

Women, Islam and Human Rights

University of Newcastle-upon-Tyne

Doctoral Thesis Submitted for the Degree of PhD

Faculty of Law, Environment and Social Sciences

Department of Politics

September 2002

Nazia Latif

Acknowledgements

In producing this thesis thanks is owed to the following:

Allah – to Him belongs all praise.

Professor Peter Jones from whom I have learnt so much and whose supervision cannot be faulted.

My parents whose prayers and support mean more to me than words can ever express.

Mustafa, Naseem, Kousar and Sazia for looking after their sister.

Ammaar, Shabina, Shaistah, Azeem and Madeeha who have provided me with much needed amusement.

All my family in Ireland and Pakistan who have offered their encouragement and support.

All my friends and in particular, Carmen, Catherine, Erica, Nadia and Wendy.

Fellow students and staff at the Department of Politics from whom I have learnt a great deal.

The Library staff at Newcastle University with special thanks to Irene at the ILL desk.

The Economic and Social Research Council for funding this PhD.

All those who have shared with me their opinions on the subject of Women, Islam and Human Rights.

Abstract

This thesis explores the position of women in contemporary Muslim societies. It examines whether restrictions placed on them are the result of Islamic edicts and how human rights documents address those restrictions. It looks at the position of women in the areas of family law, political and legal participation and veiling with particular reference to Pakistan and Iran.

The thesis begins by exploring how Islamic scripture is used to endorse opposing views of women. On the one hand is a body of literature, generally termed as conservative, that sees women as intellectually weak and in constant need of male guidance. I argue that this literature is actually based on an inconsistent approach to Islamic sources and show how Muslim women are using alternative, exegetical works and rulings from orthodox and contemporary scholars with classical training as a source of empowerment.

Based on the findings of the case studies it is argued that human rights standards, embodied in the International Bill of Human Rights, overlook many aspects of Muslim women's suffering and in particular how their socio-economic status affects their ability to escape abuse suffered at the hands of private, non-state actors. I then contend that both Muslims and human rights advocates must begin by acknowledging that they have failed the plight of Muslim women. Muslims by acting on conservative arguments and human rights advocates by overlooking the reality of women's lives. I argue that both Islam and human rights can work together to empower women but firstly human rights advocates need to take on board the different criticisms levelled

at their theory. Muslims also must endeavour to prove the authenticity of their challenges to conservative understandings of Islamic sources by educating at grassroots level and by taking on the task of Islamic scholarship through established centres of Islamic learning.

'And among His wonders is this: He creates you out of dust – and then, lo! You become human beings ranging far and wide!

And among His wonders is this: He creates for you mates from among yourselves, so that you might incline towards them, and He engenders love and tenderness between you: in this behold, there are messages indeed for people who think!

And among His wonders is the creation of the heavens and the earth, and the diversity of your tongues and colours: for in this, behold, there are messages indeed for all who are possessed of (innate) knowledge!

(The Qur'an 30:20 – 22)

Contents

Introduction.....	3
<i>Human Rights: whose standards?</i>	5
<i>Islam, Islamic sources and Muslims</i>	12
<i>Women's suffering and emancipation: whose standards?</i>	18
<i>Sources</i>	23
1. Women in Islamic Theology.....	24
Family Law	32
<i>Marriage</i>	32
<i>Divorce</i>	53
<i>Inheritance</i>	62
The Legal and Political Status of Women in Islam	66
<i>Women as Witnesses</i>	68
<i>Women in the Legal Profession</i>	73
<i>Women as Political Actors</i>	74
<i>Hijab in Islam</i>	79
Conclusion	87
2. Family Law in Iran and Pakistan.....	91
<i>Background</i>	95
Iran	97
<i>Marriage</i>	98
<i>Divorce</i>	119
Pakistan	126
<i>Marriage</i>	128
<i>Divorce</i>	133
<i>Dowry</i>	138
<i>Inheritance</i>	139
Conclusion	141
3. Legal and Political Status of Women in Iran and Pakistan.....	145
Iran	146
<i>Political Rights</i>	146
<i>Legal Rights</i>	150
Pakistan	155
<i>Political Rights</i>	155
<i>Legal Rights</i>	157
<i>Hijab: An Overview</i>	165
Conclusion	171

4. Human Rights.....	175
<i>Human Rights or Citizen Rights?</i>	182
<i>Group Rights</i>	191
<i>Women's Rights as Human Rights</i>	201
<i>Religion and Human Rights</i>	216
<i>Human Rights: Beyond Repair?</i>	240
5. Women, Islam and Human Rights.....	241
<i>Muslims, Leaders and Scholars</i>	248
<i>Women, Justice and Equity</i>	257
<i>Muslims and Ijtihad: Inadequate Reform?</i>	264
<i>Unresolved Issues</i>	269
<i>Practical Solutions</i>	276
<i>A Place for Human Rights?</i>	290
<i>Human Rights for Muslim Women: Consorting with the enemy?</i>	295
<i>Conclusion</i>	300
Conclusion.....	302
References.....	313
List of Statutes	326
Glossary.....	327
Bibliography.....	330

Introduction

In academic work on Islam, whether it examines Islam and the west or Islam and democracy, the position of women features high on the list of concerns. This is not surprising as according to Zuhur a 'culture's value may be measured by its treatment of women'.¹ Islam's value is questionable in the eyes of many observers because of its dubious credentials with regard to its prescriptions for women. Along with claiming to respect Islam and Islamic civilization, the western liberal tradition voices and shares this concern for the plight of Muslim women. When it is explained to western liberals that Islam was sent to liberate women and that the faith espouses complete equality between sexes, they ask why the present reality seems to testify to the opposite. When it is claimed that women are currently repressed not because Islam is being followed but because Islam is being ignored, that those claiming to be Muslim are not necessarily 'good' Muslims, they ask if it is not time to give up the seemingly untenable quest for the Islamic ideal. Underlying liberal explorations into Islam is the belief that there is a need for Muslims to make use of liberal ideals such as democracy and human rights protection not only because these ideals appeal to the rational and humane aspects of the individual but also because they, unlike Islam and indeed many other faiths, have proven track records. They have resulted in equality for all. At the very least there exists a confident belief that human rights standards of equality and justice are better than the Islamic standards. Islam certainly deserves respect, and outsiders have a duty to understand the tenets of the faith, but ultimately, as with Christians in the western world, Muslims must learn to keep religion in its 'proper' place: the private realm of human interaction.

Muslims working on Islam tend to follow broadly either a reformist or a conservative tradition. Amongst reformists, or what are sometimes referred to as liberal or modern Muslim writers, one camp asserts the need for Islam to undergo some form of reformation such as that experienced by Christianity. They accept the need to relegate religion to a specific space. Other reformists call for less dramatic reform or modernisation. These writers call for a re-examination of the Scripture in light of present circumstances and profess Islam's ability to adapt to such changes. The adaptation they propose would allow Muslims to retain Islam as a political ideology and also to embrace equality as that term is understood in the west and western means of political organisation.

The fundamentalist or conservative tradition is not termed so because of its attitude to Islamic texts. The interpretations these writers derive are not fundamental or necessarily conservative in that they refuse to deviate from the exact letter of the text. I term these writers as 'conservative' because of their attitude to society rather than to Islam. It is not that they believe Islam should not be altered, for indeed the majority of Muslims hold this view. It is more the case that they believe societies should not change. They express the need to return to the Golden Age of Islam, the Prophetic era and there exists a refusal or inability to acknowledge that certain economic and political developments since then might in fact be irreversible but not necessarily unIslamic. In relation to women, the conservative Golden Age was one where women stayed at home, nurturing children and ensuring that their husbands returned to a comfortable, relaxed environment after a day's work. Conservatives will not concede that this Golden Age is more reminiscent of a 1960s American sit-com than any historical literature that depicts the Prophet's time. This body of literature also

displays a deep disdain for anything considered western in origin, any dialogue with the west should be for the purpose of converting the *kuffar* (infidels) and there is a refusal to acknowledge that the classical boundaries between the Muslim (*dar al-Islam*) and non-Muslim (*dar al-harb*) world, in which the former is in a constant state of conflict with the latter, might no longer be feasible.

Human Rights: whose standards?

Not all of this literature has discussed the position of women with particular reference to human rights. However in work on Islam reference to human rights standards is ever-increasing. Aside from entire volumes dedicated to the subject of Islam and human rights it is difficult to pick up a book with Islam in the title without coming across some mention of where one stands in relation to the other. Jack Donnelly has referred to human rights as the new standard of civilisation and writers on any belief system are indeed conscious of this new standard.² A public relations initiative is being undertaken to show that Islam, or East Asian or African values for that matter, can also incorporate the idea of human rights.

The terms of reference are not always clear however. While professing respect for the concept of human rights, there is disagreement over what exactly the term means. For the most part the focus is on current international human rights standards as stated in the International Bill of Human Rights and this will also serve as the primary reference point for this thesis. For advocates of the Bill this is the saviour, the tool that must be respected by all and the very minimum that any state claiming to uphold justice and equality must respect. For opponents, the Bill is seen as a weapon in the

hands of neo-imperialists; those bent on discrediting the poor and weak, identifying them as savages in need of guidance and external interference. Yet these opponents would argue that their refusal to ratify certain Articles of the various documents that form the Bill, or their attempts to produce alternatives to it, does not equate with a refusal to acknowledge and support the very concept of human rights. They too believe in this concept, but feel that a slightly different list is needed or a shift in emphasis from the individual to the group or from civil and political rights to socio-economic rights.

While conceding to the higher moral ground that rights standards seem currently to occupy in the west³, current trends also express dismay and anger at the doctrine. It is believed for example that the west still entertains imperialist ambitions. It is also pointed out that the west, despite claiming to be the birthplace of the very concept displays remarkable hypocrisy in upholding and defending the principles of human rights. It exploits human rights standards to justify economic and political ambitions, to refuse trade agreements for personal gain, to justify bombings and to place sanctions against those it deems 'guilty' of human rights abuses. However, this policy of punishing abusers is notoriously inconsistent and other states guilty of the same or greater abuses are befriended when this suits western national interests. At the very least it is claimed that the *International Bill* reveals ignorance of the real circumstances of people's lives.

The arguments pass to and fro with great frequency both in current academic literature and popular media. However, if one were to ask which is losing the public relations battle, Islam or human rights, the answer would depend entirely on whether one was

asking the question in Washington or Islamabad, London or Tehran. Both human rights and Islam it seems have a lot to prove to sceptical observers. Thus if Muslims must explain the lack of respect for women in the Muslim world despite their claims about the commandments of Islam, human rights proponents also need to explain the hypocrisy, inconsistent foreign policies and racism that persists in states that are fully signed up to the International Bill. Critics of the human rights tradition from whatever religious or cultural persuasion are derided for pointing to such failures. Some writers dismiss the criticisms with notable flippancy. These charges of hypocrisy and double standards are clichéd argue some, while others go so far as to claim that the charges have more sinister undertones and actually serve as a mask or diversionary tactic for those wishing to pursue or justify repression. Yet the enquiries into polygamy, veiling and inheritance are voiced with the same frequency and warrant the same charges. They too, one can claim, are also clichéd and the ‘crocodile tears’ shed over the position of women in Islam are actually a disguise for wanting to control Muslim lands and progress. This desire also constitutes a form of repression. The defence against these criticisms that come from both sides is markedly similar: please do not confuse the theory with the practice. The theory is sound but the practice falls short of our aspirations.

This thesis acknowledges that both sides, Islam and human rights advocates, voice concerns that are valid and in need of further exploration. Muslims themselves agonise over the commands of their faith. They feel that the claims made by some Muslims that certain privileges are the exclusive lot of men and certain restrictions only apply to women are inconsistent with the descriptions of the grace and mercy of God described in the *Qur'an*. Similarly some human rights advocates also ponder

over the circumstances of people's lives that they have been accused of overlooking and thus study with greater discernment for example the standing ascribed to groups rather than individuals or the experiences of women or the poor. This internal inspection suggests that the criticisms voiced by 'outsiders' cannot always be considered disingenuous or as arising from sinister motives. The thesis however questions the traditional motivation for this exploration. Given what Zuhur and Donnelly claim about the treatment of women and the place of human rights respectively, it is not surprising that the two are frequently discussed together. Thus it is assumed that Islam in order to be valued highly and in order to be considered civilised must treat women in accordance with human rights standards. The motivation behind much of the literature is to show that Islam does or can be made to respect these standards and as such can be counted amongst the civilised.

In this thesis, while an attempt is made to isolate those practices labelled Islamic which are contrary to human rights, the purpose is not to see how those practices can be amended or abolished simply for the sake of matching human rights standards. My starting point is that any individual with a genuine commitment to Islam and/ or human rights, by virtue of that commitment must be concerned primarily with human suffering and how to alleviate it. Thus both sides must be aware of the form that suffering takes in today's world and must be responsive to the real needs of the victims. Once this has been undertaken, looking at ways to make Islam and human rights compatible is an important exercise only if this is the best way to alleviate that suffering. To date, while work on Islam *or* human rights sometimes acknowledges and responds to the criticisms voiced against each framework, the literature *comparing* Islam and human rights has in fact started with the assumption that one of

the two frameworks has all the solutions, there is nothing one can learn from the other and the purpose of dialogue is to convince the other of its superiority. This thesis departs from such assumptions and is concerned firstly with establishing what the problem is in Muslim societies. In other words what exactly threatens women's well being today? Only once the problem has been discovered can possible solutions be proposed. Of course advocates of Islam and of human rights thinking both believe they possess the solution. This thesis, however, looks at the ways in which advocates of human rights and 'Islamic' solutions have actually failed to respond to such threats adequately.

In taking on the first concern it is necessary to study in some depth the ways in which women are addressed in Islamic theological sources. Is it Islamic teachings that allow and in fact encourage the suppression of women? Or is it cultural practices and/ or government legislation that are in fact contrary to Islam? Or is it a combination of all these? Thus in Chapter 1 I examine precisely which aspects of Islamic teachings might be thought to threaten women's well being. This starting point inevitably involves taking on the charges commonly levelled against Islam. Polygamy, veiling, marriage and divorce laws, inheritance rights, women as witnesses, lawyers, judges and politicians must be discussed because the way these issues are dealt with in Islam is believed to inflict suffering on women. I will examine these aspects of Islamic teachings and the different ways in which they have been interpreted and how these interpretations might in turn be detrimental or indeed beneficial to women. Essentially Chapter 1 asks the question, can Islam be used to liberate women, before looking at why it has not done so.

Chapters 2 and 3 then go on to look at the situation of women in Muslim states today. In these chapters a number of concerns are addressed. What types of interpretations of Islamic sources do governments making claims to Islamisation employ? How genuine are these claims to Islamisation? How does the legislation of these self-styled Islamic regimes relate to human rights standards? In these chapters I compare human rights and Islamic standards by commenting on which aspects of the states' legislation are contrary to the Islamic standards identified in Chapter 1 and which are contrary to United Nation's human rights standards. The purpose here is to establish which is more responsive to the restrictions facing women: which laws restricting women, would governments have to abolish or revise if human rights standards were followed, and which would need to be abolished or revised if Islamic standards were followed? Here I also suggest that, if the treatment of women is how societies are evaluated, the treatment of women is also how men are evaluated. I look at how men are encouraged to exercise control over women's lives by government statements and legislation and by local norms, which suggest that a man's piety and struggle to be a 'good' Muslim is inextricably linked to how he allows his closest female relatives to behave. In that discourse it is also implied that 'real' men can control women, while those who cannot are emasculated. Thus government legislation represents only one layer of restrictions imposed on women. Therefore any solution to the problems facing women must also be aware of the dynamics that operate at local levels and how and why communities react to government legislation when this relates specifically to women's lives.

Having explored the different and complex problems facing women in Muslim societies, I then consider how far human rights standards address those problems.

Having identified legislation contrary to human rights standards in Chapters 2 and 3, I ask in Chapter 4 what the situation would be if all those laws were wiped from the statute books. Would one witness a dramatic improvement in women's lives? This question leads to an examination of numerous other criticisms levelled at human rights. These criticisms are relevant to the concerns of this thesis because they identify general shortcomings in both the theory and practice of human rights. Literature on women and human rights often suggests that women in the Muslim world are crying out for human rights standards to be incorporated into their national legislation. I examine how women might in fact be deterred from appealing to human rights not only because of opposition from men but also because women themselves are dissatisfied with current United Nations standards. The shortcomings I identify are directly related to the experiences of Muslim women and I argue that, until they are addressed, human rights standards will be only a very limited source of empowerment for Muslim women. Chapter 4 addresses many of the charges commonly levelled against human rights advocates. These charges are the hypocrisy displayed by powerful western states, the disproportionate emphasis on individual, civil and political rights, the lack of concern for experiences specific to women and the unfair treatment of religious groups.

In the final chapter of the thesis, I draw all the previous findings together and examine why Islam has failed to liberate women. I consider how far Islam, if it is to provide a framework for improving the position of Muslim women, needs to undergo the type of reform commonly proposed by reformist Muslim writers and secular writers. I also examine the discrepancies between Islam and human rights standards and ask which of the two needs to reconsider its standpoint on those particular issues. I then look at

how far proponents of human rights can work with advocates of Islam in order to provide practical help to Muslim women wishing to challenge their current position in society. Here I also make some suggestions as to what shape such initiatives might take and how these should relate to communities at grassroots level.

Before proceeding a brief word on the position of women in Muslim societies. The thesis does not claim that all women or even the majority of women in the Muslim world are victims either of draconian government policies or abusive relatives and communities. Moreover, there are many more positive aspects of these societies and the ways they value womanhood that cannot be listed here because of limitations of space. This thesis focus on policies and practices which attempt to influence and restrict many aspects of a woman's life including her education, marriage, choice of career and her very existence. These laws and norms therefore pose a *potential* danger to all women living in these societies, and have proved an *actual* danger to many women. Moreover they are indicative of the general views of women held by governments and societies and often these views are as real obstacles to women's emancipation as specific legislative measures. They therefore warrant scrutiny.

Before taking up the argument of the thesis, an explanation of some concepts and terms of reference is necessary.

Islam, Islamic sources and Muslims

In work on Islam, what is meant by Islamic tenets is inconsistent and at times confusing. These tenets and how they are used in this thesis requires some

explanation. This study is aware that Muslims today feel indebted to the founders of the five classical *madhahib* or schools of *fiqh*. In particular their methodology for formulating rulings and *fatawa* is uncontested even today. Many Muslims believe it necessary to follow one of these jurists in all religious matters⁴ and any Muslim today training in Islamic *fiqh* at one of the recognised centres for Islamic learning will study under one of these schools of thought. However, despite this strong psychological hold, it is important to make some controversial observations. Firstly, there is a tendency to equate the rulings of the classical scholars with the eternal and universal injunctions of the *Qur'an*. Thus *Shari'ah*, the eternal guide to Muslims, has come to be confused with the legal judgements of human beings living in the third century of Islam. For *Sunni* Muslims it is the works of Imams Abu Hanifah, Malik, Shafi' and Hanbal that are continuously referred to and for the majority of *Shi'a* Muslims it is the works of Imam Jafar. The position adopted in this thesis is however in agreement with writers such as Tariq Ramadan⁵ and Muhammad Asad, that the work of these scholars is *fiqh* or jurisprudence but not *Shari'ah*. As Asad explains, the *Shari'ah*, intended to be the eternal, immutable basis of Muslim life, could not have been made dependent on the exertions of the fallible human intellect.⁶ Thus the *Shari'ah* as it is used throughout this thesis refers to the *nass* ordinances of the *Qur'an* and *Sahih*⁷ *Hadith* collections. Those ordinances are unequivocal and have an explicit textual meaning. In this thesis, 'the Islamic sources' or 'the primary sources' are terms used to denote the *Qur'an* and *Sahih* collections and not the works of these scholars.

Secondly, it is often claimed that the differences of opinion across the four *Sunni* schools are so slight that they warrant little concern. This is misleading and an examination of the work of the scholars actually reveals stark differences. While the

primary sources for all these jurists were the *Qur'an* and *Sunna*, all employed other juristic tools such as *qiyas*, *ijma*, *ijtihad*, *ray* and *Maqasid al-Shari'ah* to varying degrees and in differing orders. These tools form the classical methodology and are retained by scholars today but have led to very different conclusions. For example, scholars differed considerably over exactly what constituted *awra' for women*. Some, aware of the physical tasks women working in agriculture were involved in, allowed the forearms and ankles to be shown, while others prohibited this. Thus each scholar was inevitably influenced by his cultural time and space. These differences of opinion cause Muslims and non-Muslims considerable confusion and constitute a greater problem than is usually acknowledged. This issue will be addressed in the body of the thesis.

Here it is important to point out that the differences also testify to the fallibility of the scholars and ultimately such rulings on social affairs (*muamalat*), which are not given any clear, unambiguous authoritative voice in the *Qur'an* or utterances or actions of the Prophet, do not constitute an eternal Islamic ruling; they are not part of *Shari'ah* and therefore do not need to be followed by subsequent generations of Muslims. This viewpoint, while currently fairly controversial, is gaining increasing support. For example, Muslims, including learned scholars with popular support such as Shaykh al-Qaradawi, are increasingly voicing the need for a new generation of scholars that can respond to present dynamics even if this means over-turning orthodox rulings. In such statements there is at the very least an implicit acknowledgement that those rulings are not part of eternal Islamic law.

This study does make extensive use of the classical rulings for a number of reasons. Firstly many of them are actually of great benefit to women, in that they grant women significant rights and privileges and also enjoy tremendous legitimacy amongst Muslims. Secondly, where this is not the case one can see the rulings and methodology as providing important guidelines and building blocs for Muslim scholars today. In fact maintaining this methodology is crucial as past experience has shown that when scholars have deviated from the traditional methodology they have failed to influence Muslim thinking. Khalafallah has shown how two scholars arriving at very similar conclusions left very different legacies for succeeding Muslims. He compares the work of Muhammad al-Ghazali (d.1996) and Khalid Muhammad Khalid (d. 1995) and argues that al-Ghazali in fact went further than Khalid in arguing for women's participation in political office. Yet he was able to attract a massive Muslim following while Khalid was not because the former worked solely through some version of the Islamic method. The same reasons have also been used to explain Shaykh al-Qaradawi's⁸ popularity today.⁹ Thus Muslims do not have a problem with accepting change but one must be aware of how one is to justify advocating that change.¹⁰ Thirdly, the rulings also reveal the types of influences on subsequent generations of Muslims and their perceptions of womanhood. Despite this use of classical rulings, it is also emphasised that for the sake of consistency all those rulings that are not derived from the *nass* ordinances, even when considered beneficial to women, are open to dispute and are not definitive. It is also important to state from the outset that the thesis does not claim to be an attempt to establish the 'true' Islam. Such a task, if possible, is certainly beyond the confines of this work. The *Qur'an* stipulates an array of injunctions on economic, political, spiritual, social and dietary issues. Scholars devoting their entire lives to exegetical studies of the

Qur'an have not been able to agree on all these issues that Islamic texts address. The works of classical and contemporary scholars are used in the way that they are because the thesis is occupied with the task of establishing whether there is a possibility of uncovering a version of Islam that is acceptable to Muslims, because it does not deviate dramatically from established methodologies and that is also consistent, authentic and emancipating for women.

One might argue that this methodology of haphazardly employing arguments and rulings from across the schools of *fiqh* and from contemporary writers and scholars is inconsistent in itself. But *Sunni* Muslims will also assert that, while rulings may differ across the schools of *fiqh*, they are all equally valid and that no one school can make claims to superiority or greater authenticity than the others. In light of this, *takhyir* or choosing between two or more alternatives is in fact an accepted Islamic practice and includes choosing between differing rulings from scholars.

Mention also needs to be made of the *Sunni Shi'a* divide which in nations even today leads to violent conflict and oppression. It is generally acknowledged that Imam Jafar's work is the closest to *Sunni* rulings and this is also the school followed by most *Shi'as* today and is also the official *madhab* of Iran. Nonetheless, in practice even today, the lines between the two schools are clearly demarcated. *Shi'a* Muslims follow *Shi'a* scholars and *Sunni* Muslims follow *Sunni* scholars. This thesis therefore, while proposing *takhyir* as an acceptable Islamic principle, does not assume that Muslims (expert and laypersons) will be prepared to step outside their *Sunni/Shi'a* boundaries and takes account of this when appropriate. I also contend however, that the classical divide, while important in many respects, is not as stark when exploring

the treatment of women. The issues discussed in this thesis reveal how united contemporary *Sunni/Shi'a* conservatives actually are on the position of women and it also shows how similar the challenges to these voices are across that divide. These similarities are important when discussing possible strategies for implementing practical improvements for women's circumstances.

The thesis works from the premise therefore, that scholars past and present with classical training are crucial contributors to the debate and enjoy tremendous legitimacy from laypersons, but that their rulings are not sacred and are open to questions and challenges. Thus in this thesis strategies and rulings which are derived from theological sources and which do not contradict unambiguous *Qur'anic* edicts and *Sahih Hadith* narrations might be referred to as Islamic in that they represent an informed and genuine endeavour to guide Muslims in accordance with the primary sources. But they are not given the status of *Shari'ah* law or 'Islamic' or 'primary' sources precisely because they are the result of fallible human endeavours.

In using the term 'Muslim states' in this thesis I am referring to those states with majority Muslim populations. For example, while many of these states use the label 'Islamic' as in 'The Islamic Republic of Iran' I do not attach this label because many of these states' legislative measures and policies cannot be considered Islamic. This may seem confusing, as I have already indicated above that this thesis does not claim to be uncovering the 'true' Islam. If this is the case then should one not take at face value any claims made by states, organisations or individuals to 'Islamicness', 'Islamisation' and so on. While I have indeed argued that many edicts, which are commonly believed to constitute *eternal* Islamic law, are actually open to question

and debate but nonetheless deserve the label Islamic, these states execute decisions, which display a blatant disregard for certain *Qur'anic* and Prophetic commandments. Several examples of this disregard will be given in Chapters 2 and 3. To term these states as 'Islamic' would then imply that the *Qur'an* and *Sunna* in fact offer no binding, immutable guiding principles and that is not the case.

Women's suffering and emancipation: whose standards?

In looking at Islam and women's suffering and the quest for emancipation one immediately encounters a problem. The problem lies in deciding what constitutes suffering and what form emancipation should take. When can one declare that women have been emancipated? There has already been a barrage of work from feminists of different persuasions on how we must be sensitive to the distinct cultural, economic and political settings of women's lives and how therefore we cannot assume that the women's struggles in the Muslim world can and should pursue the same goals as those in the west: universal suffrage, anti-discrimination legislation, women entering employment in increasing numbers. I am also aware of the arguments against attempts to form one homogenous checklist for women's struggles even within the Muslim world. Muslim women are diverse in their economic, social and political circumstances and therefore it is often argued that it is misleading to discuss them as one single unit. Thus, while increasing the availability of contraception might be a goal for women in Pakistan, it might not be in Malaysia. These concerns may seem to point back to the debate between cultural relativism and universalism: a practice that is considered wrong or repressive or desirable in one society is not necessarily so in another. From the outset it is also acknowledged that Muslim

women are not always the passive recipients of culture and do contribute to establishing the norms that come to govern social behaviour; norms, which might in turn appear unjust to outside observers. However I also contend that the relationship between Islam and human rights does not translate into the commonplace juxtaposition of cultural relativism and universalism. Islam and human rights and the tensions that exist between them present us with a case of competing universalisms. Islam no less than human rights thinking has established certain universal principles that Muslims claim are beneficial to human beings. Moreover Muslims claim that Islam appeals to human reason, and is responsive to the needs of all people wherever and whenever they may live and that Muslims are duty bound to explain these principles to others. Given that human rights theorists make similar claims, if Islam and human rights theorists have opposing ideas about what constitutes human suffering, would it be unfair to use the human rights view when evaluating Islam or *vice versa*? As will be noted in Chapter 1, Muslim conservatives often employ this argument to justify their schemes for how women should be treated. They dismiss human rights criticisms on the basis that outsiders do not understand what Muslim women really want and need. However this is not acceptable because Islamic sources hold that they are aware of what all women, not only Muslim women, want and need. Islam does not claim that these needs are culturally specific; therefore it follows that outsiders should be able to understand and agree with what Muslims have to say on the subject. Moreover, if both doctrines claim to appeal to human reason and contemporary circumstances, then it should also be possible to establish some common ground that can allow an analysis of women's experiences that avoids accusations of favouring one doctrine over the other. What both doctrines may differ on, and what forms the concern of this thesis are the strategies for meeting those

needs. Do humans require a list of rights or duties or spiritual fulfilment to address their problems?

Taking account of both Islamic and human rights concerns, this thesis uses the terms, suffering and emancipation in relation to the ability to make decisions regarding one's own life in the public and private sphere. Islam holds that women, like men, are endowed with free will and are fully responsible for their own actions. Not even the Prophet was permitted to compel others to follow Islam or to behave in certain ways:

'Means of insight have now come unto you from your Sustainer (through this divine writ). Whoever, therefore chooses to see, does so for his own good; and whoever chooses to remain blind, does so to his own hurt. And (say unto the blind of heart): "I am not your keeper."' (6:104).

When the freedom or autonomy to decide for oneself, is stifled and restricted, whether by state legislation or by one's closest relatives, by threats of physical or psychological chastisement, women's natural abilities are stifled, women are denied the opportunity to understand and proclaim their faith freely and are therefore inflicted with suffering and confinement and their well being is threatened.¹¹ In compelling women to act in a certain way even if that action is considered obligatory Islamically, the compeller is not in fact paving women's path to Paradise in the afterlife. This is because in Islam all actions are rewarded or punished depending not on the outcome of the action but on the intention behind it. If a woman's action is purely the result of fear of the worldly consequences, fine or imprisonment, she will not be rewarded for that action. Humans who exercise that level of control over

others are also guilty of usurping powers not granted to them by the Creator. Human rights standards are also concerned with ensuring that freedom and autonomy are respected. The Universal Declaration of Human Rights in its preamble holds that respect for human rights is important not just in itself but as the very foundation of freedom.¹²

This thesis is concerned with decision-making as a practical matter. Thus, while all individuals of sound mind can make decisions, I am concerned with the structures and institutions that enable women to implement those decisions at a real level. Thus a woman suffering from domestic abuse may decide she wants a divorce, but that means nothing if her society has not created the circumstances that will enable her to obtain a divorce legally, and to provide for her material and social needs following the divorce. This approach is appropriate for this thesis for several reasons. Firstly, it is premised on criteria agreed upon by Islam and human rights advocates and therefore permits us to examine the ways in which not only Islam but also how human rights standards endanger or promote women's emancipation, their ability to make and carry out decisions for themselves. Secondly, this approach also takes into account the fact that sometimes women's suffering is inflicted by other women. Outsiders are often bemused by the fact that women themselves are a party to rituals that are detrimental to other women. Female genital mutilation, foot binding and *suti* are just some examples of this quandary and have led some commentators to question how far it is appropriate for outsiders to oppose these practices. However if we see obstacles to decision making as a key facet of suffering, they are unacceptable even when imposed and/ or sanctioned by other women. The mere fact that some Muslim women think it acceptable that all decisions regarding their marriage, family planning, education,

employment and political and legal institutions should be made by men, is no reason why we should concede that it is indeed acceptable. The fact that some women may choose to let that happen is no reason for a state's entire legislative networks to be geared to making that the only option facing all women. Thirdly, drawing attention to obstacles to decision-making abilities does not disrespect or devalue those women who devote their lives to their families as full-time mothers, wives or carers for elderly parents. This thesis in no way implies that all such women are suffering, repressed and restricted or that those women who claim to be content in such roles are suffering from false-consciousness. Rather the thesis is concerned with how far women can choose to take on such roles and how far their societies and governments provide them with no alternative. It is also not suggesting that restraints imposed by governments or societies are unique to women living in Muslim countries.

The focus on the issues of family law, political and legal rights and *hijab* throughout this thesis is necessary partly because it reflects traditional concerns about Islam and women. However, it also illustrates how the different spheres of life impact on one another and the complex ways in which women's decision-making might be endangered or constrained as a result and how human rights standards have not adequately taken account of this complexity. While the thesis concentrates on the cases of Iran and Pakistan, I propose that these cases are broadly representative of the problems facing women in numerous other Muslim states. Of crucial importance is the fact that personal status legislation is markedly similar across the Muslim world. For example states as varied as Bangladesh, Kuwait, Libya, Egypt, Iraq, Morocco and Malaysia would not ratify Article 16 of CEDAW, which relates specifically to equal rights to marriage and its dissolution, on the grounds that it contradicts the *Shari'ah*

(or their understanding of what *Shari'ah* is). My contention is that the areas under examination are interconnected and therefore, even if some states legislate more favourably than others, this is simply not enough if other aspects of their legislation or local communities adhere to conservative understandings of what is 'proper' for women in the area of the family. The thesis will show that, if women's freedom is restricted in the sphere of family law then access to education, employment, and political and legal engagement are also endangered in a real way.

Sources

This thesis relies on Muhammad Asad's translation of the *Qur'an*¹³ unless stated otherwise.

Women in Islamic Theology

Human beings for the most part are addressed without differentiation on the basis of gender in the *Qur'an*. 'O you who believe', 'O mankind', or 'O Children of Adam' are perhaps the most often used forms of address and obviously include women as well as men. These verses enjoin mercy and understanding between Muslims, warn them of the consequences of ill action, and remind the reader of God's continuous bounty and grace to His creation. Many of these verses invoke images of men and women living in harmonious relationships, guided by Islamic principles of mutual respect, love and tolerance. The very process of creation as described in 7:189 dispels the Christian understanding of humanity originating from the male: *'It is He who created you (all) out of one living entity, and out of it brought into being its mate, so that man might incline (with love) towards woman.'* Differences in gender, ethnicity or race, are a product of God's grace to His creation, and these differences are no indication of human worth:

'O mankind! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another! Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him. Behold, God is all-knowing, all-aware.' (49:13).

There are other injunctions however, which suggest implicitly or explicitly that women ought to be treated differently than men. In these verses different rules or

duties are assigned depending on the gender of the reader. A cursory reading of these passages seems to indicate that men are given greater freedoms than women in for example, initiating and terminating marriage and greater privileges in economic and social terms. Human rights advocates obviously see such teachings as incompatible with their own theory. Human rights thinking recognises that all human beings are fundamentally equal and by virtue of that deserve the same freedoms and rights. Islam on the other hand seems to be dictating that men deserve more than women. Testifying to the human rights concern with Islamic ideology is the suffering that Muslim women are facing across the world today. Media depiction of Muslim women in certain states, where education, health care and even physical mobility are conditional on gender only strengthens scepticism at Islam's ability to aid women's struggle for emancipation and reinforces suspicion of its potential as a source of oppression. Advocates of human rights believe that the doctrine to which they subscribe can play a crucial role in aiding this struggle, yet women the world over continue to profess to the Islamic faith, while remaining largely unaware of the plethora of human rights instruments at regional and international level that are intended to protect them from discrimination and exploitation.

This Chapter will ask whether there is a contradiction between a subscription to Islam and a struggle to end female oppression. At this stage the concern is not with human rights thinking and its compatibility with Islam, but simply with the perceived link between Islamic teaching and the inferior status of the female in Muslim communities across the world. The Chapter will look at those *Qur'anic* verses which are deemed responsible for enforcing this inferiority and examine the differing ways in which those verses have been interpreted in exegeses and commentaries. The purpose of this

Chapter is to lay claim and access to that text. For centuries, that access, that ability to use the text as a source of empowerment, has been the exclusive privilege of men. Women who have taken on the task of scholarship have become lone and forgotten voices and denied the authenticity accorded to male scholars. Yet the *Qur'an* has been the tool of the oppressed since its revelation and has been used as such by the poor, the dispossessed and the socially excluded to demand redress from leaders and communities. While such movements have not always and in fact, in recent years, rarely met with success, they do enjoy widespread support. It is not possible for a Muslim convincingly to deny this aspect of the *Qur'an* as a source of social as well as spiritual progress. While male-led struggles have in some cases, done much to address female needs along with male, Islam has also been utilised to elevate the male position at the expense of the female, to subordinate women to the advantage of men. The following discussion will examine the possibility of countering that trend with alternative yet authentic and consistent understandings that also draw on the *Hadith* literature, events from Islamic history and rulings from the orthodox scholars.

Before embarking on the study I will address the arguments that such attempts have met in the past, from Muslim writers. There is firstly the argument that the 'discrimination' against women that concerns human rights theorists and liberals is only a matter of perception. What is considered ill treatment in the west is actually an elevation of the female in the Muslim world. In Islam it is argued, women are not expected to act like men in order to be valued as human beings. The differences in rights and duties that are deemed to be at odds with female well being are in fact, in keeping with obvious biological differences between men and women. Thus for example, Rashid al-Ghannushi prefers to use the term complementarity to define the

desirable male-female relationship.¹ Al-Faruqi has similarly argued that ‘men and women have been forced into a single mould’ and that the result is actually ‘more restrictive, rigid and coercive than that which formerly assigned men to one type of role and women to another’.² Yet the base of such arguments is the image of womanhood as synonymous with motherhood. This is the essential biological difference that makes it necessary for men and women to be assigned distinct roles. While the female is occupied with her natural role of childbearing and child rearing, it is obviously necessary, in fact natural for the male to be occupied with the task of providing for his wife and children materially. The allusion to the image of primitive man as hunter-gatherer is of course obvious in this world-view. Women in the conservative mind however, are not repressed by men, but liberated from the responsibility of earning economic provisions and permitted to live according to their natural endowments. Muslim women who urge a moderation of this understanding are portrayed as having been duped by western experiences, as suffering from an inferiority complex and as displaying a desire to imitate that experience while failing to recognise the decadence and immorality that lies at the heart of it. A common derogatory phrase today amongst certain Islamic organisations is the ‘chocolate Muslim’ referring to those individuals whose faith melts away once in non-Muslim society. Much of the liberal tradition of writing on Muslim women’s oppression has in many ways contributed to the propensity for such accusations. Writers such as Mayer and An-Naim, while claiming sympathy with Islam ultimately wish to see it ‘reformed’ to an extent that it will embrace whole-heartedly western liberal ideals. Thus Benedicte Spoelders has observed, ‘All the present concerns about women’s legal and economic rights are thought to have been worse in the Middle Eastern past and better in the Western present. The direction that development in the Arab world

should take is clear.³ This assumption, that emancipation in the Muslim world needs to take the same form as emancipation in the western world will be discussed in more detail in later chapters. Here I will concentrate on the theological issues in the Muslim women debate.

What the Muslim conservative⁴ attack fails to recognise however is the rapidly decreasing number of women and indeed men in the Muslim world that the traditional ethos holds any relevance for. Prevailing economic situations dictate that it is becoming increasingly difficult to raise a family on one income alone. It is also becoming increasingly difficult for Muslim women to find husbands in stable employment. This division of labour does not take into account infertility amongst men, which is increasing, and barren women. Men, the traditional breadwinners in the face of unemployment and political and social disenfranchisement are turning to crime and drug and alcohol abuse. Those women, who are permitted to provide for themselves, are exploited in the work place, being paid less than male co-workers for doing the same job. Uneducated women are exploited even by their closest male relatives, often cheated out of, or outrightly denied inheritance rights. In short, the pious, loving, protecting Muslim male who is both willing and able to provide a safe and stable environment for his family is indeed a rare commodity in today's Muslim reality. The Muslim conservative line of course still leaves unaddressed the psychological repression of those women who wish to pursue education and contribute first-hand, rather than through their sons, to societal progress, but whose talents are stifled by state legislation and cultural norms.

Another source of opposition to the struggle for female emancipation is the association in the Muslim psyche with suffering and piety. Muslim women are urged to be content with their current situation, to wait for recompense in the afterlife, and struggles for change are associated with ingratitude for God's will. This fatalistic acceptance of subordination is of course a common criticism of world religions. Yet it is largely inconsistent with the Islamic worldview, which sees strong Muslims as constantly striving to better their surrounding circumstances. Muslims are urged to improve themselves as a people through education, helping the poor and oppressed and reflecting on the uses they do and can make of natural resources and phenomena. Qarun is advised in the *Qur'an*,

'Seek instead, by means of what God has granted thee (the good) of the life to come, without forgetting, withal, thine own (rightful) share in this world; and do good (unto others) as God has done good unto thee; and seek not to spread corruption on earth, for verily, God does not love the spreaders of corruption!' (28:77).

Within Muslim circles however, fatalistic attitudes are voiced with greater frequency and force in response to women's action. Male activists on the other hand are commended for their devotion when they display a willingness to fight for emancipation in the face of injustice. Within the marital relationship, for example, Maulana Wahiduddin Khan advises women to 'avoid doing or saying anything, which could possibly invite an unpleasant reaction'. He concludes that 'success or failure of married life depends entirely upon the bride's ability to adapt'.⁵ The onus, even within the voluntary arrangement of marriage, is on the wife to accept whatever treatment she meets. Expanding Khan's advice to the community or even the nation is

in fact an inconceivable comparison for conservatives. Not because the idea that the family represents the state in microcosm is deeply flawed but because the conservative line simply cannot entertain or fathom the idea that women could be permitted to engage in any form of public role or protest. Muhammad Karoila has quite simply concluded that a woman may leave her home only on account of a *Shari'ah* necessity. The necessities being pilgrimage, visiting the ill or visiting her parents. Even going to the mosque to perform obligatory prayers is not an acceptable reason for women to leave their homes according to Karoila.⁶

The first stance is reluctant to concede that large numbers of women suffer under their interpretation of the faith, the second while not entirely denying the suffering declares this as the woman's designated fortune, which she must bear despite her personal anguish, if she is to enjoy success in the afterlife. Both these arguments share an incoherent understanding of the Islamic text and its relationship to the contemporary reality that human beings are part of. Muslim conservatives are unwilling to address this reality and instead opt for piecemeal solutions. Thus it is increasingly common for scholars embedded in this tradition to permit women working when this is 'necessary'. 'Necessity' constitutes severe material hardship and it is only under such hardship that a woman may seek employment according to conservative thinking. This view sees the necessity as essentially short term, a temporary glitch in the conservative perception of the Islamic ideal. When viewed as an anomaly, female independence, financial and/ or physical, does not need to be discussed in relation to the entire set of presumptions on marriage, the husband-wife relationship, on rules of segregation in education and the work place, and the role of state institutions, that conservatives hold. This line is not representative of the whole sphere of debate on

women in Islamic theology. It is however invoked to various degrees at great hardship to women, as the Chapter will go on to reveal. It is this general understanding of Islamic scripture that informs to some degree, state legislation, religious sermons, *fatawa*, and inevitably personal understandings. Those who subscribe to the tradition seldom ask themselves how they can conceivably believe that a Muslim woman's destiny is to live an oppressed existence, when the *Qur'an* was revealed as a '*healing and a mercy to those who believe*'? (17:82). The Muslim male in an individual capacity is equally reluctant to embark on some self-reflection and ask himself why he is so eager to hold on to the privileges, which scholars living several centuries ago bestowed upon him. Can his piety only be displayed at the expense of female emancipation? It is against this backdrop of contemporary reality on the one hand, and the quest for an unviable ideal that is oblivious to the aspirations of one half of the world's population on the other, that the debate on women in Islamic theology is carried out.

Leaving aside the human rights objections to Islamic theology at this stage allows us to begin this enquiry into Islam using criteria internal to Islam itself. If the *Qur'anic* revelation is an eternal source of healing and mercy, then how can Islam address the suffering experienced by Muslim women today? This does not wholly detach the discussion from human rights thinking which also purports to address human suffering. But the possible tension between the two schemes and their proposed solutions will be examined after this initial discussion.

The issues pertaining to women that need concern us here can be categorised into three broad areas. The first is that of family law and this area includes the rules

governing the initiation of marriage and divorce, the wife-husband relationship and inheritance rights. The second area is the political and legal rights of women in Islamic teachings. This category includes women's rights to participate in government and legal proceedings. In addition to and also interwoven with these two categories is the concern with *hijab* or veiling both as a form of dress and as a means of social exclusion.

Family Law

The term family law encompasses those laws governing marriage and divorce arrangements, as well as polygamy and laws of inheritance.

Marriage

There are many misconceptions surrounding the Muslim marriage, some of these perpetrated by Muslim writers themselves (Khan cited above serves as just one example), and others resulting from a lack of understanding of non-western concepts. For example, the practice of arranged marriage is often yet incorrectly, inextricably linked to a forced one. Other images of the Muslim married women depict an individual obligated to obey her husband unconditionally or face physical chastisement. It is only at the behest of her husband that a woman may work, pursue education or mix socially with family and friends. Even after devout obedience one might be led to believe that she still faces the risk of being divorced at the husband's unilateral will, without any rights of contesting the divorce. Escaping this fate does

not omit the possibility of being set aside as the husband takes a second, third or even fourth wife.

The point of enquiry here is not whether the *Qur'an* can be taken to justify this treatment of women. Taking certain verses or fragments of verses in isolation, divorcing them from their historical context and Prophetic practices undoubtedly answers that question in the affirmative. The reality is also undeniably that women are treated in this way, with such passages often being quoted as justification. This Chapter will ask instead, whether the *Qur'an* and *Ahadith* can be used to challenge this treatment and depiction of the married Muslim woman.

Consent

Consent of both individuals is a prerequisite of marriage and this is an issue that all scholars agree upon unanimously. There are authentic narrations of women approaching the Prophet protesting that their permission was not sought for their marriages and he gave these women the option of having their marriages annulled. The Prophet's actions were based on the unambiguous *Qur'anic* verse, 4:19, which forbids believers '*to inherit women against their will*'.

While in some parts of the Muslim world arranged marriages are still the norm, this practice does not preclude the condition of consent. Marriages can both be arranged by parents, family members or friends and entered into willingly by both parties.

The Mahr

The *Mahr* or dower is an integral element of the Islamic marriage and is tied in with numerous other aspects of the marital arrangement. It can be defined as a gift, which the husband must give to the wife. The *Mahr* is compulsory and without it the marriage cannot take place. The wife decides its amount, although some form of negotiation may occur, and its value will usually be announced to the witnesses present at the nuptial ceremony. There is no reciprocal arrangement for the husband in terms of a transfer of compulsory gift or tangible assets. The *Qur'an* reads clearly '*And give unto women their marriage portions in the spirit of a gift; but if they, of their own accord, give up unto you aught thereof, then enjoy it with pleasure and good cheer*'. (4:4).

The *Mahr* is not always viewed in a positive light, even though it seems to be distinctly advantageous to the female. It has been claimed that because the *Mahr* is payable only once the marriage has been consummated, it in fact constitutes payment to the wife for her sexual services and that she consequently forfeits her right to refuse her husband. Homa Omid cites 4:24 in support of this argument.⁷ Having given a list of marriage partners forbidden to the Muslim, the *Qur'an* reads,

'But lawful to you are all (women) beyond these, for you to seek out, offering them of your possessions, taking them in honest wedlock, and not in fornication. And unto those with whom you desire to enjoy marriage, you shall give the dowers due to them; but you will incur no sin, if after (having agreed upon) this lawful due, you freely agree with one another upon anything (else): behold, God is indeed all-knowing, wise.'

Yusuf Ali in his exegesis of this verse complies with Omid's interpretation, writing that 'as the woman in marriage surrenders her person, so the man must surrender at least some of his property according to his means. And this gives rise to the law of Dowry'.⁸ From the male point of view, marriage could be perceived as the purchase of the female body. This particular understanding gives opportunity for serious exploitation of women who become the purchased objects of another human being. The *Mahr* however might equally be seen as a means of protecting women from mistreatment, of empowerment rather than exploitation. Given that there is no maximum amount that it can be set at, and the wife determines the amount herself, the *Mahr* can come to constitute a means of financial independence during the marriage, as a widow and/ or a means of financial security should the marriage be terminated through no fault of her own. Furthermore, numerous other passages relating to marriage in the *Qur'an* clearly do not portray matrimony in mechanical, contractual terms or as derogatory to any one partner.

'And among His wonders is this: He creates for you mates out of your own kind, so that you might incline towards them, and He engenders love and tenderness between you: in this, behold, there are messages indeed for people who think!' (30:21).

The natural relationship between spouses, in this passage is not one of possession, but of mutual love and tenderness. While the sexual act is a crucial part of the marriage, given the Islamic importance of pro-creation, it is not represented as the sole reason for a man entering into marriage. Islam points to higher emotions possessed by human beings, which in fact differentiate them from other species.

Verse 4:24 does, however, make a connection between the dower and conjugal relations. However the 'enjoyment' referred to is not restricted to men. The wife, like the husband, possesses the right to sexual fulfilment during the marriage, the absence of which is considered reasonable grounds for her initiating divorce. Further passages relating to *Mahr*, while making a similar link, do not encourage the withholding of payment even if the marriage has not been consummated. Verses 2:236-237 address the situation in which divorce is to be initiated when the marriage has not yet been consummated. Verse 2:236 refers to that situation when the *Mahr's* precise amount has still to be set and yet the husband wishes to terminate the marriage. While reassuring men that they '*will incur no sin*' by taking such action, the verse commands men to '*make a provision for them (the women)– the affluent according to his means, and the straitened according to his means – a provision in an equitable manner: this is a duty upon all who would do good*'. (2:236). Verse 2:237 then goes on to deal with the situation when the *Mahr* has been set, but the husband wishes a termination prior to consummation. In this setting husbands are commanded to pay half the agreed amount and in addition consider paying the remaining half as an act of *taqwa* or God-consciousness. The verse ends with the instruction, '*And forget not (that you are to act with) grace towards one another: verily, God sees all that you do*'. (2:237). The relationship between *Mahr* and sexual relations is then not as unambiguous as Homa Omid suggests. Payment of *Mahr*, signifies an intention of commitment to the relationship rather than a purchase. It is for this reason that even when the marriage is to be terminated husbands are still expected to make some payment, indicating that their initial intention was to provide for the wife and absence of ill will towards their partner.

As outlined above this concept of *Mahr* is tied in with many other aspects of marital life, which I will now go on to discuss. These additional aspects might appear to provide greater justification for the negative reception of the Islamic concept of *Mahr*.

The Marriage Contract

The marriage contract is not mentioned specifically in the *Qur'an* but is a well-established and indeed integral part of the marriage. The contract is again available only to the wife who may insert any number of conditions necessary before agreeing to the marriage. She may wish to stipulate her right to terminate the marriage whenever she chooses, retain her right to work or continue her education during the marriage. The woman however, may not stipulate conditions that are already forbidden by Islamic scripture. So for example she may not insert a right to enter into a polyandrous marriage. There is also debate regarding whether she may refuse her husband the option of making the marriage polygamous. This, it is argued, contests God's laws by forbidding what He has clearly permitted. Firstly, the discussion below on polygamy will challenge the view that it has been 'clearly' permitted. Even before this however, the marriage contract is regarded as an opportunity for women to specify the conditions they believe to be necessary under which a prosperous marriage can be lived. Some women may credibly be aware of their mental or physical inability to be part of a polygamous arrangement. Recognition and a declaration of this inability are unlikely to enhance a woman's marriage prospects. Seen in this light alerting their prospective husbands to this fact might be seen as an act of commendable honesty that is crucial to the success of the marriage rather than a contestation of Islamic scripture. The repudiation of such a stipulation also ignores

the Prophet's own reaction when his son-in-law declared his intention to take a second wife. The Prophet is reported to have replied that whatever harms Fatima (his daughter) harms me.⁹ There is clearly recognition here that polygamy can be harmful to women. Moreover the Prophet's words forbade Ali from carrying out his intention, again despite the permissibility of it in the *Qur'an* and Ali remained monogamous until Fatima's death. There appears to be little contradiction then, between the Prophet's words and a woman deciding for herself what harmful actions she wishes to be protected from. Further to this the marriage is an entirely voluntary agreement into which the male may decline to enter should he find the conditions of it unsatisfactory. Despite the conservative stance it is only the traditional *Shi'a* school which does not recognise the permissibility of such a clause in the marriage contract. The *Sunni* schools of jurisprudence on the other hand agree on the principle of 'suspended repudiation' according to which the marriage is automatically terminated should the husband violate any terms in the marriage contract including monogamy. The other option agreed upon in the *Sunni* schools is 'delegated repudiation' whereby the wife is given the option of repudiating the marriage under such circumstances.¹⁰ This argument holds for the other clauses in the contract to which Muslim conservatives might object. For the Muslim conservative, who believes women are prohibited even from leaving their homes, demanding the right to pursue a career outside the home and even work along side men would be a case of demanding that which Islamic scripture has forbidden. But again men cannot be forced into accepting these conditions and women can be left to struggle with their own conscience as to the Islamicness of their demands. The implausibility of the Muslim conservative stance in arguing that these actions are forbidden has already been discussed and will be further in this Chapter.

The Husband-Wife Relationship

Along with the concept of *Mahr*, certain other *Qur'anic* passages appear to be not simply disadvantageous but also derogatory to the female. They are considered as such because they seem to fail to recognise her status as an independent human being, deserving the same treatment as her male counterpart and as capable of deciding for herself throughout her adult life. The idea of *Mahr* as payment for a spouse is strengthened, if not by *Qur'anic* verses on *Mahr* specifically, by other passages conveying the Islamic marital relationship. These verses portray women as requiring continuous male guardianship and they have been used to represent female obedience to the husband as a fundamental religious duty. Taking firstly, the position on husbands as guardians of their wives one needs to examine verse 4:34, which reads,

'Men shall take full care of women with the bounties which God has bestowed more abundantly on the former than on the latter, and with what they may spend out of their possessions. And the righteous women are the truly devout ones, who guard the intimacy which God has (ordained to be) guarded.'

If in the Islamic perception of humanity all humans are considered of equal worth, why does one gender need to be looked after by another. While the quoted passage does not advocate any cruelty or mistreatment towards women, it does appear to infantilise them. Certainly some women may require assistance from some men, but the reverse is equally true. This does not logically provide justification for a blanket ruling on all marriages. Another way of interpreting this verse is to see it in terms of rights and duties. Thus women are given the right to be looked after by their husbands who obviously are the corresponding duty-bearers. Seen in this way, is a

right to be looked after degrading or potentially harmful to the right-holder? What does this passage actually tell us about the Islamic understanding of womanhood? It is not the right itself that is problematic. A right to be looked after is a fundamental one if this means having one's life protected, being given material provision when needed, and a safe living environment. In fact it is in the interests of humanity that a third party does provide these in the event that any individual is unable to provide them for herself. A right can be exercised willingly but does not preclude the individual from withholding that opportunity. The difficult aspect of this passage is the explanation given for this 'right'. That is that, men have been bestowed more abundantly with bounties than women. This suggests that women are essentially incapable of providing for themselves and that their very nature dictates that they will be dependent on males. It also implies a hierarchy of humanity, with women being portrayed as inherently inferior to men. This and a similar passage to be discussed below are clearly the source of conservative conclusions regarding women's exclusion from employment and public roles. Woman if she is too inept to even look after herself can hardly be entrusted with providing a service to others.

Reality however shows that women do provide for themselves sometimes out of necessity and other times through choice, in fact not only for themselves but also for their families and other dependents. Does Islam then see such women as victims of circumstance forced to abandon their natural dispositions or even as aberrations of womanhood? The practical conclusion of such interpretations has been the development of state legislation along with societal norms that refuse to allow women to work, be educated and engage in public activity. The pious woman in conservative circles should be content with what her husband is able to supply, rather than seek to

subsidise this with her own efforts. The interpretation offered by many exegeses upholds this perception. Yet alternative perspectives are equally plausible if one looks at the grammatical forms used in the Arabic text. Amina Wadud-Muhsin shows the preference of men over women, or the bestowing of greater bounties (*faddala*), to be conditional upon certain actions and modes of behaviour. She points out that the use of the Arabic *ba'd* clearly means that only *some* men are preferred over *some* women. The preference is not innate to the male's very existence but is provisional and related to the idea of guardianship or *qawamun*. Those that are bestowed with greater bounties are those who fulfil their duty to their wives by providing for them adequately in terms of food, clothing, shelter and other material goods.¹¹ In addition to this *Shi'a* discourse allows the wife to demand extra financial payment from her husband during the period of breastfeeding, thereby increasing the duties on men towards their wives.

In an alternative interpretation Muhammad Abdel Haleem explains the root of *faddala* to be 'to give more.' In this verse the 'more' is actually an assignment of greater duties than the female and not in fact the assignment of greater bounties. This extra duty according to Haleem is the role of *qawamun*. He thus translates 4:34 as 'men maintain and attend to their wives because God has assigned this extra role to them and because of what they spend of their money on the family.'¹²

Haleem also links the problematic of 2:228 with the idea of increased duties for men rather than privileges. Thus when the *Qur'an* tells us that '*in accordance with justice, the rights of the wives (with regard to their husbands) are equal to the (husbands') rights with regard to them, although men have precedence over them (in this respect)*'

this precedence (*daraja*) is once again qualified by the extra duty to maintain a wife. Muhammad Asad, who observes that the *daraja* is in relation to a specific situation and not a general rule, offers a more convincing interpretation. The preceding passage in verse 2:228 is a discussion on divorce. Women who are divorced, the *Qur'an* explains, must undergo a waiting period of three menstrual cycles, during which time their husbands have the option of taking them back. The precedence or degree higher given to husbands is simply that they have the option of taking back their wives during this period. Thus even after being divorced the wife must wait for her husband's decision during this waiting period and is not free to accept or consider further marriage proposals until that time is over.¹³ There is of course no mutual waiting period prescribed for men who, one might argue, do not even need to wait for any pronouncement of divorce as a result of the option available to them to take a second wife in a polygamous arrangement.

The interpretations cited above see *qawamun*, *faddala* and *daraja*, not as eternal norms but as either conditional upon the execution of certain duties or in reference to a very specific situation. In light of such holistic methodologies Kamali has concluded that 'one who does not maintain his wife should not be *qawamun*'.¹⁴ Women who contribute to household finances, which are becoming increasingly common, and who live with unemployed husbands are not to be seen as the wards of their husbands.

The exploitative potential of these verses still exists for those women who do not have access to independent finances. Much of the modernist literature however stops at this point arguing, as does Kamali cited above, that the *Qur'anic* view of *qawamun* is descriptive rather than normative. However, a failure to examine the issue further

would be a vindication of the conservative censure that for those opposing their understandings only traditional male roles are considered valuable to society. The absence of a further examination would in fact be acquiescing in the view that women who fail to take on these ‘male’ roles ought to be content with the *qawamun* that is exercised over them. One needs to ask how far then, can guardianship be exercised? Can, for example, the male who is able to execute his duties successfully prevent his wife from seeking the skills, through education, that would lead to her finding employment and that would therefore erode his *qawamun* over her?

Here enters the notion of *ta’a* (obedience). The remaining part of 4:34 reads,

‘And the righteous women are the truly devout ones, who guard the intimacy which God has (ordained to be) guarded. And as for those women whose ill-will you have reason to fear, admonish them (first); then leave them alone in bed; then beat them; and if thereupon they pay you heed, do not seek to harm them. Behold, God is indeed most high, great.’

Asad in this instance has translated *qanitat* as devout, thereby equating righteousness with devout religious commitment to God’s edicts and guarding intimacy, which is a reference to modesty in dress and behaviour. In other words women ought not to behave or dress in any way that could be alluring to other men. However, Yusuf Ali,¹⁵ Aisha Bewley,¹⁶ Mawdudi¹⁷ and the Islamic University at Madinah’s (IUM) publication¹⁸ have all chosen to translate *qanitat* as obedient, with Ali and IUM using the prefix ‘devoutly’. Asad’s translation is in the minority amongst the mainstream of *Qur’anic* exegeses. His omission of ‘obedient’ eliminates the tendency to deduce

from this passage that a woman's devout obedience is to be understood, in the context of this verse, as devout obedience to her husband. Obedience to husbands is therefore widely promulgated as characteristic of a righteous woman. Imam Al-Ghazali has written that 'it is enough to say that marriage is a kind of slavery, for a wife is a slave to her husband. She owes her husband absolute obedience in whatever he may demand of her, where she herself is concerned, as long as no sin is involved'.¹⁹ This however is not how *qanitat* is used and subsequently explained consistently throughout the *Qur'an* argues Wadud-Muhsin. After examining the use of *qanitat* in several other verses,²⁰ she has asserted that it in fact 'describes a characteristic or personality trait of believers towards God. They are inclined towards being co-operative with one another and subservient before God. This is clearly distinguished from mere obedience between created beings which the word *ta'a* indicates' and this is also why *ta'a* has not been used in this verse according to Sayyid Qutb.²¹ Thus viewed, obedience is owed to God, while guarding what God has ordered is both an act of obedience to one's Creator and a display of respect for one's husband.

But if not devout obedience, clearly some minimal standard of behaviour is expected from the wife a violation of which would appear to justify physical punishment, a right which places women in obvious danger. 4:34 sanctions a number of disciplinary measures in the event of *nushuz*. Before going on to discuss the implications of these measures, it is important to offer some clarification of the concept of *nushuz*. The word has been translated above as ill-will, and by others such as Yusuf Ali as disloyalty and ill-conduct.²² Yet this offers little clarification and traditional methodology dictates that when one finds the *Qur'anic* text unclear one should turn to the actions and sayings of the Prophet for elucidation. Two incidents, directly

involving the Prophet's household provide good examples of how this passage might be implemented in practice. Both cases are recorded in the authentic *Hadith* collections and gave rise to *Qur'anic* legislation. The first case involves Aisha' reported to be the Prophet's favourite from amongst his wives. During an expedition with the Prophet and a camp of Muslims Aisha' is reported to have been left behind accidentally. She is then reported to have been escorted back to Madinah by a fellow Muslim, Safwan, who found her in the deserted camp. The arrival of Aisha with Safwan gave rise to serious accusations of adultery on Aisha's part, rumours instigated mainly by individuals with disingenuous motives towards the Islamic cause. The recriminations entered the Prophet's home directly, with Aisha remaining silent in the face of questioning from the Prophet and her parents, waiting instead for intervention from God to clear her name. In the month between the initial event and the revelation of 24:16, 19 and 23, which exonerated Aisha' and strongly reprimanded those responsible for initiating and spreading the rumours, the Prophet sought counsel with two companions in particular. He did not according to any of the narrations resort to physical chastisement despite the gravity of the accusation and Aisha's refusal to either deny or admit to it.²³

In the second incident all the Prophet's wives were involved. Some traditions claim that the wives were demanding greater material luxuries, while others cite their jealousy of the Prophet's relationship with Marya, a slave sent to him by the Coptic leader at the time. Whatever the reasons, the tension in the household reached such levels that the Prophet segregated himself from his wives for twenty-nine days. The revelation that was eventually occasioned by the segregation commanded the Prophet to

'Say unto thy wives: "If you desire (but) the life of this world and its charms – well, then, I shall provide for you and release you in a becoming manner, but if you desire God and His Apostle, and (thus the good of) this life in the hereafter, then (know that), verily, for the doers of good among you God has readied a mighty reward!"' (33:28-29).

Although their behaviour was reprehensible by Islamic standards, the wives then were not to be disciplined by physical chastisement.

In the light of such traditions and in connection with more direct invocations from the Prophet,²⁴ the overwhelming majority of scholars have concluded that the beating, if resorted to at all, is to be a symbolic act indicating that the relationship is beyond repair should the wife still refuse to desist from her ill conduct or ill will.²⁵ It is also widely accepted amongst Muslims that the Prophet never hit a woman or child. Haleem points out that the only two qualities by which a good wife is described in the *Qur'an*, guarding modesty and devout obedience to God, are required of both men and women in other verses.²⁶

I can now relate this lengthy discussion back to the original concern with the extent of *qawamun*. Even for those women who do not contribute to household finances, a man's *qawamun* over his wife refers directly to that duty to provide for her financially. From the *Qur'anic* verses it cannot be assumed that this refers to a licence to exercise control over her decisions as an adult individual. She in turn owes the husband fidelity both in terms of their physical relationship and as a confidant. These requirements however, do not preclude the possibility that a wife can educate herself,

limit the number of children she has, or make other demands of her husband before and during the marriage. Such restrictions if implemented by the husband over-rule Prophetic commands to all Muslims to pursue education ‘even if it takes you to China’.²⁷ The highly acclaimed, Nigerian Sheikh Uthman dan Fodio ruled it obligatory for women to educate themselves on all religious matters including Islamic stipulations on trade and transactions and urged women to educate themselves even without their husband’s permission. He accused those scholars who opposed women’s education of being ‘devils among men’.²⁸ This indicates that *nushuz* cannot be defined convincingly as any of these acts, given what is known of various incidents in the Prophet’s own household and further *Qur’anic* injunctions to be discussed below.²⁹ Once the wife has acquired the skills and knowledge it is an Islamic duty to share them to ensure that others benefit. That might involve taking on paid employment to provide a service to others, or engaging in some sort of voluntary activity.

Polygamy

Polygamy is often portrayed as the satiation of male desire with even Muslim scholars offering ‘scientific’ research as justification for the practice. A. Kinsey’s *Sexual Behaviour in the Male* is a popular reference arguing that ‘There seems to be no question but that the human male would be promiscuous in his choice of sexual partners throughout the whole of his life if there were no social restrictions... The human female is much less interested in a variety of partners’.³⁰ Polygamy thus portrayed only institutionalises what is the natural biology of the male, in fact even restricting it to only four sexual partners at any one time. This practice it is argued

not only satisfies natural male urges for promiscuity but also protects women from demeaning treatment as they might otherwise be forced to live the role of mistress or neglected wife. Defenders of this view offer well-rehearsed examples of non-Muslim societies in which polygamy is also permitted and the consequences of its absence. Abdur Rahman I Doi, quoting Dr Annie Besant, 'an eminent woman scholar', offers the following insight into western society: 'there is pretended monogamy in the Western world, but there is really polygamy without responsibility. The 'mistress' is cut off when the man is weary of her and sinks gradually to 'the woman of the street' for the first lover has no responsibility for her future and she is a hundred times worse off than the sheltered wife and mother in the polygamous home.'³¹ This 'natural' state of manhood along with the guaranteed chaos that ensues if polygamy is not legally permitted is the reason given for opposing any legal restrictions on the practice. The choice of a man to take more than one wife, it is argued, is an entirely private and even natural one, which ought not be subject to state interference. Such viewpoints strengthen the idea of marriage representing a transaction between male and female in Islamic thought: sexual gratification provided by the female is traded for financial security from the male.

This reasoning for polygamy however, whatever may be claimed as 'scientific fact' is not based on unequivocal Islamic scripture. In the verses discussing the concept, no mention is made of male biology and its need for multiple partners. The historical context of verse 4:3 was the aftermath of the Battle of *Uhud*, in which one tenth of the Muslim army was martyred leaving behind, in the small Muslim community, scores of widows and orphans. 4:3 with this reality facing the Muslims reads,

*'And if you have reason to fear that you might not act equitably towards orphans, then marry from among (other) women such as are lawful to you – (even) two, or three, or four: but if you have reason to fear that you might not be able to treat them with equal fairness, then (only) one – or (from among) those whom you rightfully possess. This will make it more likely that you will not deviate from the right course.'*¹

The concern thus seems to be with the well being of the female coupled with recognition that the male cannot always be trusted to behave altruistically. He can therefore marry from the women left behind without male providers if he feels he will be unable to make these provisions without marrying. It seems that marriage might therefore be considered the less altruistic approach. This recognition and concern for the female are repeated again in 4:129,

'And it will not be within your power to treat your wives with equal fairness, however much you may desire it; and so do not allow yourselves to incline towards one to the exclusion of the other, leaving her in a state, as it were, of having and not having a husband. But if you put things to rights and are conscious of Him – behold, God is indeed much-forgiving, a dispenser of grace.'

While some writers have understood this to be an effective abrogation of the permissibility of polygamy, it is difficult to argue this case persuasively.³² The verse is clearly a warning and urges caution. It however appears to be differentiating between emotional commitment which cannot be distributed equally and material commitment which can. The onus is on the male to provide material equality for his wives and not to allow his emotions to favour one wife at the expense of another in

the allocation of time spent with him, money, clothing and housing. This line is consistent with the original reasoning behind the sanction, which was to provide female victims of war with material comfort and security. There is no indication in these verses, however, that polygamy has been sanctioned to privilege the male or as a favourable response to his physical/ biological make-up. As an institution whose primary function was in fact to protect the female, she can rightly refuse a polygamous marriage arrangement. On this point most conservatives would have to agree because the Qur'an states unequivocally in 4:19 '*do not inherit women against their will.*' The contention arises on the role of legal arrangements for polygamy. The conservative line would be that there should not be any. Civil courts, in their understanding simply have no reason to interfere in a private decision and a divine edict. Fazlur Rahman has noted this contradiction in the schools of *fiqh* under which polygamy has been elevated to a legal right of the male, while justice between co-wives has been left to his personal conscience.³³ This has led some writers to conclude that the state should play a strong role in ensuring that this contradiction is rectified.³⁴ Under this interpretation a neutral judge ought to decide whether the reasons for polygamy are acceptable, whether the man has the financial means to provide his wives with an acceptable and equitable standard of living and more importantly whether existing wives and potential ones are willing participants in the arrangement. These proposals, already implemented in some countries such as Egypt and Pakistan are also based on those *Qur'anic* verse already cited which command men to treat co-wives equitably and justly. Certainly there is nothing in the *Qur'an* that condemns such a proposal. The move is not an attempt to prohibit what God has permitted but is an attempt to honour the reasons for which the permission was granted and to protect women from hardship. Indeed the demand for justice is

clearly stipulated in Scripture as is the warning that humans cannot always be trusted to keep to the bounds ordained by God.

'Hence, if two groups of believers fall to fighting [in word or deed] make peace between them; but then, if one of the two (groups) goes on acting wrongfully towards the other, fight against the one that acts wrongfully until it reverts to God's commandment; and if they revert, make peace between them with justice, and deal equitably (with them): for verily, God loves those who act equitably.' (49:9).

The conservative depiction of maleness to some degree complies with this understanding in its assertion that man is naturally promiscuous, but not naturally responsible and trust-worthy. For them however the institution of marriage is sufficient to ensure certain minimum standards of treatment for women. The contemporary reality however suggests that women enter or tolerate polygamous marriages for a number of reasons often including duress, need for basic subsistence and in some cases with co-wives oblivious to one another's existence. Such abuses of polygamy all indicate the need for state involvement in the process.

This however, can be implemented effectively only within a truly neutral judicial system. The absence of this neutrality and the widespread corruption even within law-enforcement agencies has meant that such formal procedures where they do currently exist, in Pakistan for example, largely fail to touch the lives of the vast majority of women who require them. Men are in a better position to bribe court officials in order to ensure a favourable decision or waive punishment. This will be

discussed in greater detail in the following Chapter while here I will discuss the more immediate options available to women.

The second marriage is subject to all the conditions of the first, a *Mahr*, a marriage contract and, primarily, consent. A marriage monogamous or polygamous cannot take place without these and the ways in which women can employ them has been discussed above. Wadud-Muhsin has also offered a derisive reply to the biological argument given in support of polygamy: '(this) rationale given for polygamy not only has no sanction in the *Qur'an*, but is clearly un-*Qur'anic* as it attempts to sanction men's unbridled lust: that if a man's sexual needs cannot be satisfied by one wife, he should have two. Presumably, if his lust is greater than that, he should have three; and on until he has four. Only after this fourth are the *Qur'anic* principles of self-constraint, modesty and fidelity finally to be exercised. As self-constraint and fidelity are required at the onset for the wife, these moral virtues are equally significant for the husband. It is clear that the *Qur'an* does not stress a high, civilized level for women, while leaving men to interact at the basest level.'³⁵

The discussions on polygamy concentrate on the husband's right to be polygamous and the first wife's duty to respect this right. Little however is mentioned of the second wife's duty to her sisters in Islam. As a Muslim the prospective co-wife also has a fundamental duty to ensure that any decision she makes does not have an unnecessary adverse effect on another human being. Thus in agreeing to the marriage she is also acting unIslamically if this move will cause the existing wife or children any level of unnecessary material or mental hardship. There is also reason then for a third, neutral party to monitor her reasons for making such a decision: can her

material requirements only be met through such a marriage? Even if the husband's motives for being polygamous are honourable this might not be the case with the prospective bride.

A polygamous marriage thus can be seen as an option available to a woman, who should be permitted to decide independently what is most suited to her interests. This however does not preclude the involvement of wider society in protecting women suffering under serious and inevitable abuse of its practice. This leads to another option for women in the event of unfavourable marriage arrangements, whether in polygamous or monogamous matrimony: divorce.

Divorce

Arabic terminology is extremely important in the discussion of divorce, with *talaq* being used to describe the termination of a marriage at the husband's behest, *faskh* referring to annulment of the marriage at the wife's behest, and *khul* referring to the husband agreeing to dissolve the marriage following a request from his wife. While all measures ultimately enable the woman to leave her husband, the terms are important because of the impact they will have on any post-divorce settlement.

Annulment, or *faskh*, will take place if the wife can prove to a judicial body certain behaviour on the part of her spouse. Her success in doing so will also free her from an obligation to make any financial payments to her ex-husband. This is not the case with *khul*, under which the wife must usually make some material recompense, usually by returning the original *Mahr*. Divorce procedures also vary for men and women and I will begin with a further study of these as they are stipulated in the *Qur'an*.

The concern here with our focus on the protection of the female, is how women are able to escape unsuccessful or exploitative marriages and how women are protected in the aftermath of divorce. In the case of the husband wishing an end to the marriage the procedure seems relatively straightforward. The general consensus of opinion amongst scholars is also that the wife cannot contest divorce in this instance and that the marriage is simply terminated at the husband's unilateral will. One relevant *Qur'anic* verse has already been discussed in relation to the concept of *daraja*. 2:228 however constitutes a wider discussion on divorce beginning with 2:226 and concluding with 2:233. The procedure begins with the husband's decision to cease conjugal relations with his wife, this is to be followed by three waiting periods during which time the husband may wish to retract his pronouncement. Once the third period has lapsed without a resumption of relations the divorce becomes irrevocable. Once the marriage has been terminated the couple cannot re-marry unless the woman marries another man and obtains divorce from him. This, it would seem, is intended to alert men to the serious consequences of their decision to repudiate and to prevent women from being forced to return to ex-husbands. Once the marriage is terminated the husband has no claims over the wife.

'And if he divorces her (finally), she shall thereafter not be lawful unto him unless she first takes another man for husband; then, if the latter divorces her, there shall be no sin upon either of the two if they return to one another – provided that both of them think that they will be able to keep within the bounds set by God...' 2:230

There is no mention of third party arbitration in this particular series of verses. An innovation in the proceedings has come to be accepted in the *Sunni* schools while

rejected by the *Shi'as*. This is when a triple divorce is pronounced at one time, which for the *Sunnis* although amounting to a major sin on the part of the husband still makes the divorce irrevocable. The *Shi'as* on the other hand reject this form and insist on the waiting periods to be observed before either party is considered free of the marriage.

The waiting period is a significant factor in the proceedings because during it the wife is not to be removed from her marital home and is still entitled to the same maintenance she has as a married woman. When a triple divorce (*talaq al-bidda*) is pronounced the women will often be turned out of her home immediately and refused maintenance. She will, however, be expected to observe the waiting period, probably in her parental home, before re-marrying. When the proper form of *talaq* is observed Muslim women, as noted by Esposito, have used the ruling on the waiting period in innovative ways. 2:228 instructs that *'the divorced women shall undergo, without re-marrying, a waiting period of three monthly courses: for it is not lawful for them to conceal what God may have created in their wombs'*. The monthly courses here refers to three periods of menses the completion of which depends entirely upon the women's own testimony. As Esposito explains some women have claimed maintenance for extended periods of time.³⁶ This however constitutes abuse of the system and this form of deception is not a viable option for women wishing strictly to adhere to Islamic principles. Once the legitimate waiting period passes the woman is free to re-marry. Given however, that she might have been completely averse to the divorce, the outstanding issue remains of continued maintenance. Asad believes that when the woman is divorced through no fault of her own, that is that she is not guilty of *nushuz* she is entitled to maintenance until she re-marries under the provisions of

2:241: *'And the divorced women, too, shall have (a right to) maintenance in a goodly manner: this is a duty to all who are conscious of God.'*³⁷

There is also the added issue of *Mahr*, which becomes extremely important. The original *Mahr* can be split into two parts. One amount is payable immediately following the marriage and one amount can be stipulated that is payable only should the husband divorce his wife. A high *Mahr*, which the husband is obliged to pay at the time of marriage, may also be enough financial sustenance for a divorcee after *faskh*. The absence of this and/ or any other independent financial means passes the responsibility for financial provisions on to the next closest male relative. The absence of such relatives leaves the woman the responsibility of the state.

Where a high *Mahr* has been set as compensation for divorce, this can also deter the husband from pronouncing divorce. But it might also be invoked to facilitate the woman's quest for termination of the marriage. She may rescind her right to it through the process of *khul* or she may persuade her husband to pronounce *talaq* by agreeing to forego the *Mahr*. The difference between the two procedures of *talaq* and *khul* is important for, unlike *talaq*, *khul* may require third party approval. In today's society this is likely to come from a civil court. The concept of *khul* has been extracted from 2:229:

'... And it is not lawful for you to take back anything of which you have ever given to your wives unless both (partners) have cause to fear that they may not be able to keep within the bounds set by God: hence if you have cause to fear that the two may not be

able to keep within the bounds set by God, there shall be no sin upon either of them for what the wife may give up (to her husband) in order to free herself.'

Asad thus explains that all authorities agree that this verse relates to the unconditional right on the part of the wife to obtain a divorce from her husband.³⁸ According to Maudoodi, third party intervention is necessitated only if the husband refuses to accept the *Mahr*, which in effect dissolves the marriage. Maudoodi, who generally falls into the conservative camp, offers a surprising perspective on the role of the courts in granting *khul*. The writer cites an authentic *Hadith* in which the Prophet granted *khul* on the basis of a woman's distaste for her husband's physical appearance along with her simultaneous assertion that there was no deficiency in the husband's faith or morals. From this Maudoodi asserts that 'for enforcing the decree of *Khula* all that is needed is the proved evidence of the woman's deep dislike for the husband and her refusal to live with him'. An example is also provided as to how this dislike might be proven. In this case the Caliph Omar had a woman petitioning for *khul*, confined alone to a room for three days, following which the petitioner claimed that those were the only nights of peace she had known for years. This for the Caliph was considered sufficient evidence and therefore must be considered as such by contemporary judges.³⁹ The court cannot in his view compel a woman to return to her husband nor probe into the reasons for her original request, which might compromise *Qur'anic* rules on modesty. The reasoning behind the repayment of *Mahr* in this scenario is quite simply that the woman has broken the marriage contract and therefore must offer some compensation for that reason. Overall however, the argument is that she is not financially any worse off than before the marriage, given that she was never Islamically obliged to contribute to household expenses or spend

on her husband. *Khul* will be applied for when no fault can be claimed on the part of the husband.

The power of divorce can also be delegated in the marriage contract and this can take two forms. Divorce becomes effective once the husband has broken one or more of the terms in the contract, for example taking a second wife. In another form the wife retains the right to extract divorce whenever she pleases to which the husband must acquiesce. Although not all jurists accept this power of delegation as valid key classical scholars such as Hanbal have sanctioned it.⁴⁰

Faskh however is requested when the husband is unwilling or unable to fulfil his obligations to the wife. Unlike *talaq*, *faskh* needs to be approved by a judicial body, which will consider the case put forward by the wife. Conditions under which *faskh* can be requested include a long absence or desertion by the husband, impotence, physical or financial inability, *nushuz* on the part of the husband and cases in which a marriage might have been contracted on a minor's behalf who has now reached puberty and wishes annulment.⁴¹ *Nushuz* is worthy of discussion here, because it parallels the conditions under which men may seek separation from their wives and again its exact definition is ambiguous. Defined as ill treatment, *nushuz* allows considerable leeway to the judicial body in establishing its presence. Given the consensus on the *Qur'anic* reference to beating, ongoing domestic violence would constitute *nushuz* and be acceptable grounds for divorce. Asad⁴² has also included 'mental cruelty' in his definition. The major problem for the woman, as envisaged in Islamic teachings, is not attaining a termination of her marriage, which as above examples have illustrated should be granted with ease. The problem is seeking

divorce and holding on to the *Mahr* given to her. She will only be able to do this by petitioning for *faskh*. A woman's determination to do so might arise simply from principle; the husband has not kept up his Islamic duties, despite her having done so. As recognition of this he should quite rightly forego the *Mahr* payment. The motivation might also be purely financial; she needs the *Mahr* for subsistence or no longer has it in her possession to return. Whatever the motivation might be, the courts are given considerable leeway in determining whether the husband is guilty of *nushuz* and granting *faskh*. This involvement of judiciary is not stated explicitly in the *Qur'an* but has been established indirectly from *Qur'anic* injunctions, the practice of the Prophet and the Caliphs acting as a court would today.⁴³ The forum under which Muslim women obtain marriage dissolution today resembles those in many western procedures, although this similarity does not automatically elevate its merits. There is a serious discrepancy between the consequences of men accusing wives of *nushuz* and women making the same accusation against their husbands. When husbands divorce on the basis of *nushuz*, classical scholarship indicates, they can do so unilaterally and are also absolved of paying any maintenance. Women, on the other hand, must prove *nushuz* to the courts and unless they can do so will not be granted a divorce. In order to free themselves of the marriage they may have to settle for *khul* and therefore also forego their *Mahr*.

The *Qur'anic* text as a whole, however, provides a strong case for bringing the procedures for *talaq* in line with those of *faskh*. In other words, court arbitration should equally play a role when the husband instigates divorce. The rationale for this comes from 4:35 and 65:2:

'And if you have reason to fear that a breach might occur between a (married) couple, appoint an arbiter from among his people and an arbiter from among her people; if they both want to set things aright, God may bring about their reconciliation. Behold, God is indeed all-knowing, aware.' (4:35).

'And so, when they are about to reach the end of their waiting term, either retain them in a fair manner or part with them in a fair manner. And let the two persons of (known) probity from among your own community witness (what you have decided); and do yourselves bear true witness before God: thus are admonished all who believe in God and the Last Day.' (65:2).

Other verses urge caution on the part of men who might be contemplating divorce:

'O you who have attained to faith! It is not lawful for you to (try to) become heirs to your wives (by holding on to them) against their will; and neither shall you keep them under constraint with a view to taking away anything of what you may have given them, unless it be that they have become guilty, in an obvious manner, of immoral conduct. And consort with your wives in a goodly manner; for if you dislike them, it may well be that you dislike something which God might yet make a source of abundant good.' (4:19).

Man's power of repudiation is not intended to be a weapon that he uses to repress his wife. It is also only to be used after careful contemplation of the consequences: both in this world and in the afterlife. With this cautionary note in mind coupled with the command for arbitration in 4:35, it can be argued that court involvement does not

violate any *Qur'anic* edicts and is a much needed measure given the ease with which men now abuse the right to repudiation and the ensuing hardship for women and that such a measure upholds the overriding *Qur'anic* concern with justice and societal well being and the *Shari'ah* concern with *maslahah* or public interest. While conservative and some classical interpretation assert that arbitration is only required from family and community members, this is not obvious from the text. The text implies only that the two arbiters be appointed to put forward the case of each spouse. The command for witnesses set out in 65:2 also makes clear the need for involvement of wider society in the divorce proceedings even when initiated by the husband. While family or community members may be able to encourage reconciliation they may not be able to enforce certain practical action if such attempts fail. Legal authorities are more likely to be equipped to effectively oversee payment of outstanding *Mahr*, on-going maintenance or custody of children particularly in the face of an uncooperative spouse.

The preceding discussion on divorce also necessitates discussion on the custody of children in the aftermath of divorce. The classical view holds that custody of very young children automatically goes to the mother. The *Shafi'* school allows the child to decide for herself, the *Maliki* and *Hanafi* view hold that a girl should stay with her mother at least until puberty, *Hanbalis* argue for a father's custody of his daughter from the age of seven and *Jafaris* rule that the mother should receive custody of children unless and until she re-marries. There is no direct *Qur'anic* address of this issue. Ibn al-Qayyim has argued with various citations from the *Hadith* literature that motherhood is to be preferred.⁴⁴ Najla Hamadeh has also argued for this preference given that the father's primary responsibility towards the child is financial and

therefore does not require physical proximity.⁴⁵ This however is a dangerous line of argument in that it absolves the father of any nurturing responsibilities even within marriage. In the absence of clear theological guidelines again there is both a strong case and a need for judicial involvement in securing the mental and physical health of the child, which is the ultimate concern along with protecting the mother from cultural prejudices surrounding divorcees. Regardless of who is granted custody, all schools agree that the financial responsibility remains with the father.

Inheritance

Thus far the focus has been on areas of the family pertaining directly to the marriage relationship. Inheritance rights are an aspect of this in that it is through such rights that even in the absence of paid employment Muslim women have been able to retain some financial security and independence, which is not conditional upon their marital status. The literature on women and Islam celebrates the rights of inheritance guaranteed to Muslim women some fourteen hundred years ago and which British women, for example, attained only at the close of the nineteenth century. The celebration is marred however by the disproportionate sums guaranteed to the male within the Islamic scheme of allocation. The network of distribution described in the *Qur'an*, 4:11-12 and 176, is extremely complex and the *Sunni/ Shi'a* distinction is also important. In the *Sunni* school, taking the case of a brother and sister as one example, the brother's due is twice that of the sister's following the death of a father. The allocation is criticised on two fronts, the first being that it constitutes simple discrimination, which leaves women at a stark disadvantage that cannot be justified and the second being that it is indicative of a wider prejudice against the female in

Islamic scripture. The inheritance rights of women are not necessarily exploitative or threatening to the female. They might however seem to be simply unfair. The justification for the proportion is related to the financial obligation solely on men to provide for their families including not only their wives and children but also sisters and elderly parents.⁴⁶ There is no obligation on a woman to make such provisions for a widowed or divorced sibling, for her husband or children or even her parents. Such provisions if made by choice constitute charitable donations, or if the woman wishes, can be given as part of her compulsory *zakah*. The woman, in short, gets to keep her share for herself while for the man there are numerous subsequent demands on his, including those from the sister or wife who has already received. This understanding leaves certain scenarios unanswered. While women incur no sin for keeping any inheritance entirely to themselves, it does not provide an explanation for those women who are the sole or part financial earners for the household. Consider, for example the case of a widow or woman with an unemployed husband. She according to classical scholarship in the face of financial hardship, even if married, can still demand financial assistance from her brother.

The *Shi'a* interpretation offers a different perspective of inheritance under many circumstances. Following the death of a parent it often allocates equal shares to both male and female, not on the basis of the strict *Qur'anic* word but on the basis in part of the prominence accorded to Fatima, the daughter of the Prophet Muhammad and wife of Ali, the rightful first successor of the Prophet for *Shi'as*.⁴⁷ Within *Shi'a* discourse on inheritance law, 'all heirs of the same relationship to the deceased whether male or female, agnatic or non-agnatic, have the same ability to exclude other heirs and to transmit their entitlement to their own heirs'.⁴⁸ The circumstances under

which this exclusion can apply is again complex and beyond the scope of this work. Overall suffice it to say that under the *Shi'a* scheme female relatives of the deceased are more likely to receive a greater share of the estate than in the *Sunni* scheme. It is unlikely if not impossible that *Sunni* scholars will ever take on *Shi'a* stipulations on inheritance.

Salahuddin Sultan, writing from the *Sunni* perspective, has shown that, while in four cases⁴⁹ there is a clear favouring of the male in rivalry with the female of equal relation to the deceased, there are another thirty cases in which the female will inherit equal to the man or more than him.⁵⁰ Outside of the specific instructions found in the *Qur'an*, an individual is free to bequeath up to one third of her estate to whomever she pleases entirely free of any constraints. The current major problem with inheritance rights in Islam is not with the unequal sums, but with the reluctance or complete refusal of Muslims and Muslim states to respect even what is clearly given in the *Qur'an* as undeniably an Islamic right for women. The question of how women can legally claim access to a brother's inheritance, if this is needed because of an unemployed husband for example, is also not addressed. The important point here is that the passing of inheritance wealth from the brother to the sister if the latter is in need of it is not to be seen as a voluntary act of sympathy or charity. It should be seen as a religious duty for the male sibling and a corresponding right for the female.⁵¹ The absence of rulings from classical scholars giving state institutions responsibility for dealing with such a scenario suggest that they have relied on there existing a community consisting of pious Muslim males who can be trusted to depart willingly with their wealth in order to respect the right of the financially strained female relative who competes with them for inheritance. Such a community however has rarely been

in existence and as in the cases of polygamy and *talaq* there appears to be a need for some judicial involvement in assessing the practical realities facing the affected woman. This might result in a legal ruling forcing a brother to depart with some of his inheritance because of a sister's financial strain in a particular case. Would this contravene the scheme of inheritance ordained by God? It seems that, on the contrary, judicial involvement of this nature would seek to ensure that the scheme was followed through so that it was in line with the broader Islamic plan of economic distribution, which bestows the duty of giving economic support for female relatives upon the closest male relative who is able to provide it.

In relation to the wider implications in the four cases in which women do inherit half the male share, a narration from Ali is reported to substantiate such a claim, made both by Muslim conservatives and critics of Islam. Ali is reported to have said 'O people, women are deficient in belief, inheritance and wisdom. Their deficiency in belief is due to not praying and fasting during menses; their deficiency in wisdom is that witnesses of two women equals one man and in inheritance is that their share is half of man's. Therefore, avoid bad women and beware good ones; do not follow their good advice and actions so as not to encourage them to spread bad advice and actions.' Given the precedence of Ali in *Shi'a* teachings this narration is particularly popular amongst *Shi'a* conservatives. Ali is reported to have delivered this speech just after the Battle of the Camel and in response to Aisha's leading role in opposing his leadership and forces.⁵² Ali's words are therefore seen as inspired by immediate political and personal factors. While the religious edicts he cites are indeed correct, the conclusions he draws from them are deeply flawed and cannot be supported by Scripture. The rules on inheritance have already been explained and women's

absence from fasting and praying during menstruation is not to be viewed as a punishment but as recognition of the physical effects of menstruation on the female body. Ali's words however strike at a much wider issue than these individual rulings on inheritance, menstruation and so forth. Ali is warning Muslims that women have no place in a wider political context. Their presence and advice is dangerous to society as a whole and thus needs to be discouraged. This conclusion will be discussed in greater depth below.

The Legal and Political Status of Women in Islam

Having looked at the ways in which Islamic theology addresses women within the confines of the family, I will now turn to a study of women in a wider political and legal context. The conservative credo does not see a place for women within this wider environment, using many of the passages dealing with women's standing within the family and quotes such as that offered by Ali, as rationalization of their stance. For example, if women need to be maintained by men and men are given a *daraja* above women then it is considered implausible that they should be permitted to take on any roles of leadership or decision-making. This view presents a psychological understanding of womanhood as irrational, overly emotional and intellectually weak. It also broadens the verses on *qawamun* and *daraja* to suggest that these intimate a wider normative framework for relations between men and women. While the *Qur'an* itself does not present this image, conservatives are eager to make such deductions. The conservative stance however, is as equally reluctant and weak in its acknowledgement of the political reality of today in its approach to political rights for men. Waiting for a return to the Islamic Caliphate has generally suspended any

serious discussion on how Muslims should organise their political and legal institutions in the interim period. Modernist, mainstream interpretations of Islam are also hesitant to approve a strong presence of women in the public sphere. While not openly doubting the ability of women to function in such roles, this tradition argues that society is better served by women's talents being concentrated elsewhere.

Barbara Freyer Stowasser summarises the modernist literature: 'By keeping the family united and strong, the Muslim woman will ensure the survival of moral society and thus, the values of the Islamic way of life.'⁵³ The female has a crucial role to play in societal well being but this is limited to the confines of the family and it is not clear whether women are to be granted any choice as to how they might wish to ensure morality and Islamic values. The theological account of political organisation in general, for example on Islam's advocacy or disapproval of the democratic process, cannot be discussed within the confines of this work. However, the conventional debate on women and political and legal rights has not exhausted this issue and it warrants further study. Indeed this is an integral part of the wider political and legal quandaries that face Muslims today. The following section will therefore concentrate on women's participation in the legal system as witnesses, lawyers and judges and their political role as representatives and leaders. This gender-specific debate is an integral part of, rather than a distraction from, the wider discourse that is concerned with bringing about social justice, economic re-distribution and political empowerment for entire populations. Women's emancipation need not of necessity be preceded by male emancipation in countries in which political freedoms and rights to legal redress are severely limited for both. The following discussion will show how women's issues within Muslim dialogue are different from men's issues in crucial ways. While it is generally accepted that many opportunities and indeed rights

are denied to men by corrupt, opportunistic regimes that legislate on the basis of a distortion of the Islamic message, the same rights and opportunities are withheld from women in the name of Islam. This makes the repression of women likely to continue even under some form of more representative government unless a more rigorous scrutiny of Islamic scripture is conducted.

Women as Witnesses

Of the numerous verses instructing Muslims to declare decisions and transactions in the presence of witnesses, 2:282 addresses gender specifically.

'O you who have attained to faith! Whenever you give or take credit for a stated term, set it down in writing. And let a scribe write it down equitably between you; and no scribe shall refuse to write as God has taught him: thus shall he write. And let him who contracts the debt dictate; and let him be conscious of God, his Sustainer, and not weaken anything of his undertaking. And if he who contracts the debt is weak of mind or body, or is not able to dictate himself, then let him who watches over his interests dictate equitably. And call upon two of your men to act as witnesses, and if two men are not available, then a man and two women, from among such as are acceptable to you as witnesses, so that if one of them should make a mistake, the other could remind her.'

The verse, which is the longest in the *Qur'an*, continues with instructions to make the written contract precise and thorough in detail. The striking feature is obviously the equation of one male with two females and the wider and deeper implications this requirement may have for women. Firstly one needs to ask, why is it more likely that

a woman will 'make a mistake' in witnessing and subsequently narrating the terms of a commercial transaction and needs someone 'to remind her'? Historical explanations claim that illiteracy was generally high amongst the people of the Hijaz, but particularly so amongst women, thus they would have found it difficult to ensure that the scribe was recording the terms of the contract accurately. Women were also less likely to have first hand experience of financial arrangements and therefore were more likely to experience difficulty in recalling the terms of such an agreement if called upon to do so. This explanation assumes that not only was the number of literate, numerate women substantially lower but that the quality of that literacy and numeracy was also of a lower standard. These are the traditional explanations given for the *Qur'anic* requirement but what effect does this have for women today? Women are unlikely to suffer a great deal if one takes this verse as specific to the practice of a transaction that involves giving goods on credit, with a fixed date for payment. Financial institutions, bank managers, lawyers or aid agencies, today draw up most of the arrangements for such activity even in developing nations and in rural areas.

The potential for hardship for women becomes more apparent when one looks at the assumptions arrived at on the basis of this instruction. Conservative opinion is keen to make inferences as wide and deep as possible. The most extreme view holds that, because women are mentioned specifically in this verse, this must be the only case in which women can act as witnesses. From 2:282 strength has also been given to the view that women cannot possibly pursue a legal career as judge or lawyer and subsequently must be prohibited from any sort of political activism. Women, it is believed, have not been created with the intellect that such roles demand and 2:282 is seen as evidence of this reasoning. This however is a process of interpretation in

which the *Qur'an* is used to *confirm* opinions on women that are the product of cultural time and space, rather than an example of the text being used to *inform* human understanding of God's creation. Put simply the *Qur'an* does not explain why it was considered necessary to call for two female witnesses in the place of one male. Literacy and experience in business being more common amongst men is one reason given for the injunction and this being the case would suggest that once this ceases to be the reality, the requirement is null and that women if need be can act as witnesses in their own right. A realisation of the changing skills acquired by individuals is important not only for female dignity but also for society as a whole. The *Qur'anic* edict is clearly concerned with ensuring a just outcome in a financial transaction; an outcome in which both lender and borrower will be protected from fraudulent behaviour. The written contract and the witnesses are intended to prevent the agreement being dishonoured in any form. The witness plays an active role in this in the event of an ensuing disagreement between the contracting parties or a failure to honour the terms of the contract. Badawi⁵⁴ and Kamali⁵⁵ both point out that while the *Qur'an* calls for two female witnesses to the writing of the contract it does not mean that a judge cannot decide on a case with the testimony of only one witness. Thus Badawi has used the example of the testimony of a female business graduate weighed against an illiterate male. The judge can clearly make a rational decision as to which is better equipped to recount the intricacies of a financial agreement.

Some classical as well as contemporary scholars have prohibited women from acting as witnesses in criminal cases also or at the very least have argued that the equation stipulated in 2:282 is to be extended to numerous other cases. The opinions vary across the four *madhahib* regarding which criminal cases require two male witnesses

specifically and which permit one male and two female witnesses. The important point here is the *Qur'anic* evidence for this extension to some or all, criminal cases. Because the gender of witnesses is not stipulated in other verses, conservatives use Arabic grammar regulations to add weight to their argument. When addressing a mixture of men and women, the Arabic language will always employ the masculine form of the noun or verb. Thus Mohammed El-Awa has chosen to translate 65:2 as '... and call to witness two just men...' ⁵⁶ rather than 'two just persons'. From this it has been deduced that only men can act as witnesses, yet such an inference leads to absurd conclusions with rulings on, for example, the threat of punishment in countless verses becoming applicable to men only. Instead 33:35 can be taken as an elucidation of the use of the plural form and thus a directive that verses apply to both genders unless the contrary is stated specifically. The moment of revelation is important in determining this conclusion. Umm Salma, is reported to have asked her husband, the Prophet, 'why are men mentioned in the *Qur'an* and why are we not?' The response came in the form of direct revelation from God in a verse mentioning both men and women repeatedly:

'Verily, for all men and women who have surrendered themselves unto God, and all believing men and believing women, and all truly devout men and truly devout women, and all men and women who are true to their word, and all men and women who are patient in adversity, and all men and women who humble themselves (before God), and all men and women who give in charity, and all self-denying men and self-denying women, and all men and women who are mindful of their chastity, and all men and women who remember God unceasingly: for (all of) them has God readied forgiveness of sins and a mighty reward.' (33:35).

The commands to give in charity, remember God and so forth were not new to the community, the verse merely accentuates the point that all revelation is equally applicable to both sexes. When this is not the case, the addressee is clearly alerted to this in *Qur'anic* language, as 2:282 shows. From Islamic history it is also pointed out that following the murder of Uthman, the third Caliph, his wife's sole testimony was accepted by the Prophet's companions as sufficient for proving the guilt of the accused. To discount female testimonies in criminal cases then represents a serious deviation from the practices of those who lived in close proximity with the Prophet himself.

The continued insistence on two female for one male on the conservative part does not necessarily stem from a higher concern with justice for all but with a much narrower concern for guaranteeing male privilege and an inability to depart from unproven notions of male superiority in intellect. It is only by insisting that the *Qur'anic* requirement emanates from a more acute understanding of the female mind that the conservative can guarantee that privilege. The understanding being that women are not created in a fashion that allows them to accumulate and process information independently. In 2:282 however it is a female that is given the task of reminding another female rather than a male reminding the female. This would indicate at the very least that, if under certain circumstances women do require assistance, it is not the male who is deemed the best source of that assistance. That verse which has proven so useful in asserting women's inadequate intellect does not indicate that only men can guide it. This further undermines the conservative case for general female subjugation to male authority in other areas now to be examined.

Women in the Legal Profession

The perceived Islamic prohibition on women entering the legal profession, particularly as judges is extracted mainly from 2:282. Abu Hanifah thus ruled that women were only permitted to judge in those cases in which they were permitted to act as witnesses. This excluded women's involvement in *hudood* (crimes for which fixed penalties are prescribed by God) or *qisas* (crimes for which retaliation is permitted) cases. The rationale for making this assumption has already been queried above. The same deductive process is used by those who bar women from any judicial posts. Even in that one case in which women are deemed to have been eligible for testimony, judicial posts are still restricted to the male on the basis that two female judges would always be required to reside over one case in line with the *Qur'anic* requirement for two female witnesses in place of one male. However, if 2:282 implies that women cannot be appointed as judges because one female witness is not acceptable in the pursuit of justice, it equally implies that one male witness is not acceptable in the pursuit of justice. The logical culmination of this argument is that every one male judge must be also assisted by a second for the verse requires two male witnesses or one male and two female. The analogy between witnesses and judges seems to be a largely untenable one and appears to have applied only in relation to women. The tenth century scholars, Ibn Hazm and Ibn Jarir at-Tabari, have refused to accept the analogy and do not view women's entry into the legal profession as contrary to Islam.⁵⁷ Indeed the textual evidence for such a prohibition is weak and contemporary state measures rely perhaps more on notions of female inadequacy to justify the stance than the *Qur'anic* text and *Ahadith*.

Women as Political Actors

In western literature the link between increased numbers of female political representatives and more accommodating legislation for women is as yet unproven. While having more women in public office does not guarantee emancipation for women, a *legal ban* on women in this area does inform policy making and public opinion on women. In the Muslim milieu this is because the ban is enacted as a result of certain conceptions of 'correct' female behaviour and the limits of female potential. A regime, which prohibits women's entry into politics, is likely to see them as mentally and physically unable to take on the demands of public office and their presence in public, working alongside men or giving orders to them as unIslamic. A regime, which understands womanhood in this way, will inevitably have an impact upon policy in other areas such as the family, most likely, to women's disadvantage.

Most non-conservative writers are reluctant to accept women as potential heads of state, but few are willing to deny them all rights of political involvement. Some writers might be only prepared to allow women the vote; others will permit them to take on political office with the exception of the office of head of state.⁵⁸ While classical scholars have on the whole denied any political/ public role for women, key contemporary figures such as Yusuf al-Qaradawi have openly supported women's political activism.⁵⁹ The condition is that women's work be part of a larger Islamic movement, aimed at challenging corrupt and inadequate secular leadership and promoting the call to Islam or *da'wa*'. While there are limits to how far such scholars might be prepared to go in submitting to female demands in this discourse, it is important to acknowledge that they do not see justification in stifling the potential of women as contributors to the struggle for general emancipation. It is also important

that the discourse has taken a new form in terms of the right/ duty to political activism. Increasingly the onus is on women to become involved in Islamic movements not in order to exercise rights but as a fulfilment of religious obligation. Women are told that as good Muslims they must utilise their education and freedom for the benefit of society as a whole. Several verses can be cited to support this argument. In 3:104 Muslims are told that God makes His messages clear so that they might find guidance *'and that there might grow out of you a community (of people) who invite unto all that is good, and enjoin the doing of what is right and forbid the doing of what is wrong: and it is they, who shall attain to a happy state!'* The verse is seen to obligate Muslims to steer the community in a positive direction. 9:71 explains,

'And (as for) the believers, both men and women – they are protectors of one another: they all enjoin the doing of what is right and forbid the doing of what is wrong, and are constant in prayer, and render the purifying dues, and pay heed unto God and His Apostle. It is they upon whom God will bestow His grace: verily, God is almighty, wise!'

Again this is taken as not only permission for women to engage in the public sphere, protecting and enjoining good alongside men but as giving such engagement an obligatory standing.⁶⁰ While it is important to bear in mind the conditionality of female involvement that can be often gleaned from the literature, it is also important that these scholars have classical Islamic training and use sound scriptural arguments to support their case. For the purposes of this Chapter, it is ultimately the presentation of evidence from the *Qur'an* and *Sunna* that strengthens the call for female presence

in the public sphere. Furthermore this evidence provides a strong case for female activism in general with or without a wider male network to guide it. The difficulties of implementing such strategies in action will be left for discussion at a later stage.

What if any might be the Islamic obstacles to the success of this development? The *Qur'an* mentions nothing in relation to female political participation specifically but does legislate the principle of *shura*' (consultation) in three separate verses: 2:233, 3:159 and 42:38. In 42:38 eternal Paradise is offered to those who refrain from sinful actions, forgive when angered, are steadfast in prayer and '*whose rule (in all matters of common concern) is consultation among themselves*'. In 3:159, the Prophet is instructed to '*take counsel*' with his followers '*in all matters of public concern; then when thou hast decided upon a course of action, place thy trust in God: for, verily, God loves those who place their trust in Him*'. 2:233 instructs wife and husband to engage in *shura*' before deciding whether to have their child weaned by a foster-mother. For the purposes of this discussion it is clearly the first two references that are of importance. The principle of *shura*' has been used to advocate democratic procedures in Muslim states, and it is also used to include women in that process since nothing in the verses suggest that they ought to be excluded. To substantiate this interpretation are several *Hadith* narrations in which the Prophet himself took counsel with women. During the crisis within the Muslim community preceding the Treaty of Hudaibiyah the Prophet sought and acted upon advice from his wife Umm Salma. In the years following his death, Aisha is generally accepted as a key authority within the community. Authentic traditions do not prevent women from being sources of that consultation whether *shura*' is understood as necessary only with experts in a specific field, or whether it is understood as a more general instruction for suffrage.

This, however, has not always obstructed attempts to limit *shura* to only male followers. The reasons have already been explored above, with *qawamun* being extended to a general male-female hierarchy rather than restricted to the wife-husband exchange of rights and duties. Another reason given to deny women the right to vote in an al-Azhar *fatwa* issued in 1952 was that this right would provide the means by which women could run for public office. The *Shari'ah*, it was argued, prohibits the means of action that might make an outlawed act possible.⁶¹

The supposed *Shari'ah* prohibition on women in public office centres around one particular *Hadith*, in which the Prophet is reported to have said, 'such people as ruled by a lady will never be successful'. Aisha Bewley⁶² and Fatima Mernissi⁶³ have made the contentious observation that this *Hadith* came to be narrated only some twenty five years after the Prophet's death following Aisha's involvement in the Battle of the Camel and that it proved useful in discrediting her action. Both in their writings have brought into question the *Hadith's* actual authenticity despite its inclusion in the *Sahih* collections of al-Bukhari. The motives of Abu Bakra in relating this *Hadith* when he did are impossible to establish today. Contending al-Bukhari's classification is also a formidable task and unlikely to find favour amongst the majority of Muslims and of course scholars. Examining the *Hadith* in light of the circumstances under which it was voiced by the Prophet himself and its relation to the *Qur'an* is however an important and more acceptable exercise. Al-Bukhari cites the *Hadith* and refers to a woman having taken power in Persia at the time it was pronounced.⁶⁴ Commentators have ascertained that it was upon hearing news of the Persian king's death and his daughter's accession to power that the Prophet said these words.⁶⁵ To view these words as anything other than a specific prophecy on the people of Persia is to

contradict the *Qur'anic* text itself, which describes in detail a people, led by a woman to success and prosperity. *Sura 27* relates the example of a nation led by a woman, named in exegeses as Bilqis, who follows the invitation of the Prophet Solomon to accept Islam. Bilqis is astute in her recognition of Solomon's honourable intentions and displays both sound intellect and piety in her acceptance of the faith. The episode on Bilqis concludes with her words, '*I have surrendered myself, with Solomon, unto the Sustainer of all the worlds!*' (27:44). Her surrender is to God, the only true sovereign and not to any human power. Stowasser has noted the lack of exegetical work that examines the verses on Bilqis in light of their relevance for contemporary society.⁶⁶ This is not surprising given the implications it might have for conservative disdain towards women as wielders of political power. Nonetheless the case for female franchise in the political area can be related to and strengthened by this text.

Aside from Bilqis there are other examples of females being entrusted with social responsibility in decision making roles and by important Islamic figures include Umar Ibn al-Khattab appointing Shifa' bint 'Abd Allah as officer in charge of the markets in Madinah.⁶⁷ There is strong historical evidence that women played a prominent public role in early Islamic society and *seerah* literature abounds with examples of women engaging in *jihad*. Classical works however have not concentrated on such figures as Shifa', Bilqis or Nusayba al-Ansariyya who defended the Prophet in the Battle of Uhud, as examples to be followed by subsequent generations. The figures that are seen to be worthy of emulation in a great deal of classical works, as Stowasser has pointed out, are those whose public work was limited and undertaken because of necessity. Thus the wife of Moses attended her flocks only because her father was too ill to do so himself. Immediately upon recognising Moses as an honest, righteous

man she suggests to her father that he hire Moses to carry out the work. (28:26).

Similarly the wives of the Prophet, undoubtedly exemplary figures, are portrayed as women engaged primarily in nurturing and providing a peaceful environment for the Prophet at home rather than involving themselves in any political, community issues.⁶⁸

These role models lead to another crucial aspect of Islamic theology's address of women: the issue of *hijab*.

Hijab In Islam

The concept of *hijab* is understood in diverse ways depending on the country, school of thought and even social class in which it is being debated. In many Muslim countries and in the west the term has come to signify a form of dress: the headscarf worn by women that covers the hair and is draped over the front of the body. The *hijab* also requires not showing the shape of one's body either by leaving any part of it bare or wearing transparent or tight clothing. Increasing numbers of women are taking on the *hijab* voluntarily in countries such as Egypt, Turkey and in the west. The headscarf is considered as both a religious obligation and a reassertion of Islamic identity in an increasingly secular world. Women who wear it see it not as a restrictive garment but a facilitating one. The *hijab* frees the female from the shackles of commercial beauty products and the dictates of fashion and leaves her to operate as an independent intellectual being rather than a physical entity driven to please men. Examining the increasing trend to wear the *hijab* amongst Egyptian women, Soroya Duval has written, 'the prevalence of the Islamic mode among women cannot be seen

as a retreat from female autonomy and subjectivity. The availability of education, the entry of women into universities and professional occupations cannot be considered regressive, no matter how conservative the appearance of the uniform that helps them to achieve these goals may look'. Duval goes on to provide extracts of interviews with *hijabed* women who assert their autonomy in the face of criticism from close male relatives and men within the various Islamic movements the women are part of.⁶⁹

The function of *hijab* is to cover the *awra*' which can be defined as those parts of a person which it is indecent to expose in public. Those women today who don the headscarf would appear to subscribe to the view that *awra* ' comprises the entire body with the exception of the hands and face. However in theological debate *hijab* and *awra* ' are contested terms, with the Wahhabi sect ruling the face as *awra* '.

The word *hijab* as an instruction of dress and behaviour to all Muslim women is not mentioned explicitly in the *Qur'an* but has been introduced to the Muslim community through *Suras Al-Ahzab* (33) and *An-Nur* (24). From *Al-Ahzab* , 33:33 is the verse that is of particular interest to conservatives who oppose women working in any occupation outside the home and call for strict segregation between the sexes. 33:33 reads, '*And abide quietly in your homes, and do not flaunt your charms as they used to flaunt them in the old days of pagan ignorance...* '; this as the Arabic '*waw*' and even its English translation to 'And' shows that it is only part of a wider address and is grammatically incomplete. However it fits the conservative agenda to cite this phrase in isolation because of its seemingly clear instruction to women to stay confined to their homes. A citation of the full text of this verse makes the object of

address clear, for it continues, '*... and be constant in prayer, and render the purifying dues, and pay heed unto God and His Apostles: for God only wants to remove from you all that might be loathsome, O you members of the (Prophet's) household, and to purify you to utmost purity.*' How can Asad be assured that it is the Prophet's household that is being addressed specifically from the Arabic *ahl al-bait* (literally people of the house and translated above as members of the (Prophet's) household)? His rendering is in fact not contentious and is actually apparent from 33:32: '*O wives of the Prophet! You are not like any of the (other) women, provided that you remain (truly) conscious of God. Hence be not over-soft in your speech, lest any whose heart is diseased should be moved to desire (you): but withal speak in a kindly way.*' 33:32 is inextricably linked to 33:33 with the use of *waw* as the first word in the latter verse. The address is very specifically directed to the wives of the Prophet and not to all Muslim women. However, the case for confinement does not stop with the use of one fragmented verse. To 33:33 is added what has generally come to be termed by the scholars as the 'descent of the *hijab*' in 33:53.

'O you who have attained to faith! Do not enter the Prophet's dwellings unless you are given leave; (and when invited) to a meal, do not come (so early as) to wait for it to be readied: but whenever you are invited, enter (at the proper time); and when you have partaken of the meal, disperse without lingering for the sake of mere talk: that behold, might give offence to the Prophet, and yet he might feel shy of (asking) you (to leave): but God is not shy of (teaching you) what is right. And (as for the Prophet's wives,) whenever you ask them anything that you need, ask them from behind a screen (hijab): this will deepen the purity of your hearts and theirs. Moreover it does not behove you to give offence to God's Apostles – just as it would not behove you ever to

marry his widows after he has passed away: that verily, would be an enormity in the sight of God.'

The *hijab* in this verse has been extended to mean a required partition between all women and men despite the single concern of the verse from beginning to end with the etiquette of entering the Prophet's dwellings and interaction with his wives. Fatima Mernissi has given great attention to the occasion for revelation of this verse. She looks beyond the immediate circumstances of the meal at the Prophet's home celebrating his marriage to Zainab and examines the crisis in the community at the time following the Battle of Uhud. According to Mernissi, the veiling imposed on all women, was a result of the Hypocrites of Madinah harassing Muslim women claiming they had mistaken them as slaves. The veil in Mernissi's words 'represents the triumph of the Hypocrites'.⁷⁰ This provides an explanation of 33:59 which continues with the theme of women's protection.

'O Prophet! Tell thy wives and thy daughters, as well as all (other) believing women, that they should draw over themselves some of their outer garments (when in public): this will be more conducive to their being recognized (as decent women) and not annoyed. But (withal,) God is indeed much-forgiving a dispenser of grace!'

Muhammad al-Ghazali also sees a link between the specific command to the Prophet's wives in *Al-Ahzab*, the general command to veil in this later verse and the malicious harassment of women carried out by the Hypocrites but does not suggest that the commands of 33:33 and 33:53 should be extended to all Muslim women.⁷¹ This is because there are important differences between the commandments of

33:33/53 and 33:59/ 24:31. Verses 33 and 53 of *Al Ahzab* make explicit what ought to be the ideal behaviour of the Prophet's wives, and their exceptional standing in the Muslim community. They are to remain at home, speak in a certain tone and be separated from the rest of the community by means of a *hijab* (curtain). The text of 33:59 and 24:31 is explicitly addressed to all Muslim women. 24:31 reads,

'And tell the believing women to lower their gaze and to be mindful of their chastity, and not to display their charms (in public) beyond what may (decently) be apparent thereof; hence let them draw their head-coverings over their bosoms. And let them not display (more of) their charms to any but their husbands or their fathers... and let them not swing their legs (in walking) so as to draw attention to their hidden charms. And (always), O you believers – all of you – turn unto God in repentance, so that you might attain to a happy state.'

33:33, 53 and 59 together are seen as permitting the Prophet's wives to leave their homes when this was necessary. The instructions in 24:31 above, and in 33:59 relate to all other Muslim women and their appropriate behaviour *in public*, which in turn indicates that their presence outside of the home is conceivable and acceptable within Islamic dictates. Islam does not prohibit women from entering public space for it is only in the event of this interaction between male and female in that space that both are commanded to 'lower their gaze' in 24:30-31.

Hijab may not be the separation of women from men but there is some alternative form of modest behaviour that is required of Muslims. Along with 'lowering their gaze' and being 'mindful of their chastity' women are given additional instructions on

clothing and walking and this is precisely where the contemporary debate on *hijab* focuses. As already explained, the *hijab* or separation between men and women in the public domain has been interpreted in classical and contemporary scholarship as a head covering and loose ankle-length clothing for women and loose clothing from naval to knee for men. The ruling comes from the command to ‘draw over themselves some of their *jilbab*’ (garments) in 33:59 and to draw their ‘*khimar* (head covering) over their *juyub*’ (bosom) in 24:31. The *jilbab* translated by Asad as garments and the instruction to women to draw this over themselves is often quoted as evidence for an Islamic obligation to cover the head. Yusuf Ali explains that the *jilbab* is an ‘outer garment, a long gown covering the whole body, or a cloak covering the neck and bosom’.⁷² Asad believes that the verse has been left deliberately vague because it is not a general timeless injunction.⁷³ It is a moral guidance that was relevant to the circumstances of the time: the harassment by the Hypocrites and thus the need for Muslim women to make themselves easily recognised. The more common view is that it is taken as given in the *Qur’an* that Muslim women will wear a *jilbab*-like garment, which covers the whole body including the head. Women who wear such garments, although aware that it may not prevent harassment and in fact may even aggravate it, will explain that they are more convinced by the closing phrase, the form of dress is seen as conducive to being recognised as a Muslim. In this sense the command becomes timeless, in that the *hijab* is to be worn as a badge, clearly distinguishing the Muslim from the non-Muslim, giving clear signals of the physical and social distance to be kept from the opposite sex. The debate surrounding the precise meaning of 24:31 runs on similar lines. In this verse *khimar* translated by Asad was a head covering traditionally worn by Muslim women, which was let down over the wearer’s back leaving the breasts bare. For Asad the concern in the *Qur’an*

is with covering the breasts rather than wearing a head covering.⁷⁴ For the majority of scholars however, the supposition is that *all* Muslim women will wear the *khimar* as a rule *and* insure that their breasts are covered. For the latter school, the command is to cover all parts of the body that the *khimar* did including the hair and neck. The *Hadith* in which Aisha related that upon hearing the command to cover their necks and bosoms and not to reveal their beauty the Muslim women cut their waist sheets at the edges and covered their heads with the cut pieces, supposedly supports this interpretation.⁷⁵ The *Hadith* has been classified as *Sahih* but does not tally wholly with the conventional interpretation of 24:31, which claims that the *khimar* worn by the women of Madinah covered the head even prior to the revelation and the continued wearing of it as obligatory is taken as given in the verse. Clearly there would have been no need then to cut waist sheets as fabric to cover the head with. It could be that some women wore this type of dress and by the revelation it was clearly understood what was being commanded: to cover the entire body including the hair and neck. There is nothing else in the two verses that command covering the head and the evidence that claims otherwise relies on the notion that the *Qur'anic* reference of *khimar* and *jilbab* makes it apparent what was expected of subsequent generations of Muslim women.

The minimum dress requirement therefore continues to be widely thought of as loose ankle length clothing and a head covering. If there is internal consensus on this issue, a consensus that includes female scholarship and understanding, then there is little reason to see the injunction as restrictive and potentially distressing for women. The distressing factor is the perceived need for strict enforcement of the injunction within Muslim countries. Unlike other Islamic obligations, in which women can choose the

level of faith they wish to practise, the *hijab* has become a distinctly public affair. Women are burdened with the task of preserving moral order via observance of this legislation. The *hijab* has huge political significance in the contemporary Muslim arena. Women will be refused entry into mosques, access to centres of Islamic learning, the opportunity to speak in public, and in certain states even fined or imprisoned for not wearing the head covering. The issue has become more than one of personal choice and preparation and this makes it distinctly different from other religious obligations such as the *Hajj* or five daily prayers. Yet the *Qur'anic* injunctions are concerned with the protection of women from unIslamic forces. They do not suggest, as many contemporary scholars do, that the very fabric of morality is dependent on women covering the hair. While punishments are clearly laid out for adultery, fornication and slander, acts which do compromise the well being of wider society, there is no such punishment dictated for refusal to wear *hijab* how ever that term might be understood. The contemporary execution of such punishments is an innovation lacking any sound Islamic credentials. Moreover the *hijab* cannot by virtue of the *Qur'anic* text itself, be seen as an instrument restricting the physical mobility of women for, on the contrary, it is an instruction on how to behave in the public realm and in the company of men.

The conservative use of *hijab* to confine women's movement and access to education and employment is not wholly outdated. It continues to be voiced expressly in works such as Koirala's⁷⁶ in Friday sermons and inflicted on women if this happens to be the personal interpretation of their father or husband. It is also the justification given for segregation in schools and the workplace with the frequent adage that Islam does not encourage 'free mixing' and a failure to define what precisely is meant by that phrase.

Whatever 'free mixing' might be, crude segregation on gender lines is inconsistent with the *Hadith* literature in which women attended the mosque, sought advice from the Prophet directly, participated in public meetings and were employed to supervise the market. It also fails to explain why Imam Shafi' attended the study circles of a female scholar, Nafisa bint al-Hasan. In theory such segregation may neither disadvantage women nor men. In practice the contrary has proven to be the case, with decidedly greater resources being devoted to male education. In the battle for female emancipation it is these historical examples of socially and politically active women that are increasingly being brought to the attention of Muslims from all traditions.

Conclusion

The proposals that I have advocated in terms of greater court involvement in *talaq* cases, in supervising polygamy and inheritance allocations do not contradict any *Qur'anic* injunctions. But more importantly than this they can be implemented through use of traditional juristic methodology. *Maqasid al-Shari'ah* argues, Kamali is an important but neglected science of establishing Islamic laws. Meaning the objectives of Islamic law, the *Maqasid al-Shari'ah* are mercy and justice. All Islamic laws must respect this concept of mercy towards other human beings based on the *Qur'anic* verse 'We have not sent you but as a mercy to the worlds.' (21:107).⁷⁷ When men are unilaterally divorcing their wives leaving them in poverty and destitution, when men are taking additional wives and failing to provide for them emotionally and materially and when inheritance laws can mean that a wealthy male can refuse to aid a poorer female relative, this objective is not being respected. Thus there is an onus on scholars to exercise further *ijtihad* in order to ensure that the very objectives of

Islamic law (mercy and justice) are realised. Indeed in terms of *talaq* procedures justice would demand that a wife be given the opportunity to defend herself against any accusations of *nushuz* made by the husband in a similar way that the husband is given this opportunity when a petition for *faskh* is brought before a court.

Overall the *Qur'an's* representation of the ideal Muslim woman is not strikingly different from the ideal Muslim male. Both are commanded to pray, fast, perform the pilgrimage. Both are required to strive in Islam's cause with their wealth and persons, to increase their knowledge of God and His creation and to display mercy and kindness towards other human beings. Motherhood is given particular attention in both *Hadith* and *Qur'an* but this is not the solitary role of women and nor are men absolved of nurturing responsibilities. The role models offered in the *Qur'an* and *Ahadith* are varied, ranging from the wife of Pharaoh who disobeyed her tyrannical husband by embracing Islam, to Aisha about whom the Prophet is reported to have said 'take half your religion from this red-haired woman'.⁷⁸ The conservative ideal Muslim woman is largely independent of sacred depictions. Most importantly, the *Qur'an*, by bestowing the same religious obligations on women and men testifies to the intellectual and physical capabilities of the female.

This Chapter has offered an examination of the *Qur'anic* verses often used to justify male authority over women. While conservative readings of the text fuel many of the fears of Islam as a repressive force for women, these voices can be countered with a more holistic approach to Islamic literature. Within the family, marriage is to be seen as a voluntary agreement, with viable means of exit for both spouses. The *Mahr* and marriage contract have also been shown to be powerful means of facilitating a

woman's independence within the marriage. The controversial but misunderstood concepts of *qawamun*, *daraja* and *nushuz* have also been studied and placed in context with other concepts of equality, love and respect found in the *Qur'an* and *Hadith* literature. The discussion on divorce, polygamy and inheritance questions the orthodox perception that men can always be trusted to follow *Qur'anic* commands for just treatment of female kin. This section calls for a stronger judicial role in ensuring just marriage, divorce and inheritance settlements that are in keeping with overriding *Qur'anic* concerns with justice and equity. While supporting the case for this stronger judicial involvement the Chapter also acknowledges the problems of corruption and nepotism that currently plague many courts in Muslim countries. Inheritance rights for women, often deemed to be indicative of women's inferiority, have also been examined with more than the customary hasty reading of the relevant *Qur'anic* verses. This examination shows that the complex web of inheritance rights allot women more than simply half a man's share and therefore cannot be seen as an allegory of Islam's overall perception of women's worth. The same conclusion has been drawn in relation to the two female witnesses that are required to match one male testimony in cases involving financial transactions. The practice of extending certain concepts of *qawamun* or *daraja* into spheres in which this was not envisaged by the *Qur'an* has also been repudiated to show that women can take on public roles without contradicting Islamic tenets and even as a matter of religious obligation. The *hijab* has been interpreted as a code of dress and behaviour for both women and men. While the precise nature of this code is still debated, the case for *hijab* as a means of social exclusion for women is countered by *Hadith* literature that abounds with examples of women's strong, productive and respected presence in public.

The position of women within contemporary Muslim societies is not to be confused with the position of women within Islam itself. Muslim societies institutionalise their own, often controversial, readings of Islam. They have also developed customs and cultures that go beyond the letter of Islam. Thus if we are to understand the position of women in Muslim societies, we must examine the institutions and mores of these societies. It is to this task that I now turn.

Family Law in Iran and Pakistan

Islam, from early in its history, has been exploited by regimes as a powerful political and social ideology. Islam continues to be the tool of the established order and of revolutionary movements in countries extending from Indonesia to Mauritania and it has been used to legitimate an array of regimes, including monarchies in the Gulf and democracies in South-East Asia. This Chapter will concentrate on how the conservative understandings outlined in Chapter 1 are played out in practice when such forces come to control state legislation. The two case studies I shall use are Iran and Pakistan. These studies are also restricted to certain periods: Iran from 1979 to 1989 under Ayatollah Khomeini's rule and Pakistan from 1977 to 1988 under General Zia's rule. Their practices will be evaluated in light of Islamic principles many of which have been outlined in the previous Chapter. This is also where I will introduce the standards set by human rights thinking. There are of course numerous opinions on what constitutes a human right. For the purposes of this discussion I will concentrate on the Universal Declaration of Human Rights (UDHR)¹ with occasional reference to other documents developed under the auspices of the United Nations. The UDHR and related documents represent a general consensus amongst theorists and practitioners on what rights should be protected by national governments.

While more than a decade has elapsed since the cessation of each leader's rule, in both societies, a great deal of the legislation remains in place and can be found in numerous other Muslim states. What follows in this and the next Chapter is by no

means an archaic or purely historical study of Muslim women. Concentrating on these periods allows us to evaluate the successes and losses of the women who campaigned against the state and to then comment on the possible ways forward. Iran and Pakistan provide interesting examples because of the fervour with which policies directly impacting upon women's lives were pursued. Also the intensive 'Islamisation' programmes in each state followed, and were claimed to be direct responses to, intense periods of secularisation. While this does not testify to the actual Islamicness of the eventual measures, it will show the paradox of 'Islamisation' in many nation-states. What is often the case is that arguments are employed under the guise of being Islamic to pursue end-results that are largely independent of Islamic thinking. A close scrutiny reveals that in many cases, aside from vague references to what is 'proper' for women from clerics, it is extremely difficult to decipher precisely which *Qur'anic* and Prophetic stipulations the final legislation has been extracted from. Because both states explicitly claimed to be legislating Islamic laws, it is a perfectly legitimate and indeed necessary exercise that these laws be scrutinised in light of Islamic texts. Iran also serves as an important case because it is the only state to follow the *Shi'a Jafari madhab* as opposed to the *Sunni Hanafi madhab* followed by Pakistan and numerous other Muslim countries. This Chapter will show that despite the theoretical advantages that the *Jafari madhab* offers women in practice they have been largely ignored. Both states were markedly different regime types, with Pakistan under military rule and Iran under clerical rule. Despite these differences, both states claimed to be following authentic Islamic edicts and eschewing all forms of innovation.

It is important to bear in mind that the condition of women in both states was not the immediate result of the two new governments. Certainly existing norms and perceptions of womanhood facilitated the new measures to some if not to a large degree. In the case of Pakistan Charles Kennedy has contended that ‘the implementation of Islamic laws under Pakistan’s Islamization programme has not had a significantly adverse impact on the rights of women’.² However, even if this were true, it does not excuse the ensuing state policies and measures on women, most notably because proponents of Islam celebrate the revolutionary and progressive ethos of their faith. The study of Pakistan will show that the position of women was gravely undesirable from the beginning of Zia’s rule and that therefore the claimed limited impact of his Islamisation programme was not the result of a desire to free women from the repression they suffered. Iran also witnessed a revolutionary movement that was intended to alter dramatically the prevailing norms and to empower the oppressed. What these states resorted to, despite their claimed allegiance to Islam, were in fact regressive and reactionary policies on women more reminiscent of the *jahilliya* period than the Prophetic era.

There is clear enough reason then to gauge the desirability of these states’ legislation using Islamic criteria, but why is it appropriate to bring in human rights standards? The answer is that firstly protagonists of human rights would see no reason to respect any pleas to immunity. They believe that their theory is and should rightly be applicable to all human beings regardless of the political and religious leanings of the individual; these rights are the very minimum that is required to ensure that an individual experiences a safe and dignified existence. When discussing women, human rights thinkers are obviously going to be concerned with the fundamental issue

of equality and asking whether these states respect that equality between male and female. They would be failing their convictions by not subjecting all states to such testing. Secondly, these states themselves did not and do not deny the importance of human rights protection, but often claim that their understanding of this term is better suited to Muslim subjects than are western understandings. They claim an alternative comprehension of human rights, one that is compatible with Islam. In this sense Islam competes for the same space as current notions of human rights. This is because certain Muslim state leaders claimed that if western or even UN human rights declarations were ratified unreservedly, that would be at the expense of many Islamic principles. Evaluating state legislation using both criteria will allow us to isolate any tensions between Islam and human rights and, drawing on what has been learnt from the study in Chapter 1, allow us to discern any discrepancy between what is actually Islamic and what the state falsely claims to be so. This comparison is also essential in order to facilitate the later discussion on which is more suited to addressing the needs of Muslim women living under such laws: what exactly do Islam and human rights have to deal with in practice? The first Chapter served to introduce many of the *Qur'anic* verses dealing with women and the various ways in which the text has been and can be interpreted. We now move on to how some of these interpretations actually impact on women's lives and whether the theoretical arguments countering conservative thinking can be implemented in practice. Furthermore, if they can, how does this compare to the ways in which human rights documents seek to improve women's situation?

Background

Iran has occupied the status of pariah state since the Islamic Revolution in 1979 for a number of reasons and not least because of its anti-Western rhetoric, its control of significant oil supplies and its declaration of intent to export the Revolution to other Muslim states. Many commentators have sought to downplay the role of Islam as a mobilising force in Iran and instead explain the mass support for the Revolution by pointing to the economic and social disparities under the previous regime, which Khomeini pledged to eradicate on taking power. This is also the explanation given for the significant numbers of women opposing the previous secular rule and taking to the streets in support of the Revolutionary movement. Others have homed in on the Iranian experience to prove the dangers of using Islam as a political force and the repression that this leads to. Whatever the reasons for this initial support, the previous regime was notably secular in outlook with, for example, Islamic forms of dress being prohibited. The new government was thus to interpret and represent the support for the Revolution as a franchise for their Islamisation programme with the state claiming that 98% of the population was in favour of the Islamic Republic. The link between state and religion was cemented in Iran's Constitution, which declared its intention 'to establish an ideal society on the basis of Islamic norms'.³ Khomeini as the most senior of the religious jurists and official head of state, often proclaimed his exceptional ability to interpret and implement divine will: 'in the euphoria of revolutionary success, he boasted that the Islamic Republic of Iran had surpassed all previous Muslim societies including that of the Prophet, in implementing true religion "in all spheres of life, particularly in the material and spiritual spheres"'.⁴ As infallible, religious expert Khomeini's rule was claimed to be indivisible from Islamic rule thereby rendering opposition to his rule unIslamic and heretical. Yet Khomeini's

fallibility was to be proven time and time again in his ten years as leader of Iran and, as the following study will show, often by women's movements demanding legislative measures and amendments.

Pakistan's Islamisation programme was introduced under markedly different circumstances. Although often heralded as a state born out of Islamic aspirations in 1947, Pakistan has experienced only sporadic periods of Islamisation interspersed with secular rule. For example Zulfikar Ali Bhutto's agenda was inspired by socialist movements elsewhere and consisted of land reform policies to redress the gap between rich and poor. Zia ul-Huq's military coup in 1977 was to lead to Bhutto's execution and Zia's eleven-year Presidency. The intended Islamisation of subsequent legislation was not announced until some nine months after the initial coup, which immediately invited suspicion regarding Zia's sincerity towards the process. As in Iran, the pledge to Islamise the state's institutions and legislation was put to a referendum and the new regime claimed overwhelming support for its measures. Zia unlike Khomeini was essentially a military figure without any formal training in the Islamic sciences. Nor did he claim to be an authority in religious affairs, opting instead to act on the advice of other religious experts in the country. However, as in the case of Iran, Islamisation was to prove useful in discrediting opposition. In some part, because of its strategic importance to the west and the US in particular, Pakistan was to escape the international shunning that Iran experienced.

The significantly greater discussion on Iranian women in academia and popular culture is also notable and this is due, in large part, to the *chadored* (cloaked) Iranian woman proving to be a much more poignant visual image than the urban women of

Pakistan who, despite government directives, were still free to dress as they had previously. This is important to the following study. The issue of *hijab*, as a means of excluding women from public space, will serve as the backdrop for discussion in the following two Chapters. What these Chapters will show is that there is not always a strong correlation between enforcing *hijab* as a means of social dress and enforcing *hijab* as a means of social exclusion. Pakistani women, despite escaping the enforcement of the *chador* or *burkha*, were not to escape many of the repressive measures experienced by their Iranian counterparts. These Chapters will also reveal how Iranian women in some cases were actually able to mobilise themselves much more effectively against the state than were women in Pakistan.

Following on from the previous study of women in Islamic theology and family law, this Chapter will look at those same issues (marriage, divorce and inheritance) with reference to state legislation and cultural norms in the two case studies.

Iran

Women within the regime opposed the legislation on personal status frequently and with important successes. When writing about the women's movement in Iran the reference is to a number of different initiatives. Women organised *ad hoc* public demonstrations in response to certain measures, or showed individual acts of defiance. They also lobbied female members of the *Majlis* and the Assembly of Experts. The formal mouthpiece of female led activity against the state was the magazine *Zanan*. The magazine addressed developments in legislation, which affected women directly and included interviews with religious experts and intellectuals. The magazine was

full of articles offering scrutiny of the government's policy and pointing out the weak understandings of Islam that it was based on. The female opposition in Iran employed all these means at various points to attack state measures and lobby for change.

Another important facet of the proceeding discussion is how the government agenda was aided by existing cultural norms and how women's goals even when realised, were to be hindered by those norms.

Marriage

Islam's concern with the marriage bond extends beyond the ceremonial rites and offers guidance to the Muslim on how to contract and conduct a successful marriage. Consent of both parties is required, a written contract may also lay down the conditions, which the husband must fulfil during the marriage and a series of rights and obligations is bestowed on both spouses. The conservative readings focus on those words and phrases in 2:228 and 4:34, which suggest that in the allocation of rights men are owed a greater share and in the allocation of marital duties women are burdened with more. In summarising its legislation on marriage, Iranian representatives frequently opted for that conservative line which argues that the allocation is not of greater or lesser rights and duties, but simply of *different* rights and duties. Hojatolislam Rafsanjani thus pointed out in a Friday sermon, 'The Creator of life, created men and women differently and based his plan for their rights and responsibilities on their natural and psychological capacities'.⁵ The obvious biological differences between male and female are referred to here but, as was crucial to the debate on understanding women's place in theological sources, the insistence that women's psychological capabilities differ from men's also plays a

decisive role in limiting female potential in empirical cases. Examination of the statutory laws governing marriage in Iran shows that what emerged during Khomeini's rule was a series of measures, which seriously hindered women's independence and autonomy and left them extremely vulnerable to domestic abuse. In almost all cases the legislation was to be justified on the grounds that Iran respected the natural and fundamentally different roles allegedly assigned to men and women in Islamic scripture.

Consent and Child Marriages

Iranian legislation does not explicitly override the Islamic pre-requisite of consent of the two parties entering into marriage. There have been, however, a number of measures which seriously undermine the women's ability to exercise that consent or to express disapproval to a marriage proposal. The first notable legal initiative in this area was the lowering of the minimum age of marriage from eighteen to thirteen years for females.⁶ The state of course did not demand that all female citizens should be married by the age of thirteen. But the decision to lower the minimum age is indicative of a wider policy towards women during the Khomeini regime. It certainly facilitated guardians contracting marriages on behalf of their daughters and shows that the state was eager to see significantly greater numbers of women married as opposed to single. The pressing question here is whether a thirteen-year-old girl possesses the emotional and physical maturity to offer her consent? Force may not be necessarily employed but the marriage might still be seen as involuntary, in the sense that the child has not yet formed a will that enables it to offer consent. Iranian legislation states that majority is attained at thirteen for females but also that, with the consent of

the guardian, marriage can be arranged for a minor provided that this is in the best interests of the child. There are essentially two points here that will concern human rights proponents: the issue of discrimination between male and female and the rights of the child. This latter concern raises two further issues: whether thirteen is to be considered childhood and the sanction of child marriages in Iran. The Iranian legislation also needs to be examined in light of the Islamic sources that might have inspired it.

Gender Inequality

For the human rights advocate, the state is reprehensible if it fails to treat both genders equally. Article 2 of the UDHR is explicit on this, citing sex as one of the many grounds on which it is unacceptable to discriminate against any human being in according human rights.⁷ However, not all discriminatory actions are necessarily contrary to human rights. For example, when maternity leave is legislated for but not paternity leave, it is argued that this discriminatory measure is actually necessary for ensuring an overall equality. It is obviously women who bear the physical and emotional burden of pregnancy and childbirth and therefore need the time off to recuperate. Guaranteeing maternity leave means that women can pursue careers without fear of being disadvantaged because of their (and probably their male partner's) desire to have children. Moreover eliminating gender discrimination is not always sufficient to ensure an adequate framework of protection for women, as this discussion will show. Thus discerning whether the minimum age was equally applicable to male citizens tells us very little of the way in which this particular policy adversely affected female citizens. It is the case, however, that with this particular

ruling, women were to be disadvantaged in relation to their fellow male citizens. The male age for majority was to remain higher than the female's. This discrimination is objectionable to human rights thinking. However, while the government could redress this discrepancy by reducing the age of majority for men, this would not alter the adverse effects on women. Cultural norms in Iran as in many societies mean that the husband is generally older than the wife. It is also expected that the male should be capable of providing for his wife financially. This is also stipulated in the *Qur'an* which advises men, '*And as for those who are unable to marry, let them live in continence until God grants them sufficiency out of His bounty...*' (24:33). The inability to marry in this verse arises from the inability to provide financial sustenance. That this verse has been followed in Iran can be seen by the fact that following the Revolution a number of charities were set up in order to provide financial assistance and support for men wishing to marry and Iranian banks offered special loans for the same purpose. Men refusing to marry at a younger age were justified in doing so on the grounds that they were less likely to earn sufficient incomes. The practice of young marriage has a disproportionate effect on females whose desire to pursue education or a career is not given the same weight as the male's. His pursuit of education and career could be seen as coming from a desire to provide for a family; a woman's involvement in such activity can be portrayed and interpreted as being entirely for personal gain. Thus there is likely to be less societal pressure on men than on women to marry at a young age. The law is still objectionable to human rights thinking by virtue of its discriminatory nature and it also raises another important question: whether a thirteen year old is still legally a child and if so, what rights she possesses.

Rights of the Child

The marriage age alone does not infringe upon the girl's right under Article 16 of the UDHR which guarantees all 'men and women of full age, without any limitation due to race, nationality or religion, the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution'. 16.2 adds that 'Marriage shall be entered into only with the free and full consent of the intending spouses'.⁸ The issue is of establishing whether thirteen constitutes 'full age'. The United Nations Convention on the Rights of the Child states in Article 1 that 'a child means every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier'.⁹ Clearly in Iran the law states that majority is attained earlier. It would seem that there is no valid human rights grounds for condemning the Iranian minimum age law. In fact it might be argued that there is nothing morally reprehensible about the law at all and that it is simply a western ethnocentric reaction to view thirteen as 'too young' for marriage. The situation is different if the citizen suffers abuse within the marriage, or if it can be proven that she was coerced into it. Unless this is the case, it would seem that current understandings of human rights would not provide the grounds for raising the age of majority.

Yet literature on Iran does see this statute as disadvantageous to women. Haleh Afshar¹⁰ mentions it in her work, as does Ann Elizabeth Mayer¹¹, as a problem facing Iranian women. In fact Mayer specifically has the issue indexed under 'child marriages'. An important matter, aside from the classification of thirteen as a child or adult, is the way in which this marriage age might affect women's access to other rights. For example, what are its implications for the woman's education, her

employment prospects or her ability to exercise independence in family planning? An examination of other laws governing marriage in Iran will show that they can often offer little help to even mature, educated and financially independent women suffering in abusive and repressive relationships. This would imply that the prospects for younger women's ability to prosper and take control of their own lives within a marriage are even grimmer. Educational opportunities became severely restricted when married girls were prohibited from attending state schools and numerous clinics in towns and villages and the poorer areas of Tehran that had previously distributed cheap contraception were closed down following the Revolution.¹² This meant that pregnancy was also more likely to occur within the early years of marriage, possibly despite the wife's wishes. Thus even if adopting thirteen as the age of adulthood is not in itself objectionable, there are still valid reasons for being concerned with the law.

Now it is necessary to look at what both Iran and Islam have to say on the marriage of minors. Firstly, a look at the role of the girl's guardian is crucial to understanding how child marriages work. Ultimately, in Iran, the decision to allow a marriage to go ahead is vested with the male guardian of the female whatever her age. The fate of the girl rests with the guardian's decision either to contract a marriage on her behalf, to allow her to enter a marriage with a partner of her own choosing or to prohibit her from doing so. Thus the role of the guardian is crucial in maintaining the well being of the female and it is precisely in this sphere that an Islamic argument might be employed by the state to vindicate its policy. Aisha's marriage was arranged with the Prophet, according to some historians, when she was six years old. Others have cited her age as eleven or nine. In any case it is agreed that the marriage took place before

she reached puberty, which is when classical Islamic scholarship sees adulthood as beginning. Al-Anani explains that in Islam we find a unique system marked by sublimity and perfection in its legal formulations. He writes that the Islamic rule holds a person responsible when he attains to the age of puberty. Thus pubescence or menstruation is the phase when ‘physical maturity means the natural ability to raise a family through the power with which man is normally endowed. In other words a person becomes legally responsible as and when he attains the age of maturity’.¹³ While it is not Islamically acceptable that the marriage be consummated before either partner reaches puberty, Aisha’s case is cited by classical scholars to prove that it is acceptable for the marriage to be contracted and the ceremony to take place beforehand. Applying the same Islamic principles to the Iranian case then would mean that, while a minor or indeed a thirteen year old may be betrothed, it is not appropriate for her to live with her husband until puberty. Upon reaching the age of puberty the individual is free either to uphold or annul the marriage that was concluded on her behalf while in minority.¹⁴

As for the role of the guardian, Al-Ati’s observations are helpful: ‘in view of the particular relationship between a kinsman guardian – who is often a father – and his ward... it seems very unlikely that guardianship was endorsed for reasons other than the welfare of the ward... the law [*Shari’ah* law] prescribes that all marriage arrangements must be made in the best interest of the minors involved. It is unlawful to do anything disadvantageous to them.’¹⁵ Remaining within Islamic concerns, anything ‘disadvantageous’ would at the very least comprise any threats to physical or emotional safety and also bars to education. If these rights to safety or education are compromised in any way then the marriage is unlawful Islamically and the Iranian

state, which claimed to be acting on Islamic principles, had a duty to intervene on the citizen's behalf. This would also have involved setting up the necessary mechanisms through which the minor can make her grievances known. Given that both education and marriage are highly recommended pursuits in Islamic thinking, the Islamic grounds for barring married women from state schools are extremely weak, whether or not the individual is a minor.

It would seem that the Iranian stipulations on marriage are acceptable on two grounds. Firstly because majority in Islamic thinking is not attained at a fixed age but is reached with puberty. Secondly even if at thirteen the female is still a minor (she is not menstruating) her guardian has the right to arrange and conclude a marriage on her behalf. The proviso is that the marriage cannot be consummated until puberty and can be annulled at this stage if the woman chooses. This does not affect her rights to physical and emotional safety and her duty to pursue knowledge, either as a married minor or as an adult. If it could be shown that the Iranian state was prejudicing female access to these rights, then there is also an argument for repealing the law. This has indeed been the case with married women being refused access to state schools, the lack of available contraception and the absence of practical measures protecting them in cases where the guardian or husband displayed abusive tendencies. Even if these latter restrictions were amended it is still difficult to envisage how a thirteen year old could fulfil the expectations of her both in married life and full-time education. It is also entirely feasible then that the state should have actively discouraged marriage of younger citizens until the citizen had completed her education to a level reflective of her own abilities and ambitions. This action would

be based on the *Sahih Ahadith*, 'seek knowledge even if it takes you to China' and 'Knowledge is incumbent on every male and every female'.¹⁶

The place of human rights in this web of considerations is ambiguous. Under human rights thinking can Iran be forced to raise the minimum age on the grounds that the guardian might not act in the best interests of his ward and on the grounds that at thirteen she is still a minor? As discussed above, current UN documents on human rights do not explicitly cite thirteen as an age of minority, instead leaving the judgement to the discretion of individual states. If this is the case then at thirteen, according to Iranian legislation, she has attained majority. Consequently at thirteen, as an adult, she possesses all the rights set forth in the UDHR and is considered capable of making decisions as to which of the rights she chooses to exercise. She might for example, choose marriage over education. In Iran is she in effect given a choice between marriage and education? One could argue that the rights in the UDHR are indivisible and, by pitting one against the other, the state is not respecting this principle. To this the state would reply that the choice is not quite so simple, the individual could choose education and then marriage; that thirteen is the minimum age and not the maximum. The law does not state that unless a female is married by thirteen she has forfeited the right to marry at all!

Islam does not necessarily agree that thirteen still constitutes childhood and also sanctions the practice of marriage of minors. Therefore, if one holds to the strict letter of Prophetic practice, Islam does not provide the basis for repealing the note to Article 1041¹⁷ which declares that marriage of a dependent child, with the consent of the guardian, is permissible provided that the best interests of the child are taken into

account.¹⁸ The position of human rights documents on this practice again is ambiguous. It is generally accepted that parents do act in the best interest of their children and, while the Convention on the Rights of the Child does address the problems of child abuse, child marriages do not explicitly fall under this heading and in fact are not addressed specifically at all. If however, the marriage is consummated in childhood, this could constitute sexual abuse, which Article 34 of the Convention identifies as a human rights violation.¹⁹ Article 16.2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) does stipulate that ‘the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory’.²⁰ This would provide grounds only for outlawing the practice of guardians betrothing daughters prior to thirteen but not for raising the minimum marriage age. If Iran’s policies are more concerned with occupying women in marriage and motherhood than defending Islamic principles, there is nothing in CEDAW to prevent Iran and other states from simply further reducing the age of majority in order to accommodate its policies on marriage and women. Thus, while the human rights concerns with Iranian legislation might be perfectly valid, this particular case suggests that the current framework of human rights documents does not always provide the best solution to specific problems.

Consent and Adults

Article 1043 of the Iranian Civil Code²¹ stipulates that the marriage of a woman is dependent on the consent of her father or her parental grandfather. If the woman feels

however that the father or grandfather has no justifiable cause in refusing permission for a marriage, she may appeal to a Special Civil Tribunal which may in turn issue a marriage authorisation after assessing the full particulars of the prospective groom, the terms of the proposed marriage and the *Mahr*.²² There are numerous considerations emanating from this legal requirement. Firstly it is discriminatory in that there is no equivalent requirement for a male seeking marriage: he does not need parental consent. Secondly the guardian, who must always be male, is vested with significant power over his daughter/ granddaughter even in adulthood. The underlying assumption is therefore that women are not capable of making independent decisions, requiring instead continuous male guidance.

The defence that fathers can be trusted to act in the best interests of their daughters and that, if he refuses permission it will nearly always be for good reason, is largely redundant considering that the law is applicable only to female citizens and includes adult female citizens. Why can fathers not be given the same task in ensuring that their sons also make the right marriage choice? Why is the likelihood of a woman making an incorrect choice so great that legislation needed to be enacted to prevent her from doing so? The legislation quite simply prejudices the rights of female citizens and in particular contravenes Article 16 of the UDHR cited above. In Iran the female's right to marry is conditional upon the consent of third parties and is more limited than men's.

In Islamic jurisprudence, the right of women to marry independently of guardian consent is contested. The general view is that guardians are needed for minors, the insane and inexperienced or irresponsible persons.²³ Women in some classical

scholarship and seemingly in Iranian legislation have tended to fall into the latter category of inexperienced or irresponsible persons. Although the issue is not addressed explicitly in the *Qur'an*, some classical scholars have ruled that the *wali* (guardian) must concede to the marriage arrangement. Shafi' also falls into this category while Abu Hanifah has ruled that this is not necessitated by Islamic scripture.²⁴ Also the *Jafari* school, the *madhab* that Iran claimed to be following, does not rule that the guardian's consent is needed. Whatever the rulings of classical scholars the initial Islamic position does not appear to prohibit marriage without male parental consent. What is prohibited in the *Qur'an* is the practice of women offering themselves in marriage without a *wali's* involvement and any *Mahr* arrangement. This practice known as *hiba*, is addressed in 33:50 which makes lawful to the Prophet '... any believing woman who offers herself to the Prophet and whom the Prophet might be willing to wed: (this latter being but) a privilege to thee'. Thus such women are lawful only to the Prophet and no other Muslim. Any other man who receives a proposal directly from a woman who is willing to forego any *Mahr* agreement must decline it. The woman herself has also deviated from correct Islamic conduct. The Arabic text uses a form of the noun *hiba*, literally meaning gift: 'if she offered herself as a gift'. This would imply the issue is primarily of the woman foregoing a *Mahr*, the gift, which it is compulsory for men to give to their wives, rather than of a *wali's* consent. It is understandable why a woman would do this in proposing to the Prophet; his wives were guaranteed Paradise and of course the union was to be with the Messenger of God. In the *Qur'an* then the *wali's* consent as an essential element of the marriage is extremely ambiguous and the difference of opinion in classical jurisprudence testifies to this. Moreover it does not provide any ruling on a situation

where the man has proposed to a woman, is paying a *Mahr*, but is still disapproved of by the woman's guardian.

Returning to the conditions that necessitate guardianship, in effect the Iranian state in contradiction to its official state *madhab* takes a similar line to those Muslims who wished to oppose the inheritance rights granted to women in the *Qur'an*. Desperate to hold on to their pre-Islamic privileges, men latched on to a later revelation, '*And do not entrust to those who are weak of judgement the possessions which God has placed in your charge...*' (4:5). Women, it was to be argued, constituted this group, were weak of judgement, and should therefore be denied inheritance.²⁵ In Iran, the argument continued, women were inexperienced in worldly affairs and more likely to lack good character judgement, which is essential in choosing a marriage partner. This lack of good judgement was more importantly portrayed as an inherent characteristic and permeated all aspects of Iranian legislation on women. A *Majlis* representative in stating his case for barring women from acting as judges, quoted Ali's advice to his son: 'Do not consult with women. Do not take their advice. Why? Because they are weak-willed and often their resolutions are temporary. If you ask for their advice they may change your mind, make you doubt what you resolve and undermine you.'²⁶ Portraying the weak-will as biological absolves the state from implementing solid measures to alter the situation. If women's poor judgement was linked to their lack of experience in worldly affairs then the solution would be to increase women's access to education, thereby paving the way for increasing access to involvement in public life. The Iranian state however, endeavoured to maintain that inexperience by limiting women's development through sanctioning marriage at a young age, withholding contraception and family planning advice and extolling the

virtues of motherhood above those of public roles. This, they would argue, was a response to psychological understandings of womanhood not a perpetuation of active discrimination against women. On the other hand, women's 'experience' in the arena of family life, despite the state's encouragement for all women to engage therein, either as obedient daughters or wives, was to count as no experience at all. State leaders would tell women that remaining at home with children was an important and valued occupation, yet it clearly did not mean to the state that it was an occupation that qualified women to be accepted as fully independent citizens. Hence the need for them to secure approval for marriage partners from either a *wali* or state institution.

This is one of the many ways in which Islamic law is utilised to realise state objectives, which essentially amount to preserving male privileges and female exclusion. The objectives themselves however, can easily be found in pre-Islamic eras and most notably in that period of *jahilliya* (ignorance) that conservatives themselves celebrate the end of. By showing the similarities between the conservative movement and that *jahilliya* period one can see that the contemporary projects of states such as Iran run in direct opposition to the original Islamic vision, which sought to include those previously oppressed and disdained in all aspects of community life.

The Husband-Wife Relationship

The concepts of *qawamun* and *daraja*, discussed at length in the previous Chapter informed the bulk of Iranian laws on marriage during the Khomeini regime. Not surprisingly both concepts were to be interpreted in isolation from other *Qur'anic*

verses on matrimony. Najla Hamadeh commenting on the state's interpretation writes that financial support for the wife was to become the husband's *only* obligation and the wife's *only* right.²⁷ The husband, on the other hand, was to be bestowed with far-reaching rights and his wife's obligations were correspondingly numerous. Women in Iranian legislation to all intents and purposes never reached adulthood and were considered to be in need of guardianship whether married or not. Thus a husband was given the power to prevent his wife from working outside the home if he could prove her job contrary to the interest and reputation of the family.

This legal manifestation of men's honour and reputation being inextricably linked to women's behaviour reached a pinnacle with the implementation of Article 16 of the Iranian *Qisas* (Retribution) laws: 'if someone kills another in defence of his honour... provided the force used is not excessive and it is not by government agents, then it will not be considered a crime'.²⁸ One would have imagined that any action pre-meditated or otherwise resulting in death constituted 'excessive force' but Iranian legislators clearly believed otherwise. The retribution laws of course raise a number of concerns on the issue of fair trials and criminal justice procedures. Here it is necessary to concentrate on the effects for women. The law sanctioned the murder of both wife and the male she was with. Permission was given to men to kill '*anyone* who violates their harem'.²⁹ The legislation led to a wave of honour killings, and was opposed vehemently by women parliamentarians. The final outcome of the counter campaign was Article 132 of the Criminal Code,³⁰ ratified in 1995, after Khomeini's death. The law made a distinction between rape and adultery, stating that in the former case the husband could kill only the male perpetrator. Should the man kill both parties, the burden of proof shifted to him to prove that his wife had not been the

victim of sexual assault. The legislation does not explain how a man could possibly produce such proof once both parties to the incident were dead. What the legislation essentially meant was that the onus was on the woman's family to take the man through the court system and at personal expense, rather than this being done by the state as an automatic consequence of his action.

The discrepancy between the Iranian law and the Qur'anic rules governing suspicion of adultery is significant. *Sura An-Nur* dealing specifically with spouses suspecting one another of adultery reads,

'And as for those who accuse their own wives (of adultery), but have no witnesses except themselves, let each of these accusers call God four times to witness that he is indeed telling the truth and the fifth time, that God's curse be upon him if he is telling a lie. But (as for the wife, all) chastisement shall be averted from her by her calling God four times to witness that he is indeed telling a lie, and the fifth (time) that God's curse be upon her if he is telling the truth.' (24: 6-9)

If the accused denies the allegations, the punishment for adultery can be executed only once four adults testify to witnessing the sexual act as detailed in 24:4. The mere suspicion of the witnesses or their seeing the couple in any other situation deemed to be suggestive of an adulterous affair is not sufficient. Despite the explicit rulings on the situation, Iranian politicians were still to claim that their state legislation was in accordance with rights granted by God.³¹ Men's honour then was to be respected or compromised not by their own actions of piety or ill conduct, but instead by the actions of their wives. By legalising honour killings, the state was placing women

firmly under the authority of men. Men were thus free to deal with their disobedient ward as they deemed appropriate. The overriding concern for legislators was the preservation of male honour, rather than female safety or indeed female honour.

On this issue Islamic and human rights thinking are in agreement. The legislation violates a host of UDHR declarations including Articles 7, 10 and 11, which deal with equal protection of the law, fair and public hearings and the principle of innocent until proven guilty. The women's murder made lawful on the grounds that her husband claims that she was adulterous categorically denies the woman all these rights.

The *Qisas* laws show the extreme end of Iranian legislation that claimed to be Islamic. Other legislation was inspired by similar understandings of what was the natural disposition of male and female. Any discussion of Iranian family law needs also to look at the state's attitude to motherhood. It was in their role as mothers that Khomeini acknowledged women's contribution to society with the greatest fervour. The Constitution also placed the acceptable parameters of women's activity firmly within the family:

The view of the family unit delivers women from being regarded as an object or instrument in the service of promoting consumerism and exploitation. Not only does woman recover thereby her momentous and precious function of motherhood, rearing of ideologically committed human beings, she also assumes a pioneering social role and becomes the fellow struggler of man in all vital areas of life. Given the weighty responsibilities women have thus assumed, she is accorded in Islam great value and nobility.³²

The fact that only women could bear children also indicated to Iranian state representatives that this was women's sole contribution to Iranian society. Women within government ranks also pushed forward this line up to and after Khomeini's death. Shahla Habibi, the Presidential Advisor on Women's Affairs, stated in 1991, 'Women, whatever qualifications they may have or however learned they may be, must remain the pivotal core of the family and play their parts as exemplary housewives.'³³ As mothers women were producing greater numbers of Muslims who could contribute directly to strengthening the regime. The role of motherhood was considered of such importance that the government announced that in order to promote motherhood and family life the salary of any male employee would be raised by forty per cent if his wife quitted her job.³⁴ This move sought to re-enforce the financial dependency of women on their husbands and was more likely to increase domestic pressure on women to leave employment. It of course portrayed the inability or unwillingness of the state to recognise women as independent citizens with unconditional rights to employment, maternity leave and child-care. As mothers, women were also responsible for educating their children on Islam and for raising morally upright children. This vision ran inconsistently with wider legislative measures. Women because of their natural dispositions, it was claimed, could not conclude their own marriages, sit as judges or practise as lawyers, but were to be entrusted with raising and educating succeeding generations of Muslims. In fact, the praise of motherhood in light of the practical measures that were to govern female lives can be seen as largely disingenuous and rhetorical.

Legal measures in fact ensured that men were to be in charge of both public and private decision-making and women were to be rewarded for passivity in the home

and in public. In the private sphere, as shown above, this included the power of life and death over the wife. Even the wife's sole right to financial support as understood by classical *Jafari* doctrine was seriously compromised. The *Jafari* belief that women could rightly claim wages for domestic work and for breast-feeding their children was never actively implemented in Iran.³⁵ What was incorporated in Article 1108³⁶ of the Civil Code was the right to maintenance (*nafaqeh*), which essentially entitles the wife to food, lodging and clothing.³⁷ When faced with non-compliant husbands however, to all intents and purposes women were to be given the simple option of divorce or remaining in the marriage without claiming the right to *nafaqeh*, despite its inclusion under the *Jafari madhab*, which Iran claimed to be following. As already discussed, only men could be the legal guardians of their children. Men were responsible for managing their property, approving their marriages and granting permission for educational opportunities to be taken. In the case of daughters, this right of men over women continued into adulthood.

The current understandings of human rights, like the Iranian constitution, give the family a high standing in society. Article 16.3 of the UDHR places the family as the 'natural and fundamental group unit of society' and states in Article 25.2 that 'Motherhood and childhood are entitled to special care and assistance'.³⁸ Islamic sources also refer to motherhood with reverence and an often quoted *Hadith* relates how when asked who was entitled to the greatest respect from another human being, the Prophet replied 'Your mother'. The question was asked consecutively three times by the same person and received the same reply. It was only after the fourth time the Prophet replied 'Your father'.³⁹ While both the Islamic and human rights models share this understanding of motherhood as requiring specific attention from the state

and individuals, the Iranian experience deviates in a fundamental way. The specific attention given to motherhood was contrived to prevent women from participating in other economically or politically active roles. As Farah Azari has written, ‘an ideology that defines women’s role and function in society predominantly in motherhood also has to ensure that as many women are drawn into and preoccupied in this domain as possible’.⁴⁰ This ideology helps explain the lowering of the marriage age, the restriction of contraception available and the difficulties women were to experience in attaining divorce, to be discussed below. In fact Iran’s policies on women, contrary to the *Hadith*, displayed a distinct lack of respect for mothers and also in opposition to the *Hadith*, accorded fathers markedly greater respect and rights.

Polygamous and Temporary Marriages

Polygamy is permitted in Iran without any serious restrictions and this move was justified on the grounds that women outnumbered men following the casualties during the Revolution and the on-going war with Iraq. This argument was based on entirely false premises as population figures reveal that the number of women in Iran never exceeded the number of men.⁴¹ It was also argued that polygamy was necessary as a means of protection for men as well as women. The protection had to be portrayed as necessary in terms of morality for *both* sexes as well as financial security for women in order to exonerate the state from taking on sole financial responsibility for widows and orphans. Thus according to President Hashemi Rafsanjani, ‘we shouldn’t make marriage so difficult as to encourage our youths to hanker after corruptive Western style sexual freedom’.⁴² The state followed well-known conservative arguments that

polygamy was a necessary barrier to societal chaos and in fact protected women from being neglected by men.

It was on similar grounds that temporary marriages (*mutah*) were endorsed by the state: it was necessary to accommodate young adult's desire for sexual partners, within some form of legal framework. It is only the *Shi'a Jafari* school which permits a man to contract as many temporary marriage as he desires. Unlike polygamy, no *Qur'anic* injunction or *Sahih Hadith* explicitly permits such an arrangement and it is prohibited unequivocally under *Sunni* law. In the *Jafari* school and under Iranian law, the temporary marriage is considered legitimate and may last from one night up to any number of years. The period is decided at the time of the contract. Temporary marriages need not specifically disadvantage women, given that the intentions of both partners are made clear from the onset. Provided that both partners enter this arrangement willingly, there is also no human rights objection to the practice. The objection comes from unanimous consensus of the *Sunni* scholars who claim that the Prophet explicitly condemned and prohibited the practice. *Shi'a* scholars, on the other hand, claim this *Hadith* to be of weak authenticity and insist that the prohibition was voiced by the Caliph 'Umar and not by the Prophet. It seems then that there is no particularly strong argument for repealing the legalisation of the *Mutah* union when it is contracted between unmarried persons. However it also the case that according to the *Shi'a 'ulama* a man could contract as many temporary marriages as he wished at any one time and in addition to the four wives he is permitted under the rule on polygamy. This therefore makes rights to marriage unequal. A bride-price is agreed at the beginning and the women must observe a period of sexual abstinence after the marriage's dissolution in case of pregnancy. In such cases the child is considered a

legal heir equal to a child resulting from a permanent marriage. Custody of the child however would in all likelihood go to the father given the state's policy on custody to be discussed below. In effect the institution of *Mutah* was seen as the legalisation of prostitution and is strongly disapproved of by certain strata of Iranian society.⁴³ Yann Richard suggests that *Mutah* equally provides a legitimate outlet for female sexuality and therefore should not be wholly dismissed as derogatory to women.⁴⁴ But, given that the *Mahr* still had to be paid, one can see how many women living in poverty might need to resort to the practice for subsistence. This subsistence however, should rightly be provided by the state. That marriage was seen as purchase of the female body and primarily about satisfying men, can be illustrated by one cleric's remarks on temporary marriage. Explaining the difference between a temporary and permanent arrangement, the cleric explained it was analogous to the difference between buying a house and renting a car.⁴⁵

Divorce

The Khomeini regime's stance on divorce rights for women followed the trajectory of a boomerang. On coming to power, the previous laws that had granted women the right to seek divorce through the courts were dismissed by Khomeini as unIslamic and heretical. The laws were 'annihilating Islam and destroying the family hearth of the Muslims' argued Khomeini and he went on to rule that 'Women who are divorced at the order of the courts have not obtained a valid divorce and shall be considered as married women. If they marry (once again), they are adulteresses. Whoever knowingly marries them is an adulterer and deserves the *hadd* punishments of the *Shari'ah*'.⁴⁶ For Khomeini Islamic laws dictated that divorce was the unconditional

and exclusive right of men. Article 1133 of the Civil Code⁴⁷ stated categorically that 'The husband may divorce his wife whenever he wishes to do so.'⁴⁸ If the wife contested the divorce she could take the case to a Special Civil Tribunal, which would appoint two arbiters to attempt reconciliation. The divorce however would in all likelihood proceed if the husband persisted. The problem for women was that the husband could terminate a marriage with great ease and yet women found it extremely difficult to dissolve their marriage. Again the laws were justified as corresponding accurately to women's nature, which was emotional and impulsive. Broadening divorce rights for women would in the view of Hojatoleslam Khameneyi lead to a sharp and unnecessary increase in the divorce rate.⁴⁹ While women's tendency for impulsive behaviour needed to be curtailed with legal restrictions, men's impulsive behaviour was permitted to the extent that they could murder wives, again because this was seen as the obvious and natural response.

Women responded with force to the restrictions, arguing that such views of women deviated from correct understandings of Islam. While waiting for changes at a civil level, they also encouraged women to make full use of the limited rights they did have. The marriage contract was an important tool in practice as well as theory. Women were encouraged to stipulate their right to repudiation in the contract, thereby by-passing the state restrictions through a private arrangement with their spouse. In light of the new government stance however, some public offices refused to conduct the marriage ceremony when such a clause had been included.⁵⁰ The short-term response also failed to protect those women already married.

After a lengthy campaign the existing laws went under considerable revision. The amendments meant that women could now file for divorce under certain conditions. They included: the husband's failure to support his wife or to fulfil other compulsory duties for at least six months; maltreatment; where the infliction of an incurable disease may endanger the wife's health; the husband's insanity; his failure to comply with a court order to abstain from occupations repugnant to his wife and her position; his sentencing to prison for a minimum of five years or failure to pay a fine that resulted in imprisonment; his addiction to harmful substances that are detrimental to family life; desertion for a minimum of six months without just cause; his conviction for any offence repugnant to his wife and her position; his failure to father a child after five years; his disappearance and failure to be found within six months of a court application; his second marriage without the consent of his first wife or his failure to treat his wives equally. These conditions were included in all marriage contracts and were markedly similar to the provision of the Family Protection Law of 1967, denounced by Khomeini with such zeal. The u-turn on the divorce issue raised serious questions about the extent to which the regime was ever genuinely motivated by Islamic ethics and more importantly how accurate their interpretations ever were.

The new legislation, although a significant improvement on what it replaced, still fell short of the requirements of the UDHR, which calls for *equal* rights during marriage and 'at its dissolution' (Article 16.1).⁵¹ Man's right to divorce was still unconditional and the involvement of the court was largely cosmetic if initiated by him. This was despite the Prophetic statement that *talaq* is the most hateful of the lawful things to God⁵² and the need for caution, arbitration and witnesses stated in the *Qur'an* to deter and monitor abuse of the right to divorce. The concern raised in the previous Chapter

was the discretion that might be given to individual judges when women petition the courts for *faskh*. The personal leaning of the judge was particularly important because of the ambiguity surrounding exactly what constituted *nushuz* or ill will on the part of the husband. In Iran this discretion was to be exercised to the detriment of women. For example, many judges ignored the consensus in classical scholarship on the purely symbolic nature of the ‘beating’ referred to in 4:34. While ‘maltreatment’, one of the conditions under which *faskh* could be granted, was sufficiently vague to cover many aspects of domestic abuse, in practice courts did not apply the term so liberally. Thus violence directed at the wife was not automatically to constitute the husband’s *nushuz* or maltreatment. Mehranguiz Kaar has noted that ‘culture’ and ‘customs’ led many to assume that a certain degree of male violence was a normal part of everyday married life and that many judges presiding over the Family Courts held this assumption.⁵³

While domestic violence might have been considered normal in Iranian society, classical Islamic scholarship in light of the Prophet’s practice does not see it as acceptable. Yet the state, by barring women from judicial posts, did little to alter this lack of empathy for female suffering within the court system. Its failure to include categorically any form of domestic abuse in the divorce provisions only perpetuated existing views that saw certain levels of violence towards women as normal and tolerable. Psychological abuse, given these pre-conceived ideas on physical abuse, was also unlikely to receive a favourable hearing from judges or be considered a manifestation of maltreatment. The fact that women claiming maltreatment as the condition for *faskh* had to produce four witnesses also raised serious questions about the government’s willingness to protect women in abusive relationships.

There is also no provision in the legislation for women who were married in childhood and upon reaching the age of majority wished to have their marriages annulled and this again falls short of classical Islamic prescriptions on divorce.

Maintenance

In favour of women however, the state does not hold a triple divorce pronounced at one time as valid and holds that the waiting period must be observed. This means that the wife must remain within the marital home during this period and is entitled to financial maintenance. If the woman could prove one of the twelve conditions against her husband, she was entitled to the *Mahr*. The women's movement also encouraged women to see divorce as a real possibility and to set the *Mahr* accordingly. Ziba Mir-Hosseini's research conducted in branches of the Special Civil Court from 1985 – 1988 in Tehran shows how women also used the *Mahr* to deter husbands from dissolving the marriage. This was effective if it was set sufficiently high. Thus the wife may demand the *Mahr* knowing that her husband could not afford to pay it, thereby deterring him from continuing with the proceedings. This tactic was aided by the fact that the court also saw the *Mahr* as binding and was in some cases prepared to confiscate property belonging to the husband in order to pay it off.⁵⁴

This however was not always sufficient maintenance given the devaluing of currency that could take place over time and the simple fact that not all women entered marriages with the view that they must prepare for a divorce. Thus the new rulings meant very little if the post-divorce settlement left women in serious financial hardship. Iranian women thus campaigned rigorously to bring to the government's

attention the plight of women divorced by their husbands with no financial sustenance. Thus women argued that, in addition to the *Mahr* and *nafaqeh* during the marriage, it was also correct Islamically to provide women with ongoing maintenance after dissolution of the marriage. The argument was that a woman would have invested time and resources during the marriage not expected of her by Islamic teachings, and was now being abandoned without any recognition of her efforts. The outcome was that women would be entitled to up to half the property acquired by the husband over the course of the marriage provided that the wife was not at fault and did not seek the divorce herself.⁵⁵ Thus only *talaq* and not *faskh* entitled the woman to adequate maintenance. Even after convincing a judge of the occurrence of one of the twelve conditions under which she could be granted divorce, the woman was not granted any meaningful financial maintenance. This would act as a further obstacle for women in unhappy marriages who did not set sufficiently high *Mahrs* to compensate for this event. While the more favourable developments on maintenance occurred in the post-Khomeini regime, they were an essential part of the general campaign to empower women in divorce arrangements and settlements. Also, given his rulings on divorce rights for women, there is no reason to assume that Khomeini would not have given in to women's demands on this issue.

Custody

Iran's praise of motherhood runs seriously at odds with its rulings on custody of children after divorce. Women only have custody of sons until the age of two and daughters until the age of seven, after which custody immediately passes to the father. Women have campaigned against this measure with little success despite Imam

Jafar's ruling that custody should remain with the divorced mother until she remarries.⁵⁶ In Iran, even if after puberty the child wishes to return to its mother, the father must approve marriages or foreign travel. The mother's wishes, however, hold no legal status.

Added to the web of legal and political measures hindering women's access to divorce one must also address the cultural influences. Farah Azari has pointed out that divorced women do not have high prospects for re-marriage because they will be considered 'second-hand'.⁵⁷

We can now return briefly to the issue of the minimum marriage age. Given the more complete study of legal measures governing women, there appear to be few measures to protect women in general. For the younger woman married in her early to mid-teens, denied a state education which in turn seriously hindered her employment prospects, then possibly divorced by her husband and stigmatised by society, the state measures were seriously reprehensible from both human rights and Islamic perspectives.

Despite its claims to possessing a revolutionary vision, the Iranian state in the area of family law was to subscribe to the conservative, in fact, *jahilliya* view that women were incapable of behaving rationally and responsibly. Women were to be treated as intellectually inferior beings, requiring constant guardianship and being continuously denied freedoms and rights granted automatically to men. This, it was argued, was for the protection of the women themselves and of society at large: women could not be trusted to use such freedoms and rights to divorce or marry responsibly. At some

level within the limited bounds of state legislation on family issues there was potential for some empowering of women. The use of the courts was widened considerably as a means of redress for female grievances regarding their marriage or guardian's restrictions. In reality however, judges upheld existing notions of correct behaviour for women, which dictated that women were best placed within a marriage relationship where their behaviour could be supervised and corrected by a male.

Pakistan

Zia al-Huq seized power through a military coup in July 1977 in Pakistan but was not to announce his Islamisation programme until nine months after coming to power. Many aspects of the nation's political and legal system were to be altered by the measures. However the existing Muslim Family Law Ordinance of 1961 (MFLO)⁵⁸ was to be deemed compatible with the Zia regime's interpretation of Islam and therefore remained largely intact. The regime's contentment with the Ordinance was of such magnitude that it was to be excluded from the jurisdiction of the *Shari'ah* Benches and Courts until 1991. In fact many aspects of legislation relating to personal status dated back to pre-partition, British rule. Rubya Mehdi explains that the MFLO did not abolish the statute laws concerning family affairs that were in force pre-1961 and which had been made as early as 1929 and 1939.⁵⁹ These dates are extremely significant in that the non-Muslim colonial rulers of India in fact, introduced those personal status laws that were celebrated as truly Islamic. In fact the stipulations of the Dissolution of Muslim Marriages Act, which was introduced in 1939 have not been altered by the MFLO or any subsequent legislation and continue to govern divorce law in Pakistan. As the discussion continues the reasons for this

satisfaction with existing measures will become more apparent. Zia's predecessors had shown little concern for women's suffering and personal status laws reflected this approach. Women's opposition to family law was not notably more pronounced during Zia's rule perhaps because he was not the author of the legislation. Despite the restrictions placed on women through legal initiatives, conservative camps in Pakistan still insisted that existing legislation was too liberating for women and conversely too restrictive for men. This debate within the political establishment illustrated how men's rights are, in conservative thinking, intimately bound to the rights of women. In other words, when women are provided greater rights this is seen as an unreasonable and unIslamic infringement on men's right to control women. Again this is tied to ideas of male honour, which is seen to be compromised when women traditionally under the male's control act independently. The perception was and still is that men are good Muslims if they can ensure 'their' women behave in certain ways. General views of women in Pakistan were similar to those in Iran. Women's place was in the home and this was for the protection of women themselves. A popular orator on Islam was Israr Ahmed who appeared on Pakistani TV, wrote in *The Pakistan Times* a major broadsheet in the country and was also handpicked by Zia to sit on the *Majlis- e -Shura*'. Ahmed called for all working women to be pensioned and retired off and went on to claim that no man could be punished for assaulting or raping a woman until, in accordance with his interpretation of an 'Islamic society', there was an absence of female visibility. Although Ahmed resigned from the *Majlis- e -Shura*' and was later condemned by the 'ulama, he was originally given a powerful platform on which to voice his opinions.⁶⁰

A study of Pakistani women needs also to acknowledge the stark differences amongst them resulting from geographical location, tribal membership and social class. These affiliations are important because they will determine the layers of rules and regulations, only some of which are state administered, that govern women and indeed men. For the most part women in Pakistan must comply with local beliefs on what is considered proper behaviour. Indeed these customary norms hold such force particularly in rural areas that years of legislation outlawing certain practices have largely failed to have any real impact. Thus an examination of state legislation offers only one indication of the status of women in Pakistani society. A thorough study of all the various customs and rules governing women's behaviour is beyond the confines of this work. Here I will concentrate on those issues that were specifically addressed by state measures and also make reference to the general compliance with these amongst Pakistanis. The compliance is in many cases dictated by local cultural norms. This will allow us to gauge the presence or absence of political will to address women's suppression under the Zia regime and its political manipulation of Islamic sources. It will also more importantly still provide a useful picture of the sorts of issues and attitudes that both Islam and human rights thinking must address in their proposals to address female suffering.

Marriage

The minimum age for marriage is sixteen for girls and twenty-one for boys.⁶¹ The discrepancy in ages might be seen again as resulting from expectations of the husband to be in a position of financial stability before contemplating marriage and starting a family. In terms of failure to comply with the minimum age requirements for women,

the punishment is a fine of up to one thousand rupees and one month's imprisonment. The punishment falls on the bride's guardian, the bridegroom and the marriage registrar.⁶² The bride still considered a minor, escapes punishment and the underlying assumption is that her guardian will have forced her into the marriage. The state also provided for such marriages to be annulled if the bride chooses once she reaches the age of sixteen. This did not address the problem of adult daughters being forced into marriages, which is also a major problem. Despite the illegality of girls marrying before sixteen, Rubya Mehdi has pointed out that it is not uncommon for a *nikah* (marriage) registrar to accept a bribe and register the marriage of both boys and girls under the legal marriage age.⁶³ In Pakistan, the *culture* of marrying girls off at a young age poses more of a threat to females than religious understandings or government legislation. Research shows that the practice of child marriage is more prevalent in poorer, rural areas than in urban affluent ones. One of the primary factors is that when parents arrange the marriage of a daughter the financial responsibility for her is passed on to the husband. Khawar Mumtaz also shows that the desirability of marriage is disseminated through local sayings and songs and not religious texts.⁶⁴ Indeed while there are *Ahadith* pointing to the virtues of marriage these do not suggest that there is particular religious merit in early marriage.

What is also important in the areas and groupings where child betrothals take place is the lack of use and knowledge of Islamic tools that might be evoked to protect daughters once married. Thus a high *Mahr* or marriage contracts are seldom made use of as a means of ensuring a certain level of treatment and financial security for the bride. Instead, innovative ways have been devised of protecting women within marriage. One of the most well known practices is that of *watta satta*. In essence this

involves families exchanging daughters. A brother and sister from one family will be betrothed to a brother and sister from another. The implicit understanding here is that the husband will not mistreat his wife out of fear that his sister will meet with similar treatment from his brother-in-law. When one nuclear family does not consist of appropriate numbers of sons and daughters the *watta satta* will extend to cousins and even uncles. The practice reduces women to passive actors in the arrangement whose marriage is ultimately dependent on either husband or brother. As in Iran, Pakistani culture also accepts that some physical abuse within marriage is inevitable and should be endured by the wife. The assumption is of course that a man who is otherwise capable of subjecting his wife to physical and psychological abuse is also capable of displaying enough compassion to refrain from such action in order to protect his sister. Another problem is that familial pressures might result in forcing one couple, who were otherwise happy, to divorce as a response to the other couple's marriage break-up.

Watta satta also cannot exclusively be understood in terms of protection for women; it is also about exchanging burdens, which a daughter is often seen as embodying. By taking a daughter in marriage for their son a family has relieved another of that burden and so as a display of good will that family must do the same: they must take a daughter in return.

Another major problem surrounding the issue of marriage is ignorance of the Islamic laws governing it. Many women are unaware of the marriage contract and the fact that they can delegate to themselves the power of divorce or stipulate a monthly sum for financial maintenance during the marriage.⁶⁵

Any genuine attempt at Islamisation in Pakistan would have to be aware of and prepared to challenge forcefully such cultural practices that have no grounding in religious texts and often run in direct opposition to Islamic edicts. Pakistan is also notorious for corruption and nepotism at all levels of legal, political and social networks. This reality also poses a formidable challenge for human rights practitioners, who might succeed in persuading governments to legislate in their favour but not the mass population that human rights law is intended to aid. The problems of disseminating information and arguments to grassroots level will be discussed later. For now it is important to concentrate on the governmental level and its willingness to implement appropriate Islamic measures for women. To the state's credit the legislation on marriage does not accord men the same powers over their wives' employment or even lives that Iranian legislation does. Young married girls were also not prohibited from attending state schools, although this did and does not ensure a minimum education for girls given the poorly resourced education system, particularly in rural areas. Also unlike Iranian marriage law both adults male and female are considered capable of contracting their own marriages without the guardian's consent and this complies with the orthodox *Hanafi* ruling.

Polygamy

Polygamous marriages in Pakistan require the consent of the first wife and also the Arbitration Council, which has the task of deciding whether the additional marriage is 'necessary and just'.⁶⁶ In accordance with the MFLO⁶⁷, a request must be made by the husband to the Council in writing and existing wives are asked to nominate a representative to articulate their consent or opposition to the proposed marriage.⁶⁸

The law, if considered in isolation, may be considered sufficient for ensuring women's wishes are respected within the marriage. A look at wider issues however, reveals that women are firstly likely to be unaware of the procedures given the high levels of illiteracy, estimated at around eighty five per cent.⁶⁹ Secondly one needs to examine the alternatives available. Women are likely to be dependent on husbands for basic food and shelter. They are thus vulnerable to being coerced into conceding to the wishes of the husband or face being divorced. As the study of divorce law will show, this is an extremely unattractive option given the inadequate provisions for women in the state's divorce laws.

Zia did not seek to broaden the terms of personal status legislation in order to extend male powers over their wives and nor did he seek to legislate in order to offer women further protection within the home in terms of domestic abuse. As further discussion will show this immunity given to the Ordinance was not the result of any genuine desire to aid women's struggle for independence. In terms of marriage law, cultural practices and norms ensured male privileges and women's subordination and any state legislation would have been largely superfluous: the general understanding was that men were owed obedience from their wives and that certain levels of domestic violence were to be expected and endured. In addition numerous other laws, both in the area of personal status and in the wider political sphere, ensured these privileges by keeping women dependent on husbands for financial subsistence and for their acceptance within the immediate society in which they operated. I will now turn to what divorce arrangements are available to women, which is an important indication of the marriage arrangements that were considered acceptable to the Zia regime.

Divorce

The 1961 Ordinance sought to bring *talaq* under some form of court arbitration.

Under the provisions of the Ordinance⁷⁰, notification of the pronouncement of *talaq* had to be given to the chairperson of the Union Council with a copy supplied to the wife. After ninety days the *talaq* became effective unless the wife was pregnant in which case the marriage was extended until the birth of the child. The chairperson of the Union Council was expected to provide an opportunity for an arbitration committee to attempt conciliation within thirty days of receiving the initial notice.

After ninety days the *talaq* was finalised but not irrevocable. This meant that under Pakistani law the couple could re-marry without the *Qur'anic* requirement that the wife must be party to an intervening marriage first.⁷¹

As in the case of marriage, actual divorce practice was far removed from the legislative procedures. Despite the obligatory notification required, the traditional form of *talaq* prevailed as the norm in Pakistan. This meant that the notification was seen simply as a formality. The 'traditional' also in the Pakistani context was not synonymous with Islamic. In Pakistan the triple *talaq* pronouncement is still the most common, and yet is an innovation and ignores the woman's Islamic right to maintenance and to remain in the marital home during the waiting periods. Contrary to Islamic practice it is in the parental home that she is expected to observe the final waiting period of three menstrual cycles. This also meant that although the divorce was not recognised by the state until the Union Council was notified and the ninety days had elapsed, the husband, along with general consensus amongst the community, considered himself absolved of any duties towards the wife once he had arbitrarily

pronounced the divorce. The husband could under these circumstances contract another marriage, given the legality of polygamy, without any serious repercussions.⁷² The divorced wife on the other hand could be accused of adultery for remarrying if her ex-husband had failed to give notification to the Union Council. The punishment for adultery was stoning to death.

Women in Pakistan, in accordance with classical scholarship can stipulate their right to divorce in the marriage contract. Known as *talaq-I-tafwid* this form of divorce also permits the wife to retain her *Mahr*. Such a stipulation is, however, culturally unacceptable and few women enter a marriage with the thought of making divorce arrangements.⁷³ Women who have not stipulated *talaq-I-tafwid* in their marriage contracts can file for divorce themselves under one or more of eight conditions under Section 2 (vii) of the Dissolution of Muslim Marriages Act, 1939.⁷⁴ They are: if the whereabouts of the husband have not been known for a period of four years; the husband has neglected or has failed to provide maintenance for his wife for a period of two years; the husband has been sentenced to imprisonment for a period of seven years or more; the husband has failed to perform without reasonable cause, his marital obligations for a period of three years; the husband was impotent at the time of marriage and continued to be so; the husband has been insane for a period of three years or is suffering from leprosy or a virulent venereal disease; the wife having been given in marriage before sixteen repudiates the marriage before eighteen provided that the marriage has not been consummated; the husband treats his wife with cruelty that is that he habitually assaults her or makes her life miserable by cruelty of conduct, even if such conduct does not amount to physical ill-treatment, or associates with women of evil repute, or attempts to force her to lead an immoral life, disposes of her

property or prevents her from exercising her legal rights over it, or obstructs her in the observance of her religious profession or practice, if the husband takes another wife without permission from his existing wife or if he has more than one wife and does not treat them equitably in accordance with the *Qur'an*.⁷⁵ Lucy Carroll is correct in pointing out that the Act is marginally more generous to women than classical *Hanafi* jurisprudence.⁷⁶ However, as pointed out in Chapter 1, the problems with classical understandings of divorce is the unconditional right granted to men and the ease with which they can free themselves of any responsibility to their wives. This practice is unjust in itself but the injustice in human rights terms is heightened further when it is compared to the strict conditions governing women's ability to divorce. When women seek divorce, the law requires more than simple notification to the relevant authorities. In this case the women must notify the Union Council who will then refer the matter to the district court, which will consider the merits of the wife's plea. Again the procedures violate Article 16.1 of the UDHR. The Pakistani state was confident that it could define the well being of married women by a few succinct conditions. To paraphrase, a woman can, or perhaps ought, to cope with an insane husband for three years or an absent husband for four years and not a day less. Pakistani men, like their Iranian counterparts, were under no legal obligation to endure any marital conditions beyond their own personal desires despite the *Qur'anic* pleas for caution, for meaningful and not simply symbolic arbitration and the need for witnesses to the divorce. Referring back to Lucy Carroll's point on classical rulings, there is certainly a need within Muslim societies to re-evaluate these rulings and to recognise the suffering caused to women who are subjected to rash unsupervised divorce pronouncements and who have limited powers of repudiation themselves. Such an evaluation may also bring Islamic procedures in line with human rights

notions but the overriding concern ought to be how to ensure a just settlement for women. Divorce is rightly a legal matter requiring independent and neutral supervision and *Qur'anic* stipulations do not prohibit such procedure. Classical scholarship has however proven to be overly optimistic in its understanding that men will use their powers of repudiation responsibly with due consideration for the wife and any children they may have. While it is unlikely to be in the wife's interests that a reluctant husband be forced by the courts to remain with the woman he wishes separation from, the system fails in its provisions for women in post-divorce settlements. Pakistani and Iranian legislators, although aware of the hardship caused to women, have been reluctant to address this matter with sufficient rigour.

Maintenance

Even with the provisions of the Dissolution of Muslim Marriages Act (DMMA), it has been noted that in 'the rare instances where women initiate the dissolution of their marriage, they invariably do so on the grounds of redemption (*khula*) which offers women lesser benefits than the DMMA'.⁷⁷ By petitioning for *khul* rather than *faskh* the wife foregoes her *Mahr* and any subsequent right to maintenance. Women were more likely to take this option because of the high level of proof required for *faskh* under the DMMA.⁷⁸ Aside from the *Mahr*, Pakistani women have no legal right to maintenance after divorce, whether initiated by the husband or wife and Izzud-Din Pal explains that the question of maintenance allowance for the divorced wife has never been seriously discussed in Pakistan.⁷⁹ This is despite the *Hanafi* ruling that husbands should maintain wives after divorce provided that the marriage has ended through no fault of the wife.⁸⁰ The lack of maintenance inevitably would be another factor in

binding women in unhappy, abusive marriages. Pakistan, as a developing nation, does not have any adequate welfare provisions for its citizens. Opportunities for paid employment for women are extremely limited and the inheritance rights under Islamic law have also been seriously infringed. All these factors combined show that divorced women are extremely vulnerable to economic poverty and are forced to rely for sustenance on male relatives who may in turn be unable or unwilling to provide for them. Exacerbating the situation is the cultural disapproval of divorce, particularly when instigated by women.

Custody

Custody cases in Pakistan are governed by a combination of Islamic Law and the Guardian and Wards Act of 1890.⁸¹ Research on custody cases in Pakistan has shown that generally custody of children has gone to the mother and this has been the case regardless of the child's age, which is an important fact bearing in mind that classical rulings on custody to the mother are dependent on the child's age. Shaheen Ali's research has led her to comment, 'the overriding factor used by judges was that the interest of the minor was of paramount consideration and this rule they maintained even if it meant deviating from strict application of principles of Islamic law. Legal guardianship however, remains with the father, which vests with him powers over the child's property. This ruling is again based on assumptions that, while women are capable and indeed better suited to nurturing they are incapable of taking on decision-making roles.'⁸²

Dowry

The dowry system in Pakistan is largely a remnant of the years of living side by side with Hindu traditions. Dowry is understood as being the wedding gift provided by the bride's family. In its strictest sense it should consist of some household items, clothing and jewellery for the bride. The problems associated with this practice in India have been well documented over the years. The groom's family have demanded extortionate dowries and in extreme cases brides have been murdered when they failed to bring with them large sums of money, property or jewellery. Parents have been forced to take out loans in order to finance daughters' weddings. In Pakistan the implications of dowry have not been so far reaching, however the problems that arose did become severe enough for the custom to be controlled by the Dowry and Bridal Gifts (Restriction) Act in 1976⁸³, which was upheld by Zia. The Act attempted to limit the value of gifts given to the bride to relatively low figures and stressed that the dowry must be totally invested in the bride. Unlike the *Mahr*, there is no Islamic precedent for the custom of dowry and it has never been justified on these grounds. The practice is worthy of mention here for two reasons. Firstly it illustrates the cultural forces that are at work in Muslim societies: forces that are in fact alien to Islam. Secondly it adds to the privileges accorded to sons within Pakistani families. Sons yield a return through the dowry system, whereas daughters become a financial burden. This has also meant that instead of investing in a daughter's education parents will save for a dowry.⁸⁴ These are the type of practices and perceptions relating to the female that the women's movements in Pakistan needs to contend with.

Inheritance

Inheritance laws in Pakistan comply with the *Sunni* allocation as discussed in the previous Chapter. As with many legislative initiatives however, in this area too there is a stark discrepancy between theory and practice. Familial pressures often result in women signing away their inheritance rights to brothers or other close male relatives. While research into case laws has shown that when women for protection of inheritance rights do petition the courts they have received a positive response, it also reveals that the number of cases on this issue reaching the courts is extremely low. This observation along with additional studies has led Shaheen Ali to conclude that the 'pressure from both family and society to forego one's inheritance (is) so compelling for women that they are simply unable to raise a voice and forced to settle out of court'.⁸⁵ This pressure is particularly compelling when it would involve the fragmentation of agricultural land, which constitutes the brother's source of livelihood.⁸⁶

Much of the literature on Pakistan concentrates on judicial rulings on personal status cases and reveals that the presiding judges, even when ruling in favour of women, do so by expressing similar sentiments to Iranian clerics. This is the view that women are irrational beings and incapable of acting independently without being duped by the complexities of the world around them.⁸⁷ The judges thus express sympathy with this inherent feature of womanhood and offer her protection through the civil courts. While in the short term this has proved useful in individual cases it sets a dangerous precedent, as developments in Iran have shown, where women are legally bound by decisions made by husbands or fathers regarding education, marriage and employment. Pakistani women under the Zia regime have escaped the legal

codification of male guardianship. This however is not an adequate indicator of women's position in Pakistan in comparison to Iran. Pakistani women also live under repressive cultural practices and norms that differ sharply from one region or social class to another. These cultural practices continue regardless of state legislation that has offered women rights to legal redress regarding unsatisfactory marriage arrangements and inheritance allocations. Pakistan's experience is particularly problematic because the general population has displayed a blatant disregard for both Islamic edicts and human rights. This is shown through studies on inheritance claims, the practice of *watta satta* and the continued demand for bridal dowries. Men have largely ignored the limited rights for women granted through the DMMA and the MFLO both of which fall short of Islamic and human rights requirements on family law. The rampant corruption makes it relatively easy for men to engage in child marriages, polygamy, unilateral divorce and even embezzlement and also waive punitive action by the courts. What chance is there for human rights or Islamic measures to take hold in these societies in a meaningful way? The mass population is largely unaware of even some of the basic Islamic edicts on issues of personal status let alone the various human rights documents that exist at international level. Most importantly it is women who live in the greatest ignorance of the Islamic arguments that could be employed to aid their daily lives. Islamic reasoning certainly enjoys a legitimacy in Pakistan that human rights thinking clearly does not. Abusive men would have few qualms about denouncing any recourse to human rights instruments as heretical but would be uneasy if accused of behaving unIslamically. The crucial issue is of course the source of that accusation. Women's groups are unlikely in the first instance to gain the legitimacy that male Islamic scholars do. Here the government has a crucial role to play if it genuinely wishes to aid women's

emancipation. By providing a platform to those scholars who subscribe to liberating interpretations of the text it can propagate Islamic virtues that provide the women's struggle with legitimacy: scholars, who categorically denounce all forms of domestic violence, call for adequate maintenance for divorcees, alert women to the options of the marriage contract and *Mahr*, demand that women be granted the inheritance the *Qur'an* has clearly stipulated and condemn any form of coercion used by parents in arranging marriages. These are basic provisions granted by classical *Hanafi* jurisprudence, which the Zia regime failed to bring to the attention of the population despite its claims to Islamisation. Added to this of course is the tremendous potential within the Islamic texts as a source of empowerment discussed in the previous Chapter. Instead the Zia regime displayed its insincerity towards women by tailoring its measures to placate conservative movements such as the political party *Jama'at - I Islami*.

Conclusion

The implications all these realities have for the theoretical concern of this thesis can be summarised as follows. In the area of marriage Iran in particular defied human rights documents by legalising child marriages, restricting a woman's right to contract her own marriage, legalising honour killings and vesting certain powers with the husband over the wife's choice of employment; none of these powers was given with equal measure to the wife over her husband. Polygamy was permitted by both states with Iran also legalising temporary marriages. Under the terms of the UDHR's Article 16, polygamy is objectionable from a human rights perspective because there is no reciprocal right to polyandry. Divorce laws were also irreconcilable with human

rights thinking because in both states men's right to repudiation remained in essence unconditional, while women's right was subject to a number of specified conditions. The state also displayed discriminatory policies towards women in post-divorce settlements: In Iran by favouring men in custody cases and in Iran and Pakistan by failing to provide women with adequate financial provision.

A compliance with human rights documents might redress these injustices toward women but governments claiming to be Islamic insist that such compliance would betray the tenets of their faith. The evidence cited from Islamic texts in this and the previous Chapter shows the contrary to be the case and that many aspects of family law could be revised to be in tune with both Islamic and human rights prescriptions. In both countries the general ethos underlying family law is the view that women cannot be trusted with the full wealth of rights that men enjoy in this area. Thus restrictions on women's ability to decide on marriage, divorce, education and employment is justified on the grounds that it protects women from making impulsive and reckless decisions. Islamic revelation however, sought to overturn such understandings of the female by establishing that marriage was to be considered a source of comfort for both spouses rather than an assertion of male ownership of women. It also gave women control over their property and finances in order to establish that women were capable of disposing of their wealth responsibly. Both Iran and Pakistan failed to legislate in ways that respected this basis of equality found in Islamic sources. The foregoing study has also shown that both governments were prepared frequently to abandon uncontested, orthodox Islamic rulings. It is not then that governments professing Islamic credentials are reluctant to step outside classical schools of law, rather it is the case that they are reluctant to take this step when it

would result in gains for women and losses for men. Indeed even where limited rights have been granted to women in opposition to classical jurisprudence, in the area of divorce for example, the governments failed to back these up with appropriate post-divorce settlements for women (custody of children and maintenance), which in fact have been provided by classical scholars. Iran in particular showed willingness for innovation in religious laws by exonerating men who murdered their wives whom they suspected of adultery. Such policies particularly ran in opposition to the *Qur'an's* deep disdain for anarchy and its proposals for a well-ordered and just society.

The outstanding issues remain of polygamy, temporary marriage and child marriage. While in theory women's consent was required before their husbands could enter into a polygamous marriage, the Pakistani experience showed many women to be unaware of this stipulation. The Iranian government's comments on both polygamous and temporary marriages indicated that marriage for them was primarily about satisfying male sexual desires. This understanding of polygamy does not possess any Islamic validity and given that in both states men outnumbered women there was in fact a strong case for restricting or supervising polygamy much more severely than either state did. The same holds true of temporary marriage. The issue of child marriage however, remains unresolved with the Prophet himself having entered into marriage with Aisha while she was still in childhood. Islam however addresses the risk of coercion having been used against the child by giving the female the option of nullifying the marriage once she reaches adulthood. Thus far if both Iran and Pakistan were to follow genuine programmes of Islamisation they would need to amend divorce and marriage legislation in line with the proposals I have set forward.

However it is also possible that the permissibility of polygamy, child marriages and inheritance allocations would continue as the Islamic evidence for continuing these practices is strong. The acceptance of these practices would in turn still be in contradiction to human rights standards. The next Chapter will look at the position of women in the legal and political sphere. Then we will be in a position to ask in Chapter 4, in greater detail, whether women's suffering could be seriously alleviated by greater adherence to human rights standards and then whether such compliance with human rights documents is possible in Muslim nations.

Legal and Political Status of Women in Iran and Pakistan

In this Chapter I will look at the status of women within political and legal institutions in Iran and Pakistan. This will include examining the opportunities women had to be involved in the legal and political decision-making process. While the previous Chapter looked at treatment and perceptions of women in civil proceedings relating to personal status, here I will look in more detail at women's status in criminal proceedings.

In the case of both countries a discussion of political and legal rights must acknowledge that these were severely restricted for both men and women since any serious opposition to the regime was prohibited. However the reasons advanced for women's exclusion from the political and legal spheres were different from those given for men's exclusion. Women in both countries faced dual restrictions. Firstly because they lived in regimes that did not tolerate any opposition whether led by men or women. Secondly as women, they were denied even those limited rights that men were given because it was argued, this was what Islamic sources dictated. The governments denied accusations that they restricted male access to political and legal rights. In the case of women however, they would claim that restrictions were necessary if the government was to live up to its commitments to Islamisation. As in the area of family law, existing cultural norms were an additional factor hindering women's struggle for political and legal recognition. In addition one must bear in

mind the personal status regulations, which give a clear indication of what the respective government's desired roles were for women: passive mothers and housewives.

Iran

Political Rights

Both adult men and women were given voting rights in Iran and were permitted to exercise these rights in the election of representatives for the *Majlis*, the country's legislative body. Iran subscribed to the somewhat less conservative line that women could also run for election on the *Majlis* and be appointed to the Assembly of Experts, the body responsible for drafting the Constitution. It was only the posts of prime minister and president from which women were barred. Firstly then, a look at this particular restriction and the official reasons advanced for it. The restriction contravenes Article 21 of the UDHR, which states that 'Everyone has the right to take part in the government of his country, directly or through freely chosen representatives' and that 'Everyone has the right of equal access to public service in his country.'¹ However, during the debating in the *Majlis* and Assembly of Experts of the bill, which was to bar women from the two posts, a number of reasons were advanced for the necessity of the prohibition. Ayatollah Sadduqi's reason for opposing women's access to a prime ministerial or presidential role was this: 'Suppose you choose a qualified woman to become president or prime minister. One morning, we see that the prime minister's office is closed. We ask why? We are told, because the lady (prime minister) gave birth the night before. This will only bring shame on us.' Other reasons included the familiar argument in Iranian discourse that

women lacked the powers of reasoning and intellect required of such positions and also that women were required to give their full energy to their children and families.² The reasons require study because they reveal the government's general attitude towards women and show the contorted ways in which it utilised Islamic texts. The end decision was extrapolated from the widely disseminated Prophecy relating to the Persians and the disparaging words of Ali on taking women's advice. The reasons however advanced by various state representatives went beyond the Prophet's and Ali's suggestions and are not to be found in the *Qur'an* or *Ahadith* and merely amounted to conjectures on female psychology and biology: that not only do all women want to bear children but that they are incapable of co-ordinating this desire with the demands of their profession and the nation's interest. Sadduqi's comments in particular have no religious grounding and border on absurd assumptions about women's requirements during and after pregnancy and the way in which governments are run. By using these examples as the basis for policy, the Iranian state refused also to acknowledge the important leadership roles played by women throughout Islamic history: roles that testified to the fact that the utterances of the Prophet and Ali were not general rulings but references to very specific instances. However, while the end decision of the state is important, it must be asked what hardship did this restriction cause the overwhelming majority of Iranian women? The answer is obviously that this policy alone was not going to have any serious adverse effect on women's lives given that women could still choose *Majlis* representatives and run for office in the *Majlis* and seek appointment on the Assembly of Experts, the two bodies that would ultimately determine the outcome of political proposals that would touch women's lives on a daily basis.

The actual number of women in the *Majlis* and Assembly of Experts has, however, remained extremely low with only three to four females in the *Majlis* and one in the Assembly of Experts over the first decade of the Revolution. No woman ever held a ministerial post during this period. Undoubtedly the views on women's capabilities and social propriety played a decisive role in ministerial appointments. One must concede however that there were a dismally low number of women in the *Majlis* to choose ministers from and the task of electing *Majlis* representatives lay with the general population. However by continuously voicing such opinions on women, state representatives added to the unlikelihood of large numbers of them being voted for: they gave further legitimacy to stereotypical roles and negative assumptions about women's abilities. By allowing women in principle to take political office and simultaneously insisting that women were irresponsible, weak beings the government was also being wholly inconsistent in its measures. What the government was doing in practice was using limited numbers of women in the *Majlis* and Assembly as token gestures and to legitimise its wider policies. Female representatives could be wheeled out at appropriate times to praise the regime's treatment of women. Overall the opportunity for female representatives to make any real impact was limited. Women were denied access to the high-powered committees and the custom became that elected female representatives took part only in discussions on women's issues. Males, on the other hand, felt qualified to participate in the full range of parliamentary matters including those affecting women only. The government frequently pointed to the different biological make-up of men and women that in turn affected their needs and contributions to society. This practice of men in the *Majlis* and Assembly indicated that men also held a more acute understanding of female needs than did women themselves and so even when legislating for women, male guidance was

necessary. Haleh Esfandiari has explained that many of the elected women were relatives of leading clerics and revolutionary figures and as such identified with the ruling regime.³ For the purposes of this discussion, it is important to point out that those women such as A'zam Taleqani and Maryam Behrouzi who did speak out against the government's plans for women did so using Islamic arguments. In many ways this was a necessary strategy in that human rights arguments would only have led to accusations of their employing infidel theories. But the women's successes were not wholly insignificant considering the dramatic u-turn on divorce laws and the extension of maintenance provisions.

The only government measure, which explicitly contravened the UDHR, was its exclusion of women from running for prime minister or president. The lack of female ministers could be justified by a number of factors, the most pertinent of which would be that the population simply was not voting for women. Because the government's discrimination in other political areas was never statutory, human rights documents could not effectively be evoked to alter that government's practices.

The Islamic arguments for actively seeking to increase female participation in decision-making are only slightly, more helpful. One could argue firstly that by sidelining the female representatives, the government failed in its Islamic obligation to engage in *Shura* ' (consultation) as stipulated in 3:159 and 42:38. Chapter 1 also presented arguments by contemporary scholars who insist that it is an Islamic duty for women to become involved in political activities. Taking this line would put an onus on governments to accommodate female involvement more actively. However these arguments still remain somewhat underdeveloped for women can engage in political

activism without insisting on a seat in a legislative assembly. The reluctance to date of both writing on Islam and human rights documents to address this issue might be due to the fact that one cannot guarantee a correlation between increased numbers of women in legislative bodies and policies designed to alleviate female suffering. Thus for example the arguments for reserving a minimum number of seats for female candidates are questionable. But equal political rights argues David Miller are important in order to instil a sense of worth in humans: 'Everyone who is excluded from, or treated unequally, in the political realm will suffer a loss of self-respect. He will feel that his equal worth as a human being has been denied.'⁴ While one might not be able to advance a case for positive discrimination in the allocation of seats and cabinet posts by employing human rights or Islamic arguments the government's actions were nonetheless reprehensible. This is because by voicing the opinions it did and by effectively excluding elected representatives from many aspects of decision-making it was seriously undermining women's sense of worth and was perpetuating prejudices that might have been held by citizens. Moreover the attitude to women in the political institutions did not stop there but was carried over into numerous other aspects of women's lives.

Legal Rights

I have already discussed the various debates surrounding the interpretation of 2:282. Article 92 of the *Qisas* Law⁵ did not subscribe to the most extreme conservative view that women could act as witnesses only in cases concerned specifically with financial transactions. However, in all criminal cases all female testimonies had to be corroborated by a man's and Iran was to add yet a further dimension to the existing

interpretations. The *Qisas* Law ruled that any woman who insisted on giving uncorroborated evidence was lying and therefore subject to punishment for slander. From the discussion on witnesses the traditional debate has surrounded the issue of two female witnesses and one male, with the second female, not the male, being given the task of reminding the first. At most one could assume that a judge could discount the evidence of a lone female witness, although the decision to do this would seriously bring into question the judges interest in pursuing the course of justice. But by subjecting the woman to punishment, the state again was showing its willingness to deviate from orthodox opinions when this served to undermine and sabotage women's place in the public domain and their quest for independence. The ruling went one step further than other policies on women. While they were based on the assumption that society needed to be protected from women's weak intellect and overly emotional behaviour, Article 92 of the *Qisas* Law was founded on the understanding that, unless deterred by punishment, women would attempt deliberately to pervert the course of justice. Not only were women biologically unable to re-call events and details, they were also likely to lie about these. Hence the need again for some form of male guidance.

In addition to the restrictions on women's aiding the justice system as witnesses, women were also barred from employment in the legal profession. This meant that women could not act as judges or lawyers. Yet again the reasons were that such important occupations could not be entrusted to faint-hearted, weak beings. Sacking female lawyers and judges was one of Khomeini's first moves on coming to power. And while there is some classical scholarship that would seem to sanction this view, it was inconsistent with the fact that women could still run for political office and did

not draw on the primary sources of Islamic teachings: the *Qur'an* and *Hadith*.

Moreover it seemed wholly out of touch with the government's obsessive concern with female modesty. The prohibition meant, for example, that in *faskh* cases a woman would be expected to relate intimate marital problems (e.g. her husband's impotency) to a courtroom full entirely of other males. Such concerns led to women being permitted to act as advisers in Family Courts and on issues dealing with the care and responsibility for children by 1982. Even so, women's role was merely an advisory one.

The legislation, along with its detachment from Islamic prescriptions, also added to the state's violation of the fundamental notion of equality enshrined in the UDHR and compromised the possibility of trials being 'fair and impartial' as stipulated by Article 10.⁶ The legislation had huge repercussions for broader justice issues. In many cases, such as sexual assault, finding suitable witnesses can be problematic and this is compounded further when there is a strict gender requirement. A woman wishing to report such cases would also be discouraged from doing so if it meant that her only choice was to be represented by a man. Discounting female witnesses would inevitably hinder any prosecution or defence case going through the criminal justice system. These concerns were to be sacrificed for what was in the eyes of the government a deeper concern: how to ensure women were kept at home away from public view. Barring women from certain occupations also breached Article 23 of the UDHR: 'Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.'⁷

Further novel approaches to Islamisation were displayed in Iran's revision of its

criminal laws. On the matter of murder cases, we have already looked at the effective legalisation of honour killings. Added to this the Iranian regime decided that in all other cases involving the murder of a woman the loss to society was significantly less than had a man been murdered. A look at Article 5 of the *Qisas* law will illustrate this point further: ‘Should a Muslim man wilfully murder a Muslim woman, he must be killed; the murder can be punished only after the woman’s guardian has paid half of his *dayeh*, blood money, or the sum that the man would be worth if he were to live a normal life: this is negotiated with and paid to the man’s family.’⁸ The concepts of *qisas* (retaliation) and *diya* (blood money) both have explicit sanction from the *Qur’an*. Whether this in itself falls under the category of ‘cruel, inhuman or degrading treatment or punishment’ proscribed under Article 5 of the UDHR⁹ is still a hotly debated and important issue. Here however we must concentrate on the specific hardship caused to women in comparison to men as a result of state legislation. Again no *Qur’anic* verse or *Hadith* narration could be quoted in support of this measure and instead Ayatollah Mohammad Musavi Bojnurdi had to make use of his own personal reasoning. He explained, ‘of course when a woman is killed it is a major crime. A real crime. But when we think about it rationally if we execute the man then we have made two families miserable; especially the second family who with this execution lose their breadwinner and are reduced to poverty. We have to ask whether executing the man solves any problems’.¹⁰ Bojnurdi by asking the audience to think about the legislation ‘rationally’ was indicating that any opposition or criticism was in fact irrational; a character trait government representatives frequently attributed to women. In Iran it is the content of the explanations along with the end-result that constitute serious affronts to women’s status in society. Bojnurdi fails to explain a number of contradictions easily gleaned from his words. Firstly, what does he believe to be the

very purpose of retribution or *qisas*? Presumably such punishments are meant both to act as deterrents to others and to protect society from dangerous criminals. If killing a woman found guilty of murder serves both these functions then obviously so ought killing a guilty man. If, on the other hand, Bojnurdi was claiming that *qisas* did not serve this function then the death penalty needs to be outlawed for female as well as male murderers. Secondly, the state was keen to absolve itself of all responsibility in ensuring that justice is served to the female victim's family. Why could the state not make adequate welfare provisions for the male felon's family instead of placing this burden upon the kin of the victim? Thirdly the legislation does not account for a case in which the female victim was the main breadwinner of the family. Fourthly, the regime's admiration of motherhood is again seriously flawed as Haleh Afshar points out, Bojnurdi does not ask whether executing a woman would make a family miserable or solve any problems.¹¹ Despite the continuous state rhetoric about woman's work in the home being acknowledged and valued by the nation and its having equal importance with men's occupation outside the home, the *Qisas* bill was actually able to quantify how much the state valued one function in comparison to another: a female murderer's life could be taken without any conditions, a man's on the other hand required monetary compensation.

Thus in Iran there were two distinct justice systems, one for women and one for men. The systems were different and unequal and it was men that possessed the legal privileges both as victims and as perpetrators of crime. Women also were to be denied the opportunity to aid in pursuing justice by having their roles as witnesses, lawyers and judges restricted by governmental measures.

Pakistan

While in the area of family law much of the Zia regime's vision for women was already legislated for in the political and legal arena it required some pro-active measures. In his second speech to the nation the President had announced that the sanctity of *pardah* (veil) and the security of women in the four walls of their homes would be protected.¹² To realise this ideology, changes had to be made at political and legal levels. It was also in this area that women's organisations were to mobilise with greatest enthusiasm against the state measures.

Political Rights

In relation to political participation no formal restrictions were put in place to prevent women from voting or entering cabinet and parliamentary positions. This was despite the recommendations of the Ansari Commission in 1982, that women be disqualified from ever becoming head of state, that women be a minimum of fifty years of age before becoming members of the *Majlis-e-Shura* and that no more than five per cent of the general membership of the *Majlis* be reserved for women, that women be prohibited from leaving the country without a male escort and that unmarried, unaccompanied women be prevented from serving abroad in the foreign service. In 1983, Zia chose to ignore the bulk of the recommendations, opting instead to endorse only the five per cent reservation of female seats in the *Majlis*. However, when elections were held in February 1985, out of the eleven female candidates only one woman was actually elected.¹³ Zia's regime, like its counterpart in Iran never sought to challenge existing and widespread notions that the only correct role and place for

women was within the home and nor did it provide a platform for women's groups aiming to mount that challenge.

Here it is important to examine the later election of Benazir Bhutto. One might use this event to show that when given the choice Pakistanis had few problems in voting for a woman. In an earlier election in 1965, it has also been suggested that, had the election process been honest, then Fatima Jinnah would have won against the incumbent President, Ayub Khan.¹⁴ Notable in this latter example was that Mawdudi, of the *Jama'at I-Islami*, renowned for his conservative views on women was prepared to support Fatima Jinnah's candidacy on the grounds that it was necessary for preventing a greater evil, in that case Khan's re-accession. These events might paint too optimistic a picture for human rights activists and Islamists campaigning for women's issues. Both Benazir and Fatima emerged from political families. Benazir was the daughter of a former prime minister and Fatima was the sister of Pakistan's celebrated founder, Muhammad Ali Jinnah. Political dynasties play an influential role in South Asian politics generally; the Gandhi family is another example. Dushka Sayid notes that even today most women representatives in Pakistan have inherited their constituencies from their families.¹⁵ This offers little comfort to women wishing to pursue political careers and then issues without such backing. It would seem that the extremely small number of women actually running for and winning elections is a more accurate indication of the cultural barriers to female political involvement in Pakistan. Dynastic rule is in fact contrary to the Islamic ideology, which sought to erode tribal and clan entitlements to power. But this phenomenon does offer one explanation for Zia's reluctance to endorse further restrictive measures on women in politics. By doing so he would have risked inciting opposition from the political

establishment: opposition that might have proved formidable in destabilising Zia's political rule.

The role that either Islam or human rights can play in this sphere, as in the case of Iran is limited. There are no formal restrictions on women entering politics in Pakistan. As such human rights are being upheld. It will also be argued in this thesis that human rights legislation is not enough to address the cultural barriers to women entering political careers. The failure to develop Islamic arguments for encouraging women into politics is due, among other reasons, to how far one can argue that larger numbers of women in politics is a benefit to wider society. Indeed Benazir Bhutto did little to overturn some of the most horrific aspects of Pakistani legislation on women to be discussed below.

Legal Rights

***The Hudood Ordinance, 1979*¹⁶**

The *Hudood Ordinance*¹⁷ deals with *zina* (sexual relations outside marriage) and rape cases. The maximum punishment for *zina* is stoning to death for married persons and one hundred lashes for unmarried persons. Pakistani law in theory follows classical jurisprudence based on clear *Qur'anic* verses, by ruling that punishment could only be carried out following the testimony of four eyewitnesses to the act of penetration or the voluntary confession of the accused in a court of law.¹⁸

However, the maximum punishment cannot be carried out on the basis of the testimony of female or non-Muslim witnesses. The regulations and penalty if followed to the exact letter are largely redundant and a Judge of the Lahore High Court explained, 'These hard rules of evidence themselves indicate that the purpose of the law is not to fix scaffoldings in crossings to flog people every day but to punish those who, despite preventive methods adopted by Islam, commit *zina* in such a wanton way that four or more persons can see them.'¹⁹ Moreover in *Qur'anic* rules (24:4) if such an accusation is made without the corroboration of a further three witnesses, it is the accuser who is subject to punishment.

The practice of judges presiding over *zina* cases however has deviated starkly from the theory. According to the provision of the MFLO all marriages and divorces must be officially registered. In one case in 1982 a woman and her partner who had eloped but not registered the marriage were tried for fornication.²⁰ The couple, Fahmida and Allah Baksh although tried were not found guilty of the charge but another case led to more serious consequences. In that case it was the failure of a husband, to register his divorce that led to his ex-wife being accused and found guilty of adultery, which as stated above is punished by the death sentence. Because the divorce was never registered it was ruled that it never took place and therefore the re-marriage of the divorced woman was not recognised either. Instead her co-habitation with her new husband was ruled as constituting an adulterous affair.²¹ All this might justify the abolition of the *Hudood* Ordinance. Certainly from a human rights perspective the punishments could well be seen as cruel, inhuman and degrading and also in the case of adultery carry much graver consequences for women. But as already stated the

Ordinance's rulings on adultery and fornication are based on explicit *Qur'anic* injunctions.

On the other hand, these cases have led Anis Ahmed to declare that given the strict evidence required for proving *zina*, the problem for women is not with the *Hudood* Ordinance but with the compulsory registration of marriages as stipulated in the MFLO.²² The registration is intended to protect women from the triple divorce pronouncement, from arbitrary divorce, child marriages and polygamous marriages. It may indeed be the case that should the compulsory registration be abolished it would not have huge adverse effects for those women most vulnerable to such abusive practices. This is because men simply see themselves as above the laws that are intended to protect women and can generally breach them without any serious consequences. It is also the case that according to the MFLO in divorce cases it is the responsibility of the husband to register his petition. However to blame the cases cited above on the MFLO is not accurate. The case of Fahmida and Allah Baksh was different because Fahmida had been reported as abducted by her parents and this might explain the couple's decision not to register the marriage. But even with the absence of compulsory registration such charges could still be brought against couples that had married in secret with only the minimum number of people present at the ceremony and without parental permission. Even in divorce cases the absence of compulsory registration could still lead to a husband pronouncing a triple divorce in the absence of witnesses, turn his wife out of her home without observing the *iddah* (waiting period) and therefore still accuse her of adultery should she re-marry. Should he re-marry of course at most he might be punished with fine or imprisonment for entering a polygamous marriage without receiving consent from his 'existing'

wife. His wife on the other hand will be tried for adultery, which carries the death sentence. Indeed it has been noted that husbands do accuse ex-wives of adultery simply out of malice.²³ This state of affairs actually strengthens the call I have made in previous Chapters for the greater and compulsory involvement of an impartial and competent judiciary in all divorce cases rather than for removing altogether the involvement of any third party. In the case of failure to register marriage judges can easily call for the testimony of the Imam who would have performed the ceremony and the two witnesses needed for that ceremony.

In charges of adultery and fornication the problem lies in the eagerness of the judiciary to honour accusations, and to subject the accused to the traumas of a trial, and even execute punishment without the necessary evidence. It is also notable that even should the accused woman or couple be lying about their marital status, that is that they are in fact having a sexual relationship outside of marriage the evidence required by the *Qur'an* is still nonetheless virtually impossible to come by. Given the nature of the evidence required, the upholding of human rights concerns is not incompatible with the *Qur'anic* legislation. However the problem is with the practice of the judiciary and its failure to adhere to the requirements of the *Qur'an* and the *Hudood* Ordinance. Indeed, given the *Qur'anic* rules of evidence it is highly unlikely that any genuine cases of *zina* are ever brought before the courts. Therefore until a Pakistani government can eliminate the tendency in the judiciary to prosecute on the basis of insufficient evidence and root out the corruption within it, there is a strong case for suspending the punishments stipulated for *zina* in the *Hudood* Ordinance. Certainly the punishment of innocent women, which is made possible by

implementing the Ordinance in such a climate, violates the higher Islamic concern for justice and mercy.

Moreover contrary to Ahmed's assertion not all the problems with the *Hudood* Ordinance can be related to compulsory registration. Nor are all the problems related to the discrepancy between the specific requirements of the Ordinance and the practice of the judiciary. Another serious problem for women arose when the Ordinance failed to distinguish between rape and *zina*. Thus any accusations of rape had to be backed by four adult male witnesses before punishment could be carried out. Firstly, as Anita Weiss points out, what four men of good repute would stand by and allow a woman to be raped?²⁴ What the law actually meant was that many rape cases would go unpunished because of the high level of proof required. Secondly in some cases women who had reported rape to the police were themselves accused of adultery. The most noted and publicised case is that of Safia Bibi who was raped by a local landlord and his son and became pregnant. Safia Bibi gave birth to a son who later died. Safia Bibi's father then registered the rape case. The Sessions judge acquitted both the landlord and his son on the basis that the required evidence had not been produced. The self-confessed pregnancy however, was used as evidence for *zina*. On account of Safia's partial blindness she was given a lesser punishment of fifteen lashes. Pakistan's largest women's network, the Women's Action Forum, came out in full force against the verdict. As a result of the publicity brought about by the WAF, the Federal *Shari'ah* Court asked that the case be transferred to it for review and later repealed the earlier decision. Commenting on the case, Justice Aftab Hussein ruled that under the law the statement of any witness can only be accepted in full, that in the case of rape, if the man is acquitted due to lack of evidence and given

the benefit of the doubt, the woman must also be given this benefit and that the mere fact of pregnancy was insufficient to prove Safia Bibi's guilt.²⁵ The Federal Court's ruling would appear to be more in line with the spirit of classical *fiqh*, given that all *Sunni* scholars formulated the concept of the sleeping foetus in order to protect pregnant women from such charges. Under the rule of sleeping foetus Abu Hanifah decreed that a human pregnancy could last for up to a period of two years. This meant that divorced or widowed women could claim recourse to the sleeping foetus for up to two years after the divorce or death of a husband, thereby escaping charges of *zina*. Leila Badawi also explains that for unmarried women the conventional legal formula attributed pregnancy to a public bath shortly after the men's hour. 'There it was claimed a woman, might accidentally sit on a little pool of semen and thereby conceive.'²⁶

While such rulings may appear somewhat implausible in the modern setting given what is known about conception and pregnancy the spirit of them ought to still act as an important guide in *zina* cases. The spirit was clearly to protect women from such charges. On the issue of witnesses the Pakistani legislation was particularly contrary to classical jurisprudence and Prophetic practice. This is because the classical jurists ruled that in rape cases the evidence of the victimised woman was equivalent to that of four witnesses. The prophet is also known to have given judgement on rape and defamation cases on the evidence of one woman.²⁷

The Pakistani regime failed to make use of such orthodox rulings outlined above that could have aided women. By stipulating that only men were acceptable witnesses in rape cases, the state also failed to acknowledge the reality that women were more

likely to be raped in the presence of and in fact along with other women than in the presence of four adult males. The regime also failed to consider how important developments in forensic science, medical examinations and DNA testing were being employed across the world and could be used to aid the course of justice in rape cases.

The human rights violations that the Ordinance falls under are numerous: Article 7, 'All are equal before the law and are entitled without any discrimination to equal protection of the law' and Article 10, 'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him'. Safia Bibi was not even on trial yet was sentenced to punishment.

***The Evidence Act, 1984.*²⁸**

Zia's administration also codified the *Qur'anic* requirement of two female witnesses for every one male witness in financial transactions. Here though the wording is sufficiently vague to allow judges to discount single female witnesses in cases other than those simply involving financial transactions. Article 17 of The Evidence Act²⁹ states 'In all matters pertaining to financial and future obligations provided these are reduced to writing the evidence of two men or one man and two women will be required, so that if one should forget, the other may remind her'.³⁰ The term 'future obligations' could also be used to refer to matters other than financial ones. This move unlike the legislation pertaining to *zina*, was sourced from some classical interpretations but violated sections of the UDHR. We saw in Chapter 1 that one of the reasons given for 2:282 is the high level of illiteracy amongst women at the time

of revelation. Pakistan however has never embarked on any concerted drive to educate women despite emphatic *Ahadith* extolling the importance of education.

Gender requirements in court proceedings were extended to other criminal cases including murder and bodily harm. The maximum punishment for these crimes could be carried out only with the testimony of two male witnesses. If only one female witness came forward the lesser punishment was to be given.³¹ The death penalty for murder is still present in Pakistan and yet the legal system is plagued with corruption at the highest levels, thereby bringing into question the quality of justice that both victims and suspects will receive. Thus, while women's groups may not wish to insist that female's testimonies lead to such punishment, the gender discrimination sends very clear signals regarding the state's view on women: women cannot be entrusted with the task of recalling evidence and pursuing justice.

Pakistan's pursuit of Islamisation was particularly inconsistent in the legal and political arena. On the one hand women were permitted to take on the role of judge, politician and even head of state and thus in principle assume complete equality with men, but their evidence was not permissible to Pakistani courts on an equal footing. For Zia the dilemma was how to appease certain sections of the population in order to remain in power, rather than how best to implement Islamic laws in a modern nation-state. Anita Weiss points out that Zia's policies adversely affected those women who were already disenfranchised and disempowered. Women from powerful political families retained the right to contest elections and be appointed as judges. The laws on witnesses also did not alter the situation on the ground as women rarely testified in courts anyway. The laws on *zina*, on the other hand, upheld both class and gender

distinctions because the majority of defendants in *zina* case and victims in rape cases tended to be from poor, rural families without political influence. The Islamisation programme as dictated by Zia, placated the government's political supporters, namely the *Jama'at – I – Islami*, without imposing upon any major power wielders in the country that were crucial in maintaining Zia's hold on power.³² For example because there was a tendency for political seats to be handed down to family members, Zia never restricted women's entry into politics as such a move would have disgruntled existing powerful families holding parliamentary seats.

Hijab: An Overview

The issue of *hijab* has been of great concern to western audiences. Veiled women have become the symbol for Islamisation policies: the conventional wisdom has been that, the more veiled women on the streets of a state the more Islamic must be the nature of its regime. Both Iran and Pakistan attempted to make the wearing of some form of head covering compulsory for its female population. We saw in Chapter 1 how the issue of *hijab* is addressed in the *Qur'an* as a required physical partition between the wives of the Prophet and men and as a required form of dress and behaviour for all Muslims and also that the exact form of this dress requirement is still a debated issue within Muslim communities today. We also saw how historical accounts of life during the Prophetic era do not indicate that it was ever a society strictly segregated along gender lines or one in which women were not free to take an active role in public life. In Pakistan and Iran however, policy on the issue of *hijab* has meant both dress requirements and a step towards seclusion or restricted mobility for women. Before Khomeini and Zia came to power in their respective countries

women were also subject to certain restrictions on their mobility. In pre-revolutionary Iran, when the *chador* was actually prohibited and western styles of dress enthusiastically endorsed, many legal and customary norms restricted women from travelling alone or obtaining jobs and renting apartments without the permission of their husband or father. Valentine Moghadem reveals that male attitudes and behaviour often made it difficult for women even to stand for taxis or go shopping.³³ Such attitudes were inspired by the notion that good Muslim women remained at home. In Pakistan also, observing *pardah* has been associated with long standing class privileges rather than simply levels of religious practice and governmental decrees.³⁴ The term *pardah* in Urdu also refers to the practice of keeping women secluded from male strangers and this inevitably restricts a woman's access to certain services and institutions. In rural areas a woman, approaching the courts for example, will be seen to have compromised the family's honour.³⁵ In both states the Arabic word *hijab* is substituted for *chador*, in Iran meaning the long loose fabric covering the hair and body and for *dupatta* or *burkha* in Pakistan meaning a head covering. For the purposes of this discussion I will use both these terms in reference simply to clothing. When discussing the wider and deeper application of *hijab* I will use terms such as *pardah*, seclusion and restricted mobility.

Both Khomeini and Zia were unsatisfied with the prevailing attitudes to women's dress and behaviour and sought to ensure the observance of *hijab* further. Both leaders also saw the enforcement of *hijab* as a crucial step toward instating a more comprehensive partition between men and women. In both worldviews the most appropriate partition was between the public space in which men would operate and the home, the designated place for women. In Iran women were required by law to

wear the *chador*. The punishment at the official level was imprisonment for up to two months. At an unofficial level, incidents were reported in the early days of the Khomeini regime of the state sponsored Anti-Vice patrol, attacking women physically and verbally for not wearing the *chador*. Women made various attempts to oppose the measures through demonstrations and strikes but to no effect. A major factor in the women's failure on this issue was undoubtedly the violent repression of the demonstrations by the state sponsored Hizbollah.³⁶ The *chador* was seen as necessary for ensuring a moral society in which men and women could not mix freely and fall into the vices of western society.

Schools, universities and government offices were also segregated on gender lines. On the issue of segregation it must be noted firstly that most schools were single sex institutions during the preceding Pahlavi era. Secondly the wider segregation measures instigated under Khomeini proved extremely difficult to impose and by the end of the 1980s co-education had been introduced in a number of schools at the primary and secondary levels because of a lack of qualified female teachers.³⁷ For Khomeini the *chador* was not about facilitating women's movement in public but was ultimately intended to be the first step in a policy of segregation, culminating in the absence of women from public space. We have already seen how this was to be achieved through barring women from certain professions, subjecting them to male guardianship and extolling the virtues of motherhood and domesticity. However, the overall results of the drive to keep women at home have been contested. Akbar Aghajanian has argued that the employment and school participation rate declined significantly for women.³⁸ Nayereh Tohidi, on the other hand, has argued that much

of the initial rhetoric of the state attempting to impose an ideology of domesticity was not successful.³⁹ This difference of opinion is important and I will return to it later.

In Pakistan, government directives rather than legislation were distributed to government offices and educational institutions ordering women to wear *dupattas* (a scarf worn loosely over the hair). Thus, while women were forced to wear such garments in order to keep their jobs, a visit to Pakistan's larger cities during the Zia regime showed that women generally, outside of their jobs, did not observe the directives. The *dupatta* or *burkha* continued to be worn by those women who had done so previously. Pal comments that the degrees of *purdah* observed by women when they are not playing a public role are variable and are linked to class and subculture. *Purdah* he writes is, nevertheless, 'an attitude of mind and a mode of behaviour and the main goal of Zia ul-Huq regime was to promote these attributes in women'.⁴⁰ The attitudes and mode of behaviour that Zia aimed to promote were made apparent in his own speech to the nation in which he promised to protect the sanctity of the *chador* and the *char divari* (the veil and the four walls of the home).⁴¹ Schools were already single-sex until university level and this remained the case under Zia. Government offices continued to operate under few restrictions.

The issue of *hijab* or veiling is important because it represents one further form of oppression against women. It impinges on the principle of freedom enshrined in the UDHR and the way in which the discourse developed in both countries has also compromised Islamic commandments. Amongst the obsession with patrolling women's dress, men were given a licence in both states to violate the first instruction in the *Qur'anic* series relating to modest behaviour: lowering the gaze 24;30. Thus

women's dress was scrupulously scrutinised by men and all men felt qualified to comment on a woman's clothing. Furthermore, *hijab* or modesty was entirely the responsibility of women. Women who did not dress properly were responsible for spreading immorality and temptation, while little emphasis was placed on men's duty to exercise modesty, by lowering the gaze or showing greater respect for women on public transport or in the market place. In short the belief was that if women wished to be respected they ought to avoid coming out of their homes as much as possible. While these attitudes existed prior to Zia and Khomeini coming to power they were implicitly encouraged through speeches made by Zia and through Khomeini's sponsoring of Hizbollah.

It is important but difficult to disentangle the truth in the debate over *hijab*. What is the source of women's oppression in this area: government measures that seek to force women to cover their hair, government measures that seek to keep women away from men, or both? Firstly, it is important to emphasise that women wear *hijab* for a variety of reasons and sometimes by choice and it is important to distinguish between different levels of enforcement and the reasons behind them. If *hijab* is only enforced for teachers or government officials during working hours as in Pakistan, then it is no less or more restrictive than an employee's being expected to wear a uniform. Secondly, on the issue of segregation, if properly resourced segregated schools can actually aid in girl's education, this form of segregation may be unobjectionable. Given cultural norms, girls might be permitted only to attend school on the condition that it is segregated. Not only this, but in terms of academic success it has been noted that girls perform better in single sex schools.⁴² The problem was that schools were not properly resourced and that it was not only schools that the government in Iran

wanted to segregate. Thirdly, the discussion also reveals that, despite being relatively free under state legislation to dress as they pleased, Pakistani women still faced severe restrictions on personal freedoms pertaining to marriage, divorce and criminal justice. In short they were not any better off than their Iranian counterparts. This shows that imposed social exclusion and imposed dress are intertwined concepts but not inextricably: one can certainly be achieved without the other. It is certainly the case that *hijab* is an integral part of a wider view of womanhood. Those such as Khomeini who have enforced it with such violence show a deep disdain for women's visibility. But the comparison with Pakistan shows that, even if women in Iran were permitted to discard their *hijabs* tomorrow they would not necessarily experience any improvement in the rest of their lives.

The discussion on *hijab* is revealing of a much wider problem. The extracts from Aghajanian and Tohidi reveal, there are deeply conflicting conclusions as to what state policies on segregation can actually achieve. State policies may not guarantee greater segregation leading to greater seclusion of women but equally state policies cannot guarantee the opposite: less segregation and greater inclusion of women. In particular the geographical areas, in which *purdah* is and always has been a locally established and rigorously enforced means of completely secluding women from public, are also the areas in which the population is most detached from state regulations on women's behaviour and rights. For example in the Federally Administered Tribal Areas women were not given the right to vote until 1997. Even then the male to female ratio of registered votes was 75:25 compared to the national average of 55:45.⁴³ This seriously brings into question the extent to which state

measures can alter prevailing attitudes towards women and where women's groups with limited resources should focus their attentions.

This discussion shows that while governments can enforce *hijab* with significant success the enforcement and paradoxically the relaxing of segregation is extremely difficult. This also indicates that while the debate on whether *hijab* is or is not obligatory for Muslim women is important it is also in many a ways a distraction from the real problem. The concentration, then, ought to be on how to influence the practice of *pardah* as the attitude of mind that Pal refers to above rather than simply *pardah* as a visible dress code. It is only by altering the way that society *thinks* about women's roles and presence that any significant improvements in women's lives can be achieved. Persuading governments not to enforce veiling is only addressing one very small part of the problem because societies in which veiling is not enforced are not any more responsive to women's needs. Understanding and then balancing this complex web of considerations is the real challenge for human rights activists and Islamists and the means each camp might use for addressing this challenge will be part of the discussion in the next two Chapters.

Conclusion

The aim of this and the previous Chapter has been to show that, while state laws are an important focus for bringing about change, they must be examined along with the cultural practices and beliefs under which they are introduced. On this note it has been pointed out that 'laws do not work effectively if they are not congruent with their social context. It is evident that no law can ultimately compel action'.⁴⁴ Thus

restrictive laws for women were adhered to because they fitted in with the existing social context in which they were introduced. The challenge then is to attempt to influence that context so that more accommodating legislation can be implemented with success. For example it was shown that formal restrictions on female political participation in Khomeini's Iran and Zia's Pakistan were relatively few yet the actual numbers of women in representative bodies remained extremely low in both countries due in large part to general opinions amongst the population on women's unsuitability for leadership roles. Despite the liberal allocation of political rights, state legislation in both states violated a host of human rights stipulated in the UDHR. Both states instigated rules on women as witnesses that failed to respect the principle of equality. These rules were also inconsistent with holistic interpretations of the *Qur'an*. Iran's legislation was particularly harsh and innovative, stipulating punishment for women who insisted on giving uncorroborated evidence. Pakistan chose to extend the two females for one male requisite to all criminal cases. In the legal arena Pakistan was only marginally more lenient than Iran, by allowing women to take occupations as lawyers and judges. Some of the most horrific aspects of state measures however, came into being during the periods under study. In Pakistan the *Hudood Ordinance* made it possible for a woman reporting a rape case to be found guilty of, and punished for, adultery or fornication. It also led to women being punished for adultery as a result of their ex-husband's failure to register their divorce. In Iran male murderers of female victims were subject to lesser punishment than murderers of males; a move, which gave a clear indication of the value attributed to women by the regime. The issue of *hijab* has also been examined but here it was argued that not all aspects of enforcing *hijab* could be considered a human rights violation. Rather I contended that, when states did not make instating *hijab* a priority, this was not

always an indication that the regime was more sympathetic towards women. Pakistan in particular showed how it has been power interests that have ultimately determined the nature of government policy rather than a genuine desire to implement Islamic ethics.

Chapters 2 and 3 have shown that the major problem is not of persuading governments to step outside the classical schools of jurisprudence in order to legislate for contemporary problems. In fact both governments, with the approval of clerics trained in classical *fiqh*, displayed their willingness to ignore clear *Qur'anic* injunctions particularly in the area of executing punishments for *zina* and rape. This discredits the governments' claims to Islamisation and therefore its claims to be following an Islamic understanding of human rights. Thus far it has been suggested that many of the government's restrictions on women could not continue if those government's respected the principles of the UDHR. The next Chapter, however, will look at the areas in which human rights thinking falls short of the wider requirements of women living in Muslim countries.

It is also important to note that the vast majority of legislation and cultural norms discussed in these two Chapters remain in place today and not only in the two countries that have provided the case studies for these Chapters but to varying degrees in other predominantly Muslim nations.⁴⁵ In May 2002 in Pakistan, Zafran Bibi was found guilty of adultery after having reported her rape to the police. Judge Anwar Ali Khan sentenced Zafran Bibi to death despite the absence of a confession or the required four witnesses. Indeed despite the fact that Zafran Bibi was not on trial. Although the President insists she will not be executed, Zafran Bibi awaits her fate in

prison at the time of writing. When asked whether he intended to amend the *Hudood* Ordinance, President Musharraf replied that he had not given it much thought.⁴⁶

Human Rights

Chapters 2 and 3 have provided a survey of the empirical situation of women in Iran and Pakistan. In both cases state legislation and governmental restrictions have been instrumental in contributing to and creating the subordinate position in which women find themselves. The conventional wisdom in the western world is that much of that treatment is contrary to human rights and that therefore greater adherence to human rights regulations would eradicate many of the injustices women to which are subjected. What lies at the very base of a theory of human rights was and still is the idea that human beings are owed certain things simply in virtue of being human. As Peter Jones points out, 'one conviction that underlies most conceptions of human rights is that all human individuals have intrinsic value simply as human individuals'.¹ This value has in western political thought been articulated in terms of humans being owed certain *rights*. Jack Donnelly argues the human rights doctrine says in effect, 'treat a person like a human being and you'll get one' and 'here's how you treat a person like a human being'.²

In response to this of course there are religions and cultures that believe they are already well aware of how to treat other humans and moreover they may see some human rights as contradicting their existing practices. For the human rights theorist, the task is a momentous one: to persuade all humans, regardless of where they live and the culture and religion with which they are affiliated, that human rights must be respected and protected: that this is the very minimum treatment they are owed. The

human rights theorist strives to be more than simply tolerated, she insists that she should be heeded and that her theory should be acted upon in a practical way. In the contemporary political climate, particularly in the western world, it is human rights thinking that appears to occupy the higher moral ground. The tone of the literature on the subject is that groups must be persuaded to tailor their belief systems to fit in with human rights notions. It is taken for granted that human rights thinking should take priority over other systems of thought: the doctrine of human rights has become an unshakeable moral truth while other ways of thinking about power relationships have come to be seen as a 'problem'. Yet the doctrine of human rights as currently formulated is not as uncontroversial or as universally acceptable as this might suggest. While there might be a general consensus that the formulation of human rights is a positive step forward for humanity, there is also a great deal of disquiet at the ways in which certain voices and experiences have been marginalized in that formulation. This Chapter will show that the theory of human rights has run into serious problems, which it must address if it is to play a meaningful role in people's lives.

Numerous theories have attempted to explain why it is that human rights offer a unique and indeed superior set of norms governing relations between individuals and between individuals and the state. Yet debate still continues as to the correct list of human rights and the correct foundation for that list. Human rights theories themselves are varied and offer different explanations as to why it is that human beings have rights. Moreover those theories are not always complementary and often pull in different directions. Thus far I have used human rights as they are embodied in international documents as the standard-bearer of human rights thinking. Indeed, there are a number of writers who re-enforce this stance. Fred Halliday for example

insists, 'the only foundation for a conception of human rights can be the secularised derivation of natural law that underpins the Franco-American discourse present in the UDHR and similar documents'.³ Jack Donnelly⁴ too asserts that there is a massive international normative consensus on the list of rights contained in the UDHR, the Covenant on Civil and Political Rights⁵ and the Covenant on Economic, Social and Cultural Rights.⁶ This Chapter will show that the debate on human rights has by no means been exhausted despite Halliday's suggestion to the contrary. Alison Dundes Renteln for example, acknowledging the many objections to current human rights thinking, calls for anthropological research in order to derive a more inclusive list of human rights. The basis for a consensus on human rights is, she argues, already present in most cultures across the world: 'if one can demonstrate that there is a convergence in traditional belief systems with respect to specific moral principles, then there may be hope that one can prove that there is a consensus. It may be possible to revive languishing human rights'.⁷ For Renteln the problem is that many societies have yet to be convinced of the validity of human rights and also that the contemporary lists of human rights fall short of being truly universally accepted.

The aim here is not to offer an exhaustive study of the various theories of human rights, contemporary and historical. The purpose is rather to show that the theory of human rights is an ever-evolving doctrine. To take into consideration in a theory of human rights the concerns of women,⁸ religious and cultural groups, as will be done in this Chapter, is not as it might seem, an overly ambitious assignment. Indeed if the human rights advocate is to succeed in her task this is a necessity, for despite claims to the contrary the universality of human rights has not been embraced by all peoples and their governments world-wide. As Adamantia Pollis points out, 'clearly the

intellectual turmoil revolving around the issue of the universality of rights bespeaks to continued intellectual discomfort at its absence and to scepticism as to the validity of the universalist claims of the West'.⁹ What does unite all these theories is the belief in the equality of all humans. For Dworkin, the purpose of human rights is to maintain the principle of equal respect and concern. Equality 'is the source both of the general authority of collective goals and of the special limitations on their authority that justify more particular rights'.¹⁰ Human rights, whatever form they take and from wherever they are derived, must acknowledge and reinforce this fundamental equality. The onus is of course on states to observe these regulations because, it is generally agreed upon in the contemporary political arena that the purpose of human rights is to protect individuals in modern nation-states. 'A theory of rights is an attempt to provide some sort of basic moral foundation for the proper treatment of individuals by the state such that to infringe such basic rights is wrong irrespective of the utility bearing consequences of infringing such rights.'¹¹ Although Raymond Plant points out that this is a somewhat crude definition, he does acknowledge that it captures 'something essential about the moral force of rights claims'.¹² Few states would reject the very notion of human rights and even fewer would reject the notion that individuals need to be protected against abuses of power whether executed by the state or individuals residing within it. In addition human rights express a belief that 'the boundaries of nations are not the boundaries of moral concern'.¹³ Thus human rights are viewed as potential constraints on state power and they are to be applied to and respected by human beings regardless of where they live.

So let us assume for one moment that both our case studies, Iran and Pakistan, have enacted laws that respect the fundamental equality between men and women as it is

espoused in the UDHR. We saw, for example, that women's right to divorce was limited in comparison to men's in both countries. What would happen if men's right to divorce was subject to the same restrictions as women's, or if women were granted the same rights to repudiation that men currently enjoy? Even leaving aside for now the input and restraints imposed by indigenous cultures, the answer is that the way in which women exercise their rights would still not alter dramatically. This is partly because, as explained in the previous Chapters, women in these countries tend to be dependent on their husbands for basic subsistence. Thus they would still be reluctant to exercise their right to divorce. Of course, respecting the terms of the UDHR would also mean that the states would need to ensure that women were not discriminated against when seeking employment and education. The public and private sectors would have to operate a fair recruitment policy. But this would not solve the problem of general unemployment and poorly resourced schools. The governments cannot create sufficient jobs and educational institutions particularly if (as is the case for many Muslim countries) they are governments of developing nations, which also means that they cannot provide adequate welfare systems. Moreover, this discussion will show, that even with full compliance with the UDHR, there are still areas of women's lives that are left untouched by the document; experiences that are very specific to women.

The belief is voiced by many academics and practitioners that secularisation is needed for women's sake: women would benefit from secularisation. This belief does not withstand scrutiny. Secularisation in Iran and Egypt for example, failed to offer women any real improvements. In addition, many women, Muslim, Christian or Jewish, follow their respective faiths out of deep and genuine personal conviction.

The aim for these women is not to live in secularised societies but to live in societies in which members of the same faith consider their views and contributions legitimate. The perceived link between secularisation and human rights, or the lack of respect accorded to religious conviction in the rhetoric of human rights, makes it difficult for women to appeal to that theory in promoting their cause. Added to this is the reality that Muslim women tend to live in nations with a colonial past and/ or general suspicion of or even resentment towards the west. The theory of human rights in turn tends to be understood by both men and women as a western concept, serving purely western interests. In short, the current understandings of human rights in international law will still fail countless numbers of Muslim women, because such women tend to live in states that are poor and that are suspicious of the secular views of the west and because there is more to female suffering than being denied institutional equality.

The problems with human rights thinking are therefore more complex than one might initially suppose. The objection is not simply to the notion of equality or freedom that human rights theorists wish to uphold, although the previous Chapters have shown that this clearly is a problem for some. But more important than this is the reality that human rights as they are embodied at international level, do not take full account of the circumstances of people's lives. The objections are three-fold. Firstly, there is concern over the hierarchy of rights. It is suggested that in the western world, greater prominence is given to those rights which demand least action from western states. These are the civil and political rights to be found in the International Bill of Human Rights. The multi-party, liberal-democratic system fits in with the requirements of the Bill and the duty to compel other states to follow the same system already fits in with the western agenda.¹⁴ Secondly, there is criticism of the basis of human rights

thinking which fails to take into account the real experiences of human beings, which is not always an individualised, secular one. Thirdly, changes to the list of human rights are demanded because the current list fails to take into account the forms of abuse suffered by diverse groups of people. All these criticisms of the human rights agenda will be examined below, not because these are the only criticisms but because they are of particular importance to the subject of this thesis. The purpose of this Chapter is partly to show that objections to the current human rights doctrine are not voiced exclusively by advocates of Islam. Thus human rights will not become universally accepted simply by forcing changes in Muslim beliefs. In addition, by highlighting the shortcomings of the human rights doctrine, this Chapter will show that human rights as they are currently understood will not aid Muslim women adequately in alleviating their suffering. For human rights to be of use to Muslim women, the theory's proponents must revise and extend their conception of human rights.

It might be said that the theory of human rights cannot be expected to solve all the world's problems and that the theory and those who believe in it must accept its limitations along with its strengths. Indeed this might be so, but why should human rights be permitted to address only the problems of those living in the west? Why is it only when looking to the problems of the developing world, and in particular women in that part of the world does the theory of human rights become inadequate? If this is the case then the human rights advocate must either concede that her theory is of limited rather than universal applicability or otherwise engage with the criticisms in a positive way. Below is an attempt to assess what hope there is for the latter option.

Human Rights or Citizen Rights?

Human rights, as already explained above, are conceived as rights to which all human beings are entitled without discrimination. Yet it is clear in the world today that all human beings are not accorded the same rights. While some live in comfort and move freely from one city or country to another merely for purposes of leisure, others live in conditions of poverty and despair and might be forced to leave their place of birth to seek basic subsistence. This state of affairs has come to be seen as inevitable, even natural, and while it is acceptable and perhaps even commendable that the rich should dispense a little aid to the poor in times of deep crisis, it is quite inconceivable to most that any real sacrifices should be made in order to make the entire globe more equitable. In this section I will examine the claim that what are commonly believed to be human rights are actually citizen rights. This implies that individuals are accorded value not by virtue of their humanity but by virtue of their citizenship. This being the case, it has become quite acceptable that human beings should pay taxes only to aid other human beings with the same citizenship, and to believe that they have no moral or legal obligation to those living in other states. To aid these 'others' is to bestow special favours upon them rather than to discharge basic duties of humanity. The International Bill of Human Rights has failed to address this situation appropriately for two reasons. Firstly, there is an inadequacy in the document itself in that it fails to *acknowledge and cater for the increasing movement of humans across national borders*. This has meant that states do not take responsibility for non-citizen residents if they do not wish to and yet there is no alternative entity equipped to cater for such people. Secondly, the Bill and its advocates have failed to convince state actors of their socio-economic duties. While the Bill outlines rights to material resources, governments do not see themselves as the corresponding duty-bearers for any other

than their own citizens. All this leads back to the criticism, that in reality, the country of one's birth will ultimately determine the rights that one will enjoy. To redress this state of affairs there are two points that human rights advocates must pursue. First individuals leaving their place of birth in search of socio-economic benefits need to be respected and given rights of citizenship wherever they seek it. Second wealthy states need to be persuaded to do much more to help the developing world. In fact they need to cease the practices that actively perpetuate the poverty in developing states.

The movement of peoples

There is an increasing body of literature expressing optimism at the decline in state sovereignty or at least the changing face of that sovereignty. In this new international order, it is claimed, the individual is coming to replace the state as the object of international law. This optimism is fed by Pinochet's extradition to Spain, for example, and even more recently by *the war crimes tribunal against Milosevic*. In both these cases it is the actions of the individual that are being held accountable for human rights abuses. This means not only that it has become unacceptable that those in power treat those under their jurisdiction as they please but also that humans have a legal standing independent of their nationality. Thus David Jacobson writes that, classically, the individual had a legal status only insofar as she or he had a nationality, an attachment to a territory that is recognized by the sovereign state concerned. Now, argues Jacobson, this concept is being turned on its head and nationality has been recast to become a way of making the state itself accountable for the rights and welfare of its residents, on the basis of international human rights codes.¹⁵ He suggests that, while historically all measures were enacted to ensure the interests of states, today that is changing to ensure that every state protects the interests of its

people. He claims for example that the Organization for Security and Cooperation in Europe has given non-state groups recognition as non-territorial actors in the international arena and that this means that these actors can become ‘a part of history’ and ‘determine their own destiny’.¹⁶

Yet, as Jacobson himself admits, it is still the concept of nationality that is central to determining the treatment individuals are given. Those with British nationality can demand certain treatment from the British government; those with Egyptian nationality can demand certain treatment from the Egyptian government and so on. But what of those human beings with no nationality or one that they wish to change, those that have been forced to flee for fear of the deprivation of their fundamental and basic right to life? This is not only a description of those political dissidents who fear torture or even execution upon return to their state. It also describes the situation of those escaping famine and other forms of economic deprivation such as unemployment, and/ or an absence of health care. But in western state legislation only political dissidents are catered for and not always with great compassion. Thus only individuals being denied civil and political rights are considered eligible for asylum. Those leaving their countries in order to find better employment and educational opportunities are termed ‘economic migrants’ and are dealt with disparagingly by certain politicians and media. ‘They’ are treated as parasitical beings coming to live off ‘our’ resources and ‘they’ can be let in only if there are not enough people already within ‘our’ borders wishing to do the job ‘they’ would be taking. A glance at tabloid newspapers in Britain for example, or even a survey of political speeches in the run-up to the General Election in 2001, indicates that the boundaries of nations are indeed the boundaries of moral concern. Yet asylum

seekers and 'economic migrants' are obviously still human beings, they are owed what is listed in the International Bill of Human Rights as a result of that simple status and they leave the countries of which they are citizens because of human rights denials; denials often resulting from the fact that their governments are unwilling or unable to grant them the full list of rights enshrined in the International Bill of Human Rights. Yet when that human being from Yemen, for example, lands on British soil without the necessary papers, she is not owed anything from the British government or its people. The set of people who owe her anything is decided upon by her place of birth.

The fact that many states do have some mechanisms and procedures for dealing with asylum seekers and refugees because of the UDHR's guarantee of 'the right to seek and to enjoy in other countries asylum from persecution'¹⁷ does not guarantee the refugee or asylum seeker access to rights equal to those of other residents of the state in which she seeks refuge. One glaring example is the voucher system in the United Kingdom, whereby refugees and those seeking political asylum were given vouchers instead of cash to buy food and clothing. Such measures aim clearly to identify the 'outsider' to whom the state is granting special favours as opposed to the 'insider' citizen living on unemployment benefit, for example, whose basic rights are seen as being met.

Carens compares this state of affairs to feudal privilege. He writes that citizenship in western liberal countries, like feudal privilege, is an inherited status that greatly enhances one's life chances and that, like feudal birthright privileges, restrictive citizenship is hard to justify when one thinks about it closely.¹⁸ One way of

redressing the gross disparities in basic living conditions would be open or at least *more* open borders, whereby human beings would be free to seek, without prejudice, a livelihood where their skills and abilities were needed. Such a measure would indicate an unquestionable commitment to the concept of rights for all human beings. This would in turn alleviate pressures on employment, education and the health system in developing nations who might then be able to provide more adequately for those citizens left behind.

However, even the human rights advocate on grounds of simple practicality might oppose this suggestion. It would be simply impossible to persuade wealthier states to open their borders to all who wish to enter in order to place human rights standards including economic and social rights on a par with their own. To attempt to broaden the scope of human rights to this level might simply deter all states from even the current minimal commitment to human rights. The most that one can reasonably aim for is that states reprimand others for failing to provide for their citizens, dispense small amounts of aid and, in very extreme circumstances, deploy troops. This is the argument advanced by Monshipouri and Welch, who write that the 'more controversial, less quantifiable, human rights relating to disparities in development, standard of living, and dignity are beyond the systems and structures at this point'.¹⁹

The fact that such structures do not currently exist does not of course mean that one ought not advance the need for them. Moreover the rights that Welch and Monshipouri believe to be less quantifiable, such as disparities in development and standards of living, are tremendously easy to quantify when one looks at the daily existence of individuals in different countries across the world. Clean water and

living conditions, resources in health care centres and schools, and malnutrition are hardly difficult to measure.

The reluctance of wealthier states to take on the responsibility of such rights claims, indicates to the poor that rights are not at all universal but are conditional upon citizenship and that rights claims will only be met when that serves to discredit enemies. Thomas Franck, who writes enthusiastically about the individual's enhanced status in the international arena and the increasing recognition that associations with states or groups ought to be voluntary and conditional, unwittingly recognises this reality. He firstly rejects the idea that individuals no longer operate in groups or are actively discouraged from doing so. The individualist however does see all loyalties as primarily something to be bestowed or rescinded freely and for a cause. It was as a manifestation of this, argues Franck, that the right to emigrate became so crucial an international human rights claim in the 1980s, pressed by persons all over the world on behalf of individual dissidents denied exit from the Soviet Union or China.²⁰ Franck's theory is one that few would take issue with and even advocates of group rights would seldom argue that individual's ought to be compelled to remain part of a group or community. However this theory has not been implemented in any meaningful practical way, despite his claims to the contrary. The UDHR in Article 13 does give everyone the 'right to freedom of movement and residence within the borders of each state' and the 'right to leave any country, including his own, and to return to his country'. Article 14 also asserts that 'everyone has the right to seek and to enjoy in other countries asylum from persecution'.²¹ The right to exit one's country is largely meaningless however because it is not matched with an equal right to entry. Granting asylum and citizenship to those 'outsiders' who

seek it has been left to the discretion of individual states. The political climate in many western states is to protect borders zealously in terms of the movement of peoples. The absence of a right of access to other nation-states strongly disadvantages those millions of human beings with refugee status in the world today. Kurt Mills calls for a redress of this situation, arguing that, because the right to leave has its roots in liberalism and that liberal states have been the most forceful in advocating this right even as they have tightened their borders, it is especially incumbent that such states open their borders more.²² Franck's comments indicate the impetus behind the importance allotted to the right to exit by liberal states. The cold war and the ideological battle with the communist bloc was of course the focal point for much of international relations from the end of World War II. In this struggle western states were keen to discredit the communist world and take on the plight of those suffering under the injustices of communist rule. Had the motives behind such support for the right to exit been inspired by more humanitarian concerns, an equal right of entry would have been granted to those humans escaping political and economic problems in countries in Asia and Africa that were not aligned with the communist bloc.

Yet the reluctance or outright refusal of governments and academics to acknowledge the need for such moves portrays a severe lack of commitment to the very basis of the human rights ideal. James Paradise explains the situation as follows: 'When applied to international society, the liberal paradigm has radical implications. If justice requires that equal consideration be given to the interests or claims of all moral agents, then it follows not only that we have duties to those in distant parts of the globe, but that these duties have as much weight as those that we have to members of our own society... To deny that there are any such obligations is to be guilty of a type

of ethnocentrism that is perhaps as reproachable as racism or sexism'.²³

Ethnocentrism of this sort ought not be acceptable to the human rights advocate and needs to be opposed as urgently and forcefully as any other threat to the human rights agenda.

'Basic rights'

Henry Shue, perhaps one of the strongest contemporary advocates of what he describes as 'basic rights', argues that, when people lack basic essentials such as food, because of forces beyond their own control, they are incapable of doing anything to alleviate their own situation. This means that the failure to recognise subsistence rights restricts all liberties in a very real sense.²⁴ This leads to another way in which socio-economic rights can be extended to all human beings. Currently dispensing modest amounts of aid and charity are seen as wealthier peoples fulfilling their duties to the poor. But while this can provide for food and shelter, it is not likely to endow human beings with a sense of dignity and worth in the world, nor does it give them any meaningful control over their own lives. These are important features of the human rights agenda, given that the preamble to the UDHR recognises the 'inherent dignity' and the 'equal and inalienable rights of all members of the human family'.²⁵ Shue elaborates the actions necessary to ensure that people enjoy this dignity and control. He argues that guaranteeing the right to subsistence also involves the performance of certain duties in addition to giving aid and charity. These are the duty not to eliminate a person's only means of subsistence, the duty to protect against deprivation of the only available means of subsistence by others and the duty to protect for the subsistence of those unable to provide for their own.²⁶ The duties

outlined by Shue require an extensive array of actions by governments who claim to be protectors and propagators of the human rights agenda. Today many livelihoods are threatened by the globalisation process. Multi-national corporations, for example, that invest in weaker, developing states often do so at huge costs to small businesses and rural workers along with creating serious environmental problems that adversely affect crop growing. Acceptance of the right to subsistence calls into question conventional thinking on human rights, which fails to take into account this complex web of actors and decisions that can lead to human rights abuses. Powerful states thus also need to implement fair trade policies, to be less protectionist and to regulate the actions of multi-national corporations that exploit workers.

Currently it is difficult to argue that the world's richest states have done all that is possible to aid the world's poorest states or even to recognise that, under the doctrine of human rights, it is their duty to do so. If states can claim a right to interfere by military force in other states such as Iraq to aid Kurdish rebels or in Kosovo to fight genocide, then they must recognise an equal duty to aid those human beings who are not enjoying, for example, their right to 'a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness disability, widowhood, old age or other lack of livelihood in circumstances beyond his control'.²⁷ Such duties can be met with greater ease and less controversy than attempts to alter civil and political arrangements within states. National governments will seldom refuse aid packages and open borders will certainly be taken advantage of by those in need. By encouraging their own governments to assist developing nations in this way, western human rights advocates will appear

more justified and consistent in demanding that developing nations do more to meet the economic needs of their female citizens.

Group Rights

Another major area of criticism of human rights thinking is its lack of recognition of the role played by communities in shaping individuals and the portrayal of the community as an entity from which individuals need to be liberated. This brings into question the relationship between the rights of communities or groups and the rights of individuals. In particular the concern is, when an individual's actions threaten the unity and integrity of the group or community as a whole, which should be the overriding consideration, the interests of the individual or those of the community? For many, human rights thinking is at fault because of the stress it places on the individual. They claim that 'if we insist that human rights must be rights that people can hold only as independent individuals, our conception of human rights will not match the social reality of the human condition'.²⁸ Thus, while many conventional human rights theories begin with the abstract idea of how the individual and society ought to be, the challenger in this instance works from the concept of how human beings actually are, how they interact with one another in reality.

Objections to the individualism espoused in human rights thinking have been voiced strongly by state actors in the international system. Asmarom Legesse explains that 'if Africans were the sole authors of the UDHR, they might have ranked the rights of communities above those of individuals'.²⁹ Thus the Organisation for African Unity formulated the African Charter on Human and Peoples' Rights. The Charter by

naming itself so, claims to be 'Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights'.³⁰ An examination of the African Charter reveals a concern with foreign interference in the affairs of African states and with the preservation of unity within states. The Charter assumes that the nation or group and the state should be congruent: 'All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community'. (Article 20.1 and 20.2)³¹ Once nations have achieved self-determination, the emphasis is on maintaining a strong sense of unity in order to assert independence against colonial and neo-colonial powers and to promote the country's economic development. In Article 29 the two groups mentioned specifically are the family and nation and the individual is reminded of her duty to these entities and the importance of using her talents to their benefit. This concern with colonialism and neo-colonialism plays a strong role in the politics of many Muslim states in Africa.³² One of the reasons for the formulation of the Charter was that the International Bill of Human Rights failed to address this concern. This failure has in turn discredited the Bill amongst many, including Muslims, who feel it contains a disproportionate emphasis on individual's civil and political rights and that those rights are not sufficient for resisting colonial and neo-colonial ambitions.

Opponents of the concept of people's rights worry that unity will be achieved at the expense of individual freedom but the Charter does not envisage a conflict between individual human rights and peoples' rights. Human rights are intended to protect the individual in the face of cruelty and repression while peoples' rights are intended to preserve the integrity of the group as a whole, to preserve its networks of social interaction and to equip the individual to claim her rights as part of a group. These networks are seen as essential to the development of the individual. The combination of these rights will not deny protection to the individual but will facilitate the group's ability to influence the development of the individual in a positive way and *vice versa*. Odinkalu complains that by 'failing to recognize the agency of the individual in the continuing legitimacy of the collective and its leadership, the opponents of collective rights run into error of creating an opposition between the individual and the collectivity'.³³ However, the fact that some of the most ardent defenders of peoples' rights have been national governments themselves has led liberal thinkers to treat the concept with suspicion. Their belief is that the concept of group rights makes individual's rights conditional upon the interests of the group and that overriding the interests of the individual in the name of general welfare can rarely be justified.³⁴ The concept of group rights seems to provide too convenient an excuse for the sacrifice of individual rights. Even when it is claimed that the two can operate in tandem, the propensity will inevitably be to sacrifice the latter. Underlying this debate is the suspicion that state actors have less than honourable intentions in these declarations. They simply provide a convenient excuse for repressing political opposition in non-democratic regimes under the guise of protecting the nation from a few dissidents.

However, it may well be the case that, as the Charter claims, African tradition and values do inspire this concern with peoples' rights. Pollis explains that in precolonial Africa 'two basic elements of the Western conceptual framework, individualism and equal rights for all, have not existed... As Eddison Zvobgo states, there are no freedoms to or freedoms from. If anything, there are only rights with; they stem from interpersonal relationships'.³⁵ This absence of rights to, however, was balanced by 'important elements of accountability and political participation. Tribal chiefs were selected by village councils composed of the elders. Any chief who violated customary norms, who exceeded the limits of his culturally defined authority, or in whom the village council lost confidence could be and was 'destooled' - ousted'. Tribes were also fluid networks before they were institutionalised by colonialists.³⁶ Rhoda Howard is less complimentary in her description of pre-modern societies. She writes that the lack of equality in these societies also meant an absence of rights against the community. In most known human societies 'dignity and justice are not based on any idea of the *inalienable right* of the *physical, socially equal* human being against the claims of family, community or the state'.³⁷ Traditional African society, according to Pollis and Howard, displayed a lack of individualism and belief in equality. The virtues of their historical traditions then in these respects run contrary to human rights. But even if that were the case it is not to say that contemporary African regimes wish for a return to pre-colonial structures in Africa or that, even if this were wished for, it would be possible

However, because of such features of traditional societies some theorists argue that the agenda should not be one of how best to retrieve a lost past, but where to go from here. Jack Donnelly for example argues that westernisation, modernisation,

development and underdevelopment have in fact severed the individual from the small, supportive community to which African states allude.³⁸ The only instrument that can protect citizens in these modern state structures is the human rights ideal. Moreover it is that ideal that is incorporated in international law. The fact that this finds its origins in the west is true but is also largely irrelevant for Donnelly and does not detract from its applicability world-wide. However, the absence of equality that Pollis refers to was also of course a feature of western societies historically but many westerners still might legitimately wish to revive or hold on to certain institutions such as the monarchy. One cannot assume that an appeal to group rights made by Africans disguises a desire to a return to this lack of equality. Many Africans would also accept that the accountability depicted in traditional African society by Zvobgo needs to be institutionalised in a very different way today.³⁹ Indeed the Charter, like the UDHR, stresses that 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, *ethnic group*, colour, sex, language, religion, political or any opinion, national and social origin, fortune, birth or other status'.⁴⁰ The appeal to group or people's rights in the Charter might be seen as an assertion of group unity in the face of colonial and neo-colonial powers rather than laying a detailed blueprint for the internal make-up of African nations. In this way it is not about retrieving a lost past but about building a positive future by drawing on traditional values of duties to one's society and an ethos of unity.

Others might argue that what the African Charter is expressing is in fact something other than human rights. This is because for writers such as Dworkin rights are to be seen as political 'trumps'. Thus the nature of a human right is such that it will always

defeat a policy designed to promote the general welfare unless a good argument can be offered for it not doing so.⁴¹ By giving group rights the status of human rights, individual human rights would be rendered useless because the claims they make would be easily overridden. Is there really no room for accommodation within this paradigm? Indeed it has been argued that in promoting communitarian concerns, an ethic of care might be better suited to the task than the adversarial language of rights. But there are clearly significant sections of the human population who do want to make the preservation and interests of groups the concern of human rights. By opposing communitarian concerns from inclusion in the human rights agenda the thinking advanced by Donnelly and his like has met with accusations of intellectual and cultural arrogance. These accusations I hope to show are not completely unfounded. While the various international documents pertaining to human rights have met with widespread support and been ratified by states from a diversity of cultural and religious backgrounds, not all states have had an equal input into their composition. A study of the origins of the UDHR, for example, shows that the major actors on the drafting committee were: the United States, Lebanon, France, China, Chile, the USSR and the UK. Thus no African or East Asian states were represented or indeed Muslim states given that the Lebanese government at the time was Maronite.⁴²

Moreover criticisms of this and other documents are not voiced exclusively by African states. Dissatisfaction with human rights as embodied in United Nations documents has led several regional groups to devise their own lists of human rights. Thus we have the Bangkok Declaration introduced in 1993, the San Jose Declaration ratified by Latin American states also in 1993 and the Tunis Declaration of 1991. The

uniting factor in all these documents is a concern with the eroding of their own communitarian, family-oriented societies and angst at interference from foreign powers. Their fear is not of a hypothetical situation for they look to images of the west and see their fears as justified. The images they see are of individuals enjoying the 'freedoms' celebrated in the UDHR but without these being balanced by a sense of responsibility, which in turn has led to little respect for elders, familial ties and authority in general. It is precisely this desire to hold on to community and group values that has been embodied in documents such as the African Charter.

In addition to dissatisfaction with the lack of group rights, the west is accused of double standards, of being keen to point to the shortcomings of other states but displaying a serious lack of attention to their own. The Bangkok Declaration, for example, stresses; '... the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicisation...' ⁴³ This of course leads on to an entirely different argument and is employed frequently simply for the sake of scoring political points. Nonetheless it is important to mention in passing here that accusations of human rights violations are advanced across the east/ west divide and that no state is entirely guiltless on this front. Yet it displays a serious lack of sensitivity for certain human rights theorists and western politicians to claim that they have found all the answers and that their critics have simply 'got it wrong' or are simply looking for excuses for their human rights violations.

Given the importance placed on group rights or peoples' rights amongst significant portions of the world's population, it is essential that we look for a way of including

this concept in human rights thinking while at the same time ensuring protection for individuals. Peter Jones explains the difference between a collective conception of group rights and a corporate conception. The former of these can be considered as part of the human rights scheme while the latter cannot. The difference stems from who ultimately holds the trump. In the case of collective rights it is the individual members of the group who jointly hold the right because 'morally... the case for a group right rests upon the interests of the individuals who form the group, regardless of the strength of their shared identity and the interdependency of their shared interests'.⁴⁴ Thus a group of individuals may come together to lobby the government for the building of a local playground or even a place of worship. In this case they simply comprise a group of individuals with a common goal. They may or may not share a common cultural heritage, language or religion. Their strength is in their numbers, because while it may be unreasonable to insist that such a facility be provided at the behest of one individual it is not so if it is demanded by a much larger number.

In the case of corporate rights, moral standing is ascribed to the group as such so that the holder of the right is the group as a unitary entity. In this case the group must be distinct from other groups in society and by virtue of this difference lay claim to some special treatment. More than this, 'a group must possess a morally significant identity as a group independently, and in advance, of whatever interests and rights it may possess. Just as an individual has an identity and a standing as a person independently and in advance of the rights that he possesses...'⁴⁵ If groups are seen as tantamount to 'natural' entities, rather than socially constructed ones, as natural as the human herself, one can clearly see how a serious conflict between the rights of the group and

the rights of the individual might arise. Which of these conceptions do Africans allude to? The Charter has faced many criticisms the most pertinent of which is the concern that the individual rights are subject to what is deemed best for the *community*. But what can be gleaned from the African Charter is the idea that the rights laid down therein are appropriate for African society, not necessarily for all societies. Thus the preservation of the group is necessary for African development in particular, rather than human development in general. Thus while it is indeed the case that the communitarian society is portrayed as an integral part of African society, one must also acknowledge that a major purpose of this emphasis on peoples' rights was and still is to assist the struggle against colonial and what is now termed neo-colonial rule. The unity of citizens is also deemed crucial for the region's economic development and the newly industrialised states of South East Asia with their emphasis on the collectivity is seen as strengthening this belief. The Charter's Preamble states that its signatories are:

'Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights'

and

'Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, Zionism...'⁴⁶

Thus, one might argue, it is advocated that the group works together in order to achieve certain political, social and economic goals. It serves a purpose at a given point in time rather than being an eternal entity. Indeed groups and the governments they come to be ruled by are not seen as natural, eternal entities because the Charter in Article 20 recognises the right to self-determination and thus the right of groups of people to break away from their governments.⁴⁷ Moreover the objective of advancing peoples' rights is to benefit each and every individual; it is not about advancing unity for unity's sake. In this case then it is a theory of collective rights that is being advanced and therefore one that is not incompatible with human rights notions.

At this juncture it would be useful to re-cap what exactly is being disputed. On the one hand African and indeed many East Asian and Latin American states argue that they too believe in the concept of human rights but also in the idea of peoples' rights. In this they see no contradiction, and feel that they have a right to advance certain values within their borders. They are arguing that their nations have a right to strive for a united society and it is only by preserving this unity that common goals of economic development and political independence can be achieved. Moreover as a people they have a right not to have these goals sabotaged by more powerful nations and organisations. When they are told they ought not do this or cannot do this, it is seen as a form of imperialism and evidence of ignorance of the values that are cherished by other cultures and an attempt to endanger the well being of citizens. The response to this argument is two-fold. Firstly, human rights and peoples' rights cannot have equal weighting; one must have the authority to over-ride the other. This stems from a genuine concern for human beings not a desire to dominate other cultures with one's own. Secondly, if you believe it is peoples' rights that hold the

trump card, then you do not believe in human rights at all, or at the very least your commitment to human rights is lacking true conviction. As has been argued above, the standing accorded to the group can test the commitment to human rights. If the group can be conceived as a fluid entity with instrumental value then it does not contradict the fundamental importance of the individual within human rights notions. Peter Jones thus appears to have offered an amicable solution to the quandary over individual rights and peoples' rights. This is certainly how Fernyhough perceives the place of the group in pre-colonial Africa; 'there is no doubt that across the precolonial continent claims to justice, economic resources and political office were expressed in both individual and collective terms and that the value of the individual and of individual achievement was and still is no less in Africa than elsewhere'.⁴⁸ Given what Fernyhough tells us about traditional African societies, even if one is not convinced that the African Charter was devised with only good intentions, that is still no reason to discredit the very idea of group rights.

Women's Rights as Human Rights

The next concern to be examined in this Chapter is the feminist objection to current lists of human rights and the thinking behind them. There are of course many different strands within feminism. What unites the different strands in relation to human rights however is the belief that they have been devised according to what men fear might happen to them. Those issues that are specific to women, such as domestic violence, sexual assault, pornography and child-bearing are not seen to be addressed appropriately in contemporary schemes of human rights. Human rights as they currently stand therefore, do not go far enough in including women's experiences as

victims of abuses of power. Feminists wish to devise a list of human rights based on actual experiences. 'Feminists take actual women's experiences as a starting point and place those in their full contexts. They prefer a complex 'insider' viewpoint to a simplified and abstract outsider viewpoint.'⁴⁹ The 'insider' viewpoint is complex because it must acknowledge that there is no uniform model of womanhood. Women operate under varying economic, social, cultural and political circumstances and these variations must be considered in turn if a meaningful theory is to be derived from women's experience. It would however be misleading to suggest that feminism in any of its various forms has found all the answers or even that feminist proponents of human rights are any more sensitive to the needs of diverse cultures and religions than non-feminist ones. In addition the charge of ethnocentrism and cultural imperialism still plagues western feminist writers. This will be discussed in greater detail later.

To begin with, it is important to consider one of the major themes of feminist works in the field of human rights. One of the principal targets of the feminist critique is the distinction between the public and the private world that is characteristic of international human rights law and the liberal ideology that underlies it. In that ideology individuals ought to be free to behave as they please in the private world. Feminists point out that women the world over are still very much relegated to the private sphere and that women's presence in public life is still the exception rather than the norm. For many women then, everyday experience comprises their family and home. But this of course does not mean that they are safe from persecution and violations of their human rights, because for women the majority of abuses occur within what is deemed to be the private sphere: the family. When a woman is the victim of domestic abuse or sexual assault this is a violation of her human rights and

one that is no less condemnable than a man's being detained without trial or tortured inside a prison cell for political dissent. Human rights thinking as it currently stands fails women because it is seen as providing safeguards only against those violations that occur within the public sphere, primarily those that are carried out by state actors and to which men fall victim rather than women. The emphasis to date has been on civil and political rights and these rights are insufficient for addressing the abuses that are specific to women. Charlotte Bunch explains the reasoning behind this exclusion: 'because those western-educated propertied men who first advanced the cause of human rights most feared the violation of their civil and political rights in the public sphere, this area of violation has been privileged in human rights work. They did not fear, however, violations in the private sphere of the home because they were the masters of that territory'.⁵⁰

The line that feminists draw between the public and the private dominates the literature on women and human rights. What is meant by the private sphere in feminist discourse appears to be the family unit. Feminists point out that, while human rights documents inform states on what legislation is appropriate for ensuring protection for individuals within the work place, in schools and prisons, the authors of these documents are reluctant to offer guidance on how individuals ought to treat one another within the four walls of their own home and, even when they do take this step, enforcement is extremely difficult. This reluctance continues to keep women invisible. It ignores their plight and perpetuates their subordination by men because men traditionally occupy a more powerful position within the family by virtue of cultural norms and their greater control of financial means. One might be struck by the surprising inconsistencies in the legislation of both our case studies, which I have

pointed to in Chapters 2 and 3. For example, while severely restricting women's rights within marriage, and failing to protect women from domestic abuse, Iran still allowed women to become political representatives. The government felt able to do this because by perpetuating a culture of female subordination within the home, it avoided any danger that legislative bodies would be taken over by large numbers of women. Until the theory of human rights addresses more forcefully the subordination of women within the home, the list of civil and political rights they are currently granted will be of limited value to them.

In reply to such criticisms, there are two ways of making human rights more inclusive of women's experiences. The first of these is to emphasise how current declarations apply equally to women and to men. For example, Article 5 of the UDHR does state that, 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. Indeed both domestic abuse and rape fall within the category of cruel, inhuman or degrading treatment. Thus while the form such treatment takes is likely to be different for men and women, the right to be protected from it applies equally to both and thus the duty to insure equal protection already falls to the signatories of the Declaration. The fact that the right applies equally to men and women, it could be argued, is already made clear in Article 2 of the UDHR:

'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. It might be claimed that it is not the case that the rights making up the UDHR are insufficient but only that a particular aspect of it has been overlooked. The solution then is to broaden the interpretation of current rights.

In response to this, it is asserted that rights as they currently stand, in reality, have been applied effectively only when the treatment is being carried out or sanctioned by the state and that this was the original intention behind them. When such treatment is carried out by private actors in the form of sexual assault and domestic abuse, it has traditionally been deemed to fall outside the domain of human rights thinking.⁵¹ The task ought to be to bring this treatment into the realm of human rights by extending the current list and acknowledging that its content is not fixed but should be seen as part of an evolving theory. For feminists the female experience must not be permitted to be seen as the exception and the male experience as the norm. While acknowledging that all states may agree on the need to combat practices threatening to women, feminists take exception to the fact that they are not met with the same abhorrence as abuses suffered by men. Charlotte Bunch explains, 'no government determines its policies toward other countries on the basis of their treatment of women, even where aid and trade decisions are said to be based on a country's human rights record'.⁵² While rights theories have evolved since their inception in 1948, from merely civil and political rights, to including social, economic and cultural rights and then incorporating (although not unanimously) rights to self-determination or peoples' rights, these three generations of rights still, according to feminists, fail adequately to take account of female life experiences. To date, equal rights has meant that women can enjoy their rights provided that they act like men and there is no reason why women should be obliged to act in that way.⁵³ In reality too, numerous societal constraints prevent women from working outside the home or from being involved in shaping their communities. In other words they are excluded from those activities that are most valued by their societies, activities that are generally undertaken by men. Even those documents relating specifically to women, such as

the Convention on the Elimination of All Forms of Discrimination Against Women, are seen as 'based on the same limited approach' in that in Article 1 the measure of equality is still a male one, and the focus of the Convention as a whole is on public life, the economy, the law, education and a very limited recognition that oppression within the private sphere contributes extensively to women's inequality.⁵⁴ The gender-neutral language of the Convention in many of its articles falls short of providing adequately for women. The goal is to see women's roles respected and protected regardless of what those roles might be. Given these realities, then, women's rights as human rights need to be listed as a distinct set of rights applicable to the female experience or what has been termed 'women-specific rights'. These rights in addition to addressing violence aimed specifically at women, might include those associated with reproductive choice and childbirth, along with the right to a minimum wage for work within the home or in subsistence farming, and the right to literacy.⁵⁵ The issues of literacy and payment for housework and subsistence farming is important in giving women some financial and social independence, which, as already indicated, is an important determinant of how women will exercise other rights. Paid housework, for example, is often presented as an implausible proposal and yet the study of Iran shows that the state, drawing on classical Islamic scholarship, does in fact support this principle in theory. Feminists would therefore contend that it is only by including such issues in the human rights agenda, that states will be forced to give them due attention.

There are two objections to this agenda. Firstly it is feared that the state may become too powerful if it is allowed or encouraged to intervene in family life and to dictate how that life should be conducted. The counter argument to this is that, merely

because abuses when suffered by women tend to be committed by private actors, this does not absolve the state of responsibility. Indeed, the state has a very strong role to play in combating domestic violence and sexual assault and cannot be seen as blameless when such practices continue within its borders. As Donna Sullivan explains, 'the liberal ideology underlying much of civil and political rights discourse views the law principally as a means of regulating state intervention in private life, generally without acknowledging the role of the state itself in constructing the separation of public from private life'.⁵⁶ The state therefore either creates this separation or at the very least perpetuates it. Moreover family matters are made public concerns when that suits the state's own political interests. For example, the number of children a woman has becomes a public concern when it affects the nation's resources and economic performance to the point that forced sterilisation might become government policy. Similarly 'family values' will be promoted if this will win votes but providing child-care will be ignored if this issue is not an election winner. The result has been the noted lack of women's issues being discussed in the public sphere at times when their presence is not 'required' and their continued subordination within the home because national governments and international actors do not find it politically advantageous to intervene. This shows that governments in fact do not operate with a 'hands-off' or neutral approach at all and the result has had very serious consequences for women. An often-quoted illustration is the different ways in which states view the practice of wife-murder and husband-murder. The Women's Rights Project of Americas Watch observing violence against women in Brazil found that in some regions the defence of honour in the murder of an allegedly unfaithful wife was successful in 80 per cent of cases. Husband-murder on the other hand was treated more seriously.⁵⁷ Although both forms of murder arose from

domestic/ private disputes, the Brazilian judiciary was not acting impartially, but sending out implicit messages to the population; messages which in effect held a man's life to be more valuable than a woman's. It was able to do this because there was no state legislation to prevent it from doing so. We have discussed the problem of honour killings in Iran and the research conducted by the Women's Rights Project indicates that the problem and the tendency of state's to fail to punish murderers appropriately is not unique to Muslim states. These kinds of injustices are specific to women, not only Muslim women, and need to be recognised as such. A nation's failure to provide adequate protection and justice to women suffering violence within their homes must be brought to the forefront of the human rights agenda and given an international platform rather than be left to the discretion of individual states. In fact, reality proves that the so-called private realm is very much the subject of national legislation and that laws relating to marriage, divorce and inheritance play a prominent role in all contemporary nations.

Secondly, in relation to the extension of human rights lists, it is feared that while feminists have struggled to ensure that their demands and concerns are not marginalised, generating a set of women-specific rights may result in precisely this. Organisations and working groups assigned the task of devising and then monitoring such a list are, as past experience has shown, likely to be under-funded and undervalued. Katerina Tomasevski also opposes responding to feminist critiques by extending human rights further because she holds the view that the term 'women's rights' implies that women have some special or different set of rights, which she believes they do not. She continues that 'women's rights' are allowances that societies have made for motherhood, not for their womanhood. Motherhood then, is

only one facet of being a woman and of course not all women are or will become mothers. Thus to extend the current list of rights would be to confine women to the status of mother.⁵⁸ The case of Iran is a good illustration of the restrictions that can be imposed on women when too much emphasis is placed on women's responsibilities and rights in motherhood. The danger is that this comes to be seen as women's only 'proper' role. Dorothy Thomas also wants to show that the exercise of civil and political rights in the public realm helps fuel the battle to assert female personhood that is a driving force behind the entire women's human rights endeavour. She believes that 'women's exercise of rights in this sphere does not simply replicate or 'equal' the male model of political activity, but counter-balances that model with the appearance of a female political actor'.⁵⁹ Women of course have made significant contributions in nationalist movements and in struggles against political oppression. Chile under Pinochet and the fight against apartheid in South Africa are just two examples. Distracting attention from civil and political rights on the basis that they only aid in protecting men also distracts attention from the important contributions made by women in this sphere and assumes incorrectly that women will always behave like men when they are part of that sphere.

Confounding the task further is, of course, the reality that not all women everywhere share the same experiences. Devising a list that is supposed to emanate from these different experiences is a contentious matter even from within the feminist credo. For example it has been pointed out that the public/ private dichotomy that is objected to so strongly is not apparent in all regions of the world: 'In the past international development agencies such as UNDP and FAO and USAID have done much to perpetuate the western stereotype of women's position being in the home and

nurturing her children. This role is in fact alien to most 3rd world women... who must toil in fields or trade in the market place'.⁶⁰ Devising a list of rights for women carries with it the possibility of being charged with the same ethnocentrism and imperialism that the original lists have been faced with, for women perhaps even more than men must operate within specific cultural, religious and social boundaries. Any revisions to the current list then must take into account the different circumstances of women's lives and equally importantly an abandoning of the charge of false-consciousness against those women who claim to be 'happy' in their role within the home as wife, mother or daughter.

The contention with current human rights however does not stop with a desire simply to expand the list or expand interpretations of it. It is also felt that certain rights found within the current body of documents may not only fail to protect women but might actually aid in propagating abuses. Article 12 of the UDHR for example states: 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks'.⁶¹ This right to privacy protects those who maltreat family members and who are most likely to be women. When human rights abuses occur within the family, to where do women turn for redress? Because of the many-layered problems with human rights, some feminists and some human rights theorists writing from outside the feminist perspective argue that the language of rights is not the most appropriate for alleviating the suffering of women. Jeremy Waldron for example argues that because the oppression of women by men permeates the entire culture the idea of rights may be too shallow for feminist concerns.⁶² Another argument advanced is that the language

of rights may simply not be suitable in certain circumstances. For example it has been claimed that in South Asia 'rights discourse is a weak discourse' particularly in the context of women and family relations.⁶³ This suggests that the language of rights does not, according to some, have much rhetorical force in South Asia.

Both these arguments raise important questions about the feminists' plight in aiming to alleviate the subordinate position of women across the globe. If it can be shown that human rights are in fact not the best way of eradicating this subordination, should the feminist abandon her crusade for the reform of human rights? From the feminist perspective however, one needs to ask why the entitlements listed in the current Universal Declaration deserve to be accorded the title *human rights* if clearly they do not offer protection to one half of the world's population and, this being the case, why should human rights be immune from feminist critiques? In short, human rights must be made to live up to their title.

However, rather than a discounting of the feminist battle, Waldron's assertion might be interpreted as a realisation of the limitations of human rights, or at least that one can be an advocate of human rights without being too ambitious about what they can achieve. Human rights do not necessarily need to be seen as an all-encompassing morality and it may be that appeals to a different tool might be more effective in empowering women. It is often pointed out that in some cultures rights are seldom invoked to spur certain actions or to guarantee certain treatment of individuals. To introduce rights into such cultures may then, do more harm than good. Instead it might be more appropriate to remind humans of the duty they have towards others rather than of the rights others have against them. Such bonds of love and duty are

deemed to be what holds families together rather than any right that one family member may hold against another. While feminists may object to the liberal agenda and the primacy of civil and political rights in human rights discourse, they are equally critical of this sort of relativist stance. Feminists view claims of cultural specificity and particularity with suspicion. They ask 'why culture appears to be a defence only in regard to gender roles and the governmental and nongovernmental denials of fundamental rights to women'.⁶⁴ It is pointed out that more states have made more reservations to CEDAW than to any other United Nations documents pertaining to human rights. Thus they would argue that it is not the concept of rights itself that most states object to but a concept of rights that will empower women. If that is the case then women should continue to make human rights more accommodating to their experiences.

However, as I have already shown, assertions of cultural specificity are not only advanced in relation to women in society but have been declared in response to the individualism of human rights and the lack of emphasis on economic rights. Feminists then need to examine these claims rather than to dismiss them merely as misogynist conspiracies. Yet even that feminist writing that does take into consideration the diverse belief systems and cultural practices to which women are affiliated finds it difficult to accept that a tool other than rights might be a more pragmatic means of alleviating the suffering of women. Mahnaz Afkhami, for example, writes that the moral problem of much of humanity, but particularly of women in the developing world, is how to make the transition from law to right while forging and maintaining an identity that is psychologically rewarding and morally acceptable. Appeals to cultural relativity however are not acceptable for Afkhami if

the appeal involves disrespect for the concept of human rights. For Afkhami cultural relativity must presuppose individual human rights.⁶⁵ The assumption here is that only an appeal to rights can promote the cause of women and that cultural practices must operate within that framework. From where does this insistence stem?

The appeal of human rights is their claim to universality in comparison to the dangers of appeals to relativism, some of which have already been listed in the section on Group Rights. Defining culture and outlining the facets of the culture that are to be preserved has become the privilege of those occupying powerful positions. Women rarely occupy such positions within the governments that supposedly represent them. As a result not only do they suffer under repressive political regimes in the same way as male citizens, but they also suffer under patriarchal structures in their more immediate communities and homes. As already stated, feminists will acknowledge that the starting point for an adequate theory of human rights needs to be women's actual experiences. From this it must follow that since women's experiences alter dramatically from one place to another, this must also be taken into consideration. A radical point of departure is the realisation that a tool other than rights might need to be followed or devised to aid women. This may be because of the culture that is hostile to rights discourse or because the women of that culture believe there are other means available to them.

Not all alternatives to rights need be specific to a particular culture. Fiona Robinson promotes the idea of a care-ethic, which she believes 'may be used more effectively to define and secure that which we value for human beings'.⁶⁶ The advantage of caring over rights is that, while claiming 'my rights' is necessarily based on putting oneself

first, caring identifies the potential moral value located in relationships and values a focusing of attention and sustained effort on the promotion of good relations, whether it is in the context of the family, the community, the nation, or the globe.⁶⁷ In the context of improving the lot of women, this proposition is a significant one. For while human rights activists might acknowledge that work needs to be initiated from a grassroots level in order to empower women and to raise an awareness of their needs, they must also acknowledge that women in turn may not wish to enforce their 'rights' against their fathers, husbands or community elders. The idea of not seeing oneself as the possessor of rights against one's relatives and community is not exclusive to women in the developing world. Carol Gilligan's well known study on women in the US found that they were more likely to see themselves as part of a community to which they had responsibilities, rather than in contradistinction to a society against which they had rights.⁶⁸ I am not proposing here that replacing human rights thinking with the ethics of care and responsibility is the way forward for women. However, the tendency of feminist solutions to date to focus on the need to educate women about their rights has not and may not be enough to secure women those rights. Human rights need not be abandoned, but they may need to be seen as one moral scheme operating amongst many in contemporary communities. This is because promoting the cause of women, perhaps even more than promoting the cause of men, involves working on a number of different levels. There is the international level which must be made aware of the very specific violations suffered by women such as domestic abuse, rape and honour killings and the need to extend human rights documents to provide for these wrongs. There is, of course, the governmental level, which must be continuously lobbied and reprimanded for crimes against women, such as the continuous rape of women by Indian police officers in Kashmir⁶⁹ or the

atrocities carried out by Serbian soldiers against women in Bosnia⁷⁰, and for governments' refusal to provide appropriately for women's divorce and marriage arrangements. But there is also the grassroots level because experience has shown that, even when legislation to protect women is put in place, compliance does not always follow. Many examples of this gap between legislation and practice have been given in the study on Iran and Pakistan. In Ethiopia too, despite polygamy being outlawed, it is still practised by both Christians and Muslims and in India, despite the prohibition of dowries, women continue to be murdered for failing to bring large dowries to their marital homes. Katarina Tomasevski makes an important observation when she notes that available studies tend to agree that women did enjoy a broad spectrum of rights and freedom earlier in history and that it may be that *retrogression* rather than progress has taken place.⁷¹ The way forward could be to educate entire communities of this past in which freedoms and rights were enjoyed not because international treaties demanded them but because they were an integral part of the indigenous culture. It may be that such rights were sustained by a strong sense of duty and obligation rather than by an emphasis upon rights themselves. In such cultures an appeal to the duty might then prove more effective than to the right even though the desired end result will be the same.

It must be stressed that this strategy of education does not mean that feminists should abandon their mission to see a broader list of rights embodied at international level. This is simply because human rights documents should be available to those women who do wish to claim their rights against state representatives or private actors. For human rights documents to be of use to women they need to take account of the types of abuses that women suffer. Feminists in their crusade however, must be aware of

and sensitive to the diverse experiences of women from different religious, ethnic, national and cultural backgrounds.

Religion and Human Rights

Of the three areas of criticism regarding human rights examined in this Chapter, the relationship between human rights and religion is undoubtedly the most problematic. The purpose of this section is to show that Islam is not the only religion that has been subjected to criticism by human rights advocates. I will argue that simply because the relationship between religion and human rights is a contentious one this is no reason for human rights proponents to ignore the concerns of religious groups. This is because so long as human rights is seen as a secular theory that is insensitive to religious groups, religious women will feel unable to appeal to that theory. Feminists and proponents of group rights both lobby for human rights to be extended to take into account the realities of their lives. Religions however, tend to be comprehensive systems of thought and ways of life in themselves and many will claim that they do not need human rights as a theory to govern human relations; that their faith already provides this. The hostility is reciprocal and I will begin by looking at the concerns of human rights regarding religion. I will then discuss the criticisms religions direct at human rights, as these rights are currently understood, before going on to look at specific practices and ideas which illustrate the challenging relationship between religion and human rights theory.

Firstly, human rights theorists object to the specific practices emanating from a religion because they represent violations of various human rights already agreed

upon. For example female genital mutilation or the practice of *suti* are seen as forms of cruel, inhuman and degrading treatment. Some religions are also seen as violating the human being's right to equality through the way in which they treat women and those outside of their faith.

Secondly, proponents of human rights present a more general critical attitude towards religion. It is often argued that secularism should be permitted to solve the problem of religion. If religious representatives could only keep their religion to themselves as a private affair, then human rights could flourish as a theory that governs relations between people of different races, cultures and faiths justly and equitably.⁷² Instead religion insists on getting in the way. Every religion feels it has the answers to human suffering and repression and this causes tension and conflict between people of different faiths who advocate different means of action and different reasons for it. Secular human rights theories feel that indeed everyone should be allowed to follow the religion of their choice, but not take control of the political agenda.⁷³ Thirdly, religion is seen as a restrictive force, as one that aims to exercise social control, and therefore as antithetical to human rights, which is intended to liberate humans.

Human rights aim to inform religions of the error of their ways. Certain practices, such as those mentioned above, need to be discontinued and the idea that one religion should dictate to the world how to organise its legal and political institutions is simply unacceptable in the modern world. The globe cannot be expected to act according to God's will because all the people of the globe simply do not believe in the same god and some do not believe in any god.

Religions respond in a number of ways. Firstly they will point out that the practices condemned by human rights are not always sanctioned by religion but are often distortions of it. An example of this is the incorrect association of Islam with female genital mutilation. In other cases a proper understanding of the rationale behind a practice would show that in fact human rights are not being violated. Secondly, Max Stackhouse points out, the belief in a divine being in whose image all humans are created naturally leads to the idea that each person by virtue of being human must be accorded a dignity and respect which precludes violation of a human's person, relationships and convictions.⁷⁴ Accordingly religions will want to argue that they too have a strong commitment to human rights and to ending suffering, repression and abuse of power. Thirdly religions tend to say that where they do deviate from human rights norms, it is not the place of the human rights theorist to interfere, the faith is capable of dealing with its own problems, if and when these arise. Moreover they might argue that such a practice is only a human rights violation if one subscribes to that version of human rights enshrined in the International Bill of Human Rights and that that is a list of rights that has been devised through negotiations between state actors motivated by political rather than religious considerations. In this way the Bill might represent a secular theory of human rights for religious peoples. Finally religions will ask why it is that, when tensions do arise, it is religions that are expected to reform rather than the theory of human rights. In general they feel that they are expected to bow to a theory that seems intent on marginalizing and deriding their viewpoints.

Despite the rhetoric that passes between religious representatives and human rights advocates, one must acknowledge that religious groups struggle internally to face up

to the issues that are censured by human rights. Even so, religious individuals are not about to give up their beliefs for human rights and by the same token human rights protagonists are not going to abandon their theory to endorse religions wholeheartedly. For a theory of human rights to be acceptable to religious representatives it has to find legitimacy within the religion itself, rather than by claiming merely that this is the way the contemporary world must operate. How can this be achieved? Most religions today are concerned with propagating their message and recruiting new followers. Even when they are not, they are certainly aware that human rights have become a standard by which other systems, political regimes, ideologies and faiths are judged. Thus, any religion that is seen as extolling practices and ideas that run counter to human rights will have a public relations problem.

Human rights thinking can respond to this reality in two ways. It can publicise the facets of a religion that it does not agree with, discredit the faith concerned and hope this will pressurise the faith to amend its dogma. This however may result only in alienating the followers of that faith, in whose eyes human rights might in turn come to be discredited. It will not do the theory of human rights any justice if large proportions of humanity feel that it does not apply to them. The other response could be for human rights proponents to attempt to understand the practices and ideas that they disagree with, discover how much support these enjoy within the faith, the extent to which they are being followed accurately and how far there are any victims as a result of these practices, and what their wishes are. It seems that for human rights to play a meaningful role in society today it needs to follow the latter of these options.

From the outset it is important to acknowledge that human rights proponents may not endorse all the practices or ideas that they study. It is naïve to think that this could be the case and some writers are guilty of making the mistake of assuming and suggesting that this is possible. It is not always fruitful to downplay the tensions between religion and current understandings of human rights for the sake of political correctness or liberalism. The aim of this section is to provide a comprehensive analysis of the relationship between religion and human rights with all its potential and problems. It will begin by looking at the ways in which religion can be used actually to promote the cause of human rights. It will then look at practices that, although at first sight condemnable in the eyes of human rights, can be made acceptable with some understanding and concessions on both sides. Next, I will draw attention to an area where human rights might actually be forced to concede to the thinking of religious groups. The section will then discuss the most problematic of issues: when a religious tenet cannot possibly be acceptable to human rights and where the faith will not or cannot compromise. The section will end on a more optimistic note, with a look at the way in which religions can evolve over time, naturally and internally to accept certain human rights edicts, that at one point in history might have seemed utterly unacceptable to the followers of that faith. By using the following examples my aim is to show that secular human rights proponents must reassess their attitude to religious groups and that only by that reassessment can a more meaningful dialogue with Muslims be entered into. The shape and purpose of that dialogue will be discussed in Chapter 5.

Religion and Human Rights: Potential Allies

Religions are often criticised for instilling a certain apathy and passivity in their followers. The idea of accepting one's current situation as God's will is in some faiths seen as a sign of piety. The more anguish and distress one suffers in this life the greater the reward will be in the next life. Hardship is God's way of testing the fidelity and steadfastness of His followers. Human rights, on the other hand, aim to equip human beings to fight hardship in this world when the source of that hardship can be clearly identified. When a government confiscates the property of its citizens or persecutes certain individuals because of their sex or ethnicity this should not be tolerated. Religions are often reprimanded because they use their potency to exercise social control rather than to propagate freedom and liberty. How justified is this criticism? I will take Christianity as an example: that great defender of 'offering the other cheek'. This concept is certainly to be found in Christian Scripture: Jesus in the Sermon on the Mount is reported to have said in Matthew 5: 39-40, 'if any one strikes you on the right cheek, turn to him the other also; and if anyone would sue you and take your coat, let him have your cloak as well'. The Christian is being advised to humbly accept whatever treatment she receives and that to do so is an act of godliness. But what is to be made of the statement of Jesus in Matthew 10:35 which reads, 'I have come to set a man against his father and a daughter against her mother, and a daughter-in-law against her mother-in-law?' This verse can be interpreted to mean that in the pursuit of justice and truth, deviance from community and even familial norms is not only acceptable but also inevitable. The answer is that different Christian leaders at different points in history to justify and encourage certain actions have used both passages and the principles they promote. It was a Christian cleric, Trevor Huddleston, who in Britain initiated the drive to boycott South African

produce during the apartheid regime. The aim was to pressurise the government there into ending its unacceptable treatment of its black population. Similarly it was a Catholic cleric, Archbishop Oscar Romero, who was assassinated during the mass in 1980 in El Salvador for his active condemnation of the repressive military regime there.⁷⁵ It would be misleading to claim that such pro-active measures are carried out with the unquestioning approval of all within the hierarchies of organised religion. Pope John Paul II on a visit to El Salvador in 1980 while condemning the social injustice perpetrated by the existing regime also condemned the military activities of the guerrillas; activities that were supported by Romero. Similarly in 1983, while in Nicaragua the Pope asked the priests not to engage in political activities while at the same time admonishing foreign ideologies. Benavides comments that 'the equation of a given social order with 'reality' becomes even more apparent in the Pope's condemnation of 'foreign ideologies' because this obviously implies that the prevalent ideology is not such, but rather the way things ought to be: the natural order of things'.⁷⁶ This is precisely the ethos that human rights wishes to repudiate. The human rights advocate cannot accept that human beings should be expected to live under unrepresentative governments with an absence of liberties and rights.

One cannot escape the reality that religion has been used to achieve and/ or maintain undesirable ends. The fact that it was the words of the leader of a major Christian denomination that seemed to urge followers to accept the *status quo* means that this ethos cannot be dismissed as a marginal one within the Christian faith. Marty Martin refers to such contradictory voices within one faith as 'disparity of understandings'.⁷⁷ This disparity is more likely to be seen as a problem in human rights dialogue than an asset. The reasons for this are that there is the dilemma of whose voice should be

heeded, and in the end there will be at least one disgruntled group. But also one cannot escape the reality that religion provides an important and often crucial moral voice and mobilising potential that cannot be replaced by secular ideologies. It seems that the potential could be used in a very positive way to further the cause of human rights and that, in entering dialogue with Christian leaders, it might be more fruitful to remind them of the Biblical verses which point to the duty of Christians to strive against injustice rather than accept it or 'offer the other cheek'. The 'disparity of understandings' can show that there is more than one possible outcome in any given situation and moreover that religious scripture sanctions all these different outcomes. The appeal to challenge repressive authority can only be aided by the fact that many within the Christian faith already adhere to the concept and thus do not find it entirely alien to their faith. Moreover one cannot assume that influence on religious edicts is only carried out from top to bottom of the religious hierarchy. It may well be that Archbishops and Cardinals are able to influence their superiors within the church and provide convincing theological reasons for them to change their views.

Indeed history has shown that the democratic process has been used for undesirable ends and yet one would not argue that a commitment to democracy should be abandoned because of this. The religious are entirely justified in asking why their beliefs are unduly treated with suspicion in this way.

Judaism and Shunning: Room for Compromise

The practice of shunning within Judaism provides an example of where both human rights and religion might be able to concede certain points to the other and work

together to ensure just treatment of individuals in the Jewish community. I will begin by providing some background to the process of shunning. A Jew can be shunned for a number of offences including, denigrating a community scholar or agent of the Jewish court while he is carrying out his work, mocking one of the rules of Jewish law, desecrating God's name or refusing to accept the jurisdiction of the Jewish court system. When a Jew is shunned she is refused access to the Synagogue, she cannot participate in group prayers and religious festivals and other members in the community are prohibited from offering her any hospitality or allowing her to enter their homes. Again it would seem the restrictive facet of religion is being exemplified. It seems a heavy price to pay for questioning authority. Mocking government officials and state legislation is in many ways a common feature of modern societies and is the subject of satirical newspaper articles, films and television shows. This is in fact seen as an important means of bringing attention to the shortcomings of current leaders and their actions not as punishable offences.

The Jewish defence might be that the price is understood and whoever knowingly proceeds to act in this manner must take the consequences. More than this, it is felt that shunning is not so much a punishment but a means of protecting the group from individuals whose aim is only to cause disruption, disunity and confusion. For it is clear that by behaving in the manner that they do, they do not respect and revere the Jewish faith. Michael Broyde defends the Jewish position by claiming that religious groups have a right to avoid the internal confusion of allowing multiple voices to speak in the name of its faith.⁷⁸ Going further than this, it is important to remember that unlike state legislation, Jewish laws are believed to be divinely ordained and Jewish leaders must be accorded special respect because they are upholding laws

which no human has the power to amend. State rules and regulations are never flawless, but for the Jew the laws of her faith can never be seen as flawed because God has decreed them. The community cannot possibly welcome individuals who fail to see this by mocking and ridiculing celestial laws and the upholders of them. Circumstance and incomplete understanding limit human actions and decisions, but this is hardly the case with the Creator.

All these defences seem acceptable in theory and it is true that all groups, not only religious communities, are governed by rules which at times might seem bizarre to the outsider, but cannot always be interfered with when humans consciously enter into these situations. The human rights concern however is with the victim, in this scenario, the shunned. Contemporary cases show that shunning is not always executed with celestial motives or with sole consideration for the interests of the community. In one recent case in America a member of the Chasidic community had been shunned for suing an educational institution of his community, alleging corruption on part of the institution against the government and various students. To outside observers the educational institute was exploiting its position and was guilty of a very serious crime that was rightly brought to the attention of the courts. In turn the religious leader who shunned the individual had misused his power and should not be impervious to censure. In its defence the Chasidic community might feel that this individual was bringing unwelcome attention to the dealings of a few of its members, bringing undue shame and suspicion upon the community. However, the exploitation of one's power could well be exercised by any number of individuals including a company boss, a trade union leader or head of a voluntary organisation. No one

would claim that an appeal to human rights is not appropriate in these situations, so why should religious leaders be immune from that appeal?

Human rights must accept that religions, for the reasons outlined above, are different from other bonds that humans enter into or experience. When a human rights violation is carried out within a religious community its handling requires special tact and understanding. But this does not mean that the human rights proponent must recoil from rectifying miscarriages of justice even if it is a religious leader that is responsible for the miscarriage. When a Jew is wrongfully shunned, she is denied Articles 18 and 27 of the UDHR, which give her the rights to freedom of religion as part of a community, to manifest her religion or belief in teaching, practice worship and observance and to participate in the cultural life of the community.⁷⁹ Jews might argue that in particular cases this is justifiable and the human rights theorist might concede this point. A human rights theory might thus be able to regard certain practices, normally seen as contrary to human rights, as acceptable because of the widespread support those practices enjoy in their respective communities. Before conceding this however, it would need to be ascertained that individuals accept and support these practices voluntarily and not as a result of any coercion or pressure from community leaders or members.

The next step however is for both parties to agree upon the difference between rightful shunning and wrongful shunning. Shunning is acceptable when an individual fails to respect divine laws and noble leaders, it is unacceptable when an individual questions corrupt leadership and seeks to rectify it. It can be assumed that Jews themselves do not wish blindly to follow leaders who do not uphold their interests;

they might wish to build internal mechanisms for dealing with this, and if these are adequate then the procedure of shunning can be made acceptable to human rights theories. If internal mechanisms fail the victim, then the Jewish community must allow her to seek redress from elsewhere. Returning to the original case, the individual taking his case to a national court, wished to gain a reversal of the shunning, to be welcomed back to the community. In a physical sense courts might be able to achieve this, by insisting that the plaintiff be given access to the Synagogue. But to be truly welcomed requires a psychological shift in the community and this is something human rights legislation can achieve only through a long process of dialogue and education and reassurances that it too will act in the interests of the community and all its constituent members.

Human Duties, Human Rights

The three world monotheistic faiths place a strong emphasis on duties that individuals have to their communities and to God. Human rights theorists assert that rights come before duties and duties are derived from these, not *vice-versa*. The idea that duties derive from rights may be unacceptable to Christians, Jews or Muslims since it may suggest that it is not God that is the source of our duties but right-holding individuals. Islam is a useful example in illustrating this tension. Advocates of universal human rights view Islam as a threat to their theory, which places the individual at the epicentre of human interaction. Human rights theorists are concerned with the Islamic teachings that command humans to bear duties and responsibilities and to submit to the one God.

In Islam, it has been said, 'human rights are a function of human obligations and not their antecedent'.⁸⁰ For Dalacoura, while a right does imply a duty, 'what is of crucial importance to the idea of human rights is that rights exist independently of and prior to its correlative duty'.⁸¹ Following this line of thinking, what is meant by a right is that the claim that arises through the non-performance of a duty is justified on the grounds that the duty is owed to the individual in his own person.⁸² Thus it would seem Islamic teachings do not tally with the ethos of human rights.

It must be asked however, what is the purpose of human rights? What role do human rights play in the contemporary political arena? Human rights are concerned with abuses of power, and need to be institutionalised in a legal context to effectively protect individuals. When the emphasis is laid on human responsibilities, when it is believed that before humans possess rights they bear responsibilities, it is argued that adequate protective mechanisms will not be provided for individuals. Sceptical critics of the human duties scheme may claim that this shift of emphasis is all too convenient for repressive regimes that wish to see its citizens as the bearers of duties to the collectivity rather than as the holders of legal rights against the state. However, Bassam Tibi has observed correctly that, while 'undemocratic regimes in the Middle East utilise the concept of duties, they did not invent it. It is an Islamic concept as old as Islam itself and a part and parcel of the Islamic world view shared by the majority of Muslims'.⁸³ Thus one cannot simply discard the emphasis on human responsibilities as an opportune political manoeuvre. Instead, we need to look at whether this emphasis can be made acceptable to a theory of human rights.

That human duties and their corresponding rights are conferred by God in the Islamic scheme is yet another problem area closely related to the first one. In Islamic thought while duties are owed to God and God bestows rights, both rights and duties are envisaged as providing humans with the necessary mechanisms to protect them in the face of adversity and repression. In its early stages, *Qur'anic* revelation encouraged Muslims to migrate in the name of Islam, literally to distance themselves from persecution. In later revelations the Muslim is permitted to rise against such persecution. The following *Qur'anic* verse asks Muslims '*And how could you refuse to fight in the cause of God and of the utterly helpless men and women and children...*' (4:75). In relation to this, an often-quoted saying of the Prophet Muhammad reads, 'whoever of you sees something objectionable then let him change it with his hand, and if he is not able then with his tongue, and if he is not able then with his heart and that is the weakest of faith'.⁸⁴ For the Muslim subordinating one's will to God, demands constructive action and not a fatalistic acceptance of life in this world. Barazangi explains that in Islam the divine criterion by which every individual is judged is how well balanced he or she has discharged the responsibilities toward God *and* those toward people.⁸⁵ In providing for the poor, saving someone's life, protecting another's property or defending the oppressed from injustice, the Muslim is fulfilling her responsibility to God. But the net result of this action, regardless of the intention behind it, is that the individual's life, liberty and property will be respected if Muslims wish to follow Islamic commandments. The *Qur'an* and *Sunna* also make known the repercussions for the individual who violates these. The repercussions are this worldly and otherworldly.

Dalacoura finds this inadequate. She argues that a law that has the purpose of serving God becomes intolerant, partly because those who execute the law cannot be held accountable. The law must have the purpose of serving mankind, and therefore be adaptable to its needs.⁸⁶ There are two points being made here: that of the purpose of the law and that of accountability. Firstly, it is possible that the law has the purpose and the result of serving both mankind and God. Muslims throughout the world view the *Qur'an* and *Sunna* as the sources for precisely such a law. In viewing God as the Creator of the earth, the Omnipotent and Omniscient, the *Qur'an* is seen as an instruction manual, revealed for the benefit of God's creation. It is therefore the laws laid out in the *Qur'an* that require examination rather than simply the very idea that the *Qur'an* is the literal and final word of God.

On the issue of accountability, Muslim scholars, those responsible for extracting legal rulings from the Islamic sources are required to explain their methodology and edicts in detail, when requested to do so by any Muslim. 'According to moral teaching and the traditional conventions, if you contact a *faqih* for information about the sources of *Hadith* or a Koranic verse, he must assist you. Knowledge is to be shared, according to the promise of the Prophet himself.'⁸⁷

Duties that generate Rights

So far I have discussed the purpose of human rights and how Islamic teaching foresees repression in the same way that human rights theory does. But this is only half the problem; we need to ask if these duties can in fact generate rights? Charvet writes, 'we should think of a right as a valid claim to some positive or negative

treatment by another. Rights in this sense arise in relation to a moral or legal order and correlate with duties that are established by the same order. We should distinguish between the idea of a valid claim constituted by such an order and the ground for recognising the order as binding on one. This ground may be God's will... The rights and duties of human beings as such, then, stem from this source and there is no reason to deny the title of human rights to valid claims that are authorised in this way'.⁸⁸ The *Qur'an* itself explains the relationship between rights and duties:

'O mankind! Be conscious of your Sustainer, who has created you out of one living entity, and out of it created its mate, and out of the two spread abroad a multitude of men and women. And remain conscious of your God, in whose name you demand (your rights) from one another, and of those ties of kinship...' (4:1).

Monshipuri has suggested that human rights in this context can be realised only insofar as obligations owed to God have been fulfilled.⁸⁹ Thus defined human rights in Islam are conditional upon certain behaviour rather than accorded unconditionally to all humans. This is a misleading assertion because the extent to which the individual has fulfilled her duties to God can never be measured by a third human authority. It does not follow from this, that no rights are then to be accorded, on the contrary it implies that no rights can be withheld on such grounds, since the pious Muslim, we are told throughout the *Qur'an* and *Hadith* fulfils her duties to God in humility and modesty, away from public adulation. The *Qur'an* chastises *'those who want only to be seen and praised'*. (107:6). Only God has knowledge of who has pleased or displeased Him.⁹⁰ If anything Islamic justification for human rights

counteracts the undermining of religious beliefs, that one sees in secular philosophy; beliefs that previously gave sanctity to human existence.⁹¹

That anything other than the individual should constitute the value-creating source of the valid claim remains extremely problematic for secular writers. This is inspired by Kantian theory that views the individual as an end in herself. Again I would suggest that whether the individual is treated as an end in herself or as a means to attaining heaven in a perceived afterlife, so long as safeguards are available against abuses of power, then the role of human rights has been fulfilled. Kantian ethics also 'endorse the duty of a person as a rational being to universalise her maxims of action so that they constitute universal laws that every other rational being could will also'.⁹² On this point Muslims would be in agreement. An authentic *Hadith* relating to the Prophet tells Muslims, 'None of you believes until he loves for his brother what he loves for himself'. The commentary on this saying explains that it should be interpreted in terms of the universality of brotherhood to the extent of encompassing non-Muslims and Muslims.⁹³ This principle of reciprocity is a strong and convincing one upon which to build a theory of human rights.

Fred Halliday criticises this practice of quoting from the *Qur'an* and *Hadith* collections in order to draft an Islamic human rights network on the basis that: 'the core, sacred, texts of Islam have no doctrine of rights and the imposition onto odd quotes from the *Qur'an* and the *Hadith* of a modern human rights discourse is an ahistorical and artificial, if politically attractive, venture... Those elements that indicate a different direction, such as the *Qur'anic* line that there is no compulsion in religion are quite inadequate to found a human rights doctrine - flimsy at best, and

easily overridden by other more authoritarian, elements'.⁹⁴ Halliday is expressing two concerns: whether Islam advocates rights or not, and precisely what these rights ought to be. It is the latter point that divides Muslim scholars rather than the former. The former concern, I believe, can and needs to be surrendered, in order to move on to a meaningful discussion of how to improve the lives of individuals across the Muslim world. Indeed orthodox and modern Muslim scholars are agreed that every individual is owed at the very least, protection of her life, religion, lineage, intellect and property. These rights of the Muslim must be protected by legal measures.⁹⁵ On the specific area of women's rights it is notable that following the Beijing Conference on Women, a manual was devised with the aim of facilitating the transmission of the universal human rights concepts as inscribed in the major international human rights documents to grassroots populations in Muslim societies. The manual's author wrote that it was based on the premise that there were no contradictions between universal human rights and the spirit of Islam.⁹⁶ The fact that so much ink has been spilt on formulating Islamic human rights documents, shows that the issue for Muslims is not whether Islam grants human beings rights, rather it is the age old problem of what rights human beings ought to have.

Islam of course is not alone in its placing of a divine being as the centre of human motivation for action neither is it alone in its emphasis on human duties. Robert Cover explains that from a Jewish perspective 'an entitlement without an obligation is a sad almost pathetic thing, that to be one who acts out of obligation is the closest thing there is to a Jewish definition of completion as a person within the community'.⁹⁷

These faiths nonetheless assert that human beings ought to be the claimants of rights and that this is an important way of keeping political power in check. They will however refuse to stop reminding others of the duties they have to one another and the importance of seeing human relationships in terms of humans owing one another certain tangible and intangible resources: friendship, charity, material and social support. There is no reason why human rights proponents ought not accept this assertion and move on to a more meaningful dialogue concerning the list of rights, with these faiths.

No Room For Compromise

A further feature that dogs the debate between religion and human rights is the way in which religions view individuals of other faiths. Thus human rights might be able to accommodate the idea that people within a faith wish to be governed by certain rules that do not conform with current understandings of human rights. But how can the theory of human rights cope with a practice that inflicts certain treatment on human beings simply because they are of 'the other' faith? Judaism will serve as an example here. Judaism is not concerned in the same way as are Christianity and Islam with converting people and this is extremely significant in relation to their treatment of non-Jews. On the one hand, certain Jewish scriptures could be used to claim that when Jews speak of human rights, this extends, as the phrase rightly should, to all human beings regardless of their faith. The following Talmudic passage has been quoted to illustrate the Jewish commitment to treating every human being with justice and humanity. A Gentile asks Hillel the Elder to 'convert me to Judaism on the condition that you teach me the entire Torah while I stand on one foot'. To this

request Hillel answers 'what is hateful to you do not do to your fellow... This is the entire Torah and the rest is commentary'. Novak by quoting this passage is drawing attention to the principle of reciprocity that is common to human rights thought and to Judaism.⁹⁸

However, in the contemporary political arena Judaism has come to represent not only a faith or a way of life but also a race and a nationality. The Mizrahi sect of Judaism, for example, views the settlement of the land of Israel to be a religious duty and has welcomed the creation of the Israeli state as 'a religious advance of the highest order'.⁹⁹ The implications of this duty for the Palestinian people since 1947 have been well documented by human rights and United Nations agencies. In short, for the duty to be fulfilled the existing non-Jewish residents had to be moved out and this in itself has constituted a very serious violation of human rights. Today migration to Israel is restricted on grounds of religion and, while the extent to which this alone contravenes Article 2 of the UDHR is questionable, there are serious consequences when one looks at the implications for non-Jews as compared with Jews living within the Israeli state. Consider the case of an Arab/ Israeli who wishes to marry a non-Israeli and have her spouse join her in Jerusalem. She will automatically be denied this right, while a Jewish citizen will have very little difficulty in claiming the same right. The Jew is guaranteed citizenship through the Law of Return, enacted in 1950, which grants every Jew who expresses his desire to settle in Israel the right to do so. This of course excludes any non-Jews from the right to enter the state of Israel. Indeed the question of 'who is a Jew' has been debated strongly in Israel since its creation and has led to the conclusion that religious and ethnic-national components of Judaism are so intimately interwoven as to be indissoluble.¹⁰⁰ Consecutive

religious and political leaders in Israel have supported this view of Judaism as faith, nationality and ethnicity. The reasons for this stance may of course be political rather than religious and this is an issue for the scholar of Judaism to study in more detail than this thesis allows. But it is difficult if not impossible to see how such a stance could be tolerated by a theory of human rights. There is also no indication that this practice or belief is likely to be amended and that residency rights in Israel will be extended to ensure fair treatment of Arabs in Israel.

Where can one go from this deadlock? The Jewish community in Israel may prefer to continue ignoring human rights criticism and continue to pursue a policy that it may see as essential to the preservation of the group. This is only one example of conflicts that may arise between human rights and religion. But the human rights proponent must equally be aware of the plight of the victim in such circumstances. Unlike the process of shunning, the non-Jew has in no way consented to living by the regulations of Jewish law and she must be able to continue to appeal to the language of human rights in order to rectify her situation. Human rights theories while accommodating religious demands must acknowledge the stark difference between respecting the internal practices of a community despite not entirely understanding or agreeing with them and allowing one community systematically to repress and discriminate against another. Nor should writers on human rights shy away from analysing and evaluating the undesirability of such practices. Such practices call for a strengthening rather than a diluting of the human rights agenda.

Achieving The Impossible?

The above section has highlighted a contentious issue within the Jewish faith, but this does not mean that the human rights advocate should despair of such situations.

There is always the possibility of reform and amendment within religions to the point that they come to accept ideas that at one time might have seemed inconceivable. The stance of Christianity on religious toleration is one such example. It was not until 1965 that Vatican II accepted the principle of religious liberty, and even then this was seen primarily as an article of peace rather than of faith. Religious liberty had to be accepted in order to prevent a greater evil. This acceptance came earlier among Protestant thinkers who by the seventeenth century had moved to seeing religious liberty as compatible with and even based on their faith and theology. The differing opinions on religious liberty have been based on two different Biblical themes. The first extolling liberty emanates from the Gospels where the view is put forward both of the freedom of God in giving the gift of salvation and the freedom of the disciple in responding. However, certain New Testament passages tell of God using direct divine intervention to convert Paul, and Augustine maintained that, if the state could prevent people killing themselves physically, it could also prevent them from doing so spiritually. Rejecting the Christian message was thus akin to spiritual death and the state by forcing people to convert was preventing this. Even John Locke, often heralded as the fore-father of human rights, believed that while all individuals are created rational beings anyone 'who would pass for a rational creature' must believe in God. Failure to do so for Locke meant that the individual had not fulfilled her 'rational nature'.¹⁰¹ Hence he did not extend toleration to atheists. Yet, despite the discourse that has taken place on this subject, Christianity seldom rejects the right of religious liberty today. The idea of forcing people to follow a particular religion is no

longer acceptable either in the political arena or within contemporary mainstream Christianity. This has been a slow and often tumultuous progression from the fourteenth century belief that, if individuals were free to believe what they liked, society would collapse.¹⁰²

Indeed, originally the church strongly rejected the very idea of human rights, which was associated with an opposition to religion in general and to Christianity in particular.¹⁰³ The debate has certainly moved on from here to a discussion of which rights it is precisely that human beings have. But the case of Christianity and religious toleration shows how religions can and do evolve by looking more deeply into their own scriptures and applying them to contemporary situations.

A number of issues and lessons have emerged from the above discussion. Firstly one cannot compile any grand theory to govern the way in which human rights should relate to diverse religions; each case needs to be dealt with as it arises. George Carey is right to point out that tolerance becomes more difficult when the 'other' group appears 'strange'.¹⁰⁴ The first step is for the compilers of human rights documents to be educated about these different religions on more than a superficial level. There is not always however, as some religions claim, an inextricable link between faith and human rights thinking. Equally important however is the fact that faith and the human rights doctrine are not always and do not have to be diametrically opposed. The two can be extremely useful to one another as Scott Thomas explains; 'what has to be remembered is that there is a close relationship between religious freedom and political freedom, and religious toleration often has been the beginning of political toleration, civil society, and democracy'.¹⁰⁵ It is also the case, as has been contended

throughout this Chapter, that human rights is not a theory set in stone; it has evolved tremendously from its inception and continues to do so as more and more peoples claim the theory for themselves and see it as relevant to improving the circumstances of their lives. Thus it needs to remain open to the criticisms of all groups, including religious ones. Human rights however ultimately should not shy away from standing firm on fundamental issues of equality and from criticising practices that are worthy of criticism and attempting to change these firstly by appealing to influential individuals within the religious group and, if this fails, extending external pressure in order to protect the victims of such practices.

In conclusion however, I would contend that it is equally important that religions too stand firm on their beliefs. For religions have historically provided a crucial means of keeping governments in check and of bringing them to account when the need arises. Littel argues that totalitarianism is made possible by low-grade religion, which simply blesses the prevailing values in the dominant society.¹⁰⁶ Human rights theories have benefited a great deal from the criticisms of feminist movements and from those who feel economic and social rights are crucial to the development of the individual along with civil and political rights. Religions are right to feel disgruntled by a secular society in which their perceptions of the world are often dismissed as emanating from irrational superstitions. For human rights to be a truly encompassing theory, it must not fall into the trap that so many other contemporary legal and political institutions have.

Human Rights: Beyond Repair?

The theory of human rights it seems is failing the citizens of poorer states, the citizens of those states wishing to hold on to a strong sense of community, female citizens and citizens holding strong religious beliefs. Human rights norms, it seems, have been developed and enshrined at international level to protect affluent, individualistic, secular men. What then, can the theory of human rights offer Muslim women living in the developing world whose only means of support are their community and family? This I will discuss in more detail in the next Chapter. Here however I will argue that, despite the many shortcomings of the doctrine, those with grievances against it must continue in their struggle to amend it rather than abandon it. This is because, while it may not be the only doctrine that can inspire action, for the meantime it is the only doctrine that can inspire action on an international scale at a political level. To accuse another human of neglecting her duties does not hold the same political force as accusing her of violating another individual's human right. If one can prove convincingly that a certain act is a human rights violation, it becomes an abhorrent act, one that is difficult if not impossible to justify. As such it is necessary that the scope of what is unjustifiable and what can demand action from fellow human beings be broadened to include more than the experiences envisaged by the original drafters of the UDHR over fifty years ago. Human beings, as they did fifty years ago, still need protection from those who wield power. However, the nature of that power has altered dramatically, as has the list of people permitted to hold it. It is only by listening to the subjects of this power, that the theory of human rights can be a meaningful tool of resistance to it.

Women, Islam and Human Rights

Thus far it has been established that in the area of women's rights certain interpretations of Islamic sources can indeed be used to uphold what is to be found in current human rights documents. Moreover not all of these interpretations are on the fringe of current Islamic discourse or require a complete disregard for and deviation from classical, orthodox scholarship. We saw for example how many of the interpretations of words and phrases often cited to indicate that men have been given the task of controlling women's behaviour are actually untenable when a more complete examination of the *Qur'an* is undertaken. However, Chapters 2 and 3 also showed how these alternative interpretations are not utilised by national governments. In fact, it has been established that these governments will often quite readily deviate from classical scholarship and explicit *Qur'anic* instructions, but only when this facilitates a more repressive policy towards women. In addition, Chapter 4 outlined a number of areas in which human rights documents are simply not sufficient for addressing the problems facing Muslim women. What is needed is a broader list of human rights and deeper interpretations of those already acknowledged.

In this, the final Chapter of the thesis, it is necessary to discuss what implications all these findings have for, Islam as a liberating force for women and for the relationship between Islam and human rights. This Chapter will look at what those Muslims who are convinced of Islam's ability to address the needs of Muslim women must do in order to see that that ability is realised to its full potential. The Chapter will also look

at how these Muslim endeavours affect the role that human rights theory can play in liberating women in Muslim societies. Clearly some form of dialogue is needed between advocates of an Islamic way of life and advocates of human rights. This is because, as we noted in Chapter 4, the theory of human rights despite its many shortcomings holds a certain political force at international level that other theories simply do not. Indeed it is a duty for Muslims to engage in such dialogue with non-Muslims in order to put right misconceptions or false charges propagated against their faith. From the human rights perspective also, it would be folly and indeed arrogant for theorists not to enter into such dialogue. But one also needs to ask, what should be the purpose of this dialogue?

It seems that for many prominent academics writing on the subject of Islam and human rights, the purpose of any dialogue should be to persuade Muslims to amend their faith in order to fit in with the tenets of human rights thinking. Two of the most prominent writers in this area fit into that category of academics: Ann Elizabeth Mayer and Abdullahi An-Naim. Mayer in *Islam and Human Rights: Tradition and Politics*¹ compares some Islamic schemes of human rights and national constitutions of Muslim states with the International Bill of Human Rights and Abdullahi An-Naim in *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*² offers a methodology for reforming Islam so that it will be able to accommodate the list of human rights enshrined in the International Bill. Mayer's conclusions are that the Islamic schemes not only fall short of the provisions of the Bill but that some of them actually represent disguised attempts at strengthening the ability of national governments to oppress women.³ Her main complaint concerns the reliance of these schemes on classical or what she terms 'pre-modern' scholarship. This body of

thought is generally, in Mayer's view, restrictive towards women particularly in comparison to what is guaranteed in the International Bill.⁴ An-Naim argues quite simply that 'the rule of international law must prevail in international relations, whether among Muslim states or between Muslim and non-Muslim states... the relevant verses of the *Qur'an* and other sources of the *Shari'a* must be interpreted in this light'.⁵

Both these authors' arguments will be examined in relation to further issues during the course of this Chapter. Here however, it must be pointed out that there are a number of dangers in approaching the issue of Islam and human rights in this way. Firstly, from an Islamic point of view An-Naim's undertaking is a dishonest exercise. For an enquiry into the *Qur'an*, when the outcome has been pre-determined, cannot be considered an honest one. In fact the *Qur'an* can be used to prove or disprove anything in this way. One can take odd quotes and passages from Islamic sources and create or support any sort of theory. The *Qur'an* can be studied in its entirety in relation to a specific problem to which one is hoping to find the solution. However, An-Naim's 'problem' is how to make a divine text fit in with secular law and the 'solution' for him is to discount every verse revealed in Makka. Both 'problem' and 'solution' are unIslamic in that both assume that secular law is superior to Islamic law. For Muslims, if any discrepancy exists between the two, it ought to be secular law that is surrendered. Fallible human beings devise secular law, while an infallible entity has sent the *Qur'an* as a guide for humans. The solution for An-Naim is to ignore an entire portion of the *Qur'an*. This in turn fails to acknowledge the fact that the final revelation to the Prophet Muhammad reads, '... *Today have I perfected your religious laws for you, and have bestowed upon you the full measure of My blessings,*

and willed that self-surrender unto Me shall be your religion'.(5:3). This verse asserts that the *Qur'an* is relevant and applicable in its entirety. Secondly, the determination to make other belief systems fit in with human rights documents actually excludes the possibility of arriving at ways of dealing with women's oppression that might be better than human rights thinking. Both An-Naim and Mayer fail to mention the shortcomings in human rights documents voiced by feminists, advocates of group rights and religious leaders. They therefore ignore many of the problems facing women that human rights documents do not address. Thirdly, when Muslim writers voice such views they invite further cynicism from non-Muslim commentators. Piscatori refers to such Muslim writers as the 'apologetes'. Islam, argues Piscatori, 'is a great civilization, which preaches respect for life and property, which practises tolerance and fraternity'. But it 'does not advance the basic idea of inalienable rights, nor does it avoid distinguishing according to sex and religion'. These differences 'do not make Islam inferior or out of touch with the modern world' but 'denying them does make distortions that render our understanding of Islam as an alternative approach even more elusive'. Piscatori thus urges the Muslim to present Islam in its true form regardless of whether this fits in with or is acceptable to the theory of human rights.⁶

Piscatori's comments need to be equally heeded by non-Muslim writers. Currently any suggestion that Islam might not embody a prescription requiring respect for human rights, as that term is understood in the west, immediately invites charges of barbarism and intolerance. The terms of acceptability in the international arena are conditional upon recognition that human rights protection and democracy is what every state must be striving for. Barkin explains, 'A norm that has begun to replace

territorial legitimation as a defining feature of the constitution of legitimate sovereignty in international relations is the norm of human rights... In a post-Cold War world in which the great powers that dominate the practice and the discourse of international relations mostly claim to be liberal democracies, a state is, thus, to a significant degree legitimated in the eyes of the international community insofar as it guarantees these rights'.⁷ The political reality it seems is that the international community is not interested in the alternative that Piscatori alludes to.

In academic works there is an overwhelming inclination to view challenges to human rights thinking with scepticism. Fred Halliday provides a good example. He criticises 'those outside who argue that it is wrong to criticise Middle Eastern societies in terms of what are termed 'our values' – be those on human rights, women freedom of speech or even torture'. He writes, 'the criteria for such judgements must be universally applied... Some of the grotesque positions of Western understanding or of solidarity groups in recent years, of critics of Western imperialism defending the firing squads of Khomeini's pasdaran or the clitoridectomy of some Arab Muslim societies, show where such relativism can lead'.⁸ The types of human rights violations that Halliday refers to are indeed reprehensible and in Halliday's view, *any* deviation from existing human rights norms or indeed any sympathy with alternatives to these norms has and will inevitably lead to such atrocities against humanity. This Chapter will argue that not all practices that are incompatible with human rights documents will necessarily lead to the type of suffering suggested. But for Halliday the choice appears to be between unconditionally accepting the terms of universal human rights or tolerating incredible suffering for human beings.

Thus Muslim writers continuously feel that they have something to prove to the western world. If Islam cannot be shown to advocate human rights principles, it will be accused of failing to protect human beings from harm or even held directly responsible for that harm. An-Naim's proposals represent the very extreme end of this apologetic genre of writing. Non-Muslim human rights proponents quote An-Naim with such frequency precisely because his commitment to international law appears to outweigh his commitment to the teachings of Islam. An-Naim and Mayer would be content with seeing Islam practised only as a series of rituals: fasting, pilgrimage and prayer. Such undertakings, although perhaps well-intended, have failed to convince human rights advocates of their theory's compatibility with that version of Islam to which most Muslims wish to adhere. That is Islam not simply as ritualistic faith but Islam in its entirety as revealed from Makka to Madinah. For Muslims, Islam was sent to challenge existing norms and ways of thinking about human relationships. The pagans of Makka to whom the Prophet Muhammad first preached the Islamic message also believed, perhaps like much of the international community today, that they were already in possession of a superior mode of life. To be a Muslim then, as now, was thought to involve being governed by too many rules that were impractical in the prevailing circumstances. Writers such as An-Naim, Mayer and Halliday are suggesting that Islam today should bow to prevailing beliefs about the role of religion. To those Muslims familiar with the history of the Prophet and the bitter persecution he received for propagating Islamic values in all areas of life, the proposals are not entirely new but neither are they entirely acceptable.

But if the purpose of dialogue between human rights theorists and advocates of Islam should not be to persuade Muslims of the superiority of human rights schemes then

what should it be? The answer lies in the root and very purpose of each scheme.

Both human rights and Islam were devised or revealed in order to alleviate human suffering. The *Qur'an*, we are told in 17:82 was sent as a '*healing and a mercy*'. The UDHR in its preamble shows that its founders were concerned with 'how contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.'⁹ The fact is, however, that to date the theory of human rights and Muslim endeavours have failed to address adequately the harsh conditions under which Muslim women are being forced to live today. Women are being denied the right to choose their marriage partners, they are being forced to live in unhappy and abusive marriages, their intellectual talents are being stifled because their countries do not provide adequate education and employment opportunities, and they are being denied a voice in shaping the development of their immediate communities and nations. Because we have established that not all Muslims see these conditions as a problem, the dialogue must evidently be between those Muslims who do view them as such and proponents of human rights. Nonetheless, the purpose of this dialogue ought to be to establish how these wrongs are to be put right, with both sides acknowledging that to date they have not been remedied and looking at the reasons for this failure. Chapter 4 examined some of the ways in which human rights documents needed to be amended in order to address these situations. Some further proposals will be made in this area through the course of this Chapter but it is firstly necessary to look into where Muslims have gone wrong. Why have successive generations of Muslims failed to convince other Muslims acting as state representatives or individuals that women are owed freedom, dignity and respect? The guide for this investigation is not then, how to reform Islam in order to make it acceptable to human rights advocates. This would not address sufficiently the problems facing Muslim women. Such a

guide or purpose would also fail to honour the belief held by Muslims that the *Qur'an* is the final and eternal word of God and that the Prophet Muhammad was His messenger through whom the message of Islam was sent to humanity. Thus we must put to one side the idea of reforming the *Qur'an* or expecting Muslims to start thinking differently about their faith simply because it is considered inferior to international law by a handful of writers.

Muslims, Leaders and Scholars

The problems that Muslims need to address run deeper than those issues very specific to women discussed in Chapters 1 to 3. To begin with women are not alone in lamenting the regression of the Islamic way of life. Muslims were once rulers of an Empire spreading into Europe with a vibrant educational curriculum; they introduced efficient irrigation and sanitation systems, mathematical theories and medical procedures to the western world. Today, much of the Muslim world is the developing world, and even oil-rich states are forced to rely on western technology and expertise for development.

One of the reasons advanced for Muslim stagnancy in political, economic and social matters, is the reliance on orthodox scholarship and this is related to the way in which Muslims have come to think about Islamic primary sources. Classical scholarship it is argued was relevant for the time in which it was developed. Now, however, there is a need for contemporary scholars to address contemporary issues. The problem is that there is a lack of such scholars with sufficient Islamic education to take on this task.¹⁰ Muslims then are forced to rely on rulings reached by the Imams in the second and

third generations of Islam to address the problems facing them today in the fifteenth century of Islam. Muslims have lost the ability and confidence to use the *Qur'an* and *Sunna* as primary texts from which to derive rulings and rely instead on the works of the classical scholars taking their work as definitive and eternal. All this has led to a dormant Muslim *umma* that harks back to past glories and does not or cannot deal with the problems of today.

The position of the four *Sunni* Imams on following leadership provides a good example of why it is felt that their rulings are essentially time-bound and how reliance on them has led to the problems of incompetent and repressive leadership, which in turn has had negative outcomes for women. Today Muslim men along with women are denied the right to shape their nations and to play an active role in choosing their leaders. There is also disagreement over what action women can legitimately take by way of protest against state leaders. The failure of contemporary, non-conservative¹¹ scholars to address the subject of women's protest is in many respects bound to the problem of allegiance to leaders in general and how far allegiance is conditional upon the leader's behaviour and abilities. Therefore before proceeding on to a discussion of women's rights of protest against the state, it is necessary to discuss the more general matter of when, and even if, any opposition to Muslim leaders is considered legitimate.

It is argued that while, as suggested in Chapter 4, Islam might contain certain edicts that permit Muslims to oppose their rulers, these edicts have not been developed sufficiently in Islamic jurisprudence. The result has been that Muslims have not been inspired to oppose their repressive leaders. Here I will argue that, while following

classical scholarship can be problematic, these problems are still surmountable within Islamic boundaries. Therefore contrary to Mayer's argument, the problems of classical scholarship and the reliance of Islamic human rights schemes on that scholarship are not sufficient reasons for Muslims to abandon their attempts to use Islamic texts as a source of empowerment.¹²

The orthodox *Sunni* Muslim position on leadership is indeed fragmented and problematic. Imam Malik for example argued that the way to deal with a tyrant was firstly to compel the tyrant to justice through admonition, good advice, guidance, reminding him of the commands of the Faith. If that was ineffective then Malik's advice was to have as little to do with him as possible. Imam Shafi', on the other hand, believed that any legitimate leader for the Muslims should be selected from the people of the Quraysh the tribe to which the Prophet belonged. For Hanbal any rebellion against the *Caliph*, even if he was unjust, was not permitted because of the possible consequences. Abu Hanifah, however, argued that the *Caliphate* was by the agreement of the Muslims and that a general acclaim of the *Caliph* should precede his taking power.¹³ The preceding information may appear to suggest the futility of attempts to establish any sort of Islamic ruling on leadership. The range of opinions from Malik to Abu Hanifah is indeed stark. Any Muslim with a sincere desire to follow Islam is left with a confused choice of either doing nothing in the face of injustice or being inspired by the knowledge that, because her consent was not given in that ruler's accession to power, she is perfectly at liberty to strive for change. Putting aside the issue of compatibility with the theory of human rights, I will take as my starting point the question: what is the pious Muslim to do? Taking Malik's stance is extremely problematic in the world today. Having as little to do with one's

leaders as possible still means that education and employment opportunities, health care, criminal justice proceedings, even marriage and divorce arrangements, are decided and controlled by those leaders who obviously therefore have a huge impact on the individual's life. It must be acknowledged that Imam Malik was not writing in an era when even remaining in a mosque too long after the end of the Friday prayer or wearing a headscarf were considered acts of political defiance which could lead to persecution. Similarly the idea of choosing leaders from only amongst the Quraysh, as suggested by Imam Shafi', is equally difficult given the spread of Islam throughout the world today and the difficulties in tracing genealogy. Moreover Imam Shafi' was writing at a time when the Quraysh were at the forefront of spreading Islam and could unquestionably be trusted in their pursuit of a just society. For Imam Hanbal the instability, divisions and loss of human life that could possibly ensue from rebellion were worse than any existing hardship. Yet what is present in contemporary Muslim society is both human suffering instigated by national leaders and a highly divided Muslim community, distrustful of one another and its leadership. Moreover the form of rebellion that Imam Hanbal and indeed Malik feared is no longer the only option available to Muslims. Demonstrations and strikes, the creation of community-based schools, health centres and banks are some of the ways in which Muslims are showing their dissatisfaction with their governments and posing challenges to them rather than through armed opposition.¹⁴

Of the four orthodox opinions it is Abu Hanifah's that could provide a useful starting point to those wishing both to follow one of the four Imams and to oppose their national governments. In states in which the population has not been given the opportunity to offer their consent to the ruler, his rule could be deemed illegitimate

and therefore challenged. Imam Abu Hanifah of course did not offer a step-by-step guide to expressing political dissatisfaction. It is my contention however, that Muslims should no longer view this as a failure on the part of their religion. We know, for example, that the four rightly guided *Caliphs* all differed in their administration and in the ways in which they came to power. In response writers such as Donnelly and Halliday would argue that globalisation and modernisation have affected all communities in similar ways and that therefore it is essential that some standard, universal instrument protect them from the more dangerous aspects of this. For them of course those instruments are the International Bill of Human Rights and liberal-democratic government. Human rights protection might be what Halliday, Donnelly and others believe ought to be the end result of struggles against repressive leadership. But the theory of human rights just like Islam does not provide any guide to the *means* of achieving this. It is disingenuous then for writers to criticise Islam on this front. In fact one can look at the current situation, beginning with the two case studies explored in this thesis, to see why one uniform set of instructions on such an issue would be both unsuccessful and undesirable. Since the death of Zia in Pakistan, for example, there have been elections, a female Prime Minister and a return to military rule under Musharraf. Pakistan's problems however lie in the corruption and nepotism that are rife there. Iran, on the other hand, since the death of Khomeini has held presidential elections with some limited move towards reform and yet a female head of state is inconceivable at this stage. Also Jordan's political situation is very different from Saudi Arabia's, with only the former holding elections and allowing some influence from political parties and yet both are monarchical regimes. In each situation Muslims following the advice of independent religious scholars are to pursue an Islamic society. The diversity of experiences and problems that human beings

bring to Islam is not something that needs to be controlled but to be celebrated and Muslims must also believe that Islam can accommodate this diversity rather than attempt to devise a single example of how to attain a just society and the precise institutions that such a society should possess. Muhammad Asad repudiates the idea that there could be only one form of state deserving the adjective 'Islamic'. The *Shari'ah*, he explains, does not elaborate a constitutional theory in detail.¹⁵ The volumes of *seerah* works are testimony to the array of men and women with different characteristics, thoughts and ideas that can and are great examples of Islamic individuality.

If the state is being opposed for its lack of support from the population and for its injustice, then the corollary is that it should be based on the consent of the people and the pursuit of justice. Both principles are enshrined in Islamic thought explicitly and do not require elucidation from classical scholars. The core themes of the *Qur'an* and the life of the Prophet in relation to the organisation of communities and to personal relationships are justice and equity:

'O you who have attained to faith! Be even steadfast in upholding equity, bearing witness to the truth for the sake of God, even though it be against your own selves or your parents and kinsfolk' (4:135)

and

'Indeed (even aforetime) did We send forth Our apostles with all evidence of (this) truth: and through them We bestowed revelation from on high, and (thus gave you) a

balance (wherewith to weigh right and wrong), so that men might behave with equity'. (57: 25)

In the first of the passages it is made clear that the establishment of Islamic principles requires positive action against other human beings. Moreover one's personal relationships with the oppressor, the unjust, ought not to blur the duty to strive against that force. Islam thus clearly envisages difficult dilemmas for the Muslim but the general instruction is clear; the very purpose of Scripture and prophets has been to establish just, equitable societies and this pursuit cannot be compromised. Along with this is the principle of consultation: those *'who respond to (the call of) their Sustainer and are constant in prayer; and whose rule (in all matters of common concern) is consultation among themselves; and who spend on others out of what We provide for them as sustenance; and who whenever tyranny afflicts them, defend themselves'* (42:38) are promised eternal Paradise. Consultation is required even with those who *'turned their backs'* at the Battle of Uhud. The Prophet in 3:159 is instructed to *'Pardon them, then, and pray that they be forgiven. And take counsel with them in all matters of public concern; then when thou hast decided upon a course of action, place thy trust in God: for verily, God loves those who place their trust in Him'*.

An-Naim is reluctant to make use of the concept of *shura'* (consultation) arguing that *'by virtue of its original concept and authority in the Qur'an as well as its historical practice, it has neither been comprehensive in scope nor binding in effect'*.¹⁶ In reply to An-Naim, I would argue that simply because *shura'* has not been practised in the past, it does not follow that it is not or was not binding. Secondly, given the explicit mention of the term in the *Qur'an*, it is difficult to see how one could convincingly

suggest that it is not a binding principle. Indeed it is significant that in 42:38 *shura* and defending oneself against tyranny are placed alongside the command to pray and spend in charity, tenets of Islam that it would be inconceivable to repudiate. An-Naim may be unwilling to use these passages simply because they prove inconvenient for his methodology for reform, with 3:159 being revealed in Madinah and 42:38 having been revealed in Makka. The problem would seem to lie in the unwillingness to implement *shura* rather than in its credentials as an obligatory principle. Indeed Fazlur Rahman, in his highly thorough and critical work of the development of Islamic law, believes that verse 42:38 should be considered the centre of Islamic political life.¹⁷

Opposing one's rulers then, is not prohibited within the Islamic faith, and informing them of one's opposition through peaceful protest is actually an integral part of faith when government action contravenes Islamic principles.

Even Imam Malik enjoins Muslims to compel leaders to justice through reminding them of the commands of Islam. The principle of fighting for justice and equity therefore is not an unIslamic one and is sanctioned by theological sources:

'As, for such (of the unbelievers) as do not fight against you on account of (your) faith, and neither drive you forth from your homelands, God does not forbid you to show them kindness and to behave towards them with full equity: for verily, God loves those who act equitably. God only forbids you to turn in friendship towards such as fight against you because of (your) faith, and drive you forth from your homelands, or

aid (others) in driving you forth: and as for those (from among you) who turn towards them in friendship, it is they, who are truly wrongdoers'. (60: 8-9).

When the Muslim community is treated with justice or even indifference it is commanded to live in peace, but when the Muslim is persecuted for her faith inaction is prohibited. Then action must be taken even if this is against one's closest relations. The contemporary scholar Shaykh Yusuf al – Qaradawi, who writes that the Muslim under such conditions is not only permitted to oppose her ruler but is commanded to, supports this view. He writes that the *Qur'an* denounces repressive rulers and dispraises those who follow them. Al – Qaradawi, writing in the contemporary arena, is completely aware that today the rulers that are to be opposed are not the pagans of the time of the Prophet, but Muslims claiming to uphold Islam. Moreover, for al-Qaradawi, the Islamic Movement could not support anything other than political freedom and democracy. This is because if Islamist forces are given the opportunity to operate under conditions of political freedom and democracy, al-Qaradawi argues, that they will inevitably be more appealing to the masses than political parties founded on secular ideologies.¹⁸

Up to now I have focused on the problem of unrepresentative leadership but precisely because writers such as Mayer and Halliday criticise the ambiguous use of terms in Islamic discussions, I will attempt to offer a brief *summary* of what the establishment of a *just* and *equitable* society would entail. The fundamental duty of an Islamic leader is to act with benevolence towards his subjects and to uphold their interests; all scholars agree upon this. Fazlur Rahman writes that, in addition, all *Sunni* jurists and constitutional theorists squarely charge the ruler with guaranteeing five basic rights:

the rights to life, to religion, to earn and own wealth, to human dignity and to rational integrity of mind.¹⁹ This list of rights mirrors very closely those found in the Universal Declaration of Human Rights although the latter contains several additions. Halliday emphatically insists however, that because, he believes, there is little or no explicit mention of rights in the *Qur'an* there cannot be any possible extrapolation of rights from this source.²⁰ The simple reply to Halliday is that to Muslims it matters very little what his understanding of Islamic theology is. If the Muslim scholars of Islam have consistently derived these rights from the sources, then that is indeed what constitutes authentic Islam. It is pointless for Halliday and his like to attempt to convince Muslims otherwise and underhand for them to colour the non-Muslim view of Islam in this way.

Women, Justice and Equity

It is not too contentious to suggest that all the five basic rights listed above are denied to women to some degree in the Muslim world today. The right to life is clearly being denied to women in Pakistan where it has been estimated that there are 91 females to every 100 males and there is strong evidence to suggest that this is due partly to males being given preference in health care when families have to pay for this themselves.²¹ The right to religion is also being denied, when women are prevented from attending mosques and from furthering their religious education, and when *shura'* councils in Muslim organisations consist entirely of men and only the male voice is considered capable of dictating what is authentic Islam. The right to earn and own wealth is also seriously compromised when levels of illiteracy are significantly higher amongst the female population, which in turn has direct bearing on women's ability to seek

employment, invest the wealth they do possess and claim their inheritance rights. The numbers of jobs for which women are considered 'unsuitable' are also substantially higher than those for men. All of these realities in turn seriously undermine the right to human dignity and integrity of mind. They seriously weaken a woman's sense of worth and self-esteem as well as her ability to develop mentally. Leaders in Muslim countries have thus failed to uphold the Islamic principles, adherence to which should guarantee them allegiance from the Muslim *umma*. The administration of justice and equity in Islam can be achieved only through the upholding of the five rights mentioned above for men and women and the enjoining of *shura*'.

There is strong, indeed insurmountable, justification for Muslims to oppose their governments. This is not a particularly controversial point among those *'ulama* who do not depend on their governments for their salaries. Yet many of these commonly accepted arguments become more controversial when the involvement of women is suggested. Groups in Muslim states employing Islamic slogans and arguments are clearly identified as the *Islamic* opposition. They enjoy support and credibility even if the methods they employ are not entirely agreed upon. Thus the Muslim Brotherhood in Egypt is fighting the secular state. HAMAS in Palestine is working to end the occupation of Muslim land. During the revolution in Iran the bloodshed and martyrdom were justified to meet the end of establishing an Islamic state. While male-led opposition movements such as these justify their actions on the ground that they are fighting the *kuffar* (infidels), the female-led opposition, despite fighting government measures with Islamic arguments, are often themselves given the label of *kuffar*. Women's use of Islamic arguments is seen as opportunistic rather than based on true conviction.

Women's initiatives in the political and/ or public sphere are perceived as inextricably linked with spreading of *fitna*. *Fitna* in its general sense means civil strife, sedition, schism, trial or temptation.²² When Muslim women demand reform they are said to be acting irresponsibly, feeding western negative portrayals of Islam and sacrificing the unity of the community for their own ends. Fear of divisions plays a central role in the Muslim psyche, and it is believed that this is where pre-Islamic communities, even those to whom Prophets were sent, lost their way.

'In matters of faith, He has ordained for you that which He had enjoined upon Noah – and into which We gave thee (O Muhammad) insight through revelation – as well as that which We had enjoined upon Abraham and Moses, and Jesus: Steadfastly uphold the (true) faith, and do not break up your unity therein... And (as for the followers of earlier revelation,) they broke up their unity, out of mutual jealousy, only after they had come to know the truth... ' (42:13-14)

The Prophet Muhammad is also warned against such people and told, *'Verily, as for those who have broken the unity of their faith and have become sects – thou hast nothing to do with them. Behold their case rests with God: and in time He will make them understand what they were doing'.* (6:159). Causing divisions is in fact the work of *Shaitan* as Muslims are told in the story of the Prophet Joseph:

'And he raised his parents to the highest place of honour: and they (all) fell down before Him prostrating themselves in adoration. Thereupon (Joseph) said: 'O my father! This is the real meaning of my dream of long ago, which my Sustainer has made come true. And He was indeed good to me when He freed me from the prison,

and (when) He brought you (all unto me) from the desert, after Satan had sown discord between me and my brothers'. (12:100).

When leadership is undeservedly challenged and when Muslims begin to criticise one another, they are causing such civil strife and schisms. When women lead this criticism, increasing their physical presence in public places, there is the added dimension of offering increased temptation to men. Divisions of course arise when male-led movements oppose the state, with some groups wishing to continue supporting the government and others wishing to follow different means. But man's opposition is perceived to be different from woman's because the former acts out of principle and is prepared to make sacrifices even with his life in order to build a stronger and more prosperous community. Women on the other hand are alleged to act out of self-interest, wishing to gain only personal freedom and wanting to absolve themselves of any responsibility to their communities and families. A woman's physical and mental well being generally does not feature in the male requisite for a healthy and Islamic society and the social exclusion of women is not seen as a loss to the whole of society.²³

Within many mainstream opposition movements, however, the presence of women is welcomed. The Muslim Brotherhood in Egypt, for example, celebrate the activism of Zainab al-Ghazali under Nasser's rule and even Mawdudi's *Jam'at- I-Islami* was prepared to back Fatima Jinnah's bid for presidential power in Pakistan. It is also significant that the move for female emancipation in recent history in the Muslim world was actually initiated by men. Debbie Gerner explains that Afghani and Abduh paved the way for the feminist movement in the Arab world to free Islam from the

rigid orthodoxy into which it had fallen.²⁴ The criticisms become severe only when women begin to act independently, fighting on their own platform for their own issues. Mernissi has described the ‘violent feelings against the desire of women to liberate themselves...’²⁵ Why is this when the basic principles that women are fighting for are often similar to the struggles initiated by men? Women, like their male counterparts, wish to live under conditions of freedom in which they can shape their futures, receive an education, have access to employment, and practise their faith without fear of maltreatment. What differs in the female struggle are the obstacles to the fulfilment of these wishes which are two-fold. Firstly there is the governmental mismanagement and corruption, which all opposition movements will be fighting, and which are partially responsible for the lack of available education, employment and health for all citizens, and of course the government restrictions on wearing the veil in countries such as Turkey and on many forms of religious activism. In addition to these are the restrictions placed on women by their families and immediate communities. These include the pressure to marry at an early age, to give up employment if this is not favoured by the husband, and to remain in unhappy and even abusive marriages because of the stigma attached to divorce. Raising these issues becomes potentially challenging to the very fabric of society because it calls into question the nature of male-female relations in the society as a whole. All men, regardless of their political power or lack of it, are potentially guilty of imposing this second set of obstacles and feel directly under attack when these issues are raised on public platforms.

In addition, such proposed changes in the nature of society directly impinge, of course upon the rights enjoyed by men. Increasing numbers of women in educational

institutions and in paid employment means greater competition for men seeking access to the same facilities. Greater rights for women in divorce and marriage mean that men must live with the knowledge that maltreatment on their part might no longer be put up with. The 'violent reaction' that Mernissi refers to is a reaction to the threat to a previously uncontested way of life, an attitude to one half of the population: more rights for women means fewer privileges for men. There is the threat of every man's wife, sister or daughter demanding such opportunities from her husband, brother or father.

The stance of Islamic theology on the emancipation of women to be led by women, is less problematic. As John Esposito explains, '... the *Qur'an*'s primary concern was the improvement of women's status through the establishment and protection of her rights...'²⁶ In the discussion on Muslims and leadership in general, all the verses enjoining the pursuit of justice and equity and the exercise of *shura*' were addressed to all Muslims, and again *justice must be pursued even if this is detrimental to the interests of one's closest relatives.*

The contemporary objections to women's movements emanate, in large part, from motives of self-interest. However, as with many objections to specific issues, there have been attempts to employ *Qur'anic* injunctions in order to validate a view that continues to confine women to limited, undervalued roles. The main instance of these is the command to the wives of the Prophet in 33:33: '*And stay in your houses, and do not display yourselves like any other women*'. The deduction that might come from this verse is readily apparent, and yet those who invoke it fail to refer to the preceding verse, which clearly indicates that the command is given specifically to the wives of

the Prophet: *'O wives of the Prophet! You are not like any of the (other) women...'* (33:32). As al - Qaradawi points out, confining women to the home was initially prescribed as a punishment for adultery, not the desired state of believing women.²⁷ Furthermore it is not indicated in the *Qur'an* that women are exempt from social responsibility, or that their allegiance to male power is unconditional. Justice when it is to be achieved for and/ or by women is no less important than men's interests. The two must be seen as inextricably linked as reported in a saying of the Prophet: 'You will see that the faithful, in their having mercy for one another and in their love for one another and in their kindness toward one another, are like the body; when one member of it ails, the entire body ails, as one part calls out to the other with sleeplessness and fever'.²⁸ Along with the blatant disregard for such traditions, there are many contradictions in the hostility to women's struggle. While, on the one hand, the most conservative elements in Muslim societies will claim that women because of some innate deficiency in their intellect require male protection and guardianship, on the other they will encourage harsh and sometimes violent treatment towards those women.²⁹ In fact opponents actually understand the female being in a number of incongruous ways depending on the issue they are addressing. Their violence is justified by a belief that the subject is not simply confused and misguided, but the very embodiment of evil, a danger to the entire society, comparable to Zulecha in the story of the Prophet Joseph. Rebellious women who are seen as willing to abuse and risk their respectable positions in order to satiate their own desires. More than this, these women might even be seen as co-conspirators with western forces, guilty of 'westoxification', a term frequently used in Iran and one directed at women fighting governmental measures.

However, there is no Islamic justification for such a view. As Yasien Mohamed explains, '*Fitrah* is a universal and immutable given of the metaphysical human constitution, and as a rule, cannot be corrupted or altered... For example, a generation whose forefathers were *mushrikun* (those who practice *shirk* and so believe there are forces present that possess power equal to God's) does not possess a *fitrah* of a lesser quality than a generation of believers'.³⁰ The *Qur'an*'s depiction of certain iniquitous women is not intended to be a representation of or warning against all women any more than one might suggest that the story of Pharaoh indicates that all men are innately tyrannical leaders. Men and women are of the same essence in the *Qur'an*: '*O Mankind! Be conscious of your Sustainer, who has created you out of one living entity, and out of it created its mate, and out of the two spread abroad a multitude of men and women*'. (4:1) With the same origins neither man nor woman is more predisposed to mischievous behaviour and with these same origins both are entitled to the same freedom and respect, and have been endowed with the same capabilities in ensuring they receive this.

Muslims and Ijtihad: Inadequate Reform?

Many of the arguments put forward in preceding Chapters regarding supervising polygamy, inheritance allocations and proposals for increasing women's ability to initiate and contest divorce assume that *ijtihad* from contemporary scholars will support those arguments especially when it is discovered that, in the absence of such supervision, the *Maqasid al-Shari'ah* are not being respected. *Ijtihad* refers to the exercise of personal judgement in legal matters, but this must not contradict what is contained in the *Qur'an* and *Sunna*. Personal judgements will vary from one

individual to another and as such some of the contemporary proposals depart from the rulings of classical scholarship. *Ijtihad* is an acceptable tool for arriving at Islamic rulings provided that the exerciser has received classical training in the Islamic sciences and does not deviate from explicit *Qur'anic* and *Sunna* commands. There has been debate over whether *ijtihad* can still be practised today. One view held that Islamic law had become totally structured and all problems had been settled by the third century of Islam and that the doors of *ijtihad* were from then on closed. There is general agreement amongst scholars and laypersons today that this is in fact not the case and that the process of *ijtihad* still needs to be undertaken. This is because new situations and problems have arisen that are not provided for in the classical law books or that new information has come to light that was not available to the classical formulators.

An-Naim, however, argues that *ijtihad* is insufficient for bringing about ample improvements for women. He asserts this for two reasons. Firstly he writes that the conservative arguments disputed throughout this thesis are based on 'clear and definitive texts of the *Qur'an*'.³¹ Thus he argues that 4:34, the verse stating *qawamun*, cannot possibly be interpreted in any way other than that men are guardians over women and that consequently women are prohibited from holding public office in which they would exercise authority over men.³² For An-Naim the solution is for Muslims simply to disregard this verse completely on the basis that it was revealed in Madinah. The community of today, he argues, resembles more that of Makka. The eternal message of Islam was revealed in Makka and the more practical principles revealed in Madinah are no longer relevant to the Muslims of today. I have stated why this reform methodology is unacceptable to Muslims but it is

also my contention that it is unnecessary. The tactic An-Naim employs is precisely the same as that of Muslim conservatives albeit for different reasons. An-Naim, like the conservative, takes odd quotes and passages in isolation in order to prove a point. He then extrapolates certain presumptions from those passages, which are not to be found in the *Qur'an* or in the *Hadith* narrations. An-Naim's approach could actually be used to prove any number of propositions including even that Muslims are permitted to consume intoxicants. For indeed, 5:90, the verse prohibiting alcohol and gambling, was not revealed until the Prophet's migration to Madinah. Such a proposition would be unacceptable to most Muslims and yet is entirely consistent with An-Naim's reform methodology. Instead Chapter 1 shows the importance of examining how every verse fits in with other *Qur'anic* commandments and *Hadith* narrations on human relationships. Thus the husband-wife relationship is not one of control of husband over wife but of provision for the wife by the husband. The verse has no connection with general male-female relationships and it is incorrect of An-Naim to claim that all classical scholars interpreted it as such. Imam Abu Hanifah permitted women to be appointed as judges in all matters apart from those under penal law.³³ While his rulings fall short of according women sufficient rights, they do show that his interpretation allows women to exercise authority over men. Classical rulings are not as draconian or as uncompromising as An-Naim suggests³⁴ and the scope for varied interpretation of *Qur'anic* verses is greater than he reveals.

Secondly, An-Naim opposes the exercise of *ijtihad* because he argues it has failed to bring about any real results for women, when it has been exercised in relation to those clear and definitive texts of the *Qur'an* such as 4:34 and others, which discriminate against women.³⁵ Again this is simply untrue. Women have been permitted to

become political representatives and judges in penal cases in states purporting to be Islamic as a direct result of such efforts in *ijtihad*. Scholars have used their reasoning based on their knowledge of the *Qur'an* and *Sunna* to rule that women can take on such roles.³⁶ Muslim women have also urged scholars to review traditional opinions on divorce with important successes as the case of Iran shows. Thus, while much work still needs to be done, An-Naim's objections are not sufficient to discount these efforts.

What is needed is for the process of *ijtihad* to be undertaken with greater effort and enthusiasm than it has to date. Muhammad Asad has lamented that our current canonical jurisprudence 'now resemble nothing so much as a vast old-clothes shop where ancient thought-garments, almost unrecognisable as to their original purport, are mechanically bought and sold, patched up and re-sold and where buyer's only delight consists in praising the old tailor's skill'.³⁷ While the methodology of orthodox scholarship is sound the rulings are in many respects underdeveloped in relation to contemporary situations. For the most part they worked on the assumption that men would act as pious Muslims and so they would not, for example, abuse their right of repudiation or they would voluntarily provide for female relatives financially. This has not been the case and women today need state institutions to ensure that men do operate within Islamic commands and warnings. Other rulings are simply irrelevant and based on interpretations inspired more by prevailing circumstances and personal opinion than Islamic sources, such as the restrictions on women acting as judges or political representatives. Ibn Burhan, an expert on Islamic jurisprudence, writes that each period of time requires a type of regulation, which caters to the

general welfare specific to that time. These regulations can differ from one era to another and one nation to another and still comply with the *Qur'anic* text.³⁸

The problem of relying on classical rulings is less of a problem within *Shi'a* discourse because the practice of *taqlid* or emulation of a deceased scholar in matters of law is not considered an acceptable one.³⁹ Iran's constitution clearly states that the office of religious leader must be taken by a 'just and pious person, who is fully aware of the circumstances of his age' and that the Guardian Council must also be 'conscious of the present needs and the issues of the day'.⁴⁰ Despite this, we have seen that Iran, in following *Shi'a* Islam still implements policies that do not uphold women's rights. A review of the place of classical rulings is therefore only part of the task facing Muslims. Furthermore, not all classical rulings are out of touch with present circumstances and some that are such as the 'sleeping foetus theory' discussed in Chapter 3, are a surprising aid to women. There has to be some form of consistent and methodological criteria for deciding which rulings are to be retained and which revised or disregarded and how new rulings are to be made. I have stated that the International Bill is not a sufficient guide. But improving the condition of human beings certainly is because this upholds the basic premise of the *Qur'an* itself: '*Thus step by step, We bestow from on high through this Qur'an all that gives health (to the spirit) and is a grace unto those who believe (in Us), the while it only adds to the ruin of evildoers*'. (17:82). Any ruling claiming to be Islamic must fulfil the following criteria: it must not contradict the *Qur'an* or *Sunna* and it must show grace and mercy towards other human beings. In addition, rulings are required which represent a positive and active step towards realising women's emancipation, just as the *Qur'an* did during the Prophetic era. It is agreed in Islamic jurisprudence that the 'basic

purpose of legislation (*tashri*) in Islam is to secure the welfare of the people by promoting their benefit or by protecting them from harm'.⁴¹

Unresolved Issues

There are still some issues within Islamic doctrine that human rights theorists simply cannot accept and that more importantly seem to be unfair and unjust towards women.

The institution of polygamy and the inheritance provisions even when supervised as suggested above, simply do not accord women rights equal to those of men.

Moreover, these edicts are explicitly stipulated in the *Qur'an*, their meanings are very clear and any additional verses or *Ahadith* addressing the same issues do not provide sufficient grounds for them to be completely prohibited by *Maqasid al-Shari'ah* or *ijtihad*. Despite her claims to the contrary, Mayer's critique of Islamic human rights schemes actually becomes a critique of Islam precisely because she cites these edicts as not only contrary to human rights but in need of reform or abrogation for that very reason.⁴² An-Naim's proposal simply to ignore these verses is also, I have argued, not acceptable. Is it impossible then for both theories to reach some form of understanding on these issues? When Muslim conservatives cite these two examples they do so to show how God created men to look after women. The conservative sees this as a positive feature of Islam that caters for both men's and women's biological differences. For the western liberal the examples are cited to show that there is a problem for those who wish to adhere to Islam because by doing so they are acquiescing to women being controlled by men. Obviously there are major differences in how each camp perceives the issues but the conclusions they draw are surprisingly similar: because of polygamy and unequal inheritance rights, women are

considered inferior to men in the Islamic world-view. For the human rights advocate then, these practices need to be reviewed and abandoned. I have already discussed these edicts at some length in relation to Islam and repression in Chapter 1, but here it is necessary to concentrate on the specific issue of dialogue between Islam and human rights thinking.

I have argued that, by looking at polygamy as it is explicitly addressed in the *Qur'an*, one can see that it was an institution intended to aid women rather than one intended to satisfy men. Women widowed and/ or orphaned who did not have independent financial means would be left to depend on the voluntary donations of Muslims. This, the *Qur'an* envisaged, could be replaced by allowing men to take on more than one wife and in doing so he would be duty-bound to provide for that woman financially. Today, the argument runs that such financial provision should be made by the state. The state has an obligation to provide for women in need of financial support rather than leaving them to the mercy of other citizens. Indeed what of the woman who is widowed or orphaned but whom no man is willing to marry either as a first wife or co-wife? Or the woman who simply does not wish to enter into a polygamous marriage? Does this mean that no one is obligated to protect them? Clearly from an Islamic point of view no man or woman can be forced to enter into a marriage arrangement against his or her will. Traditionally also, the *bait al-mal* or state treasury consisting of *zakah* and *sadaqah* donations, was used to provide for the needy. Given that there are Islamic provisions for such women, is there not then a case for outlawing polygamy in Muslim nations? While traditional Muslim communities made use of the *bait al-mal*, the fact is that today many Muslim states do not have adequate resources to provide welfare for their citizens. Unemployment

benefits and free health care are not available to all women living in Muslims states today and will not be for the foreseeable future. It would seem then that the original reasons for sanctioning polygamy are still present in today's world.

If the purpose of human rights is to protect human beings then the prohibition of polygamy may not be the best way of doing this. As already argued, states do not currently provide adequately for their female populations but one would not wish to see women remain in marriages or agree to be in a polygamous marriage solely out of fear of economic deprivation. The first duty then is to ensure that suitable welfare is available to those women who need it. This will inevitably involve lobbying western governments to take the universal nature of socio-economic rights more seriously. Secondly, the continued obsession with polygamy is disproportionate to the actual problem. Polygamous marriages are still very much the exception in Muslim states. In Iran, for example, less than one per cent of marriage arrangements are polygamous and the practice is still frowned upon.⁴³ Thirdly and most importantly, polygamy is intended to be a voluntary arrangement. Thus Muslim conservatives might argue that there is no justification for outlawing the practice or even restricting it in the way that some states have done. But if Muslims states have a duty to uphold Islamic principles, they equally have a duty to ensure that Islamic principles are not abused. If polygamy was intended to protect women then state institutions do have an important role to play in ensuring that no woman will suffer as a consequence of the practice. While both husband and prospective co-wife have a personal duty in this respect, the state has a social responsibility to its female citizens. If the state cannot guarantee a certain level of subsistence as an alternative to polygamy, the least it can do in the meantime is attempt to ensure that husbands follow the *Qur'an's* command not to '*... incline towards one to the exclusion of the other, leaving her in a state as it*

were of having and not having a husband'. (4:129). Civil courts need to discern the reasons behind a man's wish to be polygamous. If it is simply a result of physical attraction to another woman that does not constitute a valid Islamic reason. They also need to ensure that all concerned consent to the arrangement and that the man has the financial means to meet his *Qur'anic* obligations. Once these procedures and welfare provisions are put in place one might witness a natural and voluntary decline in polygamy in Muslim societies.

The conservative case for not placing any restrictions on polygamy, on the ground that, even with sufficient welfare and maintenance provisions, some women might wish to consent to their husband taking a second wife whatever his reasons and means for doing so, is a weak one. This argument would fail to ensure that men act within Islamic dictates, which constitutes a serious failing in any society claiming to be Islamic. Indeed some women may wish to remain married despite their husband being adulterous, but conservatives would not suggest that adultery be sanctioned or impervious to censure.

Inheritance rights cannot be thought of in the same way as polygamy. In inheritance claims a woman will be accorded certain treatment regardless of her own wishes and regardless of the wishes of the deceased. She will be given only half of what her brother receives. The fact that overall instances of inheritance claims, mean that women inherit in more cases than do men and the perceived reasons (men are responsible for providing for women) for the unequal allocations in individual cases might still not be acceptable to human rights proponents. This is because for the proponent of human rights, all adult individuals must be treated as independent beings

so that to assume that one being is naturally dependent on another and to enact laws accordingly cannot be acceptable. If an individual cannot provide for himself provision should be made by the state; it ought not be achieved by his taking a disproportionate share of his father's estate at the expense of his sister. Moreover, this in turn disadvantages his sister who might be widowed, divorced or married to a man who cannot find work and/ or does not provide for his wife. As in the case of polygamy, it is argued that the inheritance laws are outdated and that women are being forced to rely on the good will of men (in this case their brothers), which is not always forthcoming. Here though there might be no room for negotiation. The position of Islam is clear and based on the explicit *Qur'anic* verse 4:11. While there may not be room for compromise with human rights on this issue, adherents to Islam need to do more for women. We have seen how women in Pakistan, are pressurised into relinquishing their rights to inheritance. This is not acceptable. States should play a stronger role in ensuring that women receive their rights. This might involve courts automatically overseeing all transfers of wealth after a death to ensure that all relatives receive their share. Muslims can no longer rely on the assumption that they are living in societies in which men will voluntarily respect women's rights: that if a brother sees that his sister is in greater need of the inheritance, he will voluntarily share his portion. But this issue needs to be kept in proportion. For most people inheritance claims represent only one and only a very small source of their income. Furthermore, when all inheritance claims as stipulated in the Islamic scheme are respected, they actually reveal surprising gains for women. In Saudi Arabia, for example, women own over 40% of the country's private wealth even though only small numbers of women are involved in economically active roles. The figure then might be attributed to inheritance rights.⁴⁴

There is yet another unresolved issue that the International Bill of Human Rights has failed to address at all, that is not explicitly sanctioned in the *Qur'an* but appears to be sanctioned by Prophetic practice. We saw in Chapter 2 how child marriages are permitted by government legislation in Iran. We also saw that of the various international documents it was CEDAW and not the Bill that addressed this problem specifically and called for the practice to be outlawed. But there were even problems with this call for prohibition because CEDAW also failed to stipulate an age where adulthood begins and thus states wishing to continue the practice could simply lower the age of majority to suit their agenda. Despite the fact that the Bill has not addressed this issue specifically I have included it in this section because as pointed out in Chapter 2 human rights advocates such as Mayer have included it in their work as a problem in Muslim societies and have suggested that it is a human rights violation.⁴⁵ Here I am not concerned with contesting the legitimacy of CEDAW but with the problems this practice might bring to Muslims. Leaving aside here the agenda of states, let us concentrate on the Islamic arguments because it is these arguments that will inform the way governments are lobbied by Islamist pressure groups. Firstly the following questions need to be put to those Muslims who wish to retain the practice: who benefits from this practice? Who does it harm? The initial premise of child marriage might have been that such marriages cemented relations between families but today while this might still be the case it also seriously limits the child's ability to decide for herself and moreover the areas that it is still practiced are likely to be rural area, with low levels of literacy. Therefore the child is unlikely to be aware of her Islamic right to repudiation upon reaching adulthood. Secondly, it is also the case that marriages of very young girls are arranged because it unloads a financial burden. Thirdly, the practice is not explicitly sanctioned in the *Qur'an*.

This might be because although Aisha was married to the Prophet in childhood, today in arranging such a marriage, parents are not marrying their daughters to a Prophet, a man that can unconditionally be trusted to act with benevolence and compassion. Given all these factors it seems then the potential for harm to the child appears to be greater than any potential benefits.

However, even by accepting these arguments and by agreeing that the practice should be restricted by Muslims and specifically by the International Bill we are still left with a very serious problem. When does a child cease to be a child? The American scholar Hamza Yusuf, a great supporter of the classical schools of *fiqh* has conceded that although Aisha's marriage was completely acceptable in the era it took place it constitutes a problem today because childhood years, due to various aspects of modernity, are extended. He explains that a thirteen year old for example would have had the emotional and mental maturity of an adult at that time but that this is no longer the case.⁴⁶ To put a specific age on adulthood requires much greater research and has implications beyond the practices of Muslims. Here however I would suggest that Muslims need to re-consider the traditional requisite of puberty for attaining adulthood. This is because defining adulthood with puberty raises serious questions about when states can force citizens to fight in wars, how states allocate voting rights and to what age compulsory education is applicable. On these matters states have indeed been prepared to put a specific age on adulthood, it is therefore inconsistent that many Muslims are reluctant to do so in the case of marriages.

This is what Muslims need to do in order to aid women in the areas of polygamy, inheritance and child marriages. But what of the numerous other issues associated

with divorce, marriage and political and legal rights? It still remains the case that all these issues are dealt with by Muslim states in ways that seriously disadvantage women even though alternative Islamic approaches are possible. Men are still being allowed by and large to divorce wives at will; women are still being forced into marriages. What can Muslims do to alter this state of affairs?

Practical Solutions

Secularism

The general problems of sidelining religion in attempts to implement human rights have already been discussed. The fears are that faith based proposals will inevitably lead to intolerant policies, but religious groups in turn feel discontented if their faith is sidelined. It is however, necessary to discuss secularism in specific relation to Islam and human rights in more detail since a frequently articulated solution is that Muslim states should be secularised. Secularists, despite all the arguments presented hitherto, still will not be convinced that Islamic sources should be permitted to play a prominent role in organising political and social life. Firstly, secularists might argue that, if there is little or no conflict between the spirit of Islam and human rights documents, why can we not dispense with Islamic models of the state? For those who claim that there is a fundamental division between human rights and Islam, the arguments for secularism become even more cogent. Secularism holds that science is the sole providence of humankind, that reason is the measure of truth, that people's rightful concern is with the removal of inequalities in the world rather than with possible compensation for such inequalities in another life, that the state should be

impartial in religious matters, and that all religious and philosophical doctrines should be equally tolerated.⁴⁷ While Muslims would rightly agree on the issue of fighting for equality, toleration and impartiality they would find difficulty in accepting the secularist's claims for science and reason. Instead they would argue that a proper understanding of Islam, even though it places divine revelation above human reason and science, does endorse the principles of tolerance, equality and impartiality.⁴⁸ The reason that many writers insist on a secular model for state institutions is because they claim that only then could the problem of deciding between competing interpretations of Islam be overcome. They suggest that the fundamentals of Islam that are agreed upon by all are only the ritual aspects: praying, fasting and pilgrimage. On matters of social organisation some interpretations of Islam might call for eroding inequalities in this world, and for tolerance and justice but some apparently do not. Reza Afshari, for example, argues that it is impossible to ascertain the 'true Islam' and therefore makes 'a final plea on behalf of secularism and socio-political and ideological complexities'.⁴⁹ Some writers even suggest that most Muslims would prefer to be governed by secular laws. Mayer claims that in elections, when given the choice between candidates offering an Islamisation programme and candidates who criticize human rights abuses and call for greater freedoms, Muslim citizens have continuously opted for the latter. This has been proven in elections in Sudan in 1986 and in Pakistan after 1988.⁵⁰ This however is not the same as a choice between Islam and secularisation. It is a choice between dictatorial rule and promises of greater freedom. Mayer assumes that populations are not aware that such rule contradicts Islamic dictates. By rejecting autocratic governments, Muslims are not rejecting Islamisation but disingenuous and opportunistic claims to Islamisation.

The secularisation model is problematic on a number of fronts. Firstly it involves a top-down change. That is, states must do away with claiming to base their legislation on Islamic rulings. Legislation instead should be the result of human reasoning and based on facts and of course on what is endorsed in the International Bill of Human Rights. Secularists believe national legislation will in turn influence the ways in which citizens behave. Women will be able to initiate divorce on easier terms, not have to gain the permission of their guardians before marrying, not be forced to dress in a certain way and even be entitled to inherit the same as men. But as the empirical chapters have shown, Muslim societies do not always operate in this way. Despite state legislation in Pakistan, for example, women are still married at the age of minority; despite some limited rights for divorce, women still do not exercise these rights and opt instead for *khul*, despite the prohibition of *talaq al-bidda*, it is still pronounced and women still do not claim even that inheritance to which they are entitled. The reason is that women live as parts of families and communities and they rely on these entities for financial and emotional support and do not wish to defy their wishes if this will result in the withdrawal of that support. Another important reason for the continuation of such practices is that women along with men quite simply believe that they are correct Islamically, while alternative government laws are unIslamic. Imposing government legislation will not alter this state of affairs. Empirical evidence proves this. We have seen that despite the Reza Shah's ardent secularisation programme, general attitudes toward women did not alter dramatically and the Reza Shah saw no contradiction between his secularisation policies and his own decision to be polygamous. Studies on Turkey, arguably the most secular state in terms of legislation with a majority Muslim population also lead to similar.

conclusions. There, despite the criminalisation of polygamy and divorce without court arbitration these practices still continue.⁵¹ While secularisation might address the violation of certain civil and political rights, prevent mass executions and the torture of political dissidents, it will not offer the type of assistance that women require. Richard Falk explains that in relation to human rights the state is both too strong and too weak. It is too strong in that if it is itself the source of human rights violations, it is extremely difficult if not impossible to organize effective opposition at least in the short run. But it is also too weak in that, even when it is disposed to implement human rights standards internally, it can overcome contrary cultural practices only rarely and marginally especially if these are deeply ingrained and widely dispersed.⁵² Even the democratic process might not overcome these obstacles. In Pakistan, for example, despite being permitted by the state to vote, women for a variety of reasons simply do not. In fact Pakistanis along with Turks for example have ignored state laws considered beneficial to women despite the risk of fines and imprisonment.

My proposal is that real progress can be made only by convincing populations that repression of *any* individual constitutes a deviation from Islam and that every individual has an equal claim to certain choices and freedoms. The reason for my insistence on discounting the secular model is also because by pushing for it, Muslim women are actually relinquishing their claim to the *Qur'an* and Islamic teachings. They are giving wholesale control of these sources to those conservatives, who believe and claim to others that it is their God-given right to oppress women. Secularism, even if this involves incorporating all the freedoms of the International Bill, will not counter the dissemination of such claims among the general population.

It will not stop men and women from coming to believe that Islam has indeed conferred such rights. This state of affairs cannot be acceptable to committed Muslims and they have a duty to protect Islam from such misuses. Secular writing often appears to overlook the determination of Muslim women to regain a voice in interpreting the primary sources. Mayer for example goes as far as to claim that if apostasy were not a punishable offence in Islam, many women would convert in order to escape the personal status laws applicable to them.⁵³

Islamism: 'Education is incumbent on every male and every female'.⁵⁴

Nonetheless, the gap between the requisites of a truly Islamic state and the current reality is a stark one. Muslims do also have a duty to see Islamic principles of *shura* and justice implemented at a national and indeed international level. But while the principle of closing that gap and the importance of these principles is addressed within Islamic scripture, the means of action are not. Indeed the nature of today's political regimes poses great problems for citizens which are not addressed in the *Qur'an*. While freedom, democracy and rights are, considered the standards of civilised societies, the ability of the state to repress and monitor its citizens has increased significantly since the advent of Islam. The willingness of governments to torture and rape when their authority is threatened is well documented. In turn when the resources available to the mass population are limited, how can Muslims possibly fight such forces with success? Given the strict *Qur'anic* abhorrence of taking human life, it is apparent that only in extreme circumstances are violent means permitted and even then only as a defensive strategy. Other means, however, are open to evaluation. In Jordan this might involve the formation of or support for an existing political party,

in Saudi Arabia some form of civil protest and strike action and in Palestine a more extreme physical response. It is entirely plausible and logical that Islamic teachings after having laid down some very basic principles, would leave communities to decide the details as their circumstances change over time and space. This however is not an entirely sufficient answer and many works end precisely where the practical questions and solutions are called for. Here I will attempt to make some tentative suggestions of possible strategies for change.

From the empirical Chapters it has been learnt that Muslims do indeed lack democracy and competent leaders. But more than this, women and indeed men lack control over their lives on a day-to-day basis and this can be attributed only partly to a lack of civil and political rights. Women also cannot rely solely on government initiatives to help them because there are in addition, many cultural barriers to women seeking employment, going to schools, choosing their own marriage partners and escaping abusive husbands. Women are often unaware of government policy and, even if they are not, they do not have access to the institutions that can help them. There are practical steps to initiating divorce or claiming inheritance: petitioning the court or filling out paper work. This is a problem because women, the figures on literacy show, lack education. As such they are essentially left to rely on a third, and one can assume, male party to tell them what authentic Islam is, what their legal and religious rights are and how to claim them. Protests and lobbying government is almost always led by the educated that in most Muslim states constitute the minority and to a large degree the elite. The Islamist feminists of Iran that lobbied the governments there were highly educated professionals, many with doctorates.⁵⁵ These women have made important gains in reforming divorce and marriage laws and

in increasing women's access to certain professions. Yet these reforms become redundant when the population they are intended to protect is either unaware of them or lacks faith in them. The population is to a large degree unconvinced of their Islamic credentials and see them as the work of a secular, westernised elite who are detached from the religion and culture of the majority.

If education leads to awareness of rights violations and the confidence to demand change, then calling for universal access to education, if indeed not universal *compulsory* education, must be the foremost priority of the women's Islamic movement and indeed of the human rights movement. Of course governments are not likely to bow to such pressure as rapidly as the situation demands and it has been suggested that many Muslim states may lack the resources to make such a provision. Here it must be emphasised that work at grassroots level can be extremely effective and might have the important advantage of respecting certain existing cultural norms. For example, if the only way in which a woman or girl in a certain district is going to be permitted to attend a school is if that school is segregated on gender lines, then women's groups need to lobby for a segregated school. In terms of resources, teaching women *Qur'anic* exegesis and *Hadith* narrations can be done with limited resources, without government approval and involvement, and in its early stages is less likely to be disapproved of by community members. The onus then is on this educated elite to educate the majority and convince that majority of the choices and freedoms made available to them by their faith.

In looking to education then I am not referring simply to the way that western practitioners and non-governmental organisations usually understand that term.

‘Education’ is often taken to mean standard education aimed at increasing literacy and numeracy with some information on contraception and birth control methods. It might be recalled from the previous Chapter that some feminist writers have advocated an extension of the list of human rights to include literacy, reproductive choice and childbirth. Education for Muslims does certainly need to include these aspects but it must also surpass them. In its Islamic sense education needs also to involve disseminating knowledge of Islamic sources, of historical and contemporary *fatawa* and of how these fit in with daily experiences. One might recall from the previous Chapter how feminists are wary of the human rights agenda because of its irrelevance to the everyday experiences of women. Islam, on the other hand, in addressing everyday human relationships does employ the language of rights. In the male-female relationship, it commands Muslims to ‘*remain conscious of God, in whose name you demand (your rights) from one another, and of these ties of kinship...*’ (4:1). Similar verses can be found relating to the rights of orphaned children and parents in 4:2 and 17:26. Muslim women have a right to know of these passages along with those enjoining worship, for in Islam the spiritual and physical nature of human existence cannot be separated. The purpose of such education is not only to equip women with the skills they might need to apply for a loan, start a business and keep their own accounts or to seek employment. Although this form of knowledge is crucial, it will benefit women only once they have the confidence and understanding of their faith and appreciate that it permits such practices.

Such initiatives have been attempted in various Muslim countries already. Mahnaz Afkhami devised a manual aimed specifically at working at grassroots level with Muslim women following the Beijing Conference. The purpose of the manual was to

transmit universal human rights concepts to Muslim women. Along with discussing various aspects of women's rights, the programme contained notes to facilitators on biographies of Islam's early heroines, a list of human rights and women's organisations in selected Muslim societies and a selection of relevant *Qur'anic* verses, *Hadith* and proverbs.⁵⁶ This attempt to interweave human rights education with Islamic education is an interesting one and the agenda is clearly to show Muslim women that universal human rights are compatible with Islamic teachings. Women however are not likely to have easy access to such programmes if the facilitators are seen as 'outsiders' and if the agenda is seen as preaching non-Islamic, 'western' principles. Indeed leaving aside prohibitions from male relatives, Muslim women themselves might feel suspicion toward such initiatives.

It seems that the struggle might prove more successful if it is carried out from orthodox networks and institutions. If the male-led Islamic movements rally support from sermons in the mosque, it might prove more productive for women also to work from within established networks of female meetings. The *halaqah* is one such network. Literally meaning circle, the *halaqah* often convenes on a weekly or fortnightly basis. The format of the *halaqah* usually comprises some recitation of the *Qur'an*, followed by a short 'reminder' given by one person, which might involve the discussion of an aspect of *seerah*, *Aqeedah* or *fiqh*. The responsibility of giving this reminder might fall on the same woman every week, if one such woman is considered of exceptional knowledge, or it might be rotated around those who attend regularly. Of course not all women have access to these meetings, but a study carried out in Iran shows that they do attract a wide range of age groups and social classes.⁵⁷ Aside from the knowledge gained at these gatherings, they often provide an important support

base for women. Any measure to educate women will meet with numerous obstacles. And once men come to know that that education is not simply about increasing literacy but about disseminating religious knowledge that challenges conservative understandings, then the obstacles will come from numerous areas in both state and society. The 'violent' reaction that Mernissi refers to will not subside in a short space of time. But the goal for women's groups operating at the present must be to increase support for their activities amongst the population at large. This involves gaining the trust of local women through an education programme that understands that changing local norms will be a slow and gradual process. If communities suspect from the outset that such education initiatives are intent on bulldozing the local culture the initiatives are unlikely to gain that trust and see any successes. It is only when acceptable numbers of women become aware of their rights as Muslims and are able to question the disingenuous interpretations of Islam offered to them by their immediate families and communities that their struggle will become one that is difficult if not impossible to suppress.

Another pressing problem today in the Muslim world is the gap between the scholar and the layperson. There is the physical space that makes scholars inaccessible to many Muslims, which in turn makes it increasingly difficult for Muslims to seek the methodological background to the issued *fatawa* and advice on their daily lives. The common view is that only few Muslims are capable of deriving rulings from the sources, while the layperson must be content with following them. There is also suspicion of gaining knowledge from the written text and a belief that true knowledge can be arrived at only through the oral tradition that is by extensive study on a personal basis with the scholar. The traditional ways of Islamic learning may quite

convincingly be seen as superior to the current trend of reading numerous books each containing contradictory information and each produced by authors and publishers with dubious credentials. But there is also the alienation of Muslims from Islamic scholarship. Muslims are made to feel incapable of seeking knowledge without the guidance of these scholars, yet scholars seem to be doing little to make themselves more accessible to the masses. Even the increasing number of scholars issuing *fatawa* on the inter-net or appearing on TV channels fails to touch the lives of those women living in poverty without access to such facilities. Yet it is these women who are most vulnerable to abuse. Muhammad Asad writes how 'the *'ulama* did and still do their best to impress upon the 'common man' that it is his moral duty to be a human parrot; that is the Law of Islam (or whatever now goes by that name) must be obeyed, but not necessarily understood, that an approach to its principles can be achieved only after a long specialised study: in other words, that the *Shari'ah* though it touches upon everybody's life is none the less not everybody's business'.⁵⁸ And yet the *Qur'an* clearly explains that '... as for those who strive hard in Our cause – We shall most certainly guide them onto paths that lead unto Us: or, behold, God is indeed with the doers of Good'. (29:69). The use of the plural, 'paths', indicates that there is more than one way of leading to a 'congnizance (*ma'rifah*) of God'.⁵⁹ Muslim women can thus rightly question any scholar's rulings and methodologies but some basic education is needed before Muslim women will have the confidence to engage in such enquiries.

This distancing needs to be rectified in relation to both the quantity and quality of scholarship available to the majority of Muslims. Women of course have the added obstacle of often not being permitted to approach the scholar first hand. On this level

then there is the need for increased Muslim scholarship from women. Despite measures in some Muslim countries designed to silence the voice of Muslim scholars, there is no doubt that they enjoy legitimacy in the eyes of other Muslims. This ‘*ulama*, when it is not part of the state apparatus or when, despite state efforts it has not allowed itself to be controlled, is an important check on governmental action. To date much of the establishment has been either insensitive or completely opposed to the emancipation of women. There is no Islamic bar on women occupying such positions of scholarship themselves. Those women privileged enough to have the opportunity to study Islamic theology at the orthodox centres for learning should not refrain from taking on such a task. It is only when women fulfil the criteria of Islamic scholarship, when they too can quote *Qur’anic* passages with eloquence, fluency and understanding and *Hadith* narrations with knowledge of the exact historical circumstances under which the event or utterance took place and of every name in the chain of narration, that it will become increasingly difficult for male scholars to dismiss them as ‘westoxified’, or ‘chocolate’ Muslims. When these women in turn make their knowledge available to the mass of Muslim women, then the dismissal of their voice will become even more difficult. The education of Muslims is the key to the development of Muslim society and is also central to the Islamic way of life.

This approach of working within the population also addresses problems that models of secularism do not. For this approach is aware that not all barriers to women’s freedom are initiated and upheld by the state. The process of educating communities through traditional institutions will impact on the way that women engage with their communities as wives, daughters and mothers. For example, by pointing to the numerous *Ahadith* that command Muslims to treat all their children equally,⁶⁰ it will

call into question the actual Islamicness of the way in which some mothers have traditionally raised their sons, privileging their education and health over those of their daughters. While the changes will be gradual, they are also more likely to be considered legitimate and valid by local communities and make real differences to the way in which individuals view women's roles and rights. Conservatives have a particular agenda in opposing such initiatives, because having been permitted education and the opportunity to excel in this field, women will discredit further the conservative view of women as weak in intellect and in need of spiritual protection and guidance. This however, makes the need for such female scholarship even more urgent.

Moghissi refuses to share enthusiasm for this use of Islam. Firstly she believes that the use of it is not based on true conviction: 'As a matter of political expediency, secular women, as well, have made use of an Islamic framework in demanding change'.⁶¹ Secondly, she refuses to accept that Islam is the only practical mechanism for reform in the Muslim world, 'to avoid alienating the masses, the intellectuals have kept quiet, sacrificing what they had won over many decades in the struggle for democracy and national liberation. Should intellectuals continue to blur their own views – apologize for their secularism, even turn to religion – because religion has been presented to the masses as the only genuine, home-grown vehicle for national liberation, and thus avoid asserting their own identities?'⁶² For Moghissi the answer is clearly no because 'in the Islamic feminist analysis of gender politics under fundamentalist rule, no mention is made of the social, political and cultural parameters of feminist activities in Islamic societies. Neither is attention paid to the contradictory impact of Islamic feminists' activities, that is, their role in legitimizing

and sanitizing the political-religious dictatorship'.⁶³ There are a number of problems with Moghissi's disparaging comments on Islam as a vehicle for reform. Moghissi blames the Islamic fundamentalist movements for presenting Islam as the only viable debating ground in Muslim states and claims that this project has been pushed forward with success because 'the masses' have come to view Islam in the same way. There is no justification for this image of 'the masses' as intellectually inferior, play-dough in the hands of wily politicians and orators of Islamic fundamentalism. Appeals to Islam prove successful because the audience continues to hold the faith despite government restrictions on certain religious acts in countries such as Turkey and Egypt.

The charge of complicity with the 'political-religious dictatorship' is a harsh one. In employing Islamic arguments are women collaborating with the repressive political regimes that claim to be upholding Islam? Moghissi appears to suggest that women in this case are accepting the limited parameters, within which they are forced to operate, rather than challenging these directly because of their unjust, restrictive nature. It is precisely these limits, which must be challenged because they have been responsible for the very limited success of their initiatives. Far from collusion with the repressors, many of these women's groups by asserting their Islamic identity are refusing to allow male-led movements monopoly control of Islam. They too are demanding and exercising their right to study, interpret and bring their diverse experience to the Islamic text. This in itself can and does constitute a serious challenge to the social, cultural and political parameters. Moghissi's portrayal of the use of Islam as the 'easy way out' or as a defeatist stance is unfair and inaccurate and

fails to acknowledge the important gains made by these women in the face of extremely harsh opposition.

A Place for Human Rights?

Despite numerous claims to the contrary, there is little to indicate that the doctrine of human rights runs in opposition to Islamic teachings. In fact even the orthodox Imams, as revealed in Chapter 4, had devised a list of fundamental rights for humans that are remarkably similar to those to be found in the UDHR. Yet the preceding discussion might imply that, in the fight for women's rights in the Muslim world, the doctrine of human rights has no role and may even be dangerous. The introductory comments on the legitimacy enjoyed by human rights claims in the international arena indicate, on the other hand, that it is extremely difficult for states to escape this doctrine and the same holds true for opposition movements. In fact, repression of Islamic opposition and banning of Islamic parties is often justified on the ground that these groups cannot be trusted to uphold democratic values and human rights if they gain power and an enormous volume of western literature has been devoted to this concern. If we ask which is *perceived* to occupy the higher moral ground, human rights or Islam, on the contemporary international political stage the answer is most certainly the doctrine of human rights. The danger for Muslim women's groups is that the same scrutiny and distrust could come to be directed at them, and this has serious repercussions for mobilising practical resources from international actors. On the other hand however, when women's groups do employ the language of human rights even in conjunction with Islam they are accused of upholding *kuffar* laws and discrediting Islam. The dilemma is indeed a difficult one: a choice between alienating

international organisations that hold the power and finances to offer practical assistance or alienating the community that they are trying to educate. There are no easy or short-term solutions to this problem, but clearly the present situation of women is an undesirable one and demands action from all parties who claim to be interested in alleviating human suffering.

Beginning with the theory of human rights, what can be done in this area to abate the tension? Western writers on human rights are keen to tell Muslims that they *should* not shun the theory of human rights simply because of its western origins.⁶⁴

Ultimately, the human rights theory was devised to help all humans and this should not be lost sight of simply because Muslims feel disgruntled at the western world. However, as outlined in the previous Chapter, criticisms of contemporary conceptions of human rights are voiced by a variety of groups of which Muslims are only one. The problem with human rights norms as enshrined in the International Bill is not merely their origins but their development, which have continued to sideline contributions from women and non-western civilisations. Hence there is little to justify the arrogance that emanates from much of the writing on human rights today. Nor is there any reason that human beings the world over should settle for the shortcomings in the theory, simply because there is as yet no convincing alternative. In short, those advocating the theory cannot continue to ignore the fact that human rights documents and mechanisms operating mostly within the United Nations have failed the plight of Muslim women. It has offered little or no protection to Muslim women in Bosnia, Palestine, Chechnya and Kashmir. To date then, Muslims have no reason to respect this theory or to see it as the key to their liberation.

Much has also been written on why the hypocrisy of western states over human rights protection does not discredit the theory itself so that the theory should continue to be invoked when that is necessary. This might indeed be the case, but Muslims would ask what is being done to end this hypocrisy. Mayer celebrates the fact that ‘despite many serious lapses, Western countries since the nineteenth century have by and large been moving in the direction of affording greater protections for the human rights of their citizens and imposing limits on the abilities of governments to infringe on these rights’.⁶⁵ But this leads back to my arguments in Chapter 4; in looking at the International Bill do we see a list of rights owed to all humans or only to certain citizens? Western states are undoubtedly the wealthiest in the world today and wield considerable political influence in international organisations. If, as they claim, there is a genuine commitment to human rights in the west, why has not more been done to help human beings outside of their borders, who are suffering from rights violations? If not active help, the least that can be done is to refrain from actions that directly add to suffering. Engaging in war with weaker states, providing arms to aggressor states, crippling debt repayment schedules and blatant discrimination against poor states in trade arrangements, are just some of the practices of western states that are responsible for human rights violations. Of course politicians can seldom be trusted to act out of principle, but in liberal democratic states much can be done to lobby governments to take action on certain issues. Moreover the current hypocrisy over human rights abuses impacts on people on an everyday basis and it is not acceptable for western writers to express concern at human rights abuses by other governments while excusing the actions of their own as inevitable in ‘the real world’. Those western writers, such as Halliday and Mayer, who urge other non-Muslims not to shy away from criticising Muslim governments when they act reprehensibly have the

same duty to censure their own governments and demand real action from them. The absence of such internal criticism gives the impression that Muslims are victims only of other Muslims, that the desire to control and repress others is an exclusively non-western one, and that it is a western understanding of the world that can save the victims from this situation. The truth, however, is that Muslims are not only victims of their own governments, but also of unfair trade agreements, of western defence companies that continue to supply these governments with weapons and surveillance equipment, and of western owned pharmaceutical companies and multi-nationals. Some internal criticism then would achieve a great deal in bringing more credibility to the doctrine of human rights. Once societies begin to feel that it is not only their way of life that is being targeted and singled out for condemnation, that there is a wider understanding of the full range of human rights violations, an acknowledgement that the list extends well beyond the victim's own national government, women and indeed men, might then feel that there is some merit in taking up the cry of human rights.

The other very simple question is, why should a woman in Pakistan or Iran for example be inspired to fight for her human rights simply because she is told that international law has given her those rights? The vast majority of human beings, including perhaps those living in the west, feel remote from this law and believe it has very little relevance to their daily existence. This is even more the case for women who have suffered rape, poverty, or violence in their own homes. Human rights advocates then need to recognise that there is a limit to what their language can achieve. Regardless of this reality they should support other initiatives to meet the same ends. If Islamic educational initiatives will bring about the same results as those

sought by human rights agencies, those agencies have a duty to fund these initiatives and offer any other practical assistance available.

All this, however, paints a very bleak picture of the current state of human rights thinking. It seems that given all the dissatisfaction expressed at the theory and the practice, there is very little that it has got right. This is not entirely the whole story. The basic premise of the doctrine of human rights was and continues to be extremely relevant to our experiences: that governments cannot always be trusted with power and need to be checked by more powerful actors. The theory of human rights lays down some parameters within which political power can reasonably operate. States can do anything but, *infringe on their citizens' rights to life, freedom of expression and so on*. The purpose of this thesis is not to dispute the very attempt to develop this set of universal rules. For indeed human beings cannot be left to the whims and aspirations of their governments, and ultimately all human beings need a safety net, when these governments fail them as is inevitable. The theory of human rights quite rightly provides that safety net. Its purpose is not to dictate to humans the details of their lives and political organisation, but to provide protection when this is sought. Presently, at an international level it is only through the language of human rights that the UN bodies or non-governmental organisations can lobby governments effectively for change. The task of western human rights advocates is also to address the gross disparities in wealth across the nations of the world. However, if I am asserting that Islamic teachings can cater for many of the problems facing women today, it may be asked why an Islamic approach cannot address these disparities in wealth also. Why is the language of human rights being given responsibility for this task? The answer lies in globalisation and increasing interdependency in the world today. To date no

adequate framework of Islamic economics has been developed to address these phenomena and to counter the negative effects they have on women's lives. But even if one were available, human rights advocates, given their primary concern with aiding human development and alleviating suffering would still have a duty to help actively in seeing such a framework implemented. This is because it is only by closing that gap that Muslim women can have meaningful access to education and employment opportunities and welfare provisions, which inevitably determine whether they will exercise their rights in other areas. The human rights bodies must also aim to be more inclusive of Muslim voices and experiences and be more resistant to the current practices of powerful western states, which use them to further state interests and disregard them when they hinder such interests. Empowering such bodies as the UN or non-governmental organisations further, leads to the problem of striking a balance between human rights protection and respecting state sovereignty. This certainly needs to be addressed but is beyond the confines of this research.

Human Rights for Muslim Women: Consorting with the enemy?

Thus far I have written a great deal on the shortcomings of human rights and the strengths of Islamic teachings. Here I will turn to the most problematic dilemma for Muslim women in their struggle for a better life. What should women do in the meantime? How do they gather the resources needed for education initiatives to take root and how can they make western human rights practitioners and writers aware that they need to shed some of their arrogance? The answer to this question does not lie simply in strategic plans but also in the theological legitimacy governing any enterprise.

For many if not most Muslim women the predicament is whether they can appeal to human rights agencies for assistance (financial and otherwise) and remain true to their Islamic identity and faith or whether, by making human rights agencies aware of the human rights violations carried out by their governments and communities, Muslim women are consorting with the enemy, with that part of the world responsible for the Crusades, the loss of Muslim land in Palestine, mass propagation of negative images of Islam, and continuous attempts to undermine Muslim opposition in secular states. If, as already argued, there is no essential incompatibility between the two doctrines then there should be no need for Muslim women to employ the human rights stance. By doing so they are actually displaying a lack of faith in Islam's ability to aid their plight. However, Muslims are aware of the Prophet's treaties and agreements with non-Muslims, signed to protect the Muslim community and the subsequent obligation to respect them. Yet these were enacted when the Muslim community was itself a united body, and the treaties were essentially for the benefit of that community as a whole. Appealing to a human rights doctrine today entails seeking protection *against* other Muslims, an action not sanctioned by any Prophetic practice and hitherto not addressed adequately by any of the orthodox Imams. Some formulations have been attempted in advising Muslims on how to deal with conflict within the *umma*. Al - Qaradawi discusses the '*fiqh* of balances'. When interests conflict, al - Qaradawi argues, an interest of a lower status should be sacrificed for the sake of a higher interest, and the interest of a private nature should be sacrificed for the sake of a common interest, though the private individual should be compensated for her loss. When interests and evils conflict, a slight evil should be forgiven for the sake of realising a major interest. A temporary evil should be forgiven for the sake of realising a long term or permanent interest and even a great evil should be accepted if

its elimination would lead to a greater evil. In normal conditions, writes al - Qaradawi, the avoidance of evil should come before the realising of interest.⁶⁶ The general perception amongst practising Muslims would be that resorting to United Nations bodies and international non-governmental organisations for assistance is an evil. The question is how this 'evil' fares in the scale of the '*fiqh* of balances'.

To alleviate their consciences in turning to non-Muslim agencies for assistance, Muslim women need also to be aware of the hypocrisy embedded in the resistance to them. The primary focus for many women's groups is often the state's family laws. When reform of these is sought, the state and local communities often resist strongly, seeing the protection of existing family law as the fortress of the Islamic ideal. Even states prepared openly to abandon Islam in all other areas will claim that their personal status laws are completely Islamic and rightly so. The first claim, as the case studies have shown, is often a false one. A closer examination of these laws shows that many of them were actually introduced not by committed Islamists but by colonial rulers. This is certainly the case for many of Pakistan's laws on marriage and divorce, which were introduced to govern Muslim communities pre-partition. The male-led Muslim conservative movement, whether in government or opposition, is keen to discredit organisations such as the United Nations and 'interfering' non-governmental organisations that are interested only in dividing the Muslim *umma* and to accuse women's organisations of being co-conspirators. This opposition to women's movements should not be permitted to hinder their struggles. For it is the suicide bombings, shootings of tourists, destruction of sites sacred to other faiths, government initiated massacres and illegal detentions that have done brutal damage to the name of Islam.

Muslim women fighting for their rights are neither naïve, unassuming cohorts in the conspiracy against Islam nor iniquitous, self-seeking individuals abandoning their faith. Muslims can also no longer convincingly deny the fact that the current state of Muslim women is in desperate need of change and that it is this reality that continues to disgrace Muslims. The stereotype of veiled, faceless, voiceless Muslim women is strengthened precisely by their relative absence from the public sphere. In sending delegates to United Nations conferences and in participating in working committees at international levels, women are in fact doing much to counter that image and in doing so are also fulfilling a key obligation of all Muslims: spreading the message of Islam. Muslims are instructed to, *'Call thou (all mankind) unto thy Sustainer's path with wisdom and goodly exhortation, and argue with them in the most kindly manner'*. (16:125). Engaging in international projects should be seen in this light, rather than in the negative terms that it previously has. Opposition to such dialogue with non-Muslims displays a greater lack of faith than does participation. For ultimately the Muslim must be convinced that the rationality and benevolence of Islam can stand up to attack and ignorance from any international actors.

The success of such initiatives will depend on whether non-Muslim human rights advocates share the underlying belief that Muslims have an equal claim to that theory as it is embodied in the various United Nations doctrines. The UN to which Muslim nations contribute financially and which is centred around the notion of the equality of all nations small or large, should not be permitted to absolve itself of responsibility for Muslims.⁶⁷ The measures I have outlined above are long-term and will inevitably meet many obstacles from governments and communities. The role of the human rights advocate is to continue censuring actions, which deserve censure because in the

interim that censoring does cause considerable embarrassment to governments. Moreover the theory of human rights tells individuals what they are owed as human beings it does not tell them how to achieve this. For example the UDHR claims that all humans are owed fair periodic elections, but does not explain how these should be brought about in a military or monarchical regime. It is disingenuous then for advocates of human rights to claim that other ways of thinking are inadequate because to date they have not provided such strategies. If human rights protagonists do indeed hold a genuine commitment to allowing human beings to shape their own lives, then any form of financial or other practical assistance also needs to be more forthcoming. It is not however fruitful for that advocate to dictate to Muslim women in what areas they must attempt to reform their faith, simply because the former finds them objectionable.

In al – Qaradawi's *fiqh* of balances then, the continuous subjugation of women and continuous Muslim intransigence can be seen only as an evil greater than any attempt to end suffering. When fellow Muslims fail them, women can quite rightly appeal to outside organisations. In doing so they are not only attaining assistance for their cause but are also making it clear that the inhuman treatment to which they are being subjected contrasts sharply with what Islam teaches and the Prophet himself practised. From their own side however, women's organisations must also be determined to devise and keep control of their own agenda. If Muslim women in a village or city believe that they wish to organise access to a scholar of Islam on a monthly or weekly basis before organising a series of accounting classes, then other Muslims and human rights practitioners must respect this. The task of alleviating suffering for Muslim women needs to be undertaken at many levels and both human rights advocates and

committed Muslims have a role to play. There must be a realisation that, merely because women are subject to repression and hardship, it does not follow that these women do not know what is best for them, that they are not aware of how to better their situations. They may require certain resources but not necessarily a detailed programme of action devised by women at an international conference. It may indeed turn out that some women will prefer the wholly secular route and here too, whatever their misgivings, Muslims must respect this for ultimately God has commanded that *'There shall be no coercion in matters of faith'*. (2:256).

Conclusion

This Chapter has examined the work of two prominent academics on Islam and human rights, Mayer and An-Naim and has argued that the traditional form of dialogue advocated by them between Islam and human rights needs to be modified. I have argued that any dialogue must begin with Muslims and human rights theorists acknowledging that they have failed countless numbers of Muslim women. Human rights proponents must surrender their insistence that Islam be amended simply for the sake of matching human rights standards. From the Muslims a review of the place of orthodox scholarship is needed along with a reassertion of women's rightful involvement in public protest. I have also suggested that some issues such as polygamy and inheritance rights might never be reconciled with human rights thinking but that these issues must be kept in proportion – if followed properly they have limited impact on women's lives and their significance for women is less great than many observers would suppose. I have proposed that an education programme for women at grassroots level is essential if women are to claim their rights and that

more women are needed to take on the task of scholarship. The Chapter ends with an analysis of the role that human rights advocates can play in aiding women's struggle. I have suggested that western advocates need to recognise the role their own governments play in violating the fundamental human rights of those humans living in other states. I end by asserting that, if human rights proponents are truly committed to addressing human needs, they must be more supportive of Islamic women's movements and they must respect the wishes of Muslim women in devising and controlling their own agendas. Equally I argue that Muslims must respect the wishes of women wishing to follow secular path.

Conclusion

This thesis has questioned the merits and validity of the way in which the debate on women, Islam and human rights has conventionally been conducted. It has aimed to move the focus of the debate away from efforts to make Islam's treatment of women compatible with human rights norms and towards the task of making both doctrines more responsive to the needs of women. This has meant moving away from the tactic of extolling the superiority of one doctrine over the other. Instead this thesis has concentrated on the areas in which each doctrine has failed to offer the necessary responses and has highlighted the strengths that each has over the other.

In the case of Islam I have argued that it is rich enough to have the potential to offer meaningful assistance to women's struggles. It has been shown that an important feature of this potential is that it does not require deviation from classical approaches to Islam and is therefore more likely to be met favourably by Muslims. At the beginning of the thesis attention was drawn to the traditional and modern literature on Islam that abounds with examples of independent, respected women such as Aisha' and Nafisa bint al-Hasan and with rulings that offer women a powerful position within the home as mothers, wives and daughters and, within larger society, as politically and legally active citizens.

However, problems have been highlighted in the way in which Muslims presently relate to their faith. First, the empirical Chapters have shown that, when states do legislate on women's issues, they rely too much on conservative readings which are in themselves highly impractical in the modern world. It has been shown that these states

have pre-determined notions of ‘proper’ roles for women. Governments in Iran and Pakistan have been primarily interested in excluding women from public space and have been prepared to manipulate, ignore or contravene Islamic sources in order to justify this exclusion and the policies that it entails. Even despite insisting that Islam honours the important role of motherhood equally with that of any employment outside the home, Iran has actually failed to bestow that honour on mothers in a practical way. Instead men have been given full control over family affairs including control over their children and wives. The result has been that these states have shown a complete disregard for the overriding *Qur’anic* concerns with justice and mercy. Second, I have argued that, although the classical scholars have made tremendous contributions to the development of Islamic law, subsequent generations of Muslims have failed to fill in the gaps left by those scholars. In particular, in the area of family law the Imams Abu Hanifah, Shafi’, Malik Hanbal and Jafar worked from the assumption that men would not abuse their rights to divorce and polygamy, to act as guardians of their children and to greater shares in inheritance. Succeeding scholars have been content with this assumption and thus have failed to respond to the needs of women who are victims of men who do abuse these rights. Men do divorce wives for no reason, contract polygamous marriages out of pure self-interest, fail to treat co-wives equally, betroth their daughters to unsuitable partners and fail to aid less well off female relatives, despite their Islamic duty to do otherwise. In neglecting these issues Muslims have failed to uphold the very *Maqasid* (objectives) of Islamic law: those of justice and mercy. I have argued that, in order to return to and honour these objectives, Muslim societies need to play a greater role in protecting women against these abuses. Thus independent and impartial courts are needed to supervise

divorce proceedings, post-divorce settlements and polygamous marriages, to oversee inheritance allocations and to reconsider the merits of child betrothals.

Such courts can play a crucial role in aiding women but are seldom to be found in the Muslim world that is today ridden with corruption and incompetence. Muslim societies, it seems, have lost sight of the objectives of Islamic law and have become either obsessed with protecting themselves against everything they perceive as western (women working and generally being involved in public life) and denouncing it as *kufr*, or desperate to show how Islam can embrace everything western (liberal democracy, secularisation) in spite of the suspicion and contempt with which many Muslims regard western concepts. Neither of these tactics has convinced observers of the virtues of Islam and both have detracted from the more important task of discerning how to use Islam as a guide to political and social progress in the twenty-first century: a guide that will enjoy the support of Muslims and that will be in tune with the needs of Muslims in the modern world. This endeavour is important not only because scores of Muslims are suffering under disingenuous claims to Islamisation, but also because in its absence, arguments for secularisation become more forceful and observers begin to question how useful Islam can be in modern life. I have argued that, because many of the restrictions on women are put in place by family members and local communities, secularisation is not a viable strategy.

Secularisation aims at seeing religious concerns abandoned by decision-making institutions in states. However such institutions are only one source of women's suffering, and as the example of Turkey shows, while secularisation might be implemented at governmental level it cannot be forced onto entire populations. The

task for Muslims then is to prove to such secularists that Islam can be the source of emancipation for all oppressed persons at all levels, and can embrace pluralism.

In terms of human rights standards I have shown that advocates have failed to recognise how the lack of respect for socio-economic rights renders many other rights largely meaningless for women. Muslim women need adequate welfare provisions in order to escape abusive relationships and to defy cultural norms that threaten their well being. However, to date wealthy states have not been persuaded to act on the fundamental basis of human rights. That is they have not fully accepted that a commitment to human rights involves positive action in order to ensure a guaranteed decent standard of living for those humans living outside the borders of wealthy states. This has been the main failing in the way that human rights concerns have been played out in practice. In terms of the theoretical basis of human rights I have argued that, by claiming monopoly control of the theory, western secularists have alienated masses of people. Many human rights advocates still insist that there is no room for the concept of group rights within their theory and the appeals to group rights must always be at the expense of individual's rights. Yet I have shown that it is not only wily power hungry politicians who feel the need for the groups with which human beings are affiliated to be respected and protected. I have also contended that the western secularist tradition, by continuously seeing religious affiliation as a problem, fails to appreciate and make use of the positive ways in which religions can endorse values remarkably similar to those cherished by human rights advocates. Even when that is not the case, it is naïve for proponents of rights to assume that they will persuade religious groups or individuals to shed practices and beliefs simply because they run in opposition to human rights thinking. Rather I argue, religious

particularities must be understood with greater sensitivity because religions themselves are often aware of practices that cause human suffering and strive to reform these through their own internal mechanisms. In addition it has been shown that, although many advocates of human rights insist that adherence to their theory will improve the condition of Muslim women, even western feminists concede that the list of rights currently enshrined in UN documents will not aid women sufficiently because it fails to take account of women's experiences in the private domain.

All these issues impact on Muslim women's experiences, because the exclusion of non-western voices from discourse on the theory and practice of human rights has resulted in its being discredited in the non-western world. Thus when one invokes the human rights of Muslim women, these rights are firstly, not sufficient for addressing their problems and secondly do not enjoy sufficient legitimacy in Muslim countries (and often amongst women themselves) to be able to force governments to act in accordance with them.

This thesis has argued that, despite the problems associated with both Islam and human rights all is not lost and that both have the capacity to incorporate the amendments that are needed. Again however, I have stressed that the purpose of these amendments must not be simply to make one doctrine a carbon copy of the other. Instead it will be more fruitful for each to concentrate its concerns in the arenas in which it enjoys legitimacy and in which its potential for success is greatest.

I argue that the energies of human rights proponents ought to be more directed towards pushing for socio-economic improvements at national and international

levels. The reason is that, while Islamic arguments enjoy legitimacy at grassroots level, they do not at international level. The doctrine of human rights has special political force and, while little can be done to force states to rectify those violations of human rights accusing a state of these violations usually causes it discomfort and embarrassment. Thus proponents of human rights must press the point that unfair and exploitative economic arrangements between states are no less grave violations of human rights than, for example, detaining citizens without trial or torturing them in prison cells.

Similarly, while human rights arguments enjoy legitimacy at international level, they do not always at grassroots level. The approach I have proposed would require education initiatives at grassroots level that aim to show women the authenticity of *Qur'anic* interpretations that challenge conservative readings. These educational initiatives would show how greater rights for women's in personal status laws, and in legal and political matters, have often been derived from classical rulings and/ or from classical methodologies. I have also stressed the importance of women embarking on classical training in the Islamic sciences so that their voices will have greater legitimacy in the discourse on women in Islam.

This division of energies is important because it acknowledges the strengths along with the weaknesses of Islam and human rights thinking. Human rights can do little to change the cultural norms that restrict women because at the level at which these norms function, individuals are prepared to violate national legislation in order to see them respected. Thus women might not be permitted to leave their homes to vote, stipulate their own conditions in a marriage contract or initiate divorce, even though

state legislation permits all of these acts. Even more extreme are cases in which men will contract a polygamous marriage or betroth their female children despite the risk of fine or imprisonment. Often such behaviour is undertaken, and the associated norms are respected by women themselves, because they genuinely believe that that is what Islam commands. A programme of Islamic education, whether initiated and funded by the national government or initiated by local non-governmental organisations and funded by international aid agencies would do much to alter these perceptions. To introduce human rights education would only aggravate charges of cultural imperialism and might even discredit the Islamic arguments that would be used in the process of education.

Another reason why women respect norms that seem inimical to their interests is because they have no viable alternative. Food, shelter, clothing and social acceptance are often conditional on that respect. Governments might not provide viable alternatives simply because economic realities do not allow them to provide adequate welfare and employment opportunities. It is here, I have argued, that human rights protagonists must work to redress that situation. These protagonists also have a crucial role to play when governments simply lack the will to make such provisions. While I have argued that human rights proponents should take a subordinate role at grassroots level, at international level they must continue to censure such governments and persist in their efforts even in the face of accusations of cultural imperialism. As this thesis has shown, governments that do nothing to assist women in abusive and unhappy relationships, and that marginalize women in the public domain, are not respecting basic Islamic principles but are violating them. Unlike action at grassroots level, these governments act not out of a genuine belief that what

they are doing is Islamic but in order to push forward their agenda whatever Islamic texts have to say about it. Thus the agendas of human rights activists and Muslim women's movements are by no means mutually exclusive. In order to be of real assistance to Muslim women, both must uncover an emancipating authentic Islam, be aware of the complex and interconnected issues that impair women's lives, and respond to these with sensitivity and determination. Both will need to work together, and exchange ideas and resources in order to ensure that national legislation respects that form of Islam. The efforts of both are inextricably linked because ultimately the vision is that an education programme at grassroots level can aid in empowering women in their families and local communities and that in turn will enable women to take advantage of the welfare, further education and employment opportunities made available by the efforts of human rights advocates. The crucial issue is that Muslim women themselves must lead the way in deciding on the issues that adversely affect them, and on the strategies for bringing about change.

It cannot be concluded from this study that there is nothing in Islam that is contrary to human rights norms. Polygamy and inheritance allocations still remain thorny points for any dialogue. However the thesis has urged that these issues ought to be kept in context and in proportion to how much they adversely affect women. They ought not prevent Muslims and human rights advocates from working around these issues in order to support women's movements.

There is still much work to be done in the area of women, Islam and human rights. While I have claimed that the language of human rights possesses special political force at international level, it is also the case that, apart from verbal recriminations,

there is little that can be done to prevent states from carrying out the types of violations that women suffer from. In this area, further research is needed on the issue of how we balance respect for state sovereignty and diversity on the one hand with, on the other and empowering the United Nations to offer meaningful assistance to women's movements. Here I would tentatively suggest that the solution lies not in intervening directly in the business of such states but in funding women's movements that are already active within them. This funding will be crucial in raising awareness of their activities and in implementing the types of educational initiatives I have advocated. Once again however, the onus falls on wealthy western states that claim to be genuinely committed to human rights ideals to be more forthcoming in their donations to the United Nations.

Muslims also find themselves engaged in a precarious balancing act. More research also needs to be done on how Muslims can remain true to the tenets of their faith while living and dealing with non-Muslims. How far is it possible for Muslims to keep control of their own agenda while seeking help from international aid agencies and engaging in dialogue at international level? How precisely do such agencies operate and to what extent do they persist in pushing forward their own agenda of a specifically western and secular form of emancipation? In this thesis I have assumed that these agencies can be trusted to act in good faith and that their primary concern is to help those in need. However further research needs to examine the extent to which that is true.

Since I began work on this thesis, certain events have done much to further damage relations between the Muslim and non-Muslim world. The attack on America of

September 11 has fuelled anger at Islam and the way it is used as a political ideology that justifies horrific acts of violence. The subsequent attack on Afghanistan and the treatment of captured prisoners in America's base at Guantanamo Bay have similarly fuelled anger amongst Muslims against the west, for its lack of empathy for citizens living outside its own borders and its outright hypocrisy in failing to uphold fundamental tenets of international law in its treatment of prisoners. In Britain liberal, modernist or reformist Muslims have been queuing up to shake hands with Prime Minister Tony Blair and to assure him that 'good' Muslims do not support the actions of those responsible for September 11. But once again the events of September 11 and the attack on Afghanistan that followed have shown the inability of westerners to embark on a journey of self-reflection. It is Islam that has been put in the witness box to testify its innocence in television series after television series on Islam, British Muslims, Islam and the west. There has yet to be a complete series on British network television on the exploitative and inconsistent foreign policies that fuel Muslim anger, on the surge in prejudices and outright racism directed against Muslim immigrants, refugees and asylum seekers expressed in daily newspapers with huge circulations, and on the way in which Muslims are detained at airports for hours at a time simply because they are Muslim. The apologues that Piscatori refers to are being wheeled out in full strength to explain themselves.

What do these events mean for the proposals outlined in this thesis? Afghanistan under the Taliban was often portrayed as a barbaric regime because of its treatment of women. The wisdom seemed to be that one of the reasons that bombing Afghanistan was necessary was that it would liberate those women! The ludicrousness and insincerity of this claim has not escaped Muslim women themselves. Certainly, if

Muslims had little faith in the language of human rights before, the ‘war on terrorism’ has diminished that faith still further. The response to the attack on America suggests to Muslims that, while Americans and Europeans are owed human rights, peace and safety, the plight of Afghani, Palestinian, Iraqi and Iranian civilians can be aided only by violence and bombings. While there was no justification for killing innocent Americans because of grievances against their government, it seems that grievances against the Taliban and Saddam Hussein are sufficient to justify the killing of innocent Afghans and Iraqis whether through bombings or crippling sanctions.

Muslim women in Afghanistan, Iraq and Iran¹ now live under both restrictive national legislation and the threat of violence from international actors. It seems that the need, stressed in Chapters 4 and 5 of this thesis, for western human rights proponents to censure the human rights violations of their own governments has become even more imperative.² At the same time the need for Muslim scholars to discover how to respond to the intransigence of western states without causing further violence and suffering for Muslims and non-Muslims is of equal importance. This renewed tension makes the process of dialogue and the need for greater understanding more urgent and yet more difficult. Dialogue assumes that both parties will speak and listen with equal measure. One can assume that again the process will begin with the familiar argument from both sides: ‘please do not confuse the theory with the practice.’ While events have done much to fuel the accusations and prejudices that the proponents of each doctrine hold against the other, this thesis began with the assumption that proponents of human rights and Islam shared a desire to alleviate human suffering. It is still reasonable to hope that that shared desire will provide the impetus for dialogue and for practical action.

References

References to Introduction

- ¹ Sherifa Zuhur, Revealing Reveiling Islamsist Gender Ideology in Contemporary Egypt (New York: State University of New York Press, 1992, 3)
- ² Jack Donnelly, 'Human Rights: A New Standard of Civilisation?' International Affairs 24 (1), 1998.
- ³ In using the term 'west' in this thesis I am referring to a political ideology. The reference is therefore to advocates of the liberal democratic, secular model of statehood that is mostly found in Western Europe and North America.
- ⁴ Taha Jabir al-Alwani, The Ethics of Disagreement in Islam (Herndon: The International Institute of Islamic Thought, 1993), 117.
- ⁵ Tariq Ramadan, Islam, the West and the Challenges of Modernity (Leicester: The Islamic Foundation, 2001).
- ⁶ Muhammad Asad, This Law of Ours and Other Essays, (Gibraltar: Dar al-Andalus, 1987), 65.
- ⁷ There are problems with some Ahadith previously given the station of *Sahih*. Later scholars have in some cases after linguistic and historical analysis declared a *Sahih Hadith* to be unsound or fabricated. However these declarations are not accepted by all and the *Ahadith* are still employed as the basis of rulings and are still disseminated as *Sahih*. More of this will be mentioned in the body of the thesis.
- ⁸ Shaykh al-Qaradawi enjoys tremendous support across the world including the west. He frequently appears on the satellite channel Al Jazeera, he regularly attends the UK to address Muslim youth organisations and also sits on the European Council of Fatwa Research.
- ⁹ Barbara Stowasser, 'Old Shaykhs, Young Women, and the Internet: The Reviewing of Women's Political Rights in Islam.' The Muslim World 91 (Spring) 2001, 102.
- ¹⁰ Haifaa Khalafallah, 'The Elusive 'Islamic Law': Rethinking the Focus of Modern Scholarship.' Islam and Christian-Muslim Relations 12 (2) 2001, 149 – 150.
- ¹¹ How Islam deals with apostasy is a highly contentious issue and is beyond the confines of this work. The thesis therefore assumes that Muslim women have themselves chosen to operate within an Islamic framework and that this is what informs the boundaries of their decision making and freedom.
- ¹² The Universal Declaration of Human Rights <http://www.un.org/Overview/rights.html> 12/03/98
- ¹³ Muhammad Asad, The Message of the Qur'an (Gibraltar: Dar al-Andalus, 1980)

References to Chapter 1, Women in Islamic Theology

- ¹ Mahmoud Muhammed. 'Women and Islamism: The Case of Rashid al-Ghannushi of Tunisia' in Abdel Salam Sidahmed and Anoushivaran Ehteshami, eds., Islamic Fundamentalism (Oxford: Westview Press, 1996), 249.
- ² Lamyia Al-Faruqi, Women, Muslim Society and Islam (Indiana: American Trust Publications, 1994), 25.
- ³ Benedicte Spoelers, 'Rethinking Development and the Feminist versus Islamist Dichotomy.' Islam and Christian-Muslim Relations 9 (3) 1998, 300.
- ⁴ I use the word conservative here not to describe the attitude to Islamic texts but to describe the attitude to contemporary society. An unwillingness to change the fundamental nature of Islamic scripture is shared by many Muslims. The group referred to here however display an unwillingness to acknowledge the changing realities in contemporary society and the way in which Islam relates to this.
- ⁵ Maulana Wahiduddin Khan, Woman in Islamic Shari'ah (New Delhi: Al-Risala Books, 1998), 151-152.
- ⁶ Moulana Muhammad Karoila, Female Leadership in Islam (Azaadville: Madrasah Arabia Islamia, 1994), 19 – 20.
- ⁷ Homa Omid, Islam and the Post-Revolutionary State in Iran (London: The Macmillan Press Ltd, 1994), 181.
- ⁸ Yusuf Ali, The Holy Qur'an: English Translation of the Meanings and Commentary (Revised and Edited by The Presidency of Islamic Researchers, IFTA, Call and Guidance), 216.
- ⁹ This is a *Sahih Hadith* found in the *Bukhari* collections and was related to me by Shaykh Judaa'i of the Islamic Research Council, 19/03/02
- ¹⁰ Hammudah 'Abd al 'Ati, The Family Structure in Islam (Indiana: American Trust Publications, 1977), 121.

- ¹¹ Amina Wudud-Muhsin, *Qur'an and Women* (Kuala Lumpur: Penerbit Fajar Bakti Sdn. Bhd, 1992), 71.
- ¹² Muhammad Abdel Haleem, *Understanding the Qur'an: Themes and Style* (London: I.B. Tauris and Co Ltd, 1999), 49-50.
- ¹³ Muhammad Asad, *The Message of The Qur'an* (Gibraltar: Dar al-Andalus, 1980), 50.
- ¹⁴ Mohammad Hashim Kamali, *Freedom, Equality and Justice in Islam* (Leicester: The Islamic Foundation, UK, 1999), 91-92.
- ¹⁵ Ali, *The Holy Qur'an: English Translation of its Meaning and Commentary*, 219.
- ¹⁶ AbdalHuqq and Aisha Bewley, *The Noble Qur'an: A New Rendering of its Meaning In English* (Norwich: Bookwork, 1999), 73.
- ¹⁷ Sayyid Abul A'la Mawdudi, *Towards Understanding the Qur'an Vol II* (Leicester: The Islamic Foundation, 1989), 36.
- ¹⁸ Muhammad Taqi-ud-Din al Hilali and Muhammad Muhsin Khan, *Interpretations of the Meanings of The Noble Qur'an* (Riyadh: Dar-us-Salam Publications, 1996), 172.
- ¹⁹ Imam Al-Ghazal, *The Proper Conduct of Marriage in Islam* (Hollywood: Al-Baz Publishing, 1998), 89.
- ²⁰ See for example, *Qur'an* 2:238, 3:17, 33:35.
- ²¹ Wadud-Muhsin, *Qur'an and Woman*, 74.
- ²² Ali, *The Holy Qur'an: English Translation of the Meanings and Commentary*, 220.
- ²³ For more details of this tradition see Martin Lings, *Muhammad* (Cambridge: Islamic Texts Society, 1991), 240-246.
- ²⁴ For example on one occasion when asked if a man could beat his wife the Prophet not contradicting the *Qur'an* replied yes but with nothing stronger than a *miswak*, the 15th century equivalent of the modern toothbrush.
- ²⁵ Asad, *The Message of The Qur'an*, 111.
- ²⁶ Haleem, *Understanding The Qur'an: Themes and Styles*, 50.
- ²⁷ Sara Sheriff, *Women's Rights in Islam* (London: Ta-Ha Publishers, 1989), 7.
- ²⁸ Aisha Bewley, *Islam: The Empowering of Women*, (London: Ta-Ha Publishers, 1999), 17.
- ²⁹ See Barbara Freyer Stowasser, *Women in The Qur'an, Traditions and Interpretations* (Oxford: Oxford University Press, 1994) for an account of the scheming amongst the Prophet's wives which on one occasion is said to have led him to divorce his latest bride on the wedding night.
- ³⁰ Alfrded C Kinsey, *Sexual Behaviour in the Human Male* (Philadelphia and London: W.B. Saunders and Company, 1948), 589.
- ³¹ Abdur Rahman I Doi, *Women in Shari'ah* (London: Ta-Ha Publishers, 1989), 75-76.
- ³² Leila Ahmed, *Women and Gender in Islam: Historical Roots of A Modern Debate* (New Haven and London: Yale University Press, 1996), 63.
- ³³ Fazlur Rahman, *Major Themes of The Qur'an* (Chicago: Bibliotecha Islamica, 1980), 47-48.
- ³⁴ John Esposito, *Women in Muslim Family Law* (Syracuse: Syracuse University Press, 1982), 61.
- ³⁵ Wadud-Muhsin, *Qur'an and Women*, 84-85.
- ³⁶ Esposito, *Women In Muslim Family Law*, 54.
- ³⁷ Asad, *The Message of The Qur'an*, 54.
- ³⁸ Asad, *The Message of The Qur'an*, 50.
- ³⁹ Maulana Abul A'ala Maudoodi, *The Laws of Marriage and Divorce in Islam* (Safat: Islamic Book Publishers, 1983), 37-39.
- ⁴⁰ Al 'Ati, *The Family Structure in Islam*, 119
- ⁴¹ Al 'Ati, *The Family Structure in Islam*, 244.
- ⁴² Asad, *The Message of The Qur'an*, 109.
- ⁴³ Maudoodi, *The Laws of Marriage and Divorce in Islam*, 37-39.
- ⁴⁴ Leila Badawi, 'Islam' in Jean Holm and John Bowker, eds., *Women in Religion* (London: Pinter, 1994), 108.
- ⁴⁵ Najla Hamadeh, 'Islamic Family Legislation: The Authoritarian Discourse of Silence' in Mai Yamani, ed., *Islam and Feminisms: Legal and Literary Perspectives* (Berkshire: Garnett Publishing, 1996), 344.
- ⁴⁶ Sayyid Qutb, *Social Justice in Islam* (New York: Islamic Publications International, 2000), 73.
- ⁴⁷ Akbar S. Ahmed, *Discovering Islam: Making Sense of Muslim History and Society*, (London: Routledge, 1988), 59.
- ⁴⁸ Richard Kimber, 'The Qur'anic Law of Inheritance' *Islamic Law and Society* 5 (3) 1998, 290.

- ⁴⁹ This is when the deceased leaves behind sons and daughters, or only a father and mother, or brothers and sisters and also a widow will receive one quarter of her husband's estate, while a widower will receive one half of his wife's.
- ⁵⁰ Salahuddin Sultan, The Balance Between Women's Rights to Inheritance and Maintenance According to Islamic Legislation (Cairo: Cairo University, 1995).
- ⁵¹ Qutb, Social Justice in Islam, 73.
- ⁵² Ziba Mir-Hosseini, 'Stretching the Limits: A Feminist Reading of the Shar'ia in Post-Revolutionary Iran' in Mai Yamani, ed. Islam and Feminisms: Legal and Literary Perspectives (Garnet Publishing, 1996), 301.
- ⁵³ Barbara Freyer Stowasser, Women in The Qur'an, Traditions and Interpretations (Oxford: Oxford University Press, 1994), 127.
- ⁵⁴ Jamal Badawi, Gender Equity in Islam: Basic Principles, (Indianapolis: American Trust Publications, 1995), 37.
- ⁵⁵ Kamali, Freedom, Equality and Justice in Islam, 95.
- ⁵⁶ Mohammad S. El-Awa, Punishment in Islamic Law (Indianapolis: American Trust Publications, 1982), 125.
- ⁵⁷ Kamali, Freedom, Equality and Justice in Islam, 97.
- ⁵⁸ Doi, Women in Shari'ah, 136.
- ⁵⁹ See Shaykh Yusuf al-Qaradawi, Priorities of The Islamic Movement in The Coming Phase (Swansea: Awakening Publications, 2000)
- ⁶⁰ Jawad, The Rights of Women in Islam: An Authentic Approach, 83.
- ⁶¹ Barbara Stowasser, 'Old Shaykhs, Young Women, and the Internet: The Rewriting of Women's Political Rights in Islam,' The Muslim World 91 (Spring) 2001, 107.
- ⁶² Aisha Bewley, Islam: The Empowering of Women 31.
- ⁶³ Fatima Mernissi, Women and Islam: An Historical and Theological Enquiry (Oxford: Basil Blackwell, 1991), 50.
- ⁶⁴ Mernissi, Women and Islam: An Historical and Theological Enquiry, 50.
- ⁶⁵ Haifaa A. Jawad, The Rights of Women in Islam: An Authentic Approach (London: Macmillan Press, 1998), 92.
- ⁶⁶ Stowasser, Women in The Qur'an, Traditions and Interpretations, 65.
- ⁶⁷ Zakaria Bashier, Muslim Women in The Midst of Change (Leicester: The Islamic Foundation, 1990), 5.
- ⁶⁸ Stowasser, Women in The Qur'an, Traditions and Interpretations, 126.
- ⁶⁹ Soroya Duval, 'New Veils and New Voices: Islamist Women's Groups in Egypt' in Karin Ask and Marit Tjomsland, eds., Women and Islamization: Contemporary Dimensions of Discourse on Gender Relations (Oxford: Berg, 1998), 61-62.
- ⁷⁰ Mernissi, Women and Islam: An Historical and Theological Enquiry, 182-187.
- ⁷¹ Shaykh Muhammad al-Ghazali, A Thematic Commentary on the Qur'an (London: The International Institute of Islamic Thought, 2000), 461.
- ⁷² Ali, The Holy Qur'an: English Translation of the Meanings and Commentary, 1265.
- ⁷³ Asad, The Message of the Qur'an, 651.
- ⁷⁴ Asad, The Message of the Qur'an, 538-539.
- ⁷⁵ Shaykh Muhammad Hisham Kabbani and Laleh Bakhtiar, Encyclopaedia of Muhammad's Women Companions and the Traditions They Related (Chicago: Kazi Publications, 1998), 239.
- ⁷⁶ Koirala, Female Leadership in Islam
- ⁷⁷ Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, (Kuala Lumpur: Ilmiah Publishers, 1999), 395.
- ⁷⁸ Eleanor Abdella Doumato, 'The Ambiguity of Shari'a and the Politics of Rights in Saudi Arabia' in Mahnaz Afkhami, ed., Faith and Freedom: Women's Human Rights in the Muslim World (London: I.B Tauris, 1995), fl 39.

References to Chapter 2, Family Law in Iran and Pakistan

- ¹ The Universal Declaration of Human Rights Adopted by General Assembly Resolution 217 A (II) of 10 December 1948. Office of the High Commissioner for Human Rights (<http://www.un.org/Overview/rights.html> 12/03/98).
- ² Charles H. Kennedy, 'Islamic Legal Reform and the Status of Women in Pakistan' Journal of Islamic Studies 2 (1) 1991, 46.
- ³ 'Iran-Constitution' Iran Online (<http://www.iranonline.com/iran/iran-info/Government/constitution.html>, March 25, 2002).
- ⁴ Ervand Abraham, Khomeinism: Essays on The Islamic Republic (California: University of California Press, 1993), 14.
- ⁵ Parvin Paidar, Women and the Political Process in Twentieth Century Iran (Cambridge: Cambridge University Press, 1995), 280.
- ⁶ Haleh Afshar, Islam and Feminisms: An Iranian Case Study (Basingstoke: St Martins Press, 1998), 168.
- ⁷ 'The Universal Declaration of Human Rights'
- ⁸ 'The Universal Declaration of Human Rights'
- ⁹ P.R. Gandhi, International Human Rights Documents (London: Blackstone Press Limited, 1995), 103.
- ¹⁰ Afshar, Islam and Feminisms: An Iranian Case Study, 168
- ¹¹ Ann Elizabeth Mayer, Islam and Human Rights: Tradition and Politics (Oxford: Westview Press, 1999), 115.
- ¹² Farah Azari, 'Sexuality and Women's Oppression in Iran' in Farah Azari, ed., Women of Iran: The Conflict with Fundamentalist Islam (London: Ithaca Press, 1983), 149.
- ¹³ Hasan Al-Anani, Freedom and Responsibility in Qur'anic Perspective (Indianapolis: American Trust Publications, 1990), 53-54.
- ¹⁴ Hammudah 'Abd Il-Ati, The Family Structure in Islam (Indiana: American Trust Publications, 1977), 77.
- ¹⁵ Al-Ati, The Family Structure in Islam, 74 - 77.
- ¹⁶ Sarah Sheriff, Women's Rights in Islam (London: Ta-Ha Publishers, 1989), 7.
- ¹⁷ Article 1041, The Civil Code of Iran, 1928, amended 1982 - 1983
- ¹⁸ Sima Pakzad, 'The Legal Status of Women in the Family in Iran' in Mahnaz Afkhami and Erika Friedl, eds., In The Eye of The Storm in Post-Revolutionary Iran (London: I.B. Tauris and Co Ltd, 1994), 169.
- ¹⁹ Gandhi, International Human Rights Documents, 111.
- ²⁰ Gandhi, International Human Rights Documents, 87.
- ²¹ Article 1043, The Civil Code of Iran, 1928, amended 1982 - 1983
- ²² Pakzad, 'The Legal Status of Women in the Family in Iran,' 169-170.
- ²³ Al-Ati, The Family Structure in Islam, 71.
- ²⁴ Allahmah Shibli Numani, Imam Abu Hanifah: Life and Work (New Delhi: Kitab Bhavan, 1995, 175).
- ²⁵ Fatima Mernissi, Women in Islam: An Historical and Theological Enquiry (London: Oxford: Basil Blackweel Ltd, 1991), 126.
- ²⁶ Afshar, Islam and Feminisms: An Iranian Case Study, 120.
- ²⁷ Najla Hamadeh, 'Islamic Family Legislation: The Authoritarian Discourse of Silence' in Mai Yamani, ed., Feminism and Islam: Legal and Literary Perspectives (Berkshire: Garnet Publishing Ltd, 1996) 339.
- ²⁸ Afshar, Islam and Feminisms: An Iranian Case Study, 173.
- ²⁹ Haleh Afshar, 'Islam and Feminism: An Analysis of Political Strategies' in Mai Yamani, ed., Feminism and Islam: Legal and Literary Perspectives (Berkshire: Garnet Publishing Ltd, 1996), 202.
- ³⁰ Article 132, The Criminal Code of Iran, Pursuant to Article 85 of the Islamic Republic of Iran, 1995
- ³¹ Afshar, Islam and Feminisms: An Iranian Case Study, 174.
- ³² 'Iran-Constitution'
- ³³ Homa Omid, Islam and the Post-Revolutionary State in Iran (London: The Macmillan Press Ltd, 1994), 199.
- ³⁴ Nayereh Tohidi, 'Gender and Islamic Fundamentalism: Feminist Politics in Iran' in C. Monanty, A. Russo and L. Torres, eds., Third World Women and the Politics of Feminism (Indiana: Indiana University Press, 1991), 254.
- ³⁵ Afshar, , Islam and Feminisms: An Iranian Case Study, 157 - 158.
- ³⁶ Article 1108, The Civil Code of Iran, 1928 and as amended 1982 - 1983.

- ³⁷ Ziba Mir-Hosseini, Marriage on Trial: A Study of Islamic Family Law (London: I.B Tauris and Co Ltd, 1993), 47.
- ³⁸ 'The Universal Declaration of Human Rights'.
- ³⁹ Sherrif, Women's Rights in Islam, 9.
- ⁴⁰ Azari, 'Sexuality and Women's Oppression in Iran', 149.
- ⁴¹ Afshar, Islam and Feminisms: An Iranian Case Study, 170.
- ⁴² Afshar, Islam and Feminisms: An Iranian Case Study, 169.
- ⁴³ Shahla Haeri, 'Temporary Marriage: an Islamic discourse on female sexuality in Iran' in Mahnaz Afkhami and Erika Friedl, eds., In The Eye of The Storm in Post-Revolutionary Iran (London: I.B. Tauris and Co Ltd, 1994), 106 & 113.
- ⁴⁴ Yann Richard, Shi'ite Islam (Oxford: Basil Blackwell Ltd, 1995), 165.
- ⁴⁵ Paidar, Women and the Political Process in Twentieth Century Iran, 281.
- ⁴⁶ Asghar Schirazi, The Constitution of Iran: Politics and the State in the Islamic Republic of Iran (London: I.B. Tauris and Co Ltd, 1997), 216.
- ⁴⁷ Article 1133, The Civil Code of Iran, 1928 and as amended 1982 – 1983.
- ⁴⁸ Ziba Mir-Hosseini, 'Marriage and the Law in Post-Revolutionary Iran in Haleh Afshar, ed., Women in the Middle East (London: The Macmillan Press Ltd, 1993), 63.
- ⁴⁹ Afshar, Islam and Feminisms: An Iranian Case Study, 179.
- ⁵⁰ Paidar, Women and the Political Process in Twentieth Century Iran, 282.
- ⁵¹ 'The Universal Declaration of Human Rights'.
- ⁵² Maulana Abul A'ala Maudoodi, The Laws of Marriage and Divorce in Islam (Safat: Islamic Book Publishers, 1983), 29.
- ⁵³ Afshar, , Islam and Feminisms: An Iranian Case Study, 182-183.
- ⁵⁴ Mir-Hosseini, 'Women, Marriage and Law in Post-Revolutionary Iran'
- ⁵⁵ Haleh Efsandiari, Reconstructed Lives: Women and Iran's Islamic Revolution (Baltimore: The John Hopkins University Press, 1997), 43.
- ⁵⁶ Afshar, Islam and Feminisms: An Iranian Case Study, 194.
- ⁵⁷ Azari, 'Sexuality and Women's Oppression in Iran', 109.
- ⁵⁸ Muslim Family Laws Ordinance, 1961, Ordinance VII of 1961
- ⁵⁹ Rubya Mehdi, The Islamization of the Law in Pakistan (Surrey: Curzon Press Ltd, 1994), 158
- ⁶⁰ Khawar Mumtaz and Farida Shaheed, Women of Pakistan: Two Steps Forward, One Step Back (London: Zed Books Ltd, 1987), 83.
- ⁶¹ Section 10, MFLO, 1961.
- ⁶² Mehdi, The Islamization of the Law in Pakistan, 195.
- ⁶³ Mehdi, The Islamization of the Law in Pakistan, 196.
- ⁶⁴ Khawar and Shaheed, Women of Pakistan: Two Steps Forward, One Step Back, 196.
- ⁶⁵ Shaheen Sardar Ali, 'A Critical Review of Family Laws in Pakistan: A Women's Perspective' in Rubya Mehdi and Farida Shaheed, eds., Women's Law and Legal Education in Pakistan (Copenhagen: New Social Sciences Monograph, Institute of Organisational and Industrial Sociology, 1997), 204.
- ⁶⁶ Mehdi, The Islamization of the Law in Pakistan, 164
- ⁶⁷ Section 6, MFLO, 1961.
- ⁶⁸ Ali, Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?, 148.
- ⁶⁹ Mumtaz and Shaheed, Women of Pakistan: Two Steps Forward, One Step Back, 28.
- ⁷⁰ Section 7, MFLO, 1961.
- ⁷¹ Section 7 of MFLO, Mehdi, The Islamization of the Law in Pakistan, 169
- ⁷² Entering a polygamous marriage without the permission of existing wives is punishable by up to one years imprisonment or a fine of five thousand rupees or with both. (MFLO).
- ⁷³ Mehdi, The Islamization of the Law in Pakistan, 176
- ⁷⁴ Section 2 (vii), Dissolution of Muslim Marriages Act, (VIII of 1939).
- ⁷⁵ Shaheen Sardar Ali, Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man? (The Hague: Kluwer Law International, 2000), 168
- ⁷⁶ Lucy Carroll, 'Qur'an 2:229: A Charter Granted to the Wife? Judicial Khul in Pakistan' in Islamic Law and Society 3 (1) 1996, 92.
- ⁷⁷ Cassandra Balchin and Sohail Akbar Warraich, 'Untying the Gordian Knot: The Theory and Practice of Divorce in Pakistan' in Rubya Mehdi and Farida Shaheed, eds., Women's Law and Legal Education and Practices in Pakistan (Copenhagen: New Social Sciences Monograph Institution of Organisational and Industrial Sociology, 1997), 261.
- ⁷⁸ Carroll, 'Qur'an 2:229: A Charter Granted to the Wife? Judicial Khul in Pakistan', 101.

- ⁷⁹ Izzud-Din Pal, 'Women and Islam in Pakistan' Middle Eastern Studies 26 (4) 1990, 455.
- ⁸⁰ Pal, 'Women and Islam in Pakistan', 455.
- ⁸¹ The Guardian and Wards Act, (VII of 1890)
- ⁸² Ali, 'A Critical Review of Family Laws in Pakistan: A Women's Perspective', 213 - 216.
- ⁸³ Dowry and Bridal Gifts (Restriction) Act, (XLIII of 1976)
- ⁸⁴ Mehdi, The Islamization of the Law in Pakistan, 196.
- ⁸⁵ Ali, 'A Critical Review of Family Laws in Pakistan: A Women's Perspective', 220.
- ⁸⁶ Ayesha Jalal, 'The Convenience of Subservience: Women and the State of Pakistan' in Deniz Kandiyoti, ed., Women, Islam and the State (London: Macmillan Press, 1991), 86.
- ⁸⁷ See for example the articles by Ali and Carroll cited above.

References to Chapter 3, Legal and Political Status of Women in Iran and Pakistan

- ¹ 'The Universal Declaration of Human Rights' Office of the High Commissioner for Human Rights (<http://www.un.org/Overview/rights.html> 12/03/98).
- ² Haleh Esfandiari, 'The Majles and Women's Issues in the Islamic Republic of Iran' in Mahnaz Afkhami and Erika Friedl, ed., In The Eye of The Storm: Women in Post-Revolutionary Iran (London: I.B. Tauris and Co Ltd, 1994), 65-71.
- ³ Haleh Esfandiari, 'The Majles and Women's Issues in the Islamic Republic of Iran', 61.
- ⁴ David Miller, 'Democracy and Social Justice', in Pierre Birnbaum, Jack Lively and Geraint Perry, eds., Democracy, Consensus and Social Contract (London: Sage Publications Inc. 1978), 92.
- ⁵ Article 92, Qisas Laws, 1981
- ⁶ 'The Universal Declaration of Human Rights'.
- ⁷ 'The Universal Declaration of Human Rights'.
- ⁸ Haleh Afshar, Islam and Feminisms: An Iranian Case Study (Basingstoke: St Martins Press, 1998), 99.
- ⁹ 'The Universal Declaration of Human Rights'.
- ¹⁰ Afshar, Islam and Feminisms: An Iranian Case Study, 110.
- ¹¹ Afshar, Islam and Feminisms: An Iranian Case Study, 110.
- ¹² Women In Pakistan: A New Era (London: Change, International Reports – Women and Society, 1984), 6.
- ¹³ Anita Weiss, 'Implications of the Islamization Program for Women', in Anita Weiss, ed., Islamic Reassertion in Pakistan: The Application of Islamic Laws in A Modern State (Syracuse: Syracuse University Press, 1986), 103.
- ¹⁴ Dushka H Sayid, 'Women in Politics – Problems of Participation: A Case Study of Pakistan' in Strategic Studies XXI (3), 2001, 14.
- ¹⁵ Sayid, 'Women in Politics – Problems of Participation: A Case Study of Pakistan', 15.
- ¹⁶ Offence of Zina (Enforcement of Hudood) Ordinance, 1979
- ¹⁷ For full text of the Hudood Ordinance see Khawar Mumtaz and Farida Shaheed, Women of Pakistan: Two Steps Forward, One Step Back, (London: Zed Books, 1987), 173 – 178.
- ¹⁸ Section 8 (b) Offence of Zina (Enforcement of Hudood Ordinance, 1979. Reference to this Ordinance can also be found in Mumtaz and Shaheed, Women of Pakistan: Two Steps Forward, One Step Back, 100
- ¹⁹ Mumtaz and Shaheed, Women of Pakistan: Two Steps Forward, One Step Back, 101.
- ²⁰ Anis Ahmed, Women and Social Justice: An Islamic Paradigm (Islamabad: Institute of Policy Studies, 1996), 39.
- ²¹ Cassandra Balchin and Sohail Akbar Warraich, 'Untying the Gordian Knot: The Theory and Practice of Divorce in Pakistan' in Rubya Mehdi and Farida Shaheed, eds., Women's Law and Legal Education and Practices in Pakistan (Copenhagen: New Social Sciences Monograph Institution of Organisational and Industrial Sociology, 1997), 267.
- ²² Ahmed, Women and Social Justice: An Islamic Paradigm, 39-40.
- ²³ Farida Shaheed, 'The Interface of Culture, Customs and Law – Implications for Women and Activism' in Rubya Mehdi and Farida Shaheed, ed., Women's Law and Legal Education and Practices in Pakistan (Copenhagen: New Social Sciences Monograph Institution of Organisational and Industrial Sociology, 1997), 56.
- ²⁴ Weiss, 'Implications of the Islamization Program for Women' 103.
- ²⁵ Mumtaz and Shaheed, Women of Pakistan: Two Steps Forward, One Step Back, 103.
- ²⁶ Leila Badawi, 'Islam' in Jean Holm and John Bowker, eds., Women in Religion (London: Pinter, 1994), 94.

- ²⁷ Ahmed, Women and Social Justice: An Islamic Paradigm, 76.
- ²⁸ The Evidence Act (Qanun-e-Shadat), P.O. No. 10 of 1984.
- ²⁹ Article 17, Evidence Act, 1984.
- ³⁰ Mumtaz and Shaheed, Women of Pakistan: Two Steps Forward, One Step Back, 109.
- ³¹ Mumtaz and Shaheed, Women of Pakistan: Two Steps Forward, One Step Back, 111.
- ³² Weiss, 'Implications of the Islamization Program for Women', 139.
- ³³ Valentine M. Moghadem, 'Gender Inequality in the Islamic Republic of Iran' in M. Weiner and Ali Banvazizi eds., The Politics of Social Transformation in Afghanistan, Iran and Pakistan (Syracuse: Syracuse University Press, 1994), 395.
- ³⁴ Mumtaz and Shaheed, Women of Pakistan: Two Steps Forward, One Step Back, 29-30.
- ³⁵ Rubya Mehdi, 'Introducing Women's Law as a Part of Legal Education in Pakistan' in Rubya Mehdi and Farida Shaheed, ed., Women's Law and Legal Education and Practices in Pakistan (Copenhagen: New Social Sciences Monograph Institution of Organisational and Industrial Sociology), 28.
- ³⁶ Ali Rahnema and Farhad Nomani, The Secular Miracle: Religion, Politics and Economic Policy in Iran (London: Zed Books, 1990), 219-221.
- ³⁷ Patricia Higgins and Pirouz Shoar -Ghaffari, 'Women's Education in the Islamic Republic of Iran' in Mahnaz Afkhami and Erika Friedl, eds., In the Eye of the Storm: Women in Post-Revolutionary Iran (London: I.B. Tauris and Co Ltd, 1994), 41.
- ³⁸ Akbar Aghajanian, 'The Status of Women and Female Children in Iran: an update from the 1986 census' in Mahnaz Afkhami and Erika Friedl, eds., In the Eye of the Storm: Women in Post-Revolutionary Iran (London: I.B. Tauris and Co Ltd, 1994), 48 - 50.
- ³⁹ Nayereh Tohidi, 'Modernity, Islamization and Women in Iran' in Valentine M. Moghadem, ed., Gender and National Identity: Women and Politics in Muslim Societies (London: Zed Books Ltd, 1994), 137.
- ⁴⁰ Izzud-Din Pal, 'Women and Islam in Pakistan', Middle Eastern Studies 26 (4) 1990, 452.
- ⁴¹ Ayesha Jalal, 'The Convenience of Subsistence: Women and the State of Pakistan' in Deniz Kandiyoti, ed., Women, Islam and the State (London: The Macmillan Press, 1991), 101.
- ⁴² Higgins and Shoar -Ghaffari, 'Women's Education in the Islamic Republic of Iran', 41.
- ⁴³ Sayid, 'Women in Politics - Problems of Participation: A Case Study of Pakistan', 16.
- ⁴⁴ Ihsan Yilmaz, 'Secular Law and the Emergence of Unofficial Turkish Islamic Law' Middle East Journal 56 (1) 2002, 116.
- ⁴⁵ There are some notable exceptions. For example by 1997 in Iran, women were permitted to re-enter the legal profession as judges and lawyers.
- ⁴⁶ Roger McCarthy, 'Zafran Bibi - brought charges of rape and found guilty of adultery' The Observer May 12 2002, 23.

References to Chapter 4, Human Rights

- ¹ Peter Jones, Rights (London: The Macmillan Press Ltd, 1994), 98.
- ² Jack Donnelly, The Concept of Human Rights (London: Croom Helm Ltd, 1989), 33.
- ³ Fred Halliday, Islam and the Myth of Confrontation (London: I.B Tauris and Co Ltd, 1996), 140.
- ⁴ Jack Donnelly, Universal Human Rights in Theory and Practice (Ithaca and London: Cornell University Press, 1989), 23.
- ⁵ 'The International Covenant on Civil and Political Rights' Office of the High Commissioner for Human Rights (http://www.unhchr.ch/html/menu3/6/a_ccpr.htm) 14/04/99
- ⁶ 'The International Covenant on Economic, Social and Cultural Rights' Adopted by General Assembly Resolution 2200A (XXI) December 16 1966. Office of the High Commissioner for Human Rights (http://www.unhchr.ch.html/menu3/6/a_cescr.htm) 14/04/99
- ⁷ Alison Dundes Renteln, International Human Rights: Universalism Versus Relativism (London: Sage Publications, 1990), 91.
- ⁸ This is not to suggest that women constitute an entity separate from religious and cultural groups, but simply that they constitute one group with specific grievances with the human rights agenda.
- ⁹ Adamantia Pollis, 'Cultural Relativism Revisited: Through a State Prism' Human Rights Quarterly 18 (2) 1996, 320.
- ¹⁰ Scott Davidson, Human Rights (Buckingham: Open University Press, 1993), 34.
- ¹¹ Raymond Plant, Modern Political Thought (Oxford: Basil Blackwell Ltd, 1991), 258-259.
- ¹² Plant, Modern Political Thought, 259.
- ¹³ Plant, Modern Political Thought, 290.

- ¹⁴ Although the west's commitment to democracy is also questioned by many given for example the role of the US in supporting a military coup in Algeria after an Islamist party looked like it would win the next round of elections in the 1990s.
- ¹⁵ David Jacobson, Rights Across Borders: Immigration and the Decline of Citizenship, (Baltimore: The John Hopkins University Press, 1996), 117
- ¹⁶ Jacobson, Rights Across Borders: Immigration and the Decline of Citizenship, 135.
- ¹⁷ 'The Universal Declaration of Human Rights' Office of the High Commissioner for Human Rights (<http://www.un.org/Overview/rights.html> 12/03/98).
- ¹⁸ Joseph H. Carens, 'Aliens and Citizens: The Case for Open Borders.' The Review of Politics 49 (Spring) 1987, 252.
- ¹⁹ Mahmood Monshipouri and Claude E. Welch. 'The Search for International Human Rights and Justice: Coming to Terms With the New Global Realities.' Human Rights Quarterly, 23 (2) 2001, 399.
- ²⁰ Thomas M. Franck, The Empowered Self: Law and Society in the Age of Individualism (Oxford: Oxford University Press, 1999), 245.
- ²¹ 'The Universal Declaration of Human Rights.'
- ²² Kurt Mills, Human Rights in The Emerging Global Order: A New Sovereignty (London: Macmillan Press Ltd, 1998), 116.
- ²³ James F. Paradise, 'International Social Justice: Philosophical and Political-Economic Considerations.' Millennium: Journal of International Studies 14 (1) 1985, 70.
- ²⁴ Henry Shue quoted in Charles Jones Global Justice: Defending Cosmopolitanism (Oxford: Oxford University Press, 1999), 61.
- ²⁵ 'The Universal Declaration of Human Rights.'
- ²⁶ Paradise 'International Social Justice: Philosophical and Political-Economic Considerations', 69.
- ²⁷ 'The Universal Declaration of Human Rights.'
- ²⁸ Peter Jones, 'Human Rights, Group Rights, and Peoples' Rights.' Human Rights Quarterly 21 (1) 1999, 81.
- ²⁹ Donnelly, The Concept of Human Rights, 80.
- ³⁰ African (Banjul) Charter on Human and Peoples' Rights.' University of Minnesota Human Rights Library (<http://wwwwl.umn.edu/humanrts/instreet/zlafchar.htm>, 11/26/98).
- ³¹ African (Banjul) Charter on Human and Peoples' Rights.'
- ³² Algeria, Egypt, Sudan, Mauritania, Tunisia and Libya are just some of the Muslims states that have signed the Charter.
- ³³ Chidi Anselm Odinkalu, 'Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social and Cultural Rights Under the African Charter on Human and Peoples' Rights.' Human Rights Quarterly 23 (2) 2001, 344..
- ³⁴ Donnelly, Vincent and Howard quoted in Timothy Fernyhough 'Human Rights and Precolonial Africa' in Ronald Cohen, Goran Hyden and Winston P. Nagan, eds., Human Rights and Governance in Africa, (Gainesville: University of Florida Press, 1993), 46.
- ³⁵ Pollis, 'Cultural Relativism Revisited: Through a State Prism', 341.
- ³⁶ Pollis, 'Cultural Relativism Revisited: Through a State Prism', 340.
- ³⁷ Rhoda Howard, 'Dignity, Community and Human Rights' in Abdullahi Ahmed An-Naim, ed., Human Rights in Cross-Cultural Perspectives: A Quest for Consensus (Philadelphia: University of Pennsylvania Press, 1992, 91.
- ³⁸ Donnelly, Universal Human Rights in Theory and Practice, 83.
- ³⁹ This accountability may or may not take the form of a modern liberal- democratic state.
- ⁴⁰ 'African (Banjul) Charter on Human and Peoples' Rights', Article 2.
- ⁴¹ Davidson, Human Rights, 33.
- ⁴² Ashlid Samnoy 'The Origins of the Universal Declaration of Human Rights' in Gudmundur Alfredson and Asbjorn Eide, eds., The Universal Declaration of Human Rights: A Common Standard of Achievement (The Netherlands: Kluwer Law International, 1996), 6.
- ⁴³ Christina M. Cerna, 'Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts.' Human Rights Quarterly 16 (4) 1994, 743.
- ⁴⁴ Jones, 'Human Rights, Group Rights, Peoples' Rights', 85.
- ⁴⁵ Jones, 'Human Rights, Group Rights and Peoples' Rights', 87-88.
- ⁴⁶ Preamble of 'African (Banjul) Charter of Human and Peoples' Rights.'
- ⁴⁷ 'African (Banjul) Charter of Human and Peoples' Rights.'
- ⁴⁸ Fernyhough, 'Human Rights and Precolonial Africa' 51
- ⁴⁹ Eva Brems, 'Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse.' Human Rights Quarterly 19 (1) 1997, 141.

- ⁵⁰ Charlotte Bunch, 'Transforming Human Rights From a Feminist Perspective' in Julie Peters and Andrea Wolper, eds., Women's Rights, Human Rights: International Feminist Perspectives (London: Routledge, 1995), 13.
- ⁵¹ Diane Bell, 'Considering Gender: Are Human Rights for Women Too? An Australian Case' in Abdullahi An-Naim, ed., Human Rights in Cross-Cultural Perspective: A Quest for Consensus (Philadelphia: Pennsylvania University Press, 1991), 347.
- ⁵² Bunch, 'Transforming Human Rights From a Feminist Perspective', 12.
- ⁵³ Hilary Charlesworth, 'What are Women's International Human Rights', in Rebecca J. Cook ed., Human Rights of Women National and International Perspectives (Philadelphia: University of Pennsylvania Press, 1994), 63.
- ⁵⁴ Charlesworth, 'What are Women's International Human Rights', 63.
- ⁵⁵ Charlesworth, 'What are Women's International Human Rights', 66.
- ⁵⁶ Donna Sullivan, 'The Public/ Private Distinction in International Human Rights Law' in Julie Peters and Andrea Wolper, eds., Women's Rights, Human Rights: International Feminist Perspectives (London: Routledge, 1995).
- ⁵⁷ Charlesworth, 'What Are Women's International Human Rights', 72.
- ⁵⁸ Katarina, Tomasevski. Women and Human Rights (London: Zed Books Ltd, 1993), ix.
- ⁵⁹ Dorothy Q. Thomas, 'Acting Unnaturally: In Defense of the Civil and Political Rights of Women' in Margaret A. Schuler ed., From Basic Needs to Basic Rights: Women's Claim to Human Rights (Washington D.C: Institute for Women, Law and Development), 46.
- ⁶⁰ Anita M. Weiss, 'Implications of the Islamisation Program For Women' in Anita M Weiss ed., Islamic Reassertion in Pakistan: The Application of Islamic Laws in A Modern State (Syracuse: Syracuse University Press, 1986), 109.
- ⁶¹ 'Universal Declaration of Human Rights.'
- ⁶² Jeremy Waldron, Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man. (London: Methuen and Co Ltd, 1987), 159.
- ⁶³ Charlesworth, 'What are Women's International Human Rights?', 62.
- ⁶⁴ Gayle Binion, 'Human Rights: A Feminist Perspective.' Human Rights Quarterly 17 (4) 1995, 521.
- ⁶⁵ Mahnaz Afkhami, 'Identity and Culture: Women as Subjects and Agents of Cultural Change' in Margaret A. Schuler ed., From Basic Needs to Basic Rights: Women's Claim to Human Rights (Washington D.C: Institute for Women, Law and Development, 1995), 221-224.
- ⁶⁶ Fiona Robinson, 'The limits of a rights-based approach to international ethics', in Tony Evans, ed., Human Rights Fifty Years On: A Reappraisal (Manchester: Manchester University Press, 1998), 66.
- ⁶⁷ Robinson, 'The limits of a rights-based approach to international ethics', 70.
- ⁶⁸ Binion, 'Human Rights: A Feminist Perspective', 525.
- ⁶⁹ 'Country Reports - India' Amnesty International
<http://www.amnesty.org/ailib/ai/report/a97/ASA20.htm> 20/07/2002
- ⁷⁰ 'Women' Amnesty International <http://www.web.amnesty.org/ai.nsf/THEME/WOMEN> 20/07/2002
- ⁷¹ Tomasevski, Women and Human Rights, xii.
- ⁷² Reza Afshari, 'An Essay on Islamic Cultural Relativism in the Discourse of Human Rights' Human Rights Quarterly 16 (2) 1994, 235.
- ⁷³ Donnelly, The Concept of Human Rights, 31.
- ⁷⁴ Max L. Stackhouse, 'Human Rights and Public Theology: The Basic Validation of Human Rights' in Carrie Gustafson and Peter Juviler, eds., Religion and Human Rights: Competing Claims? (New York: M.E. Sharpe Inc. 1999), 16.
- ⁷⁵ Gustavo Benavides, 'Catholicism and Politics in Latin America' in Charles Wei-hsun and Gerhard E. Spiegler, eds., Movements and Issues in World Religions (Connecticut: Greenwood Press Inc. 1987), 114.
- ⁷⁶ Benavides, 'Catholicism and Politics in Latin America', 114.
- ⁷⁷ Marty Martin, 'Religious Dimensions of Human Rights' in John Witte Jr and Johan D Van der Vyer, ed., Religious Human Rights in Global Perspective (The Netherlands: Kluwer Law International, 1996), 2.
- ⁷⁸ Michael Broyde, 'Forming Religious Communities and Respecting Dissenters Rights: A Jewish Tradition For A Modern Society' Rights' in John Witte Jr and Johan D Van der Vyer, ed., Religious Human Rights in Global Perspective (The Netherlands: Kluwer Law International, 1996), 228.
- ⁷⁹ 'The Universal Declaration of Human Rights.'
- ⁸⁰ Mahmoud Monshipuri, 'Islamic Thinking and the Internationalization of Human Rights' The Muslim World LXXXIV (2-3) 1994, 218.

- ⁸¹Katerina Dalacoura, Islam, Liberalism and Human Rights (London: I.B Tauris and Co Ltd, 1998), 57
- ⁸²John Charvet, 'The Possibility of a Cosmopolitan Ethical Order Based on the Idea of Universal Human Rights.' Millennium Journal of International Studies 27 (3) 1998, 529.
- ⁸³Bassam Tibi, 'Islamic Law/ Shari'a, Human Rights, Universal Morality and International Relations' Human Rights Quarterly 16 1994, 295
- ⁸⁴Imam an-Nawawi, The Complete Forty Hadith (London: Ta-Ha Publishers, 1998), 120
- ⁸⁵Nimat Hafez Barazangi, 'Muslim Women's Islamic Higher Learning as a Human Right' in Mahnaz Afkhami and Erika Friedl, eds., Muslim Women and the Politics of Participation (Syracuse: Syracuse University Press, 1997), 47.
- ⁸⁶ Dalacoura, Islam, Liberalism and Human Rights, 64.
- ⁸⁷ Fatima Memissi, Women and Islam: A Theological Enquiry (Oxford: Oxford University Press, 1991), 3.
- ⁸⁸ Charvet, 'The Possibility of a Cosmopolitan Ethical Order Based on the Idea of Universal Human Rights', 530 - 531.
- ⁸⁹ Monshipuri, 'Islamic Thinking and the Internationalization of Human Rights,' 218.
- ⁹⁰ The exception to this would be of course in criminal offences, for which very clear punishments are prescribed in the *Qur'an* and *Sunna*.
- ⁹¹ Dalacoura, Islam, Liberalism and Human Rights, 12.
- ⁹² Charvet, 'The Possibility of a Cosmopolitan Ethical Order Based on the Idea of Universal Human Rights', 530
- ⁹³ Imam an-Nawawi, The Complete Forty Hadith, 61-63.
- ⁹⁴ Fred Halliday, 'Relativism and Universalism in Human Rights: the Case of the Islamic Middle East' Political Studies XL111 1995, 161.
- ⁹⁵ Mohammad Hashim Kamali, Principles of Islamic Jurisprudence (Kuala Lumpur: Ilmiah Publishers, 1999), 266.
- ⁹⁶ Mahnaz Afkhami, 'Claiming our Rights: A Manual for Women's Human Rights in Muslim Societies' in Mahnaz Afkhami and Erika Friedl, eds., Muslim Women and the Politics of Participation (Syracuse: Syracuse University Press, 1997), 109-111.
- ⁹⁷ Robert Cover, 'Obligation: A Jewish Jurisprudence of The Social Order' in Henry J Steiner and Philip Alston eds., International Human Rights in Context: Law, Politics and Morals Text and Materials (Oxford: Clarendon Press, 1996), 181-182.
- ⁹⁸ David Novak, 'Religious Human Rights in Judaic Texts' in John Witte Jr and Johan D Van der Vyver, ed., Religious Human Rights in Global Perspective (The Netherlands: *Kluwer Law International*, 1996), 194.
- ⁹⁹ Louis Jacobs, 'The Jewish Tradition in Today's World' in Frank Whaling, ed., Religion in Today's World: the religious situation of the world from 1945, (Edinburgh: T & T Clarke, 1987), 220.
- ¹⁰⁰ S Zalman Abramov, Perpetual Dilemma: Jewish Religion in the Jewish State (London: Associated University Presses, Inc, 1976), 277, 319.
- ¹⁰¹ Richard Ashcroft, 'Religion and Lockean Natural Rights' in Irene Bloom, J Paul Martin and Wayne L Proudfoot, eds., Religious Diversity and Human Rights (New York: Columbia University Press, 1996), 200.
- ¹⁰² George Carey, 'Tolerating Religion' in Susan Mendus, ed., The Politics of Toleration: Tolerance and Intolerance in Modern Life (Edinburgh: Edinburgh University Press, 199), 48.
- ¹⁰³ Charles Curran, 'Churches and Human Rights: From Hostility/ Reluctance to Acceptance' Milltown Studies 42 (Winter) 1998, 31.
- ¹⁰⁴ Carey, 'Tolerating Religion', 53.
- ¹⁰⁵ Scott M. Thomas, 'Taking Religious and Cultural Pluralism Seriously: The Global Resurgence of Religion and the Transformation of International Society.' Millennium: Journal of International Studies 29 (3) 2000, 841.
- ¹⁰⁶ Franklin H. Littell, 'Religious Liberty: The Present Challenge' in Charles Wei-hsun and Gerhard E. Spiegler, eds., Movements and Issues in World Religions (Connecticut: Greenwood Press Inc, 1987), 211.

References to Chapter 5, Women, Islam and Human Rights

- ¹ Ann Elizabeth Mayer, Islam and Human Rights: Tradition and Politics (Oxford: Westview Press, 1999).

- ²Abdullahi An-Naim, Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law (Syracuse: Syracuse University Press, 1996).
- ³Mayer, Islam and Human Rights: Tradition and Politics, 104.
- ⁴Mayer, Islam and Human Rights: Tradition and Politics, 89.
- ⁵An-Naim, Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law, 155.
- ⁶James P Piscatori, 'Human Rights in Islamic Political Culture' in Kenneth W. Thompson ed., The Moral Imperatives of Human Rights: A World Survey (Washington D.C. University Press of America, 1980), 157-158.
- ⁷J Samuel Barkin, 'The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms.' Millennium: Journal of International Studies, 27 (2) 1998, 246 – 247.
- ⁸Fred Halliday, 'Islam and the Myth of Confrontation'. (London: I.B. Tauris and Co Ltd, 1996), 15.
- ⁹'The Universal Declaration of Human Rights'
- ¹⁰Muhammad Asad, This Law of Ours and Other Essays (Gibraltar: Dar Al-Andalus, 1987), 57.
- ¹¹For conservative scholars the subject of women's protest is very simple. For them no form of protest is permissible even within the family.
- ¹²Mayer, Islam and Human Rights: Tradition and Politics, 59
- ¹³Muhammad Abu Zahra, The Four Imams: Their Lives, Works and their Schools of Thought (London: Dar Al Taqwa, 2001), 65, 214, 337, 455.
- ¹⁴This is not to deny the violent means of opposition taken on by many groups in the Muslim world, but this is just one method employed by certain groups.
- ¹⁵Muhammad Asad, The Principles of State and Government in Islam. (Gibraltar: Dar al-Andalus, 1980), 22-24.
- ¹⁶An-Naim, Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law, 78-79.
- ¹⁷Fazlur Rahman, Revival and Reform in Islam: A Study of Islamic Fundamentalism (Oxford: One World Publications, 2000), 75.
- ¹⁸Shaykh Yusuf al – Qaradawi, Priorities of The Islamic Movement in The Coming Phase. (Swansea: Awakening Publications, 2000), 186-187.
- ¹⁹Rahman, Revival and Reform in Islam: A Study of Islamic Fundamentalism, 81.
- ²⁰Halliday, Islam and The Myth of Confrontation, 142.
- ²¹Anita M. Weiss, 'The Consequences of State Policies for Women in Pakistan' in The Politics of Social Transformation in Afghanistan, Iran and Pakistan (Syracuse: Syracuse University Press, 1994), 415.
- ²²Aisha Bewley, Glossary of Islamic Terms. (London: Ta-Ha Publishers Ltd, 1998), 7.
- ²³Fatima Mernissi, Beyond The Veil: Male-Female Dynamics in Modern Muslim Society (Indiana: Indiana University Press, 1987), 19-20, 31.
- ²⁴Debbie G Gerner, 'Roles in Transition: The Evolving Position of Women in Arab-Islamic Countries' in Freda Hussain, ed., Muslim Women (Kent: Crom Helm Ltd, 1984), 75.
- ²⁵Fatima Mernissi, Islam and Democracy: Fear of the Modern World (London: Virago Press, 1993), 159.
- ²⁶John Esposito, Women and Muslim Family Law (Syracuse: Syracuse University Press, 1982), 53.
- ²⁷Al - Qaradawi, Priorities of The Islamic Movement in The Coming Phase, 95.
- ²⁸Abd al-Rahman Azzam, The Eternal Message of Muhammad (Cambridge: The Islamic Texts Society, 1993), 79.
- ²⁹The Taliban in Afghanistan and Hizbollah in Iran are just two examples.
- ³⁰Yasien Mohamed, Fitra: The Islamic Concept of Human Nature (London: Ta Ha Publishers Ltd, 1996), 23.
- ³¹An-Naim, Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law, 50.
- ³²An-Naim, Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law, 55.
- ³³Jawad A Haifaa, The Rights of Women in Islam: An Authentic Approach (London: Macmillan Press, 1991), 93.
- ³⁴An-Naim, Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law, 55
- ³⁵An-Naim, Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law, 50
- ³⁶Al-Qaradawi, Priorities of the Islamic Movement in the Coming Phase, 90-91.
- ³⁷Muhammad Asad, This Law of Ours and Other Essays, 11.
- ³⁸Taha Jabir al Alwani, The Ethics of Disagreement in Islam (Herndon: The International Institute of Islamic Thought, 1993), 128.
- ³⁹L. Clarke, 'The Shi'i Construction of Taqlid.' Journal of Islamic Studies 12 (1) 2001, 55.

- ⁴⁰ 'Iran – Constitution'. Iran Online (<http://www.iranonline.co/iran/iran-info/Government/constitution.html>, March 25, 2002).
- ⁴¹ Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence*, (Kuala Lumpur: Ilmiah Publishers, 1998), 268.
- ⁴² Mayer, *Islam and Human Rights: Tradition and Politics*, 111-112.
- ⁴³ Ziba Mir-Hosseini, 'Women, Marriage and the Law in Post-Revolutionary Iran' in Haleh Afshar, ed., *Women in the Middle East* (London: The Macmillan Press Ltd, 1993), 79.
- ⁴⁴ Mona Al-Munajjed, *Women in Saudi Arabia Today* (London: Macmillan Press Ltd, 1997), 91.
- ⁴⁵ Mayer, *Islam and Human Rights: Tradition and Politics*, 115.
- ⁴⁶ Hamza Yusuf, *The Life of the Prophet Muhammad* (Audio Cassette: Alhambra Productions, 1999).
- ⁴⁷ Mahmood Monshipuri, *Islamism, Secularism and Human Rights* (London: Lynne Rienner Publishers, 1998), 10-11.
- ⁴⁸ See Tariq Ramadan, *Islam, the West and the Challenges of Modernity* (Leicester: The Islamic Foundation, 2001).
- ⁴⁹ Reza Afshari, 'An Essay on Islamic Cultural Relativism in the Discourse of Human Rights' *Human Rights Quarterly* 16 (2) 1994, 235.
- ⁵⁰ Mayer, *Islam and Human Rights: Tradition and Politics*, 180.
- ⁵¹ Ihsan Yilmaz, 'Secular Law and the Emergence of Unofficial Turkish Islamic Law' *Middle East Journal* 56 (1) 2002, 124 – 127.
- ⁵² Richard Falk, 'Cultural Foundations for the International Protection of Human Rights' in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: Pennsylvania University Press, 1991), 55.
- ⁵³ Mayer, *Islam and Human Rights: Tradition and Politics*, 152.
- ⁵⁴ *Hadith of the Prophet* in Sarah Sheriff, *Women's Rights in Islam* (London: Ta-Ha Publishers, 1989), 7.
- ⁵⁵ Parvin Paidar, 'Feminism and Islam in Iran' in Deniz Kandiyoti, ed., *Gendering the Middle East: Emerging Perspectives* (London: I.B Tauris and Co Ltd, 1996), 60.
- ⁵⁶ Mahnaz Afkhami, 'Claiming Our Rights: A Manual for Women's Human Rights Education in Muslim Societies' in Mahnaz Afkhami and Erika Friedl, eds., *Muslim Women and The Politics of Participation* (Syracuse: Syracuse University Press, 1997), 109-114.
- ⁵⁷ For further illustration of how these meetings operate see Zahra Kamalkhani 'Reconstruction of Islamic Knowledge and Knowing: A Case of Islamic Practices among Women in Iran' in Karen Ask and Marit Tjomslund eds., *Women and Islamization Contemporary Dimensions of Discourse on Gender Relations* (New York: Berg, 1998), 176-193.
- ⁵⁸ Asad, *This Law of Ours and Other Essays*, 21.
- ⁵⁹ Muhammad Asad, *The Message of The Qur'an* (Gibraltar: Dar al-Andalus, 1984), 616.
- ⁶⁰ Yusuf al-Qaradawi, *The Lawful and Prohibited in Islam* (Indianapolis: American Trust Publications) 230-231.
- ⁶¹ Haideh Moghissi, *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis* (New York: Zed Books Ltd, 1999), 134.
- ⁶² Moghissi, *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis*, 137
- ⁶³ Moghissi, *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis*, 145
- ⁶⁴ Jack Donnelly, *The Concept of Human Rights* (London: Croom Helm Ltd, 1989), 83.
- ⁶⁵ Mayer, *Islam and Human Rights: Tradition and Politics*, 187.
- ⁶⁶ Al-Qaradawi, *Priorities of the Islamic Movement in The Coming Phase*, 48-49
- ⁶⁷ Some writers have claimed that even membership of such organisations as the UN is contrary to Islamic principles. It is felt that according to Islamic teachings the world is divided in two spheres dar al-Islam (the domain of Islam) and dar al-harb (the domain of war). The two domains according to some classical scholars are in a permanent state of war and attempts by Muslims to enter an indefinite state of peaceful co-existence through a body such as the UN fail to honour the Islamic duty of offensive Jihad. Such scholars as a consequence argue that Islam calls for one united Islamic political entity as opposed to the numerous Muslim nation-states in existence today. Mashood Baderin disputes this view and shows how many orthodox writings endorse the state system and membership of such bodies striving for peace. For a more detailed account of this debate see Mashood A. Baderin, 'The Evolution of Islamic Law of Nations and the Modern International Order: Universal Peace through Mutuality and Cooperation' *The American Journal of Islamic Sciences* 17 (2) 2000, 57 – 79.

References to Conclusion

¹ Although military action against Iran has not been mentioned specifically its inclusion in President Bush's 'axis of evil' suggested that it would be subjected to some form of punitive action.

²Ronald Dworkin's article in The Guardian is an important but rather cautious contribution in this area. Ronald Dworkin 'The Real Threat to US Values' The Guardian: Saturday Review 9 March 2002, 3.

List of Statutes

Iran

The Civil Code of Iran, 1928 and as amended 1982 - 1983

The Criminal Code of Iran, Pursuant to Article 85 of the Islamic Republic of Iran, 1995

Qisas Laws, 1981

Pakistan

Guardian and Wards Act, (VII of 1890)

The Dissolution of Muslim Marriages Act, (VIII of 1939)

Muslim Family Laws Ordinance, 1961
Ordinance VII of 1961

Dowry and Bridal Gifts (Restriction) Act, (XLIII of 1976)

Offence of *Zina* (Enforcement of *Hudood*) Ordinance, 1979

The Evidence Act, (*Qanuan-e-Shadat*), (P.O. No. 10 of 1984)

Glossary¹

Alim (p. 'ulama): learned scholar of Islam.

Awra': the parts of the person, which it is indecent to expose in public.

Aqeeda: article/ tenet of faith.

Ayatollah: a title of respect in *Shi'a* discourse given to a small elite of theologians by followers and fellow theologians for their knowledge and personal integrity. There is no official procedure through which this title is gained. During his time as leader of Iran, Ayatollah Khomeini, was considered exceptionally more knowledgeable and worthy of respect than others with the same title by fellow clerics.

Burkha: Urdu/ Punjabi term for the long gown worn by women, which covers the head and face.

Caliph: the head of an Islamic state.

Chador: Persian/ Urdu term for the head covering worn by women.

Daraja: degree or station.

Da'wa: inviting people to accept the message of Islam

Diya: blood money/ financial compensation for murder or injury.

Faddala: the precise meaning of this word when used in the *Qur'an* is hotly debated. See Chapter 1 of this thesis for analysis.

Faskh: termination of a contract. In this thesis refers to termination of the marriage contract at the wife's request.

Fatwa (p. fatawa): an authoritative statement on a point of law.

Fiqh: Islamic law and jurisprudence. An expert in Islamic law is known as a *faqih*.

Fitna: schism, sedition, civil strife, trial or temptation.

Fitrah: the natural human disposition to worship the one God.

Hadith (p. Ahadith): reported speech of the Prophet Muhammad.

Hajj: the pilgrimage to Makka.

Hojatoleslam: this title of respect is given in *Shi'a* discourse to a theologian who has not quite achieved the eminence of an Ayatollah.²

Hudood: boundary limits for the lawful and unlawful. *Hudood* punishments are specific fixed penalties laid down in the *Qur'an* for specified crimes.

Iddah: the waiting period to be observed by a woman before she can re-marry following a divorce or the death of her husband. In the *Jafari* school the *iddah* must also be observed following the termination of a temporary marriage.

Ijma: consensus usually referring to consensus amongst scholars on legal matters.

Ijtihad: to exercise personal judgement in legal matters.

Imam: 1. Muslim religious or political leader. 2. One of the succession of Muslim leaders, beginning with Ali, regarded as legitimate by the Shi'a. 3. Leader of Muslim congregational worship – will often take on certain additional responsibilities such as conducting wedding ceremonies and acting as arbiter in local disputes.

Jahilliya: the period of ignorance before the coming of Islam.

Jilbab: outer garment, long loose gown.

Kafir (p. kuffar): those who reject the message of Islam.

Khimar: head covering

Khul/ Khula: dissolution of the marriage at the wife's request.

Kufr: to be in a state of disbelief, to reject.

Madhab (p. madhahib): a school of Islamic jurisprudence founded on the opinions of a *faqih*. Today generally refers to the Hanafi, Maliki, Shafi', Hanbali and Jafari schools.

Mahr: bridal-money that is promised by the husband to his wife at the time of marriage.

Majlis: ruling council, parliament.

Maslahah: public interest

Maqasid: objectives

Mutah: temporary marriage in which the duration of the marriage is decided at the outset. This form of marriage is permitted in the *Shi'a* school.

Nafaqeh: maintenance, adequate support.

Nass: unequivocal, clear injunction, an explicit textual meaning.

Nushuz: Often defined as ill-will or ill-conduct, the exact meaning of this word is highly contested and is discussed in detail in Chapter 1 of the thesis.

Purdah: Urdu/ Punjabi term meaning the seclusion of women from men.

Qawamun: Often translated as guardian/ manager. See Chapter 1 for detailed analysis of this term.

Qisas: retaliation.

Qiyas: deduction by analogy.

Ray': opinion, personal discretion, a legal decision based on personal opinion that is used when no explicit guidance is available from the *Qur'an* or *Sunna*.

Sadaqah: an act of charity.

Sahih: a sound *Hadith* i.e. one in which all those in the chain of narration were known reliable, pious Muslims.

Seerah: Islamic history

Shaykh: a title of respect used to denote an elderly person or a learned scholar.

Shura': consultation.

Sunna: actions of the Prophet Muhammad, which Muslims are expected to emulate.

Sura: a chapter of the *Qur'an*

Talaq: divorce initiated by the husband.

Taqlid: to follow a *madhab* without considering the evidence for one self.

Taqwa: piety, to be in awe of God.

Tashri: legislation.

Umma: all Muslims as one distinct community.

Wali: guardian.

Zakah: one of the five pillars of Islam, the compulsory tax on a Muslim's wealth that is distributed to the needy.

¹ Aisha Bewley's, *Glossary of Islamic Terms* (London: Ta-Ha Publishers, 1998) has served as a guide in composing this glossary.

² Those with the title Ayatollah or Hojatoleslam are part of the state clergy and wielded considerable political influence during Khomeini's rule.

Bibliography

Books

Abd al-Ati, Hammudah. The Family Structure in Islam (Indiana: American Trust Publications, 1977).

Abdalhaqq and Aisha Bewley. The Noble Qur'an: A New Rendering of its Meaning in English (Norwich: Bookwork, 1999).

Abraham, Ervand. Khomeinism: Essays on The Islamic Republic (California: University of California Press, 1994).

Abramov, S Zalman. Perpetual Dilemma: Jewish Religion in the Jewish State (London: Associated University Presses, Inc, 1976).

Afkhami, Mahnaz. 'Identity and Culture: Women as Subjects and Agents of Cultural Change.' In Margaret Schuler, ed. From Basic Needs to Basic Rights: Women's Claims to Human Rights Washington D.C: Institute for Women, Law and Development, 1995, 217-232.

Afkhami, Mahnaz. 'Claiming our Rights: A Manual for Women's Human Rights Education in Muslim Societies.' In Mahnaz Afkhami and Erika Friedl, eds. Muslim Women and the Politics of Participation Syracuse: Syracuse University Press, 1997, 109-120.

Afkhami, Mahnaz. 'Women in Post-Revolutionary Iran: A Feminist Perspective.' In Mahnaz Afkhami and Erika Friedl, eds. In The Eye of The Storm: Women in Post-Revolutionary Iran London: I.B. Tauris Publishers, 1994, 6-18.

Afshar, Haleh. Islam and Feminisms: An Iranian Case Study (Basingstoke: St Martins Press, 1998).

Afshar, Haleh. 'Islam and Feminism: An Analysis of Political Strategies.' In Mai Yamani, ed. Feminism and Islam: Legal and Literary Perspectives. Berkshire: Garnet Publishing Ltd, 1996, 197-216.

Aghajanian, Akbar. 'The Status of Women and Female Children in Iran: An Update from the 1986 Census.' In Mahnaz Afkhami and Erika Friedl, eds. In The Eye of The Storm: Women in Post-Revolutionary Iran. London: I.B. Tauris and Co Ltd, 1994, 44 – 60.

Ahmed, Anis. Women and Social Justice: An Islamic Paradigm (Islamabad: Institute of Policy Studies, 1996).

Ahmed, Leila. Women and Gender in Islam: Historical Roots of A Modern Debate (New Haven and London: Yale University Press, 1992).

- Ahmed, Al-Haj Moinuddin. The Urgency of Ijtihad (New Delhi: Kitab Bhavan, 1992).
- Akbar, Ahmed S. Discovering Islam: Making Sense of Muslim History and Society (London: Routledge, 1998).
- Al-Alwani, Taha Jabir. The Ethics of Disagreement in Islam (Herndon: The International Institute of Islamic Thought 1996).
- Al-Anani, Hasan. Freedom and Responsibility in Qur'anic Perspective (Indianapolis: American Trust Publications, 1990).
- Al-Bayhaqi, Imam. The Seventy-Seven Branches of Faith (London: The Quilliam Press, 1990).
- Al-Faruqi, Lamyā. Women, Muslim Society and Islam (Indiana: American Trust Publications, 1994).
- Al-Faruqi, Ismail Raja. Islam and Other Faiths (Leicester: The Islamic Foundation, 1998).
- Al-Ghazali, Shaykh Muhammad. A Thematic Commentary of the Qur'an (London: The International Institute of Islamic Thought, 2000).
- Al-Hilali, Muhammad Taqi-ud-Din and Muhammad Muhsin Khan. Interpretations of the Meanings of The Noble Qur'an (Riyadh: Dar-us-Salam Publications, 1996).
- Ali, Shaheen Sardar. 'A Critical Review of Family Laws in Pakistan: A Women's Perspective.' In Rubya Mehdi and Farida Shaheed, ed. Women's Law and Legal Education and Practice in Pakistan. Copenhagen: New Social Sciences Monograph Institute of Organisational and Industrial Sociology, Copenhagen Business School, 1997, 198 – 223.
- Ali, Shaheen Sardar. Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man? (The Hague: Kluwer Law International, 2000).
- Ali, Yusuf. The Holy Qur'an: English Translation of the Meanings and Commentary (Revised and Edited by the Presidency of Islamic Researchers, IFTA, Call and Guidance).
- Al-Munajjed, Mona. Women in Saudi Arabia Today (London: The Macmillan Press Ltd, 1997).
- Al-Qaradawi, Yusuf. The Lawful and Prohibited in Islam (Indianapolis: American Trust Publications).
- Al-Qaradawi, Shaykh Yusuf. Priorities of the Islamic Movement in the Coming Phase (Swansea: Awakening Publications, 2000).

- Al-Uhmaymeen, Muhammad ibn Saalih. Differences of Opinion Amongst the Scholars: Their Causes and Our Position Towards Them (Birmingham: Al-Hidaayah, 1997).
- An-Naim, Abdullahi. Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law (Syracuse: Syracuse University Press, 1990).
- An-Nawawi, Imam. The Complete Forty Hadith (London: Ta-Ha Publishers, 1998).
- Arkoun, Mohammed. 'The Concept of Islamic Reformation.' In Tore Lindholm and Kari Yøgt, eds. Islamic Law Reform and Human Rights: Challenges and Rejoinders Copenhagen, Lund, Oslo, Abo Turku: Nordic Human Rights Publications, 1992, 11-24.
- Asad, Muhammad. The Message of the Qur'an (Gibraltar: Dar al-Andalus, 1984).
- Asad, Muhammad. The Principles of State and Government in Islam (Gibraltar: Dar al-Andalus, 1980).
- Asad, Muhammad. This Law of Ours and Other Essays (Gibraltar: Dal Al-Andalus, 1987).
- Ashcroft, Richard. 'Religion and Lockean Natural Rights.' In Irene Bloom, J Paul Martin and Wayne L Proudfoot, eds. Religious Diversity and Human Rights. New York: Columbia University Press, 1996, 195 – 212.
- Awn, Peter J. 'Indian Islam: The Shah Bano Affair.' In John Stratton Hawley, ed. Fundamentalism and Gender Oxford: Oxford University Press, 1994, 63-78.
- Azari, Farah. 'Sexuality and Women's Oppression in Iran.' In Farah Azari, ed. Women of Iran: The Conflict with Fundamentalist Islam. London: Ithaca Press, 1983, 90-156.
- Azari, Farah. 'The Post-Revolutionary Women's Movement in Iran.' In Farah Azari, ed. Women of Iran: The Conflict with Fundamentalist Islam London: Ithaca Press, 1983, 190-225.
- Azzam, Abd al-Rahman. The Eternal Message of Muhammad (Cambridge: The Islamic Texts Society, 1993).
- Badawi, Jamal. Gender Equity in Islam: Basic Principles (Indiana: American Trust Publications, 1995).
- Badawi, Leila. 'Islam.' In Jean Holm and John Bowker, eds. Women in Religion. London: Pinter, 1994, 84-112.

Balchin, Cassandra and Sohail Akbar Warraich. 'Untying the Gordian Knot: The Theory and Practice of Divorce in Pakistan.' In Rubya Mehdi and Farida Shaheed, ed. Women's Law and Legal Education and Practice in Pakistan. Copenhagen: New Social Sciences Monograph Institute of Organisational and Industrial Sociology, Copenhagen Business School, 1997, 260 – 275.

Barazangi, Nimat Hafez. 'Muslim Women's Islamic Higher Learning as A Human Right.' In Mahnaz Afkhami and Erika Friedl, eds. Muslim Women and the Politics of Participation. Syracuse: Syracuse University Press, 1997, 43 – 57.

Bashier, Zakaria. Muslim Women in the Midst of Change (Leicester: The Islamic Foundation, 1990).

Bell, Diane. 'Considering Gender: Are Human Rights for Women Too? An Australian Case.' In Abdulahhi An-Naim, ed. Human Rights in Cross-Cultural Perspectives Philadelphia: University of Pennsylvania Press, 1992, 339 – 362.

Benavides, Gustavo. 'Catholicism and Politics in Latin America.' In Charles Weisun and Gerhard E. Spiegler, eds. Movements and Issues in World Religions. Connecticut: Greenwood Press Inc. 1987, 107 – 134.

Bewley, Aisha. Islam: The Empowering of Women (London: Ta-Ha Publishers, 1999).

Bewley, Aisha. Glossary of Islamic Terms (London: Ta-Ha Publisher, 1998).

Brown, Karen McCarthy. 'Fundamentalism and the Control of Women.' In John Stratton Hawley, ed. Fundamentalism and Gender Oxford; Oxford University Press, 1990.

Broyde, Michael 'Forming Religious Communities and Respecting Dissenters Rights: A Jewish Tradition For A Modern Society.' In John Witte Jr and Johan D Van der Vyer, eds. Religious Human Rights in Global Perspective. The Netherlands: Kluwer Law International, 1996, 203 – 233.

Bunch, Charlotte. 'Transforming Human Rights From a Feminist Perspective.' In Peters, Julie and Andrea Wolper, eds. Women's Rights Human Rights: International Feminist Perspectives New York and London: Routledge, 1995, 11-17.

Carey, George. 'Tolerating Religion.' In Susan Mendus, ed., The Politics of Toleration: Tolerance and Intolerance in Modern Life. Edinburgh: Edinburgh University Press, 1999, 45 – 63.

Charlesworth, Hilary. 'What are "Women's International Human Rights?"' In Rebecca J Cook, ed. Human Rights of Women: National and International Perspectives Philadelphia: University of Pennsylvania Press, 1994, 58-84.

- Coomaraswamy, Radhika. 'Diversity, Universality and the Enlightenment Project.' In Margaret Schuler, ed. From Basic Needs to Basic Rights: Women's Claims to Human Rights. Washington D.C: Institute for Women, Law and Development, 1995, 213-216.
- Cover, Robert. 'Obligation: A Jewish Jurisprudence of The Social Order.' In Henry J Steiner and Philip Alston, eds. International Human Rights in Context: Law, Politics and Morals Text and Materials. Oxford: Oxford Clarendon Press, 1996, 181 – 184.
- Dalacoura, Katerina. Islam, Liberalism and Human Rights (London: I.B. Tauris and Co Ltd, 1998).
- Davidson, Scott. Human Rights (Buckingham: Open University Press, 1993).
- Doi, Abdur Rahman. Women in Shari'ah (London: Ta Ha Publishers, 1989).
- Donnelly, Jack. The Concept of Human Rights (London: Croom Helm Ltd, 1989).
- Donnelly, Jack. Universal Human Rights in Theory and Practice (London: Cornell University Press, 1989).
- Doumato, Eleanor Abdella. 'The Ambiguity of Shari'a and the Politics of 'Rights' in Saudi Arabia.' In Mahnaz Afkhami, ed. Faith and Freedom: Women's Human Rights in the Muslim World London: I.B Tauris and Co Ltd, 1995, 135 – 160.
- Duran, Khalid. 'Islamist Prospects for Human Rights in North Africa.' In Tore Lindholm and Kari Yogt, eds. Islamic Law Reform and Human Rights: Challenges and Rejoinders Copenhagen, Lund, Oslo, Abo Turku: Nordic Human Rights Publications, 1992, 149-162.
- Duval, Soroya. 'New Veils and New Voices: Islamist Women's Groups in Egypt.' In Karin Ask and Marit Tjomsland, eds. Women and Islamization: Contemporary Dimensions of Discourse on Gender Relations. Oxford: Berg, 1998, 45 – 72.
- Efsandiari, Haleh. Reconstructed Lives: Women and Iran's Islamic Revolution (Baltimore: The John Hopkins University Press, 1997).
- Esfandiari, Haleh. 'The *Majles* and Women's Issues in the Islamic Republic of Iran.' In Mahnaz Afkhami and Erika Friedl, ed. In The Eye of The Storm: Women in Post-Revolutionary Iran. London: I.B. Tauris and Co Ltd, 1994, 61 – 79.
- El-Awa, Mohammad S. Punishment in Islamic Law (Indiana: American Trust Publications, 1982).
- El-Awa, Muhammad S. On The Political System of the Islamic State (Indiana: American Trust Publications, 1980).
- Esposito, John. Women in Muslim Family Law (Syracuse: Syracuse University Press, 1982).

Falk, Richard. 'Cultural Foundations for the International Protection of Human Rights.' In Abdullahi An-Naim, ed., Human Rights and Cross Cultural Perspectives Philadelphia: University of Pennsylvania Press, 1992, 44 – 64.

Fernyhough, Timothy. 'Human Rights and Precolonial Africa.' In Ronald Cohen, Goran Hyden and Winston P. Hagan, eds. Human Rights and Governance in Africa. Gainesville: University of Florida Press, 1993, 39 – 73.

Franck, Thomas M. The Empowered Self: Law and Society in the Age of Individualism (Oxford: Oxford University Press, 1999).

Gerner, Debbie J. 'Roles in Transition: The Evolving Position of Women in Arab-Islamic Countries.' In Freda Hussain, ed. Muslim Women. Kent: Croom Helm Ltd. 1984, 71-98.

Ghandhi. P.R. International Human Rights Documents (London: Blackstone Press Limited, 1995).

Haeri, Shahla. 'Temporary Marriage: An Islamic Discourse on Female Sexuality in Iran.' In Mahnaz Afkhami and Erika Friedl, eds. In the Eye of the Storm: Women in Post-Revolutionary Iran London: I.B. Tauris and Co Ltd, 1994, 98 – 114.

Haleem, Muhammad Abdel. Understanding the *Qur'an*: Themes and Style (London: I.B. Tauris and Co Ltd, 1999).

Halliday, Fred. Islam and the Myth of Confrontation (London: I.B. Tauris and Co Ltd, 1996).

Hamadeh, Najla. 'Islamic Family Legislation: The Authoritarian Discourse of Silence.' In Mai Yamani, ed. Feminism and Islam: Legal and Literary Perspectives. Berkshire: Garnett Publishing, 1996, 331-350

Higgins, Patricia and Pirouz Shoar-Ghaffari. 'Women's Education.' In Mahnaz Afkhami and Erika Friedl, eds. In The Eye of The Storm: Women in Post-Revolutionary Iran. London: I.B. Tauris and Co Ltd, 1994, 19-43.

Hijab, Nadia. Womanpower: The Arab Debate on Women at Work (Cambridge: Cambridge University Press, 1998).

Howard, Rhoda E. 'Dignity, Community and Human Rights.' In Abdullahi An-Naim, ed. Human Rights and Cross Cultural Perspectives. Philadelphia: University of Pennsylvania Press, 1992, 81 – 102.

Hussain, Freda and Kamelia Radwan. 'The Islamic Revolution and Women: Quest for the Qur'anic Model.' In Freda Hussain, ed. Muslim Women Kent: Croom Helm Ltd, 1984, 44-71.

Imam Al-Ghazali. The Proper Conduct of Marriage in Islam (Hollywood, Florida: Al-Baz Publishing, 1998).

- Jacobs, Louis. 'The Jewish Tradition in Today's World.' In Frank Waling, ed. Religion in Today's World: the religious situation of the world from 1945. Edinburgh: T & T Clarke, 1987, 213 – 231.
- Jacobson, David. Rights Across Borders: Immigration and the Decline of Citizenship (Baltimore: The John Hopkins University Press, 1996).
- Jalal, Ayesha. 'The Convenience of Subservience: Women and the State of Pakistan.' In Deniz Kandiyoti, ed. Women, Islam and the State. London: Macmillan Press, 1991, 77 – 114.
- Jawad, Haifaa A. The Rights of Women in Islam: An Auntenctic Approach (London: Macmillan Press Ltd, 1998).
- Jerichow, Anders. Saudi Arabia Outside Global Law and Order (Surrey: Curzon Press, 1997).
- Jones, Peter. 'International Human Rights: Philosophical or Political?' In Simon Caney, David George and Peter Jones, eds. National Rights, International Obligations Oxford: Westview Press, 1996, 183-204.
- Jones, Peter. Rights (London: The Macmillan Press Ltd, 1994).
- Kabbani, Shaykh Muhammad Hisham and Laleh Bakhtiar. Encyclopedia of Muhammad's Women Companions and the Traditions They Related (Chicago: Kazi Publications, 1998).
- Kamali, Mohammad Hashim. Freedom, Equality and Justice in Islam (Leicester: The Islamic Foundation UK, 1999).
- Kamali, Mohammad Hashim. Principles of Islamic Jurisprudence (Kuala Lumpur: Ilmiah Publishers, 1999).
- Karoila, Maulana Muhammad. Female Leadership in Islam (Azaadville: Madrasah Arabia Islamia, 1994).
- Keddie, Nikke R and Beth Baron. Women in Middle Eastern History (New York: Vail Ballou Press, 1991).
- Keller, Nuh Ha Mim. Al-Nawawi's Manual of Islam (Cambridge: The Islamic Texts Society, 1996).
- Khan, Maulana Wahiduddin. Woman in Islamic Shari'ah (New Delhi: Al-Risala Books, 1998).
- Kinsey, Alfred C. Sexual Behaviour in the Human Male (Philadelphia and London: W.B. Saunders and Company, 1948).

Kymlicka, Will. 'Justice and Minority Rights.' In Robert E. Goodin and Philip Petit, eds. Contemporary Political Philosophy An Anthology Oxford: Blackwell Publishers Ltd, 1997, 366-388.

Lings, Martin. Muhammad (Cambridge: Islamic Texts Society, 1991)

Littel, Franklin H. 'Religious Liberty: The Present Challenge.' In Charles Wei-hsun and Gerhard E. Spiegler, eds. Movements and Issues in World Religions. Connecticut: Greenwood Press Inc, 1987, 199 –213.

Lukes, Stephen. 'Five Fables About Human Rights.' In Stephen Shute and Susan Hurley, eds. On Human Rights New York: Basic Books, 1993, 19-40.

Mackey, Sandra. The Iranians: Persia, Islam and the Soul of A Nation (London: Penguin Books Ltd, 1996).

Mahmoud, Muhammed. 'Women and Islamism: The Case of Rashid al-Ghannushi of Tunisia.' In Abdel Salam Sidahmed and Anoushiravan Ehteshami, eds. Islamic Fundamentalism Oxford; Westview Press, 1996, 249-265.

Martin, Marty. 'Religious Dimensions of Human Rights.' In John Witte Jr and Johan D Van der Vyer, eds. Religious Human Rights in Global Perspective. The Netherlands: Kluwer Law International, 1996, 1 – 16.

Maudoodi, Maulana Abul A'ala. The Laws of Marriage and Divorce in Islam (Safat: Islamic Book Publishers, 1983).

Mawdudi, Sayyid Abul A'la. Towards Understanding the Qur'an Vol II (Leicester: The Islamic Foundation, 1989).

Mayer, Ann Elizabeth. Islam and Human Rights: Tradition and Politics (Oxford: Westview Press, 1999).

Mayer, Ann Elizabeth. 'Islam and Human Rights: Different Issues, Different Contexts - Lessons from Comparisons.' In Tore Lindholm and Kari Yøgt, eds. Islamic Law Reform and Human Rights: Challenges and Rejoinders Copenhagen, Lund, Oslo, Abo Turku: Nordic Human Rights Publications, 1992, 117-134.

Mehdi, Rubya. The Islamization of the Law in Pakistan (Surrey: Curzon Press Ltd, 1994)

Mehdi, Rubya. 'Introducing Women's Law as a Part of Legal Education in Pakistan.' In Rubya Mehdi and Farida Shaheed, ed. Women's Law and Legal Education and Practice in Pakistan. Copenhagen: New Social Sciences Monograph Institute of Organisational and Industrial Sociology, Copenhagen Business School, 1997, 26 – 46.

Mernissi, Fatima. Women and Islam: An Historical and Theological Enquiry (Oxford: Basil Blackwell, 1991).

- Mernissi, Fatima. Beyond The Veil: Male-Female Dynamics in Modern Muslim Society (Indiana: Indiana University Press, 1987).
- Mernissi, Fatima. Islam and Democracy: Fear of the Modern World (London: Virago Press, 1993).
- Mertus, Julie. 'State Discriminatory Family Law and Customary Abuses.' In Peters, Julie and Andrea Wolper, eds. Women's Rights Human Rights: International Feminist Perspectives. New York and London: Routledge, 1995, 135-148.
- Miller, David. 'Democracy and Social Justice.' In Pierre Birnbaum, Jack Lively and Geraint Perry, eds. Democracy, Consensus and Social Contract. London: Sage Publications Inc, 1978, 75 – 100.
- Mills, Kurt. Human Rights in the Emerging Global Order: A New Sovereignty (London: Macmillan Press Ltd, 1998).
- Mir-Hosseini, Ziba. 'Stretching the Limits: A Feminist Reading of The Shar'ia in Post-Khomeini Iran.' In Mai Yamani, ed. Feminism and Islam: Legal and Literary Perspectives Berkshire: Garnet Publishing Ltd, 1996, 285-320.
- Mir-Hosseini, Ziba. 'Women, Marriage and the Law in Post-Revolutionary Iran.' In Haleh Afshar ed. Women in the Middle East London: The Macmillan Press Ltd, 1993, 59-79.
- Mir-Hosseini, Ziba. Marriage on Trial: A Study of Islamic Family Law (London: I.B. Tauris and Co Ltd, 1993).
- Moghadem, Valentine M. 'Gender Inequality in the Islamic Republic of Iran: A Sociodemography.' In M Weiner and Ali Banuazizi, eds. The Politics of Social Transformation in Afghanistan, Iran and Pakistan Syracuse: Syracuse University Press, 1994, 395-409.
- Moghadem, Valetine M. Modernizing Women: Gender and Social Change in the Middle East (London: Lynne Rienner Publishers, 1993).
- Moghissi, Haideh. Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis (New York: Zed Books Ltd, 1999).
- Mohamed, Yasien. Fitra: The Islamic Concept of Human Nature (London: Ta Ha Publishers Ltd, 1996).
- Monshipouri, Mahmood. Islamism, Secularism, and Human Rights (London: Lynne Rienner Publishers, 1998).
- Mottadeh, Roy P. 'Toward an Islamic Theology of Toleration.' In Tore Lindholm and Kari Yogi, eds. Islamic Law Reform and Human Rights: Challenges and Rejoinders Copenhagen, Lund, Oslo, Abo Turku: Nordic Human Rights Publications, 1992, 25-36.

Mumtaz, Khawar and Farida Shaheed. Women of Pakistan: Two Steps Forward, One Step Back (London: Zed Books, 1987).

Murad, Khurram. Shari'ah: The Way to God (Leicester: The Islamic Foundation, 1981).

Novak, David. 'Religious Human Rights in Judaic Texts.' In John Witte Jr and Johan D Van der Vyer, eds. Religious Human Rights in Global Perspective. The Netherlands: Kluwer Law International, 1996, 175 – 201.

Numan, Allamah Shibli. Imam Abu Hanifah: Life and Work (New Delhi: Kitab Bhavan, 1995).

Omid, Homa. Islam and the Post-Revolutionary State in Iran (London: The Macmillan Press Ltd, 1994).

Paidar, Parvin. 'Feminism and Islam in Iran.' In Deniz Kandiyoti, ed. Gendering the Middle East: Emerging Perspectives (London: I.B. Tauris and Co Ltd, 51 – 68).

Paidar, Parvin. Women and the Political Process in Twentieth Century Iran (Cambridge: Cambridge University Press, 1995).

Pakzad, Sima. 'The Legal Status of Women in the Family in Iran.' In Mahnaz Afkhami and Erika Friedl, eds. In The Eye of The Storm: Women in Post-Revolutionary Iran London: I.B. Tauris and Co Ltd, 1994, 169-187.

Patel, Ismail Adam. Islam: The Choice of Thinking Women (London: Ta-Ha Publishers, 1997).

Piscatori, James P. 'Human Rights in Islamic Political Culture.' In Kenneth W. Thompson ed. The Moral Imperatives of Human Rights: A World Survey, Washington D.C: University Press of America, 1980, 139 – 168.

Plant, Raymond. Modern Political Thought (Oxford: Basil Blackwell Ltd, 1991).

Qutb, Sayyid. Social Justice in Islam (New York: Islamic Publications International, 2000).

Rahman, Fazlur. Revival and Reform in Islam: A Study of Islamic Fundamentalism (Oxford: One World Publications, 2000).

Rahman, Fazlur. Major Themes of The Qur'an (Chicago: Bibliotecha Islamica, 1980).

Rahnema, Ali and Farhad Nomani. The Secular Miracle: Religion, Politics and Economic Policy in Iran (London: Zed Books Ltd, 1990).

Ramadan, Tariq. Islam, the West and the Challenges of Modernity (Leicester: The Islamic Foundation, 2001).

Ramadan, Tariq. To Be A European Muslim (Leicester: The Islamic Foundation, 1999).

Rao, Arati. 'The Politics of Gender and Culture in International Human Rights Discourse.' Julie Peters and Andrea Wolper, eds. Women's Rights Human Rights: International Feminist Perspectives New York and London: Routledge, 1995, 167-175.

Rawls, John. 'Justice as Fairness.' In Robert E. Goodin and Philip Petit, eds. Contemporary Political Philosophy An Anthology Oxford: Blackwell Publishers Ltd, 1997, 187-202.

Rawls, John. Political Liberalism (New York: Columbia University Press, 1993).

Rawls, John. 'The Domain of the Political and Overlapping Consensus.' In Robert E. Goodin and Philip Petit, eds. Contemporary Political Philosophy An Anthology Oxford: Blackwell Publishers Ltd, 1997, 273-288.

Rawls, John. 'The Law of Peoples.' In Stephen Shute and Susan Hurley, eds. On Human Rights New York: Basic Books, 1993, 41 – 83.

Rentlen, Alison Dundes. International Human Rights: Universalism Versus Relativism (London: Sage Publications, 1990).

Richard, Yann. Shi'ite Islam (Oxford: Basil Blackwell Ltd, 1995)

Robinson, Fiona. 'The Limits of a Rights-Based Approach to International Ethics.' In Tony Evans, ed. Human Rights Fifty Years On: A Reappraisal. Manchester: Manchester University Press, 1998, 58 – 76.

Sa'd, Muhammad Ibn. The Women of Medina (London: Ta-Ha Publishers, 1997).

Samnoy, Ashlid. 'The Origins of the Universal Declaration of Human Rights.' In Gudmundur Alfredson and Asbjorn Eide, eds. The Universal Declaration of Human Rights: A Common Standard of Achievement. The Netherlands: Kluwer Law International, 1996, 3 – 22.

Sayid, Bobby S. A Fundamental Fear: Eurocentrism and the Emergence of Islamism (London and New York: Zed Books Ltd, 1997).

Schirazi, Asghar. The Constitution of Iran: Politics and the State in the Islamic Republic of Iran (London: I.B. Tauris and Co Ltd, 1997).

Shaheed, Farida. 'The Interface of Culture, Customs and Law – Implications for Women and Activism.' In Rubya Mehdi and Farida Shaheed, ed. Women's Law and Legal Education and Practice in Pakistan. Copenhagen: New Social Sciences Monograph Institute of Organisational and Industrial Sociology, Copenhagen Business School, 1997, 47 – 62.

Sheriff, Sarah. Women's Rights in Islam (London: Ta-Ha Publishers, 1989).

Stackhouse, Max L. 'Human Rights and Public Theology: The Basic Validation of Human Rights.' In Carrie Gustafson and Peter Juviler, eds., Religion and Human Rights: Competing Claims? New York: M.E. Sharpe Inc. 1999, 12 – 30.

Steiner, Henry J and Philip Alston, eds. International Human rights in Context Law Politics and Morals Text and Materials Oxford: Clarendon Press, 1996.

Stowasser, Barbara Freyer. Women in the Qur'an, Tradition and Interpretations (Oxford: Oxford University Press, 1994).

Sullivan, Donna. 'The Public/ Private Distinction in International Human Rights Law.' In Julie Peters and Andrea Wolper, eds. Women's Rights, Human Rights: International Feminist Perspectives London: Routledge, 1995.

Sultan, Salahuddin. The Balance Between Women's Rights to Inheritance and Maintenance According to Islamic Legislation (Cairo: Cairo University Press, 1995).

Taleghany, M.A.R. The Civil Code of Iran (Littleton: Fred B. Botham, 1995).

Thomas, Dorothy Q. 'Acting Unnaturally: In Defence of the Civil and Political Rights of Women.' In Schuler, Margaret, ed. From Basic Needs to Basic Rights: Women's Claims to Human Rights Washington D.C: Institute for Women, Law and Development, 1995, 41-56.

Tohidi, Nayereh. 'Modernity, Islamization and Women in Iran.' In Valentine M. Moghadem, ed. Gender and National Identity Women and Politics in Muslim Societies London: Zed Books Ltd, 1994, 19-40.

Tohidi, Nayereh. 'Gender and Islamic Fundamentalism: Feminist Politics in Iran.' In C. Monanty, A. Russo and L. Torres, eds. Third World Women and the Politics of Feminism Indiana: Indiana University Press, 1991, 251 – 267.

Tomasevski, Katarina. Women and Human Rights (London: Zed Books Ltd, 1993).

Tripp, Charles. 'Sayyid Qutb: The Political Vision.' In Ali Rehnama, ed. Pioneers of Islamic Revival London: Zed Books Ltd, 1994.

Wadud-Muhsin, Amina. Qur'an and Woman (Kuala Lumpur: Penerbit Fajar Bakti Sdn. Bhd, 1992).

Waldron, Jeremy. Nonsense Upon Stilts Bentham, Burke and Marx on the Rights of Man (London: Methuen and Co Ltd, 1987).

Weiss, Anita M. 'Implications of the Islamization Program for Women.' In Anita M Weiss, ed. Islamic Reassertion in Pakistan: The Application of Islamic Laws in A Modern State Syracuse: Syracuse University Press, 1986, 97-114.

Weiss, Anita M. 'The Consequences of State Policies for Women in Pakistan.' In M Weiner and Ali Banuazizi, eds. The Politics of Social Transformation in Afghanistan, Iran and Pakistan Syracuse: Syracuse University Press, 1994, 412 – 446.

Unauthored Publication. Women in Pakistan: A New Era (London: Change, International Reports – Women and Society, 1984).

Zahra, Muhammad Abu. The Four Imams: Their Lives, Works and their Schools of Thought. (London: Dar Al-Taqwa, 2001).

Zeeno, Shaykh Muhammad Jameel. How To Understand The Qur'aan (London: Call to Islam, 1998).

Journal Articles

Afshari, Reza. 'An Essay on Islamic Cultural Relativism in the Discourse of Human Rights.' Human Rights Quarterly 16 (2) 1994, 235 – 276.

Arat, Yesim. 'Islamic Fundamentalism and Women in Turkey.' The Muslim World LXXX, 1990, 17-23.

Ata, A.W. 'The Impact of Westernising and Other Factors in the Changing Status of Muslim Women.' The Islamic Quarterly 31 (1) 1987, 38 – 55.

Baderin, Mashood. 'The Evolution of Islamic Law of Nations and Modern International Order: Universal Peace through Mutuality and Cooperation.' The American Journal of Islamic Social Sciences 17 (2) 2000, 57 – 79.

Bahlul, Raja. 'People vs. God: the logic of 'divine sovereignty' in Islamic democratic discourse.' Islam and Christian-Muslim Relations 11 (3) 2000, 287 – 297.

Barkin, Samuel J. 'The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms.' Millennium: Journal of International Studies, 27 (2) 1998, 229-252.

Bell, Daniel A. 'The East Asian Challenge to Human Rights: Reflections on an East - West Dialogue.' Human Rights Quarterly 18 (3) 1996, 641-667.

Bielfeldt, Heiner. 'Muslim Voices in the Human Rights Debate.' Human Rights Quarterly 17 (4) 1995, 587 – 617.

Bielfeldt, Heiner. "'Western' versus 'Islamic' Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights.' Political Theory 28 (1) 90 – 121.

Binion, Gayle. 'Human Rights: A Feminist Perspective.' Human Rights Quarterly 17 (4) 1995, 510 – 526.

- Brems, Eva. 'Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse.' Human Rights Quarterly 19 (1) 1997, 136 – 164.
- Brugger, Winifried. 'The Image of the Person in the Human Rights Concept' Human Rights Quarterly 18 (4) 1996, 594 – 611.
- Carens, Joseph H. 'Aliens and Citizens: The Case for Open Borders.' The Review of Politics 49 (Spring) 1987, 251 – 273.
- Carroll, Lucy. 'Qur'an 2:229: A Charter Granted to the Wife? Judicial *Khul* in Pakistan.' Islamic Law and Society 3 (1) 1996, 91 – 126.
- Cerna, Christina M. 'Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts' Human Rights Quarterly 16 (4) 1994, 740 – 752.
- Charvet, John. 'The Possibility of A Cosmopolitan Ethical Order Based on the Idea of Universal Human Rights.' Millennium: Journal of International Studies 27 (3) 1998, 523 – 541.
- Chesterman, Simon. 'Human Rights as Subjectivity: The Age of Rights and the Politics of Culture.' Millennium: Journal of International Studies 27 (1) 1998, 97 – 118.
- Chinkin, Christine. 'Violence Against Women: The International Legal Response.' Gender and Development 3 (2) 1995, 23 – 28.
- Clarke, L. 'The *Shi'i* Construction of *Taqlid*.' Journal of Islamic Studies 12 (1) 2001, 40 – 64.
- Curran, Charles. 'Churches and Human Rights: From Hostility/ Reluctance to Acceptance' Milltown Studies 42 (Winter) 1998, 30 – 58.
- Donnelly, Jack. 'Human Rights: A New Standard of Civilisation?' International Affairs 74 (1) 1998, 1 – 24.
- Filali-Ansary, Abdou. 'Muslims and Democracy.' Journal of Democracy 10 (3) 1999, 18 – 32.
- Freamon, Bernard K. 'Slavery, Freedom and the Doctrine of Consensus in Islamic Jurisprudence.' Harvard Human Rights Journal 11 (Spring) 1998, 1-64.
- Halliday, Fred. 'Relativism and Universalism in Human Rights: The Case of the Islamic Middle East.' Political Studies XLIII 1995, 152 – 167.
- Jones, Peter. 'Human Rights, Group Rights and Peoples' Rights.' Human Rights Quarterly 21 (1) 1999, 80 – 107.

- Kane, John. 'Justice, Impartiality, and Equality: Why the Concept of Justice Does Not Presume Equality.' Political Theory 24 (3) 1996, 375 – 393.
- Khalafallah, Haifaa. 'The Elusive 'Islamic Law': rethinking the focus of modern scholarship.' Islam and Christian-Muslim Relations 12 (2) 2001, 143 – 152.
- Kennedy, Charles H. 'Islamic Legal Reform and the Status of Women in Pakistan.' Journal of Islamic Studies 2 (1) 1991, 45 – 55.
- Kimber, Richard. 'The *Qur'anic* Law of Inheritance.' Islamic Law and Society 5 (3) 1998, 289 – 325.
- Maumoon, Dunya. 'Islamism and Gender Activism: Muslim Women's Quest for Autonomy.' Journal of Muslim Minority Affairs 19 (2) 1999, 269 – 283.
- Mayer, Ann Elizabeth. 'Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash of Construct?' Michigan Journal of International Law 15 (2) 1994, 307-404.
- Monshipouri, Mahmood and Claude E. Welch. 'The Search for International Human Rights and Justice: Coming to Terms With the New Global Realities.' Human Rights Quarterly 23 (2) 2001, 370 – 401.
- Monshipouri, Mahmood. 'Islamic Thinking and the Internationalization of Human Rights.' The Muslim World LXXXIV (2-3) 1994, 217 – 239.
- Mutua, Makau. 'Savages, Victims and Saviours: The Metaphor of Human Rights.' Harvard International Law Journal 42 (1) 2001, 201 – 245.
- Nickel, James W. 'How Human Rights Generate Duties to Protect and Provide.' Human Rights Quarterly 15 (1) 1993, 77 – 86.
- Odinkalu, Chidi Anselm. 'Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social and Cultural Rights Under the African Charter on Human and Peoples' Rights.' Human Rights Quarterly 23 (2) 2001, 327 – 369.
- Pal, Izzud-Din. 'Women and Islam in Pakistan.' Middle Eastern Studies 26 (4) 1990. 449 – 464.
- Paradise, James F. 'International Social Justice: Philosophical and Political-Economic Considerations.' Millennium: Journal of International Studies 14 (1) 1985, 64 – 78.
- Pollis, Adamantia. 'Cultural Relativism Revisited: Through a Sate Prism' Human Rights Quarterly 18 (2) 1996, 316 – 344.
- Sayid, Dushka H. 'Women in Politics – Problems of Participation: A Case Study of Pakistan.' Strategic Studies XXI (3) 2001, 11 – 24.

Spoelders, Benedicte. 'Rethinking Development and the Feminist versus Islamist Dichotomy.' *Islam and Christian-Muslim Relations* 9 (3) 1998, 295-305.

Stowasser, Barbara. 'Old Shaykhs, Young Women, and the Internet: The Rewriting of Women's Political Rights.' *The Muslim World* 91 (Spring) 2001, 99 – 119.

Thomas, Scott M. 'Taking Religious and Cultural Pluralism Seriously: The Global Resurgence of Religion and the Transformation of International Society.' *Millennium: Journal of International Studies* 29 (3) 2000, 815 – 841.

Tibi, Bassam. 'Islamic Law/ *Shari'a*, Human Rights, Universal Morality and International Relations.' *Human Rights Quarterly* 16 (2) 1994, 277 – 299.

Yilmaz, Ihsan. 'Secular Law and the Emergence of Unofficial Turkish Islamic Law.' *Middle East Journal* 56 (1) 2002, 113 – 131.

Newspaper Articles

Dworkin, Ronald. 'The Real Threat to US Values' *The Guardian: Saturday Review* 9 March 2002, 3.

McCarthy, Roger. 'Zafran Bibi – brought charges of rape and found guilty of adultery' *The Observer* 12 May 2002, 23.

Internet Sources

'African (Banjul) Charter on Human and People's Rights' *University of Minnesota Human Rights Library*, <http://www1.umn.edu/humanrts/instree/zlafchar.htm>, 11/26/98.

'Country Reports – India' *Amnesty International*
<http://www.amnesty.org/ailib/ai/report/a97/ASA20.htm> 20/07/2002

'Dissolution of Muslim Marriages Act, 1939' *SAARC Law*
http://www.vakilno1.com/saarclaw/pakistan/dissolution_of_muslim_marriages_act.htm 23/08/2002

'International Covenant on Civil and Political Rights' *Office of the High Commissioner for Human Rights* http://www.unhchr.ch/html/menu3/6/a_ccpr.htm 14/04/99

'International Covenant on Economic, Social and Cultural Rights' *Office of the High Commissioner for Human Rights* http://www.unhchr.ch/html/menu3/6/a_ceschr.htm 14/04/99

'Iran – Constitution' Iran Online <http://www.iranonline.com/iran/iran-info/Government/constitution.html>, March 25, 2002.

'Universal Declaration of Human Rights' Office of the High Commissioner for Human Rights <http://www.un.org/Overview/rights.html>, 12/03/98.

'Universal Islamic Declaration of Human Rights' Al Hewan <http://www.alhewan.com/ISLAMDECL.html>, 09/28/98.

'Women' Amnesty International http://www.web.amnesty.org/ai.nsf/THEME/WOMEN_20/07/2002

Audio Cassette

Yusuf, Hamza. The Life of the Prophet Muhammad (Alhambra Productions, 1999).