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# Interpreting Islam and Women's Rights

## *Implementing CEDAW in Pakistan*

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**abstract:** The engendering of Muslim civil society is raising profound questions regarding women's social roles and rights, resulting in conflicting images particularly concerning what constitutes women's rights, who is to define what these rights are, where responsibility lies for ensuring these rights, and the role states are playing in articulating and clarifying what is acceptable and unacceptable within a Muslim context. This article investigates Pakistan's response to having become a State Party to the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It focuses on the debate now underway to define what constitutes discrimination against women, how the state might act to eliminate discrimination against women not only in the legal sense but also in the social sense, the roles being played by various groups within the women's movement to facilitate the process of adherence to CEDAW, as well as other challenges being faced as the Pakistan state attempts to eliminate discrimination against women. This underscores the challenge of transforming prevailing Islamic interpretations of women's legal rights into ones acceptable to local mores and values while adhering to the requirements of CEDAW.

**keywords:** CEDAW ♦ Muslim societies ♦ Pakistan ♦ women in Pakistan

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Contemporary Muslim society is undergoing unprecedented social change. Virtually everywhere, Muslims are rethinking and renegotiating traditional society, particularly women's place in the larger social order. Many postcolonial Muslim states, in particular, are struggling to identify the trappings of colonization and westernization which have encroached

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upon their social norms, values, economy, polity and current legal structures. The engendering of Muslim civil society is raising profound questions regarding women's social roles and rights, a discourse whose scope ranges far beyond that prevailing in any single nation-state. This debate elicits disparate, conflicting images in the contemporary Muslim world, particularly concerning what constitutes women's rights, who is to define what these rights are, where responsibility lies for ensuring these rights, and the role states are playing in articulating and clarifying what is acceptable and unacceptable within a Muslim context.

Globalization has had an important political effect on women throughout the world. It creates a dichotomous relationship wherein women struggle for autonomy while also struggling to be integrated into the market economy. This can be seen most poignantly in Muslim countries, where women's rights movements have paralleled the rise of the global women's movement. While this was facilitated by the UN Decade for Women (1975–85), we have seen an even greater increase in the past decade. Global preparations for the 1995 Beijing Conference – the UN Fourth World Conference for Women – and the subsequent monitoring not only of how the resultant Platform for Action has been implemented around the world but also how the UN Convention on the Elimination of All forms of Discrimination against Women (CEDAW) is being implemented by nearly 90 percent of UN members (170 countries<sup>1</sup>) who have become States Parties to the Convention, has energized women worldwide. Technological advances in communication and transportation have enabled women to find out what is happening elsewhere in the world, to learn from each other, and to hold their own countries accountable to agreements they have made. If the Optional Protocol to CEDAW – which enables individuals and groups to hold their states accountable to eliminating discrimination against women – becomes entered into force, that will be an even greater global tool to empower the world's women.<sup>2</sup>

As women's groups are communicating across national boundaries and are strengthening the global women's movement there is, simultaneously, greater pressure within the international arena for states to improve conditions confronting women in their respective countries. Gender disparity in rights continues to constrain women's choices in many aspects of life worldwide. Despite the World Bank's acknowledgment of 'gender equality' as a core development issue (and hence as a development objective in its own right), there is no region of the world where women are equal to men in legal, social and economic rights (World Bank, 2001: 4). Development assistance is now often tied to human rights records, and both donors and western governments shy away from supporting those states which are condemned by global popular culture in their treatment of women and their treading on women's rights. This often manifests by

states becoming parties to international human rights treaties; they can reap the immediate public relations benefit of joining the treaty even if national leaders are not fully informed or committed to implementing it.

In Pakistan in particular, since the introduction in 1979 of Zia ul-Haq's Islamization program, women's rights have become a focal point in national political discourse as the resultant legal structure places women in unequal positions to men. Efforts to empower women through micro-credit<sup>3</sup> and in other economic arenas, however, have remained more limited in Pakistan than in other countries. In the political arena, women activists and members of women's rights organizations have expressed a growing sense of disempowerment and discomfort over prevailing political conditions which tend to exclude them from participating in elections (Zia and Bari, 1999). This scenario, compounded by long-standing traditional beliefs which demarcated women's roles within the home from men's roles outside of it, the proliferation of *deeni madari* (religious) schools throughout the country which further reinforced the exclusion of women from public life, and a dictatorial regime which tried to exclude popular participation entirely until the mid-1980s, has created an atmosphere that essentially excludes women from the political process in Pakistan.<sup>4</sup>

The stresses and pressures placed upon states to address women's rights are evident in the following statement made in the *Report of the Commission of Inquiry for Women in Pakistan*:

No community or nation is an island anymore, and Pakistan cannot remain unwashed by the rising global currents. It needs to address its domestic issues in ways that are in some harmony with the international perspective and universally accepted norms. If it does not do it now, it will be compelled to do it later, after much damage. (Commission of Inquiry for Women, 1997: xi)

What constitutes accepted roles and rights of women provides for fundamental values upon which Muslim social order has historically been constructed. As Lila Abu-Lughod (1998: 3) has noted, in the postcolonial world, women have become potent symbols of identity, society and the nation. The late Ernest Gellner wrote that Islam has provided a common moral language that has unified disparate communities in the past (Gellner, 1983: 33); its propensity to do so now and in the future, its ability to interrogate, renew and reform its values – *islah* and *tajdid* – is being challenged on a number of fronts, the most important of which concerns the rights of women.

In this article, I turn to the example of Pakistan's efforts to implement CEDAW, the UN Convention on the Elimination of All forms of Discrimination against Women, through which we can see how the state and local civil society groups are grappling with identifying what *should be*

women's rights and the dilemmas the state then faces in securing these rights. Pakistan ratified CEDAW a few months after the UN Fourth World Conference for Women in Beijing.<sup>5</sup> It is among the 23 Muslim majority states<sup>6</sup> that are now States Parties to the Convention.

All States Parties are obligated to review the impact of existing laws on women, change those laws which discriminate against women, and submit periodic reports to the UN Division for the Advancement of Women (DAW) on their progress. CEDAW's principle of state obligation requires States Parties not only to bring their domestic laws in line with the Convention, but also to ensure the practical realization of rights by undertaking extra measures to implement enabling conditions so that women's capacity to access the opportunities provided is enhanced. Article 5 asserts that States Parties must strive to modify 'the social and cultural patterns of conduct of men and women' to eliminate prejudice based on stereotyped beliefs of the inferiority of women.<sup>7</sup> Here we can see that CEDAW blurs the lines separating the public and private spheres, and is the first international human rights instrument to do so. While every Muslim country which has become a State Party to the Convention has voiced concerns that certain elements of CEDAW *may* be contradictory to Islamic tenets, it has also affirmed that most of the Convention is not. Pakistan has been engaged in extensive reviews of existing laws in this regard.

Pakistan today is endeavoring to construct culturally appropriate definitions of women's rights, as well as culturally acceptable mechanisms to implement them. Indeed, the effort to find and articulate culturally appropriate definitions of women's rights is not just an issue in Pakistan but is a contentious one worldwide. While Pakistan has sought to clarify or adapt its national laws, planning processes and related institutions to conform to CEDAW's requirements, it has also sought to clarify arenas where it cannot conform. There are abundant views and opinions on Islam and its conceptions of women's human rights. I. A. Rehman, chairperson of the Human Rights Commission of Pakistan, maintains that 'there *is* no Islamic discourse in the country' (pers. comm.). While I have found such markedly different views in Pakistan on the issue – and vision – of women's human rights, the process of articulating what this vision is has not undergone any kind of internal debate although the government of Pakistan ratified CEDAW. Now, due to *external* pressures, it is searching for a workable way of enforcing the Convention.

CEDAW was introduced as part of the UN's global efforts to empower the world's women. It builds on former international agreements, treaties and instruments and is clearly rooted in the spirit of the United Nations' Charter; as the Preamble of the Convention states, it 'reaffirms faith in fundamental human rights, in the dignity and worth of the human person

and in the equal rights of men and women'. CEDAW's essence is summarized in Article 3 of the Convention:

State Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

At issue, in particular, within the Muslim world is the concept of *equality* versus the concept of *equity*. *Equality* is often raised as being a uniquely western concept. The goals of struggles for gender *equity* are argued to be equitable distribution of power, resources, access, and the like. It includes a recognition that peoples and cultures *do* differ from one another, generally *have* some sort of gender-based division of labor but that neither men nor women should enjoy privileges and power denied to the other, that neither men nor women should be unduly *valued* over the other, and that each should occupy important spaces in their given societies. An example can saliently illustrate this point. A controversial issue that emerged at the 1993 Vienna Human Rights conference was that of inheritance. Americans and most Western European delegates wanted the resolution to state the equal inheritance of sons and daughters. Representatives from predominantly Muslim areas and some others argued that in their societies, there were other social support mechanisms built in, especially within the extended family, that provided benefits that could not be measured in terms of land or capital. Dr Anis Ahmed, director of the Daw'ah Academy at the International Islamic University in Islamabad, expressed to me that he differentiates between equity and equality in that he sees equity as taking a qualitative approach, equality taking a quantitative one, regarding the needs, requirements and roles of women and men in society. This issue of *equitable* versus *equal* remains contested in Pakistan's CEDAW report, which is *still* in draft form.<sup>8</sup>

Through ratification of CEDAW, Pakistan assumed the obligation to change laws and policies and provide enabling conditions to also change attitudes to protect women from gender-based discrimination and violence. Getting the government to ratify the Convention was a watershed point for the Pakistan women's movement. There are critical elements within the Convention that would attest to this. For example, Article 1 requires the state to create policies to eliminate discrimination against women including 'any distinction, exclusion or restriction made on the basis of sex which has the purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . On a basis of equality of men or women, of human rights and fundamental freedoms.'

Many people within and outside Pakistan are often surprised when

they hear that Pakistan has acceded to CEDAW. Why not? It has become a State Party to a number of gender-focused UN human rights instruments, as far back as the 1953 Convention on the Political Rights of Women. Instead of ratifying the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage in the late 1950s, it promulgated the 1961 Muslim Family Laws Ordinance, which requires the registration of all marriages, the written permission of a man's wife (or wives) before an arbitration council decides if he may marry again, the abolition of divorce by repudiation (*talaq*), and other safeguards for women in the event of a divorce. While it does not go as far as the UN Convention in regulating marriage, it does provide economic and legal protection to women by regulating divorce and restraining polygamy. Pakistan later became a State Party to the UN Convention on the Rights of the Child in 1990; the 1993 Vienna Declaration 'which recognized women's rights as human rights'; the 1994 Cairo Population and Development conference's Program of Action; and the 1995 Platform for Action in Beijing.

Pakistan's constitutional framework is not consistent on women's rights. The 1973 Constitution further advanced women's legal rights in the country on a number of fronts. For example, in the section on Fundamental Rights and Principles, Article 3 affirms that the state is committed to eliminating exploitation and to guarantee 'the gradual fulfillment of the fundamental principle, from each according to his ability, to each according to his work' (National Assembly of Pakistan, 1993: 6). Article 25 (1) guarantees that all citizens are equal under the law and are entitled to equal protection of law; Article 25 (2) adds 'There shall be no discrimination on the basis of sex alone.' Article 27 prohibits discrimination on the basis of sex, race, religion, or caste for government employment. Finally, in the Principles of Policy section, Article 34 states that 'steps shall be taken to ensure full participation of women in all spheres of national life'; and Article 38(a) adds that it is the responsibility of the state to 'secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living'.

However, when most people think of the issue of women's rights in Pakistan, they think of the controversy surrounding General Zia ul-Haq's 1979 Islamization program, of the Hudood Ordinances and the Law of Evidence (*Qanoon-e-Shahadat*). Zia ul-Haq (1979: 3) ordained in February 1979 that he was introducing 'the Islamic system in the country', but never initiated a public consensus on what that would mean.<sup>9</sup> The Hudood Ordinances, heralded as the foundation of this new system but essentially just a new penal code, focused on enforcing punishments for three kinds of crimes explicitly outlined in Islamic *sharia* (law): theft of private property, the consumption of intoxicants, and adultery and fornication

(*zina*). The most controversy swirled around the last, *zina*, both because the ordinance governing it made no legal distinction between adultery and rape and because its enforcement was highly discriminatory against women. Four years later, Zia's government promulgated the Law of Evidence, which critics charged would disallow women from testifying at all in certain kinds of cases and would cause their testimony in other cases to be irrelevant unless corroborated by another woman. While the restrictions on women's testimony have only been upheld in cases concerning economic transactions, the law clearly gives men and women different legal rights and, at least, underscores that the state does not regard women and men as equal economic actors.

Most people are unaware that the same year the government introduced its Islamization program, it also established the Women's Division. Its successor, the Ministry for Women's Development, was instrumental in preparing Pakistan's National Report for the 1995 Beijing Conference; the follow-up project to implement the promises made in Beijing titled the *National Plan of Action* (Government of Pakistan, 1998a); preparation of the Beijing +5 report for the May 2000 conference at UN headquarters; and monitoring Pakistan's progress in implementing CEDAW (Government of Pakistan, 1998b, 1999).

In 1994, when Pakistan was preparing its National Report for the forthcoming Beijing Conference, the Senate decided to establish a 'high-powered commission' to review the country's laws as 'a step toward ending the grosser iniquities against women'. The resultant *Report of the Commission of Inquiry for Women* states that:

There is a widespread misconception about the place Islam accords to women, which is not just a distortion spread in the West but it exists even among the intelligentsia in the Muslim World, including Pakistan. It is believed that Islam relegates women to an inferior status; it confines them inside the four walls of their homes; and it restrains them from taking up employment outside their homes or running their own business. This is wholly contrary to fact. Muslim scholars are agreed that Islam accords women virtually the whole gamut of rights, including the rights to property, to work and wages, to choice of spouse, to divorce if marriage does not prosper, to education and to participation in economic, social and political activity. These are guaranteed to Muslim women by Shariat. (Commission of Inquiry for Women, 1997: ii)

The *Report* continues by noting that many of the derogatory laws and customs in Pakistan are, unfortunately,

... justified in the name of Islam or have been introduced as Islamic laws when clearly they are retrograde customs and traditions, or ill-informed interpretations that bear no relation to the divine design. This distinction has to be clarified once and for all. Ambiguity allows obscurantist elements to re-open

debate on settled fundamental principles, and gives rise to insecurity among women within and to an extremely adverse image abroad. (Commission of Inquiry for Women, 1997: xi)

Indeed, when we review women's marginalized status in all spheres of Pakistani society – political, economic and social – it is evident that this is partly a result of women's exclusion from the kinds of decision-making processes which, in particular, affect life outside the family. In Pakistan, the inverse sex ratio is one of the lowest in the world: 91 women for every 100 men, thereby bringing into question women's right of access to nutrition, health care and related concerns. Pakistan's female economic activity rate, compared to males, is only 42 percent.<sup>10</sup> While just over half of all adult urban women are literate, less than a quarter are so in rural areas; access to an education is highly circumscribed for women in many parts of the country.<sup>11</sup> This resulted, in 2000, in an overall female adult literacy rate of 27.9 percent, compared to a male adult literacy rate more than double that, at 57.5 percent.<sup>12</sup> Formal political participation remains an essentially male domain despite increasing numbers of women joining political parties, changes in social perception of politics and the recognition of the significance of women's inclusion in it.

Returning to Pakistan's ratification of CEDAW and its efforts to implement the Convention, we can see a poignant debate has emerged regarding what constitutes discrimination against women and what rights women should enjoy in a Muslim context – a debate that I. A. Rehman believes does not yet even exist in Pakistan. We should recall that CEDAW is unique in a variety of ways, both in the requirement to submit periodic reports that indicate the measures that a state has adopted to give effect to the provisions of the Convention, and in that while CEDAW permits ratification subject to reservation – a formal declaration that the state does not accept as binding specific treaty provisions – this is meant to be a temporary measure so that states can take steps to remove obstacles to the implementation of the articles it has reserved. CEDAW's unique clause is Article 28 (2), which precludes any reservation which is incompatible with the Convention's object and purpose, especially its three fundamental principles of equality, non-discrimination, and state obligation. On the last-mentioned principle, state obligation, States Parties are not only obligated to bring their domestic law in line with the Convention but also to ensure the practical realization of rights by undertaking extra measures to implement enabling conditions so that women's capacity to access the opportunities provided is enhanced. In the reports – to be submitted within one year of accession or ratification and thereafter every four years or when the Committee requests – States Parties must indicate the measures they have adopted to give effect to the provisions of the Convention.

Pakistan's Instrument of Accession to CEDAW states that the Government of Pakistan will strive to implement the Convention but with the following reservations:

*General Declaration:* The accession by the Government of the Islamic Republic of Pakistan to the Convention on the Elimination of All Forms of Discrimination Against Women is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.

*Reservation:* The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of Article 29 of the Convention.

This paragraph states that any dispute between two or more States Parties concerning the interpretation or application of CEDAW which is not settled by negotiation between them can be submitted for arbitration to the International Court of Justice. This is not a dispute with any aspects of CEDAW's *essence*, but rather to counter the prospect of another state's criticism of Pakistan's *implementation* of CEDAW. Seven European States Parties to CEDAW, however, have raised objections to Pakistan's interpretation of the paragraph.<sup>13</sup>

The Ministry for Women's Development in Pakistan melded, in practice, the process of compiling data for the *National Plan of Action* (that was done as a follow-up to the Beijing *Platform for Action*) with identifying discriminatory laws, policies and attitudes within each federal ministry in preparation of writing the country's required CEDAW report. Thus far, a number of draft CEDAW reports have been written, but the state has determined it necessary to take a step back and first articulate a National Policy on Women. In the latter half of 2001 and during 2002, it held provincial meetings with local stakeholders – government bureaucrats, elected officials and grassroots activists – to create consensus on key themes to promote women's empowerment. However, although the language resembles the requirements of CEDAW – such as using the terminology of 'creating enabling conditions' – it draws the deep commitment of the state into question somewhat.

Indeed, while Pakistan does not condone discrimination against women at the constitutional level, agreement on the definition of what constitutes women's rights seems to end when efforts are made to become more specific and articulate workable, acceptable laws. While traditional views toward women's roles in society are being championed in many domains, substantive changes are simultaneously occurring throughout the country in social practices, orientations and values. Conflicting images regarding the place and power of women are having widespread social, economic and political consequences. A definite paradigm shift in women's access to power is occurring today in Pakistan, albeit slowly and in limited

quarters, engendering conflicting notions regarding the status and power of women throughout the society. How this translates into motivating and facilitating women to move out of the vestiges of the home into the arena of social life outside it is, for many women, one of the most daunting challenges of their lives. To access power at any level, Pakistani women need to find a voice in both public and private spheres of life. While the participation of elite women has been gradually increasing in public institutions, this has not necessarily carried over to women of all classes finding a voice in the wider society nor in their own families.<sup>14</sup> For women to become empowered would mean that they would now have some element of power and influence over what happens to their lives and generally results, too, in taking away some of the power and influence that members of other groups once held. This is, obviously, a highly controversial issue in Pakistan, and one which has been used – and manipulated – by differing political groups to further their own agendas for some time. The full range of divergent views on women's rights within Pakistan extend from being highly supportive of withdrawing the conservative Islamic laws that had been implemented during Zia ul-Haq's military regime, to contending that women should only enter the workplace or other public arena when they have fulfilled their domestic obligations, to women remaining confined within the home inside *chador aur char dewari* (within the veil and the four walls of one's home).<sup>15</sup>

For example, Farhat Hashmi, director of a relatively new Islamic institute for women in Islamabad, al-Huda, understands local interpretations of women's human rights, derived from Islam, as follows:

Women and men, both have their own spheres; each has definite basic responsibilities. Men have work outside the home; women have work within the home. It is not mandatory that a woman cannot work outside of the home, or a man cannot work inside the home. If they fulfill their responsibilities fully, they can do the other's tasks as well.<sup>16</sup>

While this view supports those women who seek to be empowered outside the home to find justification for their actions while not necessarily alienating more traditional sentiments, many Islamist advocates would not agree with this interpretation or conclusion. We can see, then, that finding a way for a state to simultaneously balance its own political exigencies is challenging as it confronts its own progressive and its own Islamist oppositions. Although the fluidity of most interpretations of what constitutes 'non-discrimination' and women's rights depends in large part on political context (more so than economic or social contexts), there seem to be some universal restrictions, especially in regard to female inheritance and other aspects of Muslim family law, that create formidable challenges for Pakistan – as well as for other Muslim states that have ratified

the Convention – to eliminate laws which apply differentially to men and women.

In Pakistan, judicial decisions concerning Islam are based, by and large, on Hanafi interpretations, though on occasion the state has turned to decisions based on other schools of *fiqh* as well. The key areas of dispute that the Pakistan state has had with CEDAW fall into three categories: co-education, inheritance and evidence/legal witness. The first category is often framed as being contradictory to those sentiments prevailing in the local culture, which largely operate under the ideal of separate spheres for males and females. Interestingly, co-educational schools had been a norm in higher education in Pakistan until its expansion in the 1970s, when students from a range of social, economic and religious backgrounds began to attend high schools and universities; it was dismantled nearly everywhere during the waning years of Zia ul-Haq's regime a decade later.

The other two categories are directly affected by Pakistan's Constitution, which requires that no laws can be in contradiction to the injunctions of Islam. These two categories of dispute – inheritance and evidence/legal witness – are widely regarded as being derived from the Qur'an and, as such, are immutable. On this basis, Pakistani law cannot grant complete equality in inheritance to men and women, given that verse 4:11 in *Sura al-Nisa* clearly states, 'A male shall inherit twice as much as a female.' The issue of evidence/legal witness is slightly more problematic. Zia ul-Haq's controversial Law of Evidence (*Qanoon-e-Shahadat*) was promulgated by the Government of Pakistan based on verse 2:282 in *Sura al-Baqr*:

Call in two male witnesses from among you, but if two men cannot be found, then one man and two women whom you judge fit to act as witnesses; so that if either of them commit an error, the other will remember.

However, this has been interpreted in a number of ways, and the current practice in Pakistan does not restrict women's testimony except in certain kinds of financial cases.

One point that many people believe is an issue in Pakistan – but legally is not – concerns consent and guardianship at the time of marriage. Pakistani case law until recently was ambiguous on this, as it has sometimes ruled in favor of a father who had opposed a daughter's marriage (on the basis that he is her *wali*, guardian), other times ruling in favor of the new bride and her husband. But in the Saima Waheed and Humaira Butt cases in the late 1990s,<sup>17</sup> the ruling was clear: based on Islam, once a child is legally considered to be an adult, the only consent necessary to obtain for a marriage to occur is that of the man and woman entering into the marriage. Consequently, a parent's objection to a marriage is not

relevant to the law (albeit it is preferred within the culture). The ruling noted that the issue has been raised in Pakistan repeatedly more because of *rivaj* (tradition) than because of its legal foundations within Islamic jurisprudence. As an extension of this interpretation, of a woman's rights as a legal adult, the nationality law has been revised so that a Pakistani woman's children can 'inherit' her nationality, irrespective of her husband's nationality, although her husband still cannot.

In its draft CEDAW report, the Pakistan government identifies a number of obstacles, quite forthrightly, that it faces in eliminating discrimination against women and in implementing the Convention, notably prevailing sociocultural norms, the existing patriarchal system, legal guarantees that are often not translated into concrete actions, and the society's feudal values.<sup>18</sup> It argues that most of the substantive challenges lie in implementation, especially at the grassroots level, due to locally perceived cultural restrictions and political necessities to appease certain groups.

However, the 1997 ground-breaking *Report of the Commission of Inquiry for Women* identified a number of specific laws and criminal procedures, in addition to traditional customs and social practices, that are discriminatory toward women in Pakistan. It makes explicit recommendations as to how Pakistan can remove such discrimination and redress inequities toward women. The *Report* also expresses concern that the state has taken contradictory positions on eliminating discrimination against women by acceding to CEDAW but *not* reversing those existing discriminatory laws. It maintains that to experience real and meaningful progress, the Pakistan state must adopt a new vision,

... which regards any acceptance of equality not as a favor or indulgence granted but as a prolonged and cruel injustice at last undone; which treats affirmative action as a necessary means of reversing centuries of discrimination and imbalance, not as a privilege or concession; which redefines the concept of equality keeping in mind the special needs of women as their right; and which explores fresh and imaginative strategies to make the vision a workable reality. (Commission of Inquiry for Women, 1997: xiii)

How this vision can become assimilated into the state's machinery and among Pakistanis is the clearest challenge it faces, as codified traditions are often perceived as religious doctrine. This has long enabled bureaucrats, in practice, to deny recognizing the problems confronting women in various arenas as well as to neglect solutions for women's empowerment along the lines that CEDAW and others recommend. Policies of former governments have been inconsistent, shifting between those promoting women's empowerment and those which have diminished it. An unforeseen consequence of such actions is that they fuel the 'culture

wars' between different groups, for the state was not playing a mediating role but rather a provocative one and was unwittingly aggravating the divides between various groups regarding women's rights in the country.

We have seen, particularly following the US military action against the Taliban in Afghanistan, examples of how culture and religion have become inextricably intertwined in many areas of Pakistan. Indeed, there exists substantial confusion over where the lines are drawn between what is Islamic, what is codified tradition, and how (if at all) to delineate their separate jurisdictions. For example, we see members of the Sipah-e-Sahaba, the Jama'at-i-Islam and of many *madrasas* (religious schools) experiencing their identity as Muslims as inseparable from other component parts of their culture, and often confusing those things that are not in accordance with cultural norms, values or practices as being in contradiction with Islam. An Islamist coalition, the Muttahida Majlis-i-Amal, was voted into office in the October 2002 provincial election in the Northwest Frontier Province; a number of draft laws they have proposed now threaten to blur that line further. Alternatively, various women's rights groups such as AGHS, the Aurat Foundation, Bedari, Pattan, Shirkat Gah, and Simorgh, engaged in activist research addressing such themes as the rise in domestic violence, female education and women's political participation, question Islam's jurisdictional space in the contemporary political sphere and whether women's rights need necessarily be limited at all by Islamic injunctions. The state warns them not to push it too far so as not to anger the various Islamist *madrasas* now aspiring to have greater influence over Islamic laws.

Cleavages also exist within the bureaucracy, among the government workers whose responsibility it is to carry out the decisions made by the state. Many of these workers, however, subscribe to Islamist or traditionalist sentiments and see no reason why women should be given 'new' rights, which they also perceive as being in conflict with Islamic tenets. To effectively reduce discrimination, the Pakistan state must find a way to include such workers in a dialogue on *why* the state has reached the conclusion that it is for the betterment of the country and all of its people to regard women as having equal legal rights with men.

Indeed, these dilemmas draw the state further into the discourse of defining women's rights through the institutional structures it will support. An example is seen in its consideration of the role of the *wali*, or guardian. The Criminal Law Amendment Act (1997), passed as an Act of Parliament with limited discussion, lays out the method for distribution of *qisas* and *diyat* (blood money) in the event of a murder. The *Report of the Commission of Inquiry for Women* interprets this act as making criminal offenses 'a private matter rather than treating them as crimes against

society'. While the *wali* is defined in gender-neutral terms, in both language and examples the *wali* is always a male. For the state to contend that the *wali need not necessarily* be a man would be to invalidate long-standing local patriarchal interpretations of men's responsibilities vis-a-vis women.

A second recent example can be seen in the culmination of lobbying on the part of various women's rights' organizations for the state to constitute a Permanent Commission on the Status of Women. A singular women's movement in a nation as ethnically, culturally and economically diverse as Pakistan would be problematic, and we must recognize that the women's movement here is neither unidimensional nor monolithic, but is multifaceted and fairly comprehensive. While a women's movement has existed in Pakistan since colonial times (when it focused largely on female education and related social welfare activities), a substantive transformation began to occur in the 1980s. A melding of the women's movement's traditional social welfare activities was occurring as diverse groups, organizing themselves as NGOs, increasingly supported small-scale projects throughout the country that focused on women's empowerment, while they expanded their critique of the actions of the Zia ul-Haq government in limiting women's legal rights. Different women's groups became involved in such activities as instituting legal aid cells for indigent women, opposing the gendered segregation of universities and playing an active role in condemning the growing incidents of violence against women and bringing them to the attention of the public, though all engaged actively with the state in advocating expanding women's legal rights.<sup>19</sup>

An important culmination of their combined efforts occurred on 8 March 2002, International Women's Day, when President General Pervez Musharraf announced the establishment of an autonomous National Commission for Women and offered that, with the passage of time, Pakistan would gradually see an increase in the number of reserved seats for women in the National and Provincial Assemblies in the country. He noted the concrete steps his government had already taken to ensure the representation of women in the country: they had increased women's participation by reserving 180 seats for women in the national and provincial assemblies, a third of seats had been reserved for women in the local government elections, and now this independent National Commission for Women would work 'for the protection of women's rights in the country'. He also announced a three-month amnesty for women prisoners involved in minor crimes, which affected the large number of women detainees who are incarcerated under *zina* charges under the Hudood laws.

The Hudood laws have come under increased international condemnation, such as that noted in the US Department of State (2002: 10) report on worldwide human rights violations. It contends that in Pakistan,

Women frequently are charged under the Hudood Ordinances for sexual misconduct, such as adultery. A Hudood law meant to deter false accusations is enforced weakly, and one human rights monitor claimed that 80 percent of adultery-related Hudood cases are filed without supporting evidence. In 1998 approximately one-third of the women in jails in Lahore, Peshawar, and Mardan were awaiting trial for adultery; that percentage likely remains accurate. Most women tried under the ordinance are acquitted, but the stigma of an adultery charge alone is severe.

However, given the marked opposition – even resentment – Musharraf has faced in Pakistan by providing assistance to the US in its war in Afghanistan and the resultant rise in political influence of Islamist parties in its wake, it is highly doubtful that Musharraf will take a proactive stance and repeal the Hudood laws. To do so would be taking a new stance in interpreting women's rights under Islam, something his government has been reluctant to assert.

An official in the Foreign Ministry offered that most of the flaws that Pakistan has faced regarding CEDAW lie in implementation, not legislation (with the exception of the Hudood laws), especially at the grass-roots level because of political necessities to appease certain groups. However, the *Report of the Commission of Inquiry for Women* identified certain areas – laws, customs, practices, criminal procedures – that are discriminatory toward women, and made recommendations on how Pakistan can remove such discrimination. It made three important, albeit controversial key recommendations:

1. To legalize abortion;
2. To abolish the Federal Shariat Court, as it is not required as other courts can do the same things;
3. And that since Hudood laws have not achieved their objectives, they should be repealed.

For example, it suggested that the government repeal the *zina* law relating to 'unlawful fornication' (e.g. adultery), which contravenes constitutional safeguards and various provisions of CEDAW that laws should not discriminate between men and women. The issue of evidence and the evidence law were also taken up here, as a woman can be found guilty of *zina* by virtue of becoming pregnant while a man cannot. The *Report* notes that since the *zina* law was promulgated, the numbers of women in Pakistani prisons have risen dramatically, and while nearly two-thirds have been accused of *zina*, hardly any of the charges have been proven and most women are ultimately released, underscoring that while in theory there are checks against false accusation of *zina*, in practice it happens very frequently. However, no action has been taken in any of the three suggested arenas, although a proposal now does exist to abolish the

Federal Shariat Court. It would, of course, take a great deal of political will to do so.

The Council for Islamic Ideology (CII), a constitutional body whose mandate in Article 230 (1a) is to make recommendations to the state so that 'the Muslims of Pakistan [may] order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Qur'an and Sunnah', has taken up the Commission of Inquiry's report, to ascertain where it is or is not consistent with Islam. In August 2001, when I pressed the CII chairperson for a copy of their report (which I had heard had been released in draft form in Urdu), he admitted that it would not be finalized for some time to come. At least there is a recognition that the state must now tread lightly on this path.

It is clear that, until very recently, this was not the case, when we analyze the contradictory actions of the former Nawaz Sharif government: on the one hand, developing the *National Plan of Action*, undertaking the writing of the CEDAW Report, revisiting other UN human rights treaties to consider if Pakistan might ratify them; while on the other, *not* implementing key recommendations of the Commission of Inquiry for Women's report, especially the recommendation to repeal laws they assessed as being discriminatory toward women or to reinstate reserved seats for women. The Nawaz government also introduced the problematic 15th Amendment in August 1998, which raised the specter that the protection of women's rights – ensured in the Constitution at this point – would become arbitrary as all 'constitutionally secured rights and freedoms may be superseded by the executive's directives, dependent only on the executive's interpretation of *Shari'ah* and their assessment of what is "right" for women' (Amnesty International, 1998: 2). A Pakistani opposition politician explained to me that the Nawaz government had taken this stance because they were 'apologists who are terrified of the militant orthodoxy raising its head in the country',<sup>20</sup> and I believe this is a fair assessment.

The challenges to navigating such uncharted paths as promoting the rights of women in Pakistan are substantial, but nothing compared to the risks and lost opportunities *not* to do this. Today, the Musharraf government is seeking to bypass the question of religion and forging on to ensure representation. In preparation for the June 2000 Beijing +5 conference at the UN headquarters in New York, Musharraf pledged that from that point forth, all so-called 'honor killings' would be considered as crimes of murder, once and for all, and would receive no special consideration. While it has reinstated reserved seats for women in national and provincial elections, it has not repealed the draconian Hudood laws. Nor has it, however, sought out opportunities to implement them, either.

The question remains if the present government is indeed committed to revisiting the kinds of laws passed two decades ago in the name of Islam, and at last getting input from civil society groups into repealing or at least revising them. It is doubtful that it will go as far as the government in Tunisia has begun to do, conducting its own *ijtihad* – controversial interpretation of Islamic law – in its ‘progressive reading of the Qur’an’ as it creates new programs that support the empowerment of women while framing them in an Islamic context.<sup>21</sup> Yet one thing is decidedly clear: how the state in Pakistan frames its modernity project and incorporates women and women’s groups into that process will certainly open up new arenas for discourse concerning the relationship between Islam and women’s status, rights and empowerment in the country. This is a process that women will no longer allow to be delayed in Pakistan.

## Notes

This article is based on a larger project the author is currently completing, ‘Interpreting Islam, Modernity and Women’s Rights: Implementing CEDAW in Pakistan, Tunisia and Malaysia’.

1. This is as of June 2002.
2. The Optional Protocol to CEDAW, which would enable individuals to contest issues of discrimination against women in member states, entered into force on 22 December 2000, but as of 24 May 2002, only had 40 states (three of them Muslim states) which had either ratified or acceded to it.
3. Lynn Renken discusses the role played by women’s organizations in Pakistan in the mid-1990s to provide microcredit to women as well as the challenges they confronted (Renken, 2001).
4. Of course, there are a few notable exceptions, but this handful of women hailed from elite backgrounds and are not representative of women’s experiences in the political arena in general.
5. Pakistan ratified CEDAW 12 March 1996.
6. These include: Algeria, 1996; Bahrain, 2002; Bangladesh, 1984; Djibouti, 1998; Egypt, 1981; Indonesia, 1984; Jordan, 1992; Kazakhstan, 1998; Kuwait, 1994; Kyrgyzstan, 1997; Lebanon, 1997; Libya, 1989; Malaysia, 1995; Morocco, 1993; Nigeria, 1985; Pakistan, 1996; Saudi Arabia, 2000; Tajikistan, 1993; Tunisia, 1985; Turkey, 1985; Turkmenistan, 1997; Uzbekistan, 1995; and Yemen, 1984.
7. ‘Political and Public Life’, General Recommendation No. 23 of CEDAW Committee, 16th Session, 1997, based on Article 7, as noted in Steiner and Alston (2000: 196).
8. This assessment is based on the draft report issued by the Government of Pakistan, Ministry for Women’s Development, Social Welfare and Special Education (1999). The report, many years overdue, remains in draft form as of this writing.
9. The Islamization program focused on four areas: economic programs, judicial

- reforms, an Islamic penal code and a new education policy. A discussion of particular details of Zia's Islamization program can be found in Weiss (1986: 11–16).
10. The UNDP defines the female economic activity rate as 'the proportion of the specified group supplying labour for the production of economic goods and services during a specified period'. Pakistan's female economic activity rate of 42 in 2000 compares to neighboring countries as follows: India at 50, Bangladesh at 76 and Iran at 37 (UNDP, 2002: Table 25, 'Gender Inequality in Economic Activity').
  11. In 1998, urban literacy was assessed at 64.7 percent (72.6 percent male literacy; 55.6 percent female literacy) while rural literacy was assessed at 34.4 percent (47.4 percent male literacy; 20.8 percent female literacy). Provincial statistics break down as follows: North West Frontier Province, 37.3 percent; Punjab, 47.4 percent; Sindh, 46.7 percent and Balochistan, 26.6 percent (Mahbub ul Haq Human Development Center, 2002: 167).
  12. The UNDP defines adult literacy as 'the percentage of people aged 15 and above who can, with understanding, both read and write a short, simple statement on their everyday life'. These figures are from UNDP (2002: Table 22, 'Gender-Related Development Index').
  13. The states parties which have raised objections to Pakistan's reservation are Austria, Denmark, Finland, Germany, the Netherlands, Norway and Portugal.
  14. This argument is elaborated further in Weiss (2001).
  15. This was a popular slogan used by Zia ul-Haq in the early 1980s, which served to restrict – at least somewhat – women's participation in the public sphere in Pakistan.
  16. Based on personal communication in Islamabad, March 1999.
  17. 1997 and 1999, respectively.
  18. These are stated thus:
    - i. A number of sociocultural norms influence women's status and perception of self in the community and are a hindrance in the implementation of laws safeguarding women's status and enjoyment of basic human rights;
    - ii. [the] prevailing patriarchal system, cultural norms and feudal values in the society continue to influence the role of women in the community;
    - iii. The legal guarantees often do not get translated into concrete actions, due to prevalent social and cultural norms/practices in the society; and
    - iv. Domestic affairs are considered a private matter and incidents of family/domestic problems are usually hushed up; Community conciliatory communities have been set up; Trained case workers have been posted in different localities to provide initial marriage and family counseling services. (Government of Pakistan, 1999: 22–7)
  19. Anita Weiss provides extensive discussions of the growth of the women's movement in Pakistan (see Weiss, 1998, 1999). Zia and Bari (1999: 104–20) also include a comprehensive discussion on efforts to enhance women's participation in public and private life in Pakistan. See also Mumtaz and Shaheed (1987).
  20. Based on confidential, personal communication in Pakistan in early 1999.

21. This was conveyed to me by Emna Aouij, Tunisia's representative on the CEDAW panel of experts, as well as by representatives of the Ministry of Women and Family Affairs in Tunisia, as part of field research conducted for the larger project still in progress, 'Interpreting Islam, Modernity and Women's Rights: Implementing CEDAW in Pakistan, Tunisia and Malaysia'.

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