BARAZA!
A Sisters In Islam Bulletin

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MUSLIM WOMEN SPEAK

# Diversity of Opinions: An Islamic Legacy

*The three daughters of the current and two past Prime Ministers – (from left to right) Nori Abdullah, Hanis Tun Hussein and Datin Paduka Marina Mahathir performing a "monologue" on women's lives before the launch of the SIS International Consultation on Trends in Family Law Reform in Muslim Countries in March 2006.*

Welcome to the second issue of *BARAZA!*, Sisters in Islam's biannual issues bulletin. The inaugural issue of *BARAZA!* tackled the impetus for the reform of Islamic family laws across the Muslim world. We compiled scholarly opinions, historical facts and trends that made the case for a comprehensive reform of laws governing the personal status of Muslims. The recurring theme was that such reform was necessary because the realities and complexities of our lives today are vastly different from the realities faced by pre-modern Islamic jurists.

However, making the case for such reforms opened up a series of larger questions. What do we do when there is diversity of opinion in Islam? Has there always been such diversity? If so, were these opinions complementary or were they ever competing and conflicting? What facets of Islam are affected by this diversity of opinion? The spiritual? The mundane? The legal? The theological? The nature of Government? Which opinions, then, are 'authentic'? What happens when certain stakeholders refuse to acknowledge diversity of opinion? What happens when we are beset by new problems that are not referred to in the traditional opinions of jurists and scholars?

In this issue of *BARAZA!*, we have compiled articles by key Islamic scholars on the subject of diversity of opinion in Islam. Our main essay, by **Mohammad Hashim Kamali**, explores the scope of diversity and disagreement among pre-modern Islamic jurists. He reveals that diversity can be traced back to the formative years of Islam, when the Companions themselves "disagreed about matters of interpretation and even … reached an agreement to disagree." Next, we present a Q&A with **M.A. Muqtedar Khan**, who argues for a "democratisation of interpretation" in order to achieve meaningful democratisation in Muslim societies. Muqtedar suggests that an interpretation that remains frozen in the past is what leads to an inflexible fiqh-centrism.

It is precisely this problem that **Muhammad Khalid Masud** looks at by exploring the complications in applying Islamic laws to Muslim minorities. Unlike Muslim-majority contexts, in which Islam can be – and is very often used as – a source of law and public policy, Muslims in Muslim-minority contexts have to deal with the formulation and application of fiqh within largely secular contexts. In order to reconcile the dilemmas faced by Muslims in either context, Muhammad Khalid stresses the need for "Muslim jurisprudence of citizenship in the framework of pluralism, in order to respond to the current political and legal challenges."

**Kecia Ali**'s essay looks at differing interpretive approaches to a complex Qur'anic verse – Surah An-Nisa (4:34) – which is very often quoted to support the idea of women's subordination to men. The essay looks at the complications behind this assumption and points towards the vast implications of different interpretations of this verse.

We also include a short essay by **Shanon Shah** explaining the evolution of a very important juristic tool in Islam – the fatwa. He compares the pre-modern practice of fatwa-making to contemporary institutionalisation of fatwa in different Muslim states.

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EDITORIAL

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To round off this issue of *BARAZA!*, we revisit two aspects of our work in reforming Islamic family law. The legal aspect is explored by Fulbright scholar **Ziad Haider**, who helps us compare key differences between the current Islamic and Civil Family Law codes. The experiences of women affected by the law are related by SIS legal officer **Razlina Razali** in presenting the background to the legal services offered by SIS. Razlina and **Zaitun Kasim** also recap our Islamic Family Law campaign in a separate essay.

Exciting times lie ahead for Muslims around the world. Certainly, there is a strong and vocal sector among Muslims which claims to speak for an "authentic" Islam, and chooses coercive and sometimes violent means of crushing dissent. However, growing numbers of Muslims feel that the discussion on diversity of opinion in Islam is long overdue.

These Muslims are moved by the same humility that underlined Imam Shafi'i's assertion that "My opinion is correct but the possibility of error exists." It is also this humility that underlined Imam Malik's refusal to allow his own opinions to be imposed upon the public. In fact, when the second Abbasid Caliph Mansur wanted to display Malik's *Muwatta* at the Ka'abah, the latter forbade it, saying, "People in different parts of the Muslim world may have received differing information." Malik told the Caliph that, "Diversity of opinion is Allah's gift to the ummah" and any imposition of one individual's opinion upon the public would be tantamount to destroying this divine gift.

In light of this, SIS has always maintained that Islam's treasury of wisdom and guidance lies in plural interpretations that have existed and enriched us since the earliest days of Islamic civilisation. Our view is that productive spaces to explore this pluralism must be enhanced and expanded so that this treasury will continue to ensure universal justice, equality and human rights for all times.

The editorial team
*BARAZA!*

*A rare opportunity – SIS members and friends meet with former President of the Republic of Iran, His Excellency Mohammad Khatami.*

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*BARAZA!* is a resource primarily for activists; policy makers; academics and students of law, Islamic and gender studies; and SIS funders and supporters.

It provides:
* a focus on contemporary matters affecting Muslims today, especially women's rights in Islam.
* resources for reference
* an update on SIS activities.


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# The Scope of Diversity and Ikhtilaf

Mohammad Hashim Kamali

With its tolerance of disagreement among the ulama over juristic issues, Islamic law is described as being one of diversity within unity – diversity in details and unity in principles. *Ikhtilaf* (juristic differences) in Islamic law is reflected in the existence of at least five different schools of jurisprudence surviving to this day. Islamic law has a rich tradition of diversity and disagreement even as it has remained open to the influence of various legal traditions.

*Ikhtilaf* however needs to be viewed in conjunction with the Islamic principle of *tawhid*, the belief in the Oneness of God. *Tawhid* is the first article of the Muslim faith. It is a major Qur'anic theme emphasising one God, one Islam, one scripture and one ummah. The plurality of schools and mazhab does not alter the fact that there is only one shariah. The various mazhab that have emerged over the centuries are schools of fiqh that have interpreted the shariah in light of the realities of their time. None has claimed to be shariah unto itself, yet all share the same shariah.

Fiqh is narrowly concerned with the practicalities of conduct and legal rules. Shariah, however, broadly encompasses this and the very essence of belief. It is in the realm of fiqh that *ikhtilaf* operates as Islam's dogma, and moral teachings are not open to *ikhtilaf*. Even the slightest bit of disagreement over the faith's essentials, for example its five pillars, is not tolerated. Indeed, the *tawhidi* philosophy of Islam is very strong, though people tend to notice the disagreements over this consonance.

Recently we have seen signs of gradual unity among Muslims. During the era of imitation – *taqlid* – the schools of law emphasised their own identity, occasionally making self-righteous assertions of their shariah interpretations. But in the present century, many a prominent Sunni jurist writes on the juristic legacy of the Shi'ite ulama and lauds their contributions. Such an open and accepting spirit is at the heart of *ikhtilaf*.

## Ikhtilaf and Ijma'

*Ikhtilaf* is accepted at the level of juristic interpretation only and needs to be seen with the competing concept of *ijma'* that limits *ikhtilaf*'s scope. After the Qur'an and the Sunnah, *ijma'* is theoretically the benchmark for proof and source of Islamic law. It embodies the collective conscience of the Muslim community, the undivided consensus over correct textual interpretations reached through *ijtihad*. On its own, individual *ijtihad*, however sound, is not binding on anyone. All enjoy the liberty of their own opinion, naturally ensuring disagreement before an *ijma'* materialises on a

### Tawhid

In Arabic, it literally means "making one" or "unifying." It is considered by many twentieth-century Islamic activists to be the defining doctrine of Islam. Although it was also traditionally recognised as a fundamental doctrine, its popularity as Islam's defining doctrine is a modern development. The term *tawhid* is not mentioned in the Qur'an.

Early theologians used it in their interpretations of the relationship between the Divine Essence and Divine Attributes. In the thirteenth century, Ibn Taymiyyah clarified the early theologians' positions, and added his own interpretation which shifted the emphasis on *tawhid* from being purely theological towards more socio-moral issues. The modern importance of *tawhid* only emerged after the reformist Sheikh Muhammad Abduh published a full discussion of its implications in his *Theology of Unity.*

Source: The Oxford Encyclopedia of the Modern Islamic World, John Esposito (editor in chief) *(1995: Oxford University Press, Oxford)*

### The era of imitation

According to some Sunni theorists, the so-called *bab al-ijtihad* (gate of independent legal thought) was "closed" at the time of the canonisation of the schools of Islamic law (circa tenth century CE). *Ijtihad* (the exercise of independent judgment by one who has sufficient knowledge) was therefore superseded by *taqlid* (the imitation of those precedents that went before). The rationale for *taqlid* was that earlier scholars were unsurpassed in their knowledge of the sacred sources and that they accomplished the interpretative work underlying inherited doctrine in a manner that exceeded the capacities of later generations. However, followers of the Hanbali school, particularly Ibn Taymiyyah, held that the gate of independent legal thought was never closed.

Source: Newby's Concise Encyclopedia of Islam *(2002: Oneworld, Oxford)* and The Oxford Encyclopedia of the Modern Islamic World.

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particular ruling. *Ijtihad* with its capacity for disagreement can thus be seen as another name for *ikhtilaf*.

If the issue of *ijtihad* is important to the community as a whole, it calls for general scrutiny by the ulama and *mujtahidin*. Two possibilities can follow: the individual *mujtahid* is not supported by *ijma'* and the opinion remains an isolated one, or it is elevated to the status of *ijma'* supported by general consensus. In this process *ikhtilaf* is tolerated as a matter of principle. No one can prevent a *mujtahid* from expressing opinions in accordance with his true convictions.

> *'The following Hadith is often quoted as a theoretical basis for legitimising ijtihad: "When a Judge exercises ijtihad and gives a right judgment, he will have two rewards, but if he errs in his judgment he will still have earned one reward." The Hadith encourages tolerance in academic endeavors. In this spirit, other scholars and mujtahids may do well to exercise restraint in denouncing views they consider erroneous.'*

But *ikhtilaf* must meet two basic requirements: opposing views must be based on valid evidence and cannot lead to something unrealistic. These must also have a basis in *ijtihad* supported by valid evidence.

And when there is general consensus over a particular ruling, *ikhtilaf* must come to an end. The *mujtahid* with a differing opinion is expected to conform to the *ijma.'* Thus, the *raison d'être* of *ijma'* is to regulate and put an end to *ikhtilaf* in order to preserve the unitarian spirit which is of central importance in Islam.

## Causes of Ikhtilaf

Three factors cause disagreements among *ulama*: (1) linguistic matters related to the interpretation of the relevant text; (2) knowledge and authenticity of a Hadith; and (3) proofs and principles of *usul al-fiqh*.

The Qur'an contains words and sentences that are open to interpretation. Disagreements over the meaning of a word might stem from homonyms which carry more than one meaning. Take for example the word *quru'* (verse 2:228). The text in question concerns the waiting period (*iddah*) a divorced woman must observe before she remarries. Her *iddah* consists of three *quru*, which could mean either three menstruations (*hayd*) or three clean periods (*tuhr*) between menstruations. The latter meaning would actually imply four menstruations and, therefore, a longer waiting period. The Companions differed over this and subsequent generations of *ulama* have inherited these differences, leaving the *ikhtilaf* unresolved.

A second cause of *ikhtilaf* is ignorance of a Hadith, especially in the period prior to the compilation of Hadith in mid-third century Hijrah. Some of the disagreements that arose between the Traditionalists *(Ahl al-Hadith)* and Rationalists *(Ahl al-Ra'y)* related to the fact that the scholastic centres of Kufah and Basrah in Iraq did not know some of the Hadith known in Makkah and Madinah. On these issues, it seems, the ulama of Kufah resorted more frequently to *ra'y* and *qiyas* (analogy). Even the ulama of Madinah were not at times well informed of the relevant Hadith and resorted to Madinan practice *('amal ahl al-Madinah)* or to *qiyas*.

### Usul al-Fiqh

Muslim jurists generally define *usul al-fiqh* ("roots of law") as the body of principles and the investigative methodology through which practical legal rules are derived from their particular sources. Its scope of interest may be likened to the field of jurisprudence in English law, as well as to the field of interpretation of statutes. Imam Shafi'i, in his Risalah, identified the sources of law (*usul al-fiqh)* as:

- the Qur'an
- the Sunnah of the Prophet
- *Ijma'* (consensus of those with sufficient knowledge to practise *ijtihad*) and
- *Qiyas* (deductive reasoning that allows one legal case to be linked to another by analogy)

Other sources of *fiqh* practised by the other Sunni schools of thought are:

- Amal Madinah (the practices in Madinah)
- *Ijtihad* (independent judgment by those who have sufficient knowledge)
- *Istihsan* (juristic preference)
- *Maslahah* (public interest)

Source: Newby's Concise Encyclopedia of Islam and The Oxford Encyclopedia of the Modern Islamic World.

Considerable differences have also arisen among schools on certain methodologies and principles of *usul al-fiqh*. There are differences with regard to juristic preference or *istihsan*, the nearest shariah equivalent of the doctrine of equity in Western jurisprudence. *Istihsan* authorises a judge or a *mujtahid* to find an alternative solution to an issue when the strict application of existing laws leads to unsatisfactory results. While the majority accepts *istihsan*, the Shafi'i school has rejected it altogether.

## Etiquette of Disagreement

The Qur'an and Sunnah are generally supportive of rational inquiry into its laws. The Companions were actively engaged in discussing legal questions. They differed from one another on matters of interpretation and *ijtihad* but tended to acknowledge and tolerate *ikhtilaf*. Their method of resolving differences was to first refer to the Qur'an and Sunnah. Only in the absence of a clear ruling in these, did they resort to *ijtihad* and *shura*. *Shura* (consultation) is a Qur'anic principle regularly practised by the Prophet (peace be upon him).

The following Hadith is often quoted as a theoretical basis for legitimising *ijtihad*: "When a judge exercises *ijtihad* and gives a right judgment, he will have two rewards but if he errs in his judgment he will still have earned one reward." The Hadith encourages tolerance in academic endeavours. In this spirit, other scholars and *mujtahids* may do well to exercise restraint in denouncing views they consider erroneous.

Even so, the Prophet also directed his Companions to avoid purposeless and destructive disagreement. On one occasion the Prophet heard two people arguing over the minor points of a Qur'anic verse such as its accentuation. He came out evidently angered with the kind of *ikhtilaf* they were engaged in and said: "Verily people were destroyed before you for (their excessive) disagreement over the Scripture." In other words, *ikhtilaf* can be destructive even if the parties mean well.

## Types of Ikhtilaf

The ulama have classified *ikhtilaf* into three types: praiseworthy (*mahmud*) – such as disagreement with the advocates of heresy and misguidance; blameworthy (*madhmum*) – of the kinds mentioned in the Hadith cited above; and one which falls between the two. The hallmarks of distinction between the praiseworthy and blameworthy *ikhtilaf* are sincerity and devotion. Whether the purpose is a worthy one, such as the advancement of sound *ijtihad*, or tainted by selfish interest, is likely to play a crucial role in determining the merits of *ikhtilaf*.

In Risalah, Imam Shafi'i divided *ikhtilaf* into two types: forbidden disagreement (*al-Ikhtilaf al-muharram*) and permissible disagreement (*al-Ikhtilaf al-ja'iz*). Disagreement is forbidden in matters determined by clear textual evidence in the Qur'an and Sunnah for anyone who is aware of it. In support of the Qur'anic directive, Shafi'i then said to the believers: "And be not like those who are divided amongst themselves and fall into disputations (*ikhtalafu*) after receiving clear signs." On matters of permissible *ikhtilaf*, Shafi'i referred to the general rules and guidelines of *ijtihad* discussed in Risalah, with the proviso that priority should be given to supportive evidence obtained from the Sunnah or through *qiyas*.

### Imam Shafi'i

Imam Shafi'i (b. 767 – d. 820 CE) started off as a dedicated student of Imam Malik. When Shafi'i went to Baghdad, he found that many people were ready to find fault with the legal opinions and methods of the Madinan, especially Imam Malik. Shafi'i stood up in Malik's defence. Later, when Shafi'i travelled to Egypt, he encountered a different situation: most people there adhered strictly and unquestioningly to the opinions of Malik. Consequently, Shafi'i conducted a critical analysis of Malik's opinions and found, among other things, that in some cases, "... he (Malik) formulates opinions on the basis of a general principle, while ignoring the specific issue; whereas at other times he gives a ruling on a specific issue and ignores the general principle." Moreover, Malik claimed in many cases that there was *ijma'* concerning the matter, when there was, in fact, disagreement about it. It was from this critical analysis of Malik's opinions that led Shafi'i to write Risalah.

Extracted from:
http://www.usc.edu/dept/MSA/law/alalwani_usulalfiqh/ch4.html

*Ikhtilaf* is a well-developed area of fiqh and works of scholarship on *ikhtilaf* date as far back as those of *fiqh* itself. The first known extant work of *ikhtilaf* is by Abu Hanifah titled *Ikhtilaf al-Sahabah* (Disagreement among the Companions). His disciple Abu Yusuf wrote a book entitled *Ikhtilaf Abi Hanifah wa Ibn Abi Layla*. Shafi'i also wrote a book entitled *Ikhtilaf Abi Hanifah wa'l-Awza'i* and has a chapter on *ikhtilaf* in Risalah. He also recorded in Kitab al-Umm his disagreements with Malik.

The style and content of these works have changed over time. Initially the style of writing tended to be somewhat defensive, seeking to vindicate one's own views without discussing the works of other *mazhab*, except perhaps in areas of difference. Subsequent works had a more comparative style of writing, and later, especially after the fifth-century Hijrah, following the decline of *ijtihad, ikhtilaf* works were influenced by regional developments. The focus shifted to disagreements within the ranks of the schools, including those between the leading imam and his disciples, or among the disciples themselves. Another notable development in this context is that the writers began to indicate their preferred positions and there emerged a genre of juristic literature on preferences (*al-tarjihat*).

## Conclusion

The existence of *ikhtilaf* as a well-developed and recognised branch of fiqh reflects the healthy climate of tolerance among the leading ulama and scholars of Islam. The fact that several schools of law have attempted to provide equally valid interpretations of the shariah – that they have accepted one another and have in turn been accepted by the Muslim community – is evidence of Islamic law's pluralism.

In the formative stages of Islamic jurisprudence – during the first three centuries – the scholars tended to excel in the degree of latitude and acceptance of *ijtihad*-oriented *ikhtilaf*. The Companions disagreed about matters of interpretation and it is even said that they had reached an agreement to disagree. Their example also finds support among the leading authorities and ulama of the era of *ijtihad*.

Yet this understanding and openness was subject to restrictions during the era of imitation (*taqlid*) with instances verging on rigidity and stricture among the ulama's lower ranks. Indeed, the mazhab divisions in the Muslim ummah today, especially between Sunnis and the Shi'ah and among the students of different Sunni legal corpus, often tend to violate the spirit of *ikhtilaf*. There is a great need today for Muslims to unite and maintain consensus while recognising that these emerge out of open deliberation and principled *ikhtilaf. Ikhtilaf* and *ijma'* are inseparable even if they appear to be contradictory.

But even as *ikhtilaf* has played an inspiring role in Islam's intellectual heritage, its role should not be exaggerated. A legal order in society cannot proceed on the basis of never-ending *ikhtilaf.* The value of *ikhtilaf* is relative to and not independent of conformity and consensus that must be accepted as the stronger influences demarcating *ikhtilaf*'s limits.

> "The fact that several schools of law have attempted to provide equally valid interpretations of the shariah – that they have accepted one another and have in turn been accepted by the Muslim community – is evidence of Islamic law's pluralism."

To determine the correct procedure for the resolution of *ikhtilaf* in Muslim societies today, one should refer to the Constitutions and laws of the countries concerned. Resolutions of differences must be made in a *maslahah*-oriented manner in the interests of the people and by accommodating their views. Once a selection has been made by the ruling authorities, everyone must comply with it and disagreements must be laid to rest.

Of course, there is no single formula for resolving *ikhtilaf*. Often the shariah, or the applied law of a country, provide only general guidelines and leave specific decisions to be made by the experts or those in charge of community affairs. Yet, ultimately we must live with some of the unresolved *ikhtilaf* in juridical and theological issues that history has bequeathed generation after generation of Muslims. This is also partly a function of *ikhtilaf*'s circumstantial character that tends to increase in relation to new developments and unprecedented experiences. As such, it must remain the responsibility of every generation of the ummah to seize the opportunities they are endowed with to resolve inherited *ikhtilaf* or find a better way of reconciling their differences with it.


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Prof Dr Hashim Mohammad Kamali is the Dean of the International Institute of Islamic Thought and Civilisation (ISTAC) at the International Islamic University Malaysia.

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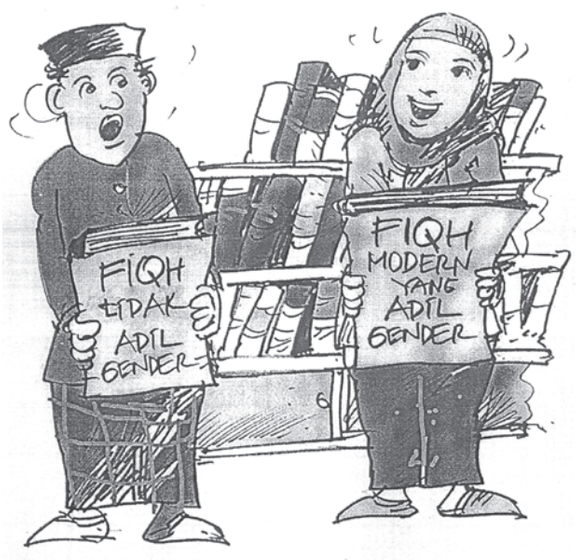


*Man: Fiqh with no gender justice.*
*Woman: Modern Fiqh that is gender just.*

*Illustration taken from "Dakwah Fiqh Perempuan: Modul Kursus Islam dan Gender" Muhammad, Husein et al. March 2006, Cirebon: Fahmina Institute.*

FOCUS

# The Priority of Politics:
## Is it possible to have an Islamic democracy that does not impose shariah?

Based on an essay by M.A. Muqtedar Khan

**SIS:** *There are several ongoing debates on the compatibility of Islam and democracy. There are several prominent Muslims who believe Islam is entirely compatible with democracy but such a democracy must not violate the precepts of the shariah. What do you think are the limitations of such an approach?*

**MK:** The extraordinary influence of the idea of "Islam as shariah" has made law prior to the state and political life. Instead of thinking of law as serving the changing needs of the political community, the polity is said to be legitimate only if it properly implements shariah. Certain discussions of the compatibility of Islam and democracy inadvertently reflect this mistaken view of law and politics. Thus, instead of concluding with a sketch of an Islamic democracy, these arguments instead impose shariah-based limitations on democracy. They make claims that a case for democracy from within Islam should not substitute popular sovereignty for divine sovereignty and should recognise that democratic lawmaking respects the priority of shariah. These discussions of Islam and democracy invariably end with an unmistakable edict – you can have democracy but only as long as people are not sovereign and shariah is not violated.

**SIS:** *But where does this idea that equates Islam with shariah come from?*

**MK:** One of the most prominent Islamic theologians, Sheikh Ibn Taymiyyah (1263–1328) – a great source of inspiration to conservative Muslims who advocate authoritarianism – argued for an Islamic leviathan that would defend the Islamic world from external military threats and Islamic doctrines from internal heresies. He claimed that the objective of an Islamic state was to impose the shariah.

**SIS:** *But surely it is reasonable for Muslims to assert the centrality of shariah in their lives?*

**MK:** There are certain things to bear in mind, especially when we are talking about how this influences the formulation of policies that affect the lives of ordinary citizens. For example, let's look at this claim that an Islamic democracy should recognise the centrality of *shariah* in Muslim life. This claim is scary and prompts several questions: Who gets to articulate what constitutes the shariah? Islamic jurists? Who determines who an Islamic jurist is? Who determines which schools can provide the education that will produce jurists? Who determines when a specific democratically passed law is in violation of the shariah? Who determines the issues on which people will have freedom of thought and action and the issues on which the so-called shariah will be unquestionable? The answer to all of these questions is the same – the Muslim jurist. If this is to be the definition of an "Islamic democracy," then it is an "Islamic democracy" that is essentially a dictatorship by Muslim jurists. It is much like contemporary Iranian democracy, which is often held hostage by the clerics.

**SIS:** *Then it appears that the prospects for an Islamic democracy are quite bleak. Do you see any possibility for an Islamic democracy that does not descend into this "dictatorship of Muslim jurists"?*

**MK:** There will be no Islamic democracy unless jurists permit the democratisation of interpretation. Let every citizen be a jurist and let her interpret Islam and shariah when she votes. In a democracy the vote/opinion/*fatwa* of every individual must be considered equal since ontologically all humans are equals. Insisting on the centrality of a fixed shariah is a recipe for authoritarianism. It does not matter if some jurists are interpretively more liberal than their traditional colleagues and their vision of the shariah is more inclusive but as long as the commanding authority of jurists remains in place and the jurists retain a monopoly on interpretation (*ijtihad*), there can be no Islamic democracy.

To be sure, the moral quality of this Islamic democracy will depend on the extent of Islamic knowledge and commitment of the citizens. But attempts to guarantee "Islamic outcomes" by requiring that, for example, "the essential shariah must be applied," will inevitably subvert democracy by handing authority over to jurists. Also, the Prophet of Islam (peace be upon him) reportedly said that "My ummah will not unite upon error." But no comparable claim is made about the infallibility of the opinions of the jurists. We are left, then, with the democratic idea that only public opinion should be trusted.

In short, the content of law in an Islamic democracy should be a democratically negotiated conclusion emerging in a democratic society. In the absence of this free and open negotiation, Islamic democracy will be a procedural sham that confines voting mechanisms to secondary matters.

**SIS:** *It is interesting that you talk about the "moral quality" of an Islamic democracy depending on the "Islamic knowledge and commitment" of its citizens. There seems to be a contradiction here, though. On the one hand, we can safely say that the intellectual*

*tradition that developed throughout the history of Islam is extremely rich and full of profound ideas. However, the debate on Islam and democracy so often stagnates at the most rigid discussions on shariah. How do you explain this?*

**MK:** It is true, the Islamic intellectual tradition – which includes Islamic legal thought (*usul al-fiqh* and fiqh), theology (*kalam*), mysticism (*tasawwuf*) and philosophy (*falsafa*) – is one of the most developed and profound traditions of human knowledge. In the area of political philosophy, however, this intellectual heritage remains strikingly underdeveloped. One of the reasons for this lacuna is the "colonial" tendency of Islamic legal thought. Many Islamic jurists simply equate Islam with Islamic law (shariah) and privilege the study of the latter. As a result we have only episodic exploration of the idea of a polity in Islam. Hundreds of Islamic schools and universities now produce hundreds of thousands of Islamic legal scholars, but hardly any produce political theorists or philosophers. With some rare exceptions, this intellectual poverty has reduced Islamic thought to the status of a medieval legal tradition.

**SIS:** *Let's go back to your assertion that an "Islamic democracy should be a democratically negotiated conclusion emerging in a democratic society." This is consonant with so-called 'secular' notions of democracy, too. Many Muslims, however, argue that in an Islamic state, human beings do not have the agency to create laws, they only implement laws that originate from God – the ultimate lawgiver in an Islamic state. How would you suggest a "democratically negotiated conclusion emerge" in this context?*

**MK:** The idea that God is the lawgiver in an Islamic state, whereas human agents are the source of law in a democracy, originates with Maulana Maududi. He coined the term *Al-Hakimiyyah* (sovereignty) and argued that in Islamic states only God was sovereign whereas in a democracy the will or whim of the majority ruled. This misunderstanding of both sovereignty and democracy has become a slogan for Islamists opposed to democracy.

Democracy implies more than mere majority rule. Constitutional democracies have guarantees that protect individuals from majority tyranny. The articulation of human rights as inviolable – as rights that cannot be taken away even by the will of the majority – is a clear example that democracy is not just mob rule.

Moreover, Islamists who talk of God's sovereignty have a narrow conception of sovereignty. Muslims must understand that while sovereignty belongs to God it has already been delegated in the form of human agency (Qur'an 2:30).

The political task at the moment is to reflect on how this God-given agency can be best employed in creating a society that will bring about a good life to people in the here and now and in the hereafter.

Muslims as individuals and as a community cannot be held accountable for what they do, unless they have some freedom, agency or sovereignty to act on their own judgments and preferences. The Day of Judgment is the natural consequence of human sovereignty; there cannot be one without the other.

Although God is sovereign in all affairs, He has exercised His sovereignty by delegating some of it in the form of human agency.

**SIS:** *Can you elaborate on your point? How does this address the claims made by advocates of the Islamic state that only God has the right to legislate?*

**MK:** As I said, God has exercised His sovereignty by delegating some of it in the form of human agency. To appreciate the nature of this delegation, one has to recognise the difference between sovereignty in principle (de jure) and sovereignty in fact (de facto). De facto sovereignty is always human, whether in a democracy or in an Islamic State.

The effect of claiming simply that God is sovereign and has the sole right to legislate is to give privilege to the few who will act in God's name. In what I would propose to be an Islamic democracy, every individual is a vicegerent of God (Qur'an 2:30) and therefore has the legitimate authority to act in God's name. Thus every citizen has the right to interpret and claim what is law (divine or otherwise). Though sovereignty is always God's in principle, human agency is what matters in practice. So we must assume that sovereignty is essentially human agency that must be both channelled and limited to establish just polities.

Ideas such as the primacy of shariah and God's sovereignty – which make states accountable to God alone and free them from accountability to the people – give power to a social elite. These are age-old canards that undermine freedom and encourage authoritarian states and totalitarian ulama. To establish an Islamic democracy we must first create a free society where all Muslims can debate what constitutes the shariah. Critics will say that God's will is not up for negotiation. But the imposition of law is against the spirit of Islam. God wants free submission. He wants his believers to worship him and obey out of free faith, not from fear of some state. Freedom comes first, and only faith that is found in freedom has any meaning. Practice of religion under duress violates the Qur'an, which is against compulsion (2:256), and religion under duress is manifestly worthless.

**SIS:** *What then is the difference between your vision of an "Islamic democracy" and the shariah-based "Islamic democracy" advocated by some other Muslims?*

**MK:** I share in the conviction that Islam and democracy are fundamentally compatible. To me, democracy is essentially intimidation-free political space which accepts the necessary evil of government and allows for a limited state that rules through consent, consultation and accountability while recognising the inalienability of certain principles and values (rights and duties). But a proper appreciation of these political-theoretical issues requires that the Muslim mind free itself from its legalistic tendencies and stop privileging shariah as a given. We must first seek to establish a polity that is Islamic/democratic and then negotiate what its laws will be.

**SIS:** *But can you give us an example of how this Islamic democracy would actually work in real life?*

**MK:** You see, if we bypass the legalistic tradition and return to the original sources of Islam, we will find in Prophet Muhammad's example an excellent model for an Islamic democracy.

After he migrated from Makkah to Yathrib in 622 CE, he established the first Islamic state. For ten years he was not only the leader of the emerging Muslim ummah in Arabia but also the political head of Madinah. As the leader of Madinah, Prophet Muhammad exercised jurisdiction over Muslims as well as non-Muslims within the city. The legitimacy of his rule over Madinah was based on his status as the Prophet of Islam as well as on the Compact of Madinah.

As a Prophet of God he had authority over all Muslims by divine decree (64:12, 47:33). He ruled over the non-Muslims of Madinah by virtue of the tripartite Compact that was signed by the Muhajirun (Muslim immigrants from Makkah), the Ansar (indigenous Muslims of Madinah) and the Yahudi (Jews). This compact was the basis of the polity of Madinah. It established a federation of communities that were equal in rights as well as duties. Thus the Jews of Madinah were constitutional partners in the making of the first Islamic state.

**SIS:** *So you are locating your framework for an Islamic democracy within the compact of Madinah?*

**MK:** In a way, yes. The Compact of Madinah provides an excellent historical example of two theoretical constructs that have shaped contemporary democratic theory – constitutions and social contracts – and should therefore be of great value to theoretical reflection on the Islamic state. In the state of nature people are free and not obliged to follow any rules or laws. They are essentially sovereign individuals. Through social contracts they surrender their sovereignty to the collective and create states.

The state then acts as an agent of the people, exercising the sovereignty that has been delegated to it through the social contract. The state is accountable to the people who constitute it and derives both legitimacy and power from the contract. Constitutions are the explicit articulations of the social contract and act as the legal basis of the polity.

On the basis of the Compact, Prophet Muhammad ruled Madinah by the consent of its citizens and in consultation with them. The Compact, which served the dual function of a social contract and a constitution, legitimised his authority over the city. The Prophet in his great wisdom demonstrated a democratic spirit quite unlike the authoritarian tendencies of many of those who claim to imitate him today. He chose to draw up a historically-specific constitution based on the eternal and transcendent principles revealed to him and he sought the consent of all who would be affected by its implementation.

**SIS:** *Perhaps you can elaborate more on how this view differs from views that advocate a shariah-based Islamic state? After all, couldn't we interpret the Compact of Madinah as a starting point for the development of an Islamic state based on the implementation of shariah?*

**MK:** Not really, because the Compact of Madinah did not impose the shariah on anyone and no laws were understood as given prior to the Compact. Neither Prophet Muhammad's divine mission nor the divine message of the Qur'an in any way undermined the principles of the Compact, though of course the values enshrined in it echo Islamic values of equality, consultation and consent in governance. As long as Islamic jurists focus on the post-Muhammad development in the discipline of Islamic legal thought and privilege it over his own practice, authoritarianism will always trump democracy in the Muslim milieu.

**SIS:** *It is indeed powerful that you see no contradiction between the ideals of democracy and the Islamic values of equality, consultation and consent in governance. But how does this translate into democracy in practice across Muslim societies? What are the challenges that Muslims face in trying to realise this practice of democracy?*

**MK:** Democracy must triumph in theory before it can be realised in practice. Muslims must widely and unambiguously accept that Islam and democracy are compatible and that meaningful faith requires freedom. Once we accept these principles we can address the political issues more easily.

But before Muslims can accept democracy as an Islamic principle, Islamic political philosophy must accomplish the following tasks:

1. Link political legitimacy not to the application of a legal code that is prior to politics but to the binding character of shura (consultation).
2. Reject the idea of a fixed shariah in favour of keeping

shariah open and dependent on negotiated understanding.
3. Explain how talk of divine sovereignty works to free rulers from accountability to the ruled.
4. Acknowledge the limits of the Islamic legal tradition and eschew it in favour of the Compact of Madinah as a basis for Islamic democracy.
5. Treat Islam as a fountain of values that guide conduct, rather than a system of ready-made solutions to problems.
6. Past legal opinions must not subvert contemporary political reflections. We will be free only when we can freely determine for ourselves what is the shariah. There is no mediation in Islam and the Islamic jurists must step aside. As long as the colonial tendencies of Islamic jurisprudence persist there will be no Islamic democracy.

**Acknowledgements**

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*Cartoon appearing in the New Straits Times following two break-ins at the SIS office at the height of the campaign opposing discriminatory amendments to the Islamic Family Laws.*

# Islamic law and Muslim minorities

Muhammad Khalid Masud

Presently, more than one third of the world's Muslims are living as minorities in non-Muslim countries, a fact that has posed challenges not only for the host countries, but also for the Muslims themselves. Most Muslims perceive Muslim minorities as an integral part of the larger Muslim community, or ummah. Many insist that Muslims must be governed by Islamic law, often that of the country of origin. Home countries are expected to offer human, political, and financial resources in order for minorities to live Islamically. This perception is quite problematic. It implies that while the Muslims have been living in these countries for three generations, their presence is transitory – it cannot conceive of Muslims living permanently under non-Muslim rule. This perception also tends to imagine Muslim minorities as colonies of the Muslim world. Apart from the question of whether Muslim countries are in a position to play the role described above, other serious questions are raised on the future of the Muslim minorities.

Notwithstanding the ambiguity of this position, some Muslim jurists continue to treat Muslim minorities today as did the medieval jurists, who regarded minorities as those left behind after the non-Muslim occupation of Muslim lands. These modern jurists presume that eventually minority Muslims will have to migrate back to Muslim countries. In the meantime, they must protect their religious and cultural identity by isolating themselves from their host societies. An example of this perception is *Muslim Minorities, Fatwa Regarding Muslims Living as Minorities* by the late Sheikh Ibn Bas and Sheikh Uthaymeen, two influential Saudi muftis. The book explains that preservation of faith and strict obedience to the laws of Islam are the foremost duties of all Muslims, including those living as minorities.

SNAPSHOT: Muslim minority populations in randomly selected countries

| Country | Muslim population |
|---|---|
| Argentina | 1.9% |
| Australia | 1.1% |
| Belgium | 2.5% |
| Cameroon | 21.2% |
| Canada | 1.0% |
| China | 1.5% |
| Denmark | 2.2% |
| Fiji | 6.9% |
| France | 7.1% |
| Germany | 4.4% |
| Guyana | 9.0% |
| India | 11.96% |
| Mauritius | 16.6% |
| Nepal | 4.2% |
| The Netherlands | 4.5% |
| Nigeria | 43.9% |
| Philippines | 4.6% |
| Singapore | 14.9% |
| South Africa | 2.4% |
| Spain | 0.5% |
| Sri Lanka | 9.0% |
| Suriname | 19.6% |
| Thailand | 4.6% |
| Uganda | 16.0% |
| UK | 2.0% |
| USA | 1.9% |

Source: Encyclopedia Britannica Book of the Year 2003, Karen Jacobs Sparks (editor) *(2003: Encyclopedia Britannica, Inc. London)*

*Muslim Minorities* shows awareness of the difficulties of Muslims living as minorities and advises them to be patient. However, "if it is not possible to gain a livelihood except by what Allah has forbidden, namely through the mixing of men and women, then this livelihood must be abandoned." It discourages Muslims from marrying non-Muslim women, forbids them to greet Christians during Christmas or other religious festivals, and allows them to go to non-Muslim courts (for registration of divorce) only if it is done according to Islamic law. *Muslim Minorities* generally does not allow a departure from the old laws. In some circumstances, where some concessions are suggested, they are only transitory and subject to general provisions of Islamic law, for example, transmission of pictures and service in non-Muslim armies.

Obedience to Islamic law in this sense necessarily requires community organisation in a particular manner and the services of legal experts for that purpose. This is often not possible without the help of the majority Muslim countries. The book, therefore, repeatedly appeals to scholars and preachers to visit Muslim minorities, even though, in the words of one inquirer, "visiting countries of disbelief is prohibited." Ibn Bas advises the Muslim rulers and the wealthy "to do what they can to save the Muslim minorities with both money and words. This is their duty." The two muftis are quite obviously restrained by the methodology as well as the worldview of the old laws to the extent that they still use the term "enemy countries" for the abodes of Muslim minorities. Certainly Ibn Bas was not using the term in the literal sense. It is the compulsion of analogical reasoning to measure the modern situation in terms of the old categories of "House of Islam" and "House of War."

Modern Muslim jurists disregard this methodological compulsion and treat the situation of Muslim minorities as exceptional cases that require special consideration.

They approach the whole range of questions relating to laws about, inter alia, food, dress, marriage, divorce, co-education, and relations with non-Muslims, in terms of expediency. Consequently, a whole set of new interpretations, often divergent, appeared. Some other jurists stressed the need for new, especially formal sources. Various rules of Islamic jurisprudence, e.g. common good, objectives or spirit of law, convenience, common practice, necessity and prevention of harm – which were invoked sparingly – gained significance as basic principles of Islamic legal theory. These opinions were published in the form of fatwas and did not constitute part of regular Islamic law texts. It is only recently that treatises have begun to appear on the subject.

## Jurisprudence of minorities

Despite the growing volume of literature on Muslim minorities, many Muslims in the West, especially in the United States, feel that the existing legal debates have failed to address their problems adequately. In 1994, the North American Fiqh Council announced a project to "develop fiqh for Muslims living in non-Muslim societies." Yusuf Talal DeLorenzo, Secretary of the Council, explained that Islamic law for minorities needed an approach different from the traditional rules of expedience. He illustrates this approach with several examples. For instance, instead of traditional unilateral divorce by the husband, the fiqh favours termination of marriage only through the court system. Taha Jabir al-Alwani, Chairman of the Council, was perhaps the first to use the term *fiqh al-aqalliyat* (1994) in his fatwa about Muslim participation in American secular politics. Some Muslims in America hesitated to participate in American politics because it meant alliance with non-Muslims, division of the Muslim community and submission to a non-Islamic system of secular politics as well as giving up the hope of the United States becoming part of *dar al-Islam*. They asked the Council for a fatwa.

Taha in his fatwa dismissed these objections and argued that the American secular system was faith-neutral, not irreligious. He distinguishes conditions in countries that have Muslim majorities from those where Muslims are a minority. The two contexts are quite different and entail different obligations: "While Muslims in Muslim countries are obliged to uphold the Islamic law of their state, Muslim minorities in the United States are not required either by Islamic law or rationality to uphold Islamic symbols of faith in a secular state, except to the extent permissible within that state."

This fatwa stirred a controversy among Muslim scholars. For instance, the Syrian Shaykh Saeed Ramadan al-Buti dismissed Taha's call for the jurisprudence of minorities as a "plot to divide Islam."

Among other comments he stated: "We were so pleased with the growing numbers of Muslims in the West, that we hoped that their adherence to Islam and their obedience to its codes will thaw the cold resistance of the deviating western civilisation in the current of the Islamic civilisation. But today the call to the Jurisprudence of Minorities warns us of a calamity contrary to our hopes. We are warned of thawing of the Islamic existence in the current of the deviating western civilisation and this type of jurisprudence guarantees this calamity."

Responding to this criticism, Taha explains that *fiqh al-aqalliyat* constitutes an autonomous jurisprudence, based on the principle of the relevance of the rule of shariah to the conditions and circumstances peculiar to a particular community and its place of residence. It requires information about local culture and expertise in social sciences e.g. sociology, economics, political science and international relations.

It is not part of the existing fiqh, which is jurisprudence developed through case law. *Fiqh al-aqalliyat* is not a jurisprudence of expediency that looks for concessions. Taha argues that the categories of *dar al-Islam* and *dar al-harb* are no longer relevant today. The Muslim presence, no matter where, should be considered permanent and dynamic. The term *fiqh al-aqalliyat* gained currency in the Muslim countries as well. Khalid Abd al-Qadir was probably the first to collect the special laws applicable to Muslims living as minorities in his book *Fi Fiqh al-aqalliyat al-Muslimah*. Yusuf al-Qaradawi, who has written extensively on the subject, also chose this title for his works much later: *Fiqh al-aqalliyat al-Muslimin, hayat al-muslimin wast al-mujtama'ca tal-ukhra* and *Fiqh of Muslim Minorities*. This latest book is also announced as a "progressive fiqh," probably with reference to the current debates on the subject and the growing anxiety of Muslims about their minority status in Islamic law.

## Another civil rights movement?

Obviously, advocates of *fiqh al-aqalliyat* have yet to answer some very complex questions. First, the term "minority" is quite problematic. Its semantic vagueness conjures up the concept of a sub-nation in a nation-state framework. A religious minority is even weaker than a sub-nation or national minority because it is further divided by other aspects like language and culture. Second, the question of minority is very closely connected with other minority situations, e.g. non-Muslim and Muslim minorities in Muslim countries. Most often they are not perceived in the same fashion. Third, the situation of Muslim minorities in the Western countries also differs from the Muslim minorities in non-Western countries, e.g. India. It appears that minorities in these different situations have to develop different sets of jurisprudence, to the extent that the term "minority," in the final analysis, becomes irrelevant.

The problems addressed by *fiqh al-aqalliyat* are not the questions related to Muslim minorities only. They concern questions for the whole Muslim world. Some of these questions are certainly more intense and urgent for Muslims in the West, but ultimately the whole Muslim world has to respond to them. The West is no longer a territorial concept; it is a global and cultural notion that is very much present in the non-Western world also.

The jurisprudence of minorities, especially in the United States, has a further semantic connotation of civil rights. It implies "help and special treatment for a community left behind."

Instead of absolute equality, civil rights call for differential equality and protection. This idea has been challenged in US courts since 1989 and is losing sympathy with jurists. In the wake of rising Islamophobia, discrimination and harassment of Muslims, and media prejudice, especially after the events of Sept 11, there seems to be no sympathy for another civil rights movement. If Muslims are forced to take this path, *fiqh al-aqalliyat* will not be there to help them because it has been so far concerned only with solving problems of (and within) Islamic law. It has still to work out problems with the local laws. There is perhaps a need for Muslim jurisprudence of citizenship in the framework of pluralism, in order to respond to the current political and legal challenges.

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# Understanding a Difficult Verse: Qur'an 4:34

Kecia Ali

Many contemporary debates about "women's status in Islam" hinge on a few key topics: the veil, polygamy and a few Qur'anic verses that are seen to prescribe female subordination – to men in general and husbands in particular. The most important of these verses occurs in *Surah an-Nisa* ("Women"). Verse 4:34 has been interpreted both by traditional medieval scholars and by contemporary Muslims from a variety of backgrounds and perspectives. The range of ways in which its key provisions have been interpreted illustrates both the presence of androcentrism and/or misogyny in some aspects of the Muslim tradition as well as possibilities for more egalitarian readings of the Scripture.

The verse is the clearest Qur'anic example of the hierarchy dividing men and women. It presents numerous difficulties for translation, since so many of the words have contested meanings. My basic translation here leaves three terms in the original Arabic since they cannot be translated without taking a position on how they should be interpreted. Precisely these issues of interpretation will be explored in the following essay, along with whether *idribuhunna* ("strike them") is to be taken literally.

"Men are *qawwamun* in relation to women, according to what God has favoured some over others and according to what they spend from their wealth. Righteous women are *qanitat*, guarding the unseen according to what God has guarded. Those [women] whose *nushuz* you fear, admonish them, and abandon them in bed, and strike them. If they obey you, do not pursue a strategy against them. Indeed, God is Exalted, Great."

"*Al-rijal qawwamun 'ala al-nisa' bi ma faddala Allahu ba'duhum 'ala ba'din wa bi ma anfaqu min amwalihim. Fa al-salihat qanitat, hafizat li'l-ghayb bi ma hafiza Allah. Wa allati tukhafuna nushuzahunna, fa 'izuhunna wa ahjuruhunna fi'l-madaji' wa adribuhunna, fa in ata'nakum, fa la tabghu 'alayhinna sabilan. Inna Allah kana 'Aliyyan, Kabir.*"

Interpreters from a variety of perspectives have addressed the key issues raised by this verse (see next table):

The Qur'an's basic stance

- Muslim women are first and foremost Muslims, the religious equals of men (e.g., verse 33:73).
- Women and men are referred to as one another's "protectors" (verse 9:71).
- Muslim marriage is described in terms of love and mercy (verses 7:189 and 30:21).
- Spouses are described as "garments" for one another (verse 2:187)

However, in a number of realms, above all marriage and divorce, Qur'anic rules are differentiated by sex, with men seemingly given greater rights and responsibilities.

| Contested areas of interpretation | Relevant Arabic terms in the verse | Interpretations |
|---|---|---|
| Are men "in charge of women"? (From the declaration in the verse that "Men are *qawwamun* in relation to women.") | *Qawwamun* (singular, *qawwam*), derived from the Arabic term for "standing." | *Traditional interpretations:*<br>Men's role as *qawwamun* covers both Divine favour of men in general over women in general and also the husband's financial responsibility for paying dower and maintenance for his wife. Some commentators highlight male "perfection" and female "deficiency" more than men's financial obligations. Others acknowledge male superiority but stress the husband's duty to support his wife.<br><br>*Other interpretations:*<br>• Favouring of men over women is only in the limited realm of the greater inheritances men receive (possibly alluded to in the immediately preceding verses, 4:32-3).<br>• The Qur'an only states that "God has favoured some over others," not that men are favoured over women; there is no grammatical reason for taking men as the "some" and women as the "others." |
| What are the defining characteristics of "righteous women"? | The verse defines "righteous women" in two ways: *hafizat li'l-ghayb* (those women who guard or protect what is absent or unseen), and *qanitat* (which can mean obedient, subservient or deferential). | **"Hafizat li'l ghayb"**<br><br>*Traditional interpretations:*<br>A woman who protects her chastity and her husband's possessions in his absence.<br><br>*Other interpretations:*<br>Those who fulfil their religious obligations and protect their faith, as God has guarded it.<br><br>**"Qanitat"**<br><br>*Traditional interpretations:*<br>Obedient women, in particular, women who are obedient to their husbands.<br><br>*Other interpretations:*<br>Qanitat is used elsewhere in the Qur'an only for obedience to God. The term is used for both men and women (verse 33:35 refers to *al-qanitin wa'l-qanitat* as qualities of those whom God will reward). It is also used for luminary figures such as Maryam (verse 66:12) and Prophet Ibrahim (verse 16:120). There is no reason for considering the use of it in verse 4:34 to refer to anything other than women's obedience and devotion to God. |
| What is *nushuz* and what are its consequences? | *Nushuz* (root word is n-sh-z) refers to "something that rises." | *Traditional interpretations:*<br>Women's *nushuz* is understood as disobedience or rebellion (*isyan*) towards their husbands. Two behaviours repeatedly mentioned as forms of *nushuz* are leaving the marital home without the husband's permission and refusing his sexual overtures. Disrespectfulness, "lewdness," or failure to perform religious obligations are also mentioned as forms of female *nushuz*. The husband may suspend his wife's support (*nafaqa*) if she has committed *nushuz*.<br><br>*Other interpretations:*<br>Generally, *nushuz* is a type of marital disharmony, arising on the part of either husband or wife, or lewd conduct, falling short of adultery, on the part of either spouse. |
| May a man strike his wife? | *Daraba*, a verb meaning "to strike" | *Traditional interpretations:*<br>This verse gives permission for a husband to strike his wife for *nushuz*. (4:34 states "admonish them, and abandon them in bed, and strike them (*wa'dribuhunna*)." However, striking is only permissible in cases where the husband has already admonished the wife and abandoned her in bed without any change in her behaviour. There are also limitations, in that he cannot be violent, must not break her bones, leave bruises or cause blood to flow.<br><br>*Other interpretations:*<br>The verb "*daraba*" appears numerous times in the Qur'an with other meanings, so it is questionable why it should be understood as "striking" in 4:34. Thus, it has been proposed that *daraba* in this context does not mean "strike" but rather "separate" or even "have sex with" (one of the verb's metaphorical meanings). Furthermore, if there are so many limitations placed on men striking their wives, then it begs the question of why striking is allowed to begin with. Others have suggested that this verse actually refers to punishment that can be imposed by the public authorities for certain transgressions. |

The numerous possible interpretations of verse 4:34 serve to highlight the role of human (and therefore fallible) intellect in comprehending Scripture. The fact that so many different views exist as to what any particular word – such as *daraba* – shows that any attempt to fix the meaning of this (or any) verse once and for all is doomed to failure.

**The Divide on verse 4:34**

| Traditional interpretations | Contemporary interpretations |
|---|---|
| Generally stress female obedience and male authority | Generally emphasise the financial component of men's marital duties and the limits to a husband's power over his wife |

Many Muslims have gravitated towards contemporary interpretations, as these are more in keeping not only with modern sensibilities in general but also the Qur'anic portrayal of women in other verses as full human beings and partners in the relationship of marriage.

Yet, however convincing one finds the progressive arguments that a man's striking his wife is not permitted by verse 4:34, it is impossible to remove all differences or hierarchy from this verse without doing violence to the Qur'anic text itself.

This is not a problem unique to marriage or to relations between men and women: The tension between equality in spiritual matters and hierarchy in worldly matters applies to many social situations addressed by the Qur'an (such as wealth/poverty or freedom/slavery). Nor is it unique to the Qur'an or Islam; such tensions exist in other Scriptures and in other religions. These considerations do not help to determine the meaning of verse 4:34 or to resolve the difficulties it presents for those Muslims committed to women's equality with men. However, they serve as a reminder that, no matter how one interprets this verse, one must not do it in isolation, but rather with careful attention to its full scriptural and social contexts.

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# The Evolution of Fatwa-making and Diversity of Fatwas

Shanon Shah

## What is a fatwa?

In Islam, it is a legal pronouncement on a specific matter, issued by a religious legal specialist. It is usually issued at the request of an individual or a judge to settle matters in which fiqh (Islamic jurisprudence) is unclear. A scholar who is capable of issuing fatwas is called a mufti.

## How are fatwas formulated?

In the pre-modern days of Islam, muftis acted as legal consultants to both judges and private citizens. The fatwas from leading muftis were recorded and circulated for reference and further study. The fatwas generally took the form of a hypothetical and impersonal opinion, and the names of the actual parties involved were substituted with fictitious names. Common names to refer to male parties were Amir and Zaid, for women they were Hind or Zainab. This is similar to the usage of John Doe or Richard Doe in English common law.

Thus, a party armed with a favourable fatwa could present their case in court, where the fatwa could be cited to provide a very persuasive authority. However, fatwas were never binding on the court. Nevertheless, a very strong fatwa sometimes allowed for a case to be settled out of court.

However, in the modern era, the mechanics of issuing fatwas differs from state to state, based on how the role of the mufti in these states has evolved over history.

## How has the role of the mufti evolved over history?

Even though the office of the mufti in the pre-modern days of Islam was limited to the role of legal consultation, the position of mufti was a very distinguished one. Muftis commanded the respect of the highest rulers of the land. Even so, it is recorded that muftis were also very thorough about observing and upholding their impartiality as legal consultants. One mufti, Dzmeali, did not even allow the people who sought his opinions to see him. Instead, he would suspend a basket from his window so that the public could place their questions there and then collect his responses the next day in the same manner.

In the modern era of the nation-state, Muslim states have chosen to institutionalise the office of the mufti. Hence, today, a state-appointed mufti is effectively the

state's official mufti. This has several political and religious ramifications. One way to comprehend this is to look at the differences in the roles of state muftis in different Muslim countries.

*Syria*

The mufti of the Republic heads the Higher Council of Ifta' (issuing fatwas). This Council is responsible not only for issuing and registering fatwas but also for administering the religious sector as a whole: Mosques, religious schools and the religious cultural institutions of the Republic. This includes the hiring and firing of staff. However, matters related to waqf are placed under the Ministry of Awqaf, with the Minister being the highest authority in the Sunni religious sector. The Minister has the power to promote members of the Higher Council of Ifta'.

The mufti of the Republic is an elected office, but the electoral procedures have been changed time and again. Historically, the office of the mufti was vacated only when the incumbent mufti had passed away or had been dismissed by the State. The Ministry of Awqaf has since asserted its influence by listing potential candidates for state mufti for selection by the Council of Ministers. The mufti has no relation to the courts, and is more likely to have a career in teaching and preaching. The mufti is also not very involved in the actual preparation of fatwas, since most fatwas are prepared by the Amin al-Fatwa.

*Lebanon*

In 1955, a law was passed instituting the Sunni Muslim religious administration in independent Lebanon. This secured for Sunnis absolute independence from the state, since the law effectively enabled the setting up of an institution with legislative powers over Sunni religious and internal affairs. Hence, a new and powerful Supreme Legal Council was formed with the participation of all Sunni Ministers, ex-Ministers, and Members of Parliament, headed by the mufti of the Republic.

Several other provisions in the 1955 law gave considerable powers to the mufti of the Lebanese Republic, and once elected, it became very difficult to remove him from office. Hence, the mufti became akin to a Sunni politician of considerable influence. The mufti was effectively elected by the Sunni community at large, not just the ulama. The office of the mufti became very politically charged at one stage. In fact, one of the muftis, Hasan Khalid, was assassinated in 1989. A new law was then passed reducing the number of people who could elect the mufti. Since then, Sunni politicians have been trying to present a non-Islamist version of Sunni Islam to the public via the office of the mufti. On the other hand, the Lebanese state has since demonstrated little interest in reviving a strong mufti. Like the Syrian mufti, the Lebanese state mufti does not issue many fatwas. Fatwas are issued mostly by the Amin al-Fatwa. There are other non-state religious leaders who are consulted by the Sunnis of Lebanon in matters related to fiqh.

*Egypt*

Unlike state muftis in Lebanon and Syria, the Egyptian mufti is not involved in the administration of religious education, which is the sole preserve of the al-Azhar university. When shariah courts were abolished in 1955, some minor responsibilities of the qadi were transferred to the mufti. The mufti is appointed by the President. For most of the 20th century, there has been a retirement age for state employees, and this has applied to the state mufti also. Hence, Egypt has had a higher turnover of state muftis compared to many other Muslim countries. The structure in Egypt also allows for the state mufti to be promoted to the even higher position of Sheikh of al-Azhar.

However, the mufti of the Republic also provides the state with a means of checking the authority of the Sheikh, should the latter try to assert independent or oppositional power. Given this environment, the mufti actually has to be more articulate in producing and defending his fatwas. The mufti often has to publicly debate his views, since he sometimes has to compete with the Sheikh of al-Azhar for legitimacy.

*Malaysia*

In Malaysia, the ruler (Sultan) of each state in the Federation appoints the state mufti. The mufti heads the Fatwa Committee in his own state. The mufti is the only religious authority who can advise the Sultan on matters related to hukum syarak. Only the Sultan has the power to dismiss the mufti. The mufti's fatwas carry considerable weight with the general population. Once gazetted these fatwas become legally binding. It is a criminal offence to challenge a gazetted fatwa. The only person who can amend or retract a fatwa is the mufti himself.

**Conclusion**

The role of the mufti has evolved from that of an impartial, independent legal consultant in the pre-modern era of Islam, to that of a very political office. Hence, the evolution of fatwas can also be seen in this light. In the modern era, the state mufti has often been mobilised by the government in power to legitimise several state policies, many of which would have met great resistance from the general population without the mufti's seal of approval. However, under certain circumstances, the state mufti may be less a representative of the state than an ally of a faction of the regime.

Sometimes, state muftis have also used the state as an instrument to advance their own religious agendas. This is not surprising, given the fact that state muftis often have the budget and authority to hold conferences, publish information, institute policies and influence public opinion on issues where they perceive a threat to the religious status quo.

**References:**


- Skovgaard-Petersen, J., 'The Typology of State Muftis' in Haddad, Yvonne Yazbeck and Barbara Stowasser (eds.), Islamic Law and the Challenges of Modernity, (Oxford: AltaMira Press, 2004)
- Weeramantry, C.G., Islamic Jurisprudence: An International Perspective, (Kuala Lumpur: The Other Press, 2001)

Table: Comparing the diversity of fatwas on the same issues

## Women as Shariah Court judges

The Fatwa Council of Penang declares that, based on the Shafi'e school of jurisprudence, no woman can ever preside as a Shariah Court judge[1].

The Grand Qadi of Sudan's Islamic courts began appointing women as Shariah Court judges from as early as 1970. This judicial decision means fatwas on this matter are moot[2].

## Conversion/Inter-religious Marriage

In the case where a wife has converted to Islam while her husband has not, veteran Islamic scholar Dr Abdullah Yousuf el Gudaie says that their marital status is still valid. He says that there are no explicit textual taboos on it, while classical scholars also did not achieve consensus on this matter[3].

The Fatwa Council of the Federal Territories (Malaysia), states that if both spouses convert to Islam at the same time, or if they both convert within the period of *iddah*, then they do not have to undertake Islamic marriage rites. Section 51 of the Law Reform (Marriage and Divorce) Act 1976 gives the non-converting spouse the right to petition for divorce. However, there is a lacuna in the laws, because (1) Islamic law in Malaysia does not recognise marriage between a Muslim and a non-Muslim, and yet (2) if the non-converting spouse does not petition for divorce, he/she is considered by the Civil Courts to be married to the converting spouse[5].

## Dress for Muslim women

Sheikh of Al-Azhar Muhammad Sayid Tantawi declares that a non-Muslim country like France has the right to ban the *hijab* for Muslim women[6].

Sheikh Yusuf Qaradawi opposes the French ban on the *hijab* in public schools. In a letter to President Jacques Chirac, he said that Muslims feel resentful that France considers the *hijab* "an aggression on others"[7]

## Smoking

The Fatwa Council of Selangor (Malaysia) initially decides that the smoking tobacco is *haram* (forbidden). The same Council later amends this fatwa to say that smoking is *makruh* (discouraged), not *haram* (forbidden)[8].

## Sale of alcohol by Muslims

The Fatwa Council of Perlis (Malaysia) declares that the sale of alcohol by Muslims to non-Muslims and other Muslims is strictly forbidden[9].

The Egyptian state mufti issues a fatwa declaring that it is permissible for Muslims to sell alcohol in Europe. The mufti based his advice on rulings from the Hanafi school of jurisprudence in Sunni Islam, which effectively allows Muslims in non-Islamic countries to enter into contracts that do not follow the precepts of Islamic law[10].

## Sex reassignment surgery

The Fatwa Council of Selangor says that sex reassignment surgery is contrary to Islamic teachings. The Council justifies this by referring to Surah An-Nisa (4:119)[11].

In Iran, sex reassignment surgery for transsexuals is allowed based on a decision by Ayatollah Imam Khomeini[12].

## Status of Shi'as

The Fatwa Council of Penang (Malaysia) denounces Shi'ism as a deviant sect and a threat to national security[13].

A fatwa from Al-Azhar states that Shi'ism is a school of thought that is religiously correct and of the same status as other Sunni schools of thought[14].

## Apostasy

The Terengganu Hudud Law on Blasphemy and Apostasy (*Irtidad* or *Ridda*) prescribes death and forfeiture of property as the punishment for blasphemy or apostasy by an unrepentant offender[15].

The late Mahmud Shaltut, the former Sheikh of Al-Azhar, wrote that many ulama agree that the *hudud* cannot be established by a solitary *hadith* and that unbelief by itself does not call for the death penalty. The current Sheikh of Al-Azhar, who was Egypt's former Grand Mufti, Dr. Mohammed Sayed Tantawi, also declared that apostasy is not a capital crime.[16]

## Male masturbation

The Fatwa Council of Melaka (Malaysia) says that male masturbation is *haram* and it is effectively a criminal act deserving of punishment based on the discretion of the judge. The Council further describes the act as having calamitous and disastrous consequences, and also that it spreads disease[17].

The European Council for Fatwa and Research says that masturbation is *makruh*, but not *haram*. In other words, it is neither a crime nor a sin, but merely discouraged. The Council further states that if masturbation is the only way to allay unbearable sexual anxieties, then it ceases to be a detestable act[18].

1 http://ii.islam.gov.my/e-fatwa/mufti/fatwa_search_result.asp?keyID=763
2 http://www.sudan.net/news/press/postedr/158.shtml
3 http://www.e-cfr.org/eng/article.php?sid=23
4 http://www.e-fatwa.gov.my/mufti/fatwa_search_result.asp?keyID=405
5 http://www.lawasia.asn.au/uploads/images/FLMalaysia.pdf
6 http://weekly.ahram.org.eg/2004/672/fr2.htm
7 http://en.wikipedia.org/wiki/Yusuf_al-Qaradawi#Qaradawi.27s_religious_edicts_.28fatwas.29
8 http://ii.islam.gov.my/e-fatwa/mufti/fatwa_search_result.asp?keyID=1147
9 http://ii.islam.gov.my/e-fatwa/mufti/fatwa_search_result.asp?keyID=985
10 http://www.muslimnews.co.uk/news/news.php?article=10341
11 http://ii.islam.gov.my/e-fatwa/mufti/fatwa_search_result.asp?keyID=1160
12 http://www.safraproject.org/sgi-genderidentity.htm
13 http://ii.islam.gov.my/e-fatwa/mufti/fatwa_warta_view.asp?keyID=531
14 http://en.wikipedia.org/wiki/List_of_famous_fatwas
15 http://www.wccpenang.org/l'overviewhudud.htm
16 http://www.sistersinislam.org.my
17 http://alhuda.mmu.edu.my/jawapan/baca.php?id=99
18 http://www.e-cfr.org/PDF/eng/Fatwa/Fatwa_e01.pdf

# The Islamic Family Law Campaign

The Sisters in Islam campaign to stop discriminatory amendments made to the Islamic Family Law generated intense and sometimes heated public debate, both on the ground and in the national media.

In this issue of *Baraza*!, we revisit the reasons behind our Islamic Family Law (IFL) campaign. Visiting Fulbright Scholar Ziad Haider helped us to compile a comparison between women's rights as enshrined by Malaysia's Islamic Family Law and Civil Family Law while SIS Legal Officer Razlina Razali and the chief Trainer Zaitun Kasim recapped our successful campaign strategies which led the Malaysian Cabinet to decide not to gazette the new Islamic Family Law and directed the Attorney-General to conduct a review in consultation with women's groups and other interested parties.

In March also, SIS held an international consultation on Trends in Family Law Reform in Muslim Countries as part of our efforts to push for reform of the law within the framework of justice and equality. A major outcome of this consultation is a proposal to initiate an international advocacy movement bringing together activists and scholars from Muslim countries in the Middle East, Southeast Asia, South Asia and Africa towards a comprehensive reform of the Islamic Family Law to end discrimination against Muslim women.


*Man: "According to hadith: there are only three bad omens: horses, women, and houses!*
*Woman: "Sst..are we suppose to accept this hadith based on faith?!!... Or…*

*Illustration taken from "Dakwah Fiqh Perempuan: Modul Kursus Islam dan Gender" Muhammad, Husein …et,al. March 2006, Cirebon: Fahmina Institute.*

## Malaysian Women - The Great Divide

| Issue | Muslim Women | Women of Other Faiths |
|---|---|---|
| Age of Marriage | Minimum age of marriage is 16 for females and 18 for males. The Shariah Court judge can give written permisson for minors to marry. | Minimum age of marriage is 18 for females and males. A marriage licence can be granted for a female under 18 but at least 16 years old. Otherwise marriage of minors is illegal. |
| Consent for Marriage | Consent of *wali nasab* (father or male relative) is necessary for female. If there is no *wali nasab* or if he unreasonably refuses consent, she can apply for the judge to act as *wali hakim*. In Kelantan and Kedah, a virgin woman's *wali mujbir* (father or paternal grandfather) can force her to marry under certain conditions. | No consent needed for those aged 21 years and above. Both women and men under 21 require written consent from father, or mother if father is deceased. If consent withheld unreasonably, the court may grant consent. |
| Witnesses | The Kelantan Islamic Family Law Enactment requires male witnesses. Though not explicit in the law, in practice other states also call for male witnesses. | Solemnisation of marriage requires at least two credible witnesses. The gender is not specified. |
| Polygamy | Wives can be part of polygamous marriages where the husband can legally take up to four wives upon meeting certain legal conditions. Amendments in recent years have made it easier for men to undertake such marriages. | Women and men can only enter monogamous marriages as per the Law Reform (Marriage and Divorce) Act 1976 that banned unconditional and unlimited polygamy. |
| Disobedience | A wife can lose maintenance, or be subject to penalty should she disobey any order from her husband that is lawful under hukum syarak. | The concept of "disobedience" is absent from civil family law |
| Divorce | A woman can be divorced outside court in contravention of the law. Husband is subject to penalty but the divorce stands. | Divorce proceedings can only occur under judicial supervision, otherwise it will not be valid. |
| Guardianship | Legally only the father is the guardian. Technically, forms involving immigration, surgery, and school transfer for children allow a mother to sign and assume some de facto guardianship rights. | Mothers and fathers have equal guardianship rights under the law. |
| Distribution | Women inherit less than male family members according to the faraid principle and depending on their status e.g. wife, daughter. On insurance and EPF funds, even when designated a beneficiary, a woman is in effect only an administrator. Funds are still distributed according to faraid. | Women and men have equal inheritance rights. On insurance and EPF funds, women designated as beneficiaries receive funds accordingly. |
| | Distribution of property by a Will is only allowed up to one-third of the estate. The beneficiary must not be among the legal heirs. | Women of other faiths can distribute their property by way of a Will without interference from the authorities. |

*This table highlights select legal provisions relating to Malaysian women's rights. They reveal the greater rights enjoyed by non-Muslim women. Two points however must be noted. First, despite the legal fine print, in practice both Muslim and non-Muslim women face hurdles in the laws' implementation. Second, the table's purpose is not to condemn Islamic law generally but to note those provisions that have led to a deep divide in the lives of Malaysian Muslim and non-Muslim women.*

# Our journey continues

Razlina Razali & Zaitun Kasim

Sisters In Islam (SIS), together with the Joint Action Group for Gender Equality (JAG), has long been working towards reviewing and streamlining the Islamic Family Law of Malaysia to end discrimination against women.

In January 2002, SIS submitted a 42-page memorandum to the Government in response to discriminatory amendments being made to the Islamic Family Law. This draft model statute was meant to be the basis of a standardised Islamic Family Law in Malaysia to replace the differing laws that exist in each of 14 states which has jurisdiction over Islam. However, this draft contained several discriminatory amendments, including giving men more grounds to divorce their wives, to contract polygamous marriages and to freeze their wives' assets in order to claim a share of the matrimonial property at the time of polygamy and divorce.

SIS held several briefings and meetings with women's groups, the Minister for Women, Family and Community Development, Datuk Seri Shahrizat Abdul Jalil and Ministry officials in order to prevent this draft statute from becoming law. After a consultation with 18 women's organisations in 2002, SIS wrote to the Minister asking for:

- The proposed standardised law to be reviewed;
- An inter-agency committee, including women's groups, to be formed to conduct the review;
- More women to be appointed to the National Shariah and Civil Technical Committee, which oversees the drafting of Islamic laws.

While a SIS member was appointed to the Technical Committee, all attempts to review the proposed standardised law failed, in spite of meetings between Ministry officials and the Islamic Affairs Department (JAKIM) which was responsible for the law. We were told: "first we'll standardise, then amend later, which makes it easier." However, SIS was of the opinion that the overall objective should not just be to achieve uniformity, but to also achieve a uniformly just law across the country.

By 2005, 11 states had adopted the new standardised law with its discriminatory amendments. When the Islamic Family Law (Federal Territories) (Amendment) Bill 2005 was tabled in Parliament for effect in the Federal Territories of Kuala Lumpur and Labuan, SIS launched a campaign to stop the passage of this Bill.

SIS strategised to publicise our concerns, as we felt both the decision-makers and the public had a right to know how this law will affect the rights of women. We hoped that our Members of Parliament, armed with sufficient information, would be able to speak up and highlight the flaws contained in the draft law. However, the tabling of the Bill was rushed through, leaving little time and space for a wider debate of the draft law. A number of MPs, both from the Government and the Opposition parties did their utmost to point out the flaws. Despite this, Dewan Rakyat (Lower House) passed the Bill.

Disappointed by the outcome, SIS still held out for an opportunity to engage with Dewan Negara (the Senate). This was a new strategy for SIS, which we felt could be a productive starting point for further advocacy. In addition, as the proportion of women in the Upper House is much higher than in the Lower House, we felt there would be more support for our concerns.

We were not wrong. We held several briefing sessions with small groups of senators, taking them through the discriminatory amendments, the differing Islamic juristic opinions which advocate equality and justice for women, and good practices in other Muslim countries. They were outraged. Not only did the Senators back us, they also submitted a petition to Minister in the Prime Minister's Department in charge of religious affairs Datuk Abdullah Zain, requesting to withdraw the Bill and to conduct a review before resubmitting it to Parliament. The women Senators, among them Sen Datuk Dayang Mahani Tun Pengiran Ahmad Raffae, Sen Dr Noraessah Mohamad, and Sen Azizah Abd Samad also spoke strongly against the flaws in the draft law and of their concerns during a briefing session led by Abdullah.

Sadly, the day before the debate, Minister in the Prime Minister's Department Datuk Seri Nazri Aziz invoked the party whip, which forced the women Senators to toe the party line. The Minister was reported as saying: "If there are Senators who are dissatisfied with this draft law, they can debate it at tomorrow's session. A motion cannot be rejected if it has not been tabled," (*Utusan Malaysia*, Dec 22, 2005). Furthermore, he added: "I stress that this is a directive, not an advice … it can be rejected if it is an advisory but this is a directive so it must be adhered to." (*Berita Harian*, Dec 22, 2005).

The draft law was passed despite the concerted opposition from 19 women Senators.

However, the voices that spoke in the Senate quickly drew public attention. SIS then began to mobilise women and men who were concerned with the developments, to write to the media and relevant Ministers including the Prime Minister, Shahrizat, and also Abdullah. We also launched a signature campaign. The objective was to inform the Government that there was a significant portion of the Malaysian public deeply opposed to Parliament's decision in passing the draft law.

Finally, due to an unprecedented public outcry, the Cabinet decided not to gazette the Bill. In addition, the Government also directed Attorney-General Tan Sri Abdul Gani Patail to hold a consultation with the shariah community (comprising several bodies

including government religious departments and NGOs) on the necessary amendments to be made to the draft law in order to deal with the concerns expressed by women's groups. SIS and other JAG members were actively involved in the negotiation process.

It was a productive consultative process, skillfully steered by the Attorney-General to reconcile the competing interests of the different constituencies. The new amendments made to the Islamic Family Law will be tabled for debate in the Lower House in the next sitting of Parliament. At the time of writing, we do not yet know what the final amendments are. However, whatever the outcome, we are proud that we managed to get a good amount of discussion generated on the issue of the Islamic Family Laws, a discussion that has seen many differing and strong viewpoints. For SIS, this represents progress in the journey towards achieving the spirit of justice and fairness as enshrined in the Qur'an.



**Public Talks**

In light of the proposed discriminatory provisions to the Islamic Family Law, SIS conducted a series of public talks to build public awareness and support, which received overwhelming response. The following are some of the talks :


*Speakers for the International Consultation on "Trends in family Law Reform in Muslim Countries": (from left to right): Professor Dr Kecia Ali, Professor Dr Shad Saleem Faruqi (chair), Dr. Ziba Mir-Hosseini and Kyai Husein Muhammad.*

1. 14 Jan 06 — **Taklimat dan Perbincangan Tentang Undang-undang Keluarga Islam**
[A Briefing and Discussion on Islamic Family Law,
organised by National Council of Women's Organisations (NCWO)
Speakers: Zainah Anwar, Nik Noriani Nik Badlishah and officials from the Islamic Affairs Department

2. 15 Jan 06 — **Islamic Family Law – Why the Discrimination?**
Organised by SIS
Speakers: Zainah Anwar, Nik Noriani Nik Badlishah and Zaitun Kasim

3. 24 Jan 06 — **Islamic Family Law – Towards Justice?**
Organised by Sin Chew Daily
Speakers: Zainah Anwar and Prof Dr Shad Saleem Faruqi

4. 4 Mar 06 — **Islamic Family Law – Break the Silence!**
Organised by Women's Institute of Management (WIM)
Speakers: Zainah Anwar and Nik Noriani Nik Badlishah

5. 19 Mar 06 — **Muslim Women Speak – Right to Public Participation**.
Organised by SIS
Speakers: Dr Ziba Mir-Hosseini, Prof Kecia Ali and Cassandra Balchin

6. 29 Mar 06 — **Perbincangan Tentang Undang-Undang Keluarga Islam**
[A Discussion on Islamic Family Law]
Organised by KANITA (Women's Studies Centre) University Sains Malaysia, Penang

Speakers: Zainah Anwar, Nik Noriani Nik Badlishah and other speakers


*SIS participates in the 16 Days of Activism*

## Study Sessions


*Activist exchange between SIS and Indonesian peers*

### 2006

So far this year, we have had four interesting and productive sessions discussing the IFL Campaign. We have also had the honour of hearing two renowned religious scholars speak on the diversity of opinions and interpretations in Islam, as well as stressing the importance of understanding the context of the Holy Texts in relation to time and society.

1. 21 Jan 06 — **Campaign against the IFL Amendment 2005**
by Razlina Razali and Shanon Shah Mohd Sidik

2. 12 Feb 06 — **Challenges of Muslims in Plural Societies**
by the Grand Mufti of Bosnia-Herzegovina, Raisul-Ulama Mustafa Ceric and Imam Feisal Abdul Rauf, Chairman of the Cordova Initiative (US)

3. 30 Mar 06 — **Tudung [The Headscarf]**
with Tuan Hj Nik Aziz Hj Nik Hassan

4. 1 April 06 — **Public Interest Litigations: the Indian experiment with Judicial Activism**
with Nazia Yusuf

### 2005

In 2005, SIS conducted five study sessions. The topics ranged from understanding certain doctrinal aspects of the religion and the Malaysian context of Islam to international mechanisms and strategies to defend women's rights (especially for Muslim women). Building on the last *Baraza!* Report, here are the sessions we had last year:

1. 9 July 05 — **The Masterminded Malay Mind**
with Prof Dato' Shamsul Amri Bahari

2. 27 July 05 — **Playing God : Who Speaks for Islam Today?**
with Prof Khaled Abu Al-Fadl

3. 12 Aug 05 — **Nation Building in Malaysia, 1957-2005 : Contestations Among Malays and Non-Malays**
with Dr Heng Pek Koon

4. 26 Nov 05 — **What is CEDAW and how is it relevant to me?**
with Rozana Isa and Janine Moussa

5. 17 Dec 05 — **Tactical Mapping and Advocacy Strategies**
with Shanon Shah Mohd Sidik

## Trainings/Workshops

As part of SIS advocacy and empowerment work, we conduct workshops at the national and regional levels. We conducted several workshops in 2005 with the Muslim community and religious leaders from South Asian countries including Afghanistan and Pakistan. Artists, fellow activists, academics, politicians and homemakers interested in SIS issues have also taken part in our workshops, In fact, we saw increased participation from these sectors in our workshops in 2005. Most participants found our modules on women's rights and Islam enlightening and liberating. Not only did they say that the workshops gave them a better understanding of the issues, they also appreciated the non-judgmental and open discussions that were the cornerstones of our workshops.

2006

| | | |
|---|---|---|
| 1. | 5 Mar 06 | **Training on Human Rights and Gender for Young Men**<br>Organised by Amnesty International<br>Conducted by Shanon Shah Mohd Sidik |

*Note: There are several workshops in the pipeline for this year, involving local and international participants from Iraq and south Asia. We will also be running a short course, "Understanding Islam from a Human Rights Perspective," for participants from around the world in August.*

2005

| | | |
|---|---|---|
| 1. | 2 - 4 Feb 05 | **1st Study Tour for South Asian Religious and Community Leaders**<br>Organised by SIS<br>Lead facilitator: Zaitun Kasim; Co-facilitators: Shanon Shah, Yati Kaprawi |
| 2. | 26 March 05 | **"Know Your Rights' workshop for Muslim Women**<br>Organised by ERA Consumer<br>Lead facilitator: Zaitun Kasim; Resource person: Razlina Razali |
| 3. | 16 – 20 May 05 | **2nd Study Tour for South Asian Religious and Community Leaders**<br>Organised by SIS<br>Lead facilitator: Zaitun Kasim; Co-facilitators: Shanon Shah, Yati Kaprawi |
| 3. | 30 July 05 | **Beginner's Training on Gender and Shariah**<br>Organised by SIS<br>Lead facilitator: Shanon Shah |
| 4. | 5-7 Aug 05 | **Artists and Activists for Justice – Pushing the Boundaries**<br>Organised by SIS<br>Lead facilitator: Zaitun Kasim; Co-facilitator: Kris Ramlan |
| 5. | 20 Aug 05 | **Shariah Law, Gender and Human Rights**<br>Organised by SIS<br>Lead facilitator: Zaitun Kasim; Co-facilitator: Shanon Shah |
| 6. | 18 Dec 05 | **Advanced Workshop on Gender and Shariah**<br>Organised by SIS<br>Lead facilitator: Zaitun Kasim; Co-facilitator: Shanon Shah |

**Research**

**• Islamic Family Law Reform**

SIS organised a three-day International Consultation on "Trends in Family Law Reform in Muslim Countries" from 18-20 March 2006. The consultation brought together Islamic scholars and activists from Morocco, Turkey, Indonesia, the Philippines, Singapore, the United States, Britain and Malaysia to share doctrinal arguments and advocacy strategies for a new Muslim Family Law based on a framework of justice and equality.

The Consultation opened with a moving presentation by the three daughters of the current and past Prime Ministers, an event which received wide media coverage. Representatives from the various government agencies and other local bodies were also invited to the opening forum. SIS also organised a public forum, "Muslim Women Speak - Claiming the Right to Public Participation" which enabled the public to interact with invited scholars and learn from their experiences.


*Study session with (from left to right): Grand Mufti of Bosnia, Dr. Raisul-Ulama Mustafa Ceric and Imam Feisal Abdul Rauf.*

**• Polygamy Research**

A nationwide research on the impact of polygamy on the family institution is at the point of kick-off. Finalised questionnaires are now being tested prior to implementation. SIS is also working with academics and researchers from three universities to support and strengthen this research. We are looking for enumerators and research assistants. If you are interested to volunteer your time, skills and resources, e-mail us. Alternatively, if you know of anyone with experience living in a polygamous family, past or present, and would like to be part of this effort in widening the knowledge base around the impact of polygamy on the family, let us know.

**Legal Services**
This year alone, 538 people approached Sisters In Islam's Legal Clinic to seek pro bono legal aid. SIS legal officer Razlina Razali runs the clinic with the help of chambering students who assist as part of their compulsory practical training. With the help of Pusat Bantuan Guaman (Legal Aid Centre), Kuala Lumpur and Selangor, the SIS Legal Clinic is open on Mondays, Thursdays and Fridays from 9am to 5pm.

Each person presents various problems and issues that are often inter-related, especially in the case of divorce. The most common issues that arise are about the financial rights of a wife upon divorce, such as *nafkah*, *iddah*, *mut'ah*, and *harta sepencarian* (matrimonial assets). Among the frequent questions asked are whether they have a right to *harta sepencarian* if they were not working or employed prior to the divorce. They were also frequently confused by threats made by the husband that they would stand to lose all their rights if they were the ones who filed for divorced. This made them afraid to ask for divorce even if, in most cases, they had very strong grounds for divorce under the law. The issue of *harta sepencarian* also arise in the context of administering inheritance. Women need to know that they have a right to claim their share of *harta sepencarian* from the deceased husband's property before the estate is divided according to *faraid*.

Going by the kinds of complaints we receive, and the issues that these women want resolved, we are heartened that women today are more aware of their rights and more courageous in demanding them.

# Recommended Reading

**Abou El-Fadl, Khaled. 1997. The Authoritative and the Authoritarian in Islamic Discourse: a Contemporary Case Study. Texas: Dar Taiba. 118p.**
Prophet Muhammad's direct link to the Divine Will was all that was necessary for the community to understand itself, its role in society and the purpose of its existence. But with the Prophet's death, Muslims were alone. How could Muslims understand God's purpose and Will without their Prophet? The need to know the Divine Will still remained. Their loneliness was merely a moment of insecurity allowing a transition into discourses of shariah. Relying on the few authoritative sources i.e. the Quran and the Sunnah, the *fuqaha* started to debate and write about issues of religious, social and political relevance. The discourse continued for centuries.

Prof Khaled Abou El Fadl studied the authoritarianism endemic in Muslim discourses today. He discovered that this negates the authoritativeness of Islamic texts and nullifies the richness and diversity of the Islamic tradition.

**Wadud, Amina. 1999. Quran and Woman: Rereading the Sacred Text from a Woman's Perspective. New York: Oxford University Press. 118p.**
Fourteen centuries of Islamic thought have produced a legacy of readings of the Quran written almost entirely by men. Now, with Quran and Woman, Amina provides a first interpretative reading by a woman, a reading which validates the female voice in the Qur'an and brings it out of the shadows. Muslim progressives have long argued that it is not the religion but patriarchal explication and implementation of the Qur'an that have kept women oppressed. For many, the way to reform is the re-examination and reinterpretation of religious texts.

Quran and Woman contributes a gender inclusive reading to one of the most fundamental disciplines in Islamic thought; Qur'anic exegesis.

**Esack, Farid. 2002. Qur'an: A Short Introduction. Oxford: Oneworld Publications. 214p.**
At the heart of the Islamic tradition lies the Qur'an – law maker, moral code and the Word of God, speaking directly to Muslims for over one thousand years. Farid Esack guides the reader through the Qur'an, outlining the key themes, explaining its historical and cultural context and examining the complexities and controversies surrounding these areas.
Other areas covered include;
• the Qur'an as evocative oral experience
• understanding and interpreting the Qur'an
• the major themes of the Qur'an, including such issues as truth, justice and gender relations
This book offers a concise guide to the Islamic Holy Book and an engaging insight into its central role within the daily lives of Muslims across the world.

**Stowasser, Barbara Freyer. 1994. Women in the Quran, Traditions and Interpretation. New York: Oxford University Press. 206p.**
Islamic ideas about women and their role in society spark considerable debate in both the Western and Islamic worlds. Despite the popular attention given to Middle Eastern attitudes toward women, there has been little systematic study of the statements regarding women in the Qur'an. Stowasser fills the void with this study on the women of Islamic sacred history. By telling the stories of these women as they appear in the Qur'an and Qur'anic interpretation, she introduces us to past and present paradigms of Islamic doctrine and to the socio-economic and political applications of these paradigms. Stowasser establishes the link between the female figure as cultural symbol and Muslim self-perceptions from Islam's beginnings to the present time.

**Barlas, Asma. 2002. Believing Women in Islam: Unreading Patriarchal Interpretation of the Quran. Austin: University of Texas Press. 245p.**
Does Islam call for or sanction the oppression of women? Non-Muslims point to the subjugation of women that occurs in many Muslim countries, especially those that claim to be "Islamic". At the same time, many Muslims read the Qur'an in ways that seem to justify sexual oppression, inequality and patriarchy. Taking a wholly different view in this book, Asma develops a believer's reading of the Qur'an that demonstrates the radically egalitarian and anti-patriarchal nature of its teachings.

# Recommended Weblinks

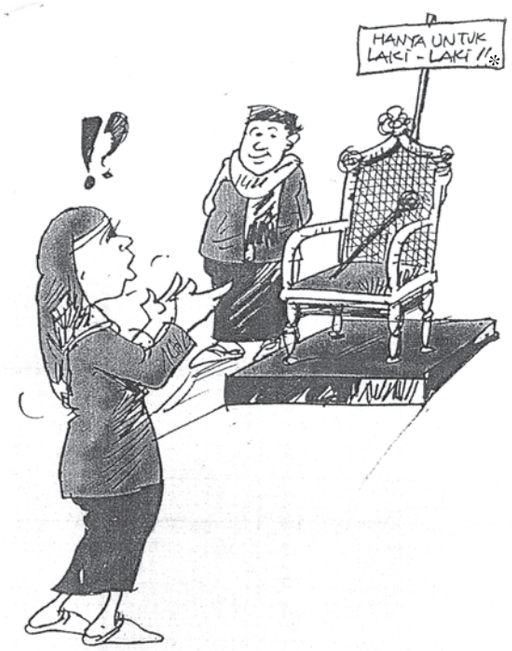
**Muslim Feminists and the Veil: To veil or not to veil – Is that the question?**
*http://www.maryams.net/articles_veil01.html*
Over the last decades of the twentieth century in particular, there has arisen a strong trend of Muslim women and men who choose to reject misogyny and androcentrism as being alien to their perception of Islam. These Muslims find empowerment and equality by reinterpreting Islamic sources to match their vision of a religion that is egalitarian at its core. If the veil has mistakenly come to represent Islam, and in particular women's place in Islam, then the question must be asked what do these new Muslim feminists have to say about it?
The purpose of this research project was to ascertain why the issue of women's veiling forms an important part of 'the woman question' as articulated by late twentieth-century Muslim feminists. The writer analysed the most important arguments made about women's veiling in the context of women's rights and equality as developed in Muslim feminist academic literature.
The fundamental reason why women's veiling is important to the question of women's rights, according to Muslim feminists, is that power over the veil represents freedom of choice. In particular, the ability to choose whether to veil or not, in accordance with the Muslim feminist's own personal interpretation of Islamic faith and morality, is at the very heart of what Islam represents to Muslim feminists: The basic Qur'anic ethic of the sovereign rights of both women and men as human beings who have the freedom of self-determination.

**The Place of Tolerance in Islam: On reading the Qur'an—and misreading it** by Khaled Abou El Fadl
*http://bostonreview.net/BR26.6/elfadl.html*
The terrorist attacks on New York City and the Pentagon have focused public attention on the state of Muslim theology. For most Americans, the utter indifference to the value of human life and the unmitigated hostility to the United States shown by some Muslims came as a great shock. Islamic values, they say, are fundamentally at odds with Western liberal values. The terrorist attacks are symptomatic of a clash between Judeo-Christian civilisation, with its values of individual freedom, pluralism, and secularism; and an amoral, un-Westernised, so-called "authentic Islam".
The Qur'an, or any text, speaks through its reader. This ability of human beings to interpret texts is both a blessing and a burden. It is a blessing because it provides us with the flexibility to adapt texts to changing circumstances. It is a burden because the reader must take responsibility for the normative values he or she brings to the text. Any text, including those that are Islamic, provides possibilities for meaning, not inevitabilities. And those possibilities are exploited, developed and ultimately determined by the reader's efforts – efforts in good faith, we hope – at making sense of the text's complexities. It would be disingenuous to deny that the Qur'an and other Islamic sources offer possibilities of intolerant interpretation.

**Beyond Interpretation: A Response to The Place of Tolerance in Islam** by Amina Wadud
*http://www.bostonreview.net/br27.1/wadud.html*
This is a response to Khaled Abou El Fadl's article The Place of Tolerance in Islam. Amina commends Khaled for his insightful assessment of the attacks on New York City and the Pentagon and especially for his parallel historicisation of those events and the work of Qur'anic interpretation. Amina asserts her attitude towards extremism justified by the name of Islam, criticising how Islamist groups interpret the Quranic texts without applying them to moral and current contexts.

**Morocco: The Quiet Revolution**
*http://www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-507761*
*http://service.spiegel.de/cache/international/spiegel/0,1518,394869,00.html*
Moroccan King Mohammed VI is using a tolerant interpretation of the Qu'ran in an attempt to modernise his country. By granting new rights to women and strengthening civil liberties, the ruler of this country of 30 million on Africa's northern edge, which is 99 percent Muslim, plans to democratise Morocco through a tolerant interpretation of the Qu'ran. Now all Moroccan women, even those who are illiterate, know that they are protected by law.

**Is Killing An Apostate in the Islamic Law?**
*http://www.irfi.org/articles/articles_251_300/is_killing_an_apostate_in_the_is.htm*
*Ridda* or *Irtidad*: Literally means 'turning back'. The act of apostasy; leaving Islam for another religion or for a secular lifestyle. The Qur'an is completely silent on any worldly punishment for apostasy, and the sole Tradition that forms the basis of rulings is open to many interpretations. Due to lack of education and critical thinking, several myths have taken root in the Muslim world over the ages, and there has been no effort in the past to clear these doubts. On the contrary, efforts seem to have been made to strengthen these myths and misconceptions.
The issue of killing a *murtad* (apostate) is not a simple one. Scholars have debated it from various angles and it is not simply an issue of killing someone for choosing one religion over another. A number of Islamic scholars from past centuries have all held that apostasy is a serious sin, but not one that requires the death penalty.




**Only for men!*

*Illustration taken from "Dakwah Fiqh Perempuan: Modul Kursus Islam dan Gender" Muhammad, Husein et al. March 2006, Cirebon: Fahmina Institute.*