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Towards a Justly-Balanced Global Community



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Editorial

Mohammad Abdus Sabur



Will 2016 be any different? This is the question that many who have lived through and observed human tragedy throughout 2015, have on their mind. Will the civil war in Syria take more lives and continue to dis-

place millions? Will more and more refugees and migrants, also from Afghanistan and Iraq, be drown to Europe by crossing the Mediterranean Sea? Will cluster bombs and other arms continue to destroy homes and kill children, men and women of all ages?

According to UNHCR and IOM, over one million people have entered Europe and over 30,000 have lost their lives while crossing the sea in the attempt. The death toll in Syria has risen above 210, 000, with over 3.2 million people becoming displaced and living in various refugee camps and shelters without adequate food, water or basic hygiene requirements.

Why is it happening and when did it start? This is a difficult question to answer and the challenge is where to start because every country has its own narratives, observers and researchers, with each one of them viewing the world, particularly the Middle East, through their own respective lenses. Most of them would agree, however, that during the post-colonial period many countries became affluent due to oil revenue, reached high standards in education, health, employment and infrastructural developments, but had a democratic deficit. Iraq and Syria gave shelter to thousands of Palestinian refugees but governments ruled with an iron fist.

These post-colonial nation states faced one common problem; they failed to be a safe haven for all people. They failed to bridge gaps between, and among, various sects and ethnic and religious communities and when drawing the national boundaries, colonial rulers had not made provisions for ethnic communities who are significant in number. The Kurdish

population is a case in point; Iraq and Libya provided millions of jobs but the regime change policy of the West destroyed the capacity of these countries and they went from being 'employers' to migrant workers.

The global powers and the United Nations have failed in their respective roles of safeguarding the rights of the people of Palestine which is a cause prolonged war. During the Iraq and Afghanistan wars the treatment of prisoners turned many against former allies. This demonstrates that through unjust means justice cannot be established

Last but certainly not least all religions and social theories are subject to interpretation, with interpretation and re-interpretation varying from person to person and forever being influenced by constantly changing social conditions and realities. When an interpretation is based on the interpreters' own lenses it may not be sufficient, as it depends on the ability of interpreters to transcend and not fall into the trap of narrow nationalism or ethnic and religious sectarianism. Therefore, the present global crises demand transcendent leadership and inclusive social, cultural, political and economic development policies and practices.

This issue of AMANA Magazine focuses on a Justly Balanced Global Community, which was the theme of the Fifth Assembly of AMAN held in Kuala Lumpur in June 2015. It highlights the need for a new generation of leadership that facilitates self-empowerment processes of common people, including women, youths and children; processes that will enable them to liberate themselves from majority chauvinism and minority self-exclusionism. This might be a starting point to achieve a shared future and harmonious societies.

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AMAN 25th Anniversary Assembly

The Asian Muslim Action Network's fifth assembly was held in conjunction with the twenty fifth anniversary of AMAN and took place on June 5-7, 2015 at the Institute for Diplomacy and Foreign Relations (IDFR) in Kuala Lumpur, Malaysia. Over 200 participants, brothers and sisters from 22 countries attended the Assembly.

In collaboration with the Global Movement of Moderates Foundation (GMMF), participants and delegates explored the theme "Towards a Justly-Balanced Global Community", especially through the concept of *ummatah wasatan* -- the idea of committing to peace by taking the middle path.

The theme was also chosen out of the realization that this world is increasingly getting polarized and in many respects more divided than ever before. Economically enormous gaps are evident between poor and rich, and in many parts of the world there is growing discrimination against women, and against ethnic and religious minorities. Incompetence, unjust and corrupt governance has led to a loss of trust in political institutions and ruling elites. Human greed and consumerism have led to the destruction and depletion of natural resources and been major factors leading to climate change. Unjust and discriminatory applications of laws as well as misinterpretation of religious texts have also led to growing sectarianism, extremism and violence.

Some of these phenomena were discussed and debated during the pre-assembly parallel workshops. For example the plight of stateless peoples such as the Rohingya from Myanmar, people displaced both by man-made and natural disasters such as the destruction at the Fukushima nuclear power plant in Japan, the impact of the typhoon that hit the people of Takloban in the Philippines, millions of war affected people in Iraq, Syria and Libya many of whom risking their lives to cross the Mediterranean Sea from the war-torn Middle East to find a safe heaven and dream world in Europe.

The AMAN Assembly sessions further addressed some of the above challenges. Interpreting Quranic verses, citing prophetic traditions and highlighting some experiences showed possible ways forward to overcome present crises. Among them were just governance, sharing of resources, equality and dignity of all human beings, security for all irrespective of gender, ethnic and religious identity.

Participants and delegates expressed concerns with acts of extremism and intolerance in their local communities. Emerging from the difficult stories of conflict and oppression from the communities was the hope and possibility of change, through the individual and community. Each individual must cultivate critical self-knowledge in one's own spiritual traditions and enrich one's own sense of righteousness and moral uprightness. Although the imbalances in the world may seem great, we may each contribute, persistently and therefore significantly, by beginning with ourselves, the communities in which we live, bearing witness and seeking change when truth and justice are not being served.

The world population represents diversity in terms of ethnicity, languages, religions, cultures and ways of life. Governance and the governing systems also differ. Yet the assembly called upon members and the global community to draw inspiration from their respective religions and address imbalances and work towards a compassionate and harmonious society.

The assembly reaffirmed the commitment to invite members and friends to develop human resources through education which empowers members of the society to be liberated themselves from existing enslaving systems and practices.

Assembly delegates called upon members and friends to uphold inter-ethnic, inter-religious harmony and take effective measures for safety and security at community level. It also called upon governments and inter-governmental institutions including the United Nations bodies to ensure the protection of refugees and the rights of migrants.

Given the reality in which women are discriminated, the assembly called upon member organizations, imams and female and male community leaders to set examples and demonstrate what is just.

The assembly strongly urged Muslim countries to instill Islamic principles which are just and promote transparent and accountable governance for the best interest of all peoples irrespective of gender, sects and ethnicity.

All educational institutions were urged to invest in empowerment of the young generation to meet the challenges of our times and beyond.

AMAN, being based in Asia, a region of great diversity, attaches great importance to inter-faith networking and to the provision of humanitarian assistance

both for natural and man-made disaster victims, caring for and empowering refugees and migrants, ensuring their rights and extending solidarity beyond the region. In the great spirit of energy and solidarity expressed throughout the course of the assembly,

AMAN is committed to continue its work on its core programs: peace and conflict studies, peace education, scholarships for young scholars, women's leadership and role in peacebuilding and intra- and inter-faith dialogue with the support of its networks, friends, partners, and members.

In conclusion, the AMAN Assembly called for unity within the Muslim Umma and communities of the world to work towards the vision of a Justly Balanced Global Community.



Patti Tolbot from UCC Canada, shared moving experience of Christian families in Canada collectively secured a building to accommodate Muslim refugees and their social integration.

Ahmad von Denffer from Muslimehelfen Germany, talked about Islamic inspiration for resource sharing with people in need.

Prof. Anisuzzaman from Bangladesh, emphasis that Islam puts singular importance on peace and security at all levels and for all.

Governance, Hegemony and a New Vision for the Future¹

Dr. Chandra Muzaffar



Governance is fundamental to Islam. It is a vital dimension of the Qur'an. At the most profound level, it is Allah's governance that accounts for the workings of the universes. It is Allah's governance that sustains the earth

as a planet. Creating the human being and placing her here on earth is also part of Allah's plan for governance.

The human being, in turn, according to the Qur'an has assumed the role of khalifah (vicegerent) on earth which means that she has to live a life guided by the values and principles conveyed to her by all the Prophets since the beginning of time. In other words, she has to govern herself guided by Allah's perennial Wisdom. This is the amanah, the trust she has to fulfil. It is the whole purpose of her creation. It is the reason why she is here on earth.

Of all human beings, those who rule over others, the leaders, bear a greater responsibility. Their amanah is of special significance. It is measured by justice. This is clearly stated in the Qur'an. It says, "O Daud, surely we have made thee a ruler in the land, so judge between men justly and follow not desire lest it leads thee astray from the path of Allah." (38:26) The Quran also tells rulers that they are required to consult the people. (42:38)

Of course, the Prophet Muhammad himself was an outstanding example of an exemplary leader in every sense. He was just and honest, firm and fair, humble and kind, magnanimous and compassionate. He defended the weak and used his power for the well-being of his people. The Righteous Caliphs who came after him (from Abu-Bakr to Ali) sought to follow his example. There were other rulers in later years like Umar Ibn-Abdul Aziz (682-720) and Salahuddin Al-Ayoubi (1138-1193) who also shone as magnificent leaders. The former raised the status of the poor and powerless while the latter combined courage with compassion.

It was because wise leadership and good governance were so central to Islamic teachings that a huge corpus of writings developed which emphasized these. The most famous was the letter that the fourth Caliph, Sayyidina Ali Ibn Talib, wrote to his Governor in Egypt, Malik Ashtar. It is a brilliant treatise on the principles of good governance and their application. Ali outlines how justice should be dispensed, how corruption should be combatted, why oppression should be eliminated, why profiteering and hoarding weaken the social fabric and what is required for the equitable distribution of wealth in society.

Through the ages, illustrious scholars such as Al-Kindi (801-873), Al-Farabi (870-950), Al-Mawardi (972-1058), Al-Ghazali (1058-1111) and Ibn Khaldun (1332-1406) have elaborated on the attributes of good leadership and good governance. Ibn Khaldun in particular examined the political and social realities that impact upon governance. He discovered through empirical research that when a dynasty first emerges it adheres to the virtues of governance but later after it has consolidated its power and enjoys affluence and indulges in luxury, it becomes corrupt and succumbs to vices which eventually lead to its downfall. Ibn Khaldun saw this as an unerring pattern in the rise and fall of civilizations. He also realized that both internal and external factors contributed to the decline of a civilization. In the case of Muslim civilization, corruption and decadence within the ruling class was aggravated by the pillage and plunder caused by the Mongol invasions of the 13th century.

If this is the past, what is the situation like today in the Muslim world? Both internal and external factors are also at play. Corruption and decadence and the elite betrayal of the people in general are widespread in the Muslim ummah. There are very few governments of integrity which are totally committed to justice and the welfare of their people.

At the same time, there is a huge external challenge. This is the challenge of hegemony --- essentially United

¹ This piece is part of the plenary presentation by Dr Chandra Muzaffar on the occasion of AMAN Assembly in June 2015

States' helmed hegemony. Sometimes described as a continuation of colonialism or neo-colonialism, the hegemon seeks to control resources belonging to others, strategic routes, the economy, politics and even culture of other nations in its drive for global dominance. Many Muslim nations have been victims of hegemony mainly because they are exporters of oil and gas, the lifeblood of modern civilization. Besides, Israel is right in the middle of the Arab world and the hegemon is determined to protect Israel's so-called security. These are the reasons which explain the hegemon's conquest of Afghanistan, Iraq and Libya and its continuing drive to conquer Syria. But let there be no mistake. Buddhist states in Southeast Asia such as Vietnam and Cambodia and Christian societies in Latin America such as Chile, Argentina, Peru, Nicaragua and Panama and even an agnostic state such as Cuba have all been victims of US hegemony at some point or other. The desire for power and control were the motivating forces behind the hegemon's agenda in these and many other cases.

Needless to say, hegemony distorts the development of societies that are caught in its grip. It emasculates their ability to nurture their own system of governance. It spawns weak, effete leaders who are just pawns and puppets of the hegemon. If hegemony is such a vile threat to the sovereignty and independence of nations everywhere, why does it persist with such tenacity?

Underscoring US helmed hegemony is global capitalism. To put it starkly, if the hegemon seeks to control foreign resources and strategic routes, it is because it is perceived as vital for an economic system that is driven by the maximization of profits and the continuous acquisition and accumulation of wealth. True, capitalism has benefitted segments of humankind in certain ways. It has helped to reduce absolute poverty in some parts of the world, accelerated social mobility for certain groups, and stimulated individual enterprise and innovation. Nonetheless, it is a system that has wrought grave injustices. Yawning disparities between the very rich and the very poor would be perhaps the most severe. According to a well-known investment firm, Credit Suisse, in 2014, the top 1% of the wealthiest people on the planet owned nearly 50% of the world's assets while the bottom 50% of the global population combined owned less than 1% of the world's wealth. Global inequalities have surged since 2008. This concentration of wealth and these disparities have adverse repercussions for the environment, for politics, for culture and for society as a whole in that it perpetuates a global order that serves the interests of

the rich and powerful to the detriment of the poor and the powerless.

There are many civil society groups all over the world that are critical of the capitalist system. Some of them are Muslim based. While they have been able to propound alternative ideas in relation to specific aspects of the economy or politics or administration or culture, they have by and large failed to articulate a realistic vision of a holistic, integrated alternative social order that can resolve not only the injustices of the present but also address the most pressing challenges of the future.

This is the real challenge before the youth of the world, both Muslim and non-Muslim alike. Can they develop through their reflections and their actions an alternative that draws from Islam and other spiritual and moral philosophies the critical elements of a comprehensive vision for change that will guide humanity in the decades ahead? Are precepts such as God-Consciousness, the position of the human being as vicegerent on earth, the vicegerent's profound commitment to justice, equality, love, compassion, honesty, integrity, humility, kindness, and unity among other similar values some of the resources that we can harness from Islam in our endeavor to forge a new vision for the future? More specifically, are there concrete principles too that we can absorb from our faith in this task, principles such as the prohibition of *riba* in the entire operations of the economy, or ensuring that means are not separated from ends in politics, or nourishing music and art and poetry to reinforce character rather than treating them as mere expressions of emotion and intuition unconnected to fundamental values and virtues?

Perhaps out of this exercise of action and reflection guided by eternal universal values and principles in our moral and spiritual philosophy will emerge a vision of governance that is contemporary and yet rooted in the Qur'an. Are AMAN youths prepared to help create such a vision?

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WASATIYYAH ISLAM; SOME CHALLENGES

The Indonesian Experience

Prof. Azyumardi Azra

“Ummatanwasatan [middle people, by extension, middle path or justly-balanced umma] has been the paradigm adopted to establish a new image of Islam and the Muslim world... This trend of searching for a moderate and quality oriented ummah has been implemented by Indonesian Muslims for decades... (TarmiziTaher, Indonesian Minister of Religious Affairs, 1997:85)



Indonesian Islam has a number of distinctive characters vis-à-vis Middle Eastern and South Asian Islam. Indonesian Islam, by and large, is a moderate, accommodative kind of Islam, and the least Arabicized Islam.

Therefore, Indonesian Islam is for that matter much less rigid compared to Saudi Arabian or Pakistani Islam for instance.

For that reason, Newsweek magazine once called Indonesian Islam as ‘Islam with a smiling face’; Islam which in many ways is compatible with modernity, democracy, and plurality. Despite these distinctions, Indonesian Islam is surely not less Islamic compared to Islam somewhere else. It is true that geographically, Islamic Indonesia is far away from the so-called centers of Islam in the Middle East, but that does not mean that Indonesian Islam is religiously peripheral.

Indonesian Islam has long adopted the Islamic paradigm of ‘middle path’ (ummahwasat), justly-balanced Islam, which can also mean ‘moderate’ Islam. The Islamic justly-balanced paradigm is a Qur’anic teaching as stated in Sura al-Baqara (2:143): “Thus, we have created you as ummawasat[justly-balanced nation], that you be witnesses over mankind and the Messenger Muhammad be a witness over yourselves”.

The formation of distinctive wasatiyyah characters of Indonesian Islam has a lot to do with the peaceful

spread of Islam, which is called by TW Arnold in his classic book, *The Preaching of Islam* (1913) as ‘penetration pacifique’. The spread of Islam in the archipelago was not through the use of force coming from Arabia or somewhere else, for instance, but rather by way of slow penetration through centuries involving conflict that in the end resulted in the accommodation of local belief and cultures.

The course of the Islamization history of the archipelago from then on is the history of continuous expansion of the santri [practicing Muslim] culture. One now can easily observe various kinds of santri cultures practiced by Indonesian Muslims from all walks of life. Successive renewal and reform within Indonesian Islam since at least the 17th century on—that in some cases involved the use of violence such as the Padri movement in West Sumatra in early decades of the 18th century—have failed to change basic features of Indonesian Islam. That is also the case of the current increased infiltration of trans-national and radical Islam that could disrupt the distinction of Indonesian Islam. It remains wasatiyyah Islam, middle path Islam, which is moderate, peaceful and tolerant Islam.

In the political field the wasatiyyah paradigm has been translated into the adoption by Muslim leaders of the basis of the state or national ideology of Pancasila (‘five pillars’). The Pancasila, adopted during the days of the proclamation of Indonesian independence on August 17, 1945, has been (and still is) the common platform among peoples of different religious, social, and cultural backgrounds in the country.

Islam has a great impact on various aspects of Indonesian life, religiously, socially, culturally, and politically. This can be seen in daily public life in the sheer demography of Indonesian Muslims that represents more than 88 percent of the country’s total population.

Wasatiyyah Organizations

Indonesia is blessed with the existence of wasatiyyah organizations such as the Nahdlatul Ulama (NU), Muhammadiyah and many other wasatiyyah Muslim organizations across the country. This is also another distinctive feature of Indonesian Islam. These Muslim organizations are non-political, operating not only as religious organizations, but also as social, cultural, and educational organizations. They own thousands of schools, and madrasahs from elementary to university levels; pesantrens (traditional Islamic boarding schools); health centers; co-operatives; peoples' credit unions; environmental preservation centers, and many others.

I would suggest these wasatiyyah organizations are also a perfect representation of Islamic-based civil society since in accordance with some definition 'civil society', they are 'voluntary, independent from the state, self-regulating and self-financing, working for better ordering of society'. Most of these Islamic-based civil society organizations have been in existence since the colonial period; Muhammadiyah—inspired by the reformist movement in Egypt in the early 20th century—was established in 1912. And since then, Muhammadiyah is mostly known as a modernist Muslim movement. The NU—the largest Muslim organization in Indonesia—was founded in 1926, and since then is mostly known as a 'traditionalist' Muslim organization.

As civil society organizations, they play an important role in mediating and bridging forces between society on the one hand and the state on the other. In much of their history they have not been involved in power and day-to-day politics, called as 'low politics'. Rather, they are involved in the so-called 'high politics', that is, politics of morality and ethics. There is little doubt that they have strong political leverage in Indonesian political processes. In this respect, they also play an important role as actors of governance, influencing the decision making processes.

Islam-based civil society organizations have been instrumental in the democratization process, even during the period of the autocratic Soeharto regime. The leaders of these Muslim organizations were involved in the democracy movement throughout the period; in fact they were at the forefront of the opposition's movement against the regime.

Challenges

The role of Islam-based civil society organizations in the consolidation and deepening of democracy in Indonesia is also instrumental. With a strong emphasis on the role of civil society in democratic processes, they are expected to be able to not only consolidate their own organizations in order to be able to function more effectively, but also to disseminate the ideals of democracy; building civic culture and civility in the public in general. For that purpose, they have been involved in programs such as voters' education, civic education, gender equity and the like. In addition, they also conduct a number of programs to combat corruption and create good governance.

Not least important is their role to respond to increased radicalism and extremism among Muslims in Indonesia and in other parts of the Muslim world. The rise of ISIS, Boko Haram, Taliban and similar radical groups with their brutality has contributed greatly to increased hostility to Islam and Muslims as a whole in many parts of the world.

This is now a very important challenge for Indonesian wasatiyyah Muslim organizations. They need to speak out more clearly and stridently against the use and abuse of the concept and praxis of jihad by the radical groups to justify their violent acts. At the same time, the wasatiyyah organizations should be more active to strengthen the understanding and practice of justly-balanced Islam among the umma.

Furthermore, the wasatiyyah Muslim organizations in cooperation with governments should intensify their efforts to mediate conflicting groups among Muslims particularly in the Middle East and South Asia. For sure, they are more acceptable and more trusted to play that role compared to USA or EU countries that have geo-political and economic interests. Time for them now is to act in a more decisive way.

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Role of Religions, Especially that of Islam, in the Establishment of a Justly Balanced Global Community

Prof. Anisuzzaman



Introduction

The overall global picture in the area of distribution of wealth and other opportunities of life is not all optimistic. This is because despite development in many fields of human life and society – in enjoying good roads and comfortable transport facilities in land, water and air – in having high rise and attractive buildings with many innovative architectural designs, high yielding crops and food grains and fruits of different varieties, life-saving drugs and other health giving medical facilities, it has not been possible to make available the basic necessities of life to numerous people of the world. Further, many people across the globe have been deprived of fundamental human rights and access to quality education and life. In what follows I will try to bring out certain basic principles and values of Islam that are necessary for the establishment of a just world. As the scope is limited but the canvas is quite vast, I will briefly discuss these values and principles mainly in the context of Islam, but also referring them to some other major religions of the world, namely Hinduism, Buddhism and Christianity indicating that there are commonalities in these basic values which we need for a sustainable development and a peaceful and just world order – a justly balanced global community. My remarks and references will not always be well knit and fully documented but rather will be intermingled and interspersed throughout the whole article. I will discuss my reflections under the following headings:

1. Peace and security: Islam puts singular importance on peace and security at all levels and for all unless one forfeits one's own right to peace and security by one's own belief pattern and mode of

conduct and behavior. In fact, Islam, an Arabic word, literally means 'peace'. The term Islam has been derived from the root 'salm', meaning peace. Connected with the word 'salm' is the word 'aman' meaning security. Thus these two words combined together give a sense of peace and a sense of security to a person who has a certain kind of mind-set and a particular way of doing things. This is because after all peace is a psychological state and what a human being does has an effect upon her/his mental condition. A human being also looks for peace, s/he seeks it, in fact s/he needs it – needs a peaceful environment for the full fruition of her/his immense potential; but the point is, the giver of peace is Allah (SWT), because He Himself is peace (Salam ¹) and peace comes from Him when as stated, a human being has a particular kind of belief pattern and mode of conduct. Thus when one surrenders oneself to Allah (SWT) and abides by His commands one qualifies oneself to get peace – peace of mind – peace at the spiritual and individual level ². This is peace with oneself. Peace also has an external dimension – peace with other people and at different levels – social, national and international or global. There is another dimension of peace – peace with non-human living beings – animals, trees, plants etc. There is a further level of peace – peace with the non-living – the natural environment.³

I must submit that peace – the message of peace, the concern for peace and attempts towards peace making – is not the exclusive property of Islam. Hinduism, Buddhism and Christianity in their pristine forms are also great advocates of peace.⁴

2. Food and drink: Peace is not possible in an empty stomach. Availability of food and drink is a pre-requisite of peace. In Islam much attention has been given to the surmounting of one's hunger and

¹ The Quran, 59:23

² *Ibid*, 89:27-30

³ For a detailed discussion of peace at different levels, see, Karim, AlhajMaulanaFazlul, *The Religion of Man*, New Delhi: Islamic Book Service, 1995, pp.85-94

thirst. Allah has revealed His Divine desire by saying that He has created everything for us for our benefit.⁵ He has asked us to eat and drink from what is pure, healthy and wholesome. He has also asked us not to abuse and misuse His gift. He has asked us to share our food and drink with others – to give food and drink to those who do not have these or have them but not enough. One of the signs of a believer in Islam is that he feeds others, who are hungry and thirsty – give them food and drink.⁶ Again, feeding others, that is, sharing of food and drink is not the exclusive credit of Islam. Hinduism⁷, Buddhism⁸ and Christianity also speak of sharing food and drink with others.

3. Shelter and clothing: Islam urges upon the believers to make available to people houses and clothes. In fact, Allah has identified Himself with the hungry, thirsty, homeless, naked and sick ones. It has been narrated in a Hadith that on the Day of Judgment Allah (SWT) will ask some people that He was hungry and they did not feed Him. He was thirsty and they did not try to quench His thirst. He was sick and they did not look after Him. He was naked and they did not give Him clothes. He was without shelter and they did not give Him any shelter. On hearing these they will be surprised and say that how it is possible to feed Him who is the sustainer of all! How is it possible to give shelter and clothes to Him who is without any form and above all these creaturely needs and limitations! It is incomprehensible that Allah becomes sick and humans will take care of Him. In reply Allah would say that hungry, thirsty, sick, naked and homeless people had gone to them and asked them to meet their needs but they had not helped them in fulfilling their needs. If they would have fulfilled their

needs it would be as if they have fulfilled Allah's needs.⁹ Similar passages are there in the Bible.¹⁰ Ideas like these are not difficult to find in the Hindu and Buddhist traditions.

4. Basic education and medical facilities: According to Islam it is a right to have basic education and medical facilities. Parents and guardians are initially responsible to make these available to their children or wards as the case/s may be. If they cannot afford to do so, it comes under the duty and responsibility of the society and the government to ensure these to the citizens.¹¹

5. Family life and recreation: According to Islam humans have a right to family life and wholesome recreation. When children are grown up it is the responsibility of the guardians to help them in lawful marriage. Islam does not permit pre-marital and extra-marital relationships.¹² Therefore, it is quite natural that people should have the right and opportunity to form a family.¹³ Islam prefers a familial environment for the children to grow up in and develop; in the absence of such an environment the society and the state are responsible for care and protection. Islam is in favor of wholesome and harmless recreation.

6. Special considerations for the elderly, women and young: Islam has given particular attention to the elderly, women and the younger section of the community. We must care for the elderly and at the same time keep in mind that the young generation is our future; so they must be well treated and developed. In Islam women enjoy special privileges. But unfortunately, let alone enjoying these special privileges in practice, they are often

⁴ For the Hindu idea regarding peace, see, Walker, Benjamin, *Hindu World*, Vol.1 : London: George Allen and Unwin Limited, 1968, pp.330-333, 343-344; also Mishra, VibhutiBhushan, *From the Vedas to the Manu-Samhita*, New Delhi: Sterling Publishers Pvt. Ltd., 1982, pp.17, 37-41; for the Buddhist idea regarding world peace, see, Singh, Vidyotma, *Basic Concepts of Buddhism*, Delhi: Vista International Publishing House, 2009, pp.218-220; also Singh, Indra Narayan, *Introduction to Buddhism*, Delhi: Prashanta Publishing House, 2009, pp.75-78; for the Christian values which include peace, see, George, Maya, *Faith and Philosophy of Christianity*, Delhi: Kalpaz Publications, 2009, pp.162-163

⁵ **The Quran:** 14:32-34; 31:20

⁶ **Ibid:** 107:2-7

⁷ **Op.Cit.**, Mishra, *From the Vedas to the Manu Samhita*, pp.135-147

⁸ **Op.Cit.**, Singh, *Introduction to Buddhism*, pp.78-86

⁹ **Hadith**

¹⁰ **Matthew:**25:35-40

¹¹ Syed, M.H., *Human Rights in Islam*, New Delhi: Anmol Publications, Pvt. Ltd., Vol.1, 2003, pp.260-272

¹² **The Quran:** 17:32

¹³ Khan, Arif Ali, *Family Law in Islam*, New Delhi: Pentagon Press, 2007, pp.1-3

ill-treated and discriminated against only because they are women. This is totally against the spirit of Islam. Islam is a religion of justice and equity, easiness and temperance, not of injustice and imbalance, extremism and excess. If we go through the life of our beloved Prophet and his companions, we find ample examples to this effect. There has been some discriminatory treatment of women in the olden days of Hinduism but ideas are now changing towards a more humane treatment.¹⁴ In Buddhism we find much more sympathetic treatment among different strata of humans. This is because Buddhism is a totally humanistic religion.¹⁵

7. Care for non-human species and natural environment: In Islam human beings are Allah's representatives¹⁶ and His creatures are as if His family members. Humans are to reflect and nurture Allah's attributes, especially, the attributes of *Rabb*¹⁷ (provider of sustenance and ensurer of well-being) and *Gaffar*¹⁸ (forgiver of faults and acceptor of genuine excuses). In Islam Allah Himself does not come down on earth as is believed in some versions of Hinduism in the form of an incarnation. Allah desires us – humans – to do His job. We should not harm or hurt animals even trees and plants unless this is really required and this again only to the extent it is truly so. We should not interfere even with nature unless this is unavoidable. Even in this case we should be kind, considerate, sympathetic and friendly.¹⁹ It is agreed that development is not possible without some kind of interference with nature but this must be friendly to all – humans, animals and nature.

8. Some positive human and spiritual values that Islam wants to impress upon its adherents: Some of these are speaking the truth²⁰, maintaining the dignity of the human person²¹, having respect for the views of others, including religious views²², having empathy for others, upholding morality and transparency in business transactions and corporate activities including political activities, having concern for the life, property and honor of other individuals.²³ In the Advaita version of the Vedanta philosophy of Hinduism differences are illusion, identity is the reality.²⁴ We notice that qualities like love and sympathy are very much dominant in Christianity²⁵; and it is evident that when love and sympathy dominate, roots of dissension and disparity disappear.

9. Some negative qualities that Islam forbids or discourages: These are in effect the enemies of peace and global justice. They are: jealousy, anger, pride, ill-speaking of others and fault-finding, telling lies, having hatred, creating mischief, unnecessary killing, stealing, looting, robbery, spreading of violence and terror, setting fire on houses, properties and crop fields, mutilating the dead, discriminating among people on the basis of skin color, place of birth, parentage, language or sex.²⁶

10. There are some misgivings about Islam in the West because of the fact that they take Islam as a religion in the Western sense of the term. But the fact is that the scope of Islam is much wider than the Western term 'religion'²⁷. My contention is that despite many differences among different religions there are some very important and decisive com-

14 For position of women during the period of the Epics, see, Opt.Cit., Mishra, From the Vedas to the Manu Samhita, pp.98-101 and about the position of women during the time of the Manu Samhita, see pp. 135-147

15 Shastri, Manmatha Nath, Buddha: His Life, His Teachings, His Order, Delhi: Indological Book House, 1901, pp.172-174; Tiwari, Kedarnath, Comparative Religions, Delhi: Matilal Banarsidas, 1997, pp.45, 49

¹⁶ The Quran: 2:30

¹⁷ Ibid

¹⁸ The Quran: 59:23

¹⁹ Op.Cit., Karim, p.90

²⁰ The Quran: 61:2-3

²¹ Op.Cit., Syed, M.H., Human Rights in Islam, pp.228-230

²² The Quran: 10:99-100; 18:29

²³ Op.Cit., Syed, M.H., Human Rights in Islam, pp.221ff

²⁴ For some fundamental characteristics of Hinduism, see, Tiwari, Comparative Religion, pp.11-12

²⁵ Tiwari, Comparative Religion, pp.132-133

²⁶ The Quran: 49:13

²⁷ Al-Attas, Syed Muhammad Naqib, Islam and Secularism, Kuala Lumpur: International Institute of Islamic Thought and Civilization, 1993, pp.51-56

monalities among them. All the religions basically are for peace and tranquility. This has exactly been encapsulated in a statement by Venerable Master Chin Kung. To quote him:

If one sincerely follows the teaching he will gain the true benefit, no matter what teaching it is, be it Confucianism, Buddhism or Taoism or any other religion. It is because all religions have their own fundamental precepts. If any practitioner truly realizes the precepts of his religion in daily life, he would necessarily be peaceful and tranquil. If we don't learn from the fundamental teachings, the whole learning process would be like a tree without roots, like water without a source, like flowers in the vase, like a house built on empty air.

Conclusion:

In the light of our above discussion it is quite clear

that for a justly balanced global society we need peace and security and to establish peace and security at all levels and for all we need to make available the basic necessities of life to all. This again requires sharing of our fortunes and privileges with others – first with less advantaged humans and then with the non-human species keeping an eye to the nature and environment. In this respect religions have an important role to play and Islam being the last revealed religion can guide us all through the hurdles and challenges of times and places.

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Delegates of the 5th Assembly in Plenary Session.

²⁸ Venerable Master Chin Kung, "Religious Education is Necessary for a Harmonious World", Address delivered at the 2nd International Conference on Interreligious and Intercultural Dialogue, Dhaka, Bangladesh, November 26th-28th, 2010, p.3

Consequences of Conflicts: Refugees and other Migrants – Integration and International Relations

Staffan Bodemar



Refugees and stateless persons

In mid 2015 there were some ice-breaking events concerning one of the most desperate refugee situations in the world – that of the Rohingya from Myanmar. Mass graves were discovered in Thailand and smugglers arrested. Push-backs of boats ended, instead vulnerable boats were actively searched for on the Andaman Sea and in the Bay of Bengal. It is significant that Aceh, which has itself suffered from many years of conflict and refugee exodus, helped to break the recent deadlock by welcoming more than 2,000 mostly Rohingya refugees. Malaysia has for years hosted Rohingya. And with the gruesome discoveries of the mass graves, governments were forced to meet and openly discuss – with participation of international organizations – the “Irregular Migration in the Indian Ocean”, as a meeting in June 2015 in Bangkok was called.

The situation of the Rohingya refugees is aggravated by them being stateless. Yet given the global refugee situation, this problem has to be solved by Asian nations, both in its humanitarian aspects and its root causes. While UNHCR, the UN refugee agency, declared at the Bangkok meeting.....

“...its commitment to doing our utmost to identify third country resettlement solutions for the most vulnerable and those with specific needs....it is important to be realistic....in light of several major crises around the world, rising numbers of refugees and asylum-seekers and urgent needs everywhere... And the prospect of resettlement, real or perceived, could exacerbate the problem by encouraging additional departures”.

“Recognizing that it will take time to address the root causes of these movements, we need creative, temporary solutions....[T]his region has success-

fully managed the migration of millions of people. Thailand alone has recently regularized well over a million temporary workers.... With the much admired economic dynamism of South East Asia, we must surely be able to find a way to address the protection needs arising from this situation – at least until such time as conditions are ripe for people to return home or find another solution. In essence, this means that those who cannot return now because of international protection reasons be allowed to stay temporarily and work. This would simply recognize and regularize what has already been happening in reality for many years.”

Desperate as this situation is for thousands of people, and indeed for those remaining in Myanmar, it is only one of the world’s numerous refugee and migration movements. It is dwarfed by the situation in West Asia, notably Syria and Iraq, which in turn is the main reason – although not the only one – for the mass movements of desperate people across the Mediterranean Sea trying to reach what they believe to be the safe haven of Europe. In 2015, more than 1,000,000 have landed, primarily in Greece but also in Italy, while more than 3,000 are reported to have died trying to do so. And yet, this large exodus is still ‘small’ as compared to the millions remaining in Jordan, Lebanon and Turkey or displaced within Syria itself. As the time of writing, the desperation of the situation is only getting worse.

The world is now experiencing the largest refugee movements since the Second World War. During my visit last year to my home country Sweden I noticed that this was now a different country from my previous visit three years earlier. It had taken in and granted residence to more than 60,000 Syrian refugees, much more than other European countries except Germany, and this is only part of the annual inflow of refugees and other migrants of some 100,000 a year – to a country of 9 million inhabitants.

Integration and nurturing inclusive societies

Sweden's capacity to help is now being severely tested. And some of the refugees and asylum-seekers, who have fled from enormous hardships, often have unrealistic expectations. Most have to stay in temporary accommodations, which had already tripled in numbers between 2010 and 2014. But these are not isolated camps. Almost every community in the country hosts asylum-seekers and refugees. The whole country is affected. 15 % of Sweden's population is born abroad - in the larger European countries Germany, France and the United Kingdom, the number is around 12%.

There are now calls even by persons who have strongly supported Sweden's reception policy to put a temporary stop to immigration. The will among most of the population may still be there, but no longer its capacity, not only in economic but also in a broader social sense. According to the government it has taken on average seven years for an adult man and 10 years for a woman to find work and to be able to support him- or herself. The last group of refugees which is considered successfully integrated into Swedish life is the group of Bosnian refugees arriving in the early 1990s.

The current problems are so acute that it is difficult to maintain a longer perspective. A recent population study indicated that already around 2040, 'original Swedes' would constitute a minority in the country. I asked a relative how he thought the country would be able to face such a change. He replied that most people would be able to accept that change, provided that criminality and corruption would not increase and that the rule of law would prevail in society.

A very substantial feature article in the February issue of Foreign Policy (FP) has the somewhat provocative title: "The Death of the Most Generous Nation on Earth", with the sub-title "Little Sweden has taken in far more refugees per capita than any country in Europe. But in doing so, it's tearing itself apart". It outlines various restrictive measures Sweden has had to undertake, both on reception and social assistance policies as a "final sign of Sweden's reluctant regression to the European mean".

This is not the first time Europe faces a major immigration situation. Anecdotedly, at the time of the French revolution, only about 50% of the population even knew how to speak French! But Europe is now facing a global migration of a scope previously unknown, and European countries are groping for solutions. There is much talk and writing about multiculturalism versus assimilation. At the same time there is a rise of right-wing parties and in some places an increase in violent reactions, such as in Germany, where the number of violent attacks on hostels for asylum-seekers grew six-fold from 2012 to 2014. The issues of immigration and integration are of course linked to the economy, but they now constitute an even greater challenge for European unity than the economy per se and the euro crisis.

Impact of external forces on the Muslim world - and Impact of the Muslim world on the West

One theme of the AMAN assembly was limited to the "Impact of external forces on the Muslim world". The impact of the western world on the Muslim world has been and continues to be enormous, historically and at present. Borders have been drawn by colonial powers without local consultations. The recent invasion of Iraq under false premises, the cruelties committed in its aftermath, including the tortures allowed both by members of the occupying forces and by members of one community towards another, are clearly factors behind the rise of extremism and eventually the creation of IS with all its horrendous cruelties.

Considering past mistakes, should western powers withdraw militarily completely from the conflicts in the Muslim world, notably now in West Asia? It is sometimes said about the involvement of the United States, that 'it is damned if it does and damned if it does not', although the two 'damnations' are of course not uttered by the same persons or groups. This dilemma is primarily for the inhabitants in the countries concerned to answer, but is presumably difficult to resolve fairly in the heat of the present conflicts.

While the impact of the western world on the Muslim world is well-known and debated, the impact that the Muslim world now has on the western world is not equally appreciated. Through immigration, the "Muslim world" is now an integral and growing part of

western countries, both of Europe and of the United States and Canada. As it is in Russia! The Muslim world is no longer just 'over there', separate from our world. It is therefore crucially important for the future, how Muslim and non-Muslim communities live together and form or reform societies together. To quote the above mentioned FP article: "The Muslim influx threatens Europe's liberal, secular consensus; but rejecting the refugees also shakes one of the great pillars of that consensus".

The international relations between the predominantly western world and the predominantly Muslim world will also continue to grow in importance - equal to that of any other international relationships.

As will the western perception of Islam, both for the internal developments of western countries such as Sweden, as well as for our international relations. Mixed messages have always been heard, but the differences have now been accentuated by one militant entity claiming to speak and act in the name of Islam and to do so with extreme violence. This has added to the concern and confusion in the west, and not only because some of its own citizens have left to join IS. Communities are seeking to combat this exodus, and are seeking the cooperation of imams, other community leaders as well as parents.

Clearly the voices of moderation – of the "middle path" - and of peace are vital, now and for the future.

These voices are not always easy to be heard over the clamour of war, hateful messages and other violent acts. This is a challenge, it is urgent and it affects us all. Organizations such as AMAN and GMM have important roles. The more such organizations can work together, the easier it may be to penetrate the media, which now inevitably but regrettably otherwise focus on the ongoing wars and the voices of violence and hate. Will our growing integration and interdependence follow what is expressed in the Qur'an that God created different peoples so that we may know each other?

A common vision east-west, north-south

The world is one. It may lack a common vision for the future, but at least there is now a common vision and understanding of our total interdependence. This is focused not only on the global economy, but on issues such as climate change and the need to avoid a global conflict such as the world knew in the past century. But this common realization has not yet resulted in a common strategy and vision how to arrive at an equitable global society, in which poverty is no longer present. But it is a beginning.

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Participants of women workshop are engaged in dialogue.

Exploring the Use of International Human Rights Law through the Supreme Court to Protect Muslim Women's Rights and Promote Reform of Muslim Personal Laws in India. Towards Justice for Women in a Global World

Mariya Salim



Muslims in India constitute around 13.4 percent of the country's population as per the census of 2001¹. The largest religious minority in India, Muslims have been disadvantaged and susceptible to discrimination

in spite of the constitutional safeguards, continuing to live in poverty and backwardness. This situation was validated by a national study commissioned by the Government of India, on the socio-economic status of Muslims in India, in 2006, headed by the former Chief Justice of high court of Delhi Rajinder Sachar.² The project of human rights in India can hardly hope to find a more relevant and absorbing concern than the position of Muslim women in the country today. Muslim women in India are triply disadvantaged, first as members of a minority, then as women, and finally as poor women. They find themselves often trapped between being loyal to their religious identity and a desire for freedom and equal rights within those communities as well.³ The state locates Muslim women's deprivation in the religious-community space and not as the objective reality of socio-political marginalization and discrimination. This permits the state to shift the blame to the community and to free itself of the guilt of any neglect. Muslim women in India have been demanding a codification of the personal laws, in the absence of which they have to face a lot of violations, particularly in the sphere of family matters.⁴ This essay aims to explore how the judiciary in India can assist the progressive women's movement, in-

corporating international human rights standards into relevant cases and litigations, setting a precedent and slowly assisting in an incremental positive change in the lives of Indian Muslim women given the globalized world they are all a part of.

India follows a dualist model, where international human rights obligations and treaties that it ratifies do not automatically become part of domestic law. These are either enacted by laws passed by the parliament or by precedent set by the Supreme Court rulings. Article 51 (c) of the Indian Constitution, exhorts the Indian state to endeavor to: 'foster respect for international law and treaty obligations in the dealings of organised peoples with one another....'. Though Art 51 (c) is non justiciable being a directive principle of state policy, the Supreme Court of India through various judgements has not only quoted international human rights law but has also used texts from treaties, even those that India has not ratified, to reach progressive judgements. The court has acknowledged that whenever there is an ambiguity surrounding a domestic law, "the national rule is to for it to be interpreted in accordance with the state's international obligations". Though the Indian Supreme Court has made very progressive judgements incorporating international human rights, it has kept out of the realm of Muslim women's rights and has not been using international standards to progressively interpret them.

The Supreme Court's augmented use of international human rights law and universal norms of human rights in interpreting constitutional guarantees of women's essential equality and freedom from

¹ Distribution Of Population By Religion, Government of India: Ministry of Home affairs
<http://censusindia.gov.in/Census_And_You/religion.aspx> accessed 20 March 2015

² Prime Minister's High Level Committee, Social, Economic and Educational Status of the Muslim Community of India: A report, (Government of India 2006)

³ Zoya Hasan & Ritu Menon, The Diversity of Muslim women's lives, (Rutgers University Press 2005) 6

⁴ Sylvia Vatuk, 'Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Personal Law' (2008) 42 Modern Asian Studies 489

discrimination is very promising. Arguably, international law does have a normative impact on states which has been demonstrated by the adoption of international human rights norms by the Indian Supreme Court.

India's obligations under international human rights law and Muslim women's rights

While looking at rights of women, Muslim women in particular, India is a state party to four particularly relevant treaties: the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).

The Indian Supreme Court, women's human rights and international Human Rights Law

*"[I]nternational instruments cast an obligation on the Indian state to gender sensitise its laws, and the Courts are under an obligation to see that the message of the international instruments is not allowed to be drowned."*⁶

In exploring the best ways to use the Supreme Court as a strategic litigation tool to push for reforms aimed to advance and protect Muslim women's rights in India, using international human rights laws for advocacy, it is useful to study past cases involving women's rights, where the court has successfully used such standards to make progressive judgements.

An example of how the Supreme Court interpreted constitutional law, read with injunction of international human rights law to enter the personal law terrain of inheritance and property rights is evident in its judgement of *C. MasilamaniMudaliar&Ors vs The Idol OfSwaminathaswamiThirukoil*.⁷ The Supreme Court upheld an appeal of a Hindu widow to be entitled to full ownership of the property which

was left to provide maintenance to her. In doing so the court stated that:

'Article 2(e) of CEDAW enjoins that this court breathe life into the dry bones of the constitution..... and the Protection of Human Rights Act and the Act to Prevent Gender based Discrimination and to effectuate right to life including the empowerment of economic, social and cultural rights to women'.⁸

The court held that India is obliged under CEDAW to prohibit all gender-based discrimination (Art 2) and made specific mention of property issues as well (Art 16). It also held that the enactment of the Protection of Human Rights Act 1993 in India meant that the principles in CEDAW and the concomitant right to development became part of the Indian constitution and the act and thus were enforceable in India.⁹

With regard to India's declarations to CEDAW, the court held that though the Government of India had certain reservations, these bore little consequence 'in view of the fundamental rights...and the directive principles of the Constitution'. In *Vishaka v. State of Rajasthan*,¹⁰ the Supreme Court filled a void in domestic legislation on sexual harassment in the workplace and upheld women's constitutional rights, directly applying CEDAW provisions.

The Supreme Court referred in its judgement to General Recommendation No. 19 as well as Article 11 of the CEDAW, reading them with Articles 14, 15, 19(1)(g) and 21 of the Indian Constitution which deal with equality before the law, special provisions for women and children, freedom to practice any trade and profession, and the right to life, respectively, guaranteed under the chapter on fundamental rights, part IV of the Indian Constitution. The court illustrated upon the norm of 'legitimate expectation' that flowed from ratification of treaties and General Recommendation No.19 to set out certain guidelines to act as law, thereby addressing the then existent legislative vacuum on the issue of sexual harassment

⁵ VrindaNarain, 'Muslim Women's Equality in India: Applying a Human Rights Framework' (2013) 35 Human Rights Quarterly 91

⁶ Apparel Export Promotion Council v. Chopra, (1999) 1 S.C.R. 117

⁷ 1996 AIR 1697

⁸ Ibid

⁹ Ibid

¹⁰ AIR 1997 Supreme Court 3011

at the workplace.¹¹ Art. 141 of the Constitution of India states that a law declared by the Supreme Court (is) to be binding on all courts and reads “The law declared by the Supreme Court shall be binding on all courts within the territory of India.”

Unlike the two judgements mentioned above which were celebrated as progressive, the Shah Bano judgement¹² of the Supreme Court which upheld the right of a divorced Muslim woman to receive maintenance caused a near uproar in the country. In 1985, Shah Bano, a seventy five year old woman, who was abandoned by her husband filed for maintenance under the criminal code applicable to all Indians. The Supreme Court upheld her right to maintenance under the criminal code and maintained that criminal law transcended family and personal laws. However, because of the communal undertones of the judgement, which not only started with a controversial statement (To the Prophet is ascribed the statement, hopefully wrongly, that ‘Woman was made from a crooked rib, and if you try to bend it straight, it will break; therefore treat your wives kindly’.) but also called for a Uniform Civil Code (UCC), the Muslim minority community saw this as an assault on their religious rights, and protested vehemently against it. Around the same time the movement for the construction of a temple in Ayodhya by the Hindu right, on the site where a mosque stood, also gained momentum. Thus these issues together took on a communal colour and the Indian government passed the ‘Muslim Women Protection of Rights on Divorce Act’ which excluded Muslim women from the protection from the criminal code and in effect overturned the ShahBano judgement. It was an incident which illustrated to feminists in India how easily issues of women’s rights could be exploited by political agendas of other groups. The primary debate around Shah Bano was that of religious vs secular law; however the passage of the Muslim women’s act shifted the debate to a conflict between women’s rights and religious rights.

Litigating strategies for women’s rights groups to further Muslim women’s rights using international human rights standards: Best practices, lessons learnt and way forward

After the Shah Bano judgement and the controversial Muslim Women Act, which was passed to neutralize it, there has hardly been any evident effort by the state or the judiciary towards revival of the process of reform towards gender-just laws in Muslim personal law. This has been exacerbated by recurrent communal violence. Thus, with the Muslim community entangled with issues concerning its identity, socio-economic security and safety, working towards securing the basic human rights of Muslim women seems to have been relegated to the background. It is important to note however, that amidst the discussions on reform that would be beneficial for Muslim women there has been some progress in the form of a striking parallel development which has slowly helped consolidate the rights of Muslim women. Muslim women have taken recourse to the law of the land to proclaim their distinct rights within the realm of family law, and progressive judgements, discussed below, made specially by the Supreme Court in guaranteeing these women their rights are certainly worth looking into.

In a case on the oral triple *talaq* method of divorce, Shamim Ara vs State of U.P. & another¹³, the Supreme Court held that a unilateral divorce that is pronounced by the husband without any reasonable reason and when there are no attempts to reconcile, the divorce is not legally valid. It went on to state that in case the wife disputed the facts of the divorce before the court, the husband will be entitled to prove attempts of reconciliation, pronouncement of the divorce, appointment of the arbitrators etc. A Muslim wife who thus has a unilateral oral divorce pronounced on her, without satisfying the above conditions, would be entitled to matrimonial assistance like maintenance, since such a divorce would not be considered legally valid. Similarly in Begum Subanu alias Saira Banu and another vs A.M. Abdul Gafoor¹⁴ the Supreme Court stated that the husband’s second marriage confers a right on the

¹¹ Madhu Mehra, ‘India’s CEDAW story in Women’s Human Rights CEDAW’ in Anne Hellum and Henriette Sinding Aasen (eds), International, Regional and National Law (Cambridge University Press 2013)

¹² Md. Ahmed Khan v. Shah Bano Begum, 3 S.C.R. 844 (S.C. 1985)

¹³ AIR 2002 SC 3551A

¹⁴ AIR 1987 SC 1103

wife not just to live in a separate home but also to claim maintenance.

Using the judicially generated procedural vehicle called a Public Interest Litigation (PIL), any organization or individual who is concerned with an ongoing human rights violation can bring an action directly to the Supreme Court. Since the Supreme Court's decision is binding upon all the courts in India, judgments which are in favour of Muslim women bear a special consequence. By pronouncing judgments, whether related to PILs or individual cases, not only does it resolve the dispute but it also states what the law concerning that particular issue is and decides on the rights of parties involved, interprets laws and provisions whenever there is any ambiguity or contradiction, setting a precedent for others as well as for itself to follow. Muslim law in India is mostly uncodified, interpreted differently by different sects, however what is common to all of these are the patriarchal elucidations flowing through these interpretations, detrimental to the rights of Indian Muslim women. Thus, Supreme Court judgments on issues on Muslim family law are very significant and bear relevance to women's struggles to live with dignity. Because of this progressive stance of the Supreme Court, the women's rights movement which is aiming at introducing a codification in the Muslim personal laws as well as regularly filing petitions on issues of Muslim women's rights, from child marriage to entry into religious places, while addressing the judiciary, as a strategy can invoke international human rights laws, using the language of universal human rights norms.

Thus, taking a look at the cases above, where on one hand the Supreme Court seems sensitive on pronouncing woman friendly judgements on cases concerning Muslim women, and on the other hand the effective use of International Human Rights law by NGOs to petition the Supreme Court, it will be a viable method for those seeking to work towards reform of Muslim personal law, to use arguments

and file petitions using international law as well, a strategy which so far has not been exploited well. This becomes especially important in the current communally charged political climate in India. It seems to many that, post Shah Bano, the judges in delivering judgments in similar cases have been careful about what they are saying where personal religious laws are concerned, thus resorting to interpretational techniques to address laws that seem discriminatory, rather than looking at them as violating women's rights and being discriminatory. Some senior lawyers are also of the opinion that the judiciary seems to refuse to 'test personal laws on the touchstone of fundamental rights' and 'has wavered to avoid being mired in controversies over the much needed reform of personal laws'¹⁵.

Conclusion

The Indian Supreme Court is arguably one of the most influential and authoritative constitutional courts anywhere in the world today, and because it plays an active role in areas of fundamental rights and governance at the national level, it enjoys the trust and faith of the citizens¹⁶. Furthermore, litigation is also a speedier and cost effective method of achieving desired consequences than lobbying through the legislature. Though scholars like PratapBhanu Mehta, who though have appreciated the Indian Supreme Court for its activist stance and praised the PIL as 'the provision of a forum to which citizens marginalized by the corruptions of routine politics can turn has arguably given serious moral and psychological reinforcement to the legitimacy of the democratic system' but at the same time also question the assumption that 'judges anymore than politicians will always protect our liberties'.¹⁷ An important example here is the concern expressed by the CEDAW committee on child marriages in India 'at reports that judges often authorize marriages of underage girls based on Muslim personal laws'¹⁸

Similarly, there have been cases where judges have

¹⁵ Avani Mehta Sood, *litigating reproductive rights: Using Public Interest Litigation and International Law to Promote Gender Justice in India*, Center for Reproductive Rights 2006

¹⁶ S. P. Sathe, *Judicial Activism in India: Transgressing borders and enforcing limits* (2nd edn, New Delhi Oxford University Press 2004)

¹⁷ PratapBhanu Mehta, 'The rise of judicial sovereignty' (2007) *Journal of Democracy* 18 (2)

¹⁸ Committee on the Elimination of Discrimination Against Women 'Concluding observations on the combined fourth and fifth periodic reports of India' (24 July 2014) CEDAW/C/IND/CO/4-5

¹⁹ MadhuKishwar, *Off The Beaten Track: Rethinking Gender Justice For Indian Women* (OUP 1999) 38

avoided striking down a discriminatory law, instead interpreting them in a manner that they seem non-discriminatory.¹⁹

Nevertheless, arguably, there is wide acceptance, even among those critical of the court in over stepping its role while exercising judicial activism, that, it has taken on a very proactive role in compensating for the inaction of the legislature and the executive in many ways. There needs to be however a constant engagement between courts and the civil society, represented by Muslim women's groups working towards reform in personal laws and towards elimination of discriminatory practices towards women invoking India's commitment to international human rights standards. The cases involving Muslim

women and family matters, where the Supreme Court, though has not used International Human rights law, are remarkable as they serve as a starting point where the Supreme Court through judgements favouring women, unequivocally links the constitutional guarantees of equality and non-discrimination with women's human rights. To evoke India's commitment to international treaties and standards in filing future petitions and the increasing use of the same by the Apex court is a promising way forward.

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AMAN Council Members met during the Assembly.

I seek for...



Dr. Mohamed Yunus Yasin

Life,
To pursuit of the truly meaningful,
And not having to waste it like a fool,
Until the cup is overflowing always full,

Happiness,
To seek in this short life always,
Trying to find all the easy ways,
If only one could locate the highways,

Content,
To chase like a lion seeking its prey,
If not able to do so maybe better to sit silently and
pray,
If only it was simply handed out on a silver tray,

Justice,
Can it exist in the hearts of men,
Fair play nailed in his heart not floating only now
and then,
Leaving the oppressed unable to act but only ask
when?

Love,
For all living and non living beings,
Not to be just some passing feelings,
Perhaps humans should remember in all his dealings,

Trust,
A promise made never broken,
Words given not simply taken as token,
Language acted upon before even it is spoken,

Mercy,
Humans ask from God day and night,
But in his actions it is just out of sight,
The Hypocrisy of thinking that he is always right,

Peace,
To seek in this journey seems so darn long,
But only a short interlude like a long forgotten song,
The balance to be restored in this life and beyond.

Peace,
In silence some try to mediate,
And in actions one hopes to alleviate,
In its presence one may hopefully radiate,

Peace,
To vanquish thy enemies thy only need to forgive,
Relinquish thy hatred thru the unspoken gift,
To accept thy being and not to create in thy heart that
deepest rift,

Peace,
Nothing wrong being ordinary,
Understand do we or do need a dictionary?,
For we only 'stand-out' when we are reactionary,

Peace,
The yearning for absolute silence,
But only tearing with hope - the only reliance,
Humility the prevailing of being but why all this
defiance?

A Personal Reflection on the Assembly

Nehara Goling Bantuas



Congratulations to 25th Anniversary!

This was my first time to become a participant of an international conference. So on the first day, I felt so intimidated. I thought that this event was just for professionals and knowledgeable people but I was very wrong because they were so kind and caring. I felt that there was no separation. There was no me and them but only we. We were all connected so even on the first day. I made a lot of friends.

We had this Pre-Assembly Workshops on the first day and I joined in the Young Creative and Critical Thinking Camp. We were taught how we can develop our capability in critical and creative thinking as we learn to generate and evaluate knowledge, clarify concepts and ideas, seek possibilities, consider alternatives and solve problems. It's like we have to think out of the box. I really like it because we were told to do some activities that require us to think broadly and deeply using our skills, behaviors and dispositions such as reason, logic, resourcefulness, imagination and innovation. I learned that though creative and critical thinking are not interchangeable, they are strongly connected, which brings complementary dimensions to thinking and learning.

On the second day, I felt the warm welcome to the delegates, honorable guests and speakers with the introduction to the AMAN 25th Anniversary assembly. This assembly was declared as a day devoted to strengthening the ideals of peace, both within and among all nations and people. I know that a lot of hope and symbolism was attached to this event.

What I also really like were the reports back from the pre-assembly workshops. These are all different topics, but it has one goal which is peace. First topic was about the stateless people. Statelessness is an invisible problem because stateless people remain unheard and unseen. We don't know how miserable it is to live without nationality, without a country who will protect us, and without the basic rights that the citizens enjoy. Many people don't care about them so it's not possible for them to show us how hard it is to become who they are. And because of this conference, I was given a chance to become aware of these issues and my perceptions were changed. We have to make a move and give a hand to these people who need us. They also have the rights to become citizens of a country and a chance to say that "I BELONG TO THIS NATION".

The second one was about climate justice advocacy. Climate justice is the thing that connects all the human rights and human development. It is when our rights and health were protected. All the people are sharing the burdens and benefits of the climate change and its resolution with justice. We are treated fair with the creation of policies or any projects that will improve climate change, help us to defend our public ownership and eliminate discrimination, racism, and gender injustice.

We also discussed about peace and conflict studies forum. It addresses some of the most enduring and intractable problems of humanity. It is concerned with the origins and nature of violence and conflict within and between societies. With these discussions about peace and conflict, I realized that the road to a peaceful world is a lengthy one. Choosing this path takes a lot of courage because along the way there may be some difficulties that will really let you down so we have to stand still and live for peace.

"Women, Peace, and Security", the topic that I'm most interested in partly because I joined the Youth for Peace group and we never talked about the rights and protection of women. Having an opportunity to listen the presentations of women workshop, I feel very sad to hear about violence against women. We are part of the powerful agents towards peace and security. Together we have to make a move and with the help of each of us, we can hold the states and people responsible and put an end to this sufferings and injustice.

Since I like watching, surfing the net, and talking, I learned a lot on this discussions about media and communication. In my opinion, I believe that one major problem with media and communication is that news is now sponsor driven. Yes, media can play both destructive and constructive role. We can use media and technology to save lives. We are young and have less experience, but we are also part of this new generation of peace-builders. We have the knowledge and power of technology to make a difference and make a better world.

After all these discussions, I am still curious to know what is good in the war. What is its goal? Is it peace? Can we build peace through war? For me, peace is something that blooms with love from the heart which has to be awakened in each of us.

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The AMANA magazine was initiated in 2005 following suggestions made at the first round of the Asian Muslim Action Network (AMAN) 'Peace Studies & Conflict Transformation' course. In Arabic, Amana means trust and embodies the primary objective of the publication in highlighting peace initiatives, peace collaboration, progressive Muslim action, and inter-faith cooperation and understanding. To ensure a wide distribution range and to connect with grass-roots communities, AMANA is printed in English, Bahasa Indonesia and Thai.

AMAN supports holistic development through awareness building with an overall aim of mobilizing and sharing resources in order to help marginalized groups in Asia. AMAN aims to build understanding and solidarity among Muslims and other faith communities towards people's empowerment, human rights, justice and peace. With over 1500 members, the network of AMAN spans Asia and is coordinated from Bangkok, Thailand.

Publications: AMANA Magazine and AMANA news online

Focus: Islam and peace; inter-faith partnerships; development initiatives; human rights; gender and peace.

