutes, along with certain descriptions, used to have a flag that was a kind of a calling piece.

Resource Person (3): They were polyandrists.

Participant: Another minor question on the usage of saying *talaq* 20, 30, 40 times as an insult. That to me is utterly confusing, how they think *talaq* could be an insult and then you go back to having intercourse with her.

Resource Person (3): The word '*talaq*' itself means untying of a knot and it meant a dissolution, technically, a dissolution of a marriage relationship. For example, if you were to say "Divorce, divorce, divorce", you translate it in these terms. Now, 'divorce' to you and me would be a technical term but when a man says "I want to dissolve the tie with you" that means "I don't want to have sex with you, I don't want to have anything to do with you" and then he re-established himself with her and then went on again in this manner. It does mean that there is something wrong with the marriage. It also means that the woman can be treated any way: Today he says I want to dissolve the tie, tomorrow he has her and then day after tomorrow he dissolves the tie. So when it went on and on and women came with complaints to Omar and said, "Look, this is what the trend is", he said: "All right, now if a man ever from his mouth utters this word more than thrice, let it be taken seriously. Let it not be considered a big joke that he's uttering and that he can take his wife back; let it be taken seriously that the marriage tie will positively dissolve and that will end his marriage." It's against ...

Participant: The purpose being not to trivialize marriage and divorce...

Resource Person (3): Not to make it a joke, not to treat it lightly but to use that word seriously. After all, if my husband was to tell me tomorrow that he wants to dissolve the marriage and then takes it as a big joke, it's not something that one can treat lightly and women in those days also could not treat it lightly and nor could the state.

Historically this particular verse 2:232 was revealed when this woman wanted to remarry her own husband. Razi, Bareilvi, all the classical commentators have referred to this incident. Yusuf Ali's commentary relates the particular incident that this woman wanted to remarry her own husband after one complete divorce had taken place, but society did not accept this. Then this *ayat* was revealed and she remarried the same husband. I think the man's name was Yasr. Unfortunately these concepts have again been brought in by male interpreters so a woman is again treated as chattel - she goes to another man and comes back. This is not the correct historical perspective and understanding of this verse.

The question of why is *hilala* accepted by all schools of jurisprudence? You see jurists have made a distinction between three types of *talaq*: *talaq-i-bidat*, *talaq-i-hassan* and *talaq-i-ahsan*.

The Prophet showed only one procedure to divorce whether it was for a man or for a woman: through arbitration and you find that the jurists of the *Khulifa-i-Rashideen* give judgements based on the fact that there was one *talaq*. When a man said to a woman, or a woman said to a man, "Look, I cannot live with you", it went to the arbitration council and finally in three months that divorce was completed. Now, in that time, whether the man said a thousand times to the woman "I want to divorce you", or the woman said to the man fifty thousand times, "I want to divorce you", it made no difference - the procedure is called *talaq-i-ahsan* and is the only form of divorce that is sanctioned by the Qur'an and recognized by the Prophet Muhammad.

The second form is very dangerous which is even accepted by the Shia jurists, who, I have found more rational in some of their divorce concepts than Sunni jurists. See how again that divorce, which is three lifetimes, has been contracted into three months, very well explained in *Bahishti Zewar* by the famous writer Maulana Thanvi. He explains: in the first month when a woman is in her *tuhoor* (when she's finished her monthly periods and you are in a position to have sex with her), you do not have sex with her and you say one *talaq*. Then at the beginning of the next month again when she's in her *tuhoor*

you don't have any sex with her and again you say *talaq* and then again in the third month. The Qur'an is very clear that three months of *iddat* is needed; one *talaq* is only operative after three months, but here you have operated three *talaqs* within three months. [2:228, see p. 89-90]

The Sunnis accept this. They accept much worse because when you talk about the *talaq-i-bidat* the Sunnis will say, "You can divorce her in her periods; you can divorce her without her periods; you can divorce her at the slip of a tongue." I must give you one example incorporated in the *Fatwa-i-Alamgiri* which quite shocked me. There was a woman called Zainab and a woman called Umrut, both wives to one man. He wanted to divorce Umrut and Zainab was standing behind the curtain. He said, "I divorce you, I divorce you, I divorce you," and poor Zainab was divorced instead of Umrut. When she came out he said, "Oh! I'm shocked!" Then he says, "It doesn't matter. Now you're divorced." So a man can divorce like that under Hanafi law, at the slip of a tongue. He can divorce when he's drunk. These are all Sunni concepts which are not accepted generally by the Shia schools of thought. If you are going to fight for a proper divorce then this, at least, has to be done away with: if you say it's *bidat* it's not valid as *talaq* at all.

[questions from the audience]

Resource Person (3): Another important point is the 1939 Dissolution of Muslim Marriages Act which was passed in India (which included India, Bangladesh and Pakistan at that time) because women could not divorce (under Muslim laws). They, therefore started becoming Hindus. when a woman converted she was able to get her divorce. When the *mullahs* found this was the trend, they used the Maliki laws and made the 1939 Act which provided nine grounds where a woman could ask for a divorce: failure to provide maintenance, or adultery, or desertion or the husband's imprisonment, or on the grounds that he is impotent; the ninth ground was any other ground permissible under Muslim law.

Approximately two years later, a case came up in the Allahabad High Court where a woman said "I want to divorce this man on incompatibility of temperament", and the judge refused the divorce. Today in India no woman can divorce a man on grounds of incompatibility of temperament. I want to trace a tradition of the Prophet Muhammad here where a woman called Baria was married to this man, who was so much in love with her that he used to follow her in the streets of Madina and tears used to fill his eyes but she said, "I don't want this man." He went to the Prophet and said, "Please talk to her." When the Prophet sent for her, she asked the Prophet, "Are you ordering me to live with this man?" He said, "No, I'm asking you." She said, "Are you requesting me to live with him?" He said, "No." Then she said, "No, I can't get on with this man. I don't like him," and the divorce was granted to her. So if a divorce was granted to her by the Prophet Muhammad himself why should a divorce not be granted to any woman today who asks for it?

Participant: A more general point which seems to have come up quite clearly between yesterday and today, is that when we're looking at *shariah* there is an overwhelming emphasis on specific laws relating to specific things. So, if you have divorce, you have lots of treatises on divorce and lots of laws which have been qualified, etc., but there doesn't seem to have been any elaboration of ethical principles on the basis of which these other things would logically fall into place.

The question I'm putting to the floor is do we want to discuss why this was not

possible? Quite frankly, I'm less interested in why it was not possible in the past and more interested in what, if anything, can be done about it in the future? We felt the need very urgently for Qur'anic interpretation but is this also an area that needs to be worked on? And if so, how? If there's any ideas, or people who want to comment on this I would appreciate it.

Resource Person (3): I'm going to talk now about the practical implementation of these ethics and these legal concepts and about how at the earliest, without waiting for us to put up a fight and to re-create a new system of jurisprudence and to go into the legalities, does one come to some sort of understanding and action? I do not know if everyone here will agree with me, but I have thought that a codified *nikahnama* is very essential and I think this group, if it gets together and breaks its head over the formulation of a *nikahnama*, which can be circulated... For example, you have a standard *nikahnama* form in Pakistan. A few things could be added to that *nikahnama* if you want prohibition of the triple *talaq* - the arbitrary power of the husband to divorce his wife - or restricting a man from marrying a second woman. All these principles can be incorporated because after all it is a contract, and it's a two-way contract and for example, even the custody of children in case of divorce, or the question of maintenance in case of divorce can be added because the Qur'an says the stipulations in the marriage contract form a very important part of contract. Any stipulation like the delegated power to divorce, for example which is a very existent thing but much ignored, gives a woman a lot of power.

When you're going to fight the system, the Hanafi laws, by the time you come to a conclusion it takes another 200 years of intellectual discussion and the conclusions may not be revealed at all. But some action of this nature, if it is done for each country and circulated as a single *nikahnama*, will give women a positive stand at least in the Islamic world.

Participant: The network of Women Living Under Muslim Laws is precisely working on that. We have been collecting what we call 'Model Marriage Contracts', from all over the world to try and see which conditions give maximum space for women to operate within marriage and a tentative information kit has already been prepared - and circulated.⁽²³⁾ It is available in French and English and we continue to add as we get more information on what sort of stipulations could be added immediately. I know we're always trying to do too much, but we're always also trying to see how many different levels and which different types of directions we need to work in and within that then everyone has their own preferences and own abilities. Eventually, I think we need everything: we need to have *ijtihad* and I wonder how I can claim that for myself [laugh] and we need to have immediate short-term information on how, right now, today, tomorrow, you can make it better and maximise the rights that you have, etc... So there is a wide range of things that are going on.

Resource Person (3): One thing on the *nikahnama*: I have also formulated a *nikahnama* which is pretty strong, and at the end of it I have put a condition that if any condition in this *nikahnama* is not acceptable by either party, let them say that clauses

²³ Subsequently published as *An Information Kit: Women in the Qur'an (Qur'anic Interpretation by Women Meeting)*.

Nos. 5, 6, 7 or Nos. 1, 2, 3 are not acceptable to us and will not be operative in the case of this particular marriage contract. Nonetheless, I feel each point has to be incorporated because one couple when they marry might feel that polygamy does not matter, it's not specified, another might feel the delegated power is not necessary, but, nonetheless, it's better if these points are laid down and then each couple can decide what to exclude.

Codification of divorce in various countries

Participant: I just want to mention something about the law in Sudan which has something called '*nashees*' and in Egypt also *nashees* is a common thing. *Nashees* is when the woman goes outside her husband's home without his permission, seeking divorce and there is a procedure for that. Either she goes back, and sometimes the court returns her by force, to her husband. It's asking for divorce without justification. She is insisting on divorce and she has to stay for two years with this *nashee* lable and then again proceed to negotiate with her husband for divorce. Otherwise she goes back or she pays something for divorce and I don't know if there is any similar thing in other Muslim countries or even if there is a justification for that within the Qur'anic context.

Participant: When you used that word '*nashee*', is that used as a derogatory term? Is it something that she's labelled as somebody who has done something very wrong.

Participant: Yes, it's a lable. *Nashee* is related to *nushuuz*.

Chair: Do you mean that it's a bar to *khula*, her right to *khula*.(24)

Participant: Yeah, you can interpret it that way. Anyway the definition of *nashee* is one who goes outside her husband's home without his permission, seeking divorce without justification, i.e. outside the grounds given by court that she can seek divorce for. She just wants a divorce and in this case she's called '*nashee*'.

Chair: Who pronounces this...?

Participant: The court.

Resource Person (3): I think she's referring to one of the sad parts that has been incorporated under Hanafi law. As far as my reading goes, a woman is not allowed to go out of the house if her husband says that there are certain places that you're not supposed to visit. In the old traditional days women only used to go out to meet relatives, (father, mother...) or other closely connected people. But if she were to go out to his friend's house or to any man's house, from there this adaptation has been brought into existence. It's totally wrong. There's no justification for it anywhere in the Qur'an but this law exists in countries that generally practise Hanafi Law.

Participant: I think we have discussed this *ayat*. It means that the woman '*takhaa-*

24 Muslim jurisprudence recognises a woman's right to divorce, although this has to be granted through the courts (or *qazi*) and on payment of some form of compensation to the husband. Various schools differ on whether the husband's permission is necessary for *khula*.

fuuna nushuu-zahunna...! disobeys her husband and then she asks for divorce and he refuses to divorce her. This is the case that she is *nashis*, i.e. she is not married and she is not divorced, between marriage and divorce: *ma laqa*.

Chair: That means she has disobeyed him and committed adultery?

Participant: No, no: disobedience, and then she asks for divorce and the husband refuses to divorce her, so she is in a situation between marriage and divorce, *ma laqa*, in between this. [general discussion amongst audience]... But she's asking for divorce and she can't marry... Probably she will be at her parents' place... But for two years she can't make any kind of other decisions until they have reached a conclusion about the status of the marriage. If they want a divorce and he'll give her divorce, then she'll pay money.

Participant: We have an equivalent of that in South Asia. I think it's in Pakistan as well as in India and Bangladesh which is the law of restitution of conjugal rights which is one of the most obnoxious laws that exist. It amounts to legalizing rape, getting your wife back. Though a woman can also apply for the same, you seldom find there has been any case of a woman filing for restitution of conjugal rights. Usually the man does it either to harass a woman or if she wants a divorce to pre-empt her attempt to file for divorce. He files this so that she is just kept hanging while this case is being fought in the court for an indefinite period. It's really an indecent law. But what we'd like to discuss is how do we solve it from the Qur'anic point of view?

Participant: In Malaysia, although personally I haven't looked closely at the word '*nushuuz*' in 4:34, what we have in legislation is that in the Sunni school if a wife disobeys the lawful wishes of the husband, this is unlawful. There are some examples, for instance, if she leaves the home but she has adequate reason to leave the home, that is not being *nushuuz*. I'm not using the Arabic term correctly here, but whatever, things like that. Of course when the guys go to court the first thing they say is, "My wife is this". But recently we've managed to document our *shariah* courts' judgements and found that the judges actually say, "Look, it's not anybody's right to say what's *nushuuz*, it's the court's right". Luckily our courts have taken a stand that the courts have to look at the facts because sometimes the husband says, "Look, my wife does not cook, she does not make the bed and she's *nushuuz*. I say she's disentitled to maintenance", to which the court says, "No, that's not *nushuuz*". The court decisions have been quite liberal in saying whether she is or she's not *nushuuz*. In one case the husband applied for restitution of conjugal rights, and the court found that there's some blame on the part of the wife and she was asked to go back to the husband but she refused and in the end they came back to the court. The court said, "Look, your wife is not interested in coming back to you. So, I'm giving her a divorce." Therefore we do have that law but, luckily, it has not been abused or rather not to such an extent that the husband can allege that she's *nashis* and that's it. There's still room for argument.

Chair: Does this mean that the woman in Sudan does not have the right to ask for *khula*?

Participant: You mean to ask for divorce? Of course, by law, you can state it in the marriage contract, but this is not happening... No, it's not automatic. They have to write

whether they want the divorce or not. The trend is to assume that the husband is the one who can divorce and if you want to divorce, you have to go either through the court or through parents and discuss some things with just you and the family.

Chair: And you have to wait for two years?

Participant: The case of *nashees* is when her husband refuses to give her divorce. Yes, it's two years.

Chair: Somebody once told me that Pakistan is the only Muslim country in the world where you can file for *khula*. I would just like to confirm whether it's true or not.

Resource Person (3): I don't think that's quite right. There is a paper that has been put with your brochure which outlines the relevant changes up to the year 1985, which most countries in the world have adopted. Now, here I have Sudan before me - of course, this is very brief. The details are not provided, but just to bring about a sort of comparison and understanding of the reforms and how they're effected: here I have Sudan, beginning its reforms in the year 1916 going into 1960, then from 1960 to 1976 and from 1976 to 1986. Now, these are the reforms that they have brought about. They belong to the Hanafi School. Basically, these are some of the countries which grant no rights to women. Recently I met the Chief Qazi of Baghdad, who's an excellent person. He quite agreed with me when I asked him the reason why they were not taking a particular stand on any issue where women are concerned. He very nicely said, "Because there's so much political instability in the country and it's always one government over taking the other government." He thought that he could get away with that reply.

Participant: Recently, I saw a research paper about the awareness amongst Sudanese women of their legal rights and in this paper I found out that women too can ask for rights i.e. in their own contract and have the right to divorce and all the other rights that men have.

Resource Person (1): Do they have it or don't they?

Participant: According to the Constitution, they have it.

Resource Person (3): What I mean is that in comparison to places like Turkey or Morocco or other countries which have taken wider strides or Pakistan, there is still a long way for Sudan to go. When Turkey brought about its reform laws and the whole Muslim world opposed it - because the *mullahs* were not willing to listen - the regime took the law into its own hands and said that polygamy was banned because the conditions for polygamy were unrealizable - that was the technical term used. No other country has been able to do that since; except maybe Tunisia that has taken very wide strides.⁽²⁵⁾

Coming back to Sudan, up to the year 1986, it was that "Judicial divorce is to be granted to the wife at the wife's insistence on a number of specified grounds." Now, when you say 'specified grounds', it's like the 1939 Dissolution of Muslim Marriages Act

25 While Turkey's laws are based on the secular Swiss Family Code, Tunisia banned polygamy from within an 'Islamic' interpretation.

in India when there are specified grounds and the ninth ground, i.e. 'any other ground which is recognized as valid under Muslim Law' should have included incompatibility of temperament. However if the woman claims 'incompatibility of temperament' the divorce is not granted.

On grounds such as adultery or impotence you need proof and then it goes on and on into these details. It's not so easy even though one might feel that these grounds are specified. These grounds are not always considered to be valid and provable. The second thing that they have brought about is 'ineffectiveness of unintended divorces'. For example, you can say, '*talaq, talaq, talaq*' but under that whether the intention to divorce existed or not has to be established. What I mean is that though they have brought about a legislation, it is not deep-rooted, it is not radical and it is not strong.

Participant: I just want to bring the discussion back to some sort of focus. What the Sudanese case did was to identify a problem in the interpretation of a Qur'anic injunction on marriage and divorce and I think it will be better for us to see what is the Qur'anic injunction and examine that. Our objective is to find what we feel is unIslamic and what we feel is the right interpretation and then to use it in our own context to pressurise our own institutions. We should go back to that and not waste our time which is so limited.

Resource Person (1): I think that one can argue very compellingly on the basis of the Qur'an. The position taken by the Qur'an is of a no-fault divorce system because the Qur'an says, "either live together in kindness or separate in kindness." There is absolutely no sense of coercion that people should be forced to live together. Marriage is a contract which people should enter into willingly. It's not a covenant, it can be dissolved. There is a procedure and, of course, it's a serious thing, and if the marriage runs into trouble, you're supposed to seek arbitration and try to resolve it. But if you can't resolve it then it's better to part. It's very important to point out, since several of you are interested in the subject of *talaq*, that in the Qur'an there is not one negative statement against *talaq*. It is stated that being married is a natural thing and it's good, healthy, and so on. This means that the Qur'an recognizes marriage as a social institution or a social arrangement which sometimes works and sometimes doesn't.

[general discussion]

Participant: There is a hadith that says of all the things permissible, the most displeasing to God is divorce. Now, if by definition, God permits something, it can't be displeasing to God because why otherwise should God permit it.

Resource Person (3): This particular tradition goes on to show that the displeasure would imply that the family should be maintained and families should not be dissolved at the drop of a hat. These days marriages are dissolved because the husband snores too loudly or on the slightest disagreement one tends to break a family apart. To my understanding, this only gives this indication that there's nothing against dissolving a marriage provided you cannot live together and you do give marriage a chance.

Resource Person (1): Right, but there is not even a tremendous emphasis in the Qur'an that you have to make a marriage work. I don't see that. If there is a problem, you seek out arbitration from his family, from her family, see if you can make it work. Look at the history of marriage in various world religions because, in Catholicism,

marriage is a sacrament. It's a contract that is made, in a sense, even with God and it cannot therefore be dissolved. In Protestantism, it is regarded as a covenant. It's actually very similar to the Catholic situation except that the Protestants have found a way out: a covenant is also with God but they say supposing there is no love left between a husband and a wife. Catholics say marriage lasts until death which means you physically die while the Protestants say, "Well, love is dead, then you can consider that death even though you are physically alive." It's just a way out. But the thing in Islam is it regards marriage as a social contract, which if for some reason you break it, there is no moral stigma. In the Qur'an there is no moral stigma attached to a divorce.

Post-Divorce Maintenance

Chair: In terms of the historical perspective and how certain things in Muslim jurisprudence develop, others not: we have talked about there not being any specific Qur'anic share given to the children of the predeceased son in inheritance. [see p. 140-143 below on inheritance]

In the Qur'anic text there does seem to be provision for the maintenance of widows yet it is the established rule in Pakistan, and as I understand it in India, that there is no maintenance in the form of alimony or something. All that is present is the dower, the *mehr* that is given to her at the time of the divorce; there doesn't seem to be the concept of continued maintenance of the divorced wife. Hence, the whole hullabaloo about the Shahbano case.(26)

But Surah Al Baqarah (2): verse 241 is so clear. This seems so categorical, so I request our resource persons to respond.

Surah Al Baqarah (2): verse 241

For divorced women
Maintenance (should be
provided)
On a reasonable (scale).
This is a duty
On the righteous.

Wa lil-mutallaqaati mataa-
'um-bil-ma'-'-ruuf. H a q q
a n 'alal-Muttaqiin

وَالْمُطَلَّقَاتُ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى
الْمُتَّقِينَ ﴿٢٤١﴾

Resource Person (3): The first thing that we have to understand is that when you talk of alimony there is a distinction between the Christian and the Islamic concept of alimony. Under Christian law, when there is no divorce, there are certain rules that are established. Basically in English law, a woman can milk a man till such time as she remarries or till such time as she dies, and therefore in the western world because of these strictures of law, you find that marriage today is a dying institution. A man does not want to marry because he has to give these very large amounts of money under the law. This does not of course mean that the woman should get no money and no protection. What I'm saying is the Islamic concept is very interconnected and interrelated to various other forms of money that have to be given to the wife. I will

26 see p. 122 below

discuss the Shahbano case later because it was connected to the Indian Penal Code which spoke of destitution.

The Islamic concept as I understand it is as follows. To begin with when a man marries, he has to give the wife a certain amount of money as *mehr* which is definitely not Rs 125.⁽²⁷⁾ If you're going to give her a *mehr*, a *sunnah* and even equate it to what the Prophet Muhammad gave his wives in the form of 400 gold dirhams, it would come to a very substantial value. If there is a divorce effected under these circumstances, that entire amount of wealth is transferred to her. It becomes her right whereby she can make a living and not be dependent upon her father or her husband or anybody and that chunk of money belongs to her.

On the other hand if the concept goes that Rs. 125 is given to her and the three *talaqs* - which is again non-Qur'anic - becomes operative then naturally she's given to prostitution. In the Tata School of Research I have found that in at least 6 Indian states, the majority of prostitutes happen to be Muslim (which is so sad) because they have nowhere to go. A father has so many daughters, he can't bring them up. They're driven to such professions because there is no self-supporting economic element to look after them.

When you come to maintenance, let us analyse how this was during the lifetime of the Prophet. There are many traditions which say there was a woman called Ibnat ibn-John who divorced the Prophet. (The Prophet did not divorce her but she divorced the Prophet). She asked for and was given that divorce - and this is a fact I think that is not really being looked into. When she went away he gave her a lot of gifts. In other divorces which were effected, there is a mention that bags and bags of sugar were given, camels and goats were given, and the woman was sent off happily in the sense that she was never sent off (after divorce) without any kind of money, or support whereby she could maintain herself. For a woman to have a substantial amount of money by which she can support herself is what is meant by the maintenance concept: the onus does not fall on either party concerned. But where the woman does not have any money and she has to live off the streets, then he has to support her. Each case is an individual case, you cannot generalize the concept of an Islamic law here and say that all cases will fall in the category of a lifetime. It will depend on each individual case concerned.

Participant: In relation to maintenance of women after divorce, you mentioned widows and divorced women. If we are going into codification this is an area where there has been a great deal of reform in so many countries. Just to give you an example, in some countries, they pay a tremendous amount of *mehr* and it's deferred, meaning a bit is paid initially at the *nikah* and the great proportion of it is paid upon divorce. So, she has that.

In some countries there is maintenance after divorce, during the *iddat* period. Also in some countries other than maintenance after divorce, they have compensation, *mata'a*. It is not *muta'a* - temporary marriage; I don't know the Arabic term, but we in Malaysia call it *mata'a*. This is a compensation paid for an unreasonable divorce pronounced by the husband. The woman is compensated and in Singapore for instance, if he's been married for 20 years then the minimum *mata'a* is one dollar per day for the 20 years she's been married, it's minimum. So, in that case she has that money. It's

27 Roughly equivalent to US\$ 3, an insignificant sum customarily given in India as *mehr*.

always a clean break principle upon divorce but there must be something real about her being compensated for all that time she took, for instance, not going to work, not improving her skills and so on.

Resource Person (3): Islamic law does not believe in case precedent. Unlike for example, in Indian law where because the precedent has been set, every case will be judged according to that case precedent until you break, or add to, or supercede that precedent. Islamic law is judged on individual cases where each case has to be considered apart from the other. The circumstances of one woman's maintenance, of one woman's education, her wealth, background, etc. influence the judgement given by the *qazi* which is not dependent upon what the previous judgements have been but upon her own individual case. Therefore, these cases have to be judged in the light of the circumstances of the woman. Whether it is a lifetime of maintenance or short term maintenance or any kind of maintenance depends upon each particular case concerned.

Chair: I'm sorry, I've got a problem with what you said... As I see it, India must be following a totally different kind of legal methodology because a legal precedent can only be applicable to a case which is totally similar to the previous case and, of course, each case is definitely to be decided on its own merit.

Resource Person (3): But each case is not identical to the other. No case, no two people, no two situations are identical, nonetheless the precedent remains. But in Islamic law that will not be the case. There may be a case of divorce, for example, when a *qazi* gives a judgement whereby the custody of all the children goes to the woman and the man gives the woman a certain amount of money, but in certain cases he may feel that one child may be given in custody to the man and one child to the woman. So, you cannot say that at the age of seven all the children must go to the male or all the children must go to the woman. It depends upon the circumstances.

Chair: Thank you yes, that was quite clear.

Participant: I would like to ask about maintenance because in Indonesia if a woman asks for divorce, whether she has an adequate reason or no reason, she is not going to get her maintenance. This is why in Indonesia now, the woman will persuade the husband to divorce her because if she asks for the divorce, she has to forget maintenance.

Chair: Isn't there a technical difference? If the divorce is initiated by the woman, then that is *khula* in which case she has to give up her *mehr* or dower or whatever she has got at the time of marriage. However I don't think that should interfere with the other technical term, i.e. maintenance. I mean, any woman undergoing a period of *iddat* who is looking after the children, or has the custody of the children, maintenance is obviously applicable to her. This is not related to who's giving the divorce.

Participant: Yes, but I would like to know whether it is mentioned in the Qur'an.

Participant: I think we have to define what is '*talaq*'? *Talaq* is divorce. '*Tatliq*' is when the woman asks for the divorce through the court; and the delegated right of

divorce, we call it '*asma*'. What then is '*khula*'? Because there is a difference between *khula* and *tatliq* (the woman asking for divorce through the court) because the woman can get *khula* without the court and without maintenance. She can use it as the last resort. But in the case of asking for the divorce through the court, she has a right to maintenance. But I think there is a confusion in the *shariah* law about what is *khula*, and what is divorce, and what is 'asking for' a divorce, and what is the delegated right of divorce.

Resource Person (3): The word '*khul*' is not used anywhere in the Qur'an in relation to divorce except in one instance when Moses is asked to remove his shoes when he approaches the burning fire. Further there is no separate word that is used in the Qur'an to distinguish or set apart a different kind of a divorce for a man and a different kind of a divorce for a woman. The divorce for a man and the divorce for a woman stand the same. Now, what jurisprudence has done is to make these distinguishing factors about giving away a part of your *mehr*, giving away part of your money, etc. But the Qur'an does not speak of it this way.

Resource Person (1): The entire *ayat* 2:241 [see p. 122] doesn't qualify the period or whatever, it just says for divorced women.

Participant: In Malaysia we may have a problem. According to Imam Shafi - the school operating in Indonesia and Malaysia - if a woman asks for a divorce, meaning she asks for *khula*, she's not entitled to maintenance. But in fact, we've adopted the Maliki school in Malaysia just to overcome this particular Shafei interpretation. The problem is sometimes the husband knows this, although he is at fault, and he refuses to give her a *talaq*, he just puts her on this string, she's neither here nor there. She has no choice but to ask for a divorce by redemption because that is the only way to get a divorce. One solution is what Singapore has done: the court calls both parties and if the court sees the husband is at fault, the court will compel the husband to pronounce *talaq* so that the woman is entitled to maintenance in any case. But maybe in Indonesia because it's such a big country and women have no access to the courts, it's really a problem.

Chair: As a Pakistani woman, I think this is an area where a lot of work needs to be done because the courts and the laws in Pakistan do not recognize long-term maintenance of divorced women. It's simply been interpreted to mean during the period of *iddat* which at the most, is hardly three months or maybe until the baby is delivered. I think this was the crux of the matter in the Shahbano case in the Indian courts, where the woman said, "Well, I'm entitled to maintenance", and the courts interpreted it differently.

Let's make it clear that *mehr* is a totally different thing which has nothing to do with maintenance. *Mehr* is a consideration for the marriage contract. Now, when the marriage contract ends, maintenance should begin because this was a clear verse of the Qur'an which says that 'for divorced women there is maintenance' ... and it should be equitable maintenance. What I don't understand is how come there has been no legislation to that effect, and the courts are not taking it into consideration? There has been no case where the judge has handed down a judgement for maintenance for a

divorced woman.(28)

Participant: What is the legal position and what is the Qur'anic position?

Participant: The translations in the information kit handed out to us at the beginning of this workshop are all different.(29) One says, "According to what is fair..." but another is "and for divorced women provision must be made according to usage. This is a duty on those who guard against evil", and "on a reasonable scale." Maududi translates it simply by saying "in accordance with the known fair standard," and then in another translation it's "according to local usage or custom usage..." So the word used is different in every translation and I'd like to know what most closely, in Arabic, the word means.

Resource Person (1): The word is '*bil ma'-ruuf*' which means 'that which is good'.

Resource Person (2): The word '*bil ma'-ruuf*' is derived from the word 'to know' and is used quite frequently in the Qur'an with regard to certain things pertaining to usage because what actually happens is '*bil ma'-ruuf*', i.e. 'that which is known'. In other words, the Qur'an places a certain emphasis on the conscience as well, and conscience is contextualized to what is within a cultural context. If you are within a cultural context where it is known that for the sake of good, fair or equitable survival that you need to have x amount of dollars to do that, then for the person to not pay that which is fair and known and good within that context is not *bil ma'-ruuf*. So it is a word that is flexible and that's why you find people saying things like 'customary', or something like that, because all of these things come into play. If you just say, I am giving this out of the goodness of my heart, for example, it presupposes that you, as an individual, can predetermine what is known within a context, to be just and good and fair. Therefore, there is a certain standard that has to be met but it is not the same from one context to the next. They reflect a kind of cultural variance and they also reflect what we call a standard of living, what you're used to, this kind of thing.

Consequently, you can't say, "Well, this man down the street from me who is very poor, divorced his wife and he gave her a *mata'a* of only Rs. 125 per year because this man only makes Rs. 500 per year. So here I am making Rs. 500,000 per year but I want to give the same amount." The ideas behind what people say is 'known and fair' is important because if you were to take situations like this to court then they can decide, based on certain scales and standards and the like, what is in fact fair, what is in fact good, what is, in fact, within the classification of *bil ma'-ruuf*.

Resource Person (1): Let's take a hypothetical situation. Supposing that there is a community in which the systematic oppression of women is a custom. Let's just assume that all women can live under Rs. 125 or whatever. I think that the reference to *bil-ma'-ruufas* well as further in the *ayat*, where it says 'That is the duty of the righteous,' it's not only that this is considered good within this historical community, but it is also with

28 In January 1995, two Bangladesh High Court judges overruled a nearly 100-year old precedent establishing that the wife is only entitled to post-divorce maintenance during *iddat*, and ruled that after divorce a husband is bound to maintain his ex-wife on a reasonable scale until she remarries.

29 See *An Information Kit: Women in the Qur'an (Qur'anic Interpretation by Women Meeting)*.

reference to some transcendental norm which is what God wants. Why else is there a reference here to *taqwaa*? It's not just what is recognised as good in this community but there is a normative notion of goodness.

Resource Person (2): Surah Al Baqarah (2): verse 236 is more explicit.

Surah Al Baqarah (2): verse 236

There is no blame on you
If ye divorce women
Before consummation
Or the fixation of their
dower;
But bestow on them
(A suitable gift),
The wealthy
According to his means,
And the poor
According to his means -
A gift of reasonable amount
Is due from those
Who wish to do the right
thing.

I.aa junaaha 'alaykum 'in
tallaqtumun-nisaaa-'a maa
lam tamassuu-hunna 'aw
taf-rizuu lahunna fariizah.
Wa matti- 'uu-hunna
'alaimuusi- 'i
qadaruhuu wa 'alalmuqtiri
q a d a r u h. Mataa- 'am-
bil-ma 'ruufi : Haq-qan
'alal-Muhsiniin.

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ
أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ
قَدَرًا وَعَلَى الْمُقْتَرِ قَدَرًا مَتَاعًا بِالْمَعْرُوفِ
حَقًّا عَلَى الْمُحْسِنِينَ ﴿٢٣٦﴾

The words used in these last three lines are '*mataa-'am-bil-ma'-ruuf*' and '*muhsiniin*'. So you do have a reiteration of a certain type of moral character, but you also have a specification of the parameters of appropriateness. This *ma'-ruuf* is approximate to different types of context, so it's not a single thing, you can't say that *bil-ma'-ruuf* always means Rs.125.

Participant: What does it mean, *taqwaa* or *ma'-ruuf*? It means that this is the context of social justice for Muslims. That's why the word is flexible for the time it will be practised. So this word is a more flexible word for the meaning of social justice.

Participant: What you're talking about is the context and therefore it should be according to what is happening and the person's means of earning and standard of living, etc. But when you talk about 'usage', it just gets reduced to traditionally they've gotten Rs. 100 about 50 years ago, then this will be translated in legal terms today to mean they should only get Rs. 100. This is really a distortion.

Participant: I have a bit of clarification too because in the Sri Lankan context, maintenance is provided for one year, an act that I feel flows from Surah Al Baqarah (2): verse 240, although that's for the widow.

Surah Al Baqarah (2): verse 240

Those of you
Who die and leave widows
Should bequeath
For their widows
A year's maintenance
And residence;
But if they leave
(The residence),
There is no blame on you
For what they do
With themselves
Provided it is reasonable
And Allah is Exalted in
Power, Wise.

Wallaziina yutawaffawna
min-kum wa yazaruuna
'azwaa-jañw-waṣ iyyatali-
'azwaa-jihim-matta- 'an
'ilal-hawli g a y r a 'ikh-
raaj. Fa- 'in kharajna falaa
junaaha 'alaykum fii maa
fa- 'alna fii 'aāfusiinna
mim-ma '-ruuf. Wallaahu
'Aziizun-Hakiim.

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا وَصِيَّةً
لَّأَزْوَاجِهِمْ مَّتَاعًا إِلَى الْوَلَدِ غَيْرَ إِخْرَاجٍ ۖ فَإِنْ
خَرَجْنَ فَلَا جُنَاحَ عَلَيْكُمْ فِيمَا فَعَلْنَ
فِي أَنْفُسِهِنَّ مِنْ مَّعْرُوفٍ ۗ وَاللَّهُ عَزِيزٌ
حَكِيمٌ ﴿٢٤٠﴾

Chair: Is there any provision in any of your respective countries regarding continued maintenance of a divorced woman?

Participant: This is in the case of a widow, but it's also applied in the case of divorce for one year.

Resource Person (3): In India, the woman gets maintenance for the rest of her life, not under Muslim law but under the general civil law.

Resource Person (1): A Muslim woman?

Resource Person (3):...A Muslim woman, of course. Please note there are two things here that come to my mind. One is that there has been case precedent in India when a woman was granted maintenance in the judgement by Justice Krishna Aya. Justice Chanderchot created this problem of Shahbano because it was not simply a case of maintenance. In the earlier case of Fazlul Bibi, Justice Krishna Aya had seen to it that two Muslim women, who had come to him for maintenance, were granted maintenance for life. In the Shahbano case, the Muslims objected to Justice Chanderchot's judgement, more because they felt he was trying to bring about a uniform civil code. Also his judgement was felt to be very objectionable because he spoke of the Prophet Muhammad as a person who discarded women, who looked down upon women. And, in the judgement, he said there should be one uniform civil code for the country, i.e. that the Muslim law should completely be overturned, and somewhere in between he referred to Yusuf Ali's translation and said that woman should get maintenance. People like us thought that Shahbano should get maintenance because the peculiarity of her case was that her husband had two wives, both cousins. Shahbano happened to be a *chacha's* (paternal uncle's) daughter and the other was a *mamoo's* (maternal uncle's) daughter. They were both living in the same house and both had children. When

Shahbano left, she asked for a very small amount of money which the Indore High Court gave. The judgement was given in favour of Shahbano, not against. He granted her maintenance of Rs. 172 per month, if I remember correctly. When the case was taken to the Supreme Court and the judgement was again given in favour of Shahbano, it was she who, under pressure from the Muslim community, said "Now I don't want this money."

Participant: In the judgement of Krishna Aya I'm not sure whether it was based on any Islamic principles and I think what we are discussing here, are cases of Islam and Muslims.

Resource Person (2): Divorce is not my forte but in the context of the particular verse we're discussing, and all the things about no negative attitude towards divorce ('either retain them in kindness or release them in kindness' and the like), it is very interesting that this entire set of about 20 verses discusses a number of things with regard to the position of women and orphans, husbands, wives, widows and the like. In other words, there's a whole section regarding what happens when a marriage does not remain intact.

There is something here about widows. I'm surprised that none of you took issue with the fact that you give the widow provision for one year. It's like saying, after death, it's okay to provide for the widow, but it's not okay to do so for divorced women. *Bil-ma'ruuf* comes in again and again. This is one of the things I did consider with regard to the other issues in the Qur'an and how it needs to be looked at. There is sometimes the tendency to take everything and then, literally, place it onto other situations rather than understand what types of practices were going on at that time. We are discussing how long this maintenance should be. What's interesting is the Qur'an also says something about "Don't keep them back from marrying other people." This is said in more than one verse. Now, we know that in the society of Arab men (and they feel very strongly about sexual prowess and this all kind of stuff) the whole idea and nature of the protection of women came from this perception of sex roles and the like. The whole literature or poetry that precedes Islam, reflects this. They never wrote a *Kama Sutra* but they had a *Perfumed Garden*, and the Qur'an actually discusses certain things with a clear indication that women just didn't hang around unmarried for long periods of time.

When that context changes; when women are being divorced and remain unmarried for the rest of their lives, or when they become widowed and they don't get married within one year, what happens? Are we trying to say that the provisions that were made within these short confines of time are in fact the laws which we wish to transpose into the modern context, where your life expectancy is much longer, where you may remain divorced for many, many years? Or are we trying, again, to extract certain principles that are adaptable to a multiplicity of life expectancies, lengths of divorce and the like? I confess this is not my area; I'm only looking at the verses that are here and their proximity to each other, there are so many *ayaat* that say: don't prevent her from marrying someone else, don't contract a marriage when a person is pregnant... The whole idea of, "I'm not going to be with you, I'm going to be with somebody else", is very clear in this text. We should not therefore transpose the explicit lengths of time and the like to the modern context. So, in my opinion you can get lifelong maintenance.

Resource Person (2): I have no definite conclusions, but the two things that occurred to me as I was looking at these verses was: the verse that says for 'the widow *mataa-*

'an *'ilal-hawlii*, that to give *mataa-'an* or this bequeathment or this amount *'ilal-hawlii* may not mean 'give it only for one year and that's it in total'. It may mean 'give a yearly amount' and this would need to be looked at further with regard to now the *hawlii*, *'ilal-hawlii* functions in grammar.

The other point is that 20 verses surrounding this particular section, say somewhere between 2:225 and 240 or 245, have a number of indications that the prevalent practice was one of remarriage quite frequently and quite quickly. When you don't have people remarrying so quickly and you have a longer life expectancy, then perhaps some of the restrictions that are given for time are not meant to be universally binding for the rest of eternity, but they are culturally particular and can be, therefore, reinterpreted in a new cultural context and in new time-spans.

Participant: It suddenly struck me that the whole purpose of *iddat* is to establish parenthood, to establish the father's identity. In fact now, in the current age, we don't have to wait three months to find out if you're pregnant. You can do it within the first four weeks. Is it not possible to work on this aspect also: If the purpose is to establish whether or not she's pregnant, could it not be argued that once you found out you're not pregnant, then the period of *iddat* should be reduced?

Resource Person (2): The Qur'an talks about reconciliation also, and *iddat* is related to that.

Chair: If you look at the process of *talaq-i-ihsaan*, that's one pronouncement followed by abstinence from sexual intercourse for the entire period of *iddat*, which means that you still have a chance of coming back, number one. [see 2:228 on p. 90 above]

Number two, this thing about determining parentage: I'm not sure this is the only reason behind *iddat*. The period of *iddat* following the death of a spouse, is also to give you a little bit of time to kind of settle down, to relax over things and not to be rushed into another marriage immediately. I know of a very young widow, she had only been married one year. Her husband died in an accident, and she had this 13-day old daughter. Earlier, the brother-in-law had registered a whole amount of property in the name of this brother who suddenly died and the whole family was literally at the widow to hurry up and marry this older brother-in-law who already had a whole number of children. The only respite that she had was this period of *iddat* of four months and ten days where she could have a bit of a breathing space. Eventually she was bullied into marrying the older brother but what I'm trying to say is that the rationale behind the period of *iddat* may not simply be the determining of parentage.

Participant: I have a slight problem with that. If the purpose is reconciliation then surely the period has to be before the divorce becomes final but the *iddat* is after the divorce becomes final. Right? If it's not final then there's something I have not understood.

Resource Person (1): Modern secular law is that the judge may pronounce a divorce today but it's different in different states. It might not be final till a year from now...

Participant: The problem is that if the purpose is reconciliation principally, why is that restriction not placed on the man? Because if he is going to get himself married within that period, it's not going to help reconciliation with him at all.

Chair: He cannot get married. Maybe it's wishful thinking on my part but can I give an example? Z has got four wives, A, B, C, D and now wants to marry E. Okay, he's divorcing one and he wants to marry a fourth one... His marriage with the fourth wife is not valid until the *iddat* of the other one...

Participant: He has one wife and he can marry another three wives at the time, at least in my country. At the time of *iddat* he even has the right to get the one he just divorced back or not. So, if he doesn't want her at all, and he has three wives and this is the fourth one, he can get a new fourth one during the ex-fourth wife's *iddat* period because he's finished with her since it is he who has the right to get her back or not, not she

Participant: In Singapore this is the *qadi's* discretion and this is where we have to train our *qadis* to realize the realities of the situation. What *qadis* have done in Singapore, though not in Malaysia, is to hold on to the divorce certificate until the particular wife's maintenance and everything have been settled, and normally the *qadi* says, "Look, you have had one problem with one wife and you want to marry again? No, you settle that one first and then when we know your obligations have been fulfilled, etc..." Because, they're only one little state, with one policy this is how it's done. But not in Malaysia where in so many states you can carry on and marry three other wives.

Participant: There are two kinds of *iddat*, one for a widow and one for a divorcee. For the widow it's also prescribed that you must stay a certain period in *iddat*. The religious authorities tell us even if she's not fertile this *iddat* is prescribed. For the divorce in Sri Lankan law, *iddat* is after the third and final *talaq* and there's no reconciliation afterwards and this is actually only meant to see whether she's pregnant but applies even to the person who's not fertile or not menstruating. It's not, in fact, related to paternity.

Resource Person (1): There are five possibilities in terms of areas in which you can have laws. Firstly, there are Qur'anic injunctions which make positive statements about 'do this' or 'don't do this'. Secondly, the Qur'an makes a recommendation which is not a *farz*, which is not required but highly recommended: God likes people to be truthful and honest and just and so on. Thirdly, there are things that God prohibits: '*haram*'. Then there are things that are not forbidden, but they are not liked by God: '*makroo*'. And finally there is the fifth area that is in the middle, about which there is no pronouncement in the Qur'an either way. That is the only area in which there is room for human legislation in Islam. Now the Qur'an says 'provide for a widow for one year', and then what happens after that? Since the Qur'an says nothing about that, that is precisely an area for *ijtihad* or *ijma*. In fact, any area on which the Qur'an says nothing is the same: we could identify those areas about which the Qur'an is silent. It doesn't mean that there is a negative pronouncement, it just means that's the area in which we need to do *ijtihad*.

Polygamy & Age at Marriage

Participant: Surah Al Nisa (4): 129, which talks about equality and says you can't treat all of your wives equal, seems to contradict Surah Al Nisa (4): verse 3.

Surah Al Nisa (4): 129

Ye are never able
To be fair and just
As between women,
Even if it is
Your ardent desire:
But turn not away
(From a woman) altogether,
So as to leave her (as it were)
Hanging (in the air).
If ye come to a friendly
Understanding, and practise
Self-restraint. Allah is
Oft-Forgiving. Most
Merciful.

Wa lañ-tastatii- 'uuu `añ-ta
'-diluu baynan-nisaaa-'i
wa law ḥarastum falaa
tamiiluu kullal-mayli
fataza-ruuhaa kal-mu-
'allaqah. Wa 'iñ tuṣliḥuu
w a tattaquu fa -
'innallaaha kaana
Gafuurar-Raḥiimaa.

وَلَيْنَ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ
فَلَا تَبْلُغُوا كِلَ الْإِثْمِ قَدْ رُوِيَ مَا كَالْمُعَلَّقَةِ وَإِنْ
تُصْلِحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا ۝

Resource Person (1): An important observation: the context of this verse is the care of orphans. If you think about it, this is the only place in the Qur'an where permission was given to men to marry more than one wife: it was in the context of orphans. If a man marries a woman off the street, how does it help the orphan? It doesn't. The implication here is that the women that you marry would have to be related to the orphans, i.e. guardians or widows related to the orphans. The text is clear. Only one country (Algeria or Tunisia) has interpreted this verse in that context. Elsewhere the context of the verse has been simply ignored.

There are two conditions specified here; one is a prior condition that the context is the care of orphans. The subsequent condition comes after that i.e. if you fear that you shall not be able to deal justly with them, then marry only one. There is, then, this requirement of doing justice and we know from many historical sources as well as *ahadith*, etc, that justice was not only economic justice, but justice in terms of your time,

Surah Al Nisa (4): verses 2 - 3

(2) To orphans restore their property
(When they reach their age),
Nor substitute (your)
worthless things
For (their) good ones; and
devour not
Their substance (by mixing it
up)
With your own. For this is
Indeed a great sin.

(2) Wa `aatul - yataamaaa
`am-waalahum wa laa
tatabadda-lul - khabiisa bi
- tayyib. Wa laa ta` -
kuluuu `amwaala-hum
`ilaaa ta` -kuluuu
`amwaala-hum `ilaaa
`amwaalikum. `Innahuu
kaana huubañ - kabiiraa.

وَأَتُوا الْيَتَامَىٰ أَمْوَالَهُمْ وَلَا تَتَبَدَّلُوا الْخَيْرَ
بِالْطَّيِّبِ وَلَا تَأْكُلُوا أَمْوَالَهُمْ إِلَىٰ أَمْوَالِكُمْ
إِنَّهُ كَانَ حُوبًا كَبِيرًا ﴿٢﴾

(3) If ye fear that ye shall not
Be able to deal justly
With the orphans,
Marry women of your
choice,
Two, or three, or four.
But if ye fear ye shall not
Be able to deal justly (with
them),
Then only one, or (a captive)
That your right hands
possess.
That will be more suitable,
To prevent you
From doing injustice.

(3) Wa `in khiftum `allaa
tuq-situu fil-yataamaa fañ
- kihuu maa taaba l a k
u m - m i n a n-nisaaa-`i
masnaa wa şulaaşa wa
rubaa ` . Fa-`in khiftum
`allaa ta`-diluu fawaa -
hidatan `aw maa malakat
`aymaanukum. Zaalika
`adnaaa `allaa ta- `uu-luu.

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا
مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مِمَّا مَضَىٰ وَتِلْكَ وَرُجْعَتُهَا
فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ
ذَٰلِكَ أَذَىٰ لَا تَعْلَمُونَ ﴿٣﴾

your interest, and your care, etc. It was very comprehensive. Polygamy is not required, it is not recommended. it is only allowed in very exceptional circumstances.

This ayat, if I remember correctly, was revealed after the Battle of Ohad: a lot of men had been killed and there was a great social problem of there being a lot of women and dependent children.

The context of 4:129 is totally different. The Qur'an is always dealing with two levels: one is setting forth the ideals which pertain from this time forward: the other is dealing with the existing situation. The second verse relates to the existing situation. What if a man already has 150 wives, does it make sense to say you can only have four wives? It doesn't, so the second verse is addressed to those other people who already had many wives. It's quite clear. The verse goes on to say "Ye are never able to be fair and just as between women, even if it is your ardent desire: but run not away (from a woman) altogether, so as to leave her (as it were)hanging (in the air). If ye come to a

friendly understanding, and practise self-restraint, Allah is Oft-Forgiving, Most Merciful". In other words: even if you have 150 wives and you can't be absolutely just, at least try to be equitable. It's a totally different context.

Participant: The juristic opinion is 'and yet you can never be fair to women'. They've understood this point and legitimized this, but they have added you can be fair in terms of material needs, but you can never be fair in terms of love and affection, full stop. Which means polygamy is interpreted as 'if he loves his other spouse better, that is quite okay so long as he gives each one house and, this and this'.

But there is also a *hadith* which says that if you love one wife more than the other, in the Hereafter your body will be unbalanced which seems to say you cannot do that either, you cannot be unfair in terms of love and affection either. If you can be unfair in terms of love and affection, surely this affects the material things you give to your spouses, and therefore the *ayat* must mean, you must be fair in all, even love and affection.

By taking this into consideration, by saying 4:129 actually means you can never be fair in anything, even love and affection, Tunisia has said polygamy is void. There's only monogamy. In some other countries, they say monogamy is the rule, polygamy is the exception and you have to prove certain requirements.

Age at marriage

Participant: I have just heard about early marriage which is now quite common in Algeria involving a girl of age 9, 10, or 11, or whatever. They say it's 'Islamic' because Aisha also got married at this same age. This leads also to the fact that in the family law in Sudan they also said the age of marriage for women is from 14 onwards, which is also child marriage. I don't know if there is any justification for that besides the view that Aisha also got married at some similar age.

Resource Person (1): Research on the subject of Bibi Aisha's age at the time she married exists and there is a lot of evidence which shows she was not 9 or 7 or 11 but that she was closer to being 20 or something. This was again a deliberate confusion. In those days you didn't have birth records and this whole myth of Aisha being a child is based on a certain *hadith* which says the Prophet used to play with her and carry her on his shoulders and all that. But just think of it: Aisha is the woman about whom the Prophet said, "Learn half the *deen* (religion) from me and half from her". She became a great *alim* (scholar) which she hardly could have done if she was 15 or 16 years old when he died. That is a myth that was concocted in order to justify child marriages.

Resource Person (3): Regarding the age of Aisha, Ghulam Ahmed Pervez came out with the discovery that her age was round about 29 [when she married] and he used contemporary sources, of people who were her neighbours and the daughter. The book I came across is written in Urdu and there is this evidence he presents. Secondly, if she was married at the age of 7, she was married in the year of Migration, and that means that 13 years elapsed [by the time the Prophet died] and so what would have been her maximum age by when she had taken so much of the Qur'an in? It wouldn't really be possible.

Participant: We have 4:34, which we discussed in some depth. There are also all the other ayaat, some of which have been discussed some at some length, some only touched upon. Some we came to a conclusion on and some we have not. They've just been raised as something that needs to be investigated further. We have also mentioned from time to time the various practices and laws which are said to be Muslim, which are Muslim in the sense that it seems that the whole Muslim world accepts them but which are definitely not Qur'anic, e.g. not allowing Muslim women to marry non-Muslim men. So in cases like this, we would also have to identify from within Muslim jurisprudence the sources that have been used to say a certain practice is 'Islamic'.

The question of *ijtihad* was also raised. Earlier, the need to develop an ethical framework was voiced. On customary versus Muslim versus codified laws, it's important for us to collect these so that we add to our knowledge and experience of the differences that exist.

Finally, what we have not yet managed to talk about specifically, but which at least we should try and think about is the current trends of codifying laws. We have attempts to unify laws in the South East Asia context, in the Arabic countries to have the Pan-Arabic laws, and an attempt right across the African continent. These are some of the trends taking place. We are very concerned that if these are unified, then this diversity, which allows us to see that many practices are not 'Islamic', will also disappear. Then we will all believe in just one monolithic Islamic culture or the Muslim way of being which I don't think will necessarily be in our favour.

Inheritance and Adoption

Participant: The women in the network have found *ayaat* other than 4:34 that have perhaps created controversies in male-female dynamics in Islam. The session is open in the sense that if any participant feels that there are any other *ayaat* that we should discuss then please feel free to contribute to the discussion.

Participant: Let us put in the numbers: We have Surah Al Nisa (4): verses 1 [creation], 3 [polygamy], 6 & 10 [guardianship of orphans], 11 [inheritance], 19 [treatment of women], 24-25 [marriage], 35 [marital disputes], 127-129 [treatment of wives], 176 [inheritance]. We also have Surah Al Imran (3): verses 36 [female children], 195 [gender parity]; Surah Al Zukhruf (43): verse 16 [son preference]; Surah Al Nur (24): verses 30-31 & 60 [modesty]; Surah Al Ahzab (33): verses 35 [gender parity] 49-50 & 52 [marriage and divorce], 53-55 [modesty], 58 [gender parity]; Surah Fatir (35): verse 11 [creation].

I think these are most of the *ayaat* which are relevant to the status of women. But I think the important one is Surah Al Nisa (4): verse 11 about inheritance.

Participant: Do you want to look at the original text in Arabic and then proceed from there because there are so many translations?

Resource Person (1): The problem with this verse is not the translation, because all the translations say the same things. This is a very clear verse. It has no similes, no metaphors, nothing problematic.

What is problematic here, first of all, is that people keep making the statement that the share of a man is twice that of a woman. This is quite wrong. Because it is only the share of the son which is twice that of a daughter; not of all men and all women. This is the first thing that comes out of this verse: the share of the father and the mother is exactly the same; the share of the brother and sister is exactly the same. They, too, are women and men. So the difference is only with respect to the son.

I want to point out something else which is very seldom noticed: when you read on, it says: "for the parents, a sixth share of the inheritance to each, if the deceased left children..." here the mother and the father each gets a sixth. The verse continues: "if there are no children, and the parents are the (only) heirs, the mother has a third". One third is twice as much as one sixth, so if a person leaves no children the mother gets twice that the father's share. This is in the text though it is never pointed out. In other words, there is a context in which a woman gets twice the share of her male partner. Whereas the son gets twice the share of the daughter, the mother gets twice the share of the father.

This verse and some other verses and a lot of *ahadith* are quoted to show that women are inferior to men by saying "Well, your share is half that of a man". The first point is this is not true. There is only one context in which the share of the woman is less

Surah Al Nisa (4): verse 11

Allah (thus) directs you
As regards your children's
(Inheritance): to the male,
A portion equal to that
Of two females, if only
Daughters, two or more,
Their share is two-thirds
Of the inheritance;
If only one, her share,
Is a half.
For parents, a sixth share
Of the inheritance to each,
If the deceased left children;
If no children, and the
parents
Are the (only) heirs, the
mother
Has a third; if the deceased
Left brothers (or sisters)
The mother has a sixth.
(The distribution in all cases
Is) after the payment
Of legacies and debts.
Ye know not whether
Your parents or your
children
Are nearest to you
In benefit. These are
Settled portions ordained
By Allah: and Allah is
All-Knowing, All-Wise.

Yuusii-kumullaahu fii
'aw-laadikum : lizzakari
mişlu haş-zil-'uñşa - yain
: fa-'iñ-kunna nisaaa - 'añ-
fawqaş-natayin fala-hunna
şuluşaa maa tarak ; wa 'iñ
- kaanat waahidatah - fala-
han-n i ş f. Wa li - 'aba-
wayhi likulli waahidim-
min humas-sudusu mimaa
taraka 'iñ-kaana lahu
walad ; fa-'illam
yakullahuu waladuñw-wa-
rişahuuu 'abawaahu fali-
'um-mihiş - şuluş ; fa - 'in -
kaana lahuuu 'ikh-watuñ-
fali-'ummi-his-sudusu
mim-ba '-di wa-şiy-yatiñy-
yuusii bihaaa 'aw dayn.
'Aabaaa-'ukum, wa
'abnaaa-'ukum laa tadrana
'ayyuhum 'aqrabu lakum
naf- 'aa. Farii-zalam-
minallaah; 'innallaaha
kaana 'Aliiman Hakiimaa.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمُ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ
فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثُ مَا تَرَكَ وَلَئِنْ
كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ
مِنْهُمَا الشُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ
لَهُ وَلَدٌ وَوَرِثَتْهُ أُوْتُهُ فِلَاؤُمُ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ
فِلَاؤُهُ الشُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ
أَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا
فَرِيضَةٌ مِنَ اللَّهِ إِنْ الْإِلَهُ كَانَ عَلِيمًا حَكِيمًا ⑪

than the man and that is the daughter. You cannot show the inferiority of women to men through this.

The only problem that remains is why the share of the son is twice that of the daughter it does not refer to women and men but is in the context of the children.

Participant: The first five lines of Surah Al Nisa (4): verse 12 also need to be discussed.

Resource Person (6): My problem is with respect to where 4:11 says: "if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share

Surah Al Nisa (4): verse 12

In what your wives leave,
Your share is a half,
If they leave no child,
But if they leave a child,
Ye get a fourth; after
payment
Of legacies and debts,
In what ye leave,
Their share is a fourth,
If ye leave no child;
But if ye leave a child,
They get an eighth; after
payment of legacies and
debts.
If the man or woman
Whose inheritance is in
question,
Has left neither ascendants
nor descendants,
But has left a brother
Or a sister, each one of the
two
Gets a sixth; but if more
Than two, they share in a
third;
After payment of legacies
And debts; so that no loss
Is caused (to anyone).
Thus is it ordained by Allah;
And Allah is All-Knowing,
Most Forbearing.

Wa lakum nişfu maa
taraka `azwaa-jukum
`illam-yakulla-huuna
walad; fa- `iñ-kaana
lahunna waladuñ -
falakumur-rubu- `u
mimmaa tarakna mim-ba
`-di Wa-siyyatiñy-yuusiina
bihaaa `aw dayn. Wa
lahun-nar-rubu- `u
mimmaa taraktum `illam-
yakul-lakum walad ; fa-
`iñ-kaana lakum waladuñ-
fa-lahunnaş-şumunu m i
m m a a taraktum-mim ba
`-di. Wa-şiy-yatiñ-tuu-
suuna bihaaa `aw dayn.
Wa `iñ-kaana rajuluñy-
yuu-raşu kalaalatan `a-
wimra-`atuñw-wa lahuuu
`akhun `aw `ukhtuñ - fali -
kulli waahidim-min
humas-sudus ; fa-`iñ - kaa-
nuun `ak-şara miñ ẓaalika
fa-hum shura-kaaa-`u
fişşuluşi mim-ba `-di Wa-
şiiyyatiñy-yuu-şaa bihaaa
`aw daynin gayra
muẓaaarr. Wa-şiiyyatam-
minal-laah; wallaahu
`Alimun Ḥa-liim.

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ
وَلَدٌ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبُعَ مِمَّا تَرَكَنَّ
مِنْ بَعْدِ وَصِيَّتِهِنَّ يُوصِينَ بِهِنَّ أَوْلَدُهُنَّ وَلَهُنَّ
الرُّبُعُ مِمَّا تَرَكَهُنَّ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ فَإِن
كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الشُّصْنُ مِمَّا تَرَكَكُمْ مِنْ بَعْدِ
وَصِيَّتِهِنَّ يُوصُونَ بِهِنَّ أَوْلَدُهُنَّ وَإِن كَانَ رَجُلٌ
يُورِثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ
وَاحِدٍ مِّنْهُمَا الشُّصْنُ إِن كَانَ تَوَاحِدًا مِّنْ ذَلِكَ
فَهُمْ شَرُكَا فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّتِهِ يَوْضَى
بِهِنَّ أَوْلَدُهُنَّ غَيْرَ مُضَارٍّ وَصِيَّتُهُ مِنَ اللَّهِ وَاللَّهُ
عَلِيمٌ حَلِيمٌ

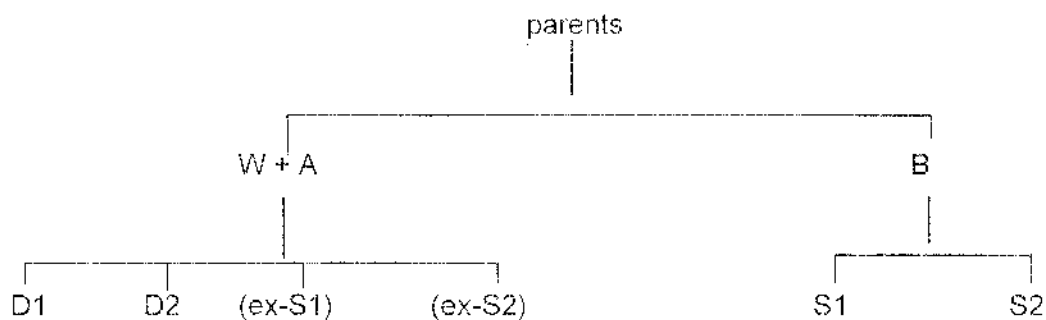
is a half". And the way this has been interpreted, which is as follows:

Unlike other systems, under the Islamic legal system, until the person dies there are no heirs, in your lifetime what is yours is yours absolutely. After death you have a chart of heirs: sharers, co-sharers, residuaries, distant kindred and so on. There is a controversy in these tables if one compares that of the Fiqh-e-Jafria and that of the Hanafis.

This verse has been chalked out in the table of inheritance as meaning there are

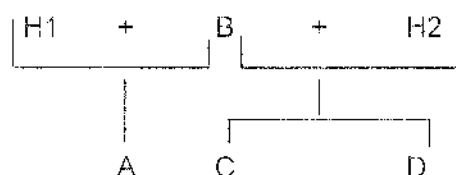
three classes of persons who inherit: heirs; residuaries and agnatic heirs. It's quite technical but my point is that if a man who has only daughters dies, according to this verse only two-thirds of the estate devolves on these daughters. The wife gets one eighth. What remains is 5/24ths of the estate and this devolves on the male agnates who may be nephews, uncles, etc. (i.e. males of the family). This is quite a substantial amount and the emphasis on male agnates therefore leads to a lot of crime because some males of the family may kill the sons of another man in the family in order to inherit this 5/24ths share.

In one case, in 1948 there were two brothers: A and B who both had 2 sons each [see chart below]. In addition A had 2 daughters. B murdered A and A's two sons (ex-S1 and ex-S2), and was himself later hanged for the crime. At the death of A (in 1954-55) he left behind a widow (W) and 2 daughters (D1 and D2). But according to the Hanafi table there were also B's 2 sons (S1 and S2) (his real nephews) who were male agnates, as residuary heirs. What happens: because she has children, W gets one eighth. D1 and D2 get 2/3rds between them and the residuary 5/24ths was to be awarded to S1 and S2. The High Court hearing the case used the principle of equity, good conscience and justice to refuse S1 and S2 a share which would have been tantamount to allowing them to benefit from a crime. But how many judges will take that decision?



This is where I think we need to come up with a more just interpretation in terms of women. For this I am counting on the fact that a reshuffling of the tables was carried out during the rule of Hazrat Omar and Hazrat Ali many a time through the principle of 'proportionate abatement' meaning that the Qur'anic shares are proportionately abated. In Hazrat Ali's time there was the famous donkey case, which I shall tell you about.

There are three types of brothers and sisters: full; uterine (of the same mother) and consanguine (of the same father). The Caliph Ali carried out 'proportionate abatement' in the case of this man, A, who was the son of woman B who had 2 more sons C & D by another husband (H2). So A was a uterine brother. Until the time of Ali, uterine siblings were not considered full heirs, only consanguine brothers or sisters were. A complained to Ali and said, suppose my father were a donkey (i.e. forget about him) I am still my mother's son. Ali then abated the other shares to accommodate A.



If, at that time, during the formative phase of Islam, they could shuffle around the table of inheritance, why is it that we can't do the same in keeping with present day conditions. Actually it's the customary preoccupation with male dominance and custody of property which is responsible for this state of affairs.

Participant: It is my understanding that in the Fiqh-e-Jafria if there are only daughters then they are considered principle heirs. And does anyone know why this was allowed when it is not allowed in the Sunni schools?

Resource Person (1): It is very important to keep these two things separate at this point. One, is what the Qur'an is saying and the other is how the legal schools have developed. They are by no means the same thing at all. What has just been said illustrates the problem: i.e., this is Muslim law, and by definition Muslim law is something which ought to be flexible since any kind of law is made by human beings. For example, all this about uterine brothers or this kind of brother or that kind of brother, is not in the Qur'anic text and is certainly the inference of various jurists. And certainly all that is subject to revision. But the way that it has developed is that, these schools of *fiqh* are seemingly more fixed than even the Qur'an. And they seem to have taken precedence over the Qur'an.

Something very important in these two verses: it is repeated not once but three or four times - these shares, 'after payment of legacies and debts'. Elsewhere the Qur'an says it is the duty of every Muslim to make a will, which means it is the duty of every Muslim to think about how to dispose of one's property.

Secondly, debt is what you owe to other people and legacy is when you want to leave something to somebody. So for instance, if there is a man and he has one daughter and one son and he knows that, according to the Qur'anic share, the daughter is going to get half the share of the son, but he assesses that the daughter's need is far in excess of the son's, or that the son can take care of himself and the daughter cannot, there is absolutely nothing against him giving anything he wants to his daughter in the shape of a 'gift' in his lifetime. First, the Qur'an says make a will; think about the circumstances, you decide, it is your property. Before the shares are given the legacies have to be given, and you can give whatever you want to whoever you want. It is only if you do not make a will, that the Qur'anic shares come in.

Participant: Surah Al Baqarah (2): verses 180-182 specifically say it is your duty to make a will in such a manner that is equitable.

Resource Person (6): The whole question of children of predeceased heirs is then not covered in the Qur'an. They have been completely omitted.

Participant: After death the will is limited to one-third of the property, before that anything can be gifted.

Participant: Where does the one-third come from?

[discussion but no response]

Surah Al Baqarah (2): verses 180-182

(180) It is prescribed,
When death approaches
Any of you, if he leave
Any goods, that he makes a
bequest
To parents and next of kin,
According to reasonable
usage:
This is due
From the God-fearing.

(180) Kutiba 'alaykum
'izaa h a z a r a
'ahadakumul-mawtu 'iīn-
taraka khay-ranil-
waṣiyyatu lil-waalidayni
wal - 'aqrabiina bil-ma`-
ruuf ; haqqan 'alal
Muttaqiin.

كُتِبَ عَلَيْكُمُ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِن تَرَكَ خَيْرًا لِّوَالِدَيْهِ
لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ ﴿١٨٠﴾

(181) If anyone changes the
bequest
After hearing it,
The guilt shall be on those
Who make the change.
For Allah hears and knows
(All things).

(181) Famam-baddalahuu
ba '-damaa sami- 'ahuu fa-
'innamaaa 'iṣ-muhuu
'alallazina yubadd-
diluunah. 'Innallaaha
Samii- 'un 'Aliim.

فَمَنْ بَدَّلَهُ بَعْدَ مَا سَمِعَهُ فَأَنشَأَ اللَّهُ عَلَى الَّذِينَ
يَبَدِّلُونَهُ إِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ ﴿١٨١﴾

(182) But if anyone fears
Partiality or wrongdoing
On the part of the testator,
And makes peace between
(The parties concerned),
There is no wrong in him:
For Allah is Oft-Forgiving,
Most Merciful.

(182) F a m a n a khaafa
mim-muṣiīn-janafan 'aw
'iṣmañ-fa-as-laha
baynahum falaaa 'iṣma
'alayh : 'innallaaha
Gafuurr-Raḥiim.

فَمَنْ خَافَ مِنْ مُّوَصِّ جَفًّا أَوْ أَشَافًا فَاصْلَحْ بَيْنَهُمْ
فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ ﴿١٨٢﴾

Resource Person (1): The question is of equity. You really can't understand any Qur'anic verse unless you put it in the framework of the whole thing, including inheritance. One of our problems is that we are conditioned into thinking of the family in the sense of the nuclear family, which is not only a very modern concept it is also a very artificial concept. The concept of the family was always that of the extended family.

And remember Islam was brought in a tribal society where the whole tribe was actually thought of in terms of family, and the word *ummah* comes from 'mother'. The whole *ummah* was considered a family. So actually what the law of inheritance is trying to establish is a network of relationships. Before Islam, women did not receive any inheritance at all, and in the West until the 19th century and sometimes until the 20th century the women had no inheritance. So just the fact that a woman as a wife, as a daughter, as a sister, as a widow, in all these capacities receives inheritance is to be noticed.

The second thing is that according to the Qur'anic frame of reference, in those times certainly all of the financial responsibility for maintenance rested upon the men. Therefore the son has twice the share of the daughter because the son is responsible also for his parents and also for all the other people in the family, which the daughter is not. So in that case actually she becomes more privileged than him: because she gets the inheritance but she does not have any financial obligations. We are looking at it in the context of those times. This is certainly one of the cases where history is very important and where the spirit of the Qur'an had the following purpose: everybody takes care of everybody. But then what later on happened was that the jurists got hold of it, and they have taken it in all sorts of directions and that becomes binding. But the Qur'an itself is very flexible.

Resource Person (2): It is interesting that the Qur'an actually says specifically *lii-waalidayni wal-'aqrabiina*: 'the parents and the relatives'. But it also points out *'bil ma'ruf*: 'with justice' or 'that which is known to be justice'; as a matter of fact: 'the rights of those who have *taqwaa*'.

Is 2:180 saying that it is taking into consideration those members of the family that were not given explicit proportions? Or is the verse saying that you make a bequeathment and the amount is not determined and that you make this while you are still living? And this equates to what we understand as the will. And in fact Pickthall uses the word 'will'.

Does the will from this verse try to include just those people who are explicitly not excluded from the verses that go into details (e.g. 4:11, 12, 176)? Or does this bequeathment try to take into consideration only those people who were not mentioned?

Resource Person (6): The problem is that there are so many aspects included in the chart of inheritance and also the question of the one-third limit for wills which are taught to us as basic principles but which are not there at all in these *ayaat*. There is also the principle that you cannot will more to one heir than the others without the prior approval of the other heirs, where did that then come in from?

Resource Person (1): Let us say it did not come from the Qur'an and that you have to research where it came from. But it is not Qur'anic. It is common to the schools so I am guessing it must be the thinking of those times. The Qur'an is not a text book of law; it is only providing guidance, and they said "on the basis of this we have to construct a legal system". So they did their own thinking. The most unfortunate thing is that it came to be believed that the *ijma* of the schools of law is binding on all Muslims in all times. This is singly the most unfortunate thing that happened in Islam, and this is what has to be broken. What has happened is that these four schools of law have overtaken the Qur'anic vision of society.

Participant: Are we to understand then that a Muslim person can leave a 'will', and all that about proportions only comes into operation if a person does not make a 'will'.

[general agreement]

Resource Person (6): The Muslim Family Laws Ordinance in Pakistan does not make any provision for the widow of the predeceased son to get any share. Neither do her children. They are in fact the most destitute, so how did that come about? by using the

principles of equity and good conscience and justice the 1961 Muslim Family Laws Ordinance in Pakistan at least, does declare the son as one of the heirs.

Chair: I asked how come this has happened and the answer was that in the Islamic Arabian context, the tribal context, where polygamy was not bad and where a widow could remarry without a problem and the children just went along with her, perhaps the widow and the orphans were not so destitute as you find them today.

Participant: I think there were far fewer widows in tribal Arabia of that time because there was no stigma attached to remarriage. This is the case even today, unlike South Asia. The widow was not as destitute, i.e. they had alternative methods to look after them then, that we no longer have today.

Participant: There are actually a number of classical scholars who disagree with the four schools on the question of succession. They have varying opinions. I have heard that some countries have used these varying opinions in their legislation. I would have to look it up. But, instead of trying to do everything afresh, perhaps we need to backtrack and see whether others have not already done some of the work.

Participant: But they're all men!

[general laughter]

Resource Person (1): Actually I think the position of the Fiqh-e-Jafria that if there are only daughters they should inherit the entire estate is a good one. But the philosophical, theological question before us is why should we not go back to the Qur'an. Why should we have to limit ourselves to having to choose from what is already available.

Participant: I would like to know about 4:11: the son will get twice as much as the daughters. This verse is really bothering us in Indonesia, because if we try to relate this verse to 4:34 where the man is the breadwinner, in Indonesia more than 20 per cent of the breadwinners are women. Also if this implies that after her husband's death a woman is to be looked after by her son, in Indonesian society when the husband dies women stay with their daughters not sons, and then the Indonesian government also proposed new laws concerning inheritance because for a long time we did not bother about this. In our society the daughter will inherit the property, but it doesn't mean she can do anything with it.

Last year the government said custody and inheritance will go under the *Shariah* Laws. The government says that if you want to go under the customary laws you can do that, but slowly the government will force people to go under *Shariah* Laws. You see when the government wanted to buy the land from the people, the people said, "The land does not belong to us it belongs to the family". Now if they decide to go under the *Shariah* Law, the daughter will have her own, the son will have his own, and they can sell it very easily. Of course, they have to go under *Shariah* laws.

Participant: Men made interpretations according to their benefits. That is why we are now all here. We are trying to break up these interpretations. But we can't reinterpret everything word for word; this is the traditional way. We have the philosophical way in the frame of social justice. So that it means that nobody bothered with this *ayat*: most

people, if they have one daughter gift her all the property they have and this is not *haram*, because the Qur'an is more flexible, more just. I chose this *ayat* to discuss because it is very relevant to 4:34 that we discussed earlier. Today things are different: women are no longer maintained by men. But we have to work in the frame of social justice. It means it is not *haram* if you give your daughter what you like of your property. So we should pay attention to the philosophical way of our interpretation.

Participant: I have more and more problems with the term we use here: 'breadwinner'. In most peasant societies women do work and do get wealth for the family. I think we are referring not to 'use value' but 'exchange value'. And I think as feminists we should object to using 'breadwinner' in that sense. Women work and they produce. They may not get money for what they do. Let us be very careful about this concept. Even in the translation should we use 'breadwinner'?

Participant: In this *ayat* it is assumed that the property is divisible. It is in terms of cash or cattle or whatever. But now what we find in our setup is property which is not divisible. In the sense a person leaves either a house or whatever. Also if the land is so fragmented then the problem begins of cultivation. So I am questioning if this can be applied even today. For instance, how do I divide my house? Can property be divisible in this proportion?

Adoption and the question of inheritance

Participant: Is there a provision in the Qur'an to provide for adopted children? We have a case in Sri Lanka where an adopted child was disinherited. In practice one-third is given to the adopted child.

Resource Person (1): In this context, the story of Zaid is very interesting. Zaid was initially a slave who belonged to the Prophet's wife Khadija, but was liberated after the Prophet's marriage to Khadija. He lived in their household and was more or less like their adopted son. In fact the convention in Arab society was that if you called anyone your son, he was treated as if he was your blood son; if you called somebody your brother he became your blood brother. And, in that society, those people were regarded as potential heirs.

The story gets more complicated because it gets tied up to the Prophet's marriage to Zainab. Zainab was the Prophet's cousin, a very beautiful woman of the Qureish tribe. Since the Prophet was very fond of Zaid, he wanted to reward Zaid by arranging his marriage to Zainab. Zainab did not wish to marry Zaid. But, because of the Prophet's wish, it did come about. It was a very unhappy marriage and Zaid kept going to the Prophet and crying on his shoulder that the marriage is not working. We have historical evidence that the Prophet tried for a very long time to make this marriage work. Eventually, it did not work out. In some ways the Prophet felt responsible for this marriage because he had been instrumental in bringing it about. Finally the only way out of this misery was that there was a divorce.

The situation now was that because the Prophet had caused Zainab to have this unsuccessful marriage, once there was a divorce he felt obligated to marry her. And that happened. This story, of course had all sorts of impact. For the orientalis, of course, this has been wonderful. There is a book by a Swedish scholar Tandre, called *Mohammed, the*

Man and his Faith, which is extremely sensational. He describes the whole event like a 20th century Hollywood story; it is terrible. This story has been narrated in all sorts of fashions to portray the Prophet in a negative light. But the historical fact is that this marriage was very upsetting to the Prophet's society; but not because the Prophet married Zainab. There was unlimited polygamy in that society; he could have married two hundred women and that would not have upset anybody. What was upsetting was that Zaid was seen in that society as the Prophet's son, and to marry the divorced wife of a son was something unacceptable. And at that time an *ayat* was revealed that people you adopt by calling them sons, or brothers, or whatever, are not your real sons. They do not inherit from you like your real sons. You can still give them legacies, and bequests. This is an *ayat* which has an historical context.

Participant: I would just like to add a little bit. The Prophet Muhammad was most reluctant to marry Zainab, and an *ayat* was revealed in the Qur'an ordering him to marry her and even Zainab and her brothers were reluctant to give her in marriage to the Prophet, because of the background. After this *ayat*, then they finally agreed.

Resource Person (1): According to Muslim law there is no adoption in Islam and therefore there is no adoption recognised in statutory law. So, if I adopt a child and take it with me to America they will not accept it, because they say this is not statutory law but customary law, which is unacceptable. The position generally taken is that there is no adoption in Islam, which I think is incorrect. It says in the Qur'an that every child should be known by the name of its father. We know, in fact, from the Prophet's lifetime how much emphasis was laid on raising orphans. If you take a child and raise it, it is considered very meritorious; it is very much recommended. But if you adopt a child it is a very deliberate act. It doesn't happen by accident, like a real child. Then you are responsible for providing for it.

Participant: It seems to me that there is a contradiction between the principle that everybody should take care of everybody, that we have mutual responsibility and the fact that the adopted child or the parentless child is now rejected under Muslim law - but I would request you to put an 's' at the end of Muslim law, because in Tunisia we have adoption on the ground that one should take care of orphans. Don't let's say Muslim law; that is singular.

It seems to me that the state has intervened and prevents people from even taking care of orphans, and says it is forbidden because adoption is forbidden. What used to happen only twenty-five years ago is that people would say: "This is my son. This is my daughter. They may not inherit, okay, but still I am taking care of them." This doesn't happen anymore because the state forbids it and you have to go through the state in order to take care of a child. Take the case of Bangladesh where all these children born to raped women were all abandoned, which seems highly unislamic from all that has just been said previously.

One last point: it seems the Qur'an says only that the child shouldn't have the name of the adopted parents and shouldn't inherit, but does not prohibit adoption as such. The first thing is said to prevent incest, because if you give your name to the child then later this child can marry a biological sister without knowing that this is a sister. Now in modern times we have records and everything is written down with the father, with the mother; who adopts what. Now this does not seem to be adequate anymore.

Resource Person (1): Also psychologically, there is a tremendous amount of problems with people who don't know where they come from. There are tons of cases showing that they should know.

Participant: Legally speaking, people now know that they are adopted. The prevention of incest which was probably one of the injunctions doesn't apply now.

Participant: There is a specific case exactly on this in Saudi Arabia where a brother and sister, whose parents divorced, ended up marrying each other. They had met many years later. They had no idea who they were, so they got married. The question that was asked of the *qazi* was "what do we do now?" post the event. So the fact of protecting you from incest is a very real thing.

Participant: As regards the children born out of wedlock, they inherit from their mothers, so they have a means of support. This happens in Malaysia. We have adoption, but it's called 'de facto' and the child continues to bear her/his original name and inherits from that family, but you have to look after that child as a member of your family while he is with you.

Participant: That's in some societies, in other Muslim societies; children out of wedlock are simply not recognized. They have no right to be. They have no legal existence. But they happen and that is a problem.

Participant: About inheritance: we were looking at a document which came from the United States circulated among Muslims about the necessity for Muslims to make a will. This document clearly said that a non-Muslim spouse cannot inherit nor can they benefit from the will.

Resource Person (6): There've been court judgements that have reiterated this law that a non-Muslim spouse cannot inherit. This classical case which is always quoted, of the Dhaka High Court, is a case in the early 1950s or 1960s where there was this Hindu couple and they had children and the Hindu husband converted to Islam and married a Muslim wife, and had children with her. When he died, the Hindu wife and children obviously claimed their inheritance and the court said, "No, the inheritance is only going to be given according to the Muslim personal law which says that only Muslims can inherit". It's not Qur'anic but nevertheless it's considered part of the statutes on Muslim law. Just like we need other reforms, we have to quote the relevant *ayaat* on inheritance and paraphrase them in a more coherent manner.

Resource Person (1): Talking about inheritance of the wife, the Qur'an is not qualifying that the wife is Muslim or whatever, it's just says 'wife'. It doesn't say that they can't inherit.

Marriage to Non-Muslims

Resource Person (1): One of the points of discussion that came up is that there is a general understanding that it is all right for a Muslim man to marry a girl from the Jewish or Christian tradition but it's not all right for a Muslim woman to do that. It's an extremely important issue now in many Muslim societies, and I would like to put this issue on the table.

Participant: When a marriage takes place between a Muslim man and a Christian or Jewish woman, at least in some codified legal systems, his wife does not inherit anything from his property and furthermore he is not allowed to will anything to his wife either.

Chair: That's the case in Pakistan. There was a recent case of a British national married to a Pakistani man. There's no problem of a divorce or anything, but this woman has been told that she's not going to inherit anything. She asked me how she could get around this law. And her question was, "Why? If it's a valid marriage, if it's recognized under Muslim law because I'm a *Kitabia* (she was a Christian). Under the Muslim personal laws why should I be debarred from inheritance?"

Resource Person (3): Under the present Shia law this is not a recognized marriage. I'm not talking about the Islamic law, mind you, I'm talking about the distinctions Shias and Sunnis make on this point. The Shias accept a *Kitabia* only in the form of a *muta'a*. And a *muta'a* woman does not inherit, whereas a wife does. If he is not a Shia man this is the first time I'm hearing that any *Kitabia* should have any trouble. As a matter of fact even in the reverse context, a Muslim woman can marry a non-Muslim man. I don't think there's any ban against it anywhere - not that I have come across. Maybe it has escaped my notice but there's no verse that prohibits a marriage of a Muslim woman to a non-Muslim man.

Participant: Surah Al Baqarah (2): verse 221 refers to both men and women equally that you are not to marry *mushrik* men or women.

If you look at the text now, I want to say something that I think is very fundamental in understanding this and some other issues: there are specific words in the Qur'an for Jews and for Christians. The Jews are referred to most of the time by two words. The most common name for referring to the Jews is *Bani Israel* (*Baniii-'Israaaa-'iila*) and sometimes as *Yahud*. The reference to Christians is as *Nasaaraa*, from 'Nazareth', because Jesus came from Nazareth. So there are specific words for the Jews and the Christians. But there are three other terms which are used very often in the Qur'an: '*kafirun*' / '*kafiriin*'; '*munaafikun*' / '*munaafikiin*'; and '*mushrikun*' / '*mushrikina*'. Because

Surah Al Baqarah (2): verse 221

Do not marry
Unbelieving women
Until they believe:
A slave women who believes
Is better than an unbelieving
woman.
Even though she allure you.
Nor marry (your girls)
To unbelievers until
They believe:
A man slave who believes
Is better than an unbeliever
Even though he allure you.
Unbelievers do (but)
Beckon you to the fire.
But Allah beckones by His
Grace
To the Garden (of Bliss)
And forgiveness,
And makes His Signs
Clear to mankind:
That they may
Receive admintion.

Wa laa taṅkihul-
mushrikaati ḥattaa yu' -
minn : wa l a - 'amatum -
m u' - minatun khayrum-
mim - mushrikatiñw-wa
law 'a -jabat-kum. Wa laa
tuṅkihul - mushrikiina
ḥattaa yu'-minuu: wa la-
'abdum-mu' - m i n u n -
khayrum-mim-mushrikiñw
- wa law 'a' - jabakum.
'Ulaaa- 'ika yad - 'uuna
'ilan-Naar. Wallaahu yad-
'uun 'ilal-Jannati wal-
mag-firati bi- 'iznih, wa
yu-bayyinu 'aayaatihii
linnaasi la- 'allahum
yatazakkaruun.

وَلَا تَنْكِحُوا الْمُشْرِكِيْنَ حَتَّى يُؤْمِنُوْا وَلِكُلِّ مُؤْمِنَةٍ
خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ اَعْجَبَتْكُمْ وَلَا تُنْكِحُوا الْمُشْرِكِيْنَ
حَتَّى يُؤْمِنُوْا وَلِكُلِّ مُؤْمِنٍ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ
اَعْجَبَكُمْ اُولٰٓئِكَ يَدْعُوْنَ اِلَى النَّارِ وَاللّٰهُ يَدْعُوْا
اِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِاِذْنِهٖ وَيُبَيِّنُ اٰيٰتِهٖ لِلنَّاسِ
لَعَلَّهُمْ يَتَذَكَّرُوْنَ ﴿٢٢١﴾

I was interested I have spent several years of research on the Qur'anic treatment of *Ahlu'l-Kitab*, I discovered that in many contexts, the commentators translate a passage and say "This refers to the Jews and this refers to the Christians," but in the actual Qur'anic text you have no reference to Jews, or to Christians: you have words like 'kafirun' or 'munaafikun'. It's an assumption to say that every time the word 'kafirun' is used it means Jews, or every time the word 'mushrikun' is used it means Christians. It does not mean that! And in this passage the word that is used in this context is 'kafirun' and never in the Qur'an is the word 'kafirun' used to refer to Jews and Christians. Never!

This context of inter marriage does not apply to Jews and Christians. Sometimes the act of saying that Jesus is the son of God is referred to as *shirk*. But I also want to point out that Christians en masse are not referred to as 'mushriqeen' in the Qur'an because the Qur'an pays very high tribute to Christians. It says that they are righteous, they are pious, they are nearest to the Muslims and so on. The Christian Monastic communities in Arabia were very highly praised. It's wrong to think (like today's Muslim commentators such as Maududi) all Christians are *mushriqeen*. The Qur'an doesn't say that. There is no evidence to argue that this means Jews and Christians. All these three: Muslims, Jews and Christians are *Ahlu'l-Kitab*, People of the Book; if they can eat together and they can inter-marry, there is absolutely no reason why women cannot inter-marry with them either.

Resource Person (3): The *mushrik* and the *Ahlu'l-Kitab* are two different things altogether. There is no injunction against the *Ahlu'l-Kitab*, is what I'm saying. The injunction is not against a *mushrik*. A *mushrik* is someone else.

Participant: A *mushrik* is not *Ahlu'l-Kitab*, which means Christian, Muslim, Jewish, that's all.

Resource Person (2): '*Mushrik*', shares its root word with '*shirk*' 'to ascribe partners to Allah'; one who holds anything equal to Allah, that's '*shirk*',

Participant: I would also like to add something to clear our confusion about the word '*nikah*'.

In Arabic sometimes, they didn't use it only to mean marriage. '*Nikah*' means intercourse even without marriage. Sometimes a *nikah* means marriage, but I read now that there is an Arabic interpretation, which suggests that in this *ayat*, it's not marriage, it means *nikah*, i.e. intercourse between a woman and man without marriage. It means that the man and the woman, they are both *mushrikat*; it doesn't mean that they will marry each other. The act between *mushrik* and *mushriqa*: *zani wa zania*. '*Nikah*' doesn't mean marriage, in this context.

Resource Person (3): The word '*nikah*' comes from the root word '*akada*', which means 'to unite'. The word '*nikah*' means sexual intercourse but it means it in connection with marriage definitely.

Participant: It is here in the Arabic interpretation I have now. The word '*nikah*' in this *ayat* means sexual intercourse: '*azzaanii laa yank ihu'lla zaaniyatan*', means that this act is between *zani wa zania*, or between *mushrik* and *mushrika*. It doesn't imply that they will marry each other or not, it means this act, i.e. *nikah*, sexual intercourse. This is the description of the act. Take Surah Al Nur (24): verse 3, for example.

Surah Al Nur (24): verse 3

Let no man guilty of
Adultery or fornication
marry

Any but a woman
Similarly guilty, or an
Unbeliever:

Nor let any but such a man
Or an Unbeliever

Marry such a woman:
To the Believers such a thing
Is forbidden.

'Azzaanii laa yaŋkihu
'illaa zaaniyatan 'a w
mushrikah : wazzaaniyatu
laa yankihuhaaa 'illaa
zaanin 'aw mushrik: wa
hurrima zaalika 'alal-Mu'-
miniin.

الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ
لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى
الْمُؤْمِنِينَ ۝

Even here, it doesn't mean 'marry'; it is the description of that act between the woman and man called *nikah*, i.e. sexual intercourse. It doesn't mention marriage at all. It

means that *mushrik* and *mushrika*, they both of them have an act of sexual intercourse which is *haram*. I mean that nobody will have *zina* with a woman which is *mushrika*, and men, *mushrik* also, both of them, are *mushrika*, and are disobeying God. It's *haram* but it's not marriage. It's an act that is *haram*, that you can call it *nikah* but it doesn't mean that you have to marry him or she has to marry him.

Resource Person (1): I think she is trying to say that an adulterer can have intercourse with somebody similarly guilty which means an adulteress and vice versa. Like, we were interpreting it as an adulterer should only marry someone similar and she's saying the word doesn't necessarily mean marry, it means they can only have intercourse with somebody who's like them.

Participant: Because it includes 'wills', it involves both of them and they are satisfied to do this act, whether it's *haram* or not...

Resource Person (2): If that is so, why is the *mushrik* there? 'Kafir', 'kufar', is 'to disbelieve'. So why say 'almushriq': 'illa zaaniyataan'aw mushrikah.wazzaaniyatu?

Surah Al Ma'idah (5): verse 5

This day are (all) things
Good and pure made lawful
Unto you. The food
Of the People of the Book
Is lawful unto you
And yours is lawful
Unto them.
(Lawful unto you in
marriage)
Are (not only) chaste women
Who are believers, but
Chaste women among
The People of the Book,
Revealed before your time -
When ye give them
Their due dowers, and desire
Chastity, not lewdness
Nor secret intrigues.
If anyone rejects faith,
Fruitless is his work,
And in the Hereafter
He will be in the ranks
Of those who have lost
(All spiritual good).

'Al-yawma 'uḥilla
lakumuttayyi-baat. Wa ṭa-
la a m u llaḥiina 'uutul-
Kitaaba ḥillullakum, wa
ṭa-'aamukum ḥillul-lahum.
Wal-muḥ-ṣanaatu minal-
mu'-mi-naati wal-
muḥṣanaatu minal-laziina
'uutul-Kitaaba min-qab-
likum 'iḏaaa 'aatay-tumuu-
hunna 'ujuura-hunna
muḥṣi-niina gayra musaa-
fiḥiina wa laa muttakhi-ḏ i
i i 'a k h - d a a n. Wa
mañy-yakfur bil-'iimaani
ṣaqad ḥabiṭa 'amaluhuu wa
huwa fil-'Aa-khirati
minalkhaa-siriin.

الْيَوْمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا
الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ وَالْمُحْصَنَاتُ
مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا
الْكِتَابَ مِن قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ
مُعْصِنِينَ غَيْرَ مُسِفِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ
وَمَن يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ وَهُوَ
فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ ٥

Resource Person (1): I would like to answer the question: if it is all right for a Muslim man to marry a woman from amongst the People of the Book, why is it not all right too, for a woman? There are three passages I would like to refer you to. The first one is, Surah Al Ma'idah (5): verse 5.

This is made the basis of saying that Muslim men can marry chaste women from amongst the People of the Book, generally interpreted as Jews and Christians - but I believe we could also argue for this to be extended to some other religions.

Why is it that Muslim women are forbidden from marrying non-Muslim men? There are two Qur'anic references: 2:221 which we've already referred to [see p148 above] but I want to analyse. It says, "Do not marry unbelieving women until they believe..." We were talking about the *mushrik*, *mushrika*. Here we see a totally egalitarian statement which is arguing both ways. It's telling men don't marry unbelieving women and it's telling women don't marry unbelieving men. Now, the word that is used here is '*mushrik*'. (Not *Ahlu'l-Kitab*, 'People of the Book'.)

Let's look at all three passages first and then I'll try to analyse them. Let's look at the third one: Surah Al Mumtahanah (60): verses 10-12, the most important one in this context. [see page overleaf]

The historical context of these passages is that when Islam first began to spread, there were many cases in which women who had previously practised some form of what we call paganism became Muslim but their husbands were still pagans and these women then started to encounter great difficulty and persecution. Many of them came for refuge to the Muslim communities, to the Prophet, and this legislation is in the context of these Muslim refugees. The Qur'an is saying here: when these women come to you, don't send them back, because, in a way, they have nowhere to go. They have taken their faith and the cost of their faith is perhaps their marriage so you have to accept them. Don't send them back to the unbelievers. Now as far as I can remember, this is the only place in the Qur'an which is used as a basis for saying Muslim women cannot marry non-Muslims.

Resource Person (3): On the historical context I'd like to add just one little thing. When the families migrated with the Prophet, at the time of the *Hijrat* many families were divided. Many people had to leave their wives and some husbands were left. So when either party wanted to convince the other party to come over or go back, in this case again the word 'unbeliever' was especially mentioned...

Resource Person (1): I think that it's even prior to the *Hijrat* and in the very early phase of Islam when, as a matter of fact, many Muslims migrated to Abyssinia: they went to Ethiopia. Then over there, there was trouble and the husbands reverted and the wives were Muslims. So this was a problem of women refugees and it was within a specific historical context...

Resource Person (2): There's also some historical information that supports the same thing which is that, supposedly, the injunction has to do with types of marriages prevalent in those days where the women were under the thumbs of the men, a Muslim woman was not able to maintain her religion under someone who would not want her to do so. The question in the modern context is if the marriages are not just of subjugation and you can live equitably with humans of a different religion and maintain your own belief in Islam and spread it to your own children, then perhaps you can have a marriage with a Jew or Christian.

Surah Al Mumtahinah (60): verse 10

O ye who believe!
When there come to you
Believing women refugees,
Examine (and test) them:
Allah knows best as to
Their faith: if ye ascertain
That they are Believers,
Then send them not back
To the Unbelievers.
They are not lawful (wives)
For the Unbelievers, nor are
The (Unbelievers) lawful
(husbands)
For them. But pay
The Unbelievers what they
Have spent (on their dower).
And there will be no blame
On you if ye marry them
On payment of their dower
To them. But hold not
To the guardianship of
Unbelieving women: ask
For what ye have spent
On their dowers, and let
The (Unbelievers) ask for
What they have spent
(On the dowers of women
Who come over to you)
Such is the command
Of Allah: He judges
(With justice) between you.
And Allah is Full of
Knowledge and Wisdom.

Yaaa-`ayyuhallaaziina `aa-
manuu `izaa jaaa-`akumul-
Mu`-minaatu
Muhaajiraatiin-famta-
hinuu-hunn : `Allaahu `a`-
lamu bi-`iimaanihin : fa-
`in `alim-tumuuhunna
Mu`-minaatiin-falaa tarji-
`uuhunna `ilal-kuf-saar.
Laa hunna hillul-lahum wa
laa hum yahilluuna lahun.
Wa aatuuhum-maaa
`aafaquu. Walaa junaaha
`alay-kum `an
tankihuuhunna `izaaa
`aatay-tumuuhunna
`ujuurahunn. Wa laa
tumsikuu bi-`isamil-
kawaa-firi was-`aluu maaa
`aafaqtum wal-yas-`aluu
maaa `aafaquu . Zaalikum
hukmullaah. Yah-kumu
baynakum. Wallaahu
`Aliimun Hakiim.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ
فَأَمْتَحِنُوهُنَّ ۚ إِنَّ اللَّهَ يَعْلَمُ رِيَّاسَانِهِنَّ وَلَئِنْ عَلِمْتُمُوهُنَّ
مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَأَهُنَّ حِلٌّ
لَهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ وَآتُوهُنَّ مَا أَنْفَقُوا
وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ
أُجُورَهُنَّ وَلَا تُمْسِكُوا بِعِصَمِ الْكَوَافِرِ وَاسْأَلُوا
مَا أَنْفَقْتُمْ وَلْيَسْأَلُوا مَا أَنْفَقُوا ذَٰلِكُمْ
حُكْمُ اللَّهِ يَحْكُمُ بَيْنَكُمْ وَاللَّهُ عَلِيمٌ
حَكِيمٌ ﴿١٠﴾

Resource Person (1): I met the Mufti of Romania when Romania was under communist rule and he said that in Romania Muslim women were marrying communists but the religious authorities allowed the Muslim women to marry them and they were still regarded as Muslims. The Ismaili community, for instance, does not prohibit their women from marrying non-Muslims and there are really a number of cases where this is done on a smaller scale.

Resource Person (2): But the recommendation is the same as far as choosing the best. Whether it is permitted for men to marry *Ahlu'l-Kitab* women or for women to marry the *Ahlu'l-Kitab*, you still have a system of priority that's set: you're supposed to choose the best.

Surah Al Mumtahinah (60): verses 11 - 12

(11) And if any
Of your wives deserts you
To the Unbelievers,
And ye have an accession
(By the coming over of
A woman from the other
side),
Then pay to those
Whose wives have deserted
The equivalent of what they
Had spent (on their dower).
And fear Allah,
In Whom ye believe.

(11) Wa 'iñ-faatakum
shay-'um-min
'azwaajikum 'ilal-kuffaari
fa- 'aatullaziina zahabat
'azwaajuhum misla maaa
'anfaquu. Wattaqullaa-
hallaziii 'aantum-bihii Mu'-
mi-nuun.

وَاِنْ قَاتَلْتُمُوْهُمْ شَيْءٌ مِّنْ اَزْوَاجِكُمْ اِلَى الْكُفٰرِ
فَعَاقِبْتُمْ قَاتِلُوْا الَّذِيْنَ ذَهَبَتْ اَزْوَاجُهُمْ مِّثْلُ
مَا اَنْفَقُوْا وَاَتَّقُوا اللّٰهَ الَّذِيْ اَنْتُمْ بِهِ مُؤْمِنُوْنَ ﴿١١﴾

(12) O Prophet!
When believing woman
come
To thee to take the oath
Of fealty to thee, that they
Will not associate in worship
Any other thing whatever
With Allah, that they
Will not steal, that they
Will not commit adultery
(Or fornication), that they
Will not kill their children,
That they will not utter
Slander, intentionally
forging
Falsehood, and that they
Will not disobey thee
In any just matter -
Then do thou receive
Their fealty, and pray to
Allah
For forgiveness (of
Their sins): for Allah is
Oft-Forgiving, Most
Merciful.

(12) Yaaa - 'ayyuhan-
Nabiyyu 'izaa jaaa-'akal-
Mu'-minaatu yubaa-yi '-
naka 'alaaa 'allaa
yushrikna billaahi shay-
'añw-wa laa yasriqna wa
laa yazniina wa laa
yaqtulna 'awlaadahunna
wa laa ya'-tiina bi-
buhtaaniñy-yaf '-
tariinahuu b a y n a
'aydii-hinna wa
'arjulihinna wa laa ya '-
şinnaka fii m a '-r u u f i n
-fabaa-yi '-hunna
wastagfir la-hunnallaah :
'innallaaha Gafuu-rur-
Raḥiim.

يٰٓاَيُّهَا النَّبِيُّ اِذَا جَاءَكَ الْمُؤْمِنٰتُ يَبٰٓيِعْنَكَ
عَلٰى اَنْ لَا يُشْرِكْنَ بِاللّٰهِ شَيْئًا وَّلَا يَسْرِقْنَ وَّلَا
يَزْنِيْنَ وَّلَا يَقْتُلْنَ اَوْلَادَهُنَّ وَّلَا يَأْتِيْنَ بِسَهْتٰنٍ
يَفْتَرِيْنَ بَيْنَ اَيْدِيْهِنَّ وَاَنْجُلِهِنَّ وَّلَا يَحْصِيْنَكَ
فِيْ مَعْرُوْفٍ بِّبٰٓيِعِهِنَّ وَاَسْتَغْفِرْ لَهُنَّ اللّٰهُ اِنَّ
اللّٰهَ غَفُوْرٌ رَّحِيْمٌ ﴿١٢﴾

The Interface between Custom and Codified Jurisprudence

Chair: We've been informally discussing how just or equitable customary laws and the codified laws of various countries have been vis-a-vis Qur'anic verses and the implementation of these laws.

For instance free consent is one of the technical terms essential to a valid marriage. Islam allows that, the codified laws of Pakistan allow that, but in actual term what is 'free consent'? Is it present in the marriages that are usually practised in Pakistan? From my experience what happens is that in these families (I'm talking of typical conventional marriages although they are not as typical any longer) the proposal is given and the acceptance made and then finally, a social meeting is arranged where the woman is there and amid all that fanfare they ask do you accept this man? In my part of the country the woman is not even asked that. In fact the man is also not asked. It might seem quite strange but I have not seen my marriage contract, neither has my husband. I have not signed it, neither has my husband. So, although my religion gives me the choice and the capability to say yes or no and not only pay lip service to this word yes or no but in actual fact, customary law here has overridden my free consent. I would not call this 'free consent' in the legal sense even less so in the religious or moral sense because free consent is not there when you're all dressed up in your finery and you have people, literally by the hundreds, waiting outside to take you to this other house. How can you pick up your veil and say 'sorry I'm not marrying this man'. I would call it a very unIslamic sort of custom. The other thing is the matter of inheritance.

In the northern belt only (i.e. Swat, Dir, Chitral and a certain portion of the tribal areas) the *riwaj*, (customary law) does not allow females to inherit, although the religious and codified laws of the countries both give you the right to inherit. With respect to *mehr* we're given a portion of property as *mehr* but we can't administer it. We don't have the power to dispose of it, or to use it independently or anything. Recently, this was successfully challenged in the High Court. But the government has appealed against this decision. Imagine, an Islamic government (at least professing to be an Islamic state) has appealed against this. So these are two instances where the law gives you rights, religion gives you these rights, but custom does not.

Participant: About free consent: in the Algerian Family Code which was passed in May 1984, there's a paragraph saying that both spouses should consent to the marriage but a bit further down in the law, you find that the consent of the bride can be expressed by any sign. In other words, she can be silent, she can cry, anything can be interpreted as her consent. I have been told repeatedly that silence can be the expression of consent

and I think someone here said that if the Prophet didn't say anything, it had a meaning. I'd like to know if it's in the Qur'an or not?

The other thing is dowry. Our family court makes it an obligation that a dowry is given and for your information, since you are in this part of the world, it's very different there. In Pakistan, probably under the influence of Hinduism it's the family of the bride which has to give dowry, while in our part of the world it's the family of the groom. It makes no difference in the sense that it ruins families, they are in debt for years. So the law says that a marriage is not valid without a dowry and I would like to know whether this is Islamic and where it is in the Qur'an.

Participant: I would like to say a few words about what is customary in Bangladesh. Let's start with marriage and dowry. Recently there's been a spate of bride killing because of dowries. (I'm sure that previously the same thing used to happen but it never got reported). It's become absolutely rampant and even after the birth of children. It happens that the family of the bride had promised such and such money, or a bicycle, or a television, and that was not given and in consequence brides have been killed. It's common to see at least one case of dowry death every day in the newspapers. This dowry has now been outlawed; we have a law against dowry but it's never implemented.

Secondly, the law of inheritance: it's not proper for any girl to claim inheritance from the father's side. Almost 90% of women give up their claims. It's due I think to the weak economic position of women. If they claim anything from the father, it's implied that they are depriving their brother of his share and, by claiming that property share, she's giving away any right to even come back to her father's house. For example, there is a practice called '*naya*' (see *Legal Status of Women*) in which the bride is brought every year to her father's house - it's a kind of vacation. When she claims inheritance almost inevitably she gives up that right for ever. These are just conventions... Actually she has every right to inherit but she will not claim it and the poorer the family, the worse it is: in villages it's even worse. These things have been going on for many years. We have very nice laws, but these are hardly ever implemented.

About the delegated power of divorce that is printed in the *nikahnama*: very recently amongst the very educated, the bride's family has started to actually see that it is signed and the power is given. I don't have that delegated power and when I later went to find out about it, I discovered that my husband's family, at the time of the wedding, gave the standard line that during the time of marriage it's inauspicious to talk of divorce and that's how most people get away with it, dismissing the clause.

Participant: You have the right to insert that at any point. For those of us in Bangladesh or in Pakistan, who do not have that provision in their *nikahnama*'s, you can have it signed now, tomorrow, any day and have your right. Normally, it's crossed out before you get to the *nikah* and very often it's the girl's family who stops the woman by saying, "How inauspicious! You are talking about divorce, you are just getting married and how can you do this. Shut up, shut up!" Or the *maulvi* who's there filling out the forms doesn't ask anybody anything: he just crosses it out.

Participant: Since we are trying to introduce this clause of delegated right of divorce in the *nikahnama* in the North of Africa - where it's unheard of - I've been told, "No, it's not in keeping with Maliki views". I want to know whether it comes from another school or not?

Participant: In the Hanbali school everything is permitted which is not prohibited, and the Hanbali school has this. In fact, the Hanafi school in India and Pakistan adopted the Hanbali principle. In Malaysia jurists say, "No, no such thing because you see this is from whatever school and we don't agree with it."

Resource Person (3): There is a doctrine of *takhal'ur*, by which a school can replace another school of thought among the Sunnis. There is absolutely no controversy regarding that issue. So if there's delegated powers/laws under Hanafi law which is not present under Maliki law. Maliki law can adopt the school of Hanafi law, and many countries have done that.

Participant: The Hanafis take it so for granted that they never bother to give you any references. They just say everyone knows that you can do this, end of question.

Resource Person: I'm not sure I understand your question, are you looking for some Qur'anic basis for the delegated right to divorce, some *hadith* basis for it or what? [laughing]

Participant: There is a *hadith* that says a Muslim is bound by his stipulations which means by his contract, by his word.

Resource Person (1): See, according to the Qur'an, marriage is a contract. The way these *ayaat* which relate to marriage read, is that the whole thing is egalitarian. There should be consent on the part of both... No, I don't think that there's the notion of silence in the Qur'an. It says it should be a contract. It should be free consent and the couple should live together in kindness, separate in kindness. The Qur'anic picture of marriage seems to be that it's two adults who freely enter into this for the sake of companionship, love, procreation, etc., and that if they can't make it work, they should separate by mutual agreement. It seems to me that the Qur'an is not giving any higher or lower power to either.

Resource Person (3): It is very explicit that there has to be consent. When the formalities take place, consent is one of the main pillars and it has to be free from impediments of error, fraud, misinterpretation, coercion or force.

Participant: We also have this clause in the Algerian Code. What I'm asking is: if we have such laws, on which misinterpretation is it based? Not your interpretation of the Qur'an, but their interpretation of the Qur'an, and when we put our finger on where it is, then how can we challenge it by another interpretation? That's exactly what I'm asking about this free consent which can be expressed by silence or other signs. And also dowry: is it, or is it not part of the marriage?

Resource Person (1): Answering your question 'on what is it based?': it is based on a whole set of assumptions which together make up this patriarchal world view.

What we've been doing for the last four days is that you can take a number of *ayaat* and turn them around. These same verses that we use to free women, they can turn them around. I'm sure that there are endless number of *ahadith* which you can find, which can be used negatively. The act of codification of this is *fiqh*, jurisprudence. But the orientation of the Qur'an is pro-feminist, and even in our four days of very superficial

study of the Qur'an, see how much we have discovered because we want to. But in fourteen hundred years, if you want to find negative things, don't you think you can find them? The thing is, you need specific support to prove a positive point but to prove a negative point...

Participant: I don't know if this is an example but I think this might help to clarify. One translation I have of Surah Al Nisa (4) verse 4 specifically talks about the question of giving them something as a free gift. The question is, is this prescriptive? Is this something you have to do without which your marriage becomes invalid? Because the way in which it's been translated into jurisprudence is that because there is this *ayat* in the Qur'an and it says that you must give women the dower so unless you give the *mehr* the marriage is not valid.

Surah Al Nisa (4): verse 4

And give the women
(On marriage) their dower
As a free gift; but if they
Of their own good pleasure
Remit any part of it to you
Take it and enjoy it
With right good cheer.

Wa `aatun - nissaa-`a
şadu-qaa-tihinna niḥlah;
fa-`in-ṭib-na lakum `aā-
shay-`im-minhu nafsān -
fakuluuhu haniiji-`am-
mariiji-`aa.

وَاتُوا النِّسَاءَ صَدُقَتِهِنَّ نِحْلَهُ فَإِنْ طِبْنَ
لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا
مَّرِيئًا ④

Resource Person (1): That's correct, but we have to distinguish between dower i.e. *mehr*, and dowry i.e. *jehez*. *Jehez* is unIslamic and unQur'anic whereas without dower you cannot have an Islamic marriage. There are so many *ahadith* on this subject concerning people who were totally destitute who went to the Prophet. One man said, "I have nothing," and the Prophet said, "You have four dates, give that". Someone said, "I have absolutely nothing." He said, "Do you know any part of the Qur'an?" He says, "Yes, the Prophet said, "Well, give that to her, recite that to her. That is your *mehr*." So you have to make a token gift before the marriage can be considered valid.

Chair: I think customary law has played quite a role in how this is interpreted. In our part of Pakistan, automatically, before the marriage you're supposed to give dower. You give that and you go to the bride's place and get the *nikah*. It is understood that all the dower is considered prompt. I don't know for what reasons it's been considered deferred (payable on death of the husband or divorce) in most other parts of the country.

Participant: I've been led to believe that in the North West Frontier Province of Pakistan, the dower is not actually given to the woman: it goes to the woman's family and the woman's family has control over the expenditure and the usage of that money.

Chair: Yes, but it's all mixed up. Dower has nothing to do with the *sarpaisay* (the brideprice or something). What happens is this: the expected expenditure on the wedding... (what the boy's side is going to incur and what the girl's side is going to

incur); the entire sum is paid by the bridegroom's side. This is in addition to what she'll get as *mehr*, as jewellery, etc. What is slowly and gradually happening is that as a mark of prestige or status-symbol people have stopped taking what comes from the bridegroom's side. They say, "No, we're going to spend our own money". In my own village firewood used to be sent from the bridegroom's side on the day of marriage and *chai*, (tea and sugar and rice and what have you) that was in addition. But there are tribes where the men of the bride's family would take that money saying, "All right, we'll incur the expenditure for you," then they would take that cash, and pocket it. I think that it's a derogatory form of the custom. Originally the expenses to be incurred at the wedding were to be paid by the groom. Her *mehr* is separate. It's instantaneous. What happens is: suppose this is the wedding ceremony; you have all the villagers sitting here and one man says, "I propose this much as the *mehr*". Then the other person would say, "for my sake, shall we have a lesser amount. It would be difficult for this man to give", and there is some bargaining... See?

Participant: Is there any specific term for this other expense that is given?

Chair: They'd say the '*sarpaisay*': the '*sar*' is your head and '*paisay*' is money, the money is on the head of the bride...

Participant: We have that custom in Malaysia also, we say '*balanga*': expenses. But the *mehr* is separate. It's even codified. The *mehr* is there, the *balanga* is there. In fact if the guys don't give *balanga* you can go to court and say, "Excuse me, I want my *balanga*". She can claim the expenses in court.

Chair: I'd like to point out one thing: there is a lot of misuse of this bride price and what is in effect supposed to be the expenses. The man may pocket it. He may have an uncle, or a brother or a father who might need this money and he might send Rs. 20 and put the Rs. 80 in his pocket. It's got nothing to do with the custom as such.

Participant: What we have in Sudan is also called *mehr* where the groom would give the money, gold and other things. But this money, it has to be given to the bride, to take home. The bride's parents are not supposed to use her money in the celebration even though they have to give foodstuffs to use in the celebration. This is of course a custom.

Resource Person (3): The Qur'an establishes the importance of *mehr* and insists upon its incorporation within marriage contracts because it establishes the woman immediately as a property owner. The dowry system that you have in India and prevailing in other parts of the Muslim world is radically different from this Qur'anic concept in which the money given by the husband establishes her and becomes an integral part of her property to do what she wants with. After that her husband has no right to question her with regard to the property. The insistence upon *mehr* was to make her financially independent.

Chair: There've been many reported cases in the courts of Pakistan where custom had gone into actual gross illegalities and unIslamic practices concerning keeping back the dower or just eliminating the element of dower from a contract of marriage which is the case in Punjabi *watta satta*, what we in the Frontier Province call '*badl*', i.e. the marriage of a brother and sister to another brother and sister and this marriage is contracted

simultaneously on the express condition - and 'express condition' is the word here - that neither will claim dowry. This is totally unIslamic and there have been so many reported cases but only a few courts in Pakistan, (and a couple of courts in pre-Partition India) have actually ruled that this is unIslamic: to mix up two contracts of marriage into one thing. You can't have one marriage being contingent on the other.

Another thing peculiar to the Pathan tribes is the practice of *swara*, found in the context of settling a vendetta. If there's a blood feud between two families and they want to come to a compromise, then the tribe that has committed the murder will - in return for getting a clean slate, and as a means of requesting forgiveness from the other tribe - give them any of their girls that the enemy demands who are then married to one of the aggrieved tribe's men. Naturally, consent just doesn't enter into this, number one. Number two, the match may be totally inappropriate. I've heard of 6 and 7-year old girls being given as *swara* to a 50, 60-year old man in the other family. Then there's no question of *mehr*, or gift, or inheritance. She's debarred on both fronts. She doesn't get a dowry and on the other hand she doesn't get inheritance because it's on the express condition that she's actually become part of the enemy's family and she's not going to be able to come back to her own family.

Participant: Another example of this contradiction between customary and Islamic law. Yesterday I distributed an African magazine on what is happening now to Sudanese women. We have a custom of respect for women. I mean, in Sudan throughout history, men are supposed to respect women whatever their age, elder or younger or whatever. Now we have, with the emergence of Islamization in Sudan from 1983, a law that prohibits women to go outside Sudan unless they are accompanied by a male relative. Maybe they feel that we just misuse this freedom to go outside the country. But also those women who are in their 50s and 60s, they have been involved and quite active for a very long time and they have been asked to get their son to come and approve that his mother can go abroad.

Participant: In Sri Lanka, we are governed by the Shafei sect, so none of the other sects would apply to us. As regards consent, we have the *wali* system where the father or the *wali* (guardian) gives consent on behalf of the girl, so she doesn't sign the marriage contract at all. I haven't signed either. We don't see the marriage contract either. Then as regards the custom on the marriage day, the husband takes your hair and says a prayer which is always said. This *dua* is said when you buy an animal too... [general surprise]... Yes, it's from a book called *Masloom Dua'ain* (Prayers of the Prophet). This prayer is said, by touching the girl's hair and can be said when an animal is bought. For instance, Maulana Maududi in some book says to a man is given a right to divorce because he has bought the wife, and that he should be given that right.

About dowry and *mehr* in Sri Lanka: it's mainly the woman who gives the dowry to the man and the man gives a token dowry. Say, a woman would give about Rs. 25-50,000, a man would give about Rs. 100 and that's entered as dowry and it has no economic value whatever. I don't know how the practise of dowry emerged and dowry is a dirty term there. It's '*kai koli*' which is sort of, saying you pay something for the husband. Perhaps we've got it from the Hindu custom. Nobody wants to change that term. Nobody wants to touch that system of dowry.

About polygamy: If the man wants to marry another wife, he has to publish a few notices in the mosque and that suffices. There is no other restriction on polygamy in Sri Lanka. Fortunately polygamy is not prevalent in spite of this rule. It's increasing, but it's

not so prevalent considering the freedom given to the man.

About divorce: we are not given the right to *khul* divorce and a judge had said: "The Sri Lankan Muslim community is not prepared to accept *khul* divorce in Sri Lanka". And incompatibility is not a reason for a divorce though it's given in the Qur'an.

Participant: In the Sri Lankan context, the Muslim personal law operates in a situation of a minority law vis-a-vis the general law. So it is confined to matters of personal law, i.e. marriage, divorce. In other matters the general law applies. There are certain conflicts, e.g. the age of majority. According to the general law, the age of majority is 18 while a girl can be given away in marriage even at the age of 12. Then, we had this famous case of adoption in 1988, when the adoptee lost his rights as an adopted child because the court held that under Muslim personal law, adopted children cannot inherit. The conflict really is that parents cannot adopt a child unless they are prepared to look after the welfare of the child but still this didn't come out in the judgement.

Participant: In this particular case this person was adopted under the general law. You have to adopt under general law. Then when it came to inheritance, they said under Islamic law you are not expected to inherit. Because adoption is under the general law, this amounts to discrimination against a particular sector of the community.

Participant: Because the network is Women Living Under Muslim Laws, it includes non-Muslim women and this is also important. The current problem (I think novel) in Malaysia is we have Muslim laws which the states implement independently and the civil laws. What they forget to take into consideration is people across lines, i.e. Muslim and non-Muslim. Then suddenly people don't have places to seek redress. Which courts shall they go to? For instance, children: which court decides who has custody? It's a loophole which nobody is prepared to address at the moment because it's politically sensitive. I think we should also address this problem about crossing lines. Recently in one Malaysian state, they have actually passed a Muslim law that would be applicable to non-Muslims. This has been challenged in court on the basis of its constitutionality, but the case has not been heard for over six months, again because it's politically sensitive. I think we should keep these things in mind in our discussions.

Participant: I would like to share with you what happens in Indonesia about a contract of marriage. Firstly, the *qadi* will ask both of the parties to come and sit down in front of the *qadi* and sign the contract. The father, or brother, or uncle will come with the husband. The father will say yes and take this contract and give it to the daughter to sign it and give back to the *qadi*. The father, brother or uncle will sign it for this woman on her behalf sometimes without her knowledge. In Indonesia they arrange a marriage for the daughter. In one province in West Sumatra (a regency called Pariyaman) the woman has to buy a man. It's very expensive, [general laughter] to buy a man...

Resource Person (1): Are there no any cheap men around...?

[general laughter]

Participant: Not in this area. If a man is a University graduate, the woman has to give a car, BMW sometimes, believe me. But in West Sumatra the woman's family asks the man's family whether they would like to give their son to marry the daughter, this is in customary law.

The other thing is inheritance: in Indonesia, inheritance goes under customary laws and the adopted child will inherit from the father if they are registered. About custody, when the marriage breaks, the children will go with the mother. There is no choice for Indonesian women because as soon as the husband divorces them, he will leave them, and automatically the children will stay with the mother.

Concerning the marriage contract: *muta'a*, exists in the island Borneo, where a lot of people from Malaysia, Thailand and the Philippines come and work. The government allows them to marry young Indonesian women, just to protect them from becoming a prostitute. They will marry for two years, three years and then after the worker's contract is over, they just leave the women without any compensation. According to our small research, most of the women who have children when they are 15, 17, 18 (and they have three or four children) become prostitutes and just cross the border to Saba and Sarawak. Now this *muta'a* is not restricted to Kalimantan, but is spreading to the other islands, especially to Ja'fa where there are big time projects. Now in Ja'fa, especially West Ja'fa, you find children with blue and green eyes. When we raised this issue, (because in Kalimantan it's been happening since 1972) the *ulema* said that they are not going to consider this *muta'a*. But after five years lobbying from the government the *ulema* said, "We have to come back to this situation in our country because of the economic situation. So we can allow this."

About *zina*: in Indonesia they punish them both, they are forced to go around a village without dress... [exclamations of 'What?!']... Naked. It's not a law but this is under customary law especially in some areas. For *zina*, the punishment is given by society and both will be made to go around naked in the village for the whole day to show the people...

[general discussion]

Resource Person (1): You don't have *muta'a* in the Qur'an. *Muta'a'a* is only Shia. I want to know why you have it in Indonesia.

Participant: In Indonesia it seems we only practice it and it's accepted when people think they need it.

Part 2 B:

The Process of Muslim Jurisprudence: Women in Society

Discussion on Zina

Chair: There was a consensus on the need to discuss evidence and *zina*.

Participant: The Hudood Ordinances in Pakistan promulgated by General Ziaul Haq in 1979 cover a number of issues: *zina* (which encompasses fornication and adultery), *zina bil jabr* (rape), *qazf* (bearing false testimony), drunkenness and theft. The sections that women's groups have been most concerned about are the sections on *zina* and *zina bil jabr* and their application. The law states that *zina* has been committed when two sane adults have had intercourse when they have no reason to believe that they are married to each other. For *hadd*, maximum punishment, the required proof is either a full confession to a competent court, or that you have four Muslim, male adults of good repute witness to the act itself. The same level of proof has been applied in the case of rape as for *zina*.

The Zina (Enforcement of Hudood) Ordinance makes *zina* an offence against society and an offence against the state, whereas under the British Penal Code - previously implemented in Pakistan under colonial rule and subsequently adopted after Independence - adultery was a crime against the husband if he chose to acknowledge it. (If the husband chose not to pursue the matter, no one else could register a case against the woman; also fornication was not a crime in the eyes of the law). Under the present Ordinance, any third person such as your neighbours, can register a case of *zina* against any two persons that they feel are guilty. Also, it has frequently been used where a woman has been abducted (or run off with a man) and her parents go to the police and say, "Our daughter has been abducted, we want her back." But it is not up to the complainant to decide under what section the crime is registered and very frequently the police has said, "There's no evidence of her having been abducted, therefore we are registering a case of *zina*." In cases where women have had children and are not married, it's often been presumed they were guilty of *zina*. This has happened when in a rape case it could not be proved who the father/rapist was, and under what circumstances the woman became pregnant.

What happens in the case of rape when you apply the same level of proof as for *zina*?

The Ordinance is based on Surah Al-Nur (24): verse 2 (30) except that they have given the male gender to the witnesses and excluded women's evidence in the provision for maximum punishment. The problem is not just that you can be raped in your home and have one or no witnesses - a small child or whatever - you can be raped with a whole stadium full of thousands of women and non-Muslims watching and the rapist will not get the maximum punishment under this law. The implications are horrendous and this is why we have been looking at it

Participant: What about this case where a judge decided that being pregnant was not proof of adultery or fornication?

Participant: That case was as follows: Safia Bibi, a young girl of about 16 who was virtually blind and who at some point got pregnant, had a child. The child died and after the death of the child, Safia Bibi's father registered a case of rape against the man in whose house she used to work. The Sessions Judge's logic was, you have accused X of committing this rape. There's no proof that X committed this rape and furthermore, why did you take two years to register this case? However since you have said that you gave birth to a child, you must, therefore, necessarily be guilty of *zina* and therefore, given your tender age, etc., etc., I'm giving you a very light punishment which is 15 lashes and three years in jail. Led by Women's Action Forum, women's groups in Pakistan protested against this and mobilized a lot of people both nationally as well as internationally. Eventually the Federal Shariat Court took notice of this through its *suo moto* powers, and Justice Aftab Hussain, the Chief Justice of the Federal Shariat Court, gave a very progressive judgement acquitting Safia. (Soon after, he was 'promoted' to some other administrative post and subsequently resigned from the Bench). We think the Ordinance is used unfairly in instances where women get pregnant. In practice, there have been enormous problems; for instance, the courts have rejected women's evidence for maximum punishment but on the other hand they have used the evidence of minor children and other things to convict women.

Participant: I think enlightened or progressive judgements are exceptions to the rule and if any law can be misused, we should be looking at the content of the law and not feel that in our country or elsewhere there's a person who can be progressive in interpreting it. We should really be looking at the content and see how it can be misinterpreted.

Resource Person (1): I haven't done research on the Zina Ordinance in any depth but do you think there is a clear distinction made in the Zina Ordinance between adultery and rape?

Participant: Our understanding is that when you look at the Qur'an it says very specifically that if there are four persons who have seen this act and say it did take place, then you should punish those who are guilty (24:2). However, it goes on to say that if someone accuses a woman falsely without bringing forth four witnesses then you must punish the accusers and must not take their evidence into account (24:4). Now, in the Ordinance this second part has been separated into an entirely different section - *qazf* - while they allow you to use medical, or circumstantial, and other evidence for convictions. There's also enormous confusion between *zina* and *zina bil jabr*.

30 See page overleaf

Surah Al Nur (24): verses 2-4

(2) The woman and the man
Guilty of adultery or
fornication
Flog each of them
With a hundred stripes;
Let not compassion move
you
In their case, in a matter
Prescribed by Allah, if ye
believe
In Allah and the Last Day:
And let a party
Of the Believers
Witness their punishment.

(2) `azzaaniyatu wazzaanii
faj-liduu kulla waahidim-
minhu-maa mi-`ata jaldah
; wa laa ta`-khuḡkum -
bihimaa ra`-fa-tuñ fi
Diinillaahi `iñ-kuñtum tu`-
minuuna billaahi wal-
Yaw-mil - `Aakhir ; wal -
yash - had `azaabahumaa
ṭaaa - `ifatum-minal-Mu` -
miniin.

الرَّائِيَةُ وَالرَّائِي فَأَجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةً
جَلْدَةً وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ
كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ
عَذَابُهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ ②

(3) Let no man guilty of
Adultery or fornication
marry
Any but a woman
Similarly guilty, or an
Unbeliever:
Nor let any but such a man
Or an Unbeliever
Marry such a woman:
To the Believers such a thing
Is forbidden.

(3) `Azzaanii laa yañkihu
`illaa zaaniyatan `a w
mushrikah : wazzaaniyatu
laa yañkiḡhuhaaa `illaa
zaanin `aw mushrik : wa
hurrima ṣaalika `alal-Mu` -
mi-niin.

الرَّائِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ
لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى
الْمُؤْمِنِينَ ③

(4) And those who launch
A charge against chaste
women
And produce not four
witnesses,
(To support their allegation),
-Flog them with eighty
stripes;
And reject their evidence
Ever after: for such men
Are wicked transgressors; -

(4) Wallaziina yarmuunal-
muh-sanaati summa lam
ya`-tuu bi- `arba- `ati
shuhadaaa-`a fajliduuhum
samaaniina jaldatanw-wa
laa taqbaluu lahum
shahaa-datan `abadaa : wa
`ulaaa-`ika humul-
faasiqun;-

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَا يَأْتُوا بِأَرْبَعَةِ
شُهَدَاءَ فَأَجْلِدْهُمْ وَمُؤَشَّعِينَ جَلْدَةً وَلَا
تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ
الْفَاسِقُونَ ④

Participant: What's been happening in many of the cases has nothing to do with religious issues, rather the police collude with people who want to put the woman away. You even have cases of women who have been put into jail by their husbands on false accusations of adultery because the husbands wanted to marry someone, and this was a way of keeping the wife out of the way for a while. In one case a woman was put into jail because the husband went to Saudi Arabia to work. When he came home after two years he got her out, and then when he was going away again he put her back in. The reasons may be different, but the way the law is made enables you to do things like that. You are guilty unless you prove yourself innocent and not the other way round. Moreover it's the husband's word against the wife's and the husband's word prevails.

Chair: Are there any clear distinctive verses regarding *zina* and *zina-bil-jabr*?

Resource Person (1): No, the Hudood Ordinances are not in the Qur'an, they are anti-Qur'anic. I want to make a general observation about the understanding of the Hudood Ordinances. First, what kind of thinking brought there Ordinances about and the way the Zina Ordinance has been implemented shows very clearly the mindset and bias against women, which is a universal bias. In the United States, in New York, 9 out of 10 rapes are not reported because women are so afraid because, first they are raped and when they go to report it the attitude of the police is very hostile. The attitude is 'What were you doing walking down Manhattan at 3 o'clock in the afternoon?' This particular attitude towards women and women's sexuality goes back to the Fall and the whole conflict between God and Satan, Iblis. This is a universal attitude: when a woman is raped it's her fault, and so in many progressive places, due to women's pressure, women have been put on the rape squad because men just don't understand what rape is.

As far as I know, and other people who are familiar with the Qur'anic text can correct me, I don't think that in the Qur'an there is any specific verse that relates to rape. *Zina bil jabr* is not a subject in the Qur'an at all. What we are left with is *zina* and I think that we have to distinguish between 'zina' and the word 'faahisha' or 'faahishe', because whereas the word 'zina' is very specific and refers to a sexual act, the words 'faahisihee' and 'faahisha' do not necessarily refer to that. They refer to some act of sexually inappropriate conduct but comprise a whole range of things. It's like the word 'immorality'. What's 'immorality'? It could be anything. We could look at the two or three passages that are in this context. Let's look at the first one, Surah Al Nisa (4): verse 15.

Surah Al Nisa (4): verse 15

If any of your women
Are guilt of lewdness,
Take the evidence of four
(Reliable) witnesses from
amongst you
Against them; and if they
testify,
Confine them to houses until
Death do claim them,
Or Allah ordain for them
Some (other) way.

Walla-tii y'-tiinal-faahi-
shata min - nisaaa - 'ikum
fastash - hiduu 'alayhinna
'arba- 'atam - miñkum; fa-
'iñ-shahiduu fa-
'amsikuuhunna fil-bu-yuuti
hattaa yatawaffaa-hun-nal-
mawtu 'aw yaj - 'alallaahu
lahunna sabiilaa.

وَالَّتِي يَأْتِيَنَّ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا
عَلَيْهِنَّ أَرْبَعَةً شَاهِدًا أَنْ شَهِدُوا فَأَمْسِكُوهُنَّ
فِي الْبُيُوتِ حَتَّى يَتَوَفَّيَهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ
لَهُنَّ سَبِيلًا ۝

Remember I had said that according to the Qur'an 'confinement to the home' is a punishment given to unchaste women.

Surah Al Nur (24): verses 6-9

(6) And for those who launch
A charge against their
spouses,
And have (in support)
No evidence but their own, -
Their solitary evidence
(Can be received) if they
Bear witness four times
(With an oath) by Allah
That they are solemnly
Telling the truth.

(6) Wallaziina yarmuuna
'az-waajahum wa lam
yakullahum shuhadaaa-'u
'illaaa 'aṇfusu-hum fa-
shahaadatu 'ahadihim
'arba-'u shahaadaatim-
billaahi 'innahuu lamiṇaṣ-
ṣaadiqiin;

وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ
لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ
أَحَدِهِمْ أَرْبَعٌ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ
الصَّادِقِينَ ⑥

(7) And the fifth (oath)
(Should be) that they
solemnly
Invoke the curse of Allah
On themselves if they
Tell a lie.

(7) Wal-khaamisatu 'anna
la'-natallaahi 'alayhi 'iṇ-
kaana minal-kaazibiin.

وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ
الْكَاذِبِينَ ⑦

(8) But it would avert
The punishment from the
wife,
If she bears witness
Four times (with an oath)
By Allah, that (her husband)
Is telling a lie;

(8) Wa yadra-'u 'anhal-
'azaaba 'aṇ tash-hada
'arba-'a shahaadaatim-
billaahi 'innanu la-minal-
kaazibiin;

وَيَذَرُوعَتَهَا الْعَذَابَ إِنْ تَشْهَدُ أَرْبَعٌ شَهَدَاتٍ
بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ ⑧

(9) And the fifth (oath)
Should be that she solemnly
Invokes the wrath of Allah
On herself if (her accuser)
Is telling the truth.

(9) Wal-khaamisata 'anna
gaṣa-ballaahi 'alayhaaa
'iṇ-kaana mināṣ-ṣaadiqiin.

وَالْخَامِسَةُ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ
الصَّادِقِينَ ⑨

First for later reference, I want to point out that this is also one of the contexts in which the Law of Evidence comes in. There are eight contexts in which evidence is required and there is no distinction made between the evidence of men and women. It is an addition that in the Zina Ordinance four male witnesses are required for *hadd*; the Qur'an just says four witnesses, it does not specify male or female. A very important point for our feminist activists is that there is nothing in the Qur'an which says female or

male and there is no superiority accorded to the evidence of males over females. In fact, in the other passage [Surah Al Nur (24): verses 6-9]: if a man accuses his wife of adultery and he swears on oath four times that in his opinion she is guilty of adultery and if she in turn swears four times and says she's not, she's absolved. Not only is her word equal to his, it supercedes his because then there's no recourse against her. So this idea that there should be four men is totally against the Qur'an and I repeat again and again, the Qur'an gives more protection to women than to men. In the case of slander, it says if you slander a chaste woman, you will receive a punishment of 80 lashes (24:4); it doesn't say that if you slander a man, you receive 80 lashes because it recognises that a woman's reputation is more vulnerable and women are more likely to be abused and punished than men are. The Qur'an is very protective to women.

It's very hard to establish a linkage between the spirit and even the letter of the Qur'an and the Zina Ordinance. 4:15 is a fascinating verse. What does it mean? It uses the word 'faahisha', not 'zina', and it talks about two women... What do you think it means? It means two women.

Participant: [in Arabic] It's plural but feminine, not necessarily just two..

Resource Person (1): So, two or more. What do you think it means?

Resource Person (3): It means lesbianism. I'm not an authority on this but somebody had described this particular verse where these women were in confinement, not as a normal sexual act, but as an act of one woman to another.

Resource Person (1): Okay, let's read the next one, Surah Al Nisa(4): verse 16.

Surah Al Nisa(4): verse 16

If two men among you
Are guilty of lewdness,
Punish them both.
If they repent and amend,
Leave them alone; for Allah
Is Oft-Returning, Most
Merciful.

Wallazaani ya'-tiyaanihaa
miinkum fa-'aazuuhumaa.
Fa-'iñ-taabaa wa 'aşlahaa
fa-'a'-ri-zuu 'anhumaa;
'innallaaha kaa-na
Taw-waabar-Rahiimaa

وَالَّذِينَ يَأْتِيهِمَا مِنْكُمْ فَادُّوهُمَا فَإِنْ تَابَا وَأَصْلَحَا
فَاعْرِضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا

"If two men among you are guilty of lewdness," - same word 'faahisha'. Now, here it says two men. Okay? If the context is homosexuality, then what do you think these verses mean? Let's think about it together... I want to point out that in Jewish law, homosexuality between men is recognised as both a sin and a crime and is punishable, I think by death. But homosexuality between women was not recognized as either a sin or a crime and they refer to it as 'play'. This is in Jewish law because there's no act of penetration and that's what constitutes the crime. Why was that a crime? Because in a relationship between two men, one of them acts the role of a woman. So, it's feminization of masculinity...

Chair: That's the crime, not the actual act?

Resource Person (1): Yes, and there's extensive writing on this in Jewish law. Between women it's play, not a sin or a crime. But if we are going to interpret 4:15 as talking about lesbianism it would seem - at a superficial reading of the Qur'an - that it's taking a much stronger stand against women than men, wouldn't you say so? [general agreement]

Now, I'm thinking aloud, I haven't done detailed research on this passage, I'm not sure exactly what it means but it's very important. One possibility might be where it says 'confine them to their homes', that much is clear, 'until death do claim them'. Is it not possible that the word 'maot', which is translated as 'death', could also mean something else? That it could also mean not death but a sort of a change in their position? Like, for instance, the word 'qatal' in Arabic; it doesn't only mean physical murder when it says, "Do not kill your children". It also means do not stifle your children's potentiality to develop. Likewise, 'death' could also mean until they change their mind or repent or something like that. We need to research this, I'm just presenting that because, as I said, my basic premise is that God is just, so there must be some justice. There just has to be some way of interpreting it in a just way. I don't know, but this is a point that needs to be investigated.

Participant: Yes, first of all you said 'faahisha' doesn't mean that it's zina. But you see there is another ayat Surah Bani Isra-il (17): verse 32 which mentions 'wa laa taqrabuz-zinaaa 'innahuu kaana faahishah': 'it is a shameful (deed)'.

Surah Al Isra (17): verse 32

Nor come nigh to adultery:
For it is a shameful (deed)
And an evil, opening the
road
(To other evils).

Wa laa taqrabuz-zinaaa
'innahuu kaana faahishah :
wa saaa-'a sabiilaa.

وَلَا تَقْرُبُوا الزَّوَاجَ إِذَا كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Resource Person (2): I'm also not familiar with the Zina Ordinance but you have said three things that seem to have come up and somehow they've overlapped. I've just been looking at the verses. The first thing is the crime has to have some kind of a name, it has to be determined.

What is happening is, in real cases, you're trying to make some determination of rape and, whether or not that is considered either one of these two words: zina or faahisha. There is another word in the Qur'an which is from 'bigaaa- 'tin' and has to do with Surah Al Nur (24): verse 33, which says 'Do not force your slave girls': bigaaa- 'tin, do not compel. That's only to say that we have these two words yet, in actuality, we have a multiplicity of crimes, sexual assault or lewd conduct between members of the same gender that are considered in modern context as crimes.

The question is what indication do we have in the Qur'an that all these things are included: rape, homosexuality, adultery and fornication. You have a problem when the

Surah Al Nur (24): verse 33

Let those who find not
The wherewithal for
marriage
Keep themselves chaste,
until
Allah gives them means
Out of His grace.
And if any of your slaves
Ask for a deed in writing
(To enable them to earn
Their freedom for a certain
sum),
Give them such a deed
If ye know any good
In them: yea, give them
Something yourselves
Out of the means which
Allah has given to you.
But force not your maids
To prostitution when they
desire
Chastity, in order that ye
May make a gain
In the goods of this life.
But if anyone compels them,
Yet, after such compulsion,
Is Allah Oft-Forgiving,
Most Merciful (to them).

Wal-yasta '-fifillaziina laa
yajiduuna nikaahan hattaa
yugniyahumullaahu min-
fazlih. Wallazina
yabtaguunal - Ki-taaba
mimmaa malakat 'ay-
maanukum fa-katibuuhum
'in 'alimutum fiihim
khayrañw-wa 'aatuuhum -
mim-maalillaahil - laziii
'aataakum. Wa laa tuk-
rihuu fatayaatikum 'alal -
bi-gaaa-'i 'in aradna
taḥaṣṣunal-litabtaguu
'arazal-hayaatiddun-yaa.
Wa mañy-yukrih-hunna
fa-'innallaaha mim-ba 'di
'ik-raahihinna Gafuurrur-
Raḥiim.

وَلَيْسَتَعَفِيفَ الَّذِينَ لَا يَجِدُونَ نِكَاحًا حَتَّى يُعْطِيَهُمُ
اللَّهُ مِنْ فَضْلِهِ وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِمَّا مَلَكَتْ
أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَ
أَتَوْهُم مِّن مَّالِ اللَّهِ الَّذِي آتَاكُمْ وَلَا تَكْرَهُوا
فَتَلْبَسُوهُ عَلَى الْبِغَاءِ إِنْ أَرَدْتُمْ مَحْصَنًا لِّلْبَنَاتِ عِوَضَ
الْحَيَاةِ الدُّنْيَا وَمَنْ يُكْرِهْنَّ فَإِنَّ اللَّهَ مِنْ بَعْدِ
إِكْرَاهِهِنَّ غَفُورٌ رَّحِيمٌ ﴿٣٣﴾

only word for fornication and adultery in Arabic is the same. So in fact in the modern context they have added this other phraseology to say sex with somebody who's already married, and sex with somebody who's not married. This is to build up the thesis that the first thing you have is the crime: what is the crime? What is it called? And what is the Qur'anic reference? The Qur'anic references are few, *zina*, *faahisha*, *bigaaa'in*.

The second thing is the proof. According to the Qur'an, there are two types of proofs, one is confession and the other is by witness. The *shuhadaaa'u* (witness) is not specified by gender necessarily, yet it has come to be restricted to only one gender in practice. Just responding to the information shared here regarding the real cases I think you would need to discuss the acceptable Qur'anic proofs which do not include medical records and pregnancies and all of these other things. So you would have to make a case to maintain the proofs within the confines of what is allowed in the Qur'an: witnesses, and short of having the necessary witnesses, there is a possibility of a confession (and you know the man can swear a certain number of times that it's so, and

the woman can swear against that). That's all you have. It can't become definitive if she believes that he's falsely accusing her, she can swear it. You don't have any proof in the Qur'an that you can use these other things such as medical reports, circumstantial evidence and the like.

The final thing is the punishment and the statement in the Qur'an of saying '*fi hudood Allah*', this is where the term has been transposed. There is an indication that she should stay within what Allah has permitted, the boundaries established by Allah. With the punishment of stoning, lashes and confinement and whether or not a person can be stoned to death, you have a little bit of a problem, because you have an indication in the Qur'an that the punishment for a slave is half the punishment for a free person, so what's half of death? This is how I've looked at that part of it on my own, that Surah Al Nisa (4): verse 25 says the free woman's punishment is death, the slave woman's punishment is half. You have to consider whether or not you can have half of death. On what you have presented to me, I feel things have been re-shuffled in the process of being codified into laws. For example, they would say this kind of a crime will have this kind of punishment, and the lines have been crossed over. What you need to do is return to the text itself and see what has, in fact, been prescribed as the punishment in each crime.

Participant: In Pakistan, our problems are rather complex because as far as *rajm* (stoning to death) is concerned, the Federal Shariat Court earlier ruled that it was unIslamic and should be struck off the records. The military government of the time decided to use its powers and reconstitute the Bench and sent it back to them for reconsideration of the decision, making sure that the reconstituted Bench would agree that *rajm* is Islamic.

One question that keeps coming up is why is there no word in Arabic for rape? I'm not an Arabic scholar but *zina bil jabr* is the term I know: forcibly having intercourse with somebody who's not willing. There's none in Urdu; we don't acknowledge that this is a crime that exists. So my question is whether this crime did not exist in that time? And if so, how come? [laugh] But also then there must be a term. We looked, we went to scholars, saying all right, rape is not in the Qur'an, what about abduction, something that would imply rape, violence? We couldn't find any reference and there's only one *hadith* which is a case of this woman who went to the Prophet and said, "I've been raped", and he said "Right, who is it?" and she said, "Him", and apparently there are two versions to what then happened. One version says the Prophet said, "Right, let him be punished", and then it turned out not to be the right man. The other version was that when the punishment was about to be executed, the guilty man came forward and said, "This man is not guilty, I am guilty". But we could not find anything else on rape, or forced intercourse. It's something which continues to worry me. In Pakistan I know it happens, we just don't have a word for it. We will, socially, not acknowledge this crime at all.

The second is that we thought we had a very good case about the Hudood Ordinances being unIslamic because there had been progressive judgements. One judge in the Shariat Bench of the Lahore High Court, in acquitting a woman accused of *zina*, said that the purpose of the law was not to fix scaffoldings and flog people every day, but to punish those who despite the provisions of Islam commit *zina* in such a wanton way that four or more persons can see them. He also gave other references of incidents that happened during the Prophet's time and there was always repentance,

Surah Al Nisa (4): verse 25

If any of you have not
The means wherewith To
wed free believing women,
They may wed believing
Girls from among those
Whom your right hands
possess:
And Allah hath full
knowledge
About your Faith.
Ye are one from another:
Wed them with the leave
Of their owners, and give
them.
Their owners, according to
what
Is reasonable: they should be
Chaste, not lustful, nor
taking
Paramours: when they
Are taken into wedlock,
If they fall into shame,
Their punishment is half
That for free women
This (permission) is for those
Among you who fear sin;
But it is better for you
That ye practise self-
restraint:
And Allah is Oft-Forgiving,
Most Merciful.

Wa mallam yastati'
miñkum ṭaw-lan 'any -
yañkiḥal-Muḥṣanaatil-
Mu'minaati famimmaa
malakat 'ay-maanukum-
miñ-fatayaa-tikumul-Mu'-
Minaat: wallaahu 'a'-lamu
bi-'iimaanikum. Ba'-
zukum-mimba'-z:
fañkiḥuu-hunna bi-'izni
'ahli-hinna wa 'aatuu-
hunna 'ujuura-hunna bil-
ma'-ruufi muḥṣanaatin
gayra musaafi-haatiñw-wa
laa muttakhi-zaati 'akh-
daan. Fa-'izaaa 'uḥṣinna
fa-'in 'atayna bi-faḥi-
shatiñ-fa-'alay-hinna niṣfu
maa 'alal-muḥṣanaati
minal-'aḥaab. Ḥaaliika
liman khashiyal - 'anata
miñkum. Wa 'an taṣbiruu
khay-rui-lakum: wallaahu
Gafuurrur-Raḥiim

وَمَنْ لَّمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُحْصَنَاتِ
الْمُؤْمِنَاتِ فَمِنْ نَمَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَانِكُمُ الْمُؤْمِنَاتِ
وَاللَّهُ أَعْلَمُ بِأَيْمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ فَانْكِحُوهُنَّ
بِإِذْنِ أَهْلِهِنَّ وَأَتُوهُنَّ أَجُورَهُنَّ بِالْعُرْفِ وَأَنْ يُحْصَنَاتِ
غَيْرُ مُسَافِحَاتٍ وَلَا مَتَّحِدَاتٍ أَخَذَ لَكُمْ قِيَادًا لِحُصْنِ
فَأَنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ
مِنَ الْعَذَابِ ذَلِكَ لِمَنْ خَشِيَ الْعَنَتَ مِنْكُمْ وَأَنْ
تَصْبِرُوا خَيْرٌ لَكُمْ وَاللَّهُ غَفُورٌ رَحِيمٌ ﴿٢٥﴾

and mercy and forgiveness was shown. But in 1989 a case challenging the Hudood Ordinances as being unIslamic was fought all the way up to the Federal Shariat Court, and to our utter horror, the Federal Shariat Court, (no longer headed by Justice Aftab Hussain) ruled that the Hudood Ordinances were Islamic. We are astounded. It's such an abominable piece of legislation, how could it have anything to do with justice?

Resource Person (1): What do you mean by saying there's no word for rape in Urdu? There are many things for which there is not one single word, but there is the concept; like they write in the newspapers or whatever, 'uski izzat loot li' [in Urdu: 'they looted her

honour'].... No, no, wait a minute: if you read English literature, almost until the modern period it was not considered civilized language to use the word 'rape', so you used words like, 'she was violated', etc. It doesn't mean there is no concept. It's in very modern terms that we're talking so freely about having sexual intercourse and stuff like that. Twenty years ago people never used these words. I don't think it's right to say that there's no word for it, the concept certainly exists and I think this is a very common crime. There is a silence about it which goes back to this Bedouin concept of shame and honour. In Arabic, there are two words for 'honour': *sharf* which means honour in general, from which you get the word '*sharif*', and then '*arad*', which is also 'honour' but most often used specifically related to women's sexual conduct. If a woman is seen to behave in an inappropriate way, it's '*arad*' that comes in. The way this concept works is very peculiar because, though the '*arad*' is determined by how the women behave, the honour belongs to a man. So that if a woman is seen behaving in an immoral way this is going to affect the honour of the men in her tribe and they, therefore, guard it very jealously. The thing is that there is a controversy: once lost, can it ever be regained? Some people say yes and some say no. There are still tribes, for instance, one in the Egyptian desert, in which the attitude is that if a girl is raped and the fact becomes known, then it is not only necessary for the male relatives of this girl to go and kill the person who perpetrated the deed but they must come back and kill her because as long as she's there, she's a reminder of the deed. You have to, sort of, wipe the slate clean. That's an attitude that I found extremely prevalent in Pakistan. For instance, if I was walking down the road with my brother and I looked at somebody across the road and kind of smiled, my brother would feel his honour had been compromised. That is a very mild example.

This is at the root of the silence about these things. If a girl is raped and the fact is suppressed then you don't have to get into this business of killing and blood vendetta and all the rest of it. But if it becomes known, then it becomes a matter of your *izzat* (honour), then you have to avenge it. Why people bury this whole thing is what Nawal el Sadawi talks about in *The Hidden Face of Eve: Women in the Arab World*. This is also why molestation doesn't get talked about. Because if you acknowledge it then certain actions become necessary and then you don't want to get into that. So you want to keep the status quo.

Participant: Yes, but the inverse is that the woman 1) never gets justice and, 2) is never accepted anywhere in our society. I agree this is the reason they suppress the issue and we've been working with families where this has happened. But the net result is that you all hide it and it's unacknowledged and the woman continues to suffer. My main concern is that, is there any Qur'anic reference to violation or violence even if it's in different language?

Resource Person (2): The larger question is how does the Qur'an wish us to live moral lives? Now, morality can be either internally developed or externally imposed and, without any question, what the Qur'an is saying is it does not believe that morality can or should be externally imposed. It is trying to inculcate this inner sense of morality that you do the right thing instead of being made to behave in a certain way. With regard to all of these *ayaat* we've been looking at in the context of marriage and divorce, and the emphasis on doing right - that which is *bil-ma'ruuf* - the aim is to develop in the Muslims this internal sense of what is right and what is wrong and making yourself your own judge, your own conscience. Reminding you again and again that you are responsible

for what you do and God is going to judge you on that basis. That's the basic thrust of the Qur'an and it's only in very few cases that this external thing is given.

This verse 24:33 [see p.169 above] was very important to me because I was told by a professor in Cairo, that it means that you can't let the slave girls be used by other people but the one they belong to. I had a very difficult time with this interpretation. Obviously, the men would say he can do whatever he wants, she belongs to him, but actually there's a whole series of words that have to be looked at in the entire Qur'anic context. First is 'to force someone', to do something against their will. It is talking about if you force them to, *bigaaa-t'in* and they don't want it, if they want to be *muhsanaa*; people think that it relates only to free women but the Qur'an says that if they want to be *muhsanaa*, if they want to be chaste and chasteness is not virginity, because it is also used in other places in the Qur'an for women who are married. The verse says if they want to maintain a certain control over their body (and this word '*aradna*' is also here) if you go against their sexual privacy and dignity and honour, if you force them beyond this, then they are not to be held responsible for that. In other words - you have so many real life scenarios in this context - a woman who is raped is not to be stigmatized because of the rape that has been forced upon her. The terminology the Qur'an uses is 'after this abuse of them', that 'they (in the feminine) are not willing' is not something that should be held against them. Obviously when the men look at this, they do not want to see this as meaning sexual use of anyone who does not want you to use them, whether in your family incestuously, or in your possession as a slave, or as your wife for that matter. There is a strict prohibition against forcing yourself against someone who does not want it and anyone who is forced into that situation is not to be stigmatized because of it.

You have to look at certain things and how they are used in the Qur'an such as '*hasana*', this idea of chastity; *bigaaa-t'in*, the forcing against someone's will. It's not logical to say you can force her against her will to have sex with you but you can't force her to have sex with your friends. The concept is of forcing her against her will, and that is as close to rape as you can get. With regard to Qur'anic terminology there are very few words that are very explicit with regard to certain things of a sexual nature, e.g. rape. Take the example of the *ayat* on tilth '*haraf*' [see p.194 below]. We are talking about a divine book meant for the rest of eternity. Not surprisingly, there's a subtle type of terminology. The idea of *zina*, of *huwa faahisha*, this *muhsanaa*, the *hasana*, or chastity of the period, all these things have to be taken into consideration. However the case has to be built based on only these things that the Qur'an has said, and only the direct correlations that the Qur'an has made and not on how they have become implemented in society, in the courts, etc., because the courts, for instance, have decided that if it says four witnesses, it can only be male witnesses. Therefore, you have to go back and pull out what references, and what subtle innuendoes there are with regard to ill-conduct.

'*Faahisha*' can become the term that you use for incest because any form of ill-conduct is prohibited. If you start to build on the subtleties of the Qur'anic sexual context, and then say this and this and this is *faahisha*, (because even *zina* is *faahisha*, you know), your new thing will be a *Faahisha* Ordinance and, therefore, men would become responsible for their *faahisha* under the terminology of forcing someone to do something against their will. If the Qur'an says you can't even force a slave, who in fact you own, how can you force your wife, who is supposed to be your partner? How can you force your daughter, who's supposed to be your own offspring? How can you force a child? I mean, any of these instances where force is used.

Resource Person (1): On the basis of these two or three verses, the Qur'an is taking not a subtle position but a very clear position on rape because it is saying here, "Force not your maids to prostitution", i.e. don't rape your slaves. It's an imperative. It's not saying 'It's not nice to do this'; it's an order: "Don't do this!". There's also a Qur'anic verse which says, "You should not inherit your wives against their will." This is a prohibition against rape of wives; that is an explicit verse in the Qur'an.... No, no, 'inherit' in that context definitely means 'having sex'

Resource Person (3): If I may interrupt. So 4:15 says God does accept repentance but only of those who are guilty of evil out of ignorance and then repent quickly; 4:19 is a follow up. In Surah Al Nisa (4): verses 14-19 have to be read together. Those two verses in between - 4:17 and 18 - are also important.

Surah Al Nisa (4): verse 15

If any of your women
Are guilt of lewdness,
Take the evidence of four
(Reliable) witnesses from
amongst you
Against them; and if they
testify,
Confine them to houses until
Death do claim them,
Or Allah ordain for them
Some (other) way.

Walla-tii y'-tiinal-faahi-
shata min - nisaaa - 'ikum
fastash - hiduu 'alayhinna
'arba- 'atam - miñkum; fa-
'in-shahiduu fa-
'amsikuuhunna fil-bu-yuuti
ḥattaa yatawaffaa-hun-nal-
mawtu 'aw yaj - 'alallaahu
lahunna sabiilaa.

وَالَّتِي يَأْتِيَنِ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا
عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ
فِي الْبُيُوتِ حَتَّى يَتَوَفَّيَهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ
لَهُنَّ سَبِيلًا ﴿١٥﴾

Surah Al Nisa(4): verse 16

If two men among you
Are guilty of lewdness,
Punish them both.
If they repent and amend,
Leave them alone; for Allah
Is Oft-Returning. Most
Merciful.

Wallazaani ya'-tiyaanihaa
miñkum fa-'aazuuhumaa.
Fa-'iñ-taabaa wa 'aṣṭahaa
fa-'a'-ri-zuu 'anhumaa;
'innallaaha kaa-na
Taw-waabar-Raḥiimaa

وَالَّذِينَ يَأْتِيَنِهَا مِنْكُمْ فَأَذْهَبَا عَنْهُمَا فَإِنْ تَابَا وَأَصْلَحَا
فَاعْرِضْ عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا ﴿١٦﴾

Resource Person (2): The follow up to verses 15 and 16 where we read that the woman gets extra punishment against the men, is in verses 17 and 18. I think those have to be read continuously. One more thing with regard to rape and force: in Surah Yusuf, when Zulekha is chasing Yusuf that is also a forced act on her part.

Surah Al Nisa (4): verses 17 - 19

(17) Allah accepts the repentance
Of those who do evil
In ignorance and repent
Soon afterwards; to them
Will Allah turn in mercy:
For Allah is full of knowledge
And wisdom.

(17) 'Innamat - tawbatu
'alal-laahi lillaziina ya '-
maluunas-suuu-'a bi -
jahaalatiin summa
yatuubuuna miin qariibiin -
fa- 'ulaaa - 'ika yatuu -
bullaahu 'alayhim : w a
kaanallaahu 'Aliiman
Hakiimaa.

إِنَّمَا التَّوْبَةُ عَلَى اللَّهِ لِلَّذِينَ يَعْمَلُونَ
السُّوءَ بِجَهَالَةٍ ثُمَّ يَتُوبُونَ مِنْ قَرِيبٍ
فَأُولَئِكَ يَتُوبُ اللَّهُ عَلَيْهِمْ وَكَانَ اللَّهُ عَلِيمًا
حَكِيمًا ۝١٧

(18) Of no effect is the repentance
Of those who continue
To do evil, until Death
Faces one of them, and he
says,
"Now have I repented
indeed;"
Nor of those who die
Rejecting Faith; for them
Have we prepared
A punishment most grievous.

(18) Wa laysa-tittaw-batu
lil-laziina ya '-maluunas-
sayyi-'aati hatta'aa 'izaa
hazara 'aha-dahumul -
mawtu qaala 'innii tubtul-
'aana wa lallaziina ya-
muutuuna wa hum kuffaar
: 'ulaaa-'ika 'a'-tadnaa
lahum 'azaaban 'aliimaa.

وَلَيْسَتِ التَّوْبَةُ لِلَّذِينَ يَعْمَلُونَ السَّيِّئَاتِ حَتَّى
إِذَا حَضَرَ أَحَدَهُمُ الْمَوْتُ قَالَ إِنِّي تُبْتُ وَلَا
الَّذِينَ يَمُوتُونَ وَهُمْ كُفَّارًا أُولَئِكَ أَعْتَدْنَا لَهُمْ
عَذَابًا أَلِيمًا ۝١٨

(19) O Ye who believe!
Ye are forbidden to inherit
Women against their will.
Nor should you treat them
With harshness, that you may
Take away part of the dower
Ye have given them - except
Where they have been guilty
Of open lewdness.
On the contrary live with
them
On a footing of kindness and
equity.
If ye take a dislike to them
It may be that ye dislike
A thing, and Allah brings
about
Through it a great deal of
good.

(19) Y a a a - 'ayyu -
hallaziina 'aamanuu las
yahillu lakum 'aā - tariṣun
- nisaaa-'a karhas. Wa l a
a t a - ' - zuluuhunna l i t a
z h a b u u b i - b a - ' - z i
maas 'aatay-tumuu-hunna
'illaaa 'aāy-ya`-tiina bifaa
- ḥishatim-mubayyinah;
wa 'aashiruu-hunna bil -
ma -'ruuf. Fa-'iīn-karih -
tumuuhunna fa - 'asaaa
'aā-takrahuu shay - 'aāw -
wa yaj- 'alallaahu fiihi
khay - raān-kasiiraa -

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا
النِّسَاءَ كَرْهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ
مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِعَاقِبَةٍ مُبَيَّنَةٍ
وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ
فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ
خَيْرًا كَثِيرًا ۝١٩

Participant: If the Qur'an is silent then we have the right to legislate appropriately for our times, and if we take directions from what there is, then we definitely can propose a law that is just and equitable.

Participant: I'm going to move the discussion a little bit to bring an example from the Family Code in Egypt that we examined in the English version in 1986. We found that rape is punished differently depending on the circumstances. In another chapter of the law we found that if it is rape within the family, i.e. incest, the punishment is less. So I would like to know where this comes from.

The second example is from Algeria and relates to the fact of pregnancy not being taken as proof of adultery. Traditionally in Algeria, if the man would leave, as a migrant or for whatever reason, or even if he died, a child born to his wife for 'n' number of years, (7 in Algeria) was called a 'silent' or 'sleeping' child and was presumed to be from the father and there was nothing anybody could do about that. This concept appeared in the drafts of the Family Code, where it said the duration of pregnancy is between 6 months and 3 years. Of course everybody laughed at this and consequently it was withdrawn from the final version. As a result, we have erased a tradition which was very favourable to women. I was told that there was a reference in the Qur'an.

[comment that this concept allowed women to be used/abused by anyone in the family]

At least she won't be punished for that... No, neither would he, that is true.

Participant: I don't think it was promulgated for the benefit of women...

Participant: Maybe not, but in effective terms it was beneficial to a certain number of them because they were not punished. But why is it that in the Qur'an this question of punishment, and very harsh punishment, appears all the time? I'm very interested in hearing about how you interpret it.

Resource Person (1): I want very much that we should look at the passages. If we read 4:15 and 4:16 together, and the context seems to be clearly homosexuality because it says two men, (and again in Jewish law and in Christian law homosexuality was punishable by death. It is very clearly condemned in several places in the Bible) what do we do with that? Maybe we need to put a question mark and say we need to research this; I think the Arabic needs to be investigated.

Resource Person (3): 4:16 and 4:17 and 4:18 have to be read together. This is what I have been trying to tell you; read 4:17 and 4:18 along with it.

Resource Person (1): It is because of all this that I think the word for 'death': '*maot*', must mean 'repentance'.

Resource Person (2): These two verses 4:15 and 4:16 have to be looked at together. The second verse, 4:16: '*walla zaani, ya'-tiyaanihaa*', that 'the two who are guilty' - *ha*, feminine plural, (referring back to *faahisha*) is connected to the word '*faahisha*'; from the very first verse, the very first time, as if to say that the two verses are considered together: i.e. all of the considerations go together, the punishments and the forgiveness. What is the crime? *Faahisha*. Though the word '*faahisha*' is not mentioned in the verse

with the men, we assume that it's there. We take it from the first one. So, although the punishment mentioned with regard to women is not mentioned in the verse for the men, we take that too. Similarly, although forgiveness or *taabaa* (*toba*) is not mentioned in the ones for the women, we take that too. In other words, there is a thing about the Qur'an, about not overstating (redundancy is considered very bad form in Arabic), therefore the idea of taking something essential and indicating it in the shortest amount of words is what you have. For example if the main thing is *faahisha*, this is not even mentioned in the second verse. There is no way of saying what we're even talking about if you were to take this verse by itself. You've got to take the two verses together. The ultimate thing is *'innallaaha kaana Taw-waabar-Rahiimaa*, that is the *taabaa*, which is an essential part of the *innallaaha*, cannot mean that *taabaa* is there for the men but it's not there for the women.

Chair: So, do you think it's homosexuality?

[comment: it has to be]

Resource Person (2): In fact, this *faahisha* is only one of the many forms of *faahisha*. We can't see *faahisha* only as homosexuality. *Zina* is *faahisha*, incest is *faahisha*, *bigaaa-i'in* the people who don't want it is *faahisha*. You cannot take *faahisha* as only meaning homosexuality but in this instance because you're talking about women together it seems to be this [comments]...

Participant: I think maybe you can find another interpretation of 4:15. In my view this is the first stage of the women being guilty of an immoral act. And in the second *ayat*, 4:16, *'wallaazaani ya-tiyaahihaa minkum'*: *'minkum'* means female and male. In the second stage, it means that if the woman or the man are guilty and they have *taabaa*, or they turn back to God... [reads 4:16 starting from *fa-'a'-rizuu...*], because *'minkum'* includes man and woman.

Another *ayat* [reads 4:16 until *mawtu...*] means that you have to keep them at home until they turn back to God. If not, if they refuse... the last *ayat* says that... [reads 4:18] which means that if you refuse to turn back to God... It means it's deferred. It means you have to stay at home until you die or you repent.

Resource Person (1): Would you conclude that for women who are not repentant, the only punishment is that they confine themselves to the house? There's no death or no other punishment inflicted on them, that it is enough that they are isolated until they die a natural death?

Participant: Yes, or turn back to God...

Participant: Right, but if they continue to go on with their homosexuality, then the only punishment is they are isolated?

Participant: No! I'm not speaking about homosexuality at all! I don't agree that there's a reference to homosexuality in this *ayat* because in the second *ayat* they say *'wallaazaani ya-tiyaanihaa minkum'*, *'minkum'* means men and women, so this is the second stage. The translation is wrong if it says, "if two men among you are guilty of such act", it doesn't mean this in Arabic at all. *'Minkum'*, is plural and it means female and male...

Resource Person (1): The plural refers to the "from among you" but before that it says two men...

Participant: 'Walazani' also means 'both' who could be female and male.

Resource Person (2): If you mention both the male and the female separately, then the terminology with regard to the male can apply for the male exclusively; but if you use just one term, then the female has to be assumed to be included. So, the idea is that if the women do it (4:15) then there's the entire scenario, and then one extrapolates from that scenario and says if men do it from among you (4:16)... It's because they mentioned the women and they mentioned the men. It's the same situation. Not only that, the verses are not even complete without the other because it says *ya, wallazaani ya*. All of this is taken together, just like you hold all four verses together to decide what happens, to approach death or before death you make the *taabaa*,

Participant: It's *faahisha*.

Resource Person (2): ...Yes! In other words, the other verse is connected. Otherwise, it doesn't make sense to have punishment for the women and then in the next verse prescribe more punishment for them. No, the punishment is for the women who do it and for the men who do it.

Participant: No, for me it seems to be a different situation because one is without *taabaa*, the other with *taabaa*. This is the difference. The first situation was without *taabaa*. You put them at home because they didn't repent, have *taabaa*. The second situation is they '*Fa'in-taabaa wa 'aslahaa fa-'a'-ri-zuu 'anhumaa*'. But in the situation of the woman there's no *taabaa*, that's why she has to stay at her home to think about *taabaa*.

Resource Person (1): I think that the point could be sustained grammatically because what the text is saying (4:16) is that if two among you, and the two could be either men or women. Her point is that in the first passage it's saying that if women are guilty of lewdness, then confine them to their homes till they die, and then it goes on to say but if they repent...

The problem I have is why does it say two? The first is general, if women are guilty of *faahisha*, it doesn't specify which kind of *faahisha*, but the second one says if two women, even if it's not men, it's two women, the context appears to be homosexuality. That's the question.

Participant: Two questions. One is, while we've been discussing homosexuality, it isn't yet clear to me what our stand on it is which I think is very important. The other is, I want to know why was homosexuality considered immoral or a crime in those days? This becomes especially relevant today because there are some realities that have to be faced, such as bisexuality does exist. All human beings have dual characteristics of both the male and the female and sex conversion does take place.

Participant: Earlier you were referring to the fact that homosexuality is more sinful for men than for women and you were giving the tentative explanation that this is because one of them is considered a woman. I wonder whether it could also be referred to the

scene of Yunan and the misuse of the sperm, because it's also in the Bible, it's also in the Jewish law.

Resource Person (1): Spilling your seed, definitely, but also in the scriptures there's great stress on homosexuality being 'unnatural', and this of course is a great controversy going on in the West today because it has been medically proven that at least 10% of the human race is created in such a way that they are biologically homosexual. So, is it right to think of these people as perverse, or sick? I think this is one of those questions that did not exist in 7th century Arabia; they didn't know about this. I think it is an issue that needs to be considered. I was asked a year ago to write a paper on homosexuality in Islam and I tried for one year to find some material and I couldn't find anything. I mean, there are a few references, but it was just not adequate for me to write about. I think that this is certainly a question in our modern period.

Participant: The problem I have, especially as far as homosexuality is concerned, is that it means 'lewdness'. 'Faahisha' here means lewdness. I mean, don't you then need to consider what the Qur'an's attitude on sexuality is before you can decide whether they refer to homosexuality here? Because if the Qur'an does not have a negative attitude towards human sexuality, then homosexuality may not necessarily come under 'lewdness'.

Resource Person (1): As you know this is a very big question in the West - I have many Jewish and Christian friends working in this area and none of them has been able to find any Biblical text which supports homosexuality. I don't think that this text, no matter how we construe it, can be used to support homosexuality. At this point in the state of our research I would venture to say that the text of these three religions does not support homosexuality. That's the position of the text. The question is of whether we can go beyond the text because it is a new situation, because they didn't have the medical knowledge that we have now. I have great difficulty with this attitude of describing all homosexuals as sick because I don't think that all these people are sick or perverse and I think therefore that something needs to be done about the situation.

Participant: Does the text support any form of sexuality which is not geared towards marriage and procreation?

Resource Person (1): In a paper called *Sexuality in Islam*³¹ this question about sexuality has been discussed. When we use the word 'sexuality', we have to remember that sexuality does not only refer to sexual intercourse between men and women. Sexuality is a very broad term. Therefore, the statement made by one participant of: "When we go out we leave our sexuality behind", was really a very troublesome statement, because when we're born, we are gender defined. We are born with sexuality and sexuality is a part of how we interact with anything or anybody. Sexuality is not confined to sexual intercourse. But if you're defining sexuality in terms of sexual intercourse, again in terms of the scriptures of Judaism and Christianity and Islam, there is absolutely no text which supports sexual intercourse outside of marriage. I think this is the position of the sacred texts. This creates a great problem in the West where pre-

31 Source could not be traced - Eds.

marital and extra-marital sex is going on all over the place. The question is, how do these people deal with it? The way friends who are ministers deal with it is they don't talk about it. They have agreed to be silent because as it is, the membership of all the Churches in America, except the Baptist Church, is dwindling, so if they say this is bad, nobody is going to come. So they don't talk about it. In as far as the text is concerned, I think the position is very clear.

Resource Person (3): I thought homosexuality was mentioned in the Qur'an, in Surah Hud, where a positive injunction has come against homosexuality. Where it is related that an entire generation was wiped out, I thought it was because of the homosexual act and the Qur'an is very precise on this issue.

Resource Person (1): I want to tell you one or two very interesting stories. One is, the story of Lot, the nephew of Abraham. In the Bible it is related that once he was entertaining some male guests and the people of that land were very wicked and they came and knocked on his door. They said, "We want to know these men", which means we want to have sex with these men, and he said, "No, no, they are my guests and you cannot have sex with them". In place of those male guests, he offered his two virgin daughters which was not accepted therefore his virgin daughters were not raped. The second story is in the Book of Judges, which says there was a man called the Levite and he had a woman (sometimes she's referred to as his wife, sometime as his concubine); there's some ambiguity about it. They have a quarrel, she leaves him, she goes to her father's house and he goes to bring her back and his father-in-law detains him, and they have fun for two or three days, just entertainment. This Levite and this woman and the servant are returning and he has his donkeys and so on. They come to this place called Gibeah, this strange land where they want to camp. Nobody wants to take them because they are strangers and this old man who is also from the same area, comes, and the Levite flatters him a little bit and manages to get hospitality for the night. They go to this old man's house and the two men are eating and drinking and there's a knock on the door and the men of the tribe of Benjamin stand and surround the house and say: "Send us out this man, we want to know him, we want to have sex with him". He replies "No, no, this is against the code of hospitality. You can't do that. Instead of this man you can have his concubine and my young virgin daughter," and they say, "No, we don't want that." Whilst this argument is going on, this Levite gets up, takes this woman and throws her out and shuts the door. The story goes on that she is raped from nightfall till morning and when morning comes she falls out there down on the threshold. This Levite gets up in the morning and is going to leave and she's on the threshold, and he says, "Get up!" and she doesn't get up. He picks her up and puts her on the donkey and goes home. When home, he takes this woman, he cuts up her body in twelve parts and sends each part to the twelve tribes of Israel and says, "Look how wicked these people of Benjamin are. Look what they have done to her," and then he started a fight between his tribe and their tribe and so on. If you study the text, it's not clear whether that woman fallen on the threshold was dead or not. She may not have been dead, but anyhow when he cuts her up, of course, she was dead after that.

The reason I'm telling you this story, is that in that culture hospitality was only extended to males and this raping of women, throwing out these women in order to protect his guest from homosexual attack, was considered nothing. There's a Christian theologian by the name of Phyllis Trible who has written a wonderful book called *Text of Terror: Literary-Feminist Readings of Biblical Narratives* and she's taken several of

these Biblical texts, which after all millions of people believe to be the sacred text, and said, "Now, tell us, what do these stories mean and how as women, are we supposed to deal with this?" These are never read out in churches, but these are texts and there are many more of these types.

Participant: We're talking about texts and as Muslims, we are supposed to have faith in the other divine books and if the Bible is a divine book, why do we reject the story of Genesis there, for instance, and why do we say that is not correct and what the Qur'an says is correct? I mean, how do we believe in two contradictory texts?

Resource Person (1): ...It's a very valid question because Muslims say, and the Qur'an says, that the Qur'an is a confirmation of previous scriptures. But, as a matter of fact, Muslims don't believe anything which is in the Bible, and the reason for that is that there is a statement in the Qur'an which says that some people, some Jews and some Christians, may have changed some words in the original text. From that the inference is it's all wrong, and the only Muslim that I have ever come across in my life who ever read the Bible believing it to be true (there may be others) is Sir Syed Ahmed Khan.⁽³²⁾ He learnt Hebrew and started to translate the Bible, and his writings on this subject are not available at all. That part of Sir Syed Ahmed's thoughts has been totally suppressed. He was the only one I know of who believed that it's religiously imperative for us to read the Bible, not just with a negative attitude.

But going back to the question, if these stories are in the Bible, don't you think we also have to deal with that? These are very difficult stories, the whole question of homosexuality and adultery, etc., is so complicated. These are like case studies, so I think whenever we get together on research projects as these, we also need to consider these kinds of stories.

Participant: We have to get to what is the reason for forbidding *zina* or homosexuality: which is more dangerous for the society, and relative to the punishment which is worse than the other?

Resource Person (1): An Arab-Muslim teaching in America was asked by some Americans, what do you think is the Islamic position on or the Muslim attitude to homosexuality? How do Muslims deal with homosexuality? He said, "Well, Muslims still haven't come to grips with how to deal with heterosexuality [laughter] so we haven't come to homosexuality." I think that's really the summing up of this question. We haven't dealt with heterosexuality yet, so let's postpone the other question.

Participant: Specifically because of this Zina Ordinance and so on, what would be the position for women who, for instance, due to some social reason do not get married or can't get married, and also women who've been divorced - and I think most of us are aware of the stigma that is attached to divorced and widowed women in our society. What is the Qur'an's stand or our stand on what is to be done to their sexuality which is ignored? Is there an imperative injunction against pre-marital sex for one thing in the Qur'an? That would be the first part of the question.

32 (d. 1898) enlightened Muslim scholar, who emphasised the need for educational reform among Muslims; founder of the famous Aligarh University in India.

Resource Person (1): The term '*zina*' does not distinguish between adultery and fornication but in Jewish law fornication is not a crime. Adultery, "Thou shalt not commit adultery", is not fornication. If a man committed adultery, adultery could only be committed if the woman was married and if adultery was committed, then the punishment had to be given. But if a man had sexual relation with an unmarried girl, even against her will sometimes, what he was required to do was to pay something like 40 shekles, (a small amount of money) to her father. If the fact became known, then he had to give this money and he was required to marry her. That was his only punishment. In Jewish law, the writ of divorce can only be given by a man, called a *get*. A woman can ask for a divorce, but unless the man gives her that she cannot be divorced. This is the case even today under Jewish law. But where he had pre-marital sex and then had to give money and marry her, this was the only kind of marriage in which she got a right to divorce him; and she could demand a *get*. The point is, in Jewish law fornication and adultery are not considered on the same level and fornication is looked at much less seriously. This is not what the Qur'an is saying

Resource Person (3): I have a question: I was asked once, when a man can have four wives, why can't a woman have two husbands at least?...

Resource Person (1): Why two, why not four?

Resource Person (3): ...Okay, two or three or four or whatever, but why not more than one?

Resource Person (1): Well, it's a patriarchal system and in a patriarchal system, it's very important to determine who the father of the child is whereas if a woman had several husbands, this could not be done...

Resource Person (2): Surah Al Nur (24): verses 2-4 [see p. 164 above] say '*azzaani'*' which is one who commits *zina*. Right? Now, if you are married and you commit *zina*, how can you marry anyway?

Participant: But we're talking about people who aren't married.

Resource Person (2): It says there is a prohibition on people to marry a person who does *zina*. We're talking about the person who does adultery and wants to be married. If we're talking about a person female she can't already be married, since she can't have more than one husband, right? The restriction on who she can marry is "only another person who has committed *zina*". In other words, this is not talking about a person who commits adultery, but the fornicator. The female who commits *zina* can only marry someone who has also committed it or an idolator, the verse says. If we know that a woman can't have more than one husband, it's not saying a woman who is married to a man, has had sex with another man, i.e. an adulterer per se, cannot marry any but an adulterer. She's already married. So if an unmarried person commits *zina*, she can only marry a person who has already committed *zina* as well.

Participant: You mean, *zina* would then include people who were not married at all, never have been.

Resource Person (2): Otherwise, who should they marry... If she's an adulterer, and already married.

Resource Person (1): She's talking about the case of a woman who's not married, and she's having sex with someone else who also may not be married

Resource Person (2): Sorry, maybe I'm being too subtle with this... A woman cannot have two husbands, right? Please, I'm trying to make a point here only with regard to the terms 'wazzaani', 'aizania': a person who commits *zina*. I'm giving you the English, let's see what it means. It means that the person who commits *zina*, female, can only marry anyone who commits *zina*, male, or someone who disbelieves. Any female already married cannot marry anyone else whether he's an idolator or an adulterer or whatever, so it must mean someone who is not married.

Just take the term, a person who commits *zina*, female, cannot marry anybody, she is forbidden to the believers. It's forbidden because then prohibitions are put on marrying that person, it would not apply if she's already married.

Participant: From that point of view then, most of the men in our society cannot marry us because I think it's an accepted fact, especially in Pakistan that men do not go into their marriages as virgins. Only idiots do and that too is a socially accepted fact, they are actually called idiots. So what happens to the vast majority of women who then would be ineligible to those men because those men have obviously, acceptably, had sex without being married?

Participant: Looking at the verse, yes, but there's so many other things. In principle it's not allowed for men either. In principle even in the case of inheritance, if you look at how various powers back various interpretations of the Qur'an and not other sections of the same interpretation; there is no law in Pakistan that forces a person to give to the daughter whatever her share is. Why is that not being enforced through a punishment, i.e. that if you do not give your daughter her share, which is very specifically in the Qur'an, you will be jailed or whatever.

Resource Person (1): I think we should be very troubled by the fact that the word '*zina*' in Arabic, and in the Qur'anic context, does not distinguish between adultery and fornication because I think these two must be distinguished. They are not at all the same thing and they are certainly dealt with very differently in both Jewish and Christian law. If we are considering the Qur'an to be a continuation of the previous scriptures and Islam is following upon these traditions, there has to be some sort of continuity. That these traditions do distinguish between adultery and fornication has to be taken into consideration because there are so few Qur'anic passages dealing with the subject at all. Just as it is imperative that we distinguish between *zina* and rape, which the Zina Ordinance does not do; we also need to distinguish between *zina*/adultery, and *zina*/fornication. Therefore I have trouble when I read Yusuf Ali who says, "The woman and the man guilty of adultery or fornication..." because in the text it is *zina*, it doesn't say separate the two but he separates the two, that's an inference on his part, and this is one place where, I think, historical research is very necessary to know what was the case law at that time. Were there any cases that were brought before the Prophet which distinguished between the two and let us see how it was done. There may be some *ahadith*. I think at this point in time and for the future these two must be distinguished. That's my first point.

Why is adultery treated as more serious than fornication? Because adultery is between married people which means that they already have a contract with somebody

else and the contract requires marital fidelity as a part of the contract. When they are guilty of adultery, they are guilty of breaking a contract into which they have entered. In the other passage where it says if a man accuses his wife of adultery he has to swear three times, etc., it seems to me incredible that a woman or a man who commits adultery, is punished for it by 80 lashes in public and then the marriage is resumed as if nothing happened. We can't simply assume that. When it says that when a man guilty of adultery, (I'm going to read 'zina' as 'adultery' here not as 'fornication') cannot "marry anybody but a woman similarly guilty" I would read it as: if an act of adultery has been committed between two people then they should get married to each other. That's my understanding of it rather than they can't get married to anybody or never get married. I don't think that sort of prohibition is here. It means that they should not go around marrying somebody else, for instance this man who's a philanderer shouldn't go and marry an 18-year old virgin. He should marry someone who is also in a similar position to him. I don't read it as there is a prohibition against their getting married.

On the Codification of Punishment and Evidence

Participant: We discussed this question of punishment, lashes: is it stated in the Qur'an, or is it from the Jewish tradition?

Resource Person (1): Not lashes: the Jewish tradition was stoning. Stoning was then abolished by the Christian tradition. Later there's the effort made by these Muslims to revive it. There is no Islamic justification for stoning... There is no mention of stoning in the Qur'an.

Participant: If the question is why this was included in the Hudood Ordinances introduced in Pakistan: it was included on the basis of four *ahadith*, not on the basis of the Qur'an. In the judgement, in which the Federal Shariat Court decided lashes was unIslamic, they quoted each *hadith* and gave arguments that three of these instances happened before the revelation of this particular *ayat* and the last one they said was a very weak *hadith*.

Participant: I looked a lot for the source of it and it's not there in the Qur'an but I found it in the last *khutba* [sermon] of the Prophet at the time of the *Hujatul Wida*. It says that the child should be born of the marriage bed and adds something about anybody who violates this shall be stoned. I don't remember the exact words but something to that effect.

Resource Person (1): I find that very hard to believe that the Prophet could have said that because the Prophet could not have said something against the Qur'an.

I want to make one comment about the *hadith* which I described as 'Israelite' because it's really very important. Some people say that the Jews put a lot of Jewish traditions into Islamic tradition. On the basis of my research, I would state that it was not the Jews who put the Israeli traditions into the Islamic traditions it was the Muslims who did that, and I will give you one example of how it happened. In the *Tafsir Ibn Kathir*, one of the most important *tafsirs* of the Qur'an, the commentary regarding 4:1 which relates to creation he says, "It is an Israeli tradition that woman was created from the rib of Adam". One hundred pages later in the same book while commenting on another passage which deals with the creation of woman, he says, "and woman was created from the rib of Adam". So one hundred pages after saying it's an Israeli custom, in the same book, he has assimilated it. Because it suited their purposes, they took these Jewish traditions and assimilated them.

Resource Person (2): Ibn-i-Khaldun who is noted as a historiographer, says that the Muslim Arabs when they had questions about the unseen, creation, the afterlife, and the

like, they used to ask the *Ahlu'l-Kitab*, People of the Book, that were among them for explanations and the *Ahlu'l-Kitab* that were among them were not rabbis, theologians or priests, they were just your average everyday Christians and Jews, who had absorbed mythology as fact. When a Muslim would ask each of them about these things they would give the answers that were - and still are - common. These things were absorbed by Muslims prior to their actually getting specific revelations with regard to these aspects of the Hereafter and became part of their thinking which then filled in what was not said in the Qur'an. When the Muslims transmit them later, you have to understand that they're not always transmitting something that is based on actuality. Later thinkers like Ibn-i-Kathir do the same thing. Early Muslims had already absorbed these types of things and, we're bound in them now

Resource Person (3): I just have one more observation. If you want to break this Zina Ordinance, one needs to note that these laws are absorbed in one concept called *'istidlal*. In it's ordinary use *'istidlal* means inferring of one thing from another, and the two chief sources recognized for such inferences are custom and usage and the laws of the religions revealed before Islam. For example, take the four-hoofed animals that you are forbidden to eat: this is an injunction that came in relation to a previous religion, and was later absorbed. Stoning could have been absorbed into the framework. But this is how it is been made use of by lawyers and jurists.

Participant: Just to interject here that according to scholars, such as Maulana Maududi, the purpose of floggings was not to physically harm people, and there's a whole passage where he said it was done in the morning before the sun came out, or after sunset, to avoid the heat and that when it is an old person then a hundred lashes could mean with a hundred straws or whatever. According to these scholars, the purpose was to shame the offenders in front of the community.

Participant: The very fact that you quote Maududi on this, although on other things you disagree with him, is a question in itself. Even the person who has actually confessed to *zina*, can say, "Look, I've changed my mind", and then you're not supposed to impose the punishment at all. There are jurists who interpret: "Look, if He knows it, then it's good for you not to disclose it because then it's between you and Allah". The provision is just to guard against open lewdness. And who would have sex out in the open for four witnesses to see? It's close to impossible... You should take the spirit of this and say that actually it's not at all meant to be imposed. Of course, in Pakistan people think differently on this and Pakistan happens to chose to take the opinion that as an Islamic state we must impose this as our duty to Allah, or the regime or whatever.

Participant: On the question of lashes again just to clarify: when Pakistan went ahead and started flogging people by having this 50-yard run-up, by this huge wrestler type, wielding this enormous whip, the Federal Shariat Court said it had nothing to do with Islamic punishment and at one point gave a ruling saying, 'what you are doing has nothing to do with Islam, this has to do with martial law regulations'. The Saudi government apparently also said the same thing to the Pakistan government, i.e. that what you're doing is not in keeping with Islam

Participant: Actually, the Hudood Ordinances prescribe the length and quality of the whip and that is not the whip which is used to give these punishments. What they use

are these long leather whips and they come running and sort of try to kill you with the first lash. People have fainted and been taken away and the rest of the lashes given subsequently. Plus, under the martial law regime, women were flogged for the first time in Pakistan's history.

The Law of Evidence

Resource Person (1): Surah Al Baqarah (2): verse 282, the longest verse in the Qur'an...

Participant: Our concern in Pakistan stems from the fact that in 1984, after a long drawn out battle between women's rights groups and those proposing a change in the law of evidence, the new Law of Evidence, now in practise, was promulgated in Pakistan. And, I would say, largely due to the noise and protest that we made it was not promulgated in the form originally proposed which said that for all matters you would need two male witnesses, failing which... it went on and on and on. The current Law of Evidence retains, more or less the Law of Evidence as it was before 1984 but adds to it a clause that says that in the case of "future financial obligations, when reduced to writing" etc - it's really paraphrasing this *ayat* ...

Chair: I would like to just add, interestingly, this law has actually not been implemented anywhere. In Pakistan, it is on the statute books, it has been passed, it has seen the most agitation from women's groups but on the other hand one has not seen any implementation of it in cases yet.

Participant: Cases and contracts which were drawn up before this law and which happen to have two women's signatures, or that of one woman and one man, are now being challenged retrospectively in court.

Chair: While this law was passed in 1984, what we would call classical books on Muhammadan law, e.g. *Mulla's Mohammedan Law*, Justice Hidayatullah Fyzee, etc., also contain a similar element on the requirement of marriage: either two male witnesses or one male plus two female witnesses. It's not just come up with the martial law regime: it was something that was always considered the acceptable thing.

In the Law of Evidence it's not giving a woman half an evidence, it's giving the other woman a corroborator's power (which again one can argue about). What I don't understand is that all along in the classical works this requirement of two female witnesses or one male has been there for everything. I'd like to know whether this is the only verse in the Qur'an on the basis of which you're talking of two female witnesses equivalent to one male or is there any other *ayat*?

Resource Person (1): This case illustrates better than perhaps anything how the Qur'anic text has come to be seen through the lens of the *ahadith* because we have that *hadith* in which it is said the Prophet encountered this group of women one day and he said, "You should give *sadiqa*," and they said, "Why?" He said, "You are deficient in intellect and you are deficient in piety or righteousness" and they said, "Why are we deficient in intellect?" "Because the evidence of two women is equal to that of one man; because you menstruate therefore you miss prayers and therefore you are deficient in *ibadat*," and so on. This *hadith* undoubtedly reflects the thinking of the early generation

of Muslims and it is through that lens that this verse has come to be read.

If we look at this verse step by step, the context is the writing down of mercantile contracts because in Mecca, a society in which trading was a chief means of earning a livelihood, these people were making all these oral contracts. The first part of the injunction is 'write it down because otherwise you'll forget and complications will arise'. The first injunction is to the scribe, "Write it faithfully" and so on. Then in case one of the parties is mentally deficient and is not able to himself or herself to dictate, "Let his guardian dictate faithfully." Then when the contract is written, it needs to be witnessed.

Surah Al Baqarah (2): verse 282

O ye who believe!
When ye deal with each
other,
In transactions involving
Future obligations
In a fixed period of time,
Reduce them to writing.
Let a scribe write down
Faithfully as between
The parties; let not the scribe
Refuse to write: as Allah
Has taught him,
So let him write.
Let him who incurs
The liability dictate,
But let him fear
His Lord Allah
And not diminish
Aught of what he owes.
If the party liable
Is mentally deficient,
Or weak, or unable
Himself to dictate,
Let his guardian
Dictate faithfully.
And get two witnesses,
Out of your own men,
And if there are not two men,
Then a man and two women,
Such as ye choose,
For witnesses
So that if one of them
errs, The other can remind
her.

Yaaa-`ayyuhallaziina `aa-
manuuu `izaa tadaa-
yantum-bi-daynin `ilaaa
`ajalim-musam-maān-
faktubuuh. Wal-yaktub-
baynakum kaatibum-bil-
`adl. Wa laa ya`-ba
kaatibun `aāny-yaktuba
kamaa `allama-hullaahu
fal-yaktub. Wal - yumli-
lillazii `alayhil - ḥaqqu
wal-yattaqil-laaha
Rabbahuu wa laa yab-khas
minhu shay-`aa. Fa-`in-
kannallazii `alayhil-ḥaqqu
safii-han `aw ḡa-`iifan `aw
laa yas-tatii- `u `aāny-
yumilla huwa fal-yumlil
waliyyuhuu bil- `adl.
Wastash - hiduu shahii-
dayni mir-rijaalikum : fa-
`iilam ya-kuunaa rajulayni
fa-rajuluñw-wamra-`ataani
mimmañ-tarḡaw na
minash-shuhadaaa-`i `aān-
taḡilla `ih-daahumaa
fatuzak-kira `ih-daahumal-
`ukhraa.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ
مُسَمًّى فَلَا تُبْزَوْهُ وَلِيَكُنَّ بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَ
لَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ
وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا
يَبْغِ مِنْهُ ثَمَنًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا
أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمْلِئَ فليَمْلِكْ وَلِيَّهُ
بِالْعَدْلِ وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ
فَإِنْ لَمْ يَكُنَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ
مِنَ الشَّهَادَةِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا
الْأُخْرَى

The witnesses
Should not refuse
When they are called on
(For evidence).
Disdain not to reduce
To writing (your contract)
For a future period,
Whether it be small
Or big: it is juster
In the sight of Allah, More
suitable as evidence,
And more convenient
To prevent doubts
Among yourselves
But if it be a transaction
Which ye can carry out
On the spot among
yourselves
There is no blame on you
If ye reduce it not
To writing.
But take witnesses
Whenever ye make
A commercial contract;
And let neither scribe
Nor witness suffer harm.
If ye do (such harm),
It would be wickedness
In you. So fear Allah;
For it is Allah
That teaches you.
And Allah is well acquainted
With all things.

Wa laa ya`-bash-
shuhadaaaa- u `izaa m a a
du- `uu. Wa laa tas-
`amuuu `aā taktubuuhu
ṣagii-ran `aw kabiiran
`ilaaa `ajalih. Zaalikum
`aqsaṭu `indallaahi wa
`aqwamu lish-shahaadati
wa `adnaaa `a l l a a
tartaabuuu `illaaa `an-
takuuua tijaaratan
haaziratan t u d i i r u u n
a h a a b a y n a k u m f a -
l a y s a `alaykum
junaahun `allaa tak-
tubuuhaa. Wa `ash -
hiduuu `izaa tabaaya ` -
tum. Wa laa yu-ḡaaarra
kaatibunw - wa l a a
shahiid. Wa `in-taf- `aluu
fa-`i n n a h u u
fusuuqum-bikum.
Wattaqullaah ; wa yu-
`allimu-kumullaah.
Wallaahu bi-kulli shay-`in
`Aliim.

وَلَا يَأْتِ الشَّهَدَاءُ إِذْ أُمِدُّوا وَلَا اسْتَنْوُوا
أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ذَلِكُمْ أَقْسَطُ
عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا إِلَّا
أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ
عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا وَأَشْهَدُوا إِذَا بَيَّعْتُمْ
وَلَا يَصْرُوكَا كَاتِبٌ وَلَا شَهِيدٌ وَإِنْ تَفْعَلُوا فَإِنَّهُ
فُسُوقٌ بَيْنَكُمْ فَاتَّقُوا اللَّهَ وَيَعْلَمُ اللَّهُ مَا تَفْعَلُونَ
بِحَلِّ شَيْءٍ عَلَيْهِ ۝

Here follow the crucial three or four lines that we need to look at: "Get two witnesses out of your own men." So the first preference is to get two men and if you are a radical feminist you say why two men? But because in that world it was men who were doing the trading, the thing that was most practical is to get two men but if not two men then a man and two women. As pointed out the thing to see here is "such as ye choose witnesses", "so that if one of them errs... (this word is not actually 'err', it's 'gets confused', 'gets puzzled') ... the other can remind her." It's not that two women are witnesses one after the other. It's only if one of them forgets or gets confused or gets puzzled, the other one can remind her. The other one doesn't give evidence. The other

one serves as a council to the first. Of the two there is only one who is the witness. This was done because women at that time were not used to going to court - women still today in the 20th century are not used to going to court - and this was another protective measure for women. It was not meant to reduce women in this stupid way of 2:1.

What has happened throughout everything that we've been talking about since Day 1 of our meeting is an effort to reduce women to being less than men. It's ridiculous because with this thing they have made it mathematical, 2:1 and it goes on. With the *qisas* and *diyat* (retribution and blood money) laws they also have these mathematical equations coming in. But, Qur'anically, this is not what it means at all.

Resource Person (2): In addition, you notice that the verse afterwards goes on to say that if someone is called to be a witness then they should not refuse. Now again, there was the context that few women were part of the business dealing, but also the fact that the reason why you must have someone to oversee this affair, someone who'll write it - and not just one person - is to prevent someone from abusing the contractual situation. So you have two men for example who sign the contract and person A decides that he wants to get something out of it, so he lies. He says this is not the way it was, there was something else that is missing. Two men together are considered as equals and it is not so easy for him to coerce the other man. But, suppose the other party is a woman, he can coerce this woman and say if you don't change your evidence then I can do such and such to you, but she has the corollary of another woman with her, she has a corroboration not just in terms of the evidence itself but in terms of support at being able to come forth with information that she has. When the verse goes on to say, if you're approached, if two women are approached to be able to come to do this - one to be the witness, one to corroborate - then you can't refuse. Now if you were one woman and they were going to approach you to do this witnessing, you'll say, "No, I don't want to go, I don't know what they're going to do to me afterwards," and this whole system of abuse of women also comes to mind. So the companionship of the second woman gives her strength to enter into a contractual witnessing in a context where she was not respected and she was coerced into many things.

You can see that looking at the content only in regards to the context helps you to take the essence of the Qur'an a little bit further. Fazlur Rehman in addition says that if the reason why there had to be two no longer exists, then it is possible for there to be only one. He looks at the legal rationale as contained in the text of protection. He concludes therefore that if you come to a different circumstance where there is greater protection and the woman as a single witness can come forward because she knows the business of the trade and the like, then if you are not concerned with her ignorance about the matter nor with the protection of her rights as a witness in the courts, then it is not necessary to uphold this provision to the letter; you can go only to essentially what you are trying to achieve and that is two reliable witnesses.

Woman as Field

Participant: We are going to discuss some of the other ayaat: Surah Al Baqarah (2): verses 222 and 223...

Resource Person (1): If you look at the content and spirit of the Qur'an, what it is saying is that God created men and women so that they should live together in tranquillity and harmony and equality. So it is not creating a hierarchy, it is not creating any kind of a division. I agree that it is addressed to the men. Throughout the Bible much of the text was addressed to the men. It was a literary convention of the Semitic languages that they were addressed, most of the time, to men. But you see also the commandments regarding prayers addressed to the men. Muslims have never interpreted those as referring only to men. They refer to everybody.

Participant: For 2:222 the word describing menstruation is translated differently: it is a 'harmful' thing, it is a 'pollution', it is an 'illness', it is 'impurities', so already there are various translations.

Surah Al Baqarah (2): verses 222

They ask thee
Concerning women's
courses.
Say: They are
A hurt and a pollution:
So keep away from women
In their courses, and do not
Approach them until
They are clean.
But when they have
Purified themselves,
Ye may approach them
In any manner, time, or place
Ordained for you by Allah.
For Allah loves those
Who turn to Him constantly
And He loves those
Who keep themselves pure
and clean.

Wa yas-`aluunaka
`anilmaḥiiz. Qul huwa
`azañ-fa `-'tazilun-nisaaa-`a
filmahḥiizi walaa taqrabu-
hunna ḥattaa yaṭ-hurn. Fa-
`izaa ta-taḥharna fa`-tuu-
hunna min ḥa y-s u
`amara-kumul-laah. `I n n
a llaaha yuḥibbut-
Tawwaa-biina wa
yuḥibbul-Muta-ṭaḥhiriin.

وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذًى فَاعْتَزِلُوا
النِّسَاءَ فِي الْمَحِيضِ وَلَا تَقْرُبُوهُنَّ حَتَّى يَطْهُرْنَ
فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ إِنَّ
اللَّهَ يُحِبُّ التَّوَّابِينَ وَيُحِبُّ الْمُتَطَهِّرِينَ ﴿٢٢٢﴾

Participant: Over the last 10 years in Pakistan, we have had many opportunities to have a dialogue with reactionary male *maulvis*, and this is one of the verses which is thrown at us as saying women are unclean for so many days, therefore they are inferior.

Resource Person (1): The so-called historical or patriarchal religions starting from Judaism onwards, are only a few thousand years old. For tens of thousands of years before that there were other kinds of religions. We call most of these religions pre-historical because we do not have documentary evidence relating to them. But we have other forms of evidence, including archaeological. There is already considerable literature on what are called the 'goddess religions'.

For several thousand years before the rise of patriarchal religions there were matriarchal societies. These were societies that were headed by women and were basically agricultural. What people worship is directly related to how they live, so that in earlier times when human beings were hunting animals, they worshipped animals; we know this from cave paintings in ancient France, Spain and so on. Then when human beings started living by practising agriculture the centre of their worship was the earth, soil and fertility, etc. All sorts of fertility cults arose and you see this also in the pre-Judaic mythology in the Middle East.

In the earlier matriarchal societies that we know, they did not know how human beings were born, about the process of reproduction. They believed it was only women who reproduced. They did not think that it had anything to do with men and women were very greatly revered. There was a sense of awe about women's life-giving powers, and blood was not considered a symbol of impurity but a symbol of life. But then, as the structures changed, what begins to happen is that there is a transformation from blood as a symbol of life. This concept of taboo applies to things that are considered either too sacred to be handled or too impure to be handled. In Arabic we have the word *haram* and the word in Arabic means both that which is sacred - e.g., *masjid-ul-haram* - and also that which is forbidden.

Originally blood was considered to be sacred, not impure, and women were considered possessors of this sacred power of creation. Then you have the rise of the patriarchal religions and everything starts getting turned around.

About this that women are 'impure' being thrown in your face, it is actually a *hadith* and not just one *hadith*; it is repeated many times in Bokhari and Muslim. This *hadith* says one day the Prophet went to a mosque and after the prayers he was coming out and met a group of women. He said to these women 'Look you women, you should give *sadiqa* (charity). They said 'Why?' and he said 'Because you are lacking, you are *'nakis ul aql* [Urdu] - it means deficient in reason; also *'nakis ul din*' means deficient in prayer. They said 'Why? He said 'Because the evidence of two women is equal to one man and because you have menstruation'.

Just think about it. If God has created women in such a way that they should menstruate and has said at the same time when you menstruate you should not pray; then the same God turns around and says 'because you did not pray therefore you are deficient in *ibadat*'. Is this any kind of justice? It's absolutely ridiculous that first you exempt somebody from doing something and then you hold that person responsible and consider that person deficient because they didn't do it. You can't have it both ways. Either you're exempted or you're not exempted - either you can pray or you can't pray. It's a circular argument: that business of deficient and that two women equal one man; it is a total misreading of that passage.

Again we have collective biases coming in. This idea that women are deficient in intellect is coming out of a dualism which was mainly Greek. The Greeks believed there were two principles: one higher, one lower. The higher principle consisted of reason, the lower principle consisted of physical or emotional aspects. Reason was the highest faculty because you had

access to God through reason and God was also referred to as 'logos', which is 'reason'. First it was: reason is the highest, matter is second; then it was: rationality equals men and corporeality equals women. This has done enormous damage to women because women have always been seen as irrational, as lacking in reason. That's where it's coming from. All of these biases are in these *ahadith*.

In fact, these are beautiful verses, because what these verses are saying is recognizing and honouring the life cycles of women, that women have this rhythm, this whole cycle of life which consists of menstruation and so on.

When you read 2:222 on menstruation this is like 'they're dirty', right? But it is not that they are 'dirty', it is that this is a time apart for them, because women have seasons of life. This is a whole cycle of life, that you leave them alone in this time. It's that they have this physical pain or difficulty whatever, and therefore at that point, you should not expect them to have sexual intercourse with you: *Qul huwa' azan-fa-tazilun-nisaaa* (*aziat* in Urdu) 'it's painful'. This is not 'harmful' in the sense like a virus.

Participant: My immediate reaction is that it's addressing men and that it's 'harmful'.

Participant: It's not this 'aza' for the men. It's something like the woman 'is illness'.

Resource Person (1): 'Aziya' is from the same root. We could read it backwards; read 2:223 first: 'Your wives are a tilth so approach your tilth how and when you will'. If you were a farmer and you were dealing with the land, you would know that there are certain seasons where you sow and you do the harvesting. The body of a woman has always, since time immemorial, been likened to the earth because the earth has its seasons when you sow and when you reap. Likewise it's important to realize that you should only have sexual intercourse with women during the proper season. Read 2:222 and 2:223 backwards, I think it makes a lot of sense.

Participant: So this 'aza' is for the women, it's not for the men. Use the same example of the man and the land; it's not *aza* for the farmer, it's *aza* for the land.

Participant: Is it 'hurtful' or 'harmful' because that makes a lot of difference.

Resource Person (1): I think it's 'hurtful'.

Participant: 'Hurtful', yes 'aza' from 'aziya'.

Participant: So 'aziya' is 'hurtful', not 'hurt', or 'harmful'.

Participant: Can we look at Yusuf Ali's translation in English. It says '...they (presumably the courses) are a hurt and a pollution'. Where did 'pollution' come in, there's no Arabic for that, no? So all it is, is that they are a 'hurt', would that be the translation?

Resource Person (1): I think so.

Participant: Not 'pollution' because 'pollution' means that she's dirty.

Participant: But there is a mention of 'take a bath' or whatever because you either did intercourse, or you are not pure or you're not clean, which makes *tahharna* a need and it's a *tahharna* from something dirty.

Resource Person (1): Not at all. Why do we perform *vozoo* before prayer? Not because you are dirty, but because of ritual impurity; ritual impurity both in Jewish law and in Islamic law is if there is any sort of emission from your body, any kind of emission, you are required to purify yourself ritually. When men perform *vozoo* you don't say they are dirty and stay away from them. It is a ritual act of purification. It is not that they are morally or physically dirty. *Tahhama* is required for many things, not only for menstruation.

Participant: What is being said is that, by implication, it is a pollution since you are required to purify yourself.

Resource Person (1): But 'pollution' is not the right word. It is that you are not in a state of ritual purity, for various reasons. Men also, before prayer, are required to perform *tahhama*, for *vozoo* is a form of purification.

Participant: The word *tawwaabiina* in 2:222 means 'the one who did something and again he or she came to Allah and made amends.' It's still the word '*tawwaabun*', which means someone who did something wrong. (I'm forgetting about '*aza*' right now which may be a problem of translation.)

Participant: I think the word '*tawwaab*' is when you disobey what is the rule of Allah, and then you have to turn to Allah again. So if the man has intercourse with her when she is menstruating, he disobeys Allah's rules. He has to *istafhar* or to have the *taabaa* and turn to Him.

Participant: Is there an exact meaning for '*aza*' and for '*tahha*', and what does it mean '*tahhama*' and then *tawwaabiina*?

Resource Person (2): '*Aza*' is a word that means 'pain' or 'discomfort' and it was also decided that it means that to have sexual intercourse during that time is harmful to the woman. What happens however is that because the verse goes on to say '*hattaa yat-hum*' an association was falsely made that the need for the *tahhama* indicates that the *iddeh* is something filthy or unclean. But the problem with *tahhama* is it is also the terminology used for circumcision. *Tahhama* has a lot more to do with the fact that there are certain ritual performances that you do such as *vozoo*, and one of the things that requires a ritual act of cleanliness is blood. So the ritual act of cleanliness does not necessarily indicate that there is something in and of itself dirty. It is an act or a thing that has to be put into a state of preparation for *salaat*. It comes down many centuries later that *heydan* of itself is dirty, but it's not.

Participant: I feel even in the *hadith* and 2:223 both, the sexuality of women is not given any importance. They are mere objects from what I read. [See page overleaf]

Resource Person (1): It's a highly symbolic verse, and you have to understand the symbolism of the earth which is very complex. This is not only in Islam. If you look at the history of religion, for thousands of years the earth has been seen as a symbol of life, not just an object. Even today in many parts of Africa, people worship nature. This is a very profound image, that women are like the earth. They give life, they have seasons. If you are a wise person, you will sow and reap wisely, and with compassion and with consideration. But of course if you're going to interpret it in the sense of crass materialism like most of these people do... But those Arabs were great linguists. They produced only one art and that was the art of poetry and language.

Surah Al Baqarah (2): verses 223

Your wives are
As a tilth unto you
So approach your tilth
When or how you will;
But so some good act
For your souls beforehand;
And fear Allah,
And know that ye are
To meet Him (in the
Hereafter),
And give (these) good
tidings
To those who believe.

Nisaaa-'ukum harṣul-la-
kum : fa'-tuu harṣakum
'annaa shi'-tum : wa
qaddimuu li-aṇfusikum ;
wattaqul-laaha wa '-
lamuuuu 'annakum-mulaa-
quuh : wa bashshiril-Mu'-
mi-niin.

نِسَاءُكُمْ حَرْثٌ لَّكُمْ فَأَنْتُمْ حَرِثُكُمْ أَنْتُمْ تَنْشُرُوهُ
قَدْ مَوَالِ أَنْفُسِكُمْ وَأَتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّكُمْ مُلْقَوْنَ
وَبَشِّرِ الْمُؤْمِنِينَ ﴿٢٢٣﴾

Participant: When it says that 'your wives are a tilth', the image of the translators over the centuries seems to be viewing a piece of land as something that you own. It's this concept of ownership which still comes across in the translation that I have a problem with.

Participant: I have problems with the identification of women and nature because it leads us back into this dichotomy viz-a-viz nature and women being only nature.

Participant: It says, 'approach your tilth when or how you will' and then the next part, 'but do some good act for your souls beforehand'; if you approach the woman, you have to do something good before that - in other words balance it because this is something that's wrong.

Participant: There is also an *ayat* in the Qur'an which says that before you go and speak to the Prophet give some *sadiqa*. Going and speaking to the Prophet is naturally something good and if you are asked to give *sadiqa* which is also something good, it sort of means that this act is venerated.

Participant: In this verse it's written 'so approach your tilth when and how you like'. I read it relates to the position of intercourse. You can enter from front or behind [laughter]. This was a male interpretation, Imam Ghazali I suppose.

Resource Person (1): We are once again encountering one of the major problem that arises: we have to read the Qur'anic text very carefully and closely, but at the same time we have to guard against what may be called a literal understanding of the Qur'an. We have to somehow find the right balance here. Arabic is a very complex language. Words have many meanings and words are sometimes mixed up. In fact this is what the so-called 'fundamentalists' are doing. They are reading it very, very literally and you can't do that because there are in the Qur'an so many metaphors and similes. Anybody who has studied literature knows you can't always translate this absolutely exactly and say this is what this means.

As to the issue of possession: it's not that they are your possession, but that you should think of their relationship to you as the relationship of earth or soil to you. It's not 'your tilth' but the tilth 'unto you', 'like the earth, unto you', not that they belong to you. There are so many verses in the Qur'an where it says 'God is forgiving' or that 'God wants you to be forgiving'. Do you think it's just an embellishment, just a meaningless thing? It is a recognition implicit in the Qur'an that in that society men were more powerful, and do, in fact, treat women as objects. What the Qur'an consistently tries to do, was to uplift the status of women and all disadvantaged people: slaves, orphans, women and so on. It is reminding the men, the people in power, all the time that they are accountable to God, that there is somebody higher than they are and they should be watchful and mindful of that. So, I interpret 'do some good beforehand' as 'you should be thoughtful'; don't think that here is this woman and I can do to her whatever I want. Be considerate before you engage in this.

Of course there is the other side of it which is that the Qur'an, unlike Christianity takes a very positive view of sexuality. Sexuality is encouraged and regarded as a natural thing. 'Approach your tilth when and how you will' means that having sexual intercourse in itself is fine, is good and recommended, but you have to be mindful of what is the life cycle and needs of a woman.

Resource Person (2): I am particularly interested in the occasion of the revelation of this verse. To my knowledge, the Prophet was approached as to whether a man could have intercourse with his wife in any position other than the 'missionary position', and he says: 'your wives are your tilth, you can approach them, you can have intercourse in any position you like'. Only the terminology used in the Qur'an is never so plain. It's always very poetical, terminology you can use with your children, it's so very sweet. What it's saying is 'Okay this is your *harras*, this is something where you can plant the seed of your semen. So it's not so much an indication that women's only job is to be able to take your seed in and make babies, but with regard to the question of whether you could or not have intercourse in more than one position. 'This is your wife, this is the person with whom you have chosen to build your family. Enjoy yourselves'. You know whatever suits your fancy.

Participant: It says in 2:223 'when and how you like', that is, it gives a free choice to the men.

Resource Person (1): Please read on: 'But do some good act for your souls beforehand...

Why is all that being said? It's sort of like the verses we were reading on inheritance: there is this emphasis in the Qur'an on equity and justice: '*bil-ma'ruuf*' - do it with righteousness, this attitude of consideration should be extended to women. That's why there's this reference to God here - otherwise why should God have to enter into this picture? "But do some good" it's like 'be mindful' that women have been created in this way by God and you should be respectful of that.

The Qur'an, as pointed out before, is always aware of the actual situation of women: that women in that society were treated as chattel. A huge problem in Meccan society was the case of these thousands of women who were slaves and they were taken into the *harem* of the sheikh.

This verse is appealing to these men and saying 'don't just treat them as objects, but treat them with some kindness and compassion'. So the historical context also enters into this.

And this analogy of the field is very good but that's not how the *maulvis* have interpreted it. They think of the land as an object. They don't think of land as a living thing. Land is the source of life and if you impoverish it, ultimately you die yourself.

The Language of Gender Parity: Hurrees and Son Preference

Participant: Surah Al Baqarah (2): verse 25 is an *ayat* over which I fought with my Arabic teacher and I'm glad to say that finally he was the one who had to give in.

The problematic sentence in this for me is *'walahum fiihaaa 'azwaaajum-mu-tah-harah*. Pickthall's translation is okay. But most of the translations in Urdu are a little strange. I'll read out a translation by N.J.Dawood: "...Wedded to chaste virgins, they shall abide there forever." Where did he find the words 'chaste' and 'virgins'?

I would like to take each word separately; *walahum*, *wa*: 'is', '*lahum*' means 'for them', with '*hum*' meaning 'they' third person-masculine. *Hun* is the female and *hum* is masculine. So they say that since *hum* is used here, this naturally means for the male. *Fiihaaa* means 'in her', and 'her' here means Paradise because in Arabic, paradise is female. '*Azwaaaj*' is the plural of '*zaj*' which means 'pair'. In Urdu the word '*zaja*' is used to mean 'wife', so they read that meaning into this word and instead of using it like 'pair' or 'companion', they just translate it as 'wives'. The *zaj* is a pair, even if it's a pair of socks in Arabic you use the word '*zaj*' and '*muta'ah-harah*' again is the female form. So naturally they conclude that when it says *lahum*, 'for them' (males) there will be in Paradise *azwaaaj*, they translate it as female because *mu-tah-harah* - a female adjective - is attached to *azwaaaj*.

I'd like to argue that since the whole Qur'an is addressed in the male gender, if we say *lahum* - 'for them' - means only for the male, then the whole Qur'an is for the male. That means all duties and obligations and instructions are only for the male and the female would have to be left out. Therefore I conclude that '*lahum*' here is general and not male.

For '*mu-tah-harah*', the rule of grammar is like this: when there is the plural form, for example of '*gher zawul aqool*' which means 'those things that do not have any intelligence', the plural is written in the form of female singular. '*Mu-tah-harah*' is female singular but '*azwaaaj*' is plural. The adjective used for it is presented in the female singular form, but *azwaaaj* is not female, *azwaaaj* means 'pair' or 'a companion'. This is how I argued for several lessons that *lahum* means 'for anybody who has done good works and has gone to Paradise'... 'in it there will be *azwaaaj*' meaning 'pair' or 'companions' who will be pure.

Maulana Maududi in his translation says they will have chaste or pure wives, but he adds a little footnote to this sentence and he says that *zaj* means 'pair' and then he gives a long explanation of how a pure wife will get a pure husband and if her husband in this world was impure, she'll be given a new husband, a pure one. Similarly, if a husband was pure he will get a pure wife, if she was pure in this world, but if she wasn't then he will be given a new wife who will be chaste. I'm trying to point out here that even a male scholar of Maulana Maududi's calibre (who has all the requisite knowledge) does not have the courage of his convictions to put the correct word into the translation. He

translates it traditionally and then he goes on to explain that 'I also have this extra knowledge in case you're interested'. But the harm is done because most people will not read the long notes. They will just read the translation.

Surah Al Baqarah (2): verse 25

But give glad tidings
To those who believe
And work righteousness,
That their portion is
Gardens,
Beneath which rivers flow.
Every time they are fed
With fruits therefore,
They say: "Why, this is
What we were fed with
before,"
For they are given things in
similitude;
And they have therein
Companions pure (and holy);
And they abide therein
(forever).

Wa bashshi-rillaziina
'aamanuu wa 'amiluṣ-
ṣaali-haati'anna lahum
jannaatiin-tajriimiin-
tahtihal-'anhaar. Kullamaa
ruziquu minhaa miin-sama-
ratir-rizqaan-qaaluu
haazallaziruziqnaa miin-
qablu wa 'utuu bihi
mutashaabihaa. Wa lahum
fiihaa 'azwajaum-mu-tah-
harah; wa hu
m fiihaa khaaliduun.

وَبَشِّرِ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ أَنَّ لَهُمْ
جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ كُلَّمَا رُزِقُوا مِنْهَا مِنْ
ثَمَرَةٍ رِزْقًا قَالُوا هَذَا الَّذِي رُزِقْنَا مِنْ قَبْلُ وَأُتُوا بِهِ
مُتَشَابِهًا وَلَهُمْ فِيهَا أَزْوَاجٌ مُطَهَّرَةٌ وَهُمْ فِيهَا خَالِدُونَ ﴿٢٥﴾

Resource Person (2): To add to that: there is no Arabic form exclusively for the males unless the female plural form is also specified. The masculine plural form that is used to apply to males and females included in a given situation is the same form as the one that would be used for males only. An example: *attulabo fil gurfa* - 'the students are in the room.' The same form of *attulab* (masculine plural form) applies if both female and male students are in the room. The only way that *attulab* will mean only male students is if you say '*attulabo wa attalibat fil gurfa*', i.e. only if you have the female student plural form also specified then '*attulab*' means only males.

So this verse says "give glad tidings to those who believe and work righteousness." That is the '*hum*' that is referred to when it says *wa lahum*, 'and for them is this *azwajaum mu tah-harah*.'

The '*azwajaum*' in the Qur'an is not used to indicate female or male the way it does traditionally where they say *azwajaum* means 'wives'. Especially with regard to the Hereafter, there is a point that needs to be noted: the scholars traditionally will take any statement about the companions in the Hereafter as if they are all equal. In the Meccan period, when the Prophet was surrounded by very patriarchal thinking, the Qur'an used the terminology '*qurra'ain*', the *hurree*, the *hural ain*. *Hurree* is the image of the ideal woman in the perceptions of these patriarchal Bedouins: she is not only a virgin but she's white and has big eyes... This was something very attractive to them because the woman of settled families who never had to go out in the desert and get her skin brown was very attractive to them. This verse says something that's very important: '*muta'ashaabihaa*', that what you get in Paradise is like what you get here! The Qur'an

tried to say to the desert Arab at that stage, 'If you think that there is a beautiful woman here and therefore you want to do things in this life in order to get her, your epitome of beauty is available in Paradise'.

But the Qur'an goes further: after the Prophet went to Madina, the Qur'an never used that term again. It always says that in Paradise for those who believe, both male and female, will be pure companions. The term 'azwaa'j' was never used just for females or for males but is also an important characteristic that you say of pairs, of creation; in other words what you have is your companion in Paradise, a soul that is like your soul. It doesn't have to be your wife, it's not necessarily not your husband; you are paired on the basis of similarities in your basic self and therefore it is a union of a higher level. It's not just men who lust after women who are virgins and white and the like, it is people who believe and strive for Allah who have the benefit of being paired with other people like themselves in Paradise.

Resource Person (1): Muslims believe - perhaps universally - that the *hur* that are mentioned in the Qur'an are women but I want to make the point which has been made by Ghulam Ahmed Pervez in his writing: that the word '*hur*' is plural; and like the word '*azwaa'j*' it means both females and males in the Qur'an.

Son preference

Participant: [in the context of the language of gender parity] There is also Surah Al Nahl: (16): verse 72

[can somebody comment on this?]

Surah Al Nahl: (16): verse 72

And Allah has made for you
Mates (and Companions) of
your own nature,
And made for you, out of
them,
Sons and daughters and
grandchildren.
And provided for your
sustenance
Of the best: will they
Then believe in vain things,
And be ungrateful for
Allah's favours?

Wallaahu ja- 'ala lakum-
min 'aāfusikum
'azwaa'jañwwa ja- 'ala
lakum-min 'azwaa'jikum
baniina wa ḥafadatañwwa
ra-zaqakum - m i n a ṭ -
ṭayyibaat : 'afa-bil-baatili
yu'-minuuna wa bi-ni '-
matillaahi h u m yakfu-
ruun?-

وَاللّٰهُ جَعَلَ لَكُم مِّنْ اَنْفُسِكُمْ اَزْوَاجًا وَجَعَلَ لَكُم مِّنْ اَزْوَاجِكُمْ بَنِيْنَ وَحَفَدَةً وَرَزَقَكُم مِّنَ الطَّيِّبَاتِ اَفَاَبْاٰ طٰلٍ يُؤْمِنُوْنَ وَيُنْعِمْتَ اللّٰهُ هُمْ يُكْفُرُوْنَ ﴿٧٢﴾

Resource Person (2): The Arabic word for 'offspring' which eventually took on a male form and a female form has the same root: '*bin*' for daughter comes from the same thing as '*ibn*', the basic sound part of it is the *nun* and the *bay*: 'n', 'b'. So the use of

terms like this are not indications of only offspring of the male gender, it is offspring in general. The derivation of the term to include a female term and the male term is because the language has a requirement later on for a designation for what is female, *bint* as opposed to what is male, *ibn*. But '*baniina*' is not only the male offspring, and then '*hafada*' is also just the word for 'grandchildren' of any sex.

This is the problem that I keep trying to demonstrate: don't always say because it has this male seeming term that it means only males; there are some restrictions on the ability of languages to be able to express certain types of things. This is the thing that happens in feminist literature, which said: "Well, we want to be able to say either 'she' every time we want to refer to a person in the context or we want to say both 'she' and 'he'." If the Qur'an said 'she' and 'he' every time it referred to a context, stylistically the text would be greatly weakened. It would be trivialized. So the text also has a language constraint which we should not then equate to a conceptual or essential constraint. It is operating with language and yet it's talking about things that sometimes transcend language. So we have to be able to see the instances where it points to transcending the language. Only those people who want to make the Qur'an very small, leave it as if it means only male children. We want to make the text bigger, so we take the term and we realize that its root originally means any type of offspring.

Resource Person (1): A small point of interest here: in the Bible, women are mentioned only on two occasions: either they have done something wrong or they are crucial to the plot. Otherwise they are never mentioned. This is a general Biblical rule. For instance, if you look at the line of "Abraham begat Isaac begat so and so, ... begat," isn't it a little bit funny that all of these men are begetting each other? [general laughter]. But women were not mentioned: it was not a part of the Semitic tradition to mention women. So the Qur'an actually is very liberal because it mentions many women but generally they were not mentioned separately.

Linkages between Dress, Modesty and Sexuality

Chair: I think the next verses we need to examine are verses: 24:30-31, 7:26, and 33:59-60 which relate to modesty and purdah. I'd like to discuss not just the concept of purdah in Islam, but dress, and details of it.

Resource Person (1): Universally, the issue of purdah is the most important sociological problem that confronts Muslim women. This issue is of enormous significance and I'm not sure that we can do justice to it in a few minutes. If we are going to discuss it at all we need to do so comprehensively. It affects women in many societies including this society but also women living in the western world. If you go to any women's meeting held in North America, this is the sole discussion: how should you be dressed, how much of your hair should be visible, if one hair of your head is visible you're not a good Muslim and so on. It may not pertain to the women sitting around this table, but it does pertain to the lives of the majority of Muslim women. We have to ask what is the background to this issue and how are we to understand it, and these verses relating to purdah.

As background, I would offer that in traditional Islam and in some other traditional societies (including traditional Judaism and traditional Christianity), there was this notion that the world could be divided up into two kinds of spaces: public and private. Private space is the home, and this is the domain of women and public space is the whole world and this is the domain of men. There is also the assumption that as long as people are in their respective spaces, everything is all right with the world, and that there should not be a crossing of the barriers between these two worlds unless there is some very grave emergency.

I want to also emphasize that, historically, purdah did not originate with Islam. Purdah pre-dates Islam and there is a very strong emphasis on purdah in the Jewish and the Christian traditions. For instance, to this day, orthodox Jewish women wear the veil. Even if you look at the Christians, one of the most important statements of St. Paul (who is the chief formulator of the Christian tradition) is "I allow no woman to prophesy unless she wears a veil and if she will not wear a veil she should shave off her head", which was a declaration that she was a harlot. Let's get that historical picture in mind where the assumption is to keep women in their respective spaces. Existentially this means that all women are assumed to exhaust their capabilities or potentialities within the domain of the house, which means all women are seen only as housewives or housemakers, but the men have the freedom of the whole world and can be anything. This has become a very critical point of protest throughout the Islamic world.

The question is what does the Qur'an say about this issue? There are some very important passages in the Qur'an which deal with it. The most important passage is the longest Surah Al Nur (24): verses 30 and 31:

Surah Al Nur (24): verses 30 - 31

(30) Say to the believing men
That they should lower
Their gaze and guard
Their modesty: that will make
For greater purity for them:
And Allah is well acquainted
With all that they do.

(30) Qul-lil-Mu'-miniina
yaguz-zuu min 'abshaarihim
wa yah-fazuu furuujahum :
zaalika 'azkaa lahum:
'innallaaha kha-biirum-
bimaa yaşna- 'uun.

قُلْ لِّلْمُؤْمِنِينَ يَغُضُّوْا مِنْ اَبْصَارِهِمْ وَيَحْفَظُوْا
فُرُوْجَهُمْ ذٰلِكَ اَزْكٰى لَّهُمْ اِنَّ اللّٰهَ خَبِيْرٌۢ بِمَا
يَصْنَعُوْنَ ﴿٣٠﴾

(31) And say to the believing
women
That they should lower
Their gaze and guard
Their modesty; that they
Should not display their
Beauty and ornaments except
What (must ordinarily) appear
Thereof; that they should
Draw their veils over
Their bosoms and not display
Their beauty except
To their husbands, their fathers,
Their husbands' fathers, their
sons,
Their husbands' sons,
Their brothers or their brothers'
sons,
Or their sisters' sons,
Or their women, or the slaves
Whom their right hands
Possess, or male servants
Free of physical needs,
Or small children who
Have no sense of the shame
Of sex; and that they
Should not strike their feet
In order to draw attention
To their hidden ornaments.
And O ye Believers!
Turn ye all together
Towards Allah, that ye
May attain Bliss.

(31) Wa qul - lil - Mu '-
minaati yagzuuna min
'absaarihinna wa yahfazna
furuujahunna wa laa
yubdiina ziinatahunna
'illaa maa zahara minhaa
wal-yaz-ribna bi-
khumurihinna 'alaa
juyuubihinn ; wa laa
yubdiina ziinatahunna
'illaa libu- 'uula-tihinna
'aw 'aabaaa - 'ihinna 'aw
'aabaaa-'i bu- 'uulatihinna
'aw 'abnaaa-'ihinna - 'aw
'ab-naaa - 'i bu -
'uulatihinna 'aw
'ikhwaanihinna 'aw baniiii
'ikh-waanihinna 'aw baniiii
'akha-waatihinna 'aw
nisaaa - 'ihinna 'aw maa
malakat 'aymaanuhunna
'awittaabi - 'iina gayri
'ulil-'irbati minarrijaali
'awit-tifiillaziina lam y a
zharuu 'alaa 'awraatin-
nisaaa' : wa laa yaz-ribna
bi-'arjulihinna liyu '-lama
maa yukfiina min-
ziinatihinn. Wa tuubuuu
'ilallaahi jamii- 'an
'ayyuhal-Mu'-minuuna la-
'allakum tuflihuun.

وَقُلْ لِّلْمُؤْمِنٰتِ يَغْضُضْنَ مِنْ اَبْصَارِهِنَّ وَيَحْفَظْنَ
فُرُوْجَهُنَّ وَلَا يُبْدِيْنَ زِيْنَتَهُنَّ اِلَّا مَا ظَهَرَ مِنْهَا
وَلْيَضْحَكُنَّ يَخْمُرْنَ عَلٰى جُيُوْبِهِنَّ وَلَا يُبْدِيْنَ
زِيْنَتَهُنَّ اِلَّا لِبُعُوْلَتِهِنَّ اَوْ اٰبَائِهِنَّ اَوْ اَبْنَائِهِنَّ
اَوْ اٰخْوَانِهِنَّ اَوْ اَنْۢبَآءٍ بُعُوْلَتِهِنَّ اَوْ اِخْوَانِهِنَّ اَوْ
اَسْنَانُهُنَّ اَوْ اِلْتِجَاعِيْنَ غَيْرِ اُولٰٓئِكَ مِنَ الرِّجَالِ
اَوْ الْوُطُوْدِ الَّذِيْنَ لَمْ يَظْهَرُوْا عَلٰى عَوْرَتِ النِّسَاءِ وَلَا
يَضْرِبْنَ بِاَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِيْنَ مِنْ زِيْنَتِهِنَّ وَ
تَوْبُوْا اِلَى اللّٰهِ جَمِيْعًا اِنَّهُم مُّقْتَصِدُوْنَ ۝۳۱

We notice immediately that this injunction is given both to believing men and believing women, in fact it is addressed first to men and then to women. Again, we come back to this discussion that's continued these days: of distinguishing between the principles of *deen*, which are essential principles, and the elaborations of *deen*. The essential principle, of course, is the principle of modesty: that both men and women should behave in a modest manner. There is much greater elaboration in the case of women and this emerges not only in this passage but also in many other passages of the Qur'an. Then the question obviously arises, why the greater elaboration for women?

Before I look at that I want to point out that in this verse itself one thing is clear: that Muslim women are not required to cover their faces. Because if a woman was covered from head to foot why would Muslim men be required to lower their gaze? It's implicit in this passage.

Returning to why there are more laws relating to women than relating to men. If we look at the history of how men and women's bodies have been projected in the world, it doesn't take much to arrive at the conclusion that women's bodies have always lent themselves much more to advertising than men's bodies. I think 90% of the advertising, certainly that which goes on in the western world has to do with women's bodies. In that way women's bodies have always been more vulnerable. Going back to what was pointed out yesterday (also coming from Greek dualism), there has always been this idea anyway that women are bodies, and men are spirits. This very strong strand of thought runs through all these religious traditions. And, because women are bodies, therefore women need to be covered and cloistered and locked behind seven doors and so on! And not only are women bodies but, as St. Augustine said, women's bodies/women are very dangerous because they cause erections even in holy men. You find that same thought in Maulana Maududi, i.e. because poor men get excited, therefore lock up the women, therefore women must be covered! It's a strange kind of an argument and somewhere in today's discussion we must talk about Rokeya Sakhawat Hossain, this marvelous Bengali woman and her book *Sultana's Dream*. She really does deal with this very beautifully.

Anyway, the question here is the intent of the Qur'an in prescribing greater rules of dress for women than for men. Let's keep that in mind and look at Surah Al Ahzab (33): verse 59 (also often cited in this context).

Surah Al Azhab (33): verse 59

O Prophet! Tell
They wives and daughters,
And the believing women
That they should cast
Their outer garments over
Their persons (when abroad):
That is most convenient,
That they should be known
(As such) and not molested.
And Allah is Oft-Forgiving,
Most Merciful

Y a a a - 'ayuuhan -
Nabiy- y u q u l - l i - ' a z
w a a j i k a wa banaatika
wa nisaaa- 'il-Mu'-miniia
yudniina 'alay-hinna miñ
jalaabiibihinn : zaa-lika
'adnaaa 'a'ny-yu 'rafna fa-
laa yu'-zayn. Wa
kaanallaahu Gafuurar -
Raḥiimaa.

يَا أَيُّهَا النَّبِيُّ قُلْ لِّلْأَزْوَاجِ وَبَنَاتِكَ وَنِسَاءِ الْمُؤْمِنِينَ
يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ ذَٰلِكَ أَدْنَىٰ أَنْ
يَعْرِفْنَ فَلَا يُؤْذَيْنَ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا ۝

Surah Al Ahzab (33): verse 60

Truly, if the Hypocrites,
And those in whose hearts
Is a disease, and those who
Stir up sedition in the City,
Desist not, We shall
certainly
Stir thee up against them:
Then will they not be
Able to stay in it
As thy neighbours
For any length of time:

La-'illam yañtahil-
Munaafiquuna wallaziina
fii quluubihim-marazuñw-
wal-murjifuuna fil-
Madiinati lanug-riyannaka
bihim gumma laa
yujaawiruu-naka fiihaaa
'illaa qaliilaa

لَئِنْ لَّمْ يَنْتَهِ الْمُنَافِقُونَ وَالَّذِينَ فِي قُلُوبِهِمْ
مَّرَضٌ وَالْمُرْجِفُونَ فِي الْمَدِينَةِ لَنُغْرِيَنَّكَ بِهِمْ
ثُمَّ لَا يَجَاوِرُونَكَ فِيهَا إِلَّا قَلِيلًا ۝

The context shows that women in those days were in danger of being molested. If a woman went out of her house there was great danger that she would be taken as a street woman or ... molested. Therefore what is being prescribed here is that they should wear this outer garment as a means of identification, as a means of saying 'leave me in peace, I am a chaste woman, don't bother me'.

Clearly, the previous passage was saying: there is no prohibition on what women wear. You can wear anything that is ordinary, but don't engage in exhibitionism. Women are allowed even to wear ornaments provided you don't go jingling down the street. The principal statement is don't do things to attract attention to yourself, i.e. if you don't want to be treated as a sex object, then don't dress up like a sex object because if you do then you're going to be treated in certain ways.

This next passage is giving a reason (that links up with the discussion we had on the law of inheritance yesterday). The purpose for wearing this garment is that you should be identified as a chaste woman. My educational experience of being in an all-girl Pakistani institution was one year in a college with a *burqa* room. When girls came to the college, they would take off their *burqas* and deposit them in the *burqa* room because they didn't need to wear it in the college. It was common knowledge, that when there was a girl and she had a rendezvous with her boyfriend, she would come to the *burqa* room, wear a *burqa* and go out because the *burqa* made her anonymous. So today, this garment is not a means of proclaiming that you are chaste. I would argue very strongly that because the reason for this prescription has vanished, that this prescription no longer applies. This prescription was given attached to a reason and if the reason no longer holds then the intention of the text is more important than the letter. The purpose of wearing this additional garment was protection of the women so that they could go about their business safely in the world, whereas as I pointed out earlier, according to the Qur'an, confinement of women to the home is the punishment for unchaste women. The situation is reversed today. If you're a good Muslim woman, you're supposed to be within the *char deewari* (four walls). So these prescriptions in the Qur'an relating to purdah have been turned around.

One final point is that it's very important to understand that the basic rule, not in the Qur'an, but in traditional Islamic thought is segregation. The ideal situation is if men and

women are segregated, they live in separate worlds. Of course, there are two places in the world where this actually does happen: one is Saudi Arabia and the other one, in my experience, is the Harvard Divinity School [laughter]. But the ideal is to keep them separate and purdah is an extension of the idea of segregation: basically keep them apart but if a woman has to enter into the men's space, then she should be nameless, faceless and without any identity. We cannot therefore deal with the issue of purdah without the idea of segregation, and the issue here is, do we believe in a world in which men and women are not allowed to mix, to work together? Here, we run into a tremendous contradiction in all the Muslim countries including Pakistan where the late General Ziaul Haq kept saying 'I want women to be part of the national work force'. That can't happen if you have sex segregation and purdah so we have a tremendous tension between national goals proclaimed by Muslim societies and these social norms.

Participant: If purdah can be misused by certain women, it doesn't mean that it is something wrong. One thing more, exhibitionism can be stopped by wearing the *chaddar*. Purdah does not necessarily mean *burqa* and covering of the face, purdah means covering your head and everything that shows your sexuality. It just means that you should leave your sexual identity within your house for the enjoyment of your husband. When you go into society then you should go as a human being, that is, your personality as a human being and not as a woman should be recognized. You should not show your womanhood. Purdah is observed by everybody in Iran and those women are active in every field of life, they are ministers, they are in foreign affairs, they are directors of certain institutions, they are in the legal profession. So I think that it is not necessary that if they are observing purdah that they are segregated from the men, e.g. air hostesses, have left their womanhood in their house and are just as men are.

Secondly, we use make-up and different types of dresses and colourful dresses, but men do not. Let us investigate the psychological background for that. If they do not need anything to beautify themselves then why are we so keen?

Resource Person (1): Just a very brief response. First of all when we use the word 'purdah', one of the basic problems is that there has come about the use of the word 'veiling' especially in the western media. It's a very misleading term because there is no such thing as veiling. There are 200 varieties of dress that go under the name of 'veiling' and they are not all the same. A woman who is dressed from head to foot in a veil is not the same thing as a woman who is wearing a *dupatta*. It's a different dress, it produces wholly different effects. So I think when we use the word 'purdah', in the interests of accuracy, we should designate what we are talking about.

Secondly, the contention that everybody in Iran is happily wearing a purdah: it is a coercive measure. In 1935, the father of the Shah of Iran pronounced an edict which outlawed veiling, i.e. wearing the *chaddar* in Iran, and his soldiers went out and by force took the purdah off of women's heads. It was an act of violence, and what has happened under Khomeini's regime is that it was re-imposed upon women. The first was an act of violence and oppression, the second is an also act of violence and oppression. The whole discussion of veiling in the context of Iran, in the context of Egypt, is a very complicated question, and we have to discuss it separately if we are going to discuss it at all.

[rebuttal and general discussion brought to order by the Chair]

Participant: In response to the remark that women should not dress up as sex objects because then they'll be treated as a sex object. It's a very subjective view on what is a sex object and what is not; and where the lines are drawn. It may be that women are not dressing up as sex objects and yet they are treated as such. They may be fully covered, etc. and still be raped. Therefore there's something problematic here and it should be clarified or stated in a different way.

Participant (1): I agree that perceptions of sexuality and of how a woman should be dressed or not, differ from country to country and from time to time. I come from, I think, the largest Muslim country in the world and there 90% of people live in villages. The women don't have enough money to wear a blouse, the top half of their bodies are uncovered and those women work in the fields next to the men and both sexes have to work so hard, they don't have time to look at each other. And if you were to go and distribute blouses to them in the villages and they strutted around the village roads wearing those blouses, then they would be sex objects [light laughter... Chair: That would be a sign of affluence?!...] because that would be as if they were trying to dress up like a *'bibi'* (upper class woman). The reaction would be "You're wearing a petticoat and a blouse, what do you think you are?" The perception is different. That kind of poor woman, is just wearing a sari wrapped around and that's how 90% of the women are dressed in Bangladesh and the identity of Muslims is very, very strong.

[discussions]

Chair: Since time is limited I request each one give their point of view first and then those of us who've spoken once will speak again.

Resource Person (3):...India is a secular nation and since I teach Islamic culture I'm often asked to define what you mean by 'the culture of Islam'. by a woman's dress in Islam, by a woman's carriage in Islam. These problems set me thinking. Of course one has to conclude for oneself after reading the verses directly. I don't think that Islam has prescribed any particular dress. For example in India, women wear saris, and in Pakistan they wear *shalwar kameez*, and in Malaysia they have a different form. I think the main point is not the letter but the spirit, which would mean modesty, a form of a dress which would be not very attractive.

When I went to perform my Hajj, I asked what I should wear and I was told by the most orthodox elements (my teachers right since childhood) that I was allowed to wear any coloured dress. It is not necessary to wear a white dress. So I wore printed dresses with full sleeves and covered my hair and did not use the traditional norms.

Dress is extremely subjective: if you are covered, you are modest. I don't mean that you wear bikinis and stroll around the streets. I mean you wear a dress which protects you and in that connection, I should like to read a paragraph in a paper that I presented pertaining to these verses.

"The seclusion of women undoubtedly possessed many advantages in the social well-being of an uncultured, unsettled, primitive community. Seeing the widespread laxity of morals among all classes of people, the Prophet Mohammed strongly recommended modesty in appearance and dress, but to suppose that his recommendations should assume its present form and that he enjoined seclusion of the women is wholly opposed to the spirit of his reforms."

Further recommendations to women are they should not display their beauty or ornaments except what must ordinarily appear thereof. 33:59-60 is self-explanatory. Two points should be made. 1) If women did not go out, where lay the necessity for prescribing a distinctive dress or the occasion for their harassment. That means they did go out. And 2) it seems that this particular injunction was required by special circumstances which then prevailed in Madina where the Hypocrites would molest a woman and feign modesty by suggesting that they thought her to be just 'one of those women'. A particular incident created a serious brawl which led to a few killings.

There are also another two verses, Surah Al Ahzab (33): verses 32-33.

Surah Al Azhab (33): verses 32 - 33

(32) O Consorts of the Prophet!
Ye are not like any
Of the (other) women:
If ye do fear (Allah),
Be not too complaisant
Of speech, lest one
In whose heart is
A disease should be moved
With desire: but speak ye
A speech (that is) just.

(32) Yaa - Nisaaa-'an -
Nabiyyi lastunna ka-
'ahadim-minanni-saaa-'i
'inittaqaaytunna falaa
takhza '-na bil-qawli
fayaṭma- 'allaḥii fii qalbihii
marazunw-wa qulna
qawlam-ma '-ruufaa.

يٰۤاَيُّهَا النَّبِيُّ كَاٰحِدٍ مِّنَ النِّسَاءِ اِنْ اَتَيْتُنَّ فَلَا
تَخْضَعْنَ بِالْقَوْلِ فَيَطْمَعَ الَّذِي فِي قَلْبِهِ مَرَضٌ
وَقُلْنَ قَوْلًا مَّعْرُوفًا

(33) And stay quietly in
Your houses, and make not
A dazzling display, like
That of the former Times
Of Ignorance: and establish
Regular Prayer, and give
Regular Charity; and obey
Allah and His Messenger.
And Allah only wishes
To remove all abomination
From you, ye Members
Of the Family, and to make
Your pure and spotless.

(33) Wa qarna fii
buyuutikunna wa laa
tabarraja tabarrujal-Jaahi-
liyyatil-'uulaa wa 'aqim-
naṣ-Ṣalaata wa 'aatiinaz-
Za-kaata wa 'aṭi '-nallaaha
wa Rasuulah. 'Innamaa
yuriidul-laahu liyuḥhiba
'aḥkumur-rijsa 'Ahlal-
Bayti wa yuṭah-hirakum
taṭhiiraa.

وَقَرْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ
الْأُولَىٰ وَأَقِمْنَ الصَّلَاةَ وَآتِينَ الزَّكَاةَ وَأَطِعْنَ
اللَّهَ وَرَسُولَهُ إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ
الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا

This is evidently an injunction against parading finery and exciting the uncontrolled passion of youth... [general laughter and comments of 'They're the ones who need it!']. Its implication is against immodest exposure and provocative display. These injunctions had for their object the promotion of decency among women and the improvement of their dress and demeanor and their protection from insult. It should be noted that the condition of women among the pre-Islamic Arabs was very degraded. The sacrilegious

war, which lasted 40 years before finally being put to an end by the Prophet Muhammad, was caused by an insult offered to a woman of Basoos at one of the fairs of Okaz. The Prophet Mohammed wanted to reform and enjoin respect and honour for women. His directives, in their true spirit, seem easy to understand when viewed against the social and moral chaos from which he was endeavoring to evolve order.

One more thing: the fact that in early Islam you find women in several fields of endeavor. Take Bibi Aisha, the daughter of Abu Bakr and wife of the Prophet, recognized for her sharpness of intellect, who personally conducted the insurrectionary movement against Ali in what is known as the Battle of Jamal. This signifies the leadership of women in fields of public interest. Then Bibi Fatima, the daughter of the Prophet, often took part in discussions regarding *khilafat*. Bibi Zainab, the granddaughter of the Prophet, who shielded her nephew from the Umayyads and brought them to shame in their own courts for their misdeeds... I have a number of other examples here which would run into a little more time than we have.

Resource Person (2): I wish to make the same point and give another verse that we should include: Surah Al Araf (7): verse 26.

Surah Al Araf (7): verse 26

O ye Children of Adam!
We have bestowed raiment
Upon you to cover
Your shame, as well as
To be an adornment to you.
But the raiment of
righteousness -
That is the best.
Such are among the Signs
Of Allah, that they
May receive admonition!

Yaa-Banii-'Aadama qad
aanzal-naa 'alay-kum
libaasañy-yu-waarii saw-
'aati-kum wa riishaa. Wa
libaasut-taqwaa zaalika
khayr. Zaalika min
'Aayaa-til-laahi la-'al-
lahum yaz-zakka-ruun

يٰٓبٰنِيْٓ اٰدَمَ قَدْ اَنْزَلْنَا عَلٰيْكُمْ لِبَاسًا لِّاَوْرَاقٍ سَوَآءٍ لَّكُمْ
وَرِبَّشًا وَلِبَاسُ التَّقْوٰى ذٰلِكَ خَيْرٌ ذٰلِكَ مِّنْ
اٰيٰتِ اللّٰهِ لَعَلَّهُمْ يَذَّكَّرُوْنَ ﴿٢٦﴾

Allah says to the Children of Adam and to all the descendants of Adam that He gave dress to cover your forms and that the dress of piety and of righteousness is the best form of dress. This reiterates the particular points that were made. It is not the amount of material that you wear but the caliber of your inside coming through that counts. So, you can dress from head to toe like donning the *burqa* in the girls' school and yet you're going out to an illicit interlude. It's not the dress itself...

More importantly, the verse came down in a specific context in which modesty was perceived as dressing and wearing this amount of material and these colours, etc. The injunction for *libas-e-taqwaa*, [Urdu] for pious dress, and for modesty is the overriding principle.

In new cultures what ordinarily appears in that environment becomes the standard by which you judge modesty, not the materials and the stitching that they had in Saudi Arabia fourteen hundred years ago. Thus the women in the village who have nothing on

their tops who are in accordance with the prescriptions and the necessities of their environment are considered modest. From culture to culture it is necessary that there be variations that reflect the needs and the attitudes of the people that are there. The attitudes and needs of the people that were in Saudi Arabia fourteen hundred years ago was one form. You don't transpose that same literal form to every culture all around the world.

Participant: What I have to say is not on the verse but its impact since my work is on the socio-political impact of Islamic revivalism, and the work that I have done with university students. My concern is that when these students are pressured to cover up, (in Malaysia we call them '*militolokung*' who cover up in the long robe and the head dress) their behaviour and their personality and character are all then confined to a standard of behaviour as defined by the group that they are in. So once you've covered up then, for instance in class you're not supposed to speak up, you're not supposed to ask too many questions, you're not supposed to talk to the boys, you're not supposed to laugh loudly, you can't hang out anymore. My concern is the impact on young people once you conform to what has been defined by the Islamic code of dressing.

Some people say "What is wrong? You can be a doctor, a lawyer, we're not saying you can't go to the university and all that, all we're asking you is to cover yourself up." But that's not where it stops. Once you cover yourself up then a whole code of behaviour comes into play that restricts your development, preventing you from reaching your full potential.

Resource Person (1): I want to just take up a minute of your time and read something to you which has not been said in the context of purdah, of veiling. This is a very famous statement by St. Paul who was, as I have said, the chief formulator of the Christian tradition. He says:

"Christ is the head of every man, man is the head of every woman, and God is the source of Christ." So here we have the hierarchy: God, Christ, Man, Woman. "For a man to pray or prophesize with his head covered is a sign of disrespect to his source. For a woman, however, it's a sign of disrespect to her source if she prays or prophesizes unveiled. She might as well have her head shaved off. In fact, a woman who will not wear a veil ought to have her hair cut off. If a woman is ashamed to have her hair cut off or shaved she ought to wear a veil. A man", this is very important, "should certainly not cover his head since he is the image of God and reflects God's glory but Woman is the reflection of Man's glory for Man did not come from Woman, Woman came from Man and Man was not created for the sake of Woman but Woman was created for the sake of Man."

The point of this is, as said, veiling is a very strong Jewish custom, and what this passage (written not by a Jew, but a Christian), is that the woman wears the veil as a sign of woman's submission to man. This is why there is this tremendous emphasis on covering your head. If it's a matter of *zeenat* or ornamentation or whatever, what about the face: that is certainly more relevant in a discussion of ornamentation than one hair over your head. But this covering is a sign of submission to man. Therefore, as already said, it's a whole thing, once you wear the veil, in its wake come all of these things. I think it's fundamental to know that historically veiling was a sign that a woman was subservient to a man.

Participant: I was a little concerned about the word 'purdah'. It's not an Arabic word. In

Pakistan when we use the word 'purdah', (probably a Persian word) it means two things:- 1) segregation and 2) the covering of the face. It includes both these things and when I started studying the Qur'an, I started wondering where the concept of covering the face came from. First there is 33:59 which is addressed to all believing women and then there is 33:32-33 which are addressed to the wives of the Prophets and are very clear. If you look at 33:32-33 that means there was a different set of rules for the wives of the Prophet, and they are asked not to speak openly to men, to speak from behind a curtain, etc. This rule was actually made for the wives of the Prophet. Later on, a lot of the *Ashabiyya* (Companions of the Prophet) who were close to the wives of the Prophet, started copying the wives for, naturally, this was a more elevated form of behaviour. So came about the practice that in most societies the elite women started covering their faces. After that the *ulema* got so used to the idea, that they just couldn't accept the idea of women uncovering their faces and then they started saying that this is an injunction from God and started adding the word 'face' in the Qur'an, where the word 'face' is not given in the 33:59. But they started adding that word within brackets.

Participant: Firstly, I agree with the earlier comment that if the intention is to prevent women from being molested, then the physical act of covering yourself has not proved to be a protection. Women have been dragged out of their homes and raped inside their homes as well as outside. So a physical veil, whether it's a purdah that divides the house or covers the face, doesn't help in that situation. Secondly, I just wanted to mention that the *burqa* in the form we know it in the sub-continent, emerged in the late 19th century in Bengal as a way for Muslim women from well-to-do families to move out of the seclusion of their homes in which they had been bound. Adopting this portable veil allowed them greater freedom so that they could move about in their anonymity.

Another short comment: referring to women in Iran leaving behind their womanhood in their homes when they go outside. My problem is that I think men do dress in what they think is attractive. In Pakistan so many young men all wear very tight blue jeans and shirts and T-shirts or whatever. However, it is not they who are said to be 'westernized', or 'unIslamic'. It is women, all of us here who wear *shalwar kurta* and are fairly well covered, who are. To illustrate this question of dress (I don't know how many are old enough to remember but) when the PIA pyjama cut started in the 1960s there was a lot of argument whether this was approved of or not by society. One of my aunts was arguing that this was very provocative and therefore should not be worn by any of us in the family. My great aunt replied "I don't understand you. In my youth we used to wear a lace *choli*, (a sort of bra) and on top of that we had a lace or a very thin lawn *shameez* (long shirt). There was nothing that was covering us physically so we were always bent double in our shame and we were always trying to look for a thicker *chaddar* to wear when meeting other people." So the context in which we veil is important and let's not forget that men also wear clothes that they think is attractive, whether we think it is attractive or not is a different question [light laughter].

A question to those who speak Arabic: we're always told "You have to cover up your head". I don't see, at least in the translation, any reference to head covering. What word in Arabic says 'draw thy veil', what is that word 'veil'?

Resource Person (2): It is '*khumurihinna*', the plural of '*khumur*'. It was later prescribed that the *khumur* is the piece that you wear on your head. But this is something that evolved. The *khumur* was a piece probably more similar to what you wear in Pakistan that goes across your breast because it says "They should draw their veils over their

bosom" and the bosom is the top part. It doesn't say the entire breast, just this part because the dress like that of your great aunt was what was prevailing then and they had these low cleavages, with this area being shown. The prescription says to draw it over your chest and there's no place where there is a word that says anything with regard to the head. Not in the Qur'an. There are other words. There is '*hijab*', used for the wives of the Prophet. Later on they said it also means that everybody should wear a *hijab* all the time and it should go from head to wherever, but the words that are used were later derived to contain meanings that included the head because of other things but not because the verses themselves said it.

Participant: In talking about Haj, it was said that we can wear any type of dress, i.e. *shalwar kameez* or any colour; that is perfectly correct. *Hijab* is only that we must cover our heads. In *shalwar kameez* just put the scarf on the head. That is enough. *Hijab* may be of any kind. The limits have been described.

Another point is that this order was addressed to the wives of the Prophet. Now we see 33:59 [see p.203 above] is also addressed to '*nisaaa-il-Mu'-miniina*', i.e. to all women of faith.

The verse speaks of '*jalaabiibihinn*': that we should put a covering on the head that covers this part of the body also. If I don't follow a particular thing or my daughter or my mother doesn't, this does not mean that this behaviour is ordered by Islam. Whether we follow or not, Islam's order stands. Finally, Hazrat Aisha, Hazrat Fatima, and Hazrat Zainab, are mentioned as leading figures, not only for women but for men also, but they were under *hijab*. If they could lead their society with *hijab*, what is the obstacle for us? I think we can do our jobs more easily if we observe that type of *hijab*. Lastly if women do not have even a blouse then this is not an Islamic society because Islamic society does not allow such discrimination in society. If the people are so poor then we should do something...

Participant: If purdah is an extension of segregation, can we look at it with the help of the concept of freedom? I'm raising this because when we take the concept of dress and modesty by itself, a great deal of confusion seems to occur because trying to codify dress or modesty itself is a difficult task.

Related to that second question: are we saying that if whatever codification exists is not followed, then there is a religious legitimacy to molest women? And to what extent is the legitimization of molestation of women acceptable (or can be argued against or for)? That's why I thought that perhaps the concept of freedom could be used for interpreting purdah as segregation.

Resource Person (3): A very interesting point has been raised but I'm not going to really answer the question. My concern is with marriage and divorce and I deal with men and women who come to me with problems. In one case, a couple in their early 30s, very compatible, were married for 14 years, had one baby. Then, the man who used to travel a lot, met his former girlfriend (who was already married to another man) and fell very much in love with her. This came as a shock to his wife, naturally. This man said he would give her everything she wanted in the form of maintenance, a car, money, but said he can't do without this other woman. The girl happened to be a friend, and I'm absolutely against marriages breaking down unless there's really enough cause. When I found out what happened I began to review the situation, in terms of segregation, of mixed groups that get together, the man-woman relationship, and what direction we are headed in.

I asked myself how much contact between the sexes is healthy, how much is unhealthy? If it is unhealthy, to what extent? I have boys and girls in my class, and the girls always ask me questions such as "We are not allowed to go out after 6pm, but our brothers go out after 8pm. Why should boys be given this kind of freedom and girls not? Why are there these double standards?" It all boils down to the fact that there is one standard for the boy and another for the girl. Why is it that if a boy goes out with that girl, then nothing happens, he'll get away with it in society, but the girl, she has to be protected. It is we who teach our boys to rape because we are not teaching them the correct norms.

On the question of society and mixing, my students ask "Where should we stop? If our brothers can dance with another girl, why can't we dance with another man?" Please understand that for a young student, this is a very relevant question. I said, "Putting your arms around another man, his putting his arms around you, is not Islamic society". To that extent there is to be the *hijab*. It was very rightly pointed out from 7:26, it is the *hijab* of modesty, of the heart, of the spirit, of the soul - of everything that comes out from within you. But where are the lines to be drawn? What kind of society can we create whereby we mix yet maintain those limits of mixing so that we don't create such complications as we have. Our societies have more divorces because women come into the lives of other men, the other woman is also involved.

Participant: I take serious exception to the contention that the absence of a blouse makes for an unIslamic society.

[simultaneous comments]

Chair: I think the contention was that there is no social justice and it's atrocious to have women go around without blouses. I think that was the idea.

Participant: This poverty and the inability to go around with a *chaddar* exists in many other countries. I don't think that's the issue at all.

Chair: I think this is getting out of hand.

Participant: I think I made it quite clear: it was not just an economic notion. It's very much a cultural notion. If you gave these women 1,000 takas or rupees, they would probably go and buy something else rather than a blouse.

Participant: My point is that the very fact that they do not notice may imply that it is an attitude of mind, of how you see other people. If they're not staring, it speaks well for the men. And if they notice when a woman is wearing a blouse it means it's human curiosity that's coming into play not necessarily the men being provoked.

Participant: Three comments, the first on the injunction of veiling being in order to protect women from being molested, raped. It seems very close to what is said even now, that if you are raped it's because you asked for it. We should really not follow that line at all.

Second, about Islamic dress. There is now something specific which is known as 'Islamic dress', (well maybe not in Pakistan but in the North of Africa, in a big part of Africa, in the West, in Europe, certainly) and it is the Iranian model which is spreading.

This is absolutely different from what culturally was known as veiling. Certainly it's completely different from what we had in Algeria and the rest of North Africa. This came about because, at times, people were so poor that when this so-called Islamic dress was distributed for free, people were quite happy to have that. (Which brings us back to the point of poverty). This dress is distributed and used regardless of the normal cultural, traditional outfit for women. Personally I feel this is extremely imperialistic.

The third thing is, as said, together with the so-called Islamic dress comes a whole code of behaviour. As far as Algeria, England and France are concerned, it's not limited to not laughing, not mixing, etc., but also deciding that you will not attend biology class, you will not attend music or drawing class, etc.

Participant: Last year, I stopped in Saudi Arabia for *Umra* and I was covered from head to toe the way I was supposed to be. At that time my braid was somewhere near my knees, so the head covering didn't quite cover the back of my braid. At various points during *Umra*, a lot of women told me it was *haram* and that I should cover it. Apart from that, one of the interesting things that happened was that, there was a lot of rush. When you walk between Safa and Marwa there's a point when, in turning around, there's an immense crush. That day there were so many people that there was just about enough space for a person to stand, maybe less. At one of the points, I was about to turn, there was a man behind me who basically gripped me around the waist and kept on muttering that he would get me through there, he kept on saying that but he was feeling me all over. I just want to say that covering doesn't mean anything not even in this most holy of holy places for Islam. When I came back from *Umra*, I really wanted to have nothing to do with Islam. As far as sexual harassment was concerned I had been told if I covered myself it wouldn't happen.

The other thing is that out of the numerous people I've talked to, a very hefty percentage of Pakistani students have gone through some form of molestation at home. Something that shocked me beyond belief. Of the limited people that I've talked to, one out of every three claims to have been molested by a member of the family or by the *maulvis* who come to teach them the Qur'an at home. Women in our society do not want to deal with it. Mothers do not want to deal with it, sisters do not want to deal with it. I can tell you from very personal experience, nobody wants to talk about it and if you want to talk about it, they're very afraid. They seem to believe the family, as the monolith we know it, is going to crumble and there will be nowhere for women to go. If your uncles or fathers or grandfathers are doing anything, nobody wants to talk about it because if notice is taken, where is this woman who has no independence of her own going to go? As a result, children are completely crushed and they can't say anything. I really think you need to address the issue of women who get molested within the home as well.

People want to talk about incest as the deviation from the norm; I don't think it's that much of a deviation it happens too often for it to be a deviation. Apart from that, if the extended family (or the family) is the monolith that it's supposed to be, then why does it end up being the disaster that it invariably turns out to be? I speak from having observed too many cases for it to be just an aberrant personal opinion.

Chair: This is what was being highlighted earlier: there's one contention that if you're properly covered and not a sex object then you'll be just left alone to your own devices. What's coming up now is that this is not so and your provoking somebody, or attracting somebody, or whatever, has nothing to do with your dress but relates to the attitudes the male has towards the female. This is something that we should talk about.

Participant: I would like to place in front of this group the following:

If we all believe that the first premise in Islam is that men and women are created equal, period, then in that context I would like to pose the question: is there space within Islam which says molestation is legitimate provided the code (of dress and of modesty) is X, Y and Z and has been violated. If we concede that molestation of women is legitimate in Islam, then my question is: what would be the chief determinant of the codification of molestation? From the discussion, the determinant appears to be men's ability to get excited, which is a biological factor. But we're also saying that it may vary from culture to culture, from country to country. If in Bangladesh men don't get excited if women are without a blouse it seems, over there, it is not legitimate to molest a woman. In other places, they're getting excited if a woman is fully covered, suggesting molestation becomes legitimate. If we are saying that the determinant of the codification of modesty and dress would be man's state of excitement, then we are saying that it is nature, a biological feature in men. A feature not in women because men go around in whatever way they want to, and there's no assertion on the part of women's groups or women or even scholars that "Women are getting excited so there should be a determinant for men accordingly."

Connected with that is the concept of responsibility. Once you say "Yes, there is a space within Islam for molestation of women as a legitimate act", then we are saying that the responsibility falls on women. I'm emphasizing this question of legitimacy of molestation in Islam because I find that the attempt to arrive at a codification which is acceptable in a monolithic way is nearly an impossibility. I would like to propose the concept of freedom and responsibility (that goes with it), as something to be evoked in terms of trying to understand this. So that we can arrive at a point where, whether the woman wears make-up or not, whether she wears a blouse or not whatever, her right is not to be molested.

Participant: I just want to add that rape within the family is something we hardly ever discuss. It's never ever talked or written about or researched. In 1980-81 and 1982 I conducted a research in Algiers on unwed mothers and illegitimate and abandoned children. In the course of this research I came across lots of cases of young women, under 20 in general, who were pregnant and who were still virgins. Which meant that they had had very incomplete intercourse. They were also the kind of young women who are very closely watched, who don't go out of the house (or hardly) and who are told to go to the baker and be back in about 3 minutes - very closely watched. The only explanation for these pregnancies was that they were raped within the family and very quickly. We really have to look at this because we make the assumption that it does not exist in the Muslim context. This is not true.

Participant: In trying to determine the form of dress, and standard of modesty, if we say that it depends on different cultures and different time periods and all that; by extension then, as Islamic revivalism goes on and with time, increases in fervour, as more and more people cover themselves up, the standard of modesty in that society is going to change. Then the standard of the proper dress for the women would be wearing the veil or wearing the *hijab* or wearing the blouse. Meaning that as a society evolves, because pressure is being put upon people in a certain way, that will become the new standard of accepted modesty and accepted dress in the Islamic context. Then that is also a problem, how do we want to define the dress then?

Participant: I have some comments focusing on 24:30-31 [see p.202 above], the first point is that this order 'to cast down the looks and guard' is for both women and men. Again, this goes back to the Qur'anic framework of social justice and equality we discussed earlier: if I agree to cover myself, he has to cover himself also. This order is for both women and men, and if both of us obey, there is no problem. The problem is that men refuse to obey this order. They put all the responsibility on the woman and subjugate her. What has happened is that the man refuses to control himself (or has a problem of controlling himself) so he puts all the responsibility on the woman. She has to cover herself. This is the first point.

The second point, if I agree as a woman to cover myself it means that I agree that I'm a sexual object only, I'm not a human being. I heard somebody say that I have to leave my sexuality at home to be a human being. I disagree with this. I am a human being within my sexuality. I do not have to leave my sexuality at home to be a human being. In the same way the man is a human being with his sexuality. The problem is that we are both human beings with our sexualities.

Resource Person (1): The issues of veiling and segregation ought not to be confused for they are two different issues. The argument that is coming through to me is: wearing a modest dress does not protect Muslim women from molestation, therefore why wear the modest dress. This is a very dangerous argument. Essentially, it's a reaction. I can understand your reaction when a man is trying to rape you in the middle of performing Haj, and I think most of us have been through this type of experience. I had an identical experience when I went to Iran in 1980 as part of a delegation invited to attend the celebration of the Iranian Revolution. We were ordered to wear these very heavy black *chadors* and were all dressed in that way standing in this crowd of one million people to hear the Imam. Despite the dress and crowd, these men were trying to molest us. This goes on all over the place, but nonetheless, I think we have to keep the issues separate and go back to the intent of the Qur'an.

First, as said before, the law of modesty in the Qur'an applies to men and women both and applies to them equally. That's the law that is binding for all Muslims for all times.

The other laws were contextual; they were given in a certain historical context and those laws are changeable, i.e., if in that society women who did not wear a certain dress were molested then certain things are given in the Qur'an and we have not to confuse the generic with the contextual.

On the other issue of women as sex objects, the point made was: it's subjective. Certainly there is no such thing as 'Islamic dress'. But there is the Islamic law of modesty. You have to interpret the Islamic law of modesty, a) according to your own conscience and b) according to your cultural context. What is modest in one society is not modest in another society and so on. There is also a common sensical point of view that needs to be taken into consideration here that has nothing to do with theology or ideology or anything. It has simply to do with survival. Let me give you an example. Several years ago, two Czech friends had come to visit Pakistan. The woman was an art historian and was very beautiful; over 6 feet tall, blonde. It was the era of the mini-skirt and that's how she was dressed. She asked to be taken to the old Gates in Lahore. I was very naive and one day she was dressed that way and we went. The Gates of Lahore have very narrow streets and tall houses and literally thousands of people looking over the roof tops and so on. With this very attractive woman dressed in a mini-skirt, in 30 seconds we had hundreds of people there, looking under her legs, at her,

pushing her from this side and that side and within 5 minutes we had to flee. The next day, she wanted to go to some place else and asked to borrow a dress from me. This is not theology or ideology, it's common sense. In some places I would do the same. Feminist as I am, I think you have to use your common sense.

It is very, very important to remember the point I have made many times in this meeting - that the Qur'an is always proceeding at two levels: the normative level, where it is setting forth ideals, (and in this case the ideal is the law of modesty) and secondly, taking into account the existential situation of what was going on, it is giving you remedies to deal with that. We have to separate those two, because the existential realities change; they are different in different places.

The question of freedom is a very large question and I want to talk about it concretely. It needs to be illustrated. The question of purdah, of veiling, is extremely complicated and the case study I want to take is Iran. In the Iranian revolution the *chador* became one of its foremost symbols; certainly in terms of the western media where for months on television, the one symbol of the Iranian Revolution was these thousands of women wearing the black *chador*. It's important to realize that in the context of the Iranian Revolution, the *chador* was a symbol not of one thing, but of many things. First it was a symbol of political defiance which I illustrated before; the Shah's father had ordered it taken off and so the woman put it on as a means of political defiance to the Shah. Second, it had an economic meaning because Iran like most other Muslim countries is a land of tremendous economic disparity with very poor people and very rich people. In fact, the city of Tehran which is divided into South and North explains why the Revolution happened. Southern Tehran has the worst slums in the world and northern Tehran has nine palaces including the famous crystal palace; it's incredible to see such poverty and such wealth in such close proximity. In these circumstances the *chador* equalized, because no matter whether you're rich or poor, drape a *chador* around yourself and you're all the same. You cannot have a revolution without unity and the *chador* brought about that unity and a sense of removing class distinctions. Then as the Revolution progressed, the *chador* also acquired an Islamic meaning. I do not believe that the Iranian Revolution was Islamic to begin with: it was political and economic. But as it progressed it did acquire an Islamic flavour and then the *chador* acquired an Islamic meaning. But this was only one of its meanings.

The Revolution supposedly succeeded and the Shah left the country. On February 3, 1979 Ayatollah Khomeini returned. There were placards and posters all over Iran saying "We honour the women of Iran"; and he publicly thanked the women of Iran for their contribution without which the Revolution would not have taken place. Then he said "We honour these women and now would they please go home!" That was the very first edict issued by Ayatollah Khomeini. The next was an assumption that all these good Iranian women would forever wear the *chador*. So this thing which they had taken on as the symbol of their freedom became a symbol of their bondage. They no longer had the freedom to take it off, because if they did acid was thrown in their face or other terrible things were done.

The whole issue is therefore one of freedom. What does the dress mean to you? Is it a symbol of freedom or is it imposed on you from without? You can wear it as an act of freedom. Many young women in Egypt have donned this dress independently as an act of autonomy against western Imperialism, against economic imperialism. To them the Islamic dress, including the head dress, is a symbol of independence. If anything is imposed on you, it's a means of oppression and in Iran, I think, undoubtedly, the *chador* was a means of oppression for a great number of women; though perhaps not for all. I'm

aware that after Khomeini, in today's Iran, there are more women working than have ever worked before. But this is a testament to the heroic spirit of women and to their resourcefulness. There are so many restrictions put on the women in Iran, many cannot do a full-time job; and women are debarred from many jobs; women have to wear this dress and so on. But these women are so resourceful that even within those constraints they are still managing to go forward, because once there's a revolution you cannot turn the clock back. Once women have become liberated through this revolution, you can't put them back in the home in the same way as before. The women of Iran have been liberated but let's not glorify things and say that this *chador* is the symbol of freedom. If the women have worn it voluntarily then it is and if they haven't, it's not. It is ultimately subjective, there's no objective way in which it can be decided that it is the same thing for everybody.

In looking at, and understanding what *hijab* means in any society we have to look at all of these factors, we cannot just say one thing. In the West, the stereotype is that anybody who is veiled is oppressed, which is absolutely wrong. But even within the Islamic society, you have to talk to those people to find out what it means. Do you know, Maulana Maududi was once asked, "Maulana, you know that in the Qur'an it does not say that you have to cover your face?" (He's even put this within brackets in his *Tafhim-ul-Qur'an* which is the most widely read Urdu commentary in the world) and he said, "Yes. I know it's not in the Qur'an but I think that they should." This is his recorded answer: "I think they should."

Participant: With respect to Iranian women now participating in every field of economic activity, I think we should not forget the 10-year long war which meant that men had to go to war, and the women had to take their place and perform duties normally performed by men. That should not be forgotten as a factor pushing women into the work place.

Participant: My question relates to identity. Why should women be the bearers of national identity for the Revolution by putting on the *chador*?

Participant: In the discussion there are several things which have come up clearly and need to be looked at and some which perhaps have not come out as clearly and may need to be underlined.

The point made about separating the issues of molestation and modesty is probably very important. However in terms of rape, aggression, or molestation of women, the discussion seems to revolve around women's sexuality, when in fact rape is not a sexual act, but an act of violence. 80-year old women have been raped. I think we should not forget that it is not sexuality which necessarily provokes it. Some research interlinks war and rape very closely together. One exceptional case in which women were not raped while war raged for over 10-15 years, is in the Vietnam war amongst the North Vietnamese. This was quite astounding but then the women were there fighting with the men throughout and I think it is an attitude of mind which comes through. Also when talking of rape and acts of violence in general, we have to recognize that our societies are very unequal societies with enormous frustrations at every level. In many cases the end product is that the frustration of everyone else gets taken out on the weaker elements. In terms of violence, this is often women who do not have much power and that violence sometimes spills over on to children, but certainly we have to remember that it's not just women who are aggressed. In our societies many men are also

aggressed and the subject of many acts of violence. We have to also consider the economic, political, and social systems in which we live

Coming back to the point of why women are always meant to be the bearers of our cultural heritage, our national identities, our religious, social environment, etc. Since Iran is being talked about, I would like to relate an experience. We were invited to the Islamic Cultural Centre, when a woman member of the Iranian parliament was invited. Apart from what she said, visually what struck me the most was: the entire time she was speaking this woman, acknowledged in her own right, a minister, (I think, certainly an elected member of the Assembly) was fidgeting with her various *hijabs*. Checking to see whether her leg was showing when she sat down and when she got up, and her head. The feeling that transmitted itself to us, was a great anguish, "I better not let my hair show, I better not do this." In contrast, the male representative of the Iranian Cultural Centre was wearing a western suit, with a blue shirt open half way down to his waist, and he was lounging about throughout the entire discussion.

So, yes, why is it that the women must show how Islamic we are, how Pakistani we are, etc. More men in Pakistan than woman wear western dress, yet it is the women who are accused of being westernized, anti-Islamic, anti-Pakistani and everything else. We had a ridiculous situation under General Zia where he said that men were to wear 'national' dress and women to wear 'Islamic' dress, as defined by himself. It was declared that saris are not 'Islamic'.

Finally, we cannot ignore the role of the state in promoting a certain ideology. In the 1960s women in Pakistan wore many different types of dress admittedly in a certain class (and you would not go into the Walled City of Lahore wearing the same dress) but certainly in Karachi and urban centres women were wearing different dresses that became acceptable. Now since the so-called 'Islamization', starting 1977-78, increasingly women feel hampered that we should not wear this, we should not wear that. Not just urban women like us, women in the villages were told, "This is not Islamic, so what if you're wearing Pakistani dress from top to bottom? you have to do something more to prove your credentials". On the other hand men would be in their loin-cloths, if that, taking baths in the canal and harassing all the college girls who go by with their head and their whole bodies covered. Nobody picked that up as being 'unIslamic'. With the full backing of the state, we have slowly started to accept that this is Islamic and this is not. In the rural areas where women wear something like the sarong of Malaysia, the *dhoti*, they now feel it is unIslamic and they say so and are embarrassed to wear their traditional clothes in the city. Actually, the city culture is being forcibly imposed on women from the rural areas.

Let us remember that the societies we live in have a power structure with its own biases. At the same time there is a world trend reinforcing notions of dress and of what is acceptable or not; and very often what is 'unacceptable' is what the women do. Focusing on the social, political, economic powers that exist: when Pakistan decided (I shouldn't say Pakistan, Pakistan poor thing didn't decide anything)... When General Ziaul Haq and the military regime decided they had to Islamize (the justification for prolonging their usurped power), in many cases they were not willing to attack such basic things as interest taken on loans which I believe is clearly prohibited in Islam. Instead they decided that women should or should not do this because it's much easier, women do not have the economic power to resist. After Pakistan initiated the process, two years later we discover Bangladesh saying "Right, now we're going to be the Islamic Republic of Bangladesh. We're going to have these laws." Pakistan also took much inspiration from Iran. World trends and linkages do exist in one direction or the other and are important.

Participant: In the context of dress and a whole dress code that relates to Islam or to being Muslim, one has to ask what is the relevance of Islam today? Firstly, if an individual has a firm belief in God and in Islam, then she'll probably go to the Qur'an as an authority, as we are doing today right now. But, in the real world it's a tool for political lobbies with very clear aims and their authority is that of the 'fundamentalist' orthodoxy. It is not pure theological principles that Islam might advocate. In this political system, it's very important for us to clarify our own stance. Is it cultural identity that we have to fight for to get the freedom of deciding our own dress code? Are we going to negotiate this within the principles of Islam? How is it going to happen?

Chair: In the northern part of Pakistan, we're a very conservative society and women are not very visible, but this conventional concept of 'purdah', of 'veiling' the woman is a kind of class distinction. Some Pathan women have no concept of veiling their face and they walk down the village street or in the fields. In fact it's considered rude if a woman is walking down the path and some male stranger comes into the village and she doesn't shake hands. Only the women of the Khans or the big shots are supposed to veil their faces as if saying "I'm better than you are." Even now, despite this Islamization trend, in the Frontier's rural areas, (we don't have many urban centres) you will not find women wearing any kind of purdah. We call this black *burqa* the '*fashioneer*': the fashionable thing. It more or less has a stigma attached to it because we trace it to when Mahmud Ghaznavi came and conquered India. Time and again his soldiers were running away with all the pretty Hindu women and the only way to protect women was to cover them with this black cloth that developed into the *burqa*. Generally, amongst Pathans the black *burqa* provokes a reaction like "This man can't look after his woman and therefore he's shrouding her" [laughter]. I don't want to appear parochial or anything, I'm just telling you a cultural trend that exists. None of my family members wear a *burqa*, although I consider myself quite Islamic [laughter].

Participant: I feel the cases of molestation at the time of Haj and during the visit to Iran may be exceptional cases because so many friends of mine have been for Haj and to Iran, but I was not told any story of molestation. Secondly, it was mentioned that Khomeini has forced women to wear this thing. It is against human nature to love a tyrant, had he been a tyrant, women would have done the same thing as they did to the Shah. Instead we have seen how much Imam Khomeini was loved by men and women, so it was not oppression, it was voluntarily. It may have been involuntary for certain people but you see when there is a law of the country some people are always against it and if in any country, they have in their law that a certain dress is prescribed, this is not oppression. I don't know the current situation in Britain but when I was studying at Edinburgh, men could not go in their pyjamas outside their houses and one of my professors went outside just once in his pyjamas and he was arrested by the police. But men never complained about this oppression of not being able to go out in pyjamas. So there is no question of an oppression.

[comment: I think that was gross British snobbery, it has got nothing to do with decency.]

No, this does depend on the sense of decency. If they had this standard and accepted it voluntarily, there is no question of any suppression and secondly, there is no question of the covering of the face and modesty...

Resource Person (1): In Iran there were incidents of acid being thrown in the face of Iranian women, thousands and thousands of cases. How do you explain those?

Participant: There may be some emotional display by certain irresponsible people, but in any case, there is no doubt that wearing of the *chador* is compulsory.

Some people said that all this *chaddar* stuff was introduced in Pakistan by General Ziaul Haq. Let me make this clear, his wife never observed any type of *hijab*, so this is not due to Ziaul Haq. Most of those people in Pakistan who wear the *chaddar* were against the regime of Ziaul Haq. This type of *hijab* has got nothing to do with Ziaul Haq or any Islamization. Finally it was said that Iranian men wear western dress, but Iranian women also wear western dress inside their *chador*. The question is not of western or eastern dress. We have to cover different parts of the body in whatever dress we have.

Chair: May I bring some focus to the discussion. First there is the Islamic concept of *hijab* and *purdah*: do we cover the face or not, is the head to be covered? There is the concept of modesty and dressing modestly. Second, is molestation contingent on having the *hijab* or not? That is, if you do not have the veil, will you be molested and if you have the veil, will you not? The consensus seems to be molestation has got nothing to do with whether you're properly dressed or not. You may still be molested even if very properly dressed with five kinds of *hijab*. Third there is some consensus that we do question why all this 'properly dressing up' seems to an abnormal extent to be addressed and focused on women, not on men. There seems to be a different code of conduct and ethics so as far as dressing up is concerned for females and males. We are asking why there shouldn't be the same kind of code for men. The fourth point to emerge is the constant focus on men being very feeble beings not able to control their physical urges and why is it that women have to help them to behave properly. Why can't they behave themselves? Let's have last comments and then could we wind this up.

Participant: To explain: first my reaction had nothing to do with modesty. If I go to the inner city bazaar I'd wear a *dupatta*. I have also strictly told an American friend I wasn't going to take her anywhere if she wasn't wearing a *shalwar kameez* and a *dupatta*, because I refuse to take responsibility for anything that might happen to her. My point was that it happens despite the covering. We need to acknowledge that there are many of us who have been covered at various times and points and it still happens to us and needs to be addressed.

The other point, with reference to incest, is that according to the Qur'an, there are people in front of whom you do not have to cover yourself, including various members of the family. Apart from that, for every woman that's veiled (in the segregation sense of the word) there are so many others who are not veiled, who are completely uncovered. *Purdah* is a very economic thing. If you can afford to have servants, you can afford to cover yourself, if you don't have somebody to do all your chores, you don't have a choice, you can't afford it.

In as far as reporting exceptional cases go, I'm sorry there are very few people who talk about it. The people who have talked about incest to me have done so because I'm the one who's willing to bring up the topic and talk about my experiences because I'm not ashamed of it. They know that I understand and that I won't blame them for it and that I won't be disgusted by it. They also know that they can talk about it to me in confidence. Despite that everybody says "Don't tell anybody," because you (or I) can't deal with people's reactions to it. You're not allowed to talk about such things. My

mother does not want to hear about such things. My aunt when she has been told about it has said at various times "Well, it happens", and then she relates cases to me within the family that nobody else is even willing to touch upon. Nobody wants to deal with it. It's about time we faced that as well.

Participant: This is a short response to a number of questions. It was said that Bangladesh is an Islamic State. Bangladesh is not an Islamic State; we have fought to be a secular state where the majority is Muslim but every Muslim, Hindu, Buddhist, Christian, whatever, will be free to practice their religion or behave in whichever way he or she wants to. But gradually, with this Islamization, we are having Islam plunged down our throats. You cannot pass judgments on who is Muslim and who is not. I believe that religion and spiritualism is something that is completely within yourself, and really the basic fact is that the moment I uttered the *shuhada* (creed), nobody has the right to question my Islamicity.

[explanations given that it was poverty which was being condemned and not people's faith]

Participant: [Translated] Regarding the discussion on purdah, some of it I've understood and some of it, because my English is not good, I have not been able to follow. If we are to presume that, in Islam, the understanding of purdah is that a woman is to become a crippled person, confined within four walls, and cut off from progress like an animal, this is a huge statement. Today we are in the age of progress and so much has changed and evolved in the meantime; and women are working in different fields, they're pilots and engineers, they go out. So what remains is the question of dress. Some are in saris, some in *shalwar kameez*, others like me in a *chaddar*. I like this *chaddar*, it's not that I have come here 'observing purdah'. I can go anywhere, this *chaddar* is not a constraint. And dress is not an impediment to women participating in various fields. However the question of constraint arises when women put on make-up and attractive clothes and make themselves attractive. Meanwhile men who do not like to see this attractiveness in the women of their household - their mothers, their sisters, their daughters - precisely want to go out of the house and see women who are attractive. They don't like women in the household singing and dancing but they go to the dancing girls, women, whatever to hear and see the same thing which they forbid in their houses...

We should wear something which is acceptable, which is common to everyone, and with dignity we should go out and wear that dress and do whatever we want to and get educated and enter into new fields, take up jobs, etc. But society does have some norms and customs, and therefore you should not do things that are counter productive. For instance if we were to overthrow everything overnight, we are not helping many of the other women in our societies who do not have that option, while if we change our physical appearance slowly it will help to allow other women to also get educated, come out and start working in a more acceptable manner. If I'm a teacher, and I go to the class and take off my blouse and start teaching, how many people are going to come to learn of what I have to teach them? Nobody. And, if I go to the rural areas in Sindh where women are working in the fields with their torn clothes and very basic clothing, if I go there with high-heeled sandals, sunglasses, and a handbag on my shoulder and try to teach them, they're not going to listen to me either because their environment is so different. When my organization started its work in the rural areas, where the vast

majority of the women are uneducated and ignorant and have to work very hard, we decided to wear clothes which we thought would be similar and acceptable to that environment. So we went with un-ironed, very simple clothes. But despite this the men said, "The women will not sit with you: you're educated." Then we not only dressed like them but participated in their everyday activities of fetching water, doing the field work and everything else in order to build a rapport. After many months we were able to open schools in these areas for girls. Girls started coming to get educated and went on to become doctors and other professions, they came not in *chaddars* but in *dupattas*. And this in a '*maulvi* village'.

On the question of purdah and incest, in one village, there were four or five brothers who were *maulvis*, all of them. One of the brothers died leaving four daughters in the custody of their paternal uncle. Three got married and left the house. One would not come out of the house and would not meet anyone. We started getting worried in the village when we heard that the paternal uncle had been carrying on this incestuous relationship with this girl. We were very startled and really did not know how to deal with it. Nobody was allowed to see this girl, she was not allowed to go out and meet anybody, etc. When finally we called her sister there was the whole question of "you don't speak about these things". Such things happen but are not talked about because there is such an enormous burden of '*sharam, hijab, hiya*' [shame, veil, modesty in Urdu] that everyone, the entire household would get dishonoured in the village. Therefore, nobody was willing to put us in touch with this girl. After six or seven months of our going back and forth, finally we were able to bring this girl out of her home and through men we put the whole matter before the *panchayat* [traditional governing council in the villages]. The elders of the family with the elders of the village sat together to decide what is to be done. The ruling of the *panchayat* gave a severe punishment to this girl's paternal uncle. But in the end, while he got punishment, she too was punished. The man's crime was acknowledged, but nobody is going to marry that girl. And this happened to someone who wore this huge enormous 10-yard *shalwar* and had this enormous *chaddar* and who lived in a *maulvi*'s house. It's not that they were unIslamic, they considered themselves extremely Islamic: all these brothers were *mullahs*.

This happens in society and cannot be prevented by purdah. It happens when purdah exists and is practiced, it happens when purdah does not exist. The two are not causally interlinked. If, however, there is too much purdah, if it is too restrictive, then it does become a hindrance. In any case, purdah is restricted to the upper class. Poor women have no option of purdah. They are out in the fields doing construction work, or they are out becoming sweepers and cleaners and everything else. Their lives are consumed by work and labour and they have no time for leisure or pleasure. The whole question of purdah and having such ideas, is really limited to very rich women with time on their hands and nothing else in their heads who are not working and can afford to have five or six women or men working for them as servants. Despite the fact that it's very upper class, still our sympathies are with those who practice this form of purdah, and are covered so much with this form of purdah...

Over these few days we have been spending more and more time on the existential reality of women, which is neither confined to Pakistan nor to Islamic societies. It's a broad issue of the oppression of women that somewhat transcends class issues, which is why we would sympathize with the Makhdoom's women or Pir Pagara's (33) women,

33. Major feudal landlords in Pakistan.

but there is also specifically a class context to the oppression of women.

On the other hand, we've been talking about the normative prescriptions of Islam and what sorts of freedom they grant us. I'm not sure how these normative prescriptions are helping us to deal with women's existential reality. I feel that in order to tackle this reality, we need to again resort to what I would call 'mass women's movements' for human rights or any kind of reform movements, perhaps like ours or others. I, at least, have not been able to see the link between the discussion on normative prescriptions of Islam and allowances of Islam for women, and the realities we have been talking about which are quite nightmarish.

Participant: In trying to separate segregation and molestation, the question that came to my mind was: if we separate the two, then what are the norms that govern segregation and, if those norms are transgressed, what is then permissible religiously as well as socially? We can't separate the existential questions from the purely normative ones. But, while locating ourselves within realities as they are lived, we are trying to take help of the normative, of the pure, in which we can root the legitimization of our ideology. How do we accomplish that? Does the separation between segregation and molestation help us in dealing with that reality? We need to look at the norms that govern segregation and what happens when they are transgressed because, I feel perhaps it's when they are transgressed that the door to molestation opens, and gets reflected in the sort of laws we now have.

Resource Person (2): A small point related to the earlier question of whether we can codify modesty: although we talked a lot about things that happened in different situations, an important point with regard to the development of the Islamic intellectual position is that Ethics have not been developed as a subject. Instead what they did was to codify actions, and as a result, we have: "You should do this and this and this," but nobody ever says anything about modesty. So how do you actually codify it? In terms of ethics, not just about modesty but other things as well, we have to go back and rethink the entire system of the development of the Islamic laws. It's not by any means an easy task. Whether or not we say things about the individual's motivation to be able to maintain a certain level of modesty, the individual operates within society and what Muslim societies did was to say: "Look, I can't think about the individual or personal conviction or personal modesty in real life, I can only codify for the masses at large." Then the codification for the masses at large inadvertently became a power structure that enforced those codes. It was not possible to elicit from a group of people, a society, a community, an *ummah*, whatever, the ethical principles that the individual was motivated by at all; these were totally lost.

Resource Person (1): Basically two questions have come up which require some sort of discussion. One, I would broadly describe as a question of faith versus non-faith, and the other is that it is very important for us, at least in terms of our discussion here when we are trying to analyse and understand what is the Qur'anic position, to remember that we are dealing with these very complex issues at two different levels. One is the normative or the ideal and the other is the actual, and there is constant tension between the two as is inevitable. The two must not be confused and it is a source of considerable concern to me that I hear this statement being made again and again that if... (let me not use the word *purdah*), modest dress or modest behaviour, does not protect us from molestation then of what use is it? This statement leads us back to a very fundamental

question, i.e. what does it mean to be a Muslim? And why should one be a Muslim at all? My very personal answer is that it has to do with living in accordance with the will and pleasure of Allah not because one gets certain material rewards or whatever but, as the end in itself, one tries to live one's life as God would have us live it. In some cases that may lead to rewards in the here and now, but it may not. In fact on the basis of my own life, I'm quite convinced that if I am going to get any reward, it's not going to be in the here and now. I really think that if Muslim women of our generation (and for several generations) are ever to be liberated this is a choice that they have to make. Unless women are willing to renounce the reward we're not going to get anywhere. We have to do this in the spirit of the early suffragette women who weren't looking for rewards here and now.

According to my understanding of the Qur'an, God wants all Muslims, all people, to behave modestly. The Qur'anic law of modesty does not only relate to what you wear; but also to how you talk, you walk, your entire behaviour. The law of modesty, you might say, is the law of decency, of appropriate behaviour. The Qur'an projects before us the vision of a society that is balanced, that is harmonious, that is at peace. This is an ideal, but if you call yourself a Muslim and you have a commitment to it then you have to try to approximate the ideal.

There is no confusion at all in my mind that regardless of how much violence occurs, and it does occur to a much greater degree than has been acknowledged, it does not affect the validity of the law of modesty or any other law. The same criticism that is being raised with regard to the law of modesty can apply to any Islamic law. I mean you can say, "I prayed to God for such and such and my prayer wasn't answered so why on earth should I pray?" We can universalize: if it doesn't work then it's not worth doing. I think this is a very secular perspective, it's not a faith perspective because if one believes that it is pleasing to God that should suffice. If it does not suffice then we are doing it for the wrong reason. These two issues must remain separated, at least for the purposes of analysis. I'm not saying that they don't come together in reality but I think there is a real tension which has persisted in this conference between the faith perspective and the secular perspective. I have no idea whether this can be resolved or not but I think we need to recognize that this discussion is going on at these two different levels.

The second question is of equality versus sameness, that relates to a lot of things stated earlier. One point made repeatedly was not being satisfied about the laws of purification relating to women, menstruating women, etc. In fact there is a difference between being equal and being the same and one of the basic problems I see with the western paradigm for women's freedom is being hung up on the concept of equality as sameness: "I want the same thing as a man, the same dress, to be able to do the same things," etc. One problem with this model is that as long as men are your model they will always be ahead of you, you will never catch up with them. It's self-defeating. The beauty of the Qur'anic model is that it allows for justice at the same time as it allows for sexual and other differences. Women are biologically different from men: women menstruate, men don't. So certain special provisions need to be made for that. This is not injustice to women, rather it is justice. There are more regulations with regard to women's dress because women's bodies are such that they are more vulnerable to exploitation and historically we know that this has been the case. These measures are meant to be protective, not restrictive, taking into account what is actually the case.

We have to go beyond this stage of feminist understanding of wanting sameness and you see some of this evolution happening now in the West; but very slowly. It is

very dangerous to be caught up in that 'same syndrome'. It's much better that we strive for justice rather than equality because equality is so likely to be misunderstood. I live in the western world and have a lot of colleagues who understand equality absolutely mechanically. I hear them saying again and again "Equality means you wash five dishes and I wash five dishes, you cook three days and I cook three days." To me this is not justice because you can divide a task absolutely down the middle and yet have a totally inequitable and unjust relationship. So we have to distinguish between mechanical equality and justice.

Participant: It's wrong to say that in the West women have such assumptions about equality. On the contrary, the new trend in the past few years has been to emphasize the difference, and personally, I'm worried about this as well as part of what you are saying because then it refers back to our nature and eventually our biological nature as women and this is something I wouldn't like to see rising again.

Participant: This is addressed to the basic Qur'anic orientation on women's dress. If we can clearly see the principle of modesty in the Qur'an, is it open to enforcement by a ruling political party? Within an Islamic framework, can we lobby for freedom to interpret this ourselves, since we are following the letter in Qur'anic interpretation here. We've talked about this principle and that in the traditional Islamic system there is no codification of principles but of actions. How can we battle confront this with a Qur'anic interpretation if self-appointed guardians of faith become dictators of the *ummah*. Can leaders of the *ummah* dictate to women? What are the various implications?...

Resource Person (3): I wanted to just elaborate on the question of what one considers to be equality. I would just like to point out what the Qur'an says regarding this matter and just a few of the verses, of the recognition the Qur'an grants to women's material and spiritual conditions are the same as men: verses 3:195, 4:32, 4:124, 9:67-68, 9:71-72, 16:97, 31:8, 33:35-36, 33:58, 33:73.

Participant: I'm having difficulty in seeing how the issue of modesty is a faith, non-faith issue. The question is not whether modesty is desirable. The given is that modesty is desirable. The issue concerns the interpretation of modesty. Everybody says that morality cannot be legislated yet within the framework one attempts to do that. But in the unequal societies we live in, breaking that code becomes a very critical issue, and what suddenly becomes permissible for men in the society. It's not a secular position, it's from within the faith framework, however once interpretation starts taking place then one is talking about codification, and once codification comes into the picture, then the question is what happens when that code is transgressed? The question I'm raising is: first accept it within the framework of faith, saying yes, modesty is desirable but who's interpreting it? Then once it is interpreted and some people break the rules, then what becomes permissible within the religious framework? Look at it perhaps from a slightly different angle especially as a device for the protection of one's right to interpret modesty. Because once we can establish and assert a right to interpret modesty within the religious framework, then perhaps one can open up the debate on what has been the process of codification.

Concubines

Participant: I have difficulty with a phrase where the Qur'an defines some women as being "Those whom your right hands possess." These women, I gather, are the captives of war; I assume that this is considered quite legal and lawful. Is this yet another instance which we take in the context of those times and not as something which is true for all ages?

Part 3: Action and Strategies

The Context of Interpretation

One session was based on broader issues beyond specific *ayaat* and their possible re-interpretation, and instead focused on the contextual and conceptual frameworks within which the participants live their lives and within which interpretation takes place. This session, although held at the beginning of the Meeting, is being reproduced in the final part of this book because it not only provided the background to the entire proceedings of the 'Qur'anic Interpretation by Women Meeting' but also set the scene for the concluding session on future action and strategies.

Some participants spoke on issues specifically related to Qur'anic interpretation in their own country and professional or activist contexts:

"In Malaysia each of the 13 states has its own family code... We are trying for uniformity of family law, and are looking at differences in interpretations. We also want to monitor the implementation of the law in the *shariah* courts. Our organization wants to monitor domestic violence in the *shariah* courts, and to see how *qadis* perceive gender relations and violence as a whole. Both are related to Surah Al Nisa (4): verse 34 (34) We have a Muslim women's study group looking into the verses and are trying to strategize on the basis of verses."

"Through my experience I came to realize that, if one is not very careful, legal literacy tends to reinforce not very progressive interpretations of the Qur'an. How does one deal with this in terms of gender equity? So hence the linkage with the network and in the interpretations and textbooks... How far and to what extent do we have freedom to manoeuvre, crucial to us as Muslim women in Bangladesh?"

I represent Bazm-e-Amina, a small group of ladies belonging to *Fiqh-e-Jafria*, who are mostly interested in the uplift of the poor. Also, as

34 See Part 1 B: The Foundational Myths for a full discussion of 4:34

everyone should, we try to understand our religion as far as we can. Of course I am not an authority; I'm a teacher of mathematics at the University so in this specific field I just try to understand as far as I can from the authorities who may be men or women, because a scholar is a scholar, irrespective of being a man... We should try to understand what we are studying honestly."

"I belong to the group called The Daughters of Islam which believes firmly in Islam. We do not want to challenge Islam. If there's anything we want to challenge it's the implementation and interpretation of Islam as done by mostly male scholars. You see we felt that while women are now being educated and can all read and write, all their reading is something that does not affect their lives. On the other hand something that is controlling our lives is something that we ignore completely. So we have set up, in Pakistan, the first Women's Islamic Centre and Library - good enough for conducting research. We also feel that unless and until we know the Arabic language ourselves, we cannot interpret whatever is in the Qur'an or in the *ahadith* properly and we just have to swallow whatever pill is given to us.

"Therefore we conduct Arabic classes. I'm learning Arabic and it helps us a great deal. We have now started going out into the poor localities where besides conducting Qur'an classes, we help them in a lot of ways which I would not like to go into detail about now.

"We feel that within the field of Islam we can do a lot for women. Besides that we are also conducting research. For example, in Pakistan if a man just stands up and says 'I divorce thee' thrice, the woman is divorced. But this ruling is not given in the Qur'an which gives you a specific process for divorcing your wife. We are conducting research on this and one day when we have enough material we would like to challenge some of the laws which have been made in the name of Islam but which we feel might be contradictory to Islam or at least the spirit of it. This will take a lot of time and maybe a group like this will help us by doing some research and cooperating with us."

"I work as an analyst at an institute where the area of concentration is foreign policy and nation building. Within nation building I'm looking at religious revivalism and its socio-political impact on society. I did my research on the current Islamic revivalism in Malaysia, looking at the reasons why it occurred, how the movement is spread, how it is organised, basically focusing on the university students and young professionals who formed the backbone of the Islamic movement in Malaysia. Currently I'm working on a new project looking at the impact of Islamic revivalism on institutions in Malaysia and social services where the Islamic movements are providing an alternative system for social welfare, such as clinics; and also at the pressure it puts on legal reform and areas like that.

"I also belong to a women's study group where we look at the Qur'an and verses affecting women in the Qur'an, seeking a more progressive

interpretation. We're in the midst of preparing two pamphlets for wide distribution: one is on the equal status of women in the Qur'an, the other on domestic violence."

"I don't want to sound pompous but within my own mind I am perfectly satisfied with my beliefs. I am the daughter of a deeply religious person, an Islamic scholar, and we do not agree on everything but we do on the essentials. I rationalize everything by this very simple means: a just God cannot accept anything unjust. This is something my mother taught me. I am satisfied in my own mind because I believe in the spirit of Islam. I definitely do not believe that one has to live by rules put down fourteen hundred years ago because you cannot recreate the circumstances of those times now. There is always a state of evolution. "That is why I don't have a problem, but in trying to understand interpretation in order to combat the man's world which is trying to relegate us to a secondary status, it is essential to understand when each verse was revealed and by whose authority you can say they are recorded as originally revealed. I would like to be satisfied on that scope. I am not the authority here: I am the lay person. But the fact is that Islam was introduced for the lay man of the day."

Responses from the participants to this were:

"On the technical part: the process by which the Qur'an was collected and written down and the process by which it was authenticated is fairly well known. It is also possible to get annotated copies of the Qur'an which tell you when exactly each revelation came.

"The other part: you will find, I think, a very clear divide between people who will work within the parameters of this particular belief and people who say 'Is it not possible to raise doubts?' But I am not entirely certain that we are going to get very far at this conference if we enter into that because that is a whole different debate."

"When was the Qur'an was codified? It was revealed over a period of 23 years and then it was codified in its present form in 10 years. I am sorry I am a lay person and don't know anything more than that. I am subject to correction. Also, the Qur'an is not in the order that it was revealed, nor does the title of the *surah* have much relevance to the contents of the *surah*, e.g. Surah Al Baqarah has much more than the cow. So who gave the chapters these titles, were they themselves revealed? But, as said, this would be another workshop."

"If you want information about it there is such a wide amount of information, literature and sources... I'm amazed that you all come from Muslim countries and you don't know this."

"The order of the *ayaat* are not according to the *Shan-e-Nazool* i.e., as revealed. But the order of the *surahs* was done by the Holy Prophet himself before his death. Certainly they have been arranged according to

the *surah's* length. There has not been any change because there are these scripts from every century in different museums and every script is the same."

While not all organizations represented through the participants were necessarily attempting to reinterpret Islamic injunctions, a common element was that conservative religious forces were seen as preventing women from realizing their full potential. These transpired in the form of laws, both written and unwritten, said to be based on Islam and intrinsically tied to interpretations. Some of the participants voiced feelings of anger:

"I was tired of reading about the place of women in Islam - as written by hundreds of men... I sometimes dream about writing something on the role and status of men in Islam [laughter]. It seems to me that men in Islam have no role since there's nothing written about them! I set out to do research and read the Qur'an with a focus on women for the first time. The more I read how humane the document is, the more angry I became at what is going on in the name of Islam. Perhaps it is safe to generalize that the first stage of feminist action is anger."

"At the first Women's Action Forum meeting, the level of women's anger was what struck me the most regarding the implications of the Hudood Ordinances. This is not justice, this is not what we think our religion is about. We went to the text of the law and to an Islamic scholar to ask what Islam says. When we found no basis for this law in Islam it gave us the courage to go on.

"I was brought up to believe Islam is a tolerant religion and was utterly shocked to see what was being said in the name of Islam."

An interesting response from a different reality was:

"One of things I see when I come out of my country is that women from traditional Islamic backgrounds have a tremendously negative historical experience that they are trying to throw off. As a consequence the first step to women's awareness is anger. I would say that that first step is something that you all experience because of what you have had to fight against in order to regain something for yourselves. You participants, have had to fight against things that have become accepted as God's law and therefore forced upon you. Those of us who accepted Islam in the West did not have that traditional baggage. The first step to feminist awareness for me was a yearning: a hunger and desire to learn. I did not have anything that I had to throw off. Consequently you will see some things and hear some things that come from me that will contradict how you have dealt with or perceive the necessary phases in the women's issue, because my background is very different.

"I come from the West and the whole term 'feminism' came from my context and I know its limitations and I know it historically and sexually and therefore there is something a little different about how I may exchange compared to how I hear you all exchange.

"This is neither good nor bad. This is just a difference that I would like to bring forward early in the conference so that it may be taken as an ingredient. The choice to be able to take feminism 100% by the horns and say 'this will be the motivating factor in my life' existed before I even became Muslim. When I became Muslim the choice of the path that I would take towards self-realization was based on an entirely different experience. Let me give you a very small example that really captures it well.

"Most of the conscientious Muslim women from traditional Muslim countries feel... their ability to be able to express their identity autonomously is to take off the veil. The reason for this was because it was a mechanism needed to restrict her, to confine her, to make her voiceless, to limit her potentialities. Those of us in America who came from an African heritage who were forced originally from our country; forced from our own customs and our own dress, were NEVER given the choice of what we wanted to wear. We were stripped of our garments and covers and veil. I began to wear long clothing before I became Muslim because it was a choice that was not given to me. Your choice was exactly opposite. The choice NOT to wear was not given to you. You must understand that fundamentally the difference in perception has something to do with your past. So if you perceive the different ingredients in that past perhaps some of what I have to say will seem a little less odd to you; many things that you feel it is necessary for you to fight against some of us are fighting for.

"I am a person who chose to be Muslim. I did not choose to be female. I did not choose to be African American and because of the fact that these two are prior to my choice, the realities of my life also placed certain limitations on what it was that other people said I could experience. Once I became Muslim there was nothing that anybody could take away from me: I had already been stripped of name, face, gender and race and all before I chose Islam. So Islam is not an inhibiting factor of my life. It is an epitome of the factor of liberation. Therefore anger was never a motivating factor in my aspirations about how I wanted to live out my life."

In response to this:

"Just a brief comment: This network is called Women Living Under Muslim Laws, because what we have in common is precisely that laws unfavourable to women have been enforced on us in the name of Islam. This is really our specificity. So you are right to point out the fact that it is not your case because you are not living under what we call Muslim laws - plural. These are forced upon us whether we like it or not."

"I do not like it. But the anger is not against Islam in any case. We are very clear about this. The anger that erupted in our organization was not against religion. The anger was against what was being done to us as women in our country under any pretext. Partially it was under

'Muslim laws' for which there was no Islamic justification. They were flogging people for many issues without using Islam. But there were other issues where our religion was being used against us. Our culture has been used against us. And anger comes when you don't have a means of expressing yourself and have remained silent for so long. But I do not think that most of the women in Pakistan will tell you that it is Islam that has kept them quiet. It is a combination of a whole multitude of factors which are economic, social, cultural and yes, of course historical.

"We have not had the choice of deciding to be Muslims. Most of us have been born into Muslim households. You have had the choice and privilege to decide at some stage that you wanted to join Islam. When people join anything there is a reaction to their own pasts, whatever that past happens to be. And as you said, the choice of race and gender in the United States was not a choice for you, obviously, but you did choose to move into something that is new. We are also, hopefully, now trying to move into something that is new."

"I just want to comment on the, 'How Islam has been used on us'. To go back: I was born a Muslim and I still believe in Islam but sometimes it really strikes me: how come there are all these supposed contradictions in the Qur'an? My own language is Arabic, but I can't find anything in my daily life that is *ar-rijaalu qawwaamuuna alanisaaa'* (from 4:34).

"We take it for granted that men are superior to us and they are supposed to control us. Or we come to the point where they are beating their wives (4:34).

"And I believe strongly in interpretations, the progressive interpretations of a different kind but it doesn't mean we are against Islam. We believe in interpretation and in different interpretation. With respect to the discussion on anger: sometimes I really feel anger. I mean how come in one verse there is talk about equality, and in other verses or in the same *surah* there is talk about another way of subordinating or oppressing. How can it be like this unless we really seek a different interpretation so that it follows the equality and justice of Islam."

At the end of a fairly long discussion, the resource persons and participants gave a number of suggestions as to how women reading the Qur'an collectively for themselves could proceed.

Resource person: I would like to focus our attention on the dynamics of what seems to be happening here. There are two levels of discussion: one is the perspective of those people around the table who take it for granted and they have no questions about Islam - whatever they mean by Islam - and the Qur'an - however they understand the Qur'an to be. Their stance is that everything that is in the Qur'an is the word of God. They are not concerned by the historical process whereby the Qur'an was put together. They might in fact sometimes think that those questions are irrelevant or irreverent and so

they don't want to deal with that. Now this is what I call a 'faith perspective', i.e., what we have to deal with is the sacred text.

Then there is this other perspective which is: I come from a religious background and I have studied or I have been a Muslim all my life. What I am concerned with is not any particular thing in it, but rather with the spirit of Islam. And a statement that I identify with in some ways: "I have worked out my relationship with Islam, and my relationship with the Qur'an and I know how I want to live my life". But the point is that for the bulk of the Muslim women in the world - we are talking here of 400-500 million people - this position is not possible. They haven't worked it out. And we have to keep that in mind as we try to work out a strategy or a plan about how this discussion is to proceed.

Now let me give you a couple of examples, because Islam is the youngest of the world's major religions, there are things which we can and should learn from other traditions.

For instance, the consensus of Christian scholars is that there is not any one, single thing that can be definitely authenticated about the life of Jesus, that can be said to have definitely happened. When that statement is made, (colleagues who teach Christian Studies make it all the time) it is extremely shocking for the Christian students because for them this is the word of God and everything in it is absolutely true. If you then ask the Christian scholars: "If you say that nothing can be authenticated, how then are you Christians?" They say: "We don't believe in the letter of the text, we believe in the spirit of the text, i.e., that Jesus was a certain kind of a person. He had a certain message. He was a Messianic figure etc., and we believe in that."

What I am trying to say here is that it is possible to understand Islam and be a Muslim in all kinds of ways. And those ways are all very interesting and very important but it is not possible for any conference to discuss that. That is my first point.

The second point: the point of revelation. There are a couple of things that we need to keep in mind. I have spent 15 years very intensively doing inter-religious dialogue with Jews and Christians and I have come to see that in these three traditions, there are three questions which are highly difficult to discuss.

In the Jewish tradition it is the question "What does it mean to be the Chosen People," which is the Jewish claim, and the issue of relationship of the people to the land of Israel. In the Christian tradition it is the question of the nature of Jesus: whether human, divine, incarnation, Trinity etc., - called the Christological Question. And in Islam it is the question of the Qur'an and revelation. Why are these questions so difficult? Because to the believers within the tradition these questions are taken for granted. They are so basic, so central, that you don't discuss them.

Theologically, these are the most difficult questions and it is not only detrimental, it is fatal to dialogue if you begin with the most difficult theological questions. They must come at the end not at the beginning. Because at the beginning of the dialogue we need to get to know each other as people. We need to establish trust in each other as human beings. We need to have some common denominator to work from. If we start with the most basic questions as to what is Islam, what is the Qur'an, we will never get anywhere.

I am NOT saying that these questions are not important but that these questions are SO important that we can't talk about them now.

I suggest there are two ways to proceed: either you go from top downwards or you go from down upwards. The way to go from bottom upwards is the way of Liberation Theology which is: let's start with our existential reality. Let us start with the fact that everybody around this table has agreed on the fact of women's oppression. And it is also a fact that there are certain Qur'anic passages (as there are *ahadith*) which have

impacted on that oppression, which have been used to cause, consolidate or perpetuate that oppression. Let us look at the traditional interpretations of certain texts, how they have been interpreted historically, almost universally by men, and see if it is possible for us as women coming from various disciplines to reinterpret them.

I don't think that it is our task in this group to come up with one definitive definition of anything. If we can establish a *prima facie* case for saying that it is possible to interpret it differently, then I think we have opened the ground. This is what Allama Mohammed Iqbal³⁵ is talking about when he says the principal of movement is *ijtihad*, meaning we open up the Qur'an for new interpretation. If we can do that, it will be a tremendous achievement.

That is what needs to be done. And so I would suggest very humbly and earnestly and strongly that we confine our discussion to what is manageable. Let's talk about the concrete things that are being used to oppress women and let's leave the larger questions either for working groups or for further conferences but not bring them in here.

Resource Person: I think that when it was said that the name of the group is Women Living Under Muslim Laws - to indicate that there are a number of humans of the female gender who are affected by laws that are considered Islamic laws or laws of Muslims - it was an attempt to say that these laws are not all the same. We do not even all believe in the same thing; we are not all sure what the definition of Islam is; we are not even all sure of the differences in the calibre of the belief that we have. The point is, that we have an issue that we are supposed to discuss. If we accept that we are all in that category, 'women living under Muslim laws', then we have at least established a primary categorization of similarity. If in addition we have a particular objective, i.e., Qur'anic interpretation of certain particular issues with regard to gender, then we have a programme.

However, the truth of the matter is that you have to start off in a certain type of atmosphere of camaraderie with objectives that you feel you can reach. Anything that deters you from reaching those goals will hang over you. Some things that have been aired have created an atmosphere which will prevent our objectively reaching the goals that we have. And in all honesty unless we say that we are an institution - and this I say about being in the West, the institution is stronger than the person - and can deny the personhood of people who come forward, with the concern for our similarity as women living under Muslim laws, then there will always be that residual sense of things unresolved in the dialogue. Therefore, if an issue is raised and there is a problem, some attempt at resolving it will have to be made in order to be able to get past it. To decide that we are not going to be able to decide on this matter is the same as saying: "I have decided that you will not be able to resolve whatever it is", and that is not the voice of everyone, nor is it reaching that which we have in common.

To have a simply defined objective will certainly make it easier to achieve something at the end of the conference. To involve yourself in all of the hierarchical issues of primary importance to "what is Islam" and "what is a Muslim", (and whether these two things are even the same thing) is a lot more complicated. But it is not impossible to allow each person to be able to say what they think, for what we have been denied often is the voice to be able to discuss issues. If we deny each other that

35 (1877-1938), acclaimed Urdu poet, philosopher and political thinker who was a central figure in the early 20th century movement to reconstruct Islam.

voice, then we are just the same as the male or the androcentric institutions that do not allow us to have a voice. So I think that out of concern for the individuals here it should be possible for everyone to say, "Do we want to discuss this?" or, "What do we want to say about this?" and get it out of the way.

To resolve the issues is not so complicated as it may seem, simply because none of us has the final word. There is no definitive, "This is what it is and that is it". Each of us have been involved in this work in some way - lesser or greater, depending on time and contacts or whatever, and because each of us has been working, each of us has gained a perspective. It is our sincere hope that as Allah says: "Allah does not change the condition of people until they first change what is in their veryness, their very souls." We will not be able to make a change unless we accept that inside of each of ourselves is some motivating force, or belief or anger or desire to learn. And it is not so complicated to be able to accept that those motivating forces are different. Attempting to come to a consensus on the motivating force is what will complicate things. If we can accept that some of the opinions are going to be different from the opinion that you hold, and that at the same time each person is equally allowed the possibility of that opinion, this will make it easier. The most we can hope for is that you have gained something; that you can then take back to your real lives as Muslim women living under these laws and to other women. You are not going to achieve that with the residual sense of something unresolved at the very onset.

Chair: I agree everyone should be able to express themselves. We have always in our meetings and get-togethers held very varied positions and come from different backgrounds. How we would like to proceed from here is really a decision for the group to take.

Participant: The main problem is that human life is one unified whole. We cannot divide it into watertight compartments: this is our economic life, this our moral life and this our sentimental life. Everything is linked together. The main problem with our societies is that we lack what we may call an Islamic consciousness, i.e., the perspective we should have as a Muslim: our relationship with God, with society, with this universe. Everything is based on that. Muslim laws are applicable only in a Muslim society, people who think like Muslims, whose consciousness is a Muslim consciousness. It is also sometimes necessary to refer to our faith and what we think about this universe. The type of life we are leading, our morality, our ethics, our penal codes should be linked with our faith also.

To try to understand different sections separately does not give a conception of the whole.

Chair: I think that in referring to a whole, you are also referring to how, in principle, a Muslim society should be and how the laws, therefore, should be related to society.

Participant: I think most of us are not denying the unity of the eventual end of our deliberations, but just saying that at this particular moment we have to have a starting point. And the starting point is to take something very concrete and discuss it. I'll give an analogy. You can't put everything in your mouth at the same time. You have to decide whether you are going to start here or there. Otherwise it will be impossible. It's better to start with something that is concrete than with something that is abstract, because the concrete itself is going to pose incredible problems.

Action and Strategies

Participant: It seems to me that in the last decade we have witnessed a lot of changes in laws in various countries in the Muslim world and that, generally speaking, these changes are unfavourable to women. Furthermore, this trend is increasing and we see it as a threat and that is why we organize to protect ourselves. I also would like to say that although the 'fundamentalist' groups may be very different in their origins and in various other ways, there are common points in their discourse which I think we should look at carefully because, as women's groups, we very often reproduce part of their discourse without really making any great analysis. For instance, each of them generally speak of 'our identity' but this identity is always presented as threatened. And it is interesting to note that our identity is threatened irrespective of whether we are speaking of a state that has 90% to 100% Muslims or whether it is a small Muslim minority greatly outnumbered by another ethnic or religious group. It is also true under various political regimes: from Tunisia which is open to capitalism, to Algeria which was supposedly socialist, to all sorts of places. Why is it that our identity is always threatened? How far can we believe this? to what extent can we make sure that it is not simply used against us in order to prevent us from making the proper links between each other and more widely?

The other thing is that when they say "our identity is always threatened", it is always the women who are asked to maintain this identity. This is why within the laws of our various countries, it is basically laws pertaining to women which are enforced as 'Islamic' and not other laws. If we look at most of our countries, what is really specific and which makes us come together are the family codes: laws affecting marriage, custody of children, i.e. things with which we are really personally concerned with. This is where our identity and the perceived threats to it have been concentrated, so the whole burden is on our shoulders.

I think that we should reflect on the fact that this is part of the discourse of those who really try to keep us down. We should be very careful that we don't buy it one way or the other. Facing this increase in unfavourable changes in the laws, women have evolved various strategies and roughly speaking we can say that there are three groups or labels we can put on groups:

- 1) Women who work from within the framework of religion because they are religious, and as believers they feel the only way is a reinterpretation of Islam from a feminist point of view.
- 2) Women who work from within the framework of Islam as a culture and not so much as a religion, either because they feel that they need to be strongly rooted or also for fear of being seen as betraying the community. We could also say for tactical reasons: not to be cut off from the majority of women; and
- 3) Women who stand up for their rights from the point of view of human rights, who eventually would advocate separation of the state and religion. And declare that religion

should be a private and personal affair.

What in my view is new is that these three categories tend to work more and more together, probably under the pressure of circumstances. But it is so important that, instead of firing at each other and thinking that one way of looking at the problem is exclusive of the other one, they see what they have in common and tend to come together on specific projects or issues. To me this new trend is the big achievement of this last decade. Women also tend to work at international levels with true international spirit, seeing that we can help each other, support each other and learn from each other at the international level.

Resource Person (1): There are two sides to this question. I want to talk about the theoretical aspect first. I believe that something very significant is happening or going to happen in the Muslim world that one could describe as a paradigm shift. Let me explain what I mean by 'paradigm shift'.

The notion of a paradigm shift - presented by a writer Thomas Cohn, in a book called, *The Nature of Scientific Revolutions*, (I think) - is that at some points in history certain basic or fundamental changes occur that not only alter the way in which you view a particular thing but alter your view of the entire world.

Let me give you two examples. Before Copernicus it was believed that human beings were the center of the earth, and that the earth was the centre of the universe. As you can imagine, this made human beings extremely important and all the philosophy was in this context. Then, after the Copernican Revolution, it was discovered that human beings are a very small part of the earth and the earth was a very small part of the universe. It was not just that this was a discovery made in the realm of geography or something; it altered the way in which everything was seen, it was a radical shift.

Another example relates to the history of Christianity. In the first period of Christianity, the people who became Christians were originally Jews and are referred to as the Jewish-Christians. They saw Jesus as a prophet - a human being - because they knew Jesus of Nazareth and that's how their thinking was. Then in the second period, St. Paul became the formulator of Christianity. St. Paul had never known the historical Jesus (and he was also a very Hellenized person). He had a mystical experience which converted him and so he had a totally different notion of Jesus which was very spiritualized, theorized and so on. From this time on, Jesus starts becoming not a human person but a sort of mystical, de-materialized human being. Then we get into all those centuries of conflict over human versus divine and so on. When you come to the Middle Ages you have the Catholic Church around which everything revolved. The Catholic Church controlled secular life, political life, private life and everything and at this point people thought in that framework.

Then comes Martin Luther. We have the Reformation and he said, 'Go to the word of God and make your individual conscience the arbiter of Truth,' and we have another radical shift. Then we come to what is called the Enlightenment Period in the 18th century where you have a deification of science and technology and progress. This is actually a period in which religion takes a back seat because people were so fascinated and charmed by the power of science.

Currently we are living in what is called the 'Post-Modern period' in which people are beginning to get disillusioned with science and technology and progress because they are saying it has all these negative side-effects. So in this period, globally, there is a return to religion. Sometimes it's referred to as a rise of 'fundamentalism' but in terms

of the paradigm shift this is something different, for a radical shift in any period changes the way in which you see everything.

Now in this current period, for instance, something very significant is happening. In the West today this notion that Jesus was divine is being severely objected to by the feminists and one major writing on this - there are many - is a long essay called *How Can a Male Saviour Save Women* by Rosemary Radford Ruether who's probably one of the most, if not the most, important Catholic theologian on the subject. The feminists are saying they can't accept the notion that Jesus is divine because Jesus was a man. This is actually radically influencing not just the feminists, but the very nature of and understanding of what Christianity is.

My point here is that the discipline we are calling 'feminist theology' doesn't only revolve around specifics such as verse 4:34; it is a challenge to the way in which we see the whole world. We have to understand that.

Further, in order for there to be a paradigm shift two things are necessary: 1) the existing paradigm or model must be in serious trouble, i.e. that people don't believe in it anymore, or have serious doubts about it; 2) there has to be an alternative. No matter how seriously troubled a paradigm is, in the absence of an alternative there will be no paradigm shift. That's where we are caught, i.e. the existing paradigm is in great trouble but we have no alternative.

I've travelled around the world, met many kinds of people, I am absolutely convinced that the time has come for a paradigm shift; especially Muslim youth don't accept the existing paradigm but they don't know where to go. This is the historical context in which we have to do our work. We can bring about this paradigm shift if we are able to create an alternative; the question is: how is it to be created? We can't do this thinking in piecemeal and take 4:34 in isolation then jump to 2:282 (on evidence). We have to have a total view of what this exercise is and where it is going to lead. If we don't, we'll be short-changing not only ourselves but we will lose this possibility of creating a paradigm shift for which there is the potential because of a whole lot of factors at this historical moment. The opportunity must be seized and we must work with it and do something very creative at this point.

Chair: Can the people in the two working groups which met last night share with us their discussions, ideas, conclusions.

Participant: The group on Trends of Codification basically looked at two things. (a) codification in specific areas (personal or family law and penal or criminal laws); and (b) under 'status of women', we looked at evidence, dress code and the capacity of women as a whole (even though the latter is usually either covered under family law or sometimes under criminal law, we put it as a separate category).

The trends of codification today tend to follow what has been conventional or traditional. They go into specifics, e.g. family law and then they itemize it, or into the specifics of criminal law and itemize that. I do not know if the development of ethics or universal principles and so on has been considered in the codifying of particular laws on family and criminal matters.

On the specifics of codification another point to ask is: what is this public interest? If this is the interests of the community, who is the community, or the *ummah*? Have women been included as a component of the community? From our sharing of experiences and discussions we are saying that this gender perspective is not taken into consideration in these laws. Therefore, the world male view is being reinforced by

certain conventional and traditional attitudes of male superiority, or patriarchy in the traditional sources, in juristic interpretations and in how the jurists have looked at specific *ayaat* in the Qur'an or the *ahadith*.

Codification is the concept of following those in authority based - I think - on an *ayat* in the Qur'an where Allah says, "Follow my Messenger and those in authority among you." Again we have to grapple with the problem of who are those people in authority? Political institutions? the government? Then you have *mullahs*, (*maulvis*), etc. And again women are a missing component in this concept of those in authority. I would like to emphasize that we are not anti-male because every time they say, "Feminism: western, you're all anti-male, you're all against family institutions," and all that. We will acknowledge that not all the men in the community (or the political authority) are anti-female, but we are saying that they are deprived of the other world view. We are trying to create a different perspective of looking at the law, but we are also saying that there is a great tendency to discriminate against women in the existing laws.

As a strategy, perhaps we could go back and identify the specific laws in our country, whether criminal or family or status of women, and trace the sources of those particular laws and see whether these are in the Qur'an, the *ahadith* or are juristic in origin. But we must examine the rationale behind a particular country adopting a particular opinion or view - sometimes we take a Maliki or Hanafi concept through *taqlid* - then we can also trace the gender orientation of those laws. After that we should work towards developing a more balanced world view of the laws with respect to what we feel should be in accordance with the spirit of the Qur'an. The logical consequence is to work towards a reform of those laws and in the meantime, to move out of some kind of a twilight zone.

So, we have to strategize and work at two levels: towards legal reform but also within the existing limitations of the law within the system as it is now. We have to reach out to our women in our own respective countries and have some kind of conscientization programme to make it possible even to question so-called 'Islamic' or Muslim laws. Because we have to work within the limitations of our own legal framework, we have to educate women on the existing laws and perhaps assist them since there may be certain loopholes they can make use of within the existing legal process.

In Malaysia, for example, we are trying to dialogue with those who structure the law, i.e. the drafters, the courts, the lawyers and the judges. In this dialogue we plan to look into and question the substantive law and the implementation of the laws. But so far we have not started querying the world view. Perhaps ours has not been a good strategy because we should also be able to question this world view. To lobby we must mobilize the women in the community because if we're just a few of us they say, "There are just a few of you western-oriented and secular women" and then you have a lost cause.

Participant: From the practical point of view of strategizing and working within our existing frameworks: we have to arrive at some sort of a common denominator at the level of which you take people along to lobby. First of all, we're short of scholars of Islam that is something we really need. The other thing I foresee as a big problem in our movement here is that a lot of the activists question the parameters of the Islamic framework for challenging what has been pushed down our throats as 'Islamic laws'. I think that is a hurdle that we will have to tackle.

Resource Person (1): [reporting on the research group discussion] There is so much

that has emerged in the last six days; there are so many things that need to be done, both in terms of Qur'anic ideas, theories and in term of history and in terms of law and so on. We have to make a decision: where do we start?

Out of this conference has emerged the very urgent consensus that we need to work on verse 4:34 because this is the one thing that has tremendous practical implications for women and is used as a basis for making all sorts of oppressive statements against women. It has also emerged from the discussion of the last six days that this is not at all easy to deal with. It's a very complicated passage and even though some of us have been working on it for many years, there are still many things that we need a better grasp of. For instance, we need to have a much better idea of the historical context in which this verse was revealed. We have some notions but not enough. Though we have not really been able to do much collective work until now, I think individually quite a lot of work has been done. Now there seems to be a consensus that this working individually, on our own initiative is not enough; that somehow we have to work together and we have to produce something which can be used to bring about this paradigm shift of which the liberation of women is a very important part.

I would like to emphasize this is a very difficult enterprise and there are certain things that are absolutely imperative. First, there has to be continuity in this and we have to work on it outside of this meeting. This leads to the second very important question of who is 'we'? When I talk about 'we', it's whoever is interested and I assure you, we need as many people as we can get - and more. So it's not restrictive in any way.

The second part is practical. When globally there is a realisation that we have to go back to religion for all sorts of reasons, this kind of research is imperative. However, research cannot be done unless and until it is autonomous and independent. The autonomy of the group must be guaranteed. It cannot be tied to any sort of political affiliation, to any political objectives, or agendas of any women's group anywhere in the world. To do any kind of research we need resources; and the question is where are these resources going to come from? My proposal is that a research fund should be established and that any woman's organization or any individual who wants to should contribute to it. But the contributing agencies who either donate their own money or who raise money for this fund have no control over the research project; because that's the only way we can maintain the integrity of the research. So, the research group has two conditions: to be independent and autonomous and to have continuity. The research has to be done on the principle of *shura*. There is no leader of this group. Of course we have to set up some sort of a framework which is very difficult.

The other thing is that the group will not present its findings on a popular level. It's very tempting but we can't do that because we will defeat the purpose. We have to understand the weight of authority, of tradition against us. Not only is this job very difficult it is also exceedingly dangerous. I'm sure all of you understand that if you make any statement about the Qur'an or *ahadith* without being very sure about your grounds - even if you are a very good scholar - you're still in great danger. To do so without sound scholarship is totally suicidal and none of us really wants to die yet. [laughter] I'm very serious and, also, if the findings are presented collectively that means this represents the collective work of women, groups of women through the world, not just one person.

Another point. This is an entirely new thing; it's never been done before in history. We have to develop our methodology as we go along, and we can do it much better collectively with people - from different backgrounds; in philosophy, theology, history, language and so on. If people take responsibility for various parts of the research, this will not only save a lot of time, but by bringing in many different perspectives, increase

its richness. We can become the pioneers for this research, but our work, actually, belongs to the Muslim women of the world; it belongs to the women who are living at the present; to the women going to come in the future. You can't do this exercise unless you are willing to dedicate your lives to it.

This was the consensus: we want to do this research; we do need money for it and do need support, but we cannot be political and we cannot be populist.

Participant: I entirely agree that it has to be autonomous. We don't want to be told what to do. We want to decide what we want to do and how we want to do it. But the question is: how do we put out this research? If we're not going to use it at a popular level, I mean what is the mechanism that we've arrived at?

Participant: A few of us discussed last night what we should do about verse 4:34. We've got some material already; we have different interpretations of 4:34 that we feel more accurately reflect the true spirit of equity and justice that the Qur'an is, that Islam is. I think we should start moving on that and not wait until the final work is done. What is very important for me is that in learning the Qur'an, my own mind has been jolted by the existence - or possibility - of a different interpretation, i.e. that the translations that we have been reading are only interpretations.

I feel we should disseminate the alternative interpretations of 4:34 that we have already heard in this meeting... and each country can strategize on what would be the right group to disseminate it to and what would be the right strategy. In certain countries it may be to the *ulema*. If you feel it will be the wrong strategy to disseminate that information to the *ulema*, the *maulvis*, then at least to the women's groups in your country. Because while in Pakistan some women's groups feel that they don't want to work within the Islamic framework, in Malaysia that doesn't arise because to even say that "We shouldn't work in the Islamic framework" [whispered in mimic] is, like, taboo. You just don't say it. It's just not done. So the battle in Malaysia, at least, at the level of 'what is Islam', 'whose Islam is the right Islam' is between the more extremist groups (or conservative obscurantists) and the more progressive groups. I believe we can have an input by offering this alternative interpretation and jolt peoples' minds into seeing that other translations have been inaccurate, or at least that there are other possibilities.

After disseminating the interpretations, we need to gather feedback: what are the questions that arise; what's the reaction? When we get feedback then we can think again of our interpretation; whether we should look at it in different ways or not; and in what direction. We could work further to convince those who are doubtful of the interpretation, or to correct our interpretation or to improve on it.

Another action is to look at how verse 4:34 has been used detrimentally to justify government action; 1) in policies; and 2) in codifying laws, and 3) societal values like, "It is the duty of the woman to obey her husband." When we meet women, and ask "Why don't you fight your husband? Why don't you say he's wrong?" they say, "It is my duty, Islam says we have to obey our husband;" the kind of values based on 4:34, i.e. that women should stay at home. This is more of a grassroots movement to tell the woman how 4:34 has been used, that this is not necessarily the right view, or the only view; that there are other views of 4:34.

My own experience of talking to women and also men involved in the Islamic movement, is that when we argue about whether women should stay at home or not, whether women should cover up or not, the first verse they quote is, "Men are the protectors of women," and they say, "Doesn't that seal the argument? That's what the

Qur'an says; "we are your protectors. We are superior to you." I can confidently, say "No!" because I have a different interpretation of 4:34 and I can argue with them.

But if you don't have access to that information when they say, "The Qur'an says this," you can't argue further because you don't know any other alternative. So I think, we should at least provide that alternative interpretation, at least, to the women's groups and activists because it's important to at least jolt the minds of the men. We should be able to feel confident in questioning them based on the Qur'an. I've been asked "On what basis are you doing this reinterpretation?" and my answer is, "On the basis of the Qur'an," and they are stunned. You use arguments of 'western feminists' or 'universal human rights', they'll just demolish you, saying, "It's in the Qur'an. You read the Qur'an." At least, it puts a seed of doubt in their minds that other people are challenging their view; their view is not the only one.

Participant: I'm not so sure that anybody is ready right now to present an alternative interpretation. But what can be done anyhow is what has been done here: compare different interpretations, which already in itself shows that they exist and therefore are unquestionably man-made. I think that's really the starting point: making women aware of the fact that in all cases it is interpretation.

Chair: Two different needs identified in these last few days are being expressed. One is a more global need to move towards the paradigm shift, the other is in our everyday lives: the need to somehow continue our struggle without being hit over the head every time with arguments which are supposed to be Islamic or Qur'anic or whatever: we're saying there is a need for a paradigm shift but we're also saying these laws, these attitudes are facing us right now. How to bridge these two needs is something which perhaps we should discuss.

We seem to agree that these alternative interpretations should be disseminated to women's organizations. However, women's organizations don't live in isolation. They are in touch with and interact with other members of that society which means that information can't be disseminated and also strictly controlled. At the same time I do understand the need and this is really open to the floor.

Resource Person (1): This need for consciousness raising not only of the men but of the women is really very urgent. There are various ways this can be accomplished. Within this group I think we've all had our consciousness raised by several degrees in the last six days and I think that the way to do it is through various kinds of meetings. Personally, I would not have any problem if material which has already been published or is, say, in manuscript form, etc., is disseminated to women's groups; even if they show it to others, it's all right. I feel that the real attack is going to come when we present this as some sort of final thing, the result of our research. One great advantage that women have within the Islamic world is that they are never taken seriously... [general laughter]. . This is an advantage. I have felt that in all these years one reason that I can get away with so much is because they say, "She's only a woman." It's when we say, "This is an international research group" and we've spent all these years on that work and they will have to take it seriously and that's when the attack is going to come. That is why I'm saying that it is very dangerous to present certain things in a popular form without detailed accurate research and that's very technical work.

We should say as loudly as we can and in as many places as we can that it is possible to interpret the Qur'an. We can demonstrate certain things. There are many

things which we can present in a popular form. We can say, "It's possible and we give you some examples", such as you think '*raja*' means 'ruler', but '*raja*' means 'brethren'. We can - and must - do the consciousness raising in whatever way we can. If asked to address women's groups, we should do that. But, ultimately, what is going to really make a difference - because the printed word always reaches more people than the spoken word - is our research. Talking about credibility I know I only have credibility among people who already want to believe what I'm saying. I don't have credibility with those who don't want to believe me. I'm not under any illusion about that. So if we want to be taken seriously in a larger sense, to make a difference, then we have to do this research and in a certain way.

Resource Person (2): In my experience, you have different types of audiences and to get the most essential and effective information to an audience on level A, you have to decide what is level A's capacity for information. If somebody in level A gets information that is ordained for the level F group, this creates problems. Or they take some of the information that you've given out and there's an immediate reaction to it because they don't understand the entire argument. Also, even if you have the entire thing there, people will select and choose from what you have said. Someone read this article in which extracts of my paper were reproduced and they said, "Well, if she believes this, then it means this; and if she believes that, then she's a *murtadd* ['apostate' in Arabic] - and *murtadds* are supposed to be killed." By the end I'm a *murtadd* and I'm supposed to be killed, not based on what I said, but on 'this means this and that means you're a *murtadd* and a *murtadd* means you should be killed.'

Even with watertight arguments, who you are speaking to, who the information gets to, how the information is then recomunicated is important. It can be misrepresented, not out of any insincerity or radicalism or destructiveness or anything, but because your own fervour does not then communicate to the next person all of the necessary details to come to the same conclusion. So information has to be made available in as thorough a way as possible and in as many possible levels as can be. If you're trying to work on some things for the people of the streets (as some of us are) the language has to be simpler than when you're talking to academicians, for example. Certainly something is lost in that simplification but also something is communicated. So there are multi-levels of dissemination and no matter what, even with watertight arguments, there are going to be misunderstandings and misrepresentations.

Participant: Perhaps we need to look at the purpose of this information dissemination; is it to evoke critical reflection or is it - as I sense is implied in what you have just said - to tell people what is right and what is wrong. I find it problematic when a position of authority is taken that I can tell people 'I have the answer.' On the other hand, the process of critical reflection - which I feel is essential in any form of liberation - helps people take decisions and actions themselves.

I would like to give an example. I work in the development field, with the urban and rural poor especially with non-government sector organisations. There, one of the critical debates is of the paradigm shift - seen as an imperative to question the development model that pervades and helps maintain the structures of oppression. The critique is the same: of science and technology which dominates the world now and the forces within that which dominate the Third World societies. In this critique, we find ourselves looking at the question of culture and religion, a question that is becoming an accepted phenomenon within alternative development endeavors. This is why, within the

development sector, we say that the 1990s will be the Decade of Ethics, whether you talk about education, economic development, or rural development. It's like recovering for ourselves the humanity which got lost when science and technology started dominating the world. At least in Asia I find the possible link very encouraging.

I'm involved with two Asian networks looking at development from the concept of justice and peace, and looking at culture and religion to support the justice and peace concept basically of the oppressed and disadvantaged groups. That's why the women's issue becomes very prominent; and I'd like to share from the development field, the methodology developed for raising critical reflection. When you help people become critically conscious, reflective, that means that the culture of silence has to be broken. Without breaking the culture of silence, the reflection will not occur, and without the release of reflection, action will not be possible and power really lies in people coming together on that ethical point. But that takes time.

I'll give you an example from the health sector in Bangladesh. The last 'District-Wide Health Programme' trained the very poor, very oppressed women to do health work in villages. There were also some men working with the women. The men were riding bicycles and the project people suggested the women also ride bicycles. So the women took time off and learnt to ride a bike and started going into the villages. That's when the *mullah* came up and said, "This is wrong. This is unislamic. You can't ride the bikes" [general laughter]. The women didn't know what to do. But the health development people - again because of the belief in alternative development strategies - said, "We can't give you the answer. All we can do is to provide the Qur'an to you. You read it yourself." These women were given time from within their work to do so. They divided up the different passages and they read it themselves and they said, "We don't find anything here which says you can't ride bikes" [general laughter]. They went back to the villages and when the *mullah* came, they said, "You show us where it is in the Qur'an." Their strength came from their own conviction which they got from their own search. If, for instance, the doctors had said, "This is the answer. You go and fight it," they would have come running back for the answer again. Instead something was released for them. Then the *mullah* said "The *ahadith* says you can't do it" [general laughter]. They came running back and said, "What do we do?" So the translations of Sahih Bokhari were given to them. They spent weeks upon weeks reading and then went back and said, "No! We don't find it there either."

In analyzing these examples we noted that those who really use religion as a tool of control, themselves are pretty ignorant and are unable to stand against arguments that come from the heart with conviction. The conviction will only emerge if you help critical reflection take place, not by telling them. There is no such thing as somebody saying, "This is right. Take it." Truth has to be found from within and I, as a development worker, see my role only as a very humble one of facilitator. It may take more time with one group and less with another group, but if information dissemination is for the purpose of evoking critical reflection then it becomes a little easier. For instance, in my work, I would really love to have access to the sort of interpretations and explanations that were given here whereby in my dialoguing with the communities with the women they could be used to start reflection. They want to reject it? Okay, it's their choice. I find that the work here is very closely linked with development work and that's a whole large field. Here I see one advantage which I don't see there: that when we look at alternative development and start analyzing the structures of oppression, the biggest wall is that of despair at seeing that there is no alternative to the development model that controls the world. That's where methodologies have been developed to help people overcome the

despair. In forums like this, it's very nice that the despair element is not there. I think that is a strength which, perhaps, can be lent to development work taking place in Asia - all over the world rather.

Participant: I want to draw attention to one kind of situation which we all will be coming across. At some point or the other there are some situations you have to face up to whether you invite it or not and this is particularly true of Pakistan. It's been happening and it may happen again, I don't know how frequently.

For example, a law is passed which is detrimental to women. You may think that it's better to keep quiet about it for the moment but that does not stop another women's organization, another women's activist organization or a lawyers association or some such NGO from taking up the matter and going to court about it. You are automatically drawn into the fight because it affects your lives. There's no denying you're a part of it whether you initiate it or not, whether you think the time is ripe or not. In such circumstances not only will there be a strong temptation to use all the research that you've been doing, all the arguments that really are so valuable - much as we would not want to bring it out into the open - but we might even need to. I'm wondering how we can use the kind of valid arguments that scholars like you are really producing for us without unnecessarily exposing ourselves?

Participant: Can I just add that when the Law of Evidence was proposed in Pakistan a number of women's groups responded and circulated this response to government representatives in the Assembly - the *Majlis-e-Shura* as the military regime called it. Despite the fact that Women's Action Forum did not accept the political status of the members of the Majlis because they were unrepresentative, unelected people, nevertheless our experience is that once a law is promulgated, (particularly if promulgated as being 'Islamic') it is extremely difficult to amend. So some of the WAF women³⁶ went to lobby with the women members of the Majlis. Our arguments were that what is being proposed does not reflect what there is in the Qur'an, the women would not believe us and they did not want to do anything. We kept saying, "We're not asking you to believe us. Please read the Qur'an. Get to that passage. This is not contained in the Qur'an." Some people actually did that. I think there's a sense of empowerment of women, a self-confidence. Lots of women are quiet not because they believe that what is being said is Islamic, but because they have no means with which to respond to the 'this is Islamic' line. Without some argument it becomes very difficult.

Participant: Right now all the women in Indonesia are trying to work towards a law on domestic violence. We have a difficult situation because we don't have an alternative Muslim lobby. There is a particular grouping of women's organizations and institutions sitting looking at the Bill and the lobby in that particular committee is saying, "This is verse 4:34 and the right to discipline belongs to the husband," and they went to such lengths as to ask, "What is the correct right of beating? When can he beat her?" It was really scary. Luckily, one of the resource persons here was in the region at that time and we could have some access to alternative interpretations and we managed to publish what she had to say.

36 Not all people or groups in WAF agreed to meet and lobby with the Majlis-e-Shoora since this was an unelected body. See Mumtaz & Shaheed, 1987 for details.

Resource Person (1): Different needs are being expressed by different people. At one level, I don't see any conflict in any of it. I think we can do all of it.

The notion of the various levels is very relevant but one has to remember a basic difference between two kinds of exercises that we are interested in. Research by its very nature works in a certain way and we have to appreciate these differences in order to try to evolve a strategy for it to happen. In order to empower women to feel that they are not trapped in a closed system, that there are alternative interpretations, they don't necessarily need to have access to research. There are many things which can be communicated without going into all the scholarly research. The network has access to thousands of women, my goodness! What can we not do with this?! Women can be freed and empowered without having to study Sahih Bokhari and the Qur'an, whatever. All that has to be opened up to them is: the Qur'an is just. God is just, and the Qur'an is not a closed text. That can and it should be done by as many people and in as many ways as possible.

Participant: My question was how this potential research group could respond to our requests, e.g. if we are going to work on law for instance, there are obvious connections. We need your help, the way you think it can be useful to both...

Resource Person (1): Certainly. Well, so many of the questions that have come up in the last six days are questions we hadn't thought about before. We are going to research many historical and legal questions that have arisen and when we think that we have an answer - there is never any final answer - and if we think we at least have a *prima facie* case we can present it to you.

People have different notions of what research is. We can't quit what we're doing and start doing something else because a problem has arisen. This does not mean, however, that we cannot make space to consider an urgent problem. Even the research group has to have short-term goals and long-term goals.

Participant: Around the table we do have people based in different centres or places where we also could perhaps contribute, if we were told how to do it. We have also seen that even in terms of the laws and customs, etc., there's a whole spate of research that also has to be done. We'd have to find out how and at what point these could link up.

We also have to remember the realities that we're all working under. Many of us are working under extremely adverse circumstances where just to keep going is a problem. However, that never stops us from dreaming of all those things that we know must be done and we will try and get them together.

Participant: Rather than using the term 'interpretation of the Qur'an based on a feminist perspective', it might be better to say, 'interpretation of the Qur'an that would accurately reflect the spirit of justice, equity or gentleness or holistic view of the Qur'an'. In Malaysia, if I talk with the men, when we argue about this issue in the Qur'an and they ask "On what basis are you interpreting the Qur'an?" and if I say, "On a feminist perspective," forget it. That is the end of the argument. I would have to say, "On the basis of the Qur'an". The Qur'an does not talk of separating men and women. It's genderless. It believes in equality between men and women.

Participant: Just because people say that they don't want to touch us if we are talking from a feminist perspective does not detract from the fact that that is what we think we

are doing, and that perhaps it is the feminist perspective that is going to allow you to change that entire world view.

Resource Person (1): I think her point is extremely important because when women started doing theology, men called it 'Feminist Theology'. At one point to distinguish it from the mainstream, it was a very important term; now, it's a term of diminishing things. In my writings, I do not use the term 'feminist theology'; I'm doing theology. It's as good or bad as any other theology. It's just theology. This is yet another Qur'anic interpretation. It happens to be by women but really there is no such thing as feminist theology. The word 'feminism' has come from the West with a lot of negative baggage. Why should we have to fight unnecessary battles. We've got a lot of necessary battles and if we use words like 'women activists', 'women's rights', 'women' nobody can question that; those are neutral terms. The moment you use 'feminism' people think of everything from unisex bathrooms to promiscuity.

Participant: My question is do we want to work with women's groups who do not want to work within the framework of Islam, within the framework of the Qur'an?

Chair: I'm not sure who you are referring to when you say, "Do we want to work with such and such?" WLUMI does not consider itself to be an organization. It sees itself as a network of information, solidarity and support. So, there's no 'policy' to work with X but not to work with Y except those who we think are really against women's interest. For instance, the network received two requests, I think on the Shahnaz Sheikh case.⁽³⁷⁾ One from a group in India wanting to reform the laws from within an Islamic framework, and the second was from women's groups who rejected this and were for one uniform code for all citizens of India irrespective of religion, race or creed. Because we're not an organization the network did not take a position; both requests for support were circulated as widely as possible so that each individual, each group, wherever they are situated, could decide for themselves whether they wanted to support one or the other type or both. As far as the network is concerned, we continue to coordinate and to receive information and work with a whole variety of persons with very different backgrounds in very different positions. As I said, we're a network: we'll try and promote as much interaction between everyone but we cannot, we feel, exclude those who are working for women's right within the Muslim world from this network irrespective of their position on Islam or secularism.

Resource Person (1): I would like to say something about that. I think the position of the network is quite clear and the network has a right to it's position. Nevertheless, I think it is important to understand that in the context of the interpretation of the Qur'an, if you have people half of whom are working out of a faith-perspective and half working out of a totally non-faith perspective that does create some problems in terms of the actual working.

Are we going to spend all our time fighting each other? Because it is a fact that women are being pitted against women and I think it is very important for women to have a sense of solidarity and not allow this to happen. I have raised this question earlier: how is it possible for women who believe the Qur'an to be the word of God and

37 See footnote No.2

women who do not believe in the word of the Qur'an to work together on one project? I don't think it can be done. Please don't misunderstand me. I am not questioning the integrity of the network; I believe it is genuinely committed to promoting the cause of women's liberation throughout the world and it tries to bring together as many people as it can find to do that.

I'm talking about specific contexts. It is quite possible, say in the context of social action, to bring together women who are coming from totally different perspectives: one could be working from within a faith perspective; one could be secular; one could be a Marxist and one could be a Communist. They would all, I can imagine, work perfectly well together in terms of social action on a particular issue. But in the context of Qur'anic interpretation, it is not possible. This is a theoretical exercise; it is not possible to put people working from within the faith perspective together with people working from a different perspective and expect this research project to get anywhere.

Chair: I think it's fairly clear by now that in this potential future project on Qur'anic interpretation, you will have those who have a faith perspective. I don't see how it could be otherwise. The question being asked was whether the network will or will not work with certain tendencies within the Muslim world. To that the answer was not only will we, we have in the past and we will continue to do so in the future. I think at some point we have to link up even though it may be a problem. All I can tell you is that at one point this was brought up in the context of Pakistan and, strange as it may seem, a number of the women who said, "We cannot work from within the Islamic framework," or, "We do not want to," are women with great faith, but they thought that in the struggle, in the women's movement, this is not something that they wanted to do. There have been very heated discussions but we've managed to work together and I think that is what is important: that we continue to work together and know that there are different ways and there are different avenues of arriving where we want to go.

Participant: I'm sorry I brought all this up. What you're saying is fine. I have no problems with it as a strategy. We do need to work together but I think in specific instances like Qur'anic interpretation, of course, it would be destructive if you have people who don't believe in working within the Islamic perspective.

Resource Person (2): I also want to make a comment about trying to promote every opinion as long as they're not against women. As altruistic as our objectives are still, as individuals, we make opinions and as a consequence inadvertently promote those opinions and those people who seem to more closely represent our altruistic goals. I'm not trying to say, therefore you should be less human and actually treat everyone fair and know what's in everyone's heart. It's not going to be possible. I'm only mentioning that we can decide, for example in a certain area, to limit the participants to those people who feel that they can be effective in that area. Even with regard to how we disseminate information we're making some choices; as part of a network we're saying that this information will achieve results that we would like to see happen. This information may not achieve those results and as a consequence when we feel that way we will not promote that second category of information as rapidly as we would promote the first one.

Participant: People who're dealing with the Qur'anic interpretation should have the faith perspective as we're calling it here. With my group, we have been in several towns

where when we talk about women's rights, we've been accused of being without religion or lacking in religion. In several cases there the parents insist that the marriages of their daughters have been strictly according to religion, such as the practice in the interior Sindh of marrying their daughters to the Qur'an, which suffices according to the parents and which they say fits all religious requirements.

Whenever we talk of women's rights, we're accused of being irreligious. We then try to give them religious, historical examples of women who have been active throughout the history of Islam, but we, sort of, just raise our voice on abstract principles without back-up and full support. So I'm very thankful that I have been able to attend this meeting and this is the kind of information that is needed to mobilize the women because this is what they need to be told. But people like me don't have the religious education necessary to facilitate that kind of support and change unless we are given more information of the kind that has been gathered today. There's a beautiful example of a couplet from a Sindhi poet about a woman who has chains on her feet but who cannot mobilize herself until she's aware of movement within the universe...

There are a number of cases in interior Sindh where several women within a single family have been married to the Qur'an and have subsequently become insane or lost their sense. I also mentioned this in an interview and it came in the paper and as a result leading Sindhi politicians issued statements against me for that interview. They said they would fix me; I got so many threats that as a result I had to call a press conference and talk about what was happening. I'm very grateful to have been able to be here. The meeting has helped me gather some of the ammunition that might be needed to counter such practices.

[At the final open session, the two principle resource persons were requested to summarize what the meeting had been about. We conclude with their statements.]

Resource Person (1): We have looked at how the Qur'an has been read in the past and how it is possible to read it at this time or in the future. In this we have also referred to the issue of woman's creation, which theoretically, is perhaps the most important.

Resource Person (2): What I would like most to share, which has become important to women in the modern context, relates to the world view of the majority of the people who gave down a translation, interpretation, exegesis, *tafsir*, etc., commentary on the Qur'an. Their world view did not include the experiences, perceptions, realizations, thoughts or concerns of women for a very long period of time in our history. When the Qur'an came, not only was it a book that was important to Muslim males in the community. It was also a book that was important to Muslim females in the community. But the intellectual tradition of Islam, which began immediately, had a slight disadvantage with regard to women's participation and that is that we did not have universities and the like where you could go and learn from scholars. If you wanted to learn something you would have to abandon your daily life, take to the roads and follow knowledge wherever it presented itself. This became practically impossible for women because this was a time in which we lived very, very close to nature, so women were very naturally very busy reproducing children. We did not have the ability to abandon our children (in my case I brought mine with me) to be able to pursue these learning circles and to exchange ideas.

The women were still a part of the Qur'an and still experiencing something with regard to this book, but the tradition began to be standardized, written down, codified by

people who had access to intellectual circles, and they were primarily men. What these men wrote passed along century after century as representing the way to think about this text. As a consequence, in the modern era, especially in the post-colonial period, in most Muslim nations when women try to find their own voice, they look back over a fourteen hundred year old history and find precious little that comes from their perspective.

So some women have said it is Islam that is against us, it is the Qur'an that doesn't speak to us or for us. What has had to happen in the modern era is that women scholars have had to go back to the Qur'an itself. They have had to jump over fourteen hundred years of literature to ask what does the Qur'an say, bare and naked, without the interpretation, without the implementation.

And this kind of perspective on the book has yielded itself to show that the Qur'an is a very pro-feminist book. As a consequence, the motivation behind of much of the work that we were doing today was to be able to find (not necessarily pro-feminist in that it would be anti-androcentric) the voice of women within that text. And sometimes what we find is very beautiful, and sometimes what we find is very tough, sometimes what we find is very funny, and sometimes what we find is very serious. This is because, I believe quite firmly, that the book is a living book. It is meant to live in our lives and our lives are funny, and difficult, and sensitive. The book relates to all of those aspects of our lives.

What we have to do now in the modern era is to make available the voice of the Qur'an that speaks from the heart of the woman as well. This is unfortunately something that has such a long past that when we begin to do it, some people become very insecure. They think that if you find the voice of the woman within the text, then the man doesn't have a voice or, perhaps, that the woman's voice is better than the man's voice. While all we have said is not necessarily a comparison to put men down and make woman superior, but that Allah, through his book, has given women an equal opportunity to be voiced through the book, to experience what is in the book and therefore to live and to know Allah.

ANNEXE 1:

The Women & Law in the Muslim World Programme

Participant: The Women and Law Project is one that we have been thinking about for the last four or five years. This is a project which has been directed and guided and shaped not by concerns of research but by the needs that have come about and been expressed in the process of networking.

The net result we hope would be a handbook; something that women and women's groups and other human rights activists could use in order to help themselves strategize. In all of our different countries and communities the ground situation may be different, so there is no one blueprint of how we can or would struggle for our rights, to change everything. However, we thought it would be useful if we could have a cross-cultural compilation of Muslim jurisprudence and specific laws that affect women as they exist in different communities. What we would also like would be interpretations of Islam: one, which have been used to justify these laws; two, which are based on the feminist perspective and which allow people, addressed by this book, to see the alternative possibilities that exist.

We would also be looking at not just the issues taken up by women but also the strategies adopted to maximize the space and to resist what we see as very reactionary trends in some of our countries. It's not a research project as such; it is a project which is guided by very urgent felt needs in our various communities. This project is planned in four phases: we would start with people and situations in specific countries and move from that to regional comparison. We have not defined 'regional' because there are geographical regions, regions in terms of schools of thought and regions in terms of cultural similarities though they may not even share the same school of Islamic thought. We'll be collecting enormous quantities of information - not all of which would be possible to put in a handbook - but we hope that on some of the major issues, the countries and the regions and the international working meeting will be able to identify priority issues, which are most urgently needed for cross-cultural information and strategies.

Over the last few years we have been trying to identify persons as well as groups who would be interested. We have limited it to 19, 20 countries partially because even this is an enormous task and we have no idea how we're going to actually be able to cope with keeping in touch with each other, feeding information to each other, etc. So that is a part of the logistics problems.

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