Interpreting Islam, Modernity, and Women's Rights in Pakistan

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Chapter 1

Introduction: Women’s Rights and Islamic Concerns with *Ijtihad* over those Rights

*Ijtihad*—interpretation. In the many years I’ve been conducting research on women’s rights in Pakistan and in other parts of the Muslim world, this one term seems to rise to the top whenever I question how someone has reached the conclusion that they hold about women’s rights, especially in modern times. Despite formal laws or policies, divergent viewpoints exist as individuals or groups conduct *ijtihad*, integrating understood Islamic norms, mores, and values with perceptions on society. Aside from how this terminology is used in the formal classical sense, discussed below, it has become an everyday concept in popular discourse, and it is this conception that is being interrogated here.

This is a book about reality and promise, not a book about rhetoric. It is about the reality of how different Muslim communities are interpreting—in this case within Pakistan, but it is a phenomenon occurring worldwide—the intersections of Islam and modernity, and where women’s roles and rights fit into that equation. Many Pakistanis hold the view that only one version of Islam is practiced—or *should* be practiced—but what that version consists of is heavily contested; in other words, there is no “one version.” Compounded with this, many people essentialize the rights Muslim women have, as if everyone shares and embraces a one-dimensional view of women’s rights. This is categorically
incorrect as there are many prevailing views within just one family, one neighborhood, one community in Pakistan, and virtually no consensus. What is it that sets groups apart, that enjoins demonstrative reactions to others’ interpretations of the place and position of Islam and of women in society? It is ijtihad. In seeking to comprehend the contours of difference, we may also find common grounds of understanding of the rights women should have in modern times, acceptable within Islamic society and unfettered by political posturing which too frequently subverts efforts to engage in constructive discourse.

The concept of ijtihad itself has varying meanings. In brief, it was through a practice extant during the classical period of Islam when accomplished religious Sunnī jurists and scholars, through personal efforts independent of any particular Sunnī school (madhab) of jurisprudence (fiqh), would reach a decision based on their own understandings of law, tradition, and acceptable actions in Islam. They would issue a fatwa (legal pronouncement), and consider this to be an interpretation that would be included as a source of sharia (Islamic law). This occasionally led to the creation of a new madhab, though on occasion was criticized as either hawa (personal opinion, often understood as evil desires) or qiyāl (human reason), without any basis in the Qurʾan, Sunnah, or other early precedents and hence not be admissible as a source of religious law. The “doors of ijtihad”—opening new possibilities of interpretation—are said to have closed some 1,400 years ago among Sunnī practitioners, and there would be no further innovations on that front.

Religious scholars have long conducted some form of ijtihad in response to social challenges. While in the orthodox sense, ijtihad is only to be carried out by a qualified religious scholar, we find today that political and social leaders frequently posture themselves as such to promote their understanding of what Islam says about something—whether they use the terminology of ijtihad or not—and encourage their interpretation to be embraced by their constituencies. The issuance of fatwas has become nearly commonplace and often controversial throughout the Muslim world.²

Khalid Mas‘ud (2009: 47) argues that taqlid, the following of a distinct madhab and hence school of jurisprudence, had by the eighteenth century in South Asia become a symbol of identity and captured a social attitude. Yet ijtihad remained an important practice in the subcontinent, necessary to respond to the new challenges created by British colonialism and essentially was a requirement for becoming a mufti (an interpreter or expounder of Islamic law) or a qadi (legal scholar) in those times. Muhammad Iqbal, the philosophical founder of Pakistan, captured the necessity to continue to practice ijtihad in his well-known Reconstruction of Religious Thought in Islam when he wrote:

The only course open to us is to approach modern knowledge with a respectful but independent attitude and to appreciate the teaching of Islam in the light of that knowledge, even though we may be led to differ from those who have gone before us.³

Mas‘ud (2009:84) avers that Iqbal spoke of ijtihad in the plural sense, of “interpretations,” and that “he recognized the significance of collective ijtihad instead of individual ijtihad.” Elsewhere Mas‘ud (2012:43) argues that the act of interpretation is a “social construction” that reflects the social environment and concerns of the time. Qasim Zaman (2012:75) observes that the term has taken on a new vitality and meaning in contemporary times,

Few terms have been invoked more often in modern intra-Muslim debates than ijtihad. Modernist intellectuals have frequently invited their coreligionists to rethink their dogmatic certainties in terms of ijtihad; and the Muslim governing elite have less frequently justified their legislative and judicial measures as forms of ijtihad. Since the late nineteenth century...many Muslims have come to explicitly reject the authority of the medieval schools of law in favor of unmediated recourse to the Islamic foundational texts...Ijtihad has had an important place in this reconfigured terrain.

Zaman argues that several modernist Sunnī ‘ulema have expressed grave misgivings about how ijtihad is operationalized today as many professing it set aside “time-honored methods” resulting in “interpretive anarchy.” Our concern here moves beyond Zaman’s analysis of what occurs when religious scholars conduct ijtihad as it instead focuses on the cacophony of voices claiming “this is what Islam says” without necessarily having substantive grounding in methods or texts. It is this everyday ijtihad that often takes us beyond interpretive anarchy and into undocumented realms of belief and practice. This is of compelling importance when we delve into the arena of interpretations on women’s rights.
What is meant by women's rights is a contentious issue today worldwide, whether in industrialized capitalist states, economically underdeveloped postcolonial states or in the economically variable Muslim majority states. Patriarchy remains overwhelmingly prevalent nearly everywhere. There are 57 million more men than women in today's world: globally, women are 49.6 percent of the population while in Pakistan they comprise 48.6 percent. Women account for two-thirds of the world's 796 million adult illiterates and gender disparities in adult literacy rates remain wide in most regions of the world. This is more exaggerated in Pakistan than in many other world areas as 57 percent of adult women have received no education whatsoever while an additional 16 percent have received only primary education. In effect, nearly two-thirds (73 percent) of adult women in Pakistan are uneducated (NIPS 2013:39). Women's participation in the global labor market for the past two decades still hovers at just over half, while men's steadily remains over three-quarters; in Pakistan, merely 13 percent of workers in nonagricultural sectors are women. Women constitute roughly only one-fifth of elected members of parliaments worldwide as well as in Pakistan. Limiting marital choices, access to education, participation in labor markets, having the ability to introduce legislation and change laws, and the right to life itself indeed has enormous implications for our understanding of women's rights.

What constitutes accepted roles and rights of women provide for fundamental values upon which Muslim social order has historically been constructed. As Lila Abu-Lughod (1998: 3) notes, in the postcolonial world, women have become potent symbols of identity, society, and the nation. The late Ernst Gellner (1983: 33) has written that Islam has provided a common moral language that has unified disparate communities in the past; its propensity to do so now and in the future, its ability to interrogate, renew and reform its values—islah and tajdid—is being challenged on a number of fronts, the most compelling of which concerns the rights of women. Indeed, contemporary Muslim societies are undergoing unprecedented social change as Muslims are rethinking and renegotiating the contours of traditional society, particularly women's place in the larger social order. Women's place, as Fatima Shaheed (2011: xi) has observed, is not static despite the myth "that women's struggles for their rights are alien to societies that have embraced Islam." Instead, women have mobilized throughout the Muslim world, and particularly in the past century, to identify and affirm rights, albeit what these comprise are contested terrains (Mizra 1983; Shaheed 2011). Many postcolonial Muslim states, in particular, are struggling to identify the trappings of colonization and Westernization that have encroached upon their social norms, values, economies, politics, and current legal structures. Revitalized Islamic worldviews combined with the engendering of Muslim civil society are raising profound questions, notably in conceptualizing women and rights as being central to this discourse. As societies are negotiating and clarifying new interpretations under rapidly changing circumstances, ijtihad is often invoked to justify resultant views. One verse in the Qur'an, Sura 4: 34, particularly animates this discourse more than any other.

Men have authority over women because God has made the one superior to the other, and because they spend their wealth to maintain them. Good women are obedient. They guard their unseen parts because God has guarded them. As for those from whom you fear disobedience, admonish them, forsake them in beds apart, and beat them.

This verse places concrete limits on women's social actions by placing them under men's jurisdiction, and presumably allows for violence against women. It is often referred to as one of the reasons for why Muslim laws cannot grant full equality to men and women. Two transnational NGOs, Women Living Under Muslim Laws (WLUMIL) and Musawah, encourage research on understanding the original intent of Islam and sharia before it became subverted by patriarchy and patriarchal interpretations of the Qur'an, advocating that there are other ways this and other verses that seemingly intrude on women's rights can be translated and understood.

At the same time, greater pressure exists within the international arena for asserting women's rights at the level of states becoming Parties to international human rights treaties. Foreign policies and development assistance is often tied to human rights records, and both donors and Western governments shy away from supporting those states which are condemned by global popular culture in their treatment of women and their treading on women's rights. The stresses and pressures placed upon states to address women's rights are evident in the following statement made in The Report of the Commission of Inquiry for Women in Pakistan:
No community or nation is an island anymore, and Pakistan cannot remain unwashed by the rising global currents. It needs to address its domestic issues in ways that are in some harmony with the international perspective and universally accepted norms. If it does not do it now, it will be compelled to do it later, after much damage.
(Commission of Inquiry for Women 1997)

Islamic republics, for myriad reasons, often become States Parties to international treaties regarding women. Ann Mayer (1999) shows that Muslim states often ratify UN conventions, but they also register numerous reservations based on their adherence to “higher laws” than they claim, “the international community is powerless to change.” She contends that, in the case of women’s rights issues, the goal is to convince the global community that their reservations are compatible with women’s equality. These reservations often serve to free states from having to look deeply into their existing laws and make them comply with a given convention’s goals. But having so many reservations—such as we see when Muslim states became Parties to the Vienna Human Rights Convention or the Beijing Platform for Action—waters down the original strength and potency of an instrument.

As an example, more than two-thirds of UN members—166 countries—are States Parties to the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), of which 22 are Muslim majority states. States Parties to the Convention are obligated to review the impact of existing laws on women, change those laws which discriminate against women, and submit periodic reports to the UN Division for the Advancement of Women (DAW) on their progress. CEDAW’s principle of State Obligation requires States Parties not only to bring their domestic law in line with the Convention, but also to ensure the practical realization of rights by undertaking extra measures to implement enabling conditions so that women’s capacity to access the opportunities provided is enhanced. Article 5 asserts that States Parties must strive to modify “the social and cultural patterns of conduct of men and women” to eliminate prejudice based on stereotyped beliefs of the inferiority of women. Most Muslim states have voiced concerns that some key elements of CEDAW may be contradictory to Islamic tenets, despite the lack of consensus on what Islam supports and advocates regarding women’s rights. CEDAW blurs the lines separating the public and private spheres, and is the first international human rights instrument to do so.

The fluidity of most interpretations of what constitutes “non-discrimination” and women’s rights depends in large part on political context, more so than economic or social contexts. However, there also seem to be some issues that Muslim states find difficult to resolve, especially those states that have set their internal political discourse within an Islamic framework. These issues manifest particularly in regard to female inheritance and other aspects of Muslim family law. The inherent contradictions for a state to negotiate common ground between conflicting views on women’s rights are indeed formidable.

The example of what occurred in Tunisia in the 1950s reveals how different the interpretations of women’s rights are in different Muslim majority states. In this predominantly Maliki fiqh environment, then president Habib Bourguiba had declared it was incumbent on the state to conduct ijtihad in its efforts to modernize, and therefore provided women unprecedented rights under the Tunisian Personal Status Code. This extraordinary legislation came into effect on January 1, 1957, two and a half years before the adoption of the new state’s Constitution. It outlawed polygamy on the grounds that the Qur’an only allowed for it provided a man would treat each wife equally, but that was not actually possible. Mohammad Talibi, a distinguished Tunisian expert on Islamic law, argues for a markedly different interpretation of men and women’s respective rights in Islam. He claims that many verses in the Qur’an affirm that equality is absolute, that “women and men are created from one entity” and that,

Men and women are, from the beginning, at the same metaphysical level. It’s the project of God to create them equally. Only one verse says women—not men—are more adapted for some things, and men are adapted better for other things. This can be interpreted as differences, but not a question of equality.

Indeed, Bourguiba’s emphasis on political and economic transformation replete with changes within the family to achieve these goals was the first challenge of the Tunisian state’s modernity project. Its impact on the cultural framework was so pervasive that all subsequent legal efforts to eliminate discrimination against women in Tunisia
can only be regarded as incremental. Katerina Dalacoura (1998: 151) argues that in developing the Code of Personal Status—as well as other legal reforms that would follow—the Tunisian state chose the path of reinterpretation Islam rather than divorcing it from the domain of law. This was possible without a great deal of dissent given Tunisia’s fairly liberal interpretation of Maliki fiqh, the continuing influence of the early twentieth century modernist Islamic reformer Tahar Haddad, and that Bourguiba had introduced a series of other reforms to weaken the power of rural political groups including the religious establishment. His closing down of Tunisia’s renowned religious university, al-Zaytouna, was both symbolic and pragmatic of the latter. Abdelsattah Amor, another eminent Tunisian legal scholar and Special UN Rapporteur on Religious Intolerance, contends that Bourguiba never presented himself as someone divorced from religion. Instead, “he was the head of the Muslim community, someone who could interpret and who could lead the community. He said he didn’t oppose Islam; he drew his reforms from Islam.” Bourguiba argued that polygamy was antithetical to Islam.¹⁵

Three decades later, these legal reforms and interpretations came to haunt Tunisia as Rachid Ghannouchi’s Islamist movement mobilized around revising them. While the antigrise Islamist movement was suppressed by Zine al-Abidine Ben Ali in the late 1980s, it has once again become empowered after his overthrow and questions are again being raised today as to the rights women should have in Tunisia, and many are now framing them within Islam, often in a far more orthodox manner than what is commonly subscribed to in Tunisia.

Another example of a distinctive interpretive response on women’s rights by a different Muslim majority state is that of Malaysia, where the state has championed bringing women into the “commons”—higher education, the political infrastructure, into all arenas of the modern economy. It has been careful in doing so by trying to find a balance between its actions and the views of the Islamist opposition, PAS (Parti Islam Semalaysia). PAS has been agitating for more sharia-based laws, including hudood and qisas, which if implemented would certainly affect women’s rights as currently legislated in Malaysia. Norani Othman, one of the founders of the activist organization Sisters in Islam, has written extensively on Muslim women’s rights as citizens in modern states. She critiques those views that consider “that equality of men and women is based on Western (and hence ‘un-Islamic’) laws and civilization.” She writes,

It is a great pity that so many Muslims these days are trying to place barriers not only in front of women’s faces but also around the rights of women and their activities. The same issue of the recognition and acceptance of human pluralism and difference is involved in the question of the gender gap. However, many contemporary Muslims see the typical citizen as a Muslim male and tend to define rights and obligations of citizens based on gender and faith. Their main justification is that Islam provides a different conception of rights and obligations for Muslim men and women. (Othman 1997: 15)

When we turn to the example of Pakistan, the focus of this book, we see that political expediency has played a critical role in advocating legal changes to empower women within the context of a fairly restrictive political context that has relied heavily on an Islamic framework. However, despite Hanafi fiqh being the major school of Islamic jurisprudence in Pakistan, there is no consensus on what actually comprises that framework. Instead, different voices have called for conflicting actions all “based on Islam,” ranging from agitating to withdraw the conservative Islamic laws that had been implemented during Zia ul-Haq’s military regime, to passing progressive legislation outlawing traditional practices that discriminate against women, to contending that women should only enter the workplace or other public arenas when they have fulfilled their domestic obligations.

This book posits that myriad constituencies within Pakistan are grappling with reinterpretating Muslim women’s rights in the context of “gendered modernity,” a compelling social dilemma as the country becomes increasingly urban with greater numbers of educated women, many of whom are no longer willing to tolerate discriminatory social practices and laws. The focus is not on binaries here, as there are a variety of ways in which groups are responding to gendered modernity concerns. The actions of the state—actually by the various regimes running it at different times—often set the agenda to which other groups respond. While the Pakistan state acts to adhere to CEDAW’s requirements to transform laws, policies and attitudes to eliminate gender discrimination, it faces a barrage of both support and opposition to its actions. Importantly, everything it does is brokered through the lens of how this conforms to Islamic laws or precedents, albeit devoid of a consensus on what this is. Given the centrality of women’s actions to cultural values within communities in Pakistan, most “culture wars” between communities—and
with the state—ultimately are fought over the rights and status of women. For example, this was evident when the Muttahida Majlis-i-Amal (MMA) government (2002–07) in Khyber Pakhtunkhwa was thwarted in its efforts to promulgate its Hisba Act (to Islamize the provincial administrative and judicial systems). The MMA’s policies dramatically compromised women’s access and rights and were remarkably contradictory to those of the federal government. The federal Council of Islamic Ideology (CII) shot down the Hisba Act in September 2004 on the grounds that it was “unconstitutionally vague and arbitrary” and that it might open the door to havoc (muftasid) and possibly a dangerous condition of indeterminacy in the law, resulting in a situation whereby,

In the course of making laws, at any time, any government, whatsoever, can use these laws to obtain its political objectives in an unfair manner.18

The Judgment also raised concerns about the Hisba Bill’s inclusion of moral and ethical issues about which there is no consensus or agreement and that the Bill did not define “what good and evil are.” The CII argued that it cannot do this on an ad hoc basis, and “arbitrariness would bring disgrace to the institution.”

The Hisba Bill was an important ways a progression of Zia ul-Haq’s Islamization program. Since it was promulgated in 1979, women’s rights and where they fit in Islamic society have become a focal point in national political discourse in Pakistan. Longstanding traditional beliefs which demarcate women’s roles within the home from men’s roles outside of it, compounded with the proliferation of religious schools further: reinforcing the exclusion of women from public life, the growing political influence of Islamist groups, and the actions and sentiments expressed by the various groups under study in this book, have created an atmosphere wherein distinct communities are interpreting rights for women in today’s Pakistan in different ways. Nearly all of them state that they are couching these interpretations within Islam.

Importantly, views espoused by the Government of Pakistan in its Constitution, legal reforms, or statements made in its periodic reports to CEDAW are not necessarily shared by all—even by most—communities in the country. General public perceptions, as studied by Gallup & Gilani Pakistan and the PewResearch Global

Attitudes surveys of everyday people grappling with the challenges of economic and social survival, cross the range of interpretations on women’s rights. While conservative groups such as al-Huda and the Jama’at-i-Islami aggressively promote stances on women’s rights that are seemingly irreconcilable with those espoused by the Women’s Action Forum (WAF), the Aurat Foundation, Shirkat Gah, and other women’s rights NGOs, all of these differ from how the Muttahida Majlis-i-Amal (MMA) government interpreted women’s rights during its tenure in power in the Khyber Pakhtunkhwa province between 2002–08 or how Fazlullah’s Swat faction of the Tehrik-i-Taliban Pakistan (TTP) interprets their vision of women’s rights. Combined together, these experiences provide practical illustrations of where the perceptual differences in interpretations and visions of Muslim women’s rights in Pakistan lie today.

Indeed, Muslim states everywhere are grappling with finding a balance between taking action to support those women who seek to be empowered outside of the home while not necessarily alienating more traditional sentiments. Many Islamist advocates do not agree with their states’ interpretations and conclusions. This process is particularly challenging for governments as each confronts its own progressive and Islamist oppositions.

There are other relevant issues that could be raised here: the extent to which new interpretations of shar’a should be encouraged or even allowed for, as well as new interpretations of hadith; how are Muslim states finding ways of accommodating the demands of modernity—and whatever that entails—without prevailing orientations toward the gendered division of labor and space; what role is being envisioned for women to play in the larger society, this modern space that is increasingly pressured by the demands of globalization; and the issues these concerns raise for Muslim states when they aspire to play an influential role in the global political sphere.

One thing I have consciously done is not write about distinct political parties’ orientations toward women’s rights in today’s Pakistan. We can see from the history of the state’s actions to affect women’s rights that there are some parties that have prioritized legislation to empower women when in power while others have not. Notably, the presumption is that the secular parties, particularly the PPP nationally and the ANP (Awami National Party) in Khyber Pakhtunkhwa, have done much during their tenure in this regard. Alternatively, the more Islamist-leaning parties, particularly the PML-N nationally
under Nawaz Sharif and the PTI in Khyber Pakthunkhwa, have not initiated such legislation. However, this is but a stereotype: each party has members within it from all orientations. Sometimes a party’s own member holding an alternative vision of what’s right and appropriate for women in Pakistan has stymied legislative initiatives. Political party, therefore, is not as much a lens for interpreting women’s rights as other criteria. The Jama’at-i-Islami, however, which prides itself as being as much of a social welfare organization as a political party (similar to Hezbollah in Lebanon and the Brotherhood in Egypt), is unique and hence has been included as a case study in the discussion of orthodox Islamist orientations.

An additional issue cries out to be mentioned: the vision and interpretation of women’s rights held by military regimes in Pakistan. As with political parties, however, whether the regime was a military one or not is not as important as membership in the various communities under study. We can see that the most empowering legislation to affect women’s rights in Pakistan, the 1961 Muslim Family Laws Ordinance (MFLO), was promulgated during the military regime of Ayub Khan. However, an entirely different vision and interpretation of women’s rights manifest in Zia ul-Haq’s 1979 Islamization program continues to have huge implications for women in the country. Finally, it was under the military regime of Pervez Musharraf that the most ruinous laws and policies initiated by Zia were finally reversed, notably with the Protection of Women Act 2006.

At this point, however, we will defer instead to exploring differing interpretations of women’s rights in Pakistan, and how it is a microcosm of both global issues introduced above: women’s rights, and concerns with *ijtihād*, interpretation, of those rights. It is in these arenas, coupled together, where *ijtihād* is being contested today in everyday life. Modernity itself generates ambiguities when dealing with traditions, religion, and normativity.

Pakistan as a Microcosm of Both Global Issues

Two perceptions characterize the basic understanding of traditional gender relations in Pakistan: women are subordinate to men, and a man’s honor resides in the actions of the women of his family, as discussed further in Chapter 3. Space is often allocated to and used differently by men and women. Traditionally, a woman has been seen as needing protection from the outside world where her respectability—and therefore that of her family—is at risk. Women in many parts of the country live under traditional constraints associated with *purdah*, which necessitate the separation of women from the activities of men both physically and symbolically, thereby creating very differentiated male and female spheres.

In the past, most women spent the bulk of their lives physically within their homes, venturing outside only when there was a substantive purpose. In poorer urban and rural communities, this purpose largely was to contribute to her family’s sustenance; once the family’s financial position improved, the woman was usually withdrawn from the labor force. With the rise in the level of a family’s prosperity and its concomitant aspiration for a higher social status, a family would then put a veil on its women and place them into some form of *purdah*.

While far greater numbers (and percentages) of women venture into public spaces in Pakistan today than in the past, in most parts of the country—perhaps Islamabad, Karachi, and wealthier parts of a few other cities to the exception—people still consider a woman (and by extension, her family) to be shameless when there are no restrictions placed on her mobility.

Despite 97 percent of its population being Muslims, Pakistan still seeks to find an appropriate role for Islam in civic and political life. What it means to be a Muslim is intrinsically tied to local cultural traditions that, to many adherents, are inextricably intertwined. The concept of women’s rights today, including women’s economic, political, and public social participation, elicits disparate, conflicting images. It would be easy to assign rudimentary labels to the four principal lenses through which women’s rights are viewed in Pakistan—traditional, progressive, orthodox Islamist, and extremist—and then elaborate on their respective visions. Easy, but wholly inaccurate, as we would be essentializing them into monolithic groupings. The enormous degree of diversity within each of these camps forces us to question the utility of using such kinds of categories at all. The way in which the state has interacted with progressive and Islamist groups, in some cases appropriating their philosophy and language for its own ends, has also contributed to fissures within these socially constructed and contested identities of rights. In addition, as culture and religion have become inextricably intertwined in many areas of
Pakistan, there exists substantial confusion over where the lines are drawn between what is Islamic, what is codified tradition, and how (if at all) to delineate the separate jurisdictions. For example, we see members of the Sipah-e-Sahaba, the Pakistan Taliban, and of other madrasas (religious schools) experience their identity as Muslims as inseparable from other component parts of their culture, and often confuse those things that are not in accordance with cultural norms, values, or practices as being not in accordance with Islam. Alternatively, progressive NGO groups such as the Aurat Foundation, ASR, and Shirkat Gah, engaged in activist research addressing such themes as the rise in domestic violence, female education, and women’s political participation, question Islam’s jurisdictional space in the contemporary political sphere and whether women’s rights need necessarily be limited at all by Islamic injunctions. Indeed, this has become a defining question in Pakistan’s social environment: what is acceptable within Islam—especially pertaining to women and their rights—may not be acceptable within prevailing cultural constructs, but should the two be indistinguishable?

What constitutes these rights, whose responsibility it is to define them, and where responsibility lies for ensuring them is highly contested, and there appears to be little room for compromise among the various contending sides. To some extent, the tension has existed since Pakistan’s founding, but the past few decades have seen the disagreements destabilize Pakistan’s political and social cohesiveness. Pakistan persists as an amalgamation of often-contradictory political enterprises, especially in regards to divergent views on the rights of women. As different constituencies within Pakistan are grappling with redefining Muslim women’s rights, at a deeper level they are engaging in local efforts to conduct _ijtihad_ as different groups seek to reconcile the exigencies of modernity, local and global pressures to ensure women’s rights with prevailing Islamic and cultural views.

The quandary over ensuring women’s rights in Pakistan is closely tied to the need for a consensus that women in Pakistan have a right, in the words of Moroccan sociologist Fatima Mernissi (1987: xii), to design a future instead of just growing old. This may infer that specific rights we presume women enjoy in Pakistan because they are consistent with Islamic _sharia_—such as retaining inherited land, or divorcing abusive husbands—actually exist, or that new rights need to be enshrined to rectify abuses which have existed in traditional society such as outlawing _swara_ and _karo-kari_, domestic and public violence, and other practices which cause women to bear the consequences for wrongs committed by others.

How women’s rights are framed has a significant effect on women’s participation in the political system and having an effective voice in that system. At the founding of the new country of Pakistan in 1947, there was little legal distinction between the rights women enjoyed and those enjoyed by men in Pakistan, consistent with the larger contours of the state’s project to ensure the country’s existence in the decade following partition. Ideological concerns such as those which rose to prominence in the 1970s and 1980s were a luxury Pakistan could not afford in the 1950s when faced with the stark reality of threats to its very survival.

Pakistan became an independent state as a result of partition of the former British India in 1947. At the outset, its greatest advocates were those supporting a homeland for the Muslims of South Asia so they would not be at risk of living under the threat of Hindu hegemony. Some of the most religiously oriented groups did not support the creation of Pakistan on the basis that Islam could not be constrained within the borders of a modern nation-state and hence they could not concede to the notion of territorial nationalism. Others, including members of the Punjab Unionist Party, saw no reason to seek independence from Britain. Therefore, with various forces pulling in different directions, and an overriding concern for the long-term security of the new political entity, little attention was initially paid to the state having a distinct ideology or to the kinds of social policies it would pursue. There was far greater concern for the very existence.

While Pakistan’s initial constitution in 1956 declared it as an Islamic republic, no institutional support was included to support that designation other than citing its principles as “freedom, equality, tolerance, and social justice as enunciated by Islam” and that the president was to be a Muslim (Khan 2001: 109). Importantly, too, Article 198 decreed that no law should “be repugnant to the injunctions of Islam” and proposed parliamentary procedures (never enacted) to determine these. The second constitution, in 1962, declared that teaching the Qur’an and Islamiat to Muslims in Pakistan should be made compulsory and also enjoined the state to undertake responsibility for the organization of _zakaat_ (religious welfare), _waqfi_ (oversight of properties for religious purposes) and
mosques (Khan 2001: 150). Yet it diminished the importance of institutional procedures to determine repugnant laws, for while providing for an advisory Council of Islamic Ideology to review laws, its findings would not be enforceable. Instead, it would make unbinding recommendations to the legislature concerned with creating laws (Khan 2001: 151).

The third constitution was promulgated in 1973, after the divisive 1971 civil war that confirmed that a shared religion was not enough to hold the union together. This Constitution finally included other references to Islam and the supremacy of Islamic laws. It also mandated the establishment of the Council of Islamic Ideology to ensure that no laws in Pakistan are in contradiction to the sharia and recommended Reserved Seats for women to ensure some level of their participation in formal political processes.

Much has happened in Pakistan since then, especially concerning Islam, interpretations of Islam, and interpretations of women’s rights, as discussed further in Chapter 2. But we can acknowledge that the Pakistani state has not invested sufficiently in its people, and notably in its women. Too often people use the trope that tradition is largely responsible for Pakistan’s challenges in improving women’s rights, or even in lowering its population growth rates. This is fallacious as the lack of prioritizing female education combined with a lack of prioritizing developing sectors in the economy to support the economic empowerment of women, is fundamentally responsible for Pakistan not lowering its population growth rates significantly—especially between the 1970s–1990s, which saw Pakistan’s population double. The 1997 Report of the Commission of Inquiry for Women advised that to experience real and meaningful progress for women’s rights, the Pakistan state must adopt a new vision.

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

This vision, however, has not yet become metabolized within the state’s machinery, as codified traditions are often interpreted as being religious doctrine. Yet experiences worldwide attest that educated women have smaller, healthier families and that only when women come to enjoy economic security, a sense of economic justice, and equality under the law that they may turn their focus to becoming involved in civil society and political groups and make substantive contributions to their country’s collective future.

**Organization of this Book**

This first chapter provides a framework for considering women’s rights in global contexts, Muslim concerns with interpretations over those rights, and how to view Pakistan as a microcosm of both of these global issues. This is followed by an extensive review of the history of legal reforms and state policies affecting women’s rights and empowerment in Pakistan, noting how the state’s efforts to articulate a definition of women’s rights has been complicated by the need to balance divergent views on the place of women in Pakistani society. The Pakistan state’s construction of an understanding of what constitutes women’s rights and the debate over defining those rights is further explained when reviewing the government’s efforts to implement the UN CEDAW Convention.

Chapter 3 seeks to capture popular interpretations and orientations toward women’s roles and rights in traditional and contemporary Pakistani society. While differing in particulars by region, location, and class, there are distinct commonalities that exist in this patriarchal culture area. It also explores mainstream, popular perceptions on women’s rights as garnered in contemporary nationwide public opinion polls, and explores the complexities of the responses regarding women’s rights. Importantly, it seeks to explore how the mass of Pakistanis value and prioritize women’s rights in a rapidly changing social context.

Building on that, we now turn to consider interpretations of women’s rights in Pakistan held by three very divergent groups. The first group, explored in Chapter 4—the first chapter to focus on interpretations of women’s rights by a distinct group in Pakistan—is that of the progressive, highly educated, generally urban-based women’s rights advocates. This group is characterized by a number of NGOs whose members have conducted research on women’s rights that was then made available to the Government of Pakistan which later, in many cases, recruited these writers to author government
documents, especially for international distribution. There are a myriad of groups in this category and we cannot essentialize this constituency as holding solely one vision on women's rights, but many do share common interpretations. Therefore, I have selected two of the most prominent organizations, the Aurat Foundation and Shirkat Gah (and some of their work with ASR) that exemplify the kinds of vision and interpretations of women's rights held by groups in this category. While each has distinct priorities and activities, these two organizations reflect the common interpretation of women's rights shared by most members of this group in Pakistan's modern context.

The following chapter, Chapter 5, juxtaposes interpretations on women's rights made by orthodox Islamist groups in the country. To capture the latter, the chapter reviews the laws and policies that were proposed and implemented by the provincial government of the MMA that impacted women's rights while it ran the provincial government of Khyber Pakhtunkhwa between 2002–08, thereby interrogating the nature of women's rights many orthodox Islamist groups espouse. To add to the comprehensiveness of the orientation of this constituency, the chapter also explores the vision held at the national level by the MMA's most influential coalition member, the Jamaat-i-Islami, and concludes with a discussion of the Islamist education organization, al-Huda. These three cases are not to be understood as an historical progression in thought, but rather as three distinct manifestations of the interpretation of women's rights held by many orthodox Islamist groups in Pakistan.

This is then contrasted in Chapter 6 with views on women's rights as understood by the most extreme outlier of all, the Swat faction of the Tehrik-e-Taliban Pakistan (TTP, or Swat Taliban). This case study focuses on their actions and espoused interpretation and vision of women's rights as manifest during the period 2007–09 when they essentially ruled the valley, though also addresses their ongoing presence and periodic injections of jihadd even now (such as their justification of the Octobe: 2012 attack on Malala Yousufzai). Their voice remains formidable. I argue that jihadd as conducted by the Swat Taliban is important to understand not only for its own sake but that it is representative of the kind of interpretations of women's rights held by many entities in Pakistan that identify as Islamist, extremist and advocating for an authentic Islam to counter how the country has been led astray.

The final chapter addresses how the perceptual differences in interpretations of Muslim women's rights in Pakistan today are affecting the wider society. Culture wars are visibly ripping the country apart as groups talk past one another, each confident that they are the proprietors of culture and interpreters of religion while others are misrepresenting it. These cultural conflicts, often rooted in religious interpretation and belief, are manifesting today as actual wars, albeit power and ideology are deeply integrated within them. It calls upon the Pakistani state to provide leadership to build a consensus on women's rights that most—if not all—groups can agree upon, seeing it as legitimate within their interpretations of Islam as well as responding to the requirements of modernity.

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Chapter 2

Legal Reforms and State Policies Affecting Women’s Rights

The history of legal reforms and state policies affecting women’s rights and empowerment in Pakistan involves a complex pattern of advances and setbacks, with the state’s efforts to articulate a definition of women’s rights complicated by the need to balance divergent views on the place of women in Pakistani society and in Islam. The state’s location of that discourse within an Islamic framework (at least since the 1970s) has occurred regardless of it being comprised of military or democratic regimes. This chapter focuses on the Pakistan state’s construction of an understanding of what constitutes women’s rights and the contentious debate both within the bureaucracy and between the bureaucracy and the political government to define those rights. These actions represent the state’s professed commitment to improve the status, condition, and circumstances of women as well as underscore the persistent challenges to creating a popular vision of women’s rights in Pakistan that all communities find acceptable within Islam.

Legal Reforms and Women’s Rights

Soon after Pakistan gained its independence from Britain, it set out to rectify what had long been considered an intrusion by British civil law into family affairs of Muslims in the region. The new legislation, the Muslim Personal Law of Shariat (1948), now recognized a