

Dubai rather obscure: "here we are labouring and earning money to send home", said one, "and Doctor Sahib is spending his money on attending meetings and crying over a woman who has done nothing for any of us".

Conclusion

At one level, the Dubai which Farid and his fellow camp dwellers inhabit appears to be remarkably similar to what the Osella's have described as a "self-contained microcosm" where people from "many different places are held together yet stand apart, separated by class and ethnicity". Yet Farid's microcosm is richly shaped by creative personal initiatives on his part, as well as being informed by a dynamic range of complex social relationships that cut across what for he and his fellow Dubai Chitralis are critically important boundaries of class, status and religious difference.

At another level, Farid's changing experiences of Dubai also points toward the complex forms of sociality and subjectivity that arise in such neo-liberal spaces as Dubai's labour camps. These camps are usually thought of as alienating and as devoid of nurturing forms of sociality, which are a valued dimension of life in Chitral (Marsden 2005). Farid and others like him, however, claim to derive pleasure from camp life. In the most unlikely of circumstances, Farid cultivates and tenaciously promotes a luxurious way of Chitrali aristocratic living. Others, like Sohail, see Gulf life as offering very different possibilities for their personal development. When they return home, they talk of being eager to get back to Dubai and resume control over their own lives.

Complex interactions, thus, are taking place between very different and apparently contradictory standards of self-management and presentation, and in the most unexpected of places – Dubai's concrete and apparently dehumanising all-male labour camps.

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Pakistan's legal system has long been associated with human rights violations. In particular, the controversial Zina Ordinance¹, which made sexual intercourse outside marriage a criminal offence. The most pernicious result of this law has been the risk for 'double jeopardy' of rape victims. A woman pressing rape charges risked being convicted of adultery if the suspect was acquitted. The infamous case of Safia Bibi, is the most distressing example of this scenario. Yet, as Martin Lau reveals, there have been gradual improvements in the legal position of Pakistan's women in recent years.

The quiet evolution:

Islam and women's rights in Pakistan



Photograph courtesy of Kristoffel Lieten.

MARTIN LAU

Safia Bibi was a blind, unmarried, girl, whose pregnancy was visible proof of sexual intercourse. She accused her employer, a landlord in rural Sindh, of having raped her. At the trial, her employer was acquitted, but the court proceeded to sentence her to imprisonment. On the basis of being pregnant and unmarried, and her charge of rape unproven, she was guilty of unlawful sexual

intercourse. Following international protests, Safia Bibi was eventually acquitted by the court of appeal. However, the rule of evidence that the pregnancy of an unmarried woman was admissible evidence in an accusation of Zina, was left undisturbed. The Zina Ordinance also led to the imprisonment of large numbers of women who had been rejected by their husbands without having been validly divorced. On re-marriage, the former husbands brought accusations of adultery against them, claiming that there

had been no divorce, and that therefore their 'wives' were committing adultery. In addition, the issue of so-called honour crimes - women murdered because for allegedly dishonouring their families through immoral conduct, and forced marriages² - has further tarnished the reputation of Pakistan's legal system in relation to the rights of women. Mention must also be made of Muslim family law as applied by Pakistani courts, which discriminates against women in many areas, such as inheritance rights and divorce.

Perhaps surprisingly, the democracy which followed the lifting of martial law and the subsequent death of Zia ul Haq in 1988, increased, rather than decreased, the role of Islam in the legal system. In the decade preceding General Musharraf's regime - 1988 until 1998 - the two ruling parties, led by Benazir Bhutto and Nawaz Sharif, failed to improve the legal position of women. They lacked the will but also the parliamentary majorities required to reverse the current of Islamisation. This, however, tells only half of the story, it omits the important role Pakistan's courts have played in controlling the fate of Islamic law.

The Federal Shariat Court

Most important in determining the position of Islamic law in the legal system was the Federal Shariat Court (FSC). Created, in 1980, to act as the court of appeal in all cases involving the Hudood Ordinances³, the court was given added jurisdiction, namely the power to invalidate laws deemed to be contrary to Islam, as laid down in the two main sources of Islamic law, namely the Qur'an and the Sunnah.⁴ Any member of the public could approach the FSC and lodge a complaint that a particular law violated Islam and should therefore be struck down. Moreover, the new court could also examine statutes '*suo moto*', meaning that it could move itself and review a statute. This new jurisdiction was unprecedented in the legal history of Pakistan, and no other country had given its courts such wide powers.

Until the creation of the FSC, only the four high courts and the Supreme Court of Pakistan had the power to invalidate laws, and then only on the grounds that they violated the constitutionally guaranteed fundamental rights. Some restrictions were imposed on the types of law which the FSC could examine, but overall the effects of the rulings of the Federal Shariat Court on the legal system have been profound.

Most visible is the court's impact in the area of criminal law, where the government was forced to pass the Criminal Law (Amendment) Act 1997 in order to bring the law on murder and assault in line with Islamic law. As a result, the heirs of a murder victim now have the right to determine the fate of the murderer. They have three options: Firstly, to demand that the murderer is punished; secondly, to agree that he pays a sum of money as compensation, in return for which he escapes punishment; and lastly, to pardon him. A recent PhD thesis concluded that on average eight out of ten convicted murderers avoided imprisonment, or indeed the death penalty, because they were able to pay monetary compensation to the victim's family.⁵ Whilst the



The Supreme Court of Pakistan.

new law can be seen as being supportive of the idea of restorative justice, and also as being in line with the customs of Pakistan's tribal areas, the consequences of this legislation have been particularly unfavourable for women, many of whom were killed by members of their own family in the name of honour. In a case where a brother had murdered his sister, it was the father who could pardon his son.

Turning of the tide

Towards the end of the 1990s, after a decade of democracy, the legal position of women living in Pakistan had become worse rather than better. It is curious that matters only began to improve after General Musharraf overturned the government of Prime Minister Nawaz Sharif and imposed a state of emergency. In what can be described as a quiet evolution, the tide of the Islamisation has turned, albeit in small, incremental steps. Amendments to Pakistan's criminal law, in the form of several acts, have improved the legal position of women under criminal law. In addition, courts, including the Federal Shariat Court, have bolstered the rights of women in the area of family law and the right to equality. While the changes, which will be described in greater detail, have not revolutionised Pakistan's legal system, they can serve as examples that it is possible to improve the legal position of women living under Muslim law without removing Islamic law from the legal system altogether.

The first significant measure taken by the government occurred in 2004, when the Criminal Law (Amendment) Act, 2004 was passed. The law extends the power of judges to punish a murderer who has killed in the name of honour. The sentence can be a maximum of 25 years imprisonment or the death sentence, and can be awarded irrespective of any payment of compensation or a pardon by the representative of the victim. In addition, the amended Article 311 of the Pakistan Penal Code, 1860 now provides for a mandatory prison sentence of 10 years for so-called honour killings. Aside from dealing specifically - for the first time in Pakistan's legal history - with honour crimes, the Criminal Law (Amendment) Act, 2004 also made a first attempt at reforming the Zina (Enforcement of Hudood) Ordinance, 1979. It now provides that where a woman is accused of Zina "no police officer below the rank of a Superintendent of Police shall investigate such offence nor shall the accused be arrested without permission of the Court". This amendment is designed to reduce the number of women arrested and imprisoned on false charges of adultery, only to be acquitted on appeal, after having spent many years behind bars. A similar provision has also been introduced for the offence of blasphemy.

Redefining Zina

The 2004 amendment to the criminal law was followed by a complete remodelling of the law of sexual offences in 2006, when the National Assembly passed the Protection of Women (Criminal Laws Amendment) Act, 2006. The Act does not repeal the Zina Ordinance, and therefore falls short of the demands of the human rights' community, but it does much to address the many injustices and hardships caused by the old Zina Ordinance.

Appended to the Act is a lengthy "Statement of Objects and Reasons". It takes the form of a short essay on the Hudood Ordinances which reads as an interesting exercise in putting the new thinking within the framework of Islamic ideology. Its opening statement establishes that in Pakistan all laws have to be in accordance with Islam and that the Protection of Women (Criminal Laws Amendment) Act, 2006 is a measure to achieve



Benazir Bhutto. Photograph courtesy of Timesonline.co.uk.

just this, namely "to bring the laws relating to Zina and Qazf, in particular, in conformity with the stated objectives of the Islamic Republic of Pakistan." In an unprecedented manner, the explanatory appendix also acknowledges the criticism of the old law, stating:

"The Zina and Qazf Ordinance have been a subject of trenchant criticism by citizens in general and scholars of Islam and women in particular. The criticisms are many. These include the lumping of the offence of Zina with Zina-bil-jabr (rape) and subjecting both to the same kind of proof and punishment. This has facilitated abuse. A woman who fails to prove rape is often prosecuted for Zina. ...Her complaint is at times deemed a confession."

The intention of the new law "is to make Zina and Qazf punishable only in accordance with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, to prevent exploitation, curb abuse of police powers and create a just and egalitarian society." The offence of adultery is the only offence which has been retained in the Zina Ordinance. It is now accompanied by the offence of making a false accusation of adultery, called Qazf. However, even in respect of the offence of adultery, there have been significant amendments to the Zina Ordinance. A new definition of "confessions" has been added, to the effect that it means "notwithstanding any judgement of any court to the contrary, an oral statement, explicitly admitting the commission of the offence of Zina, voluntarily made by the accused before a court of sessions having jurisdiction in the matter". This

new definition is designed to prevent the overlap between the offences of rape and adultery, where failed accusations of rape were converted into adultery charges, on the basis that the woman had 'confessed' to sexual intercourse when she complained of rape, as in the case of Safia Bibi.

A complaint of adultery has to be lodged directly in a court of sessions, thereby circumventing potentially corrupt police officers altogether. The judge hearing the complaint has to examine on oath not only the complainant, but also at least four adult male eye-witnesses, who have on examination satisfied the court that they are "truthful persons and abstain from major sins". These four men have to testify on oath that they witnessed the act of penetration. It is only then that the court can issue a summons for the appearance of the accused. Even at this stage, it is still open for the judge to dismiss the case if he finds that, in his judgement, there are insufficient grounds for proceeding.

New interpretations

Courts are increasingly interpreting Islamic family law in a way which promotes women's rights. This is most visible in the area of divorce laws, where the right of a Muslim woman to dissolve her marriage has been extended by the Supreme Court of Pakistan in 2006. In *Naseem Akhtar v. Muhammad Rafique* [PLD 2006 SC 293] a wife's suit for dissolution of her marriage, on the grounds that she had developed a hatred for her husband, had been dismissed by the family court and also by the Lahore High Court. The lower courts had consistently dismissed her application on the grounds that she had been unable to substantiate the alleged hatred and aversion. The Supreme Court, however, allowed her appeal and dissolved her marriage, holding that the fact that the lady had started a suit for dissolution of marriage "itself is demonstrative of the fact that the petitioner does not want to live with her husband which indicates the degree of hatred and aversion". The precedent has been set: the act of asking for a divorce is evidence enough of a wife's hatred and aversion towards her husband and the court has no choice but to grant the divorce.

Equally significant is the case of *In Re: Suo Moto Case No.1/K of 2006 (Gender Equality)* [PLD 2008 FSC 1] where the Federal Shariat Court took objection to the Citizenship Act 1951, according to which only men were allowed to obtain Pakistani citizenship for their foreign spouses. The FSC found the discriminatory provision to be contrary to Islam and invalidated it. It is worth quoting from the decision, since it illustrates the changing attitudes towards Islamic law:

"Islam is a universal religion. The last sermon of Holy Prophet is the first Charter of Human Rights wherein all human beings are equal. Mankind is one. Allah says in Holy Qur'an that 'He created man and woman from a single being (7:189)' and for HIM 'whose doeth good work, whether male or female and he (or she) is a believer, such will enter paradise. (4:124)' ... We are of the view that section 10 of the Citizenship Act is discriminatory, negates gender equality and is in violation of Articles 2-A and 25 of the Constitution of Islamic Republic of Pakistan and also against international commitments of Pakistan and most importantly is repugnant to Holy Qur'an and Sunnah." (p. 16)

In conclusion, amendments to criminal laws combined with the decisions of the high courts, the Supreme Court and the Federal Shariat Court have led to a gradual improvement of the legal position of Pakistan's women in recent years. Will they last? Musharraf resigned as President in August 2008. Given that many of the positive developments in the law are closely associated with his reign, there is a risk that a differently constituted judiciary and democratically elected governments may reverse this trend. The Federal Shariat Court could, for instance, declare the amendments to the Zina Ordinance to be contrary to Islam. Based on the experience of the 1990s, there must be at least some doubt about the willingness of elected governments to face the wrath of the religious establishment and to press for further improvements of women's rights in the near future.

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Notes

- 1 For a thorough legal analysis of the Zina Ordinance see Jahangir, Asma and Hina Jilani. 1990. *The Hudood Ordinance, A Divine Sanction?* Lahore: Sang-e-Meel Publications.
- 2 For a comprehensive review of these issues see the Pakistan section of Human Rights Watch, *Global Report on Women's Human Rights*, New York, 1995.
- 3 The Hudood Ordinances were enacted in 1979 as part of Zia-ul-Haq's Islamisation process. They were intended to implement Islamic Sharia law, by enforcing punishments mentioned in the Quran and sunnah for Zina (extra-marital sex), *Qazf* (false accusation of Zina), offences against property (theft), and prohibition (the drinking of alcohol).
- 4 See Lau, Martin. 2006. *The Role of Islam in the Legal System of Pakistan*. Leiden: Brill.
- 5 To be published as Wasti, Tahir. 2008. *The Introduction and Application of Shariah in the Law of Culpable Homicide in Pakistan*. Leiden: Brill.