A Place for Women?
Gender as a Social and Political Construct in Pakistan

Nathalène Reynolds

Working Paper Series # 112
November 2009
Table of Contents

Preliminary Remarks .................................................................................................................. 1
Introduction .................................................................................................................................. 3
1. Allegory of Woman in the Construction of the Nation ........................................................ 5
   1.1 The Instrumentalisation of the Colonial Argument .................................................. 5
   1.2 A Necessary Digression: Women as Sources of Social and National Harmony .......... 10
   1.3 A Symbolism stifled by a Drama............................................................................... 12
2. A Nation Confiscated? ........................................................................................................... 16
   2.1 Some Remarks on Recent History ........................................................................... 16
   2.2 A Status of ‘Trustee’............................................................................................... 19
3. Female Citizens, Guarantors of Male Honor?................................................................. 23
   3.1 Meagre Progress ................................................................................................. 23
   3.2 A Worrying Situation ......................................................................................... 27
   3.3 The Long Road towards the Improvement of the Condition of Pakistan’s Women ....... 30
Conclusion ................................................................................................................................... 31
Bibliography ............................................................................................................................. 34
The Sustainable Development Policy Institute is an independent, non-profit, non-government policy research institute, meant to provide expert advice to the government (at all levels), public interest and political organizations, and the mass media. It is administered by an independent Board of Governors.

Mr. H. U. Beg  
Chairman of the Board

Mr. Etrat H. Rizvi

Dr. Hamida Khuhro

Justice (Retd) Majida Rizvi

Dr. Masuma Hasan

Dr. Qasim Jan

Dr. Pervez Tahir

Dr. Saeed Shafqat

Dr. Abid Q. Suleri  
Secretary BoG / Executive Director SDPI

Under the Working Paper Series, the SDPI publishes research papers written either by the regular staff of the Institute or affiliated researchers. These papers present preliminary research findings either directly related to sustainable development or connected with governance, policy-making and other social science issues which affect sustainable and just development. These tentative findings are meant to stimulate discussion and critical comment.
A Place for Women?
Gender as a Social and Political Construct in Pakistan

Nathalène Reynolds

Preliminary Remarks

We have become accustomed to the media, in what is still sometimes referred to as 'the West', talking about the threat to 'global security' emanating from 'violent Islamic extremism'. Imprinted by the explosion of new technologies employed by the mass media that claim to be informing us so accurately, our minds have also been progressively fashioned by the new 'world order' that followed the fall of the Soviet Union. We are thus 'armed' with a new phrase-book, of which the best-know expression is perhaps the 'Global War On Terror' (GWOT), the geopolitical implications of which are often left unexplored. The viewing platform from which we are invited to watch includes a number of issues that merit our attention. Examining the Afghan question, for example, it is necessary to ask if this state, with its troubled recent history, was not a theatre on the stage of which was acted out the ideological confrontation - between the 'Western' and Soviet blocs - that marked the end of the Cold War. This kind of question tends to be left unasked by the ‘West’, apparently from a fear of having to look at the status not just of radical political Islam, but above all of jihad as it is understood today. In effect, many of the supporters of this unfortunate phenomenon give it the status of an ideology, something the 'international community' appears to reject. Raising - without prejudging - this issue allows one to avoid falling into a simplistic Manichaeanism that excludes the debates about ideas that, not so long ago, characterised our societies. The 'war on terror' seems to have the effect of stifling debate about what is presented, in most cases, as an Islamist irredentism, at once a hang-over from a by-gone age and a deus ex machina that somehow suddenly appeared out of nowhere.

Concurrently with becoming alert to the 'Islamic threat' at the beginning of the 1990s, the 'international community' also seemed to wake up to a second, equally 'unacceptable' issue: the position of women in the Muslim world, which it quickly tended to dissociate from specific historical, political or socio-economic contexts. The dominant voices appeared to

---

1 I consider the use of inverted commas necessary. Following the collapse of the Soviet bloc and the outbreak of the Gulf War, the mass media (especially 'Western') made more and more frequent use of this term that underlined the existence of an alliance bringing together the great majority of nations.

2 An attempt to boast of the advances benefiting women in 'the West', which, it may be noted, seemed to be seeking to appropriate for itself the term 'civilisation', of which the symbolic power was beyond any doubt? In any case, in 'the West' it was a time for a greater celebration, of something that was looked on as an almost unquestionable truth: that the condition of women in the industrialised world was near-exemplary. While we were being encouraged to congratulate ourselves unconditionally on the benefits of globalisation, philosophial and political debate seemed of marginal relevance. Not even the instrumentalisation of the female (and more recently male) body by advertising provoked any significant mobilisation, as we asked ourselves with renewed moral vigour about abortion or the threats to the family as an institution. It is all the more worth stressing, by way of example, the efforts of non-profit organisation in Quebec to struggle against advertising employing sexist means that tend to stereotype and thus reinforce male and female roles, as well as instrumentalise women's bodies (Cf. La publicité tentaculaire et le sexisme, 21 mai 2006, www.syyphe.org; Faites contrepoids, www.corpsaccord.com).
have forgotten the significance of events that had marked the Cold War, particularly those which followed decolonisation movements. Islam (in states where it was the religion of the majority) had often been looked upon as an excellent defensive rampart against the enemy ideology, communism. The universal establishment of democracy, to which 'the West' declared (rightly) its attachment within its frontiers, was scarcely important; 'friendly dictators' were deemed to be strong leaders capable of ensuring the stability that was judged to be, on the whole, of benefit to all.

Contemporary 'Western' approaches to Muslim countries, it is true, vary: the condition of women in Saudi Arabia (to give an extreme example) - along with its lack of enthusiasm for democracy - provoke discrete attention. This state continues to enjoy good relations with the dominant states of the 'international community'. Since the dramatic attacks of 11 September 2001, it has nonetheless been 'good form' to pity the situation of women in Afghanistan and Pakistan, while at the same time to fear the 'extremism' emanating from these two countries. In parallel, the proponents of such an argument wonder whether these countries do not represent examples - evidently to a differing extent - of 'failed states'. One may note, for example, that in India - the rising power of which is widely welcomed - the situation of rural women in a predominantly Hindu context is far from satisfactory. Each social class has a status from which men and women benefit or suffer. Relations between the two genders are, moreover, marked by a dimension to which we will return later in this document: the sexual ideology of culture. This phenomenon is of varying intensity in 'developing countries': the gaps between rich and poor are significant, while states make little effort - such as by improving access to affordable services - to reduce them. In addition to these general elements, one must examine issues specific to the Pakistani context, in which governments during brief democratic interludes have struggled to keep the social structure intact. Rural dispensaries (which still treat the majority of patients) are in a precarious state; access to space deemed 'public' - such as towns - for rural women necessitates the presence of a (male)

3 It is not my intention to minimise the danger of the armed extremism that has been seen in the tribal areas of Pakistan, not to mention other parts of the country. The Musharraf administration, however, showed itself a master in the art of blowing hot and cold, fighting against the Taliban while not denying them the opportunity to regroup, at least in certain districts. When it was - at last - called to vote, the population demonstrated once again that while it was not deaf to the words of those who mixed religion and politics, notably in sermons following Friday prayers, it put its confidence in those parties offering - more or less - a viable program and a message of hope. Thus, the Pakistan People's Party (PPP) and the Pakistan Muslim League (Nawaz) (PML-N) emerged victorious, while the coalition of religious parties, the Muttahida Majlis-e-Amal (United Action Council, MMA) saw its support fall. At the end of April 2008, Prime Minister Yusuf Raza Gilani came to the conclusion that the use of armed force alone would not suffice in the zones that Pakistan qualified, like the United States and the North Atlantic Treaty Organisation (NATO), as 'taliban'. The government coalition put a priority on dialogue, a strategy the state had already employed in vain. For the time being, it nonetheless refuses to make the complete withdrawal of the army that is demanded by militant groups. On the contrary, it has apparently decided to let the Army deal with this issue; operations have recently launched in Bajaur and Swat.

4 On 12 December 2007, following the annual publication by the World Economic Forum of the Global Gender Gap Report, Indian parliamentarians debated the increase of "all forms of violence" against women and children in their country over the previous fifteen years (Rajalakshmi, 2008: 4).

5 In June 2008, the World Bank and the United Nations Development Program estimated that 28.3% of the population of Pakistan was below the poverty line.

6 Feminist writers argue against treating the terms 'sex' and 'gender' as synonyms: the former refers to specific biological functions, and the latter to "the full ensemble of norms, values, customs, and practices by which the biological difference between the male and female of the human species is transformed and exaggerated into a much wider social difference" (Kabeer and Subramaniam, 2000: 4-5).

7 It is scarcely necessary to add that violence against women and children, often within the couple or family, respects no religious, cultural or social barriers.

8 Hygienic conditions remain poor. Women, whose lives are marked by a succession of pregnancies, also face a challenge still prevalent in many countries: the absence of either interior or exterior toilets, which - modesty
relative who if he has enough money in his pocket, without which access health care usually remains a pipe-dream, is all too often little inclined to play the role of chaperone. Last but not least, one should mention the transformation at the end of the 1970s of customs - which already strictly circumscribed the existence of women - into laws, the religious character of which was in parallel proclaimed, when they played a role in regulating morals. In the view of many Pakistani observers, this has had a 'perverse' effect: the rise of what are frequently termed 'crimes of honor'. These customs, it may be recalled, were often essentially pre-Islamic and were transplanted when Islam was adopted; the population was, however, no less convinced that they formed an integral part of religious practice.

Introduction

These brief and therefore schematic preliminary remarks are important given the difficulty for a foreign researcher to delve into the field of gender studies in the Islamic Republic of Pakistan without creating doubts in the minds of Pakistanis tired of the instrumentalization of rhetoric as to the oppression of women. It is worth recalling that the issue of oppression had been raised long ago, notably within the framework of the reflections that preceded the creation of Pak-istan, the 'country of the pure'. Its founding father, Mohammed Ali Jinnah, during a speech at the Muslim University of Aligarh on 10 March 10 1944 declared that:

“*No nation can rise to the height of glory unless your women are side by side with you; we are victims of evil customs. It is a crime against humanity that our women are shut up within the four walls of the houses as prisoners. There is no sanction anywhere for the deplorable condition in which our women have to live*” (Pakistan: Status of Women & the Women's Movement, 1944).

Faced with an international situation in which civil society as whole is concerned with the 'reprisals' hastily conducted against a terrorism that force alone - according to the argument that dominates 'Western' public discourse - will allow us to eradicate, there is at least one question that it is essential to raise. Does retreat behind the ramparts of national, regional or local cultural specificities not constitute a ruse to avoid tackling the issue of universal values to which women - of all religions - would adhere, were it not for the conscious efforts of various schools of opinion to stifle this line of argument by focusing on the 'duties' said - by more conservative schools of thought - to be defined in the Quran? My particular interest is in Pakistani society: the human rights of a Muslim who considers himself to be battered by the logic of national and international politics seem to be in opposition to those of his 'sister', whom he expects to limit herself to the role defined by society’s expectations: a society which, in turn, on the grounds of establishing the supremacy of religious principles, generally demands the respect of rigid patriarchal values.

obliges - forces them to wait until darkness to answer the call of nature. The threat of rape should not be underestimated as the act requires them to go to isolated areas. A further issue is the custom according to which men-folk eat first; women, many of whom suffer from anaemia due to successive pregnancies, not to mention undergoing the risk of death during childbirth, generally give more and better food to their sons than to their daughters. One may also note here that the citizens of South Asia, if they have sufficient financial means, are particularly enthusiastic users of echography, often having an abortion if a female foetus is identified. The falling female:Male ratio is a cause for concern. Apart from the ban on health professionals revealing the sex of the foetus (which is extremely difficult to enforce), the authorities have made little effort to introduce campaigns to challenge and change dominant collective attitudes.
The political goal of full women’s citizenship imagined by the founder of the Republic of Pakistan, proclaimed Islamic back in 1956, is yet to be realized. The country seems to have descended into a parody of these goals with the promulgation in 1979 of the *Offence of Zina (Enforcement of Hudood) Ordinance*. This instrument, emblematic of the intrusion of the state’s repressive power into the private lives of believers, requires the courts to base their decisions on a specific interpretation of the injunctions of the Quran and the Sunnah when returning verdicts after men and women have been found guilty of zina (i.e. to have voluntarily engaged in sexual intercourse outside of the legal framework of a marriage - or nikah - duly authorising them to do so). Until the introduction of new legislation during the period of rule of President Musharraf, female victims of rape had to have the support of four male witnesses of irreproachable religious piety who were present during the act of penetration...who presumably made no effort to prevent the offence. If these conditions could not be met, reporting the crime was a perilous undertaking: the victim herself risked receiving a severe punishment, as she could be suspected of having ceded to ‘temptations of the flesh’. The 1979 Ordinance erased all distinction between zina (generally translated as ‘fornication’ or ‘adultery’) and zina-bil-jabr (rape), while children who had attained puberty were considered to be capable of criminal responsibility. The legislation adopted during 2006...

---

9 The definition offered by the site www.islam-sunni.com is as follows: “Sunnah: path or practice. The usual practice of the Prophet [...] including his words, actions, behavior he tacitly approved or disapproved - what is also qualified as Hadith. The adepts of Hadith add his personal traits (including his physical characteristics) to this definition” (Cf. Qu’est ce que la Sunnah ? Réponse du Shaykh Gibril F. Haddad - What is the Sunnah? Reply of Shaykh Gibril F. Haddad). We will return later to the dispute around the Sunnah.

10 The term hudood - the plural of hadd, which means limit or restriction - refers to the punishments that result from crossing those ‘limits’. This legislation, comprising five texts, limits the eligibility of both religious minorities and Muslim females to bear witness; in this it is based on an interpretation - that is not without ambiguity - of a Quranic text according to which the evidence given by two women is equivalent to that of one man. Apart from the *Offence of Zina (Enforcement of Hudood) Ordinance*, the *Offence Against Property (Enforcement of Hudood) Ordinance* stipulates that the punishment for anyone guilty of theft is amputation by a surgeon of the right hand. The *Offence of Qazaf (Enforcement of Hudood) Ordinance* deals with false accusations of rape, a matter complicated by the discrimination against women who may have been victims or witnesses. *The Prohibition (Enforcement of Hudood) Ordinance* reinforces the criminalisation of the consumption of alcohol that applies, since 1977, to all Muslims. While the Penal Code stipulates punishment by six months of prison, a fine of 5,000 rupees or both, the Ordinance requires a punishment of eighty lashes, hence the relevance of the fifth text, the *Execution of Punishment of Whipping Ordinance*. It is intriguing to note how the judiciary tried to ‘balance’ the two legal ‘traditions’: while judging the Hudood offences outlined above, judges stubbornly handed down ‘conventional’, prison sentences that were officially no longer permitted, since the Penal Code had been amended. A further irony of the situation in Pakistan: the country continues to produce alcohol, for example the well-known Murree Beer; in principle permits are issued only to particular categories including non-Muslims, in reality there is a lucrative black market. In some newspapers and magazines, one can read advertisements offering treatment to cure addiction. It goes almost without saying that the wealthy can usually get any charges to be ‘forgotten’.


12 The *Offence of Zina (Enforcement of Hudood) Ordinance* defined zina-bil-jabr as follows: “A person is said to commit zina-bil-jabr if he or she has sexual inter-course with a woman or man, as the case may be, to whom he or she is not validly married, in any of the following circumstances, namely: (a) against the will of the victim; (b) without the consent of the victim; (c) with the consent of the victim, when the consent has been obtained by putting the victim in fear of death or of hurt; or (d) with the consent of the victim, when the offender knows that the offender is not validly married to the victim and that the consent is given because the victim believes that the offender is another person to who the victim is or believes herself or himself to be validly married. Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of zina-bil-jabr” (section 1, Article 6).
clearly defines the age of maturity, raising it to sixteen for girls and eighteen for boys; steps were taken to free those guilty of \textit{zina}. \footnote{Under the terms of the \textit{Offence of Zina (Enforcement of Hudood) Ordinance}, married women found guilty of \textit{zina} were to be condemned to death by stoning; the sentence for unmarried women was up to a maximum of one hundred lashes and ten years of prison. In practice, the courts had been more inclined to consider admissible the evidence of men who, content with a denial, remained at liberty. As already indicated, the courts considered that it was sufficient to hand down a prison sentence to convicted females.}

At the end of 2006, the possibility of amending or abrogating the \textit{Offence of Zina (Enforcement of Hudood) Ordinance} provoked opposition from the self-proclaimed defenders of the Quran and the \textit{Sunnah}. It would seem Pakistani society remains in the thrall of certain interests. Were symbolic values associated with the woman, the couple and the family profoundly transformed by the longest period of martial law the country has known, that introduced by General Zia ul-Haq from July 1977 until August 1988, during which time there was every opportunity for adherents of the patriarchal\footnote{In using the term ‘patriarchal’, the author does not intend to associate herself with radical feminism: there is simply no other term which so fully captures the situation in Pakistan.} system to promote their messianic agenda? Whatever else, Pakistan represents an excellent field for analysis, allowing, first and foremost, the researcher to examine the significance of the allegory of woman in the construction of the nation. Moreover, the interface between coloniser and colonised was through the prism of a Manichean dialectic that I will attempt to analyze since this is a dimension of importance for the subject of this paper (first section). Did the promises made by the new nation remain out of the reach of women? The religious-based parties in effect made use of a restrictive reading of sacred texts as a source of political hegemony, as the failings of the process of nation-building allowed them to hope to attain certain predominance (second section). Was the role of female citizens progressively reduced to that of a guarantor of male honor (third section)? Note that the author spent eighteen months in the country in 2006 and 2007, travelling to Punjab, Sind, Quetta, North West Frontier Province (NWFP) and the Northern Areas.\footnote{I take this occasion to warmly thank the Sustainable Development Policy Institute (SDPI) of Islamabad for having supporting me so constantly throughout my stay in Pakistan. There are too many of its personnel to whom I owe gratitude for me to list them all here, but I will thank in particular Dr. Saba Gul Khattak, who helped me through the beginnings of the project. With the support of the SDPI, I was able to conduct a variety of field-work, including trips in the framework of NGO projects. I would also like to thank Yasmine Afridi (World Vision), Khadija Nadeem (Action Aid) and Umbreen Griffin (Sind Development Society) in whose company I visited villages in NWFP and Sind.} The author is certainly not claiming to present dramatic new material that had somehow escaped the attention of Pakistani researchers. Drawing on accessible material, I endeavour to present a fresh perspective on the complex relationship between women and the state in Pakistan.

\section{1. Allegory of Woman in the Construction of the Nation}

\subsection*{1.1. The Instrumentalisation of the Colonial Argument}

Recent history demonstrates one of the failings of the model that the nation-state concept led to, that is to say (to simplify matters) a citizenship that granted greater scope for action to men even if - in theory - it applied to women, who had to actively claim their rights. The states born out of the process of decolonisation granted the latter the right to vote, at a time when that was not yet a right applied everywhere in ‘the West’. The latter had already taken a different path, particularly due to the social dynamism engendered by the two world wars: in
short, mobilised men were replaced in the work-place by women. What are today referred to as developed countries avoided - in part - a political problem. In effect, the debate that, at least indirectly, addressed women’s rights, was sweeping through civil society; increased industrialisation and the spread of access to contraception further pushed back structures that, once back in place, appeared outdated, but the resistance of which remains evident even today.

The tendency of what was in the process of becoming today’s ‘West’ - especially since the establishment of modern colonies as opposed to earlier invasions - has no doubt been too self-congratulatory about the progress from which women of that region have benefited, comparing them with the conditions predominating in what would soon come to be known as the countries of the Third World. What was presented as an analysis was, in fact, a final judgement against which the countries thus condemned tried to appeal. Were the latter, however unwillingly, fascinated by the power of colonisers who had sought to boast of the superiority of the culture to which they belonged? Another dimension is that of the place of women, of all origins, in the colonial destiny that had been fashioned by the morality of the conqueror. The colonisers had tended to belittle the status or even the morals of the female gender of the Muslim peoples that had fallen under their domination, oscillating between two stereotypical representations, the odalisque of the harem and the wife forced to strictly obey. Muslim women bowed to the religious precepts of a faith - the aura enjoyed by which, according to this reading, was inexplicable - not by conviction, but because of the harsh measures that enforced their respect. In parallel, the conqueror lauded the Christian values so rigorously promoted by European women, an assertion that the colonised populations endeavoured to rebut. Did the coloniser also imply that his specific moral and religious values went a long way to explaining his recent territorial expansion, which in turn had allowed him to build up an empire? Was this a conclusion at which the subjected people - unconsciously - arrived, even as some decried - discreetly - the impossibility during the colonial conquest of assuring the security of their sisters? Fatima Mernissi (1983: 7, 175-176), an observer of societies in the Middle East and North Africa, argues that polarisation of the debate on the situation of women pushed Muslims, certain of whose values were qualified as immoral, to defend practices such as polygyny or the wearing of the veil that many amongst them had not so long before considered anachronistic. They emphasized, for example, that it was better to “institutionalise men’s polygamous desires rather than leaving them to clandestinely carry on with mistresses.” Moreover, the debate pitted the colonial powers against “representatives of the nationalist movement, intellectuals who had defended the liberation of Muslim women.” Many of those who called for the wearing of the veil were only too quick to swap their own traditional dress for a European suit\(^\text{16}\), but they were more scrupulous regarding the perceived threat to identity that would entail were women not protected. Similarly, they tended to a rather liberal interpretation of religious texts that dealt with their own duties, especially duties towards women.\(^\text{17}\)

\(^\text{16}\) To note that in the Indian sub-continent, nationalists opposed to the partition of Bengal orchestrated - in 1905 - a boycott of imported products; the \textit{swadeshi} movement (swa - ‘own’, desh - ‘country’) turned the wearing of traditional clothing into the rallying call against colonial power.

\(^\text{17}\) Le verset 129 de la \textit{Sura} (or chapter) 4 of the Quran states that: “Ye will not be able to deal equally between (your) wives, however much ye wish (to do so). But turn not altogether away (from one), leaving her as in suspense. If ye do good and keep from evil, lo! Allah is ever Forgiving, Merciful” (M.M. Pickthall, 1930). The precept dealing with polygyny was set out after the Muslim losses (in manpower) following the Ehud raid. The custom was widespread - biblical prophets (with the exception of Jesus Christ) had not renounced it; indeed,
If the colonial era was marked by this socio-religious confrontation, it was played out against a back-drop of the ethnic and religious complexities of the sub-continent. Interactions between the area’s population and the British remained for the most part professional in character (Shodhan, 2001: 10). With increasing prosperity for some, a larger number of Indian women benefited as domestic workers. With the religious leaders and the various communities keeping a watchful eye, there was a growing tendency towards the idealisation of the “domestic angel” (Shodhan, 2001: 10-11), an allegory that was of increasing resonance all around the world. Did this reflect a desire to counter the paternalist attitude of the colonialists who made a show of concern at the condition of Muslim women? Should we thus conclude with Mernissi that, for the opposition, any modernisation amounted to a concession? Rosalind O’Hanlon (1992: 73) gives great explanatory force to a colonial ideology that sought to paint its victory in the colors of “natural law”: the “masculinity of Anglo-Saxon imperial culture” was in a way juxtaposed with the supposedly feminine “qualities” of the “Hindu tradition”. Was Muslim feeling, in the face of the downfall of the Mughal Empire, similar? Did the colonialists, for their part, imply that Muslim traditions were also essentially feminine? In any case, the use of the concept of inferiority (apparently in cultural and racial terms) became widespread; Indian society continued to debate the reasons behind the defeat, at the same time fluctuating between reinforcement of and distancing itself from traditions, in turn characterised as sources of strength or causes of weakness. Anxious to build up a powerful army, the British also promoted the myth of the existence of martial races within the Indian population, and praised the “military prowess” of the Sikhs, Rajputs and Marathis (O’Hanlon, 1992: 74). Moreover, the colonial power endeavoured to exclude the old Mughal elite; during a period when the British were pursuing a policy of ‘divide and rule’ that highlighted the minority status of a once dominant community, Indian of other confessions - notably the Hindus - were all the quicker to grasp the usefulness of learning English. In effect, the colonial language became that of the administration, (allowing a Hindu elite that Her Majesty’s government - concerned to prevent any resurgence of Mughal power) was eager to promote, to assert itself.

Setting out on the road to freedom, colonised people in Muslim-majority areas felt themselves obliged to defend ‘the nation’, attempting to revive it, in what they believed to be a thoroughly modern response. Nationalist leaders probably looked to strengthen a social fabric that colonisation had left fragile. Very often from privileged backgrounds, or having worked their way into such circles, these leaders may also have sought to pre-emptively channel the social mobility that generally accompanies any period of rapid and major change. Did they employ what had been the conqueror’s strategy of simultaneously encouraging and stifling ambitions as to the condition of women, if only through a Manicheanism which above all aimed to perpetuate colonial domination and legitimise the concept of imperialism (at the time widely looked on positively)? The colonial power, making use of a deliberately limiting vision of the condition of Muslim women, had implicitly condemned Islam and its traditions as a whole. Slipping into this unnuanced Manichean mode, Muslim leaders in favour of independence praised Islam for continuing to offer the female sex a much higher status than that enjoyed by their ‘sisters’ of other confessions. The logical consequence of this position

---

18 Forerunner in this field, in 1926 Turkey outlawed polygyny. Nonetheless, the practice continues, not only in rural areas, but also within the well-to-do urban middle class. One may note, in passing, that the Tunisia’s Code of Personal Status, adopted in 1956, opposes polygyny, stressing the impossibility for men, especially in the

18 Islam was progressive in the sense that it limited the number of wives permitted (Ali, 1975: 23). Incidentally, Muslims opposed to polygyny emphasize that slavery was another permitted practice that disappeared over time.
was to dispense with any reflection as to the need for reforms. There remains the enigma of a patriarchal system strongly anchored in dominant collective attitudes: there was no intention of questioning the increasingly anachronistic status of women. Colonisation had doubtless brought about contacts with areas of following different traditions, but also competition between the values they defended. What we will schematically term (for the purpose of the analysis which follows) the ‘Muslim patriarchy’ attempted, in the case of Pakistan, to ensure the durability of the tightened moral code it defended, and on occasion sought to extend to cover the entire population that was, in effect, subject to its authority. And one can wonder whether its ‘neutrality’, in the face of what it often looked upon as minor misdemeanours of which women were the target, was a sign of fear that tolerating any opposition might open the way to radical reforms - on the much denigrated European model - of a system, the guarantee of whose survival was deemed to lie in masculine pre-eminence. To fend off possible criticism of being Euro-centric, we will quote from the introduction of Mohja Kabf’s work (1999: 2):

“She demands to be treated as an equal and to have access to education... The actual condition of Muslim women is a serious and complex topic. Its study, however, does little to explain the development of the Western narrative. This narrative has a genealogy and logic of its own, emerging from developments in Western representations of gender, of the self, and the foreign or Other.”

It is, moreover, necessary to draw attention to a phenomenon that affected Muslim-dominated territories: women, whose condition or status was a subject for reflection, were confronted with a sensitive problem. They rejected cultural imperialism in all its forms, affirming that, unlike religious detractors, they did not seek to reject Islam, but rather to devote themselves to its rediscovery in line with the needs of the age - a discourse that was also employed with regard to Christian-majority Europe. In any event, the paths taken by countries struggling for their freedom were drawn from the nation-state model, a model praised by the colonial power that subjected people took to easily. In times of crisis, women had to be ready to support their men-folk; it was the latter who continued to hold in their hands the destiny of the nation. Once independence had been gained, those women who had taken part (even if often ‘only’ from the shadows of the family home) in a movement, the strength of which had varied by

---

19 Asghar Ali Engineer (1992: vi), Director of the Mumbai-based Institute of Islamic Studies, notes that: “Islamic society began to be feudalistic within a quarter of a century after the death of the Prophet and this feudalisation had a telling impact on the concept of the rights of women in Islam. It is this spirit which still predominates... The Quran not only awards equal status to both sexes in the normative sense but also concedes a degree of superiority to men in its own social context. However the theologians ignored the context and made men superior in the absolute sense.”

20 The Uzbek Marfua Tokhtakhodiaeva (2008: 18) states that: “In all major religions, at their early stages of development the preachers of the new belief sought support from the socially deprived sections of society, and women were among the first converts because the new teachings addressed them as individuals, speaking of their worth and right to choose. Later, the right to interpret religion became the privilege of the state and its institutions, which assigned women a secondary and subordinate role in society and in the family. The denial of women’s equality has taken different forms in Christian and Muslim countries, effectively allowing discussion of the place of women in society to be diverted away from their true problems and towards a pointless comparison of the unequal status of Christian women with the unequal status of Muslim women.”

21 For her part, Farida Shaheed (2004: 3-5) notes that Indian colonial structures “were catapulted into sovereign statehood without the benefit of a historical process that would have either integrated pre-existing institutions into the modern state or replaced them.”
region, generally found that their socio-economic status had not changed - or, now that the state proclaimed itself the guarantor of women’s position in society, had become even stiffer and less open to negotiation.

The birth of Pakistan took place in unique circumstances. The Muslim League was concerned that the Muslims of the sub-continent, once the area would no longer be under British tutelage, would be submitted to an oppression that might turn out to be considerably more severe, as well as long-lasting. India, despite its declared attachment to the secular principle, would likely be dominated by an overwhelming Hindu majority. Did not the consequences, in Pakistan, of the dramatic movements of population that followed the partition of the sub-continent allow the new leading elites to envisage - more or less immediately - necessary social reforms? The elite, anxious to prevent threats to landed property-owners becoming reality, opted for a strategy that was in effect a disguised support of the status quo, thereby differing with all radical changes, both top-down and bottom-up. An analysis predicated on the ‘egoism of the bourgeoisie’ (to borrow a term typical of communist propaganda of the period) would, however, be over-simplistic, failing to take an essential dimension into account. Many were already worried as to how to ensure the durability of the new state, when, on 11 September 1948, shortly after gaining independence, Pakistan lost its founding father, Mohamed Ali Jinnah. The tasks facing his successors were immense, and one of their major concerns related to the administrative unification of a piecemeal state, the two components of which were separate from one another by 1700 kilometres of Indian territory. There was also the issue of consolidating the formation of a close-knit civil society that could mobilise Pakistani men and women, building up a dynamism that would in turn rebound upon the political class, helping resolve the problems of political identity. However, as the past sixty years of Pakistan’s history make only too evident, it was the authoritarian tendencies which prevailed. While the political status of the citizen remained very fragile, the morality of women became - also due to the prevailing international environment - a key issue that, still today, is an indication of a society in wretched health. Moreover, the right to vote was accorded with parsimony; the first general elections took place only at the end of 1970. Universal suffrage was not granted in the Federally Administered Tribal Areas (FATA) until 1997.

22 Of course its eastern half was overwhelmingly composed of 40 million ethnically homogenous Bengalis. However, 35 million-strong West Pakistan was a mosaic of ethnic groups. It notably comprised Sind, North-West Frontier Province (NWFP), sixteen districts of the Punjab of British India, as well as the four princely states of Makran, Kharan, Las Bela and Kalat that would together form Balochistan within the new federation. Anyway, almost 60 million of 95 million Muslim of British India became Pakistani.

23 In October 1958, Marshal Ayub Khan proclaimed martial law. His ‘reign’ was followed in March 1969 by that of General Yahya Khan, which came to an end with the birth of Bangladesh in December 1971. General Zia ul-Haq took his turn to seize power in July 1977. His death in ambiguous circumstances in August 1988 opened the path to a democratic interlude, which General Pervez Musharraf brought to an end in October 1999. Like his predecessors, he was quick to give his rule a democratic veneer, beyond the surface of which, post-9/11, ‘international community’ was in no mood to probe.

24 Bordering western Afghanistan (along the Durand Line), North-West Frontier Province, Punjab in the East and Balochistan in the South, this zone is made up of seven ‘agencies’: Bajaur, Mohmand, Khyber, Orakzai, Kurram, North Waziristan and South Waziristan.
1.2. **A Necessary Digression: Women as Sources of Social and National Harmony**

Any attempt to fully comprehend the condition of women - in a country that had recently attained independence, such as Pakistan in this case - is not just a matter of examining its political and economic history; it is also important to look at the evolution of collective mentalities. This will not be our aim in this paper, but we will permit ourselves a short digression concerning the role of women as sources of social harmony, an important element in the political construction of any society. We prefer to avoid the sterile polemics into which discussions of belonging to a particular gender or geographical - and therefore cultural - zone often degenerate. Is it a matter of analysing the ‘natural’ biological condition of each gender, or a system punctuated by predefined attitudes and duties, what Gayle Rubin in 1975 grouped together as “sex/gender systems”? Should we simply refer to a “culturally specific articulation” (Bhasin, 2006: 7) that has become established over hundreds of years, while legislation ought to tackle what was for so long government by men? Few question that it is within the institution of the family, “the basic unit of society”, that children undergo “on a daily basis” their first “experience of the imposed definitions of gender appropriate roles”; it is there that the influence of “customs, culture and law” converge to great effect. Referring to the sub-continent, Bhasin writes (2006: 8):

“The ideology of motherhood is considered one of the basis of women’s oppression because it created feminine and masculine character types which perpetuate patriarchy; it creates and strengthens the divide between private and public; it restricts women’s mobility and growth and it reproduces male dominance.”

By almost all accounts, such a definition, in one form or another, is applicable to the majority of human societies. One might wonder whether those women who have managed - at least partially - to oppose this phenomenon have not been continually pestered to return to ‘true values’. Digressing, it is interesting to note the recently published *The Terror Dream: Fear and Fantasy in post 9/11 America* (Metropolitan Books, 2007). Susan Faludi examines the efforts to instrumentalise the attacks that struck the United States. Parts of the media in this country were keen to point out that many women, especially New Yorkers, had dropped a career to which they had been deeply attached in order to suddenly resume their more typical female role in the shelter of male protection (Aitkenhead, 2008: 32-33). Was this an attempt to re-connect with values that had demonstrated their reassuring durability, or a cry for help of a society which saw male identity threatened by a recently emerged female mode of living? One may ask oneself if such soul-searching is not a global phenomenon, provoking extreme responses, as is illustrated by the Pakistani case that concerns us here. Dimitri Bykov (2008: 32-33), in an article entitled *Boors, Drunkards, Only Fit to be Fleeced* and published...
by Ogniok in Moscow, makes important points. Referring to the feminist analysis that targets, in his view, men of Russian nationality as a whole, he writes:

“You will soon feel yourselves to be treated in the way Russia is in international affairs, since women’s discourse on men on the whole imitates the opinion Westerners have of Russians.”

Perhaps in certain unstable regions of the world, women might be looked upon as unpatriotic or playing into the hands of the enemy, as soon as they attempted a constructive criticism of their (male) fellow citizens. Is the national identity as conceived by men based on the scarcely concealed celebration of a patriarchal system that, as in many states, drapes itself in the colors of an incomplete but necessary equality? This is one explanation for the prudence of the majority of Pakistani women commentators: they try to interpret a political and socio-economic system that was cleverly linked to a particular vision of Islam that was both religious and national. This was a rather cunning strategy. The dominant discourse with regard to the status of women emphasizes respect for the principles detailed in the Quran and the Sunnah, thus turning the male gender into a natural ally in putting the sacred texts into practice. The behaviour of women has to be in conformity with the judgement of those who put themselves forward as the religious (and national) majority and whom they should endeavour to support by adding their voices.

Returning to look at particular aspects of society, it is important to ask whether the most rigorous of the ulama (Islamic theologians) consider the gender of which they themselves form part is naturally better disposed to fulfil its duty. Shehzad Saleem26 and Javed Ahmed Ghamidi, in The Social Shari’ah of Islam (Ghamidi, 2004: 1, 37-40), examine this issue in detail: they underline the risk of humans “cross[ing] their natural limits”: disorder and discord will be the outcome. The writers are of the opinion that “the stability of a society is threatened with dire consequences if people vested with moral authority misuse the sacred trust of Allah”. As to the question of the “guiding principles in human and social relationships”, the “divine books” are clear on this, allowing man “to create a healthy society on this earth suited to this natural urges and talents.”27 The term ‘man’ obviously refers to men and women, but nonetheless reinforces a hierarchy, that is a lived experience for most women on a daily basis. Well-received in a society unforgiving of female ‘faults’, they - incidentally - put female believers anxious to attain salvation in a delicate position. A harmonious society - a reflection of respect for God’s commandments - depends on their adherence to norms of ‘satisfactory’ behaviour.

Looking at the narrow margin for manoeuvre women have in some contexts, should one blame the religious environment or the political and socio-economic dimensions which explain the near-impossibility of autonomous thought (due in particular to an ‘unenlightened’

26 Saleem’s attempt is an interesting one: tasked with translating Ghamidi’s work, in his introduction he offers us an interpretation of the principles of life that are set forth.

27 Ghamidi (2004: 30) adds: “the Almighty has made it clear that the real sphere in which one should strive in outdoing others is not the sphere of inborn abilities and characteristics because in this sphere some have been ordained to hold preference over others. The Almighty has created some people superior to others as regards their mental, physical, economic and social status. Similarly is the case between a man and a woman. They have been created as counterparts such that one is by nature the active member and the other the passive. While the former trait needs domination, vigor and force the latter needs gentleness, subtlety and acquiescence... These are inborn characteristics and any effort to surpass one another in this area would be tantamount to waging war against nature. This would of course only leave them to mourn their own misfortune.”
and thus illiberal education system)? The Uzbek Marta Tokhtakhodjaeva (1995: 39-40) considers that some Islamic theologians were forced to acknowledge how little freedom had been granted to women, adding that this did not represent the spirit of Islam. The Indian religious scholar, Tahir Mahmood, divides responsibility between men and women, noting that:

“That such a situation exists today, is the fault of us men and women, who believe in Allah. Muslim women have not demanded recognition of their rights, and Muslim men have interpreted the law to their own benefit, using it for selfish motives.”

1.3. A Symbolism stifled by a Drama

Is Marta Tokhtakhodjaeva (1995: 15) optimistic when she declares that the issue of women’s rights constitutes “a litmus test of a state’s adherence to the principles of democracy”? The author adds that the notion of women’s rights is “one of the values of ‘Western’ civilisation which carries significance for all humanity.” This is not the place to discuss the origins of feminism, especially since the defenders of - particularly monotheistic - religious texts could exploit the occasion to argue as to the privileged status ‘their’ religion accorded to women. The remarks of Tokhtakhodjaeva to which we referred above may be countered by those of Fatima Mernissi (1983: 7, 13). Stressing that inequality is as much rooted in the “Muslim East” as the “Christian West”, the author notes that one issue has blocked almost all genuine analysis of the condition of Muslim women: the practice of examining the question by comparing them “implicitly or explicitly” with their ‘Western’ counterparts, the aim being to pretend to examine the level civilisation attained by the (male) protagonists.

Has male dominance - what Bhasin, for example, calls “male hegemony” (2006: 8) - constituted throughout the history of Pakistan an essential social pillar, itself in turn reinforced by certain moral values? And do honour and dishonour continue to represent “psycho-social and symbolic categories” (Casimir and Jung, 2008) important to a social dynamic that relies on what many feminists have termed the traditional ideology of the family?

On becoming independent, Pakistan did not disavow its heritage. As in most contexts, the economic system granted a dominant position to property-owners, and Pakistani men were - to quote Kamla Bhasin (2006: 8), who makes a general analysis of the patriarchal system - the heads of the family unit, “the natural guardian of children and the primary inheritor of property” in an essentially agrarian society. The judiciary, like other parts of the state, was a principally male domain, with men promoting a particular vision of the world that was - they

---

28 Widening the debate, we might cite Brinda Karat (2005: xviii), a member of the Communist Party of India (Marxist). The Member of India’s Rajya Sabha notes: “Male supremacist ideologies get reinvented in a myriad ways. The present unjust world order strengthens inequalities between nations, between classes and between men and women. Politically and socially, the era of imperialist driven globalisation has also seen the twin growth and strengthening of religious fundamentalism in many forms and once more it is women who are the most vulnerable targets.”

29 In referring to South Asia, the researcher (2006: 11) adds: “when some women do assume important political positions (Srimavo Bandaranaike, Indira Gandhi, Benazir Bhutto, Khaleda Zia), they do so, at least initially, because of their association with some strong male political personalities, and they function within the structures and principles laid down by men. In spite of being the only region in the world that has had so many women heads of state, the percentage of women in parliament has never and nowhere been more than ten per cent, in South Asia.”
claimed - also in the interest of women. And they declared their attachment to the Quran and the 
Sunnah when it came to regulating relations within the couple and family. Each religious 
community in British India - in conformity with the ‘personal laws’\(^{30}\) - had, anyway, been 
free to apply religious precepts, although these continued to be the subject of different 
interpretations. In addition to this, there were linguistic disagreements over the translation of 
sacred texts, the semantic meaning of which had changed since the original appearance of the 
texts, while the languages themselves had either never been or were no longer in daily use in 
South Asia. Furthermore, cultural traditions often prevailed: Islam permitted female 
inheritance, but it was no doubt considered good for them to renounce their rights in the 
interests of their original family. In any case, men were granted a double share. Did this draw, 
at least in part, on the practices of the European rural landowners? The landed gentry often 
deemed it enough to offer a comfortable dowry to their daughters when marrying them off, 
thereby avoiding the threat of breaking up landholdings.

In 1937, it is true, the Viceroy’s government had promulgated the Muslim Personal Law 
(Shariat) Application Act, but this explicitly excluded the inheritance of agricultural land.\(^{31}\) 
This text simply indicated that Islamic law dealing with the family (the Shari’ah) had to be 
implemented without ambiguity, thereby implying that no man-made legislation was 
necessary. However, Parliament, anxious to find a compromise that would satisfy the ulema, 
took steps two years later. The Dissolution of Muslim Marriages Act (DMMA) for the first 
time recognised the legal possibility for married women to ask for a divorce, through khula\(^{32}\) 
(redemption, still often referred to as ‘judicial divorce’ in Pakistan). Access to this process, 
however, had until then remained socially more or less impossible. This legislation no doubt 
represented a response to the wishes of those Muslim men and women who “believed that 
most customary laws conflicted with Islamic law” (Jahangir, 1998: 93). But it also responded 
to a more pressing matter: while men had no intention of giving up the privilege of access to 
a quick (if not to say hasty) divorce through talaq\(^{33}\), women sought to have a simple recourse 
to divorce, finding the solution in the conversion that allowed them to benefit from more 
generous laws that governed other religious communities. The new legislation implicitly took 
away Muslim women’s ‘right’ to renounce Islam that the British courts had hitherto tacitly 
recognised, by ignoring the decisions of religious community leaders, that is to say the ulema; 
an opposition the colonial powers were generally very reluctant to express. The Hanafi school 
made no provision for a Muslim woman to obtain an order from a religious court to dissolve

\(^{30}\) This term denotes a set of religious practices and traditions, which were frequently not codified; subsequent 
legislations made timid efforts to modify the course traced out.

\(^{31}\) This prohibition was lifted in Sind in 1950, the following year in Punjab, and in the areas that had in the meantime 
become Balochistan in 1962 (Jahangir, 1998: 94). In practice, women rarely claim this right and men are 
invariably quick to assume the privilege.

\(^{32}\) Requesting her husband to grant her a divorce, the wife pays a level of compensation determined by the courts, 
which can be in monetary form. Following a case settled in 1967 (Khurshid Bibi vs. Muhammad Amin), the prior 
consent of the husband is no longer required. Apart from talaq and khula; divorce may also be granted through 
mubarat in case of mutually declared aversion.

\(^{33}\) Following Shaheen Sardar Ali and Rukhshanda Naz (1998: 117), one may delimit three principal forms of talaq: 
“Talaq-ashsan: a single pronouncement of divorce made during a ‘tuhr’ or period between menstruations, 
followed by abstinence from sexual intercourse for the period of iddat. Talaq-hasan: three pronouncements of 
divorce during three successive tuhrs, no intercourse taking place during any of the tuhrs. Talaq-i-bidat: three 
pronouncements of divorce either in one sentence or three separate sentences. The intention to pronounce an 
irrevocable divorce must be present. But since marriage is in the nature of a civil contract, a restraining stipulation 
to the effect that this right of the husband may be delegated to the wife, may be inserted as talaq-i-tafweez: this 
delegated right of divorce may also be given to a third person either conditionally or absolutely and either 
permanently or for a temporary period.”
her marriage in the event of her husband neglecting her materially, deserting the conjugal home or ill-treating her (Jahangir, 1998: 93). Jurists from this school of thought had, however, made clear that the Malaki, Shafi and Hanabali schools went some way to mitigating these short-comings. In effect, the Indian *ulema* adhered to the principles defended by Maulana Ashraf Ali Sahib, of the Malaki school, who had published a detailed study entitled *Heelat-un Najza* (Jahangir, 1998: 94). Notwithstanding the fatwas\(^\text{34}\) supporting their position, they considered the introduction of legislation to be desirable, since adherents of one school were reluctant to apply the principle of another school. Article 5 of the DMMA stressed that no woman should lose her right to the dowry\(^\text{35}\) payment by virtue of her marriage having been dissolved. Section (vii) of Article 2 stipulated that a minor Muslim woman, on becoming adult, could request the annulment of her marriage (Ali and Naz, 1998: 108).\(^\text{36}\) British law-makers belatedly acknowledged their reluctance - or inability - to apply the Child Marriage Restraint Act of 1929, which was intended to prevent the marriage of children who were yet to attain puberty.

Had they so wished, would Pakistanis have been able to engineer a revision of the values of their society, in order to promote a new dynamism?\(^\text{37}\) In 1998, Ritu Menon and Kamla Bhasin published the significantly titled *Borders & Boundaries: Women in India’s Partition*. They lament the absence of genuine female participation in the historiography of the sub-continent.\(^\text{38}\) They regret that a male interpretation has in a sense had a hold on women’s accounts - “women do figure, but as members of prominent political families” or as victims of a nation in search of (re-)birth. “Supplementary to male action”, they scarcely claim the status of actors “in their own right” (2000: 8-9).\(^\text{39}\) The two writers add that, notwithstanding the scrupulous details in official documents describing the violence of which they were the

---

34 “A ruling on a point of *Islamic law* that is given by a recognized authority” (cf. www.wordwebonline.com).

35 The term *mahr* (or ‘dowry’) may be considered to refer to the ‘financial gain’ (Ali and Naz, 1998: 110) that a woman is entitled to receive from her husband - usually upon divorce or the husband re-marrying - under the terms of the marriage contract. In spite of the Muslim Family Laws Ordinance (MFLO) that, since 1961, requires a contract in writing, this appears to remain quite unusual, especially in the countryside; families with marriageable daughters hesitate to insist for fear of upsetting the other party, and generally content themselves with the oral marriage ceremony. Reference is then made to the *mahr mithl* that is to say the dowry that is returned to the wife, the amount of which is set by the courts in the event of the marriage’s break-up. It is worth noting that the dowry, a ‘legacy’ of Hinduism, is still very much a custom, and the families of would-be bridegrooms are particularly demanding - a factor which adds fuel to the idea that female children are a useless or even ruinous burden.

36 This amounted to imagining that such very young women would enjoy the economic independence that would enable them to ignore the social rejection of which they would inevitably be the victims, were they to take such a decision without the agreement of their original family.

37 Examining the development of religious confrontation in the sub-continent, Bishram Sahni, author of a novel entitled *Tamas* (*Darkness*, 1973), writes: “in the medieval times, there was a very powerful upsurge of liberal thought. In the fourteenth century, particularly, Delhi became a centre of learning and culture. The Sufis came from Persia. India became a powerful centre. It is very interesting that the Bhakti movement [the coming together - most often - of Hindus, Muslim and Sikhs to venerate the divine] flourished at more or less the same time. And there was a confluence of the two. There is no doubt that a new perspective began to emerge. It was very conducive to harmonious life and fellow feeling. This went on for two, three, or four centuries and left its impact, so that at the level of small towns, people learnt to live side by side despite their different faiths. There was also the consciousness that most people who had become Muslim were really Hindus to begin with” (Bhalia, 2006: 116).

38 The same year, Urvashi Bhutalia published a significantly titled work: *The Other Side of Silence: Voices from the Partition of India*.

39 The two authors note: “Women’s history, in Joan Kelly’s famous formulation, has a dual goal: to restore women to history and to restore our history to women. The aim of the enterprise is to ‘make women a focus of enquiry, a subject of the story, an agent of the narrative’; in other words, to construct women as a historical subject and through this construction, disabuse us of the notion that the history of women is the same as the history of men, that significant turning points in history have the same impact for one sex as for the other” (cf. Joan Kelly, *Women, History and Theory*, Chicago, Chicago University Press, 1984, 163 p.).
target, women figure “as objects of study rather than as subjects” (Menon and Basin, 2000: 11). Menon and Bhasin look at the operations conducted in parallel by India and Pakistan after the signature of an agreement in November 1947. These Recovery Operations continued throughout the first half of the 1950s.\(^4\) For both governments, the objective was to allow women who had been kidnapped or separated from their families in the haste of departure to be reunited with their loved ones. Talking about the Indian policy, Rita Menon and Kamla Bhasin (2000: 107,109) make an analysis, that could apply in reverse to Pakistan. Two considerations were of prime importance for the Nehru government: the first followed from relations between the states of India and Pakistan, and the second from the theory that India had a protective role - what the authors call *parens patria* - to play with regard to female victims of rape. The two nations, whose leaders had not flinched in the face of a partition declared necessary, turned women’s fate into a political issue, each praising the generous principles that motivated their own actions. Both sides reaffirmed their attachment to family and thus national values. They implicitly accused the people of the ‘other side’ (i.e. the majority religious community) of being responsible for, in the term employed by Menon and Bhasin, “an act of transgression which violated that most critical site of patriarchal control”: female sexuality.

Just as India took the opportunity to boast of its founding principle - secularism, Pakistan did not miss the chance to defend the ‘two nation theory’ that justified its creation. It posited that Pakistan constituted a safe haven for Muslims who, as illustrated by the horrors of the population movements, were in danger. While the Indian and Pakistani governments would proclaim - in their respective constitutions - their respect for fundamental human rights, the few women who had found a peaceful home in the environment that had become their own, along with those who so feared the ostracism to which they would doubtless fall victim, and refused any suggestion that they should return, were required (sometimes forcibly) to rejoin their original families. The latter - whether they liked it or not - welcomed back the victims\(^4\) who had often found themselves obliged to leave their child behind them, or to accept, sometimes unwillingly, the abortion ‘generously’ offered by their respective nations.\(^5\) A deafening silence descended upon the suffering of these women once they had returned ‘home’. Indian and Pakistani societies made no mention of other tragic events: a large number of women had been forced or had chosen to kill themselves by jumping into a well or a fire, in order to save the honour of a family that could no longer ensure their protection. Other episodes refer to young women delivered up by their own relatives in exchange for safe passage to ‘the other side’.

---

\(^4\) The massive population movements (estimated to have been ten million people on either side of the newly demarcated borders) caused almost one million deaths (Wolpert, 2000: 348).

\(^5\) This acceptance, contrary to what some now suggest, was by no means straightforward. On January 16th 1948, Prime Minister Jawaharlal Nehru called on the populace to fulfil its duty, while following the riots in Noakhali in West Bengal, Mahatma Gandhi tried to reject the condemnation for impurity that, in accordance with Hindu beliefs, was made against women who had been victims of such brutality (Menon and Bhasin, 2000: 99).

\(^6\) Menon and Bhasin (2000: 7) are quite right to put out: “Popular sentiment and perception, at least as reflected in Partition literature particularly in Hindi, Urdu and Punjabi, almost without exception registered the fact of Partition with despair or anger... The futility and tragedy of demarcating boundaries, and the impossibility of dividing homes and hearts are the themes of story after story, as is the terrible violence that accompanied forced migration. Nowhere in the thousands of pages of fiction and poetry do we find even a glimmer of endorsement for the price paid for freedom, or admission that this ‘qurbani’ (sacrifice) was necessary for the birth of two nations. Rather, a requiem for lost humanity, for... a shared past.”

\(^7\) Referring to the interviews they conducted, Menon and Bhasin (2000: 54-5) emphasize that: “No one failed to recall the violence of Partition, in general, and a particular moment of violence for themselves, personally; nor did anyone, man or woman, gloss over how women are dealt with in communal conflict. Yet, in the recounting of
Has this period of history - that one would try to deny by erasing it from memory once ‘injustices’ had been ‘put right’ - been surreptitiously integrated into the ideologies of the two states born of partition? East Pakistan, meanwhile, underwent two tragedies, the first in the wake of the 1947 independence, and the second on the eve of the independence of Bangladesh. One may wonder whether Punjabis, distraught at the dreadful carnage that had accompanied the partition of the sub-continent, were not in a sense seeking to exorcise the demons of history, acting out in Bengal the macabre drama that had afflicted their native Punjab. Such an analysis is, however, incomplete without making mention of the exactions suffered by Punjabis and other non-Bengalis at the hands of the Mukhti Bahini.

2. A Nation Confiscated?

2.1. Some Remarks on Recent History

Do Muslim majority states leave themselves vulnerable to criticism? After the World Conference on Human Rights that, on 25 June 1993, adopted the Vienna Declaration and the Program of Action, then the International Conference on Population and Development that took place in Cairo the following year, “many Muslim governments which had wholly or partly supported the Universal Declaration of Human Rights” the subsequent “universalist documents” revised their position (Afkhami, 1995: ix). No doubt tired of the condescension that had followed colonial rhetoric, they argued that the idea of universal human rights was a ‘western’ concept that reflected a desire to continue to exercise a kind of cultural imperialism. Thus to “judge Muslim societies by these standards” was to violate their religious rights, since Islam permitted the establishment of a just society and the respect of the “fundamental rights of women” (Afkhami, 1995: xi). Nonetheless, they hypocritically neglected to state that they had little intention of establishing the ideal society they

44 As demonstrated, for example, by the opposition to the naturalisation of foreign husbands (necessarily Muslim by religion) of Pakistani women: the country argues implicitly as to the necessity of preventing the Indian ‘enemy’ from sending agents to penetrate its structures. One may also note that the children of these marriages have recently been allowed to assume the nationality of their mother.

45 The questioning of those female Bangladeshi researchers who have looked at the consequences of the 1971 war of liberation and the refusal to recognise the contribution of women (not simply according rape victims ‘heroine status’, but genuinely acknowledging the suffering they underwent) is worthy of mention here: one group (Adhunika) undertook such a reflection, asking whether the ‘construction of women’s identity and the control’ of their ‘sexuality’ was not one of the foundations of the newly born country; the group aims to ‘include in history (or in official discourse) those who had been excluded’ (Cf. for example, Bina D’Costa, War Babies: The Question of National Honour, www.adhunika.org). Various South Asian studies examine the issue mentioned above. One might also cite the work of Rozina Visram which looks at young children (cf. Women in India and Pakistan: The Struggle for Independence from British Rule, Cambridge University Press, Paperback, New Delhi, 1993, 64 p.) or, an older work, that of Safraz Hussain (cf. Muslim Women’s Role in the Pakistan Movement, Lahore, 1969, 207 p.).

46 In effect, the massacres in East Bengal were often perpetrated by Punjabi soldiers, who made up the majority of the army.

47 Were Muslim states that remained faithful to the institution of marriage somehow shocked by the changes in ‘Western’ moral values, synonymous of an attack on virility and of the spreading of dissolute morals? Or was it rather a matter of taking advantage of the differences that had developed in order to defend long-standing patriarchal values with renewed vigour? It is true that many were authoritarian regimes doubtless having ‘accountability’ issues vis-à-vis their citizens, since even the male gender did not benefit from the respect of constitutionally-guaranteed fundamental freedoms.
described. The Pakistani writer Mahnaz Afkhami, in the introduction to her work Faith and Freedom: Women’s Human Rights in the Muslim World, argues:

“In short, they rejected women’s human rights, as defined in international documents, even as aspirations.”

Emphasizing the instability of the Twentieth Century, Naila Kabeer and Ramya Subramaniam (2000: 7) underline the impact of technological advance that gradually undermined the assumption that the division of roles and responsibilities of the two genders was natural and permanent. They add that:

“Resistance to any form of change in gender relations has increasingly taken on the rationale of the ‘sanctity of culture’. The discourse of ‘culture’ is the obvious next line of defence when arguments based on the discourse of ‘biological difference’ start to look shaky since it accommodates the defence of the very same gender division of roles, responsibilities and privileges that the earlier arguments on the grounds of biological difference were used to defend.”

Was it the temporary impossibility to provide a clear definition of national identity within which Islam, in conformity with the wishes of the ‘father of the nation’, the Quaid-e-Azam (who had hoped for a different Pakistan, without, however, giving any precise definition), would not be the only component, especially at a time when belief in a common religion seemed the only bond that could serve as a rallying point? Did one consider that the adoption of a single common language (in this case Urdu, much of the development of which had taken place in what had become independent India) would promote a gradual unification?

The adoption on 12 March 1949 of the resolution Aims and Objectives of the Constitution, better known as the Objectives Resolution, was to influence the future of the federation. Pakistan’s leaders, in the meantime, congratulated themselves for having managed to combine the principles of ‘Western’ democracy with the injunctions of Islam (Ghazali, 1999: 1-2, chapter 3).

“The Objectives Resolution proclaimed the following principles: Sovereignty belongs to Allah alone but He has delegated it to the State of Pakistan through its people for being exercised within the limits prescribed by Him as a sacred trust.”

48 Bhasin (2006: 10) makes the following provocative points which the reader may find extreme. The well-known Indian feminist writes: “Most modern religions are patriarchal, defining male authority as supreme. They present a patriarchal order as being supernaturally ordained. The feminine principle of power which existed before the evolution of institutionalized religions has been gradually weakened, goddesses have been replaced by gods. All major religions have been created, interpreted and controlled by upper class and upper caste men; they have defined morality, ethics, behaviour and even law; they have laid down the duties and rights of men and women, the relations between them. They have influenced state policy and continue to be a major force in most societies; in South Asia their power and presence are enormous.”

49 The reader has no doubt noticed that the author has cited the introductions of a number of works dealing with very different contexts, the aim being to emphasize the commonalities pertaining to women’s rights.

50 It should be recalled that the western half initially refused to grant Bengali (the majority language in East Pakistan) a similar status.

51 The Resolution provided in paragraphs 2, 3 and 4 that: “2. The State shall exercise its powers and authority through the chosen representatives of the people. 3. The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed. 4. Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings of Islam as set out in the Qur’an and Sunnah. […] 7. Fundamental rights shall be guaranteed” (cf. Objectives Resolutions is passed, 1949).
Prime Minister Liaqat Ali Khan had no hesitation in declaring:

“I consider this to be a most important occasion in the life of this country, next in importance only to the achievement of independence, because by achieving independence we only won an opportunity of building up a country and its polity in accordance with our ideals. I would like to remind the house that the Father of the Nation, Quaid-i-Azam, gave expression of his feelings on this matter on many an occasion, and his views were endorsed by the nation in unmistakable terms. Pakistan was founded because the Muslims of this sub-continent wanted to build up their lives in accordance with the teachings and traditions of Islam, because they wanted to demonstrate to the world that Islam provides a panacea to the many diseases which have crept into the life of humanity today.”

Khan did not acknowledge the alarm expressed by deputies of the Constituent Assembly of other confessions. One of them, Sri Chandra Chattopadhyaya, considered that:

“What I hear in this (Objectives) Resolution is not the voice of the great creator of Pakistan - the Quaid-i-Azam, nor even that of the Prime Minister of Pakistan the Honorable Mr. Liaquat Ali Khan, but of the Ulema of the land” (Ghazali, 1999: 2, chapter 3).

Maulana Maudidi, the leader of Jamaat-e-Islami, claimed that Jinnah had wished to promote “the sovereignty of Allah and the supremacy of his Law”. Nonetheless, he had earlier admitted that the speeches of the Muslim League leaders during the independence struggle did not give grounds to conclude that they wished to establish an Islamic government. However, divine sovereignty, as defined in the Resolution, went against the idea of a modern democracy. The Munir Report of 1954 was very clear in this respect. Indeed, the Ulema had stated to the commission:

“The Quaid-i-Azam's conception of a modern national state....became obsolete with the passing of the Objectives Resolution on 12th March 1949” (Ghazali, 1999: 2, chapter 3).

From a safe haven for Muslims, was Pakistan changing into an “ideological state” (Patel, 1991)? The politico-religious parties probably reckoned that in the future they might enjoy political dominance; the Ahmadis would become one of their first targets.\(^{52}\)

---

\(^{52}\) In 1974, the Ahmadis (or Qadianis) were officially excluded from the Muslim community of Pakistan, following the adoption of a constitutional amendment. Ten years later, an ordinance required them to cease making use of the term Muslim to describe themselves, while their places of worship were to no longer be referred to as mosques. This stipulation was included in the Penal Code (Article 298-B). In 1993, the Supreme Court confirmed the constitutionality of these measures. It justified this position in the following way: “any community, however vocal, organised, affluent or influential it may be would not be allowed to cheat others of their faith or rights, usurp their heritage and to deliberately and knowingly do such acts or take such measures as may create law and order situation” (Ahmad, 1998: 7).

We should also add that in 1982 Zia ul-Haq upgraded the repressive weaponry available to the state: any person found guilty of damaging the Quran or of having committed any sacrilege against the Holy Book was to be punished with life imprisonment (Article 295-B of the Penal Code). Section C of Article 295, decreed in 1986, stipulates that any derogatory remark against the Prophet Mohammed is to be punished by death. These regulations (Articles 295-B, 295-C, 298-A and 298-B of the Penal Code) are generally referred to as the Blasphemy Laws.
2.2. A Status of ‘Trustee’

No doubt analysis of the Pakistani context is particularly sensitive due to a factor on which female researchers of the country place much emphasis: women have had a role thrust upon them, of which they have not been allowed to divest themselves: that of ‘trustee’ of a culture that, in the eyes of a foreigner, appears multi-faceted since it encompasses local, regional and national, as well as religious, dimensions. It seems that the great majority of men remain attached to this symbolism. One may also note, in the words of the Pakistani sociologist Farida Shaheed (1998: 61), that:

“Together, culture, customs and law outline the space available for a women’s definition of self, the cross cutting factors she must daily negotiate in her action, and the boundaries against which she needs to push for self-affirmation and change… The same can be said to apply to the concept of ‘manhood’, but the implications are not alike.”

In many areas of the world, it is still left to men from the elite to define “the contours of culture, of customs or law”; and it is the male population that reap, at least partially, the benefit of such definitions. Pakistan remains one such area. The “internalized rules of a society” (Shaheed, 1998: 62) that apply to women represent a powerful weapon of which the great majority of men make use with a scarcely concealed satisfaction, convinced of their God-given right to do so.

Engineer (1992: 13) laments the impact of “cultural prejudices” on defining the status of women in the sub-continent. Returning to the question of purdah - so widespread in South Asia, he notes that:

“All that the Quran requires of women is that they not display their sexual charms, but dress in a dignified manner. These prejudices emanated in the feudal era wherein the ruling Muslim classes wanted to protect their womenfolk from others and hence kept them under strict seclusion. However that tradition was given Islamic legitimacy.”

53 “Simultaneously an avoidance of the opposite sex and a demonstration of respect for elders, the norms of purdah (literally ‘curtain’) entail a set of social practices reflecting concepts of modesty: restraint in gesture and speech, lowering of the eyes, keeping the hair and chest covered by the veil during the call to prayer, abstaining from speaking with her husband in front of his father, and - above all - avoiding the company of any individual with whom a marital relation could be envisaged… Apart from underscoring the distinction between the spheres of public (in theory male) and private (if not dominated by, then at least delimited for women), the concept of purdah rests on the idea of a perpetual tension between the [...] family circle and the angst-creating external world” (Debedant, 2003).

Certain adaptations to the rules of purdah and burqah (garment covering the whole body) are, however, possible. In rural areas, women work in the fields in the company of men from their family; both genders wear one of the traditional garments of the North of the sub-continent, the shalwar-kamiz (loose trousers covered by a long tunic), with the women adding a wide shawl (dopatta) that covers both head and chest. Any other, more restrictive garment would not let women carry out their burdensome duties. These include fetching water - often necessitating long treks, which afford the possibility of interaction away from men (village mosques usually do not include a space to which women have access). Markets are included in the public sphere - by definition off-limit to women. It is only men who sell the harvest, retaining the revenue, something which probably contributes to the received idea that ‘women do not work’. Reading certain Pakistani theologians, one can deduce that control of money is central to affirming masculine virility. Such writers stress that Islam does not forbid women from earning their living, but it does absolve them from that responsibility, which rests with their husbands - who in any case preserve their role of head of family.

54 Some researchers recall that it was Sikh men (and not their women-folk acting to defend the practices of the male members of their community) who, in the United Kingdom, recently protested in order to retain the right to
While Islam played an important in the political awakening of Muslims - from 10 May 1857 (referred to as the ‘Revolt of the Sepoys’ in older British sources, and as the ‘First Muslim War of Independence’ in Pakistani historiography) to Pakistan’s independence on 14 August 1947 - provoking questions from those of both progressive and conservative temper, it was in some respects ‘appropriated’ by the latter, whom some Pakistanis would not hesitate to qualify as reactionaries. Civil society remains divided between these two groups. The struggle is unequal; women militating for a genuine citizenship find themselves pitted unwillingly against a formidable opponent: the politico-religious groups who treat them if not as objects, then at best, as subjects who must obey and whose voices should not be raised. Until the sad reign of Zia ul-Haq, political power opted for a broadly neutral stance that, nonetheless, resulted in certain ‘concessions’, as still evidenced today by the fate of women, the lack of breathing space for religious minorities and the threats against the Ahmadis. In abandoning the fate of the couple and family to a rigorous political Islam, successive governments had two objectives: to partially satisfy the politico-religious parties; and to prevent the development of a genuine civil society, maintaining rather one with scarcely the means to venture into politics. Cast in the roles of ally and judge, and doing its utmost to avoid upsetting the politico-religious lobby, the executive (which in practice granted precious little independence to the judiciary) was protected from popular sentiment, let alone the exercise of popular sovereignty. And yet, the time bomb was ticking. The war in

wear their turban. In any case, one should note that in some areas women use the veil as a sign of modesty; male head-wear is rather a sign of their identity that is worn with pride.

A recent phenomenon in Pakistan: it is widely considered that Islam and the Sunnah prescribed domestic confinement for women. This ‘command’ has a particular resonance for women who, thanks to coming from the ranks of the urban well-off, have had access to higher education, but have chosen to wear the *burqah*, as well as abstaining from any ‘contribution’ to public life. According to some observers from this school of thought, such a choice represents a response to the Manichean ‘Western’ interpretations of the attacks of September 11th, 2001 that seemed to legitimise in advance the foreign policy that President George W. Bush intended to conduct. In a trend of unconscious imitation current in Pakistan, women from poor families take to wearing the *burqah*, the aim being to imply that their husband’s income permitted idle luxury. It is difficult to analyse these trends that remain principally urban, since in some areas women - once they have finished their morning purchases - are hardly visible at all. Punjab and Sind, in any case, are less affected by this phenomenon, which, on the basis of the information collected during the author’s travels, affects the rest of the country to varying degrees: the *burqah* appears to be *de rigeur* in Mingora (Swat) and Peshawar in NWFP. This brief description should not lead the reader to conclude that women are absent from the public sphere of employment. They fill part of the ranks of the urban proletariat, while the working hours of female agricultural workers are very long. Moreover, the elite and even the urban middle classes continue to afford a margin for manoeuvre to those of its mothers, wives and sisters who refuse to limit themselves to managing the family home.

We would like to take this occasion to signal the combined role various factors have played in pushing many women to swap *dopatta* for *burqah*. The expatriation of Pakistani workers to the Gulf states has persuaded them to more strictly adhere to conservative morals, while the economic success of that region perhaps bears witness to the divine reward awaiting those who put religious precepts into practice. This was, in any case, the account the author received from various Pakistanis. Another dimension is the example of the Iranian revolution, while a last factor stems from the high number of Afghan immigrants who arrived in the border areas of Pakistan following the Red Army intervention, coupled with the struggle against the Soviet Union and the sacrilegious atheism that, in the eyes of its opponents, it represented. While Pakistan scarcely tried to provide all its citizens with appropriate educational facilities, the country saw a growth in *madrasas* - many supported by ‘petrol kingdoms’ of the Gulf - that were free to teach what they saw fit. Control of the curricula of such institutions, despite repeated announcements of ‘harmonisation’, remains on the agenda.

Section 3 of Article 175 of the Constitution of April 12th 1973 implicitly granted the executive a period of fourteen years to make arrangements for the judiciary to enjoy a genuine independence. The political parties talk of this being an urgent priority, but little, for the time being, has changed.

Shaheed (2002: 21) quotes the typology of Marek Thee that can be applied particularly aptly to Pakistan: “militarism can exist in different ways: a repressive authoritarian regime backed by the military, direct military rule, or civilian rule with the military exerting predominant pressure. Thee identifies three sets of indicators that determine how militarism will actually manifest itself and impact on people’s lives: a) the military’s place in the
Afghanistan mixed up the ambitions of the ruling political class with those of the politico-religious parties, with each grouping trying to instrumentalise the other.  

Contrary to the spirit of Islam, the *ulema* declared themselves guardians of the faith. The modern state that Pakistan considered itself to be gradually (especially in adopting the *Hudood Ordinances*\(^{58}\)) came to take on the role of ‘moral policeman’; the constraints were vigorously applied to women (and notably their sexuality), while men were not subject to similar requirements, which gave the impression that it was permitted for them to tempt the opposite gender, thereby endangering the ‘harmony’ to which everyone declared themselves attached. It was not merely a matter of validating a practice considered ‘normal’ in certain quarters - the right of husbands to punish their less than ‘devoted’ wives\(^{59}\), but to mobilise the (particularly male) population to defend the purity of morals on a day-to-day basis. Men were explicitly encouraged to struggle against any risk of *zina* within their families or clans, leading to the increase in ‘crimes of honor’. The guilty, who would be considered murderers in another setting, felt themselves protected against any legal measures, even if their motives were not always noble. Still today, the concept of “grave and sudden provocation” authorises the judge to acquit a man accused of killing a relative (notably a wife, sister, or mother) on the straightforward presumption that they had had extra-marital sexual relations (Shaheed, 1998: 65). Thus the Supreme Court did not hesitate to declare with regard to one such drama (*Mohammed Saleh vs. The State*\(^{60}\)):

> **“Under village conditions and even in many other parts of society in this country, the right of the male members of the family to control the actions of their women folk, particularly in the field of sexual relations, is fully recognized and forcefully maintained. The idea that a young unmarried girl in a village family is entitled to leave her bed during the night and go where she pleases... simply cannot be entertained”** (Shaheed, 1998: 65).

In another decision given in 1989 (*Muhammed Yunus vs. The State*), the Court found for the defendant, even though the medical examination provided no support to the accusation of adultery he had made against his wife, who was fully clothed at the moment of the crime. The judges nonetheless declared that:

> **“The appellant had two children from his deceased wife and when he took the extreme step of taking her life by giving her repeated knife blows on different parts of her body, she must have done something unusual to enrage him to such an extent”** (Shaheed, 1998: 66-67).

---

57 Cf. the account given by the director of the Afghan office of the ISI, which, in passing, tarnishes a number of reputations (Mohammad Yousaf & Mark Adkin, *The Bear Trap. Afghanistan's Untold Story*, Lahore: Jang Publishers, June 2003; 243 p.).

58 The task of supervising the preparation of these draft laws was reportedly given to an advisor of the King of Saudi Arabia, Doctor Duwalbi - who was thus sent to Pakistan, although other sources name three principal architects: the Prosecutor General, Makhdoom Ali Khan, Javed Ahmad Ghamidi, and the President of the Council of Islamic Ideology, Muhammad Khalid Masud.

59 These are the stages which a husband, according to Saleem, should follow when his wife defies his authority, thereby threatening the very existence of the family: if reprimands - over a reasonable period - bring no result, he should avoid “all marital contact” with the rebel. Probably this will do the trick. If not, the husband may have recourse to the application of ‘gentle physical affliction’, such as a mother might employ to punish her child or a teacher to chastise an undisciplined pupil. He should not forget that he will be accountable before the Almighty (Ghamidi, 2004: 5-6, 33).

60 The date of this judgement is not given.
In a country in which women are especially plagued by illiteracy, do they consider legislation on the family to reflect divine commandment? First of all, one can discount fatalism. No doubt, the infrastructure of the school system is insufficient, especially in rural areas, and where the state does fulfil its obligations, it is generally the boys who are first in line (segregation of the genders in education being the norm). In such a context, the village mosque plays a key role: the preacher is usually also the local teacher and accepts, or enjoys, the gracious patronage of the dominant land-owner of the area. ‘Subversive’ ideas, therefore, are not to be spread. Families wishing their daughters to receive a rudimentary education tend to later withdraw them from the village school or madrasa as soon as they attain puberty, afraid of any untoward event that would jeopardise the future, which should be structured around marriage. The more well-to-do hesitate to send their adolescent daughters to continue their studies outside the village; rumour alone may suffice to durably damage a reputation.

We will not pretend to interfere in matters of Islamic jurisprudence, but draw attention to the approach of Asghar Ali Engineer (2008). Noting that the majority of the Hadith were not drawn from the Sihah Sitta (the six most authentic sources of the Sunnah), he goes on to say that:

“Women lost in the Hadith, what they had gained through the Qur’an. In the pre-Islamic period, women had a very low social status and Qur’an lifted them far above what anyone then would have expected - a reality our Ulama never tire of reminding the laity. But within a few decades of Qur’anic revelation, women returned to their pre-Islamic status in a fiercely

---

61 Based on the figures of the most recent census (that of 1998), Pakistan is the seventh most populous country in the world. Its territory is home to 2.3% of the world’s population, that is to say 132.3 million people (a figure that had probably risen to 169.2 million by 2007), of whom almost 40% are younger than 15 years old. Nearly 77% of Pakistanis are Sunni Muslim, while about 20% are Shia (the figure is the subject of sometimes animated debate). The country is also home to Hindus (1.85%), Christians (1.6%), Sikhs (0.04%) and a number of even smaller minorities, including Parsis, Buddhists and Animists (mainly the Kalash of Chitral).

The Crude Birth Rate of the federation is 31 per thousand, while the rate of natural growth about 2.6%. According to official statistics (Nadeem and Ashfaq, 2004), 64% of Pakistani males are literate, although this figure conceals strong regional disparities. Only 39% of Pakistani women are said to enjoy this ‘privilege’, a figure that is the object of debate; the journalist Muddassir Rizvi, basing himself on a figure of 28% in 2001, has expressed alarm at the ongoing decrease in female literacy. Whatever the real situation, the country spends only 1.8% of its GDP (Nadeem and Ashfaq, 2004) on education. Moreover, following what one might call the ‘tallibanisation’ of the tribal areas, girls have difficulty to go to school, and many parents who would have chosen to educate their daughters have given up the idea. It is also worth noting the correlation between poor development indicators and the take-over by religious preachers and ‘soldiers of God’ of areas that had retained, in independence, the autonomy which the British - unable to impose their rule - had allowed them. A system of administration whose authoritarian or even feudal character has - if only since September 11th, 2001 - been deplored, has thus been perpetuated, while the links between Pashtoons on either side of the Durant Line have been reinforced since the struggle against the Soviet presence in Afghanistan.

62 The Provincial Minister of Education in Sind, Pir Mazharul Haq, recently admitted that “at least 7,500 schools are lying closed in the province, buildings of some schools are in a shambles and animals”; some premises “are being used as cattle farms and others are as police stations”. Mazharul Haq expressed concern at the threat of illiteracy to the country (cf. 7,500 schools remain shut, says minister, 2008).

63 Thus a young girl of about twelve years old from a village in Sind that we choose not to name had been raped in the village madrasa. She indicated that young boys had suffered similar cruelties; the teacher had escaped any consequences thanks to the support of an important local land-owner, who, moreover, was apparently not opposed to such practices.

64 One may note that using public transport remains a challenge for women; it is inconceivable that a man and woman without family ties sit next to one another. Single female travellers in rural areas being few and far between, they tend to squat by the side of the road until such time as the already over-full (the state has long abandoned any ambition to put into practice a decent public transport system) mini-bus finds one or two other women to fill up the seat next to the driver. Moreover, many villages in mountainous areas have no vehicle access.
male dominated society - a state of affairs legitimised by the Hadith. (...) The Qur’an engendered ideals and values, but as society could not rise to that level, it dragged Islam to a suitable equilibrium, with the Hadith serving vested interests.”

Engineer gives weight to the “cultural values and customary practices” that, in Arabia as in other areas, predated Islam. Is he being diplomatic in emphasizing the fallibility of the oral tradition? The process of compiling of the Hadith, two or three centuries after the death of the Prophet, was “a socio-cultural and socio-religious necessity given the vastly different circumstances affecting Muslims worldwide”. Nonetheless, doctrines were developed that were in contradiction with the Quran, as can be seen from the numerous injunctions in the Shari’ah which lessen the status “Quranic ideals and values” offer to women.

“Most of the Qur’anic verses on women are not explained in the light of other Qur’anic verses (the only reliable methodology to understand real intent of the Qur’an), but in the light of Hadith which degrade women.”

3. Female Citizens, Guarantors of Male Honour?

3.1. Meagre Progress

There is an erroneous tendency to state that it was the process of Islamisation initiated by General Zia ul-Haq that moulded the laws dealing with the couple and the family. In fact, these were based on religious practices and traditions to which Muslims had been attached at the time of independence (Jahangir, 1998: 93). Women had long contented themselves by claiming additional rights, without questioning the existing system which they did not think to qualify as patriarchal. According to the introduction of an important work on the recent history of Pakistan, *Women of Pakistan: Two Steps Forward, One Step Back*, the female elite was hardly aware that the future depended on securing a better status for more women. Was class or caste background the determining factor? Did the sharp economic disparities prevent proper debate, denying the most vulnerable the opportunity of getting to know their fundamental rights?65

Controversy arose after the Prime Minister Ali Bogra chose to contract a second marriage in 1955. His first wife, however, was a member of the All Pakistan Women’s Association (APWA) that duly protested in her favor. Embarrassed, Bogra convened a commission - the Commission on Marriage and Family Laws - whose official task was to examine laws dealing with the couple and family, but whose actual objective was apparently to declare itself in favor of a regime permitting, within certain limits, polygyny. The commission was ostensibly balanced, since it was composed of three women and four men (one of whom was an alim, or religious expert). The president, Abdul Rashid, a member of the Bar, was principally responsible for drafting the final report. Faithful to the Prime Minister’s expectations, the text noted that:

65 Looking through the accounts the author has collected, it would seem difficult to put the blame on one gender, since the population appears to be weighed down by the burden of traditions - from the more oppressive of which people would presumably be able to gradually free themselves, had they benefited from better overall conditions. A priority for peasants would thus be the implementation of agrarian reform to bring the omnipotence of rural land-owners to an end. However any attempt to understand the functioning of the elite - or even the urban middle class - quickly shows how at least part of their revenue comes from land-holdings...in addition to which most such families have links with members of the armed forces.
“It is an indisputable article of the Muslim creed that so far as the basic principles and fundamental attitudes are concerned Islam’s teaching is comprehensive and all embracing, and Islamic law either actually derives its principles and sanctions from Divine Authority as revealed in the Holy Qu’ran or clear injunctions based on the Sunnah” (Jahangir, 1998: 97).

The Commission had nonetheless to justify its existence: ignoring the role of *ijtehad* of which believers had been free to make use, it stuck to a conservative line, based on the orthodoxy of the colonial period. Hence:

“Muslim law... ceased to be a growing organism responsive to progressive forces and changing needs. What was accepted as the personal law of the Muslims was conservative, rigid and in many respects undefined, but owing to political subjection any liberalisation or reconstruction was well-nigh impossible” (Jahangir, 1998: 98).

The timid recommendations of the Commission provoked the sharp opposition of the *alim*, who, after his arguments had been published, attracted considerable support from male and female Muslims.

Ironically, it was Marshal Ayub Khan who took up the question anew in 1961. Was he anxious to demonstrate his commitment at a time when he was attacking the ineffectiveness and corruption that had sapped the civilian governments? On 15 July 1961, he promulgated the prudent *Muslim Family Laws Ordinance* (MFLO), which addressed some of the issues that had been raised by the Rashid Commission. This text made the registration of marriages and divorces within the Muslim community obligatory. It codified the procedures governing the ‘delegated right of divorce’ and *khula*. Polygyny, which remained permitted, was regulated by an Arbitration Council. Nonetheless, the marriage of a child was considered valid if it had been consummated; women were free to request a divorce once they attained majority. The ordinance was to be applied across the whole country, but noone sought to convince the tribal areas to implement it.

With orthodox groups, employing a sovereign argument that brooked no dissent, indicating that the provisions of the MFLO went against Islamic precepts, governments, both civil and military, generally of limited legitimacy, were quick to throw in the towel, often even before the fight had begun, when it came to trying to change the dominant collective attitudes. One may ask whether the country’s leaders were themselves capable of thinking in this way, given

---

66 Any Muslim (in the view of various sources that radical schools of thought would no doubt qualify as erroneous) is free to carry out *ijtehad*, that is to say to attempt through intense concentration to develop Islamic principles, to the point where a judge’s edict may even be overturned.

67 Were the conversions that had provoked the adoption of the Dissolution of Muslim Marriages Act part of a temporary wave of resistance? Or was it that women’s margin of manoeuvre had shrunk in the wake of the British departure? An interesting indicator is that, since the adoption of the DMMA, Muslim women can invoke reasons such as cruelty of which they are or have been victim in order to try to get a divorce. They also continued to have recourse to *khula*, which demonstrates the difficulty they had in having their voices heard when complaining of the behaviour of the ‘head of the family’. Men, for their part, remained reluctant to fall into line with the procedural hurdles with which the MFLO had complicated *talaq*.

68 Briefly back in Pakistan during the month of December 2007, the author accompanied a World Vision team in the *tahsil* of Ughi (Manshera District, NWFP). Social workers were trying to stimulate debate about the role of the genders, and in particular what ‘popular wisdom’ had to say on the subject, when a women of perhaps forty, but who already conveyed an expression of exhaustion, gave us to understand that life had in a sense decided her fate; she had been married at the age of twelve before she had even attained puberty, and successive pregnancies had been her lot since then.
that many were welded to conservative values. In any event, they took up a position that protected the modest progress: anticipating the maneuvers of the radical Islamic camp, the 1962 and 1973 constitutions stated that the Muslim Family Laws Ordinance could not be revised on the grounds that any such move would be contrary to fundamental rights. Furthermore, the female gender, probably convinced that it could not realistically hope for anything better, never tried to challenge - through the courts - the inadequacy of the Ordinance on the grounds that the 1973 Constitution opposed all discrimination. But then Pakistani women had been brought up on the rhetoric of biological differences explaining the varying statuses enjoyed by men and women.

Confronted by the process of Islamisation set in motion by Gen. Zia ul-Haq, did women change their assessment of Zulfikar Ali Bhutto’s period in power? It is true that the progress made in the 1973 Constitution was half-hearted: Article 25 states the equality of citizens; Section 1 of Article 8 declares that any law or custom that is contrary to fundamental rights is invalid. However, Article 2 states - for the first time in the country’s history - that Islam is the state religion, legislation must conform to the injunctions of the Quran and the Sunnah, qualified as the only “supreme laws”. Much, therefore, was left open to interpretation.

Under the terms of the 1973 Constitution, ten seats in the National Assembly were reserved for women, along with 10% of the seats available in provincial assemblies. This measure was to be in operation for a period of ten years, or, if elections did not take place, until a new

---

69 This officially temporary restriction remains in force.
70 Cf. Article 25: “(1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex alone. (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children” (www.pakistani.org/pakistan/constitution).
71 Bhutto was President of the Islamic Republic from 20 December 1971 until 13 August 1973, then Prime Minister from 14 August 1973 until 5 July 1977. It was thus his time in office that saw the ‘excommunication’ of the Ahmadis.
72 Cf. Article 25: “(1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex alone. (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children” (cf. www.pakistani.org/pakistan/constitution).
73 Cf. Article 8: “(1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void” (cf. www.pakistani.org/pakistan/constitution).
74 Under the terms of this article, the president and prime minister must be Muslims. Moreover, following the entry into force of the Constitution, the Council of Islamic Ideology was convened. The role of this organ, as had already been stipulated in the 1962 Constitution, was to formulate recommendations enabling Muslims to live their lives in conformity with Islamic precepts, as well as ensuring that national legislation did not go against the tenets of the holy texts. Article 31 of the Constitution of 12 April 1973 provides that: “(1) Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah. (2) The state shall endeavour...: (a) to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran; (b) to promote unity and the observance of the Islamic moral standards...” (cf. www.pakistani.org/pakistan/constitution).
75 It is difficult to gauge how much attention the political parties pay to the female electorate. The electoral roll is generally established by men going from house to house, who usually ask the men of the house to complete their questionnaire. By custom or modesty, the latter may omit the names of potential female voters, perhaps also not wishing them to vote. When universal suffrage was introduced in the FATA, the jirgas (tribal councils) opposed the idea that women enjoy a privilege in what they presumably deemed an exclusively male domain. They used mosques and the loudspeakers with which places of worship are equipped to make clear their position, not hesitating to threaten to destroy the houses of men who allowed their wife to go to a voting booth. This ‘prohibition’, which aimed to maintain the power of the jirga intact for the benefit of the few, is not limited to the tribal areas. The Pakistani state (and more especially successive electoral commissions) chose to maintain a diplomatic silence or simply qualify matters as social and cultural customs.
chamber convened. Moreover, all governmental and administrative posts were opened to women\textsuperscript{76}, a number of whom took over important posts such as provincial governor, university chancellor or vice-president of the national assembly. The country celebrated the International Year of the Woman in 1975. A Women’s Rights Committee was tasked with formulating measures that would improve the “social, legal and economic position” of the female sex (Shaheed, 2002: 23). On 24 October 1976, the Declaration on the Rights of Women in Pakistan was promulgated (Shaheed, 2002: 191-4). Its first article stated that:

“Discrimination against women is contrary to the injunctions of Islam, violates Constitutional guarantees and constitutes an offence against human dignity.”

In the light of recent developments in Pakistan, this text appears ambitious, noting in its second article that:

“All appropriate measures shall be taken to abolish prejudicial practices, customs and usages which are discriminatory against women and to ensure adequate legal protection for safeguarding the rights of women.”

The promulgation of the Hudood Ordinances provoked major demonstrations by women; the police responded with a baton charge, not hesitating to make arrests. This movement led to the creation of the Women Action Forum (WAF), which denounced the imposition of legislation for which society had expressed no need. Basing himself on the idea of izzag (honour)\textsuperscript{77}, General Zia sought to promote what Pakistanis referred to as a ‘cultural agenda’. The objective was to publicly approve the notion of the (biological and social) inferior status of women, whose lives were to be structured by two elements: the chaddar (a veil covering the whole body) and the char divari - the four walls, that is to say the family home (Shaheed, 2002: 24). A Pakistani women’s forum - www.onlinewomeninpolitics.org/pa-kistan - described the status of women in these terms:

“The status of women in Pakistan is not homogenous because of the interconnection of gender with other forms of exclusion in the society. There is considerable diversity in the status of women across classes, regions, and the rural/urban divide due to uneven socioeconomic development and the impact of tribal, feudal, and capitalist social formations on women’s lives. However, women’s situation vis-à-vis men is one of systemic subordination, determined by the forces of patriarchy across classes, regions, and the rural/urban divide.”

\textsuperscript{76} There remains the fact that even the meagre 5% quota of posts reserved for women for administrative posts is hardly filled, as women are presumably reluctant to expose themselves to the harassment of male colleagues reluctant to accept their presence. One may also note certain anecdotal discriminatory measures, such as the absence of women’s toilets in some buildings of recent construction, the architects having forgotten to include them in their plan...

\textsuperscript{77} Uma Chakravarti (2005:309) notes that: “Violation of marriage codes is regarded as an attack upon izzag (‘honour’ or ‘prestige’), a wide-ranging masculine concept underpinning patriarchal practices in India across all castes. Action upholding izzag is always a male prerogative: women can only ‘incite’ action; since violence is sanctioned to uphold izzag the use of the term masks its real meaning for those who experience the violence. As the case studies . . . demonstrate the concept of ‘honour’ in punishing ‘defilers’ is essentially a means of maintaining the material structure of ‘social’ power and social dominance. ‘Honour’ is one of the most valued ideals in the subcontinental patriarchies, whether Hindus, Sikhs or Muslims - with most communities seeking to gain and maintain ‘honour’” (Casimir and Jung, 2008: 36).
3.2. A Worrying Situation

Following the promulgation of the Hudood Ordinances, the courts, which made little effort to struggle for the independence that the constitution in principle accorded them, could no longer limit themselves to an apparent neutrality on the grounds that they were simply applying the law - to the letter. Instead, they were pushed into the socio-religious ‘arena’, as they attempted to finesse the contradictions between the MFLO and the Zina (Enforcement of Hudood) Ordinance. Until very recently, the equation was the following: if the courts applied the provisions of the MFLO that required the registration of marriages, a large numbers of offenders could be accused of zina (adultery). If the courts agreed to recognise non-registered marriages, men guilty of rape and kidnapping would be in a position to get themselves out of trouble by citing the sanctity of marriage. In case of doubt, judges tended to acquit male defendants. Another issue concerned women who had divorced through an orally pronounced talaq: could they remarry? Should one take in good faith the declarations of their former husbands who, on the grounds of the crime of zina, declared that there had been no break? For once, the courts gave the benefit of the doubt to the female gender. A whole series of decisions, orders and contradictory opinions have mushroomed. With many judges lacking the training required to sit on cases of family law and being unaware of the few clear guiding principles enunciated by the Supreme Court, national jurisprudence was, as if inadvertently, ‘enriched’. To add to the confusion, a parallel system of justice was put in place in 1980 with the establishment of the Federal Shariat Court of Pakistan (FSC) and the Shariat Appellate Bench of the Supreme Court, whose members continue to be nominated by the President of the Republic. Another oddity lies in the fact that three of the eight judges of the FSC (and two of the five judges of the appellate bench) are ulema who are only knowledgeable in Islamic law. The Federal Shariat Court - either sui moto or at the request of a citizen - may examine laws that may be contrary to the injunctions of the sacred texts. It can thus insist that the government makes the amendments the court deems necessary. Appeal is to the Shariat Appellate Bench of the Supreme Court.

---

78 The recent protests by lawyers that followed the dismissal in March 2007 of the President of the Supreme Court, Iftikhar Muhammed Chaudry, are intriguing. The Pakistani and foreign mass media generally praised the movement in favour of Chaudry’s opposition to Musharraf’s enduring helmsmanship. But they often neglected to mention the disrepute widely believed to characterise the judicial organs of the Islamic Republic. The ‘common man’ in Pakistan - disadvantaged in so many ways as he may be - is no fool, and is perfectly well aware of the value of well-functioning public institutions and effective leaders.

79 After the promulgation of the Eighth Amendment of the Constitution, there was a resurgence of the controversy regarding the legality of various sections of the MFLO. Section A of Article 2 stipulates that: “The principles and provisions set out in the objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly” (cf. www.pakistani.org/pakistan/constitution). When consulted in a 1998 case, the Sind High Court declared that the MFLO was contrary to Islam. The Supreme Court delivered a different opinion, but it did not pass judgement on the scope of the High Court’s jurisdiction.

80 Another use of the Offence of Zina (Enforcement of Hudood) Ordinance allows parents to take it upon themselves to not only select but more or less impose a spouse on their children. They can thus accuse their own daughter of zina in order to force her to return back home.

81 For example: noting that the Muslim Law Family Ordinance did not apply to persons who had renounced their Pakistani citizenship, a court examined (although it was not relevant to the case before it and the court had no jurisdiction to do so) the possible modes of operation of talaq (Warraich and Balchin, 1998: 184). The parties to the case were hanafis: the judges indicated that talaq having been uttered three times consecutively, it took immediate effect. In a sense, this restored the one-sided usage of talaq-e-bidat that the Muslim Family Law Ordinance had been intended to limit (Warraich and Balchin, 1998: 184).
After the death of Zia ul-Haq in a plane crash in August 1988, civilian governments preferred to steer clear of a judicial issue that looked explosive to them. Even so, they were a few efforts at public debate. Thus, the Commission on the Status of Women, publishing its conclusions in 1984, defended the need for the “creation”, then rigorous mobilisation of “social consciousness”\textsuperscript{82}. In 1996, Islamabad signed the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, that had - ironically - been adopted in 1979. It also made a commitment that equality would be the guiding principle of its judicial system, working to eliminate all discriminatory laws and to adopt others in conformity with the Convention. In parallel, to the grand satisfaction of the orthodox camp, the country was witnessing the consolidation of the values bequeathed by Zia ul-Haq.

So the problem of the Hudood Ordinances fell into the in-tray of another military man who came to power in October 1999. In his dealing with ‘western’ interlocutors, General Pervez Musharraf made a point of promoting the concept of ‘enlightened moderation’; a tolerant vision of Islam. In September 2000, his government convened a body that was given permanency, the National Commission on the Status of Women. The main objective of the Commission was to examine all laws and rules that affected the status of women, or ran contrary to their rights. The Musharraf administration tacitly emphasized certain clauses of the constitution that granted fundamental rights to citizens; Pakistan also undertook a number of international obligations. The Hudood Ordinances represented a key battle-ground, because they had declared that evidence given by women was inadmissible,\textsuperscript{83} the age of maturity was based on the onset of puberty; zina had been equated with zina-bil-jibr, etc. The Commission mercifully recalled that several provisions of the Ordinances were contrary to the tenets of the Quran. The Holy Book did not deal with zina-bil-jabr; it ruled out the death sentence (by stoning) for cases of adultery; offenders risked divorce, while women could defend themselves against such accusations. The Surat Al Noor (The Light) (24: 6-8) states that:

“6. As for those who accuse their wives but have no witnesses except themselves; let the testimony of one of them be four testimonies, (swearing) by Allah that he is of those who speak the truth; 7. And yet a fifth, invoking the curse of Allah on him if he is of those who lie. 8. And it shall avert the punishment from her if she bear witness before Allah four times that the thing he saith is indeed false” (M.M. Pickthall, 1930).

The National Commission on The Status of Women also emphasized that those who accused women of zina ran no risk whatsoever, even though the crime of qazf, or false accusation, was clearly defined.

\textsuperscript{82} The Commission declared itself in favour of the living conditions of women being the subject of radio and television documentaries, with the print media associating itself to a campaign which, without explicitly advertising its goal, would have aimed to bear witness to the “extent of the neglect” to which the female population was victim, and to the consequences this had upon society, notably in terms of slowing development. The reasoning behind certain other recommendations - presumably selected for their persuasive power - was scarcely grounded in a vision of women as individual subjects whose happiness was an intrinsic good: better nourishment of girls to make for mothers in good health; ensure pregnant women a better diet and more rest; space pregnancies to ensure the health of new-born infants; encourage physical exercise to lead women to better fulfil their roles as mothers, and to prevent them being a burden in the event of natural disasters... (Cf. Report of the Pakistan Commission on the Status of Women, 1984: 22, 41).

\textsuperscript{83} According to the Constitution, the religious minorities were permitted to set up their own courts to deal with family matters, but were nonetheless subject to the Hudood Ordinances since these had been integrated into Tazeer, the penal law.
In 2002, a committee of fifteen members (including senior judges, Sunni and Shia religious experts and the President of the Council of Islamic Ideology) was convened. The country at last dared to formulate its opposition to the sensitive question as to whether the *Hudood Ordinances* were contrary to the Quran. Examining these laws, twelve of the fifteen members of the committee called for their abrogation and the restoration of the laws that had preceded them; two others recommended their amendment, while the fifteenth member of the body chose abstention. The committee, overall, came to the conclusion that *Hudood Ordinances* were riddled with “lacunas and anomalies” and that their implementation had brought “injustice rather than justice” (Razvi, 2008: 4). Finally, the committee recommended that parliament (*Majlis-e-Shoora*) debate the matter. The committee’s report was published in March 2003. The following year, the *Criminal Law (Amendment) Act* was passed, which came into force as of January 2005; women declared guilty of *zina* were freed.

News that the amendment of the *Offence of Zina (Enforcement of Hudood) Ordinance* and of the *Offence of Qazaf (Enforcement of Hudood) Ordinance* was envisaged set off stormy protests. On 15 November 2006, *The Protection of Women (Criminal Laws Amendments) Act* was adopted. The sense that it was almost politically impossible to amend the *Hudood Ordinances* (certain actors equating any such desire for change with an attack on Islam) weakened. Pakistanis congratulated themselves that they had been able to progress employing democratic means, even though the texts had been imposed upon the country. They had to acknowledge that it was not possible to abolish the *Hudood Ordinances*.

The *Protection of Women (Criminal Laws Amendments) Act* makes reference, in its preamble, to the issue of providing protection to women. However, it scarcely tackles the discrimination to which they are subjected, notwithstanding Pakistan’s international obligations in this respect. The law does not address the contradictions between the Islamic and civil branches of law, leaving the courts large scope for interpretation. The use of the whip is no longer envisaged, while stoning has not been formally abolished. In effect, those found guilty of *zina* are either fined, imprisoned (for up to five years) or both. However it appears that the country, indirectly trying to address the problem of the inadmissibility of evidence given by female witnesses, has tried to put an end to denunciation: all complaints should now be the subject of a court enquiry, however slow and imperfect that process may be. Finally, rape is now considered a crime under the Penal Code: women victims can register a case without fearing an accusation of adultery. However, they should no longer do this at a police station, but at a Sessions Court, where working hours are more restrictive. The law-makers tried here to get round the lack of diligence demonstrated by police personnel in recording such complaints, but will the courts be any more inclined? And what about access for complainants living in rural areas? Whatever the case, time - and jurists - will tell how effective this legislation is, particularly as parallel jurisdictions have not been abolished. The wish of the layperson is straightforward: legislation reform to bring clarity, after which the country will also be forced to state clearly the status its men are ready to grant its women.

---

84 There remains the matter of pregnancies resulting from rape or from consensual sexual relations which unmarried women try to conceal, unable to have access to an abortion. Until recently such women could be punished by prison as soon as their crime was discovered - prison offering, at least temporarily, protection of their life and that of their infant. Tradition precluded the celebration of marriage at this stage. Certain guilty women prefer to serve out their sentence; when they are freed, they are generally not in a position to return home.
3.3. The Long Road towards the Improvement of the Condition of Pakistan’s Women

During 2004, Parliament enacted legislation that took effect in January 2005 and was intended to prevent karo kari, siyah kari and other practices widely referred to as ‘crimes of honor’. The state, thereby, acknowledged that these practices were contrary to the fundamental rights of women, and put them in a highly vulnerable position. Moreover, the Ministry of Women Development announced - after the promulgation of the Protection of Women (Criminal Laws Amendments) Act - that it was planning to legislate on the following subjects: the marriage of young girls to adults; vani-swara, a custom according to which a woman is offered in marriage to an enemy family as atonement for an earlier wrong - a means of putting an end to a vendetta; the ‘marriage to the Quran’ - under the terms of which a young girl, relinquishing the right of future marriage, devotes herself (at least in theory) to the study of the Quran.

Would the prison sentences foreseen suffice to discourage such practices? And would the fines for offenders be fixed at an appropriate level, or would those fined be kept in prison for extended periods through their inability to pay? It would entail, in any case, a revision of a series of British-period laws (the 1875 Majority Act, the 1890 Guardian and Wards Act, the 1929 Child Marriage Restraint Act, and finally the 1976 Dowry and Bridal Gifts Restriction Act). Taking the Pakistani situation into account, offenders may well prefer - no doubt arguing that they were acting within their rights - recourse to a few unofficial payments to circumvent government intrusion, which in several areas is tolerated only as long as it does not interfere in local issues. How is it possible to convince them that such legislation would be for the betterment of the country?

Summarising the year 2007, the Human Rights Commission of Pakistan (HRCP) listed some 4,276 cases of violence against women; 636 were victims of ‘crimes of honor’, 731 had been raped and 736 kidnapped; there were no figures available regarding women who had been burned by their husband’s family or of more ‘traditional’ types of domestic violence.

85 We will not look here at the different categories and regional variations of ‘honour crimes’, leaving that for another article. For the time being, we will limit ourselves to noting that the various motivations behind these crimes are not always ‘noble’, and may be nothing more than a desire to get rid of a ‘burdensome’ wife, of a sister-in-law who refuses to give up her husband’s legacy, or of debts towards a neighbour.

While visiting a village in Dadu District of Sind, the author was told by local residents of a ‘crime of honour’ committed the previous week: a brother had killed his sister and aunt, the latter having tried to stop the first killing. The husbands of the two women were apparently largely unperturbed by these events. The father of the murderer had sold some belongings in order to pay off the police with a significant sum, thereby preventing any official investigation. He seemed to follow a simple logic: having already ‘lost’ a daughter, he had no desire to ‘lose’ a son. However, such social ‘approval’ is by no means always the case. A Pakistani expatriate visiting the region of Karachi killed his sister. His family had abandoned him to his fate in prison, not even providing him with the means to hire a lawyer.

86 In a village, some young Sindhis women introduced the author to a cousin who had given up all hope of marriage, happy to be simply spared material want. There was no available candidate in her family; custom in most of Pakistan favours marriages between cousins (often first cousins).

87 In India, as in Pakistan, in-laws tend to insist on bigger and bigger dowries, sometimes getting rid of a new daughter-in-law if her family do not pay the extra payment suddenly demanded in the aftermath of the marriage ceremony, or reckoning on a second dowry after the ‘accidental’ death of the first daughter-in-law. To note that brothers, thanks to the dowry that they receive, have to contribute to those of their sisters, thereby perpetuating the cycle.

88 More recently the Aurat Foundation, in a report entitled Situation of Violence Against Women in Pakistan, put forward a figure of 1321 incidents against women for the months of January to March 2008, including 366 murders (130 in Punjab, 110 in Sindh, 95 in NWFP, 25 in Balochistan and 6 in Islamabad), and 90 ‘crimes of
(Khan, 2008). Apart from what is chastely referred to as ‘conservative social practices’, the security situation worsened, and there is a tendency, since 11 September 2001, to draw attention to the opposition between the Pakistani law and order agencies and a religious extremism that observers have had difficulty to define, but the troops of which seem to resemble more and more to mercenaries who traduce the sacred texts for their own ends (927 persons killed in 71 suicide attacks during the course of 2007). In any event, the number of suicide attacks rose sharply and began to affect the centers of power (Islamabad and Rawalpindi), particularly in the aftermath of the siege of the Red Mosque in Islamabad (July 2007).

A fragile calm (that was to be broken by, amongst others, the attack on the Danish Embassy) seemed to spread after the formation of an elected government. Looking at developments in Pakistan, and the financial interests that preoccupy the political elite, one might be assured that not much will change. The Gilani government has nonetheless implied that women’s rights would be ‘restored’ in conformity with the relevant articles of the constitution. A five-point program has been announced which the National Assembly will examine. The objective is to ensure female participation of around 20% in government and quasi-government bodies. In addition, the Gilani government (like its predecessors) plans a program to eradicate conjugal violence. Employing cryptic language, Sherry Rahman, Minister of both Information and Women’s Affairs, indicated that state land would be granted to vulnerable women in order to promote their status within the family. Avoiding the delicate task of changing collective mentalities, that would necessitate not only radical legislative reforms, but also a redistribution of wealth, she declared: “Women will be given opportunities of making choices.”

Conclusion

Desirous of drawing some personal conclusions, rather than simply leaving the reader to interpret him- or herself the preceding text, the author, notwithstanding the fifteen years she has spent studying the history of the sub-continent, has found this exercise particularly challenging. The first reason for this, as was indicated at the very start of the article, stems from an international context structured around Manichean lines (‘you’re either with us or against us’) that insists on communities to adhere to one camp or the other. In addition, women have learned, if not to adhere, then at least to defend - often unconditionally, the principles most widely advocated within their societies. In such circumstances, how acceptable in Pakistan are the conclusions of a researcher with origins in a ‘West’ whose morality is lambasted in so many parts of the world?

Moreover, ‘Western women’ who do venture far from home territory can but acknowledge how, for example, recent film productions - to refer only to Hollywood - have contributed to portraying such a negative image of their sex. Those in other contexts opposed to improving
the position of women argue as to the corrupting influence of ‘Western’ moral values (even if these are by no means uniform). It is disingenuous for them to feign alarm at the catastrophe that would inevitably strike the societies of which they are part in the event of a genuine re-examination of the condition of their ‘sisters’ that they are a little quick to qualify as satisfactory. Their concern is rather to preserve the existing social structure, taking care to avoid the issue of necessary political, economic and social reforms of benefit to the population as a whole. In effect, it is only upon gaining additional rights for themselves that men become ready to concede some of them to their female fellow citizens.

Whatever the case, any attempt to examine gender relations in the Pakistani context demands frankness free of all prejudice in looking at the evolution of the country since its independence. First of all, it requires recognition of the heavy burden inherited from the colonial period. This had roots in a process that made women the object of a struggle between two male-dominated camps that above all sought to prevail politically. Pakistan was no exception this ‘rule’, even as the participation of women was indispensable to the process of nation-building. Such was the case in other former colonies, but the new state of Pakistan was fragile and its colonial heritage left it particularly vulnerable.

Taking advantage of those (women) who were scarcely used to expressing themselves, (male) political leaders asserted that they were not ignorant of women’s wishes and undertook to fulfil those wishes. They sought to assure the dominance of the man within his own household, hoping that this would reconcile those men to the tough socio-economic environment that most of them would find themselves in. They also implied that the state would work to protect women from themselves. Did they take on board the myth of the necessity of protecting the ‘morally weak’ second sex from itself and predatory males that both colonisers and colonised had long made use of in their own domestic world? There can be no empirical answer to such theological questions. One might also, however, mention the prickly issue of the morality of believers; religious duties not being solely for women. Physical chastity is one issue amongst a number of others. The Quran only authorises polygyny for men, but it is implied that the majority of ordinary men are incapable of satisfying the stated principle of equality of treatment. Another issue is that of the role of the modern state, itself modelled in many respects on the European nation-state, that deemed itself responsible for the moral well-being of believers, encouraging them - if necessary by coercive measures - to respect the key religious precepts. The imposition of a moral order, thus, presents a significant threat to the maintenance of the freedoms which all should be able to enjoy. Moreover, it may be an obstacle to any kind of social change, some degree of which is essential to the well-being of society and its members; it is surely insulting to them to consider that, left to their own devices, they would give up their faith in their guiding spiritual principles. Indeed, some would argue that ultimately it is not for those on Earth to judge our behavior in this world.

A second approach to the issue under examination is the analysis, since Pakistan’s independence, of the political, economic and social indicators that bear witness to the poor state of health of society, even as the over-spill of the Afghan conflict into the FATA and NWFP, as well as the impact of the global economic down-turn are considered likely to make

---

89 The religious text places severe limits on this practice: “And if you fear that you will not be able to deal justly with the oppressed women [Yatama- literally, the Orphans among women-see the context], then marry from among them two or three or four, but if you fear you won’t be just [even then], then marry only one.” (Quran 4:3).
matters worse. In painting this gloomy picture, it is important to wonder at the failure of political and military elites of Pakistan to fulfil their duty: the building of a society that protects and improves the position of the most vulnerable, offering them an environment favorable not only to their religious, but also political, economic and social development.
Bibliography


**Articles**


*1,321 cases of violence against women in three months: NGO*, The Dawn, Karachi, 8 June 2008.


*Qu’est ce que la Sunnah ? Réponse du Shaykh Gibril F Haddad*, www.islam-sunnite.com


