

Islam and Women's Rights

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The setting

The rise of political Islam in countries throughout the Muslim world has posed particular challenges to civil society groups engaged in the push for democracy, human rights and women's rights in Muslim societies.

This Islamic resurgence that has engulfed most Muslim countries today has thrown forth different levels of tension and competing ideologies within these societies: what Islam, whose Islam is the right Islam? The struggle for equality and justice for Muslim women must therefore be placed within the context of women living in Muslim societies undergoing change and turmoil, where Islam is increasingly shaping and redefining our lives.

However, all too often, in the turn to Islam as a way of life and the source for solutions to the ills and injustices that beset our societies, women, their rights, status, role in private and public life, dress, behaviour have become the first battleground to prove the authenticity and piety of one's return to Islam.

It is therefore not surprising that in many Muslim countries today, women's groups are at the forefront in challenging traditional religious authority within government and Islamist political activists and their use of religion to justify women's subordination and perpetuate discriminatory laws and practices.

For most Muslim women, rejecting religion is not an option. We are believers, and as believers we want to find liberation, truth and justice from within our own faith. We feel strongly we have a right to reclaim our religion, to redefine it, to participate and

contribute to an understanding of Islam, how it is codified and implemented - in ways that take into consideration the realities and experience of women's lives today.

For many Muslim women in fast modernising and industrialising Muslim countries like Malaysia, the realities of their lives today have put them in a collision course with patriarchy's construction of the "ideal" Muslim woman, justified in the name of religion. They will no longer accept that Islam actually promotes injustice and ill-treatment of half the human race. They are challenging the values of patriarchal society where power and authority reside exclusively with the husband, father, brother to whom the wife, daughter and sister owe obedience. For too long, men have defined for us what it is to be a woman, how to be a woman and then to use religion to confine us to these socially constructed limitations that reduce us to being the inferior half of the human race.

Times, however, are a changing. We live in an era where women are educated, travel the world, hold positions of power and responsibility in increasing numbers. Today in Malaysia, almost 70 percent of the students enrolled in public sector institutions of higher learning, are girls. The female labour force participation stands at 47 percent and is rising. It can only be expected that women, with increasing knowledge and education, with economic independence, will gain more confidence and courage to speak out in the face of injustice. If the injustice is committed in the name of religion, then today's women will go back to the original source of the religion to find out for themselves whether such a great religion could indeed be so unjust to half of its believers.

Of course there are many other Muslim women activists who have decided it is futile to work with religion because they believe that all religions, including Islam, are inherently patriarchal and unjust to women. To work with religion will only serve the interest of the male oppressors who use religion to control and maintain women's subjugation. To them, the choice that groups like Sisters in Islam has taken to work within the religious framework, is a losing battle because it is taking the contestation for women's rights to the turf of patriarchal religion, where those with religious authority will always win. For every alternative interpretation that women can offer to justify equality and justice, the

ulama will offer 100 others to challenge that interpretation, these feminists say. They have therefore chosen to struggle for women's rights within the framework of universal values and principles.

However, in the past ten years, more and more progressive Muslim scholars and activists have challenged the Islamic agenda of the traditionalist and the Islamist ulama and activists and their intolerance and outright oppression of women. These works which recognise equality between men and women in Islam, which argue for the imperative of ijihad (re-interpretation of the Qur'an in the context of changing times and circumstances), which address the dynamics between what is universal for all times and what is particular to seventh century Arabia, which look at the socio-historical context of revelation, which articulate the need to differentiate between what is revelation and what is human understanding of the word of God ... Such research, interpretive methodology, conceptual frameworks developed to deal with the challenge of Islam and modernity have enabled more and more Muslim women activists all over the world to realise the validity and possibility of working within the Islamic framework, that indeed we can find liberation from within Islam. Women have begun to study the Qur'an for themselves and the traditions of the Prophet to better understand Islam, and with this knowledge and new found conviction, have begun to stand up to fight for women's right to equality, justice, freedom and dignity within the religious framework.

Our strength comes from our conviction and faith in an Islam that is just, liberating and empowering to us as women. Groups like Sisters in Islam are reclaiming for ourselves the Islam that liberated women and uplifted our status by giving us rights considered revolutionary 1400 years ago -- the right to own, inherit or dispose of our own property, the right to divorce, the right to contract agreements -- all introduced by Islam in the 7th century.

It is this ethical vision of the Qur'an that insistently enjoins equality and justice, it is this liberating and revolutionary spirit of Islam that today guides our quest to be treated as fellow human beings of equal worth and dignity.

The Challenge

The challenge before us is great as we push open the democratic space for ordinary Muslims like us to claim the right to speak on matters of religion. We began by focussing on areas of discrimination against women in the name of Islam, but have grown to deal with larger issues of democratic space, constitutional governance and fundamental liberties. Some of the challenges we have to deal with include:

1. The misogynistic bent

Muslim countries today remain patriarchal and unjust to women. While civil laws are being repealed or amended to recognise equality between men and women, Islamic laws remain discriminatory against women. In the 1990s in Malaysia, a slew of laws were introduced or amended that discriminated against Muslim women. This happened at the same time when the Government, in response to long standing demands from women's groups, was taking steps to amend laws that discriminated against women. In the name of Islam, Muslim women were denied the privilege of enjoying the same legal rights and protection granted to women of other faith.

For example, in early 1999, the Guardianship of Infants Act was amended to give non-Muslim mothers the equal right to guardianship of their children, but no similar amendment was made to the Islamic Family Law to accord the same right to Muslim mothers.

The negotiations for a Domestic Violence Act in the early 1990s also saw attempts to exclude Muslims from the jurisdiction of the Act because of the belief that Muslim men have a right to beat their wives. Again, the women's groups had to lobby the Government hard for many years, to make domestic violence a crime whether it is committed by a Malay or a Chinese or Indian man. Even after the law was passed by Parliament, we had to go through two more years of pressure and lobbying to get it implemented because of objections that it should not apply to Muslims because domestic violence was a family

matter and therefore should come under Shariah jurisdiction of the states, rather than a criminal matter under federal jurisdiction.

The Hudud law of Kelantan and Terengganu grossly discriminates against women by disqualifying women (and all non-Muslims - which means 3/4s of the population) as eyewitnesses in hudoud crimes and by assuming that an unmarried woman who is pregnant or has delivered a baby has committed *zina* (adultery/illicit sex). If she claims she has been raped, the burden of proof lies on her to substantiate her claim.

The original draft of the Terengganu law which provided that a woman who reports rape would be charged for qazaf (slandorous accusation) and flogged 80 lashes if she was unable to prove the rape (through four Muslim male eyewitnesses) caused such an outrage that the PAS government was forced to amend the law to allow for circumstantial evidence.

Amendments to the Islamic Family Law since the early 1990s are another major area of discrimination against Muslim women. The amendments include:

- allowing a polygamous marriage contracted without the permission of the court to be registered, upon payment of a fine or jail sentence. This has led to a proliferation of illegal polygamous marriages contracted in southern Thailand or by illegal marriage syndicates operating in Malaysia.
- deleting the fifth condition before permission for polygamy can be granted. The fifth condition requires that the proposed polygamous marriage should not directly or indirectly lower the standard of living enjoyed by the existing wife and dependants. Its deletion makes it easier for a man to be given permission to take a second wife.
- registration of divorces pronounced outside court. It now provides for the court to approve divorces pronounced by a man without permission of the court if it is

satisfied that the *talaq* (repudiation) is valid. As a result of this amendment, research shows that in some states, the number of men who unilaterally divorce their wives outside the court is almost three times those who applied for divorce through the courts.

All these new laws and amendments to existing laws reflect the misogynistic bent of those in religious authority, be they in Government or in PAS. At a time when the Malaysian government, at least at the leadership level, recognises equality between men and women in this country and are responding to calls by women's groups to amend all laws that discriminate against women, other arms of that very same government do not share this egalitarian vision or have no courage, nor are enlightened enough to see the necessity for *ijtihad* (reinterpretation) to ensure that fellow Muslim women who are supposed to be equal citizens of this country benefit equally from the efforts at law reform

The 2001 amendment to Article 8 of the Federal Constitution to prohibit discrimination on the basis of gender poses a special challenge to the Shariah Court and the Islamic religious authorities in Malaysia to take steps to end all forms of discrimination against Muslim women in law and in practice, committed in the name of Islam.

2. The tendency to codify the most conservative opinion

Be it in the area of fundamental liberties or women's rights, the tendency displayed by the religious authorities is often to codify the most conservative opinion into law. For example, traditionally there are three juristic positions on apostasy. First, is the orthodox view of death to all apostates. The second view prescribes the death penalty only if apostasy is accompanied by rebellion against the community and its legitimate leadership. The third view holds that even though apostasy is a great sin, it is not a capital offence in Islam. Therefore a personal change of faith merits no punishment. This is the official position of al-Azhar University.

However, the Islamic party PAS in its vision of Islam has chosen the most extremist juristic opinion to codify into law – death for those who leave Islam. The Government’s religious authorities’ approach in dealing with apostasy is a compromise position: one-year compulsory rehabilitation instead of death. If at the end of the detention period, the person still refuses to repent, then the judge will declare that the person is no longer a Muslim and order his release. One-year mandatory detention is no consolation to eventual freedom of religion.

And yet, the Qur’an is explicit in its recognition of freedom of religion and there exists within the Islamic juristic heritage a position that supports freedom of religion. And yet when the religious authorities codify Islamic teachings into law, it is seldom that they would choose the most enlightened opinion.

All the more in the area of women’s rights. For example, the provision that women cannot be witnesses in the PAS Hudud law is only a juristic opinion with no explicit support in the Qur’an or Traditions of the Prophet Muhammad. Pregnancy as evidence for *zina* (Illicit sex) is a minority position of the Maliki school of law. The majority juristic opinion is that pregnancy is not admissible as proof of zina because circumstantial evidence cannot be accepted to secure a hudud punishment. And yet the PAS ideologues who belong to the Shafie school chose to ignore the more enlightened Shafie opinion and instead codify a harsher Maliki opinion – displaying the obsession to take a punitive approach to ensure that Muslims adhere to the “teachings” of their faith.

3. The authority to speak on Islam

The issue of who has a right to speak on Islam is a major contentious issue in Malaysia and many Muslim countries today. Traditionally, most Muslims believe that only the ulama have the right to speak on Islam. Those not traditionally educated in religion do not have the right to engage publicly with religion.

Therefore, very few Muslims have the courage to question, or challenge or even discuss matters of religion, even when they doubt the teachings that appear unjust or

inappropriate to the realities of their lives today. They have been socialised to accept that those in religious authority know best what is Islamic and what is not.

Thus, when groups like Sisters in Islam and lay intellectuals speak about Islam, their credentials, and their right and authority to speak publicly are questioned. To me, the attempt in 2002 by the Ulama Association of Malaysia to charge six writers for insulting Islam, is nothing more than an attempt to monopolise the meaning and content of Islam to serve the political agenda of those who use Islam to mobilise popular support.

The real issue is not about who has the right to talk about Islam. It is about one's position on various issues in Islam. If one supports the death penalty for apostasy, the hudud law, and the Islamic state, then one will enjoy the freedom and space to speak on Islam, even if one is only a third class engineering graduate from a third rate American university.

Sisters in Islam takes the position that when Islam in Malaysia is used as a source of law and public policy with widespread impact on the lives of the citizens of a democratic country, then any attempt to limit writing, talking, debate about Islam to only the ulama or those with supposedly "in-depth knowledge" of Islam really tantamount to rule of a theocratic dictatorship. Why is it that all citizens have the right to speak on political, economic and social issues that impinge on their well-being and rights, but when it comes to matters of religion, we have to defer to the ulama? The opinion of the ulama on matters of public law which affect the relationship between the state power and citizenship rights must be open to public debate.

4. Shroud of silence

Until recently, what has been remarkable about the making of Islamic laws in Malaysia is the SILENCE that shrouds the whole process, both at the drafting and legislative levels.

First, is the absence of any kind of consultation and public debate in the law making process even though such personal laws have widespread impact on the private and

public lives of some 60 percent of the Malaysian population, and implications to society at large.

Second, is the lack of any substantive debate in the legislative bodies when Islamic laws are tabled. Most elected representatives are too fearful to speak out, question, debate, let alone criticise Islamic bills.

Third, when there is no debate in the legislative assemblies, there is no press coverage. At the most, a straight forward news story – if at all – that such and such a law has been passed by the legislative body. It is then up to concerned NGOs to scramble to find copies of the bill and scrutinise it and then take the initiative to generate a public debate on the issue. Or if there has been a total silence, then civil society will only find out about the existence of such a law only when it is enforced and the ensuing public outcry.

I am happy to report that this has begun to change in Malaysia, because of growing awareness of the threat to the shape and nature of the nation state should Islamic laws be passed without any debate. In the current sitting of Parliament, a heated debate took place on amendments to the Islamic Family Law that were detrimental to women's rights. Muslims and non-Muslim MPs took part, both from the government back bench and the opposition. This is major progress as the MPs have begun to educate themselves on the issues and displayed the courage to speak out. The MPs we network with now alert us to any Islamic bills that are scheduled for debate and seek documents and arguments from us to help them with their debate. The press is also more alert in covering these debates, thus generating opportunities for the NGOs and the public to comment on the issues.

The Attorney-General's chambers has also just announced the setting up of a "shariah community" to get public feedback on shariah law making process and public complaints on shariah matters.

Islam in a democratic society

If Islam is to be used as a source of law and public policy to govern the public and private lives of citizens, then the question of who decides what is Islamic and what is not is of paramount importance. What are the implications to democratic governance when only a small exclusive group of people have the right to interpret the Text, and codify it in a manner that very often isolates the Text from the socio-historical context in which it was revealed, isolates classical juristic opinion from the socio-historical context of the lives of the founding jurists of Islam, and isolates the Text from the context of the contemporary society we live in today.

Increasingly in Malaysia today, women's groups, human rights NGOs, political parties, the media, concerned professionals are beginning to engage publicly on issues of fundamental political importance to the future of the country.

- What is the role of religion in politics?
- Is Islam compatible with democracy?
- How do we deal with the conflict between our Constitutional provisions of fundamental liberties and equality with religious laws and policies that violate these provisions?
- Should the state legislate on morality? Is it the duty of the state in order to bring about a moral society to turn all sins into crimes against the state?
- Can there be one TRUTH and one final interpretation of Islam that must govern the lives of every Muslim citizen of this country?
- How do we deal with the new universal morality of democracy, human rights and women's rights and where is the place of Islam in this dominant ethical paradigm of the modern world?

The reality and implications of Islamic governance in a multi-ethnic modernising country like Malaysia are just beginning to sink in as issues such as the Islamic state, the hudoud law, discrimination against women, freedom of expression, freedom of religion spill into the public sphere as the contestation for power between the two Muslim-based political parties, UMNO and PAS escalates.

For us in civil society, as feminists, as believers and as activists living within a democratic constitutional framework, it is important that we assert and claim our right to have our voice heard in the public sphere and to intervene in the decision-making process on matters of religion that must take into consideration the realities of our lives and the justice enjoined by the Qur'an.

The fundamental question needs to be asked: Who decides which interpretation, which juristic opinion, which hadith, which traditional practice would prevail and be the source of codified law to govern our private and public lives and punish us if we fail to abide, and which opinion would fall by the wayside, forgotten? On what basis is that decision made? Whose interests are protected and whose interests are denied? It is clear to us that this is more about power and politics rather than living the divine will on earth.

The Challenge

As we continue to study, to campaign for women's rights, for the right for people like us who did not go to that venerable university in Egypt for the study of Islam, al- Azhar, and who cannot speak Arabic, and who are not covered up, to participate in matters of religion, we know the task before us is uphill.

Through our readings, through consultations and studies with progressive Islamic scholars inside and outside the country, through networking with other women's groups engaged in the same struggle, we claimed our right and created a public space for women like us to stand up and argue for justice and equality for Muslim women in contentious areas such as polygamy, equal rights, dress and modesty, domestic violence, hudoud laws, and freedom of expression, freedom of religion and other fundamental liberties.

Of course by claiming our right and creating the space to speak out in public on Islam, we have made enemies. We have been attacked and condemned by conservative Islamist scholars and Islamist activists and movements – a common experience of other women's groups and progressive scholars in other Muslim countries.

The attacks and condemnations usually take three forms:

First, they undermine our right and our legitimacy to speak on Islam by questioning our credentials. They say we have no right to speak on Islam because we are not traditionally educated in religious schools, we do not have a degree in Islam from a recognised Arab university, we do not speak Arabic, and we do not cover our heads. They say we are western educated feminists representing an elite stratum of society who are trying to impose western values on Islam and the *ummah*. To them, the discourse on Islam is therefore exclusive only to a certain group of Muslims, the ulama with the right education, status, and position. Others do not have the right to express their opinions on Islam.

Second, they accuse us of having deviated from our faith. They equate our questioning and challenging of their obscurantist views on women and fundamental liberties, and their interpretations of the Qur'an as questioning the word of God, and therefore they say we doubt the infallibility of God and the perfection of the message. Consequently, we are accused of being against Islam. They also accuse us of using our brains, logic and reason (*akal*) instead of referring to classical exegetical and jurisprudential texts of the early centuries of Islam. They claim that these texts by the great theologians and jurists of centuries past have perfected the understanding of Islam and the doors of *ijtihad* should therefore remain closed.

Third, they contend that that it is dangerous to offer alternative opinions and interpretations of the religion as this could confuse the *ummah* and lead to disunity. There can only be one interpretation to be decided upon by the ulama and all citizens must abide by this interpretation. Alternative views that differ from the mainstream views are an insult to the Qur'an, inculcate hatred against Shari'ah, and degrade women, they assert.

It is ironic that many of those who often challenge and question the credentials of women's groups to speak on Islam, themselves do not speak Arabic and have not been traditionally educated in Islam. Many of those at the vanguard of the Islamic movement

calling for the establishment of an Islamic state and imposition of shariah rule today are professionals, engineers, doctors, professors, administrators, without any formal religious training. Actually, many of them are third rate engineering graduates from third rate American universities. Their right to speak out, however, is not questioned. The issue therefore is not so much about who has a right to speak on Islam, but what is being said about Islam. Thus those who echo the mainstream view on men's rights and women's inferior status in Islam, those who believe in the leadership of the mullahs, and those who advocate the establishment of an Islamic state and imposition of Islamic laws, have the right to speak on Islam, but those who challenge these views are denied the right and legitimacy to speak out.

I feel very strongly that the role played by civil society groups, such as women's rights and human rights activists, and public intellectuals will be key in bringing about change and the terms of public engagement on Islam in many Muslim societies.

For this to happen, however, the public space to debate on Islam and Islamic issues has to open up. Unfortunately in many Muslim societies today, this public space does not exist, not just to talk about Islam but to talk on other issues that are deemed sensitive by the power elites, be it democracy, human rights, women's rights, politics, freedom, fundamental liberties. Someone once said that bad secularism leads to bad religion. The problem that we face today in the Muslim world is that many Muslim governments, Muslim leaders govern in less than exemplary ways, lead less than exemplary lives. Many Muslim leaders do not have the moral authority nor the credibility to talk about an Islam that represents justice, peace and tolerance when they themselves lead their lives and govern other people's lives in ways that are unjust, intolerant, hostile and violent. Many Muslim countries are led by autocratic rulers and monarchs where freedom of expression, freedom of assembly, freedom of association do not exist or are very restricted. Our traditional upbringing, our culture, and our political system do not encourage us to engage freely in debate on issues. Of course then, when political Islam emerges as an alternative to challenge that autocratic state, it is an Islam led by those whose mindset and cultural framework are just as closed and limited.

But this cannot continue. Ironically, post-September 11 was a wake-up call to many Muslims. And it has been positive in many ways to those of us engaged in the debate on what Islam, whose Islam is the right Islam. One important impact in a number of Muslim countries has been the opening of the public space for debate, for discussion, for a diversity of opinion on Islam and Islamic issues to be heard in the public sphere, from both Muslims and people of other faith. This is reflected by the new demands for our work at the international level – from our publications to our training on women’s rights in Islam, especially from South Asia (Afghanistan, Pakistan, India, Bangladesh) and West Africa.

The search for answers to important questions on the role of Islam in today’s modern nation state cannot remain the exclusive preserve of the religious authorities, be they the ulama in government or in the opposition parties or Islamist activists pushing for an Islamic state and Shariah law.

Muslims and all citizens have to take responsibility for the kind of Islam that develops in our societies. The fact that Islam is increasingly shaping and redefining our lives means all of us have to engage with the religion if we do not want it to be hijacked by those who preach hatred, intolerance, bigotry, misogyny.

If we as believers want to live a life according to the tenets of our faith, a simplistic call to return to an idealised golden age of Islam that have little bearing to the realities of today's world cannot be the answer. And yet the answers can be found within our faith - if only we have the intellectual vigour, the moral courage, and the political will to strive for a more enlightened and progressive understanding of our faith in our search for answers to deal with our changing times and circumstances. For us in Sisters in Islam, this is not heretical, but an imperative if religion is to be relevant to our lives today.