

Ziba Mir-Hosseini and Vanja Hamzić

Control and Sexuality

The Revival of *Zina* Laws in Muslim Contexts



violence is not our culture

عوانيت زيباش مسام قوانيڤي

Women Living Under Muslim Laws

النساء في ظل قوانين المسلمين

Femmes sous lois musulmanes

Control and Sexuality
The Revival of *Zina* Laws in Muslim Contexts

Ziba Mir-Hosseini and Vanja Hamzić

First edition

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Publications of the international solidarity network, Women Living Under Muslim Laws, aim to provide information about the lives, struggles and strategies of women living in diverse Muslim communities and countries. WLUML publications are meant to make accessible to a wide readership the broadest possible strands of opinion within varied movements or initiatives promoting greater autonomy of women living in Muslim contexts. The publications seek to inform and help share different experiences, strategies and interpretations.

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We dedicate this publication to people around the world for their relentless efforts to claim their rights and those of others, and for affirming that upholding and promoting cultures must be founded on fundamental principles of respect, dignity and justice for all.

Foreword

It is most timely that this publication should emerge when issues of culture and human rights are being debated in many venues in the international arena: within the United Nations; in national and transnational, mainstream and alternative media outlets; and across social and political movements. Laws, like cultures and traditions, change over time. The cultural norms of the majority tend to reinforce the existing structural arrangements of power in a society. Nevertheless, within every tradition and structural limitation, people have a certain relative power to act differently, including by drawing upon different aspects of the same cultural traditions. Moreover, all cultural communities – including those of women, minorities and minority views – must be encouraged to develop their own vocabulary, specific to their contexts, which upholds the universality, indivisibility, interdependence and inter-relatedness of women’s human rights.

The collective dimension of cultural rights can be a source of solidarity and progress without, however, implying the denial of individual cultural rights. Individuals have the right to participate, or to not participate, as well as to challenge existing precepts and norms in their communities; to hold multiple identities simultaneously; to access their cultural heritage; and to be recognised as active and legitimate producers of culture(s). The contributions of women and girls to the cultural development of every community they choose to be a part of, including but not only the one they inhabit, especially in the development of new common values, are crucial in the implementation of cultural rights for all.

I note that some cultural practices may be particularly detrimental to the rights of women and girls. All harmful practices, regardless of provenance and justification, must be eliminated. All human rights are universal, indivisible and inter-related. All states, regardless of their political, economic and cultural systems, have an obligation to uphold the principle of non-discrimination and to respect, protect and fulfil the cultural rights of all persons. There is a need to work simultaneously at the level of both society and state; legal measures by themselves are rarely, if ever, sufficient. Due diligence must be exercised to address rights violations by non-state actors, including those undertaken in the name of culture and religion.

It is my hope that by building upon the progressive, equitable and just aspects of culture which are inherent to all, this book can make a substantial contribution towards the promotion of rights, under law and custom.

Farida Shaheed
UN Independent Expert on Cultural Rights

November 2010

Preface

The Violence is Not Our Culture (VNC) Campaign¹ and the Women Living Under Muslim Laws (WLUML) network are very pleased to present this publication, which offers a comparative study and feminist analysis of *zina* laws, to help activists, policy-makers, researchers and other civil society actors to acquire a better understanding of the challenges facing those initiatives that would ensure that culture and/or religion are not invoked to justify laws that criminalise women's sexuality and subject them to cruel, inhuman and degrading forms of punishment. This is one strategy for attaining gender equality and social justice, and could – and should – be used alongside other rights-based approaches, including the promotion of secular spaces, reinterpretation of religious and cultural traditions, engaging with human rights laws, and awareness-raising through creative mediums. As a contribution to the broader objective of ending violence in the name of 'culture', we hope this book goes some way to unpacking *zina* laws in some Muslim contexts and communities in order to tease out connections between the criminalisation of sexuality, gender-based violence and women's rights activism.

This book has been a long time in the making. It has been recognised that laws and customs that restrict women's rights, and prescribe or enable violent punishments to be meted out for alleged transgressions, must be better understood by civil society and decision-makers. This publication addresses *zina* laws: those that regulate any illicit sexual activity outside of marriage in Muslim contexts, including adultery and fornication. Some Muslim contexts have not historically had laws regulating *zina*, and in others, they have been instated or reinstated in the 20th century. These are one type of laws that can prescribe violent punishments to women and men who violate social norms when they engage in consensual sexual activities, and in some contexts, in cases of rape. Other times, allegations of *zina* can mask other divisions in society such as socio-economic disparity or the treatment of widows and other unmarried women. They are often linked to other laws and customs that limit women's rights, including inequitable marriage and divorce laws, guardianship laws and public order laws. Like all laws, they vary widely from country to country in terms of their development and implementation. And in all contexts, those who defend the rights of women have challenged the criminalisation of sexuality and so-called 'morality', using strategies drawn from religion, human rights and customary traditions.

Most Muslim-majority countries do not legislate *zina* formally, but regardless of its sources of legitimacy, violent punishments continue to be meted out through extra-judicial means, in parallel legal systems and in the private sphere based on customary precedents. This is the intersection in which the VNC Campaign and the WLUML network largely operate: addressing the laws and customs that affect women's lives in diverse contexts and the various strategies that women's rights defenders can employ to reclaim and redefine them.

¹ This grows out of the Global Campaign to Stop Killing and Stoning Women (SKSW Campaign) that was launched in 2007.

Since 1984, the WLUML international solidarity network has provided information, support and a collective space for women whose lives are shaped, conditioned or governed by laws and customs said to derive from Islam, from a feminist perspective. Created by individuals from eight countries in Africa, Asia and the Middle East, since its inception, the network has responded to the use of religion and culture as an excuse to deny women's human rights through the invocation or reference to laws, practices and customs which are said to be 'Islamic'. Laws are influenced by many factors, including colonialism, religion, culture and patriarchy, and they are created and recreated by human beings within ever-changing contexts. WLUML has linked individuals and organisations to address, assess and demystify the laws and customs that shape women's lives.

Over time, however, it has become increasingly apparent that addressing women's legal equality is only one aspect of ensuring women's full and equal enjoyment of their rights. As many violations of women's rights are committed in extra-judicial arenas and often by non-state actors (including armed groups as well as family and community members), simply having equitable laws in place is not enough to protect women from discrimination and violent punishments. Against this background, the Global Campaign to Stop Killing and Stoning Women was launched in November 2007, bringing together groups from Pakistan, Iran, Nigeria, Indonesia, Turkey and beyond. The campaign was inspired by, and grew out of, local and national initiatives of women's groups to challenge, resist and change what was happening in their societies: as legitimate and authentic contributors to their ever-changing cultural contexts. The campaign has aimed to link local strategies for resistance and reclamation with the international community, by linking groups through 'sister campaigns' and by liaising with international human rights mechanisms that address the universality and indivisibility of women's rights. The campaign maintains that there can be no justice in any justifications for violence based on culture, tradition or religion. The freedom of belief cannot be translated into the freedom to harm others.

The countries chosen for case studies are by no means exhaustive, but are designed to show the diversity and similarities between contexts. In some, adultery and fornication are formally criminalised as crimes against the state, and in others, they are regulated by non-state actors. In all contexts, however, women's rights defenders have challenged, redefined and overturned discriminatory regulations and highlighted violations from a gender-informed and feminist perspective. We hope this publication encourages more research, analysis, debates and collective actions in order to support advocacy initiatives at all levels and raise these issues in the global arena. We take this opportunity to thank those who have contributed to this project and look forward to the next steps we invite you to take with us, on our journey to reclaiming our rights.

Edna Aquino

Violence is Not Our Culture (VNC) Campaign

Aisha Lee Shaheed

WLUML International Coordination Office

November 2010



Introduction

Introduction

Bariya was only 13 and unmarried when her pregnancy was spotted by her uncles. She was summoned before the court which, under the newly enacted by-laws of the state of Zamfara in northern Nigeria, sentenced her to 100 cane lashes for having pre-marital sexual relations and an additional 80 lashes for slander, as no witness could corroborate her claim that any of the three men she previously identified had fathered her child. The men denied the charges and were quickly acquitted. The reports that Bariya was coerced into the act were not taken into consideration by the court. She remained detained throughout the remainder of her pregnancy. A month after giving birth to her baby, Bariya was given 100 cane lashes and released. Soon after her release, she was married off.¹

Bariya's case is just one of many. Certain contemporary Muslim-majority states and societies face an unprecedented revival, or in some cases an introduction, of laws, regulations and customs based on the notion of *zina* – an Islamic jurisprudential term denoting illicit sexual relations, particularly adultery and fornication. On the pretext of *zina*, states and societies condone or even encourage the most extreme forms of gender-based violence and discrimination, which affects women especially. Such injustice is ordinarily justified by reference to the classical *fiqh* (Islamic jurisprudence) and some of its interpretative frameworks used to ascertain *shari'a* (God's injunctions) contained in the Qur'an and the Sunna (sayings and practices of the Prophet Muhammad).

This study is an attempt to unearth and analyse the historical and present-day cultural, legal and – above all – political motives and circumstances that *really* have caused the revival of *zina* laws. These catalysts, as apparent throughout this book, do not coincide with the official rhetoric on *zina* as 'God-given' moral stipulations which state or society simply strives to adhere to. Instead, they reveal how *zina* laws, which were obsolete and had rarely ever been applied in Muslim contexts, are now employed by state and non-state actors alike to assert and maintain control over the general populace's sexuality and sociality, for the sake of a variety of political and social ends. Age-old patriarchal motives – those that originate in an assumed 'right' of the man to control and subjugate the woman – prevail over other causes of the introduction or revival of laws that criminalise sexuality and mete out disproportionately severe punishments, which have detrimental consequences to women's human rights and their access to justice. Of course, such laws are not only present in Muslim communities or maintained solely with reference to Muslim religious and cultural norms. As the cases of violence against women throughout the world aptly demonstrate (Ertürk 2009), patriarchies have emerged everywhere and have invariably used cultures and religions to justify their detrimental effects on gender justice. Other catalysts of the (re)introduction of *zina* laws include protracted socio-economic crises; covert ambitions of political, military and religious elites; post-colonial and post-nationalist anxieties; and theopolitics – i.e. politics based on (mis)use of religion.

1 For a detailed account of this case, which took place in 2000, and other similar *zina* trials in Nigeria, see BAOBAB 2003.

Another aim of this study is to comprehensively relate and reflect on civil society's resistance to the (re)emergence of *zina* laws and other measures that criminalise consensual sexual relations, in particular those mounted and sustained by national women's movements. The strategies and actions employed by these movements in their struggle for gender justice, seriously challenged by *zina* regulations, represent an invaluable legacy for all societies affected by similar havoc. Despite significantly different circumstances from country to country, this study reveals that certain approaches – such as demystification of the purported 'religious' concerns beyond *zina*-related laws and customs – can work well across various polities and religio-cultural setups. This book itself builds on the scholarly and activist engagements with the discourses of power and domination within and between Muslim communities, which falsely market themselves as the supreme moral agency, risen to restore or, indeed, 'revive' the *umma* (Muslim community), which is perceived to be 'morally challenged', whether in local or international contexts. These discourses are strengthened by reference to a mythical pan-Muslim past, which is portrayed as homogeneous in terms of social, cultural and legal norms, when in reality a vast diversity of these norms existed – and exist – across Muslim contexts. Such currents, as well as other pertinent factors, are analysed and then systematically opposed by the national women's movements, not least because the purported 'revivals' and 'restorations' invariably carry a forceful gender bias. The 'ways forward' this study discusses are fully grounded in these national and transnational narratives of resistance, with a view to revisiting, summarising and making them more accessible to a broader audience.

This book is the product of a multi-country socio-legal research project instigated by the Violence is Not Our Culture (VNC) Campaign² and the Women Living Under Muslim Laws (WLUML)³ international solidarity network. The research experience and subsequent revisions opened up many valuable avenues of analysis, which warranted a cross-disciplinary methodological approach. It was mainly based on literature review (spanning legal, political, historical, sociological, anthropological, cultural, theological and other academic studies, as well as a corpus of national laws and regulations, case law, civil society reports and publications, journalist articles, international human rights treaties and documents of their treaty bodies), with some brief local empirical research conducted for the case study on Indonesia. Organisations highlighted in the study largely reflect the network of the VNC Campaign and WLUML.

Structure of the Book

These introductory remarks are followed by a chapter offering a feminist and rights-based critique of *zina* regulations, which dissects their supposed foundations in classical *fiqh* as well as in later socio-political circumstances. It is a 'critique from within' and a contribution

2 Please visit www.stop-stoning.org. The VNC Campaign is waged under the auspices of WLUML's three-year programme Women Reclaiming and Re-defining Culture.

3 Please visit www.wluml.org

to the emerging Islamic feminist scholarship. The subsequent five chapters are country-specific case studies on the revival of *zina* laws in Indonesia, Iran, Nigeria, Pakistan and Turkey. These states were selected to illustrate and substantiate the astonishing diversity of national contexts in which the concepts of *zina* re-emerged, taking various legal and social forms. In Indonesia, *zina* legislation was introduced on the level of provincial/local by-laws and regulations in the 2000s, mainly and most dramatically in the autonomous province of Aceh. In Iran, sentences for *zina*, including *rajm* (stoning to death), were carried out as stipulated by national legislation in the aftermath of the 1979 Revolution that brought Shi'a clerics to power and 'Islamised' the laws and legal system. In Nigeria, the early 2000s were also the turning point, when 12 of its northern Muslim-majority states criminalised the offence of *zina* in accordance with their own understanding of some classical *fiqh* and lumped it together with other criminal offences, including those conceptualised through its colonial (British) legal legacy. In Pakistan, *zina* was introduced as a 'crime against state' in 1979 by the then military dictator Zia-ul-Haq, as an important 'asset' of his politically motivated 'Islamisation' programme. Finally, in Turkey, *zina* is not a crime under national law, but it is preserved in society as a transgression against one's 'family honour'; thereby, punishable extrajudicially by (male) members of the 'transgressor's' familial circle. The Turkish laws have implicitly condoned this horrendous 'custom' until the mid-2000s, by meting out lesser punishments to the perpetrators of 'honour' crimes, which still abound. All studied revivals of *zina* laws – except, arguably, in the Turkish case⁴ – were introduced at times of significant political changes, as part of a new elite's opportunistic theopolitics, seizing a particular momentum for greater influence and control. Oftentimes, however, such laws were successful because the societal and legal outlook of the state in question was chronically patriarchal anyway, thus being a fertile ground for such reprehensible ruptures. As a result, mainly, of the women's movements' arduous resistance, *zina* laws, while still present 'on paper', are by and large obsolete in Pakistan and Nigeria. The advocacy of Acehnese civil society representatives succeeded in blocking the passage – via the governor's opposition – of the notorious Qanun Jinayat (Muslim Criminal Code), which would have provided for the offence of *zina* to be punishable by stoning to death or flogging in that province. In Iran, women's activism has so far not succeeded in bringing about legal change, but it has taken the judiciary to task and exposed the injustices that *zina* laws entail, thus inserting human rights concerns into the very heart of the public debate. Those are but some of the significant victories documented and analysed in this book. The country-specific case studies are, finally, followed by a chapter with concluding remarks.

The structure adopted for the five case studies in this book is largely uniform. It is divided into six specific subsections, relating to: (1) introductory remarks; (2) historical background; (3) domestic legal system; (4) state responsibility; (5) existing civil society activism for change; and (6) conclusion. These thematic units are then customised to address state-

4 Even in Turkey, however, the discourses on *zina* were widely used for political purposes. See, e.g., Ilkkaracan 2008.

specific circumstances and developments. Thus, notwithstanding the idiosyncrasies of each studied society, they allow for a comparative analysis of each scrutinised sub-theme. The final, concluding remarks of this study are, in particular, based on such comparative insights.

The Emergence and Re-Emergence of Zina Laws

The atrocities caused by the revival and reinvention of *zina* laws are discussed in the general media almost on a daily basis.⁵ They have also provoked both activist and academic circles to produce studies, reports, articles and other resources for a better understanding of this phenomenon.⁶ Parallel to such attempts, however, the public is also continuously fed by simplistic and historically unsubstantiated accounts of *zina* regulations, which are then employed by religious, political and military elites to justify the crimes and human rights violations committed on this pretext. For example, in a popular and widely disseminated book by Sheikh Yusuf al-Qaradawi, one of the most influential scholars at Al-Azhar University in Egypt, we learn that:

Islam [*sic*] [...] is very strict in prohibiting *zina*, for *zina* leads to confusion of lineage, child abuse, the breaking-up of families, bitterness in relationships, the spread of venerable [*sic*] diseases, and a general laxity in morals: moreover, it opens the door to a flood of lusts and self gratifications (al-Qaradawi 2001 [1997]: 146).

Even the current Wikipedia entry for *zina* informs us that, “[i]n addition to the punishments [for *zina*] rendered before death, sinners are punished severely after death, unless purged of their sins by a punishment according to shari’a law [*sic*]” (Wikipedia 2010). As we shall see, those purportedly ‘shari’a-stipulated’ punishments for *zina* are, in fact, some injunctions of classical *fiqh*, which are ordinarily taken to prescribe stoning to death for adultery (extra-marital sex, when the offender is married or – according to some scholars – a widow(er) or divorcee) and 100 lashes for fornication (pre-marital sex). Both the Qur’anic verses, e.g. 24:2–3, and various *hadith* – such as those collected by Bukhari, entries 3829, 8804, 8805 and 8824 – are cited in support of these severe sentences. *Zina*, we are told, is punished so drastically because, amongst other things, it “go[es] against the interest of society” (al-Qaradawi 2001 [1997]: 146). This ‘interest’, however, is not always stated in clear terms. Could it be patriarchal subjugation of women and control of one’s sexuality by the ‘guardians of faith’? Is it ‘only’ concerned with public and familial moral standards, or does it also provide for certain ‘righteous men’ to attain and/or stay in power? What, after all, are the consequences of the legal and social imposition of this ‘interest’? These ‘conundrums’

5 See, for example, a series of articles in *The Guardian* on the case of Sakineh Mohammadi Ashtiani, a 43-year-old Iranian woman detained in Tabriz jail since 2006 and sentenced to death by stoning on charges of *zina* and other offences, <http://www.guardian.co.uk/world/sakineh-mohammadi-ashtiani>

6 See, for instance, the bibliographical notes after each country-specific case study chapter for many such examples from the studied states.

are often neglected in favour of a simplistic, 'widely understandable' message, ideologically charged and purposefully devoid of comprehensive historical, sociological or even theological analysis. It is designed to preclude, rather than spark, debate and research.

The history of *zina* is far more complex and telling than formulaic moralist prescriptions are prepared to admit. Classical Islamic jurisprudence is today mainly studied with reference to the surviving schools of thought (*madhahib*, singular: *madhhab*). Jurists of mainline Sunni (Hanafi, Maliki, Shafi'i and Hanbali) and Shi'i (Ja'fari) schools, which were all formed between the 8th and the 9th century, have sought to ascertain *shari'a* (divine 'Law' – God's instructions to humankind) by studying and interpreting the Qur'an and the Sunna. The results of these endeavours, often written and preserved in voluminous treatises, are known as *fiqh*. These works have neither emerged in a 'historical vacuum' nor have they conveyed a uniform and unambiguous body of legal knowledge. Their understanding of *shari'a* has been invariably coloured and compelled by the cultural, social and political circumstances of their time and by their individual capacities and interests in studying this transcendent subject. Hence, many of them, humbly aware of the limitedness of their expertise, have warned against unpremeditated following (*taqlid*) of their deliberations.⁷ Some contemporary researchers have particularly warned of the political elements – the aspects of governance law (*siyasa*) – that have informed and directed the classical jurists' *fiqh* (e.g. Shalakany 2008). In sum, "[f]iqh is not divine law that Muslims have a duty to implement. *Fiqh* is juristic law, humanly constructed to deal with times and circumstances" (Masud 2009: 89). Yet, where *zina* laws have been implemented, they have been regularly conceptualised – or, at least, strategically justified – upon blind reverence of some elements of classical *fiqh*.

Classical jurists have categorised *zina* as a *hadd* (plural: *hudud*) crime, a transgression against 'the right of God' (*haqq Allah*), liable to either flogging (in reference to their interpretations of the specific Qur'anic verses) or to death by stoning (unmentioned in the Qur'an, yet supposedly derivable from the Sunna). Yet, for these punishments to be executed, the accused person must either have confessed to the offence – just once or repeatedly, depending on a particular school of *fiqh* – or refused to take an oath of denial (Shalakany 2008: 46–47). The only alternative left has been the unlikely testimony of four 'righteous' Muslim male witnesses that they have "personally seen the act of '*ilaj*' or penetration *in flagrante delicto*" (Shalakany 2008: 47). The testimony of less than four appropriate witnesses or any significant difference in their accounts would make them liable for the *hadd* offence of *qadhif* (slander). Under such circumstances, conviction for *zina* has effectively been made next to impossible. The 17th century jurist 'Ali al-Qari' al-Harawi explained this peculiar measure:

7 For instance, the 8th century scholar of *fiqh*, Imam Malik, after whom the Maliki *madhhab* was named, famously cautioned: "I am but a human being. I may be wrong and I may be right. So first examine what I say". Less than a century later, Imam Hanbal, who is considered the founder of the Hanbali *madhhab*, also demanded: "do not imitate me, or Malik, or al-Shafi, or al-Thawri and derive directly from where they themselves derived" (BAOBAB 2003: 3).

[...]It is a condition that the witnesses are four [...] because God the Exalted likes [the vices of] his servants to **remain concealed**, and this is realised by demanding four witnesses, since it is very rare for four people to observe this vice (quoted in El-Rouayheb 2005: 123; [emphasis added]).

Because concealing (*satr*) has been an integral value of the overall Muslim respect for privacy, to witness or publicly confess *zina* has been commonly rendered as 'contrary to what is most appropriate' (*khilaf al-awla*).⁸ Accordingly, *zina* trials and punishments have occurred extremely rarely.

In the era of 'early modern' Muslim empires – Ottoman (1299–1923), Safavid (1501–1736), Afsharid (1736–96) and Mughal (1526–1858) – the virtue of *satr* in relation to *zina* has been consistently valued and adhered to. The Ottomans even outright abolished the *hadd* punishment of stoning to death for *zina* in 1680 (Koçak 2010: 234; Toprak 2003: 118). Other capital *hudud* punishments were also mostly replaced by the Ottoman sultans with flogging or – in most cases – with monetary fines (Schacht 1964: 91). The stipulations of classical *fiqh* have thus been moderated to meet the exigencies of the then Muslim communities. During colonial struggles and with the emergence of Muslim-majority nation-states, the influence of classical *fiqh* has been further diminished; at the advent of the 20th century, it was applicable *almost exclusively* to the realm of (Muslim) family law. Instead of the injunctions of classical *fiqh*, the emergent states' new criminal codes were modelled after European laws, which – although markedly gender-biased themselves – considered adultery a relatively minor offence.

The last quarter of the 20th century witnessed the great bulk of efforts to (re)introduce *zina* laws, both in the form of '*fiqh*-inspired' national legislation and through the increase of 'honour' crimes committed on the pretext of *zina*. They are, by and large, the result of complex socio-political circumstances, analysed throughout this book. On the one hand, Muslim theopolitical movements employed some injunctions – including those on *zina* – of classical *fiqh* to justify their political and social demands. In so doing, they intentionally misrepresented classical *fiqh* as the final and only understanding of *shari'a*, thereby giving it a 'divine weight'. Whether or not they eventually succeeded in their aspirations to power, their tactics were quickly adopted by other political instances, particularly certain Muslim governments. *Fiqh* rendered '*shari'a*' "is potentially a construct of limitless reach and power, and any institution that can attach itself to that construct becomes similarly empowered" (El Fadl 2009: 135). On the other hand, 20th century Muslim societies and communities – much like their non-Muslim counterparts – preserved a great deal of patriarchal bias, in particular in relation to societal (and legal) subjugation of women. Hence, the criminalisation of women's sexuality – enabled through the revival of *zina* laws – provided the contemporary patriarchs with an efficient and novel means to further assert their control. This is, however, a complex phenomenon, and its origins are to

8 In support for this thesis, Khaled El-Rouayheb quotes a number of early Ottoman scholars, including Ibn Nujaym, Ibn 'Abidin, Zurqani, Ibn 'Allan and Ramli. See El-Rouayheb 2005: 123.

be sought both in 'traditional' Muslim patriarchies – that is, in those found within a wide range of historical Muslim communities and their equally diverse customs – as well as in the 'encounters' – in particular those provoked by European imperialism and, later, neo-liberalism – with mostly non-Muslim patriarchal systems and their laws, customs and moral purviews. Other plausible lines of analysis could certainly include the intersections of capitalism and patriarchy (Jackson 1999) and their detrimental consequences for women's access to (gender) justice, which facilitated the spread of *zina* laws despite formal (often constitutional) human rights guarantees in many of the affected states. These and other catalysts provided for an indubitable rupture in historical treatments of *zina* in Muslim contexts, which have escalated into the most severe forms of gender-based violence and discrimination.

Resisting the Revival

The revival of *zina* laws in each society has provoked strong outcries, spearheaded by the national women's movements. Progressive Muslim (and non-Muslim) intelligentsia, religious scholars, trade unions, student movements, and domestic and international human rights organisations have often followed suit by joining in or supporting the activities organised by women's movements. These groups, often coalescing into a kind of resistance movement, have revealed and then resisted a number of strategies that are used by political, military and/or religious elites to enable the revival of *zina* laws. Some approaches the resistance movements have devised to counter these strategies are briefly discussed below.

Not Our Culture; Not Our Religion

Zina laws have often been justified with regards to particular cultural and religious traditions – such as *purdah*.⁹ The resistance movements have responded by squarely rejecting those misconceptions on the grounds of carefully collected and analysed historical, theological and cultural evidence. Patriarchal biases within certain interpretations and practices of religion and culture can thus be revealed, in an attempt to demonstrate that it is not *integral* to them; that they *can* be freed from it; that, indeed, "[t]here is another life"¹⁰

9 The literal meaning of *purdah* is a veil or a curtain. In different societies, however, it has come to signify various moral stipulations for women. In Pakistan, for example, it has been framed as a comprehensive code of conduct for Muslim women, expressed through the concept of *purdah aur char divari* (veiling and cloistering within four walls), which patriarchal ideologues, such as Sayyid Abul A'la Maudoodi, have heavily used to promote starkly gender-discriminatory ideas, including women's 'proneness' to *zina*. See, for example, Maudoodi 1967: 193, 199. Among the Nigerian Muslims, *purdah* relates to the seclusion of women, often justified in reference to *zina*. See, for instance, Abdullah-Olukoshi 1990.

10 Reflecting on developments within the Turkish feminist movement in the 1980s, Ayfie Düzkan sums up its crucial impact on society as follows: "since we have begun to talk, a new phrase has been coined in this country: There is another life [...]. Another life is possible" (WLUML 1994).

***Zina* Laws are Part of a Broader Legal Scheme for Control of Sexuality**

An important aspect of resistance to the (re)criminalisation of *zina* is to make it obvious that such a legislative development does not occur in isolation – i.e. that there is a significant incidence of gender-discriminatory laws (whether or not religiously justified) in the respective legal system, all of which are demonstrably used to control women's sexuality. Hence, the revival, often marketed as a 'moral reform' *par excellence*, is exposed as continuation (and an opportunistic 'upgrade') of an established legal mechanism constructed to provide its 'managers' with exceptional power over the general populace and, in particular, over women. Even in societies where *zina* is not explicitly criminalised by law, but instead regulated and 'punished' extrajudicially, an analysis of the domestic legal system discloses that such social malpractice continues to be effectively condoned or even encouraged by certain laws for a considerably long time. This was the case in Turkey until recent criminal justice reforms.

Supporting and Producing Knowledge

Studying the historical, political, cultural and legal circumstances surrounding the (re)emergence of *zina* laws has been an all-important aspect of civil society's resistance. The production and dissemination of knowledge gained through such insights, often in contrast with the dominant narratives put forward in support of the revival, have helped scholars, activists and the wider populace to understand what the *zina* laws were really about. One of the primary goals of this book is to further develop and encourage the struggle towards comprehensive non-patriarchal knowledge on *zina* laws and customs.

Overcoming the Divide between 'Religious' and 'Secular' Approaches and Activisms

In a number of national/local contexts, the stark divide between 'religious' and 'secular' activists against the revival of *zina* laws and other social injustices, supposedly based on the incompatibility of the base values informing the two camps, has markedly hampered the prospects of gender justice. Therefore, initiatives have emerged to 'reconcile' these approaches, insisting on the existence and necessity of common ground between the two movements. Their importance cannot be overstated. Whether arrived at through religious or other ethical frameworks, concepts such as justice or gender and sexual rights need to be negotiated across civil society movements if they are to become more than single-sided ideological catchphrases.

The Universal Applicability of Human Rights

Those who support the criminalisation of *zina* regularly attempt to preclude or derail the legal, political and moral consequences of the violation – which *zina* regulations, simply put, always constitute – of both domestic and international human rights guarantees by resorting to a cultural relativist critique of human rights. They are represented as an alien import, a 'Western' project, encroaching upon domestic 'values' and 'traditions'. Against such well-known tirades, the resistance movements produce a wealth of accounts suggesting the opposite – that human rights are a universally shared moral agency, applicable irrespective of a particular religious or cultural milieu. Notwithstanding

the sizeable attempts of global northern (neo)imperialisms to usurp the discourse of human rights, usually within a broader (neo)liberalist ideology, for their own political ends, the movements often showcase how both national and international human rights obligations of the state are an indispensable instrument for the attainment of gender and social justice. Their violations, clearly dramatically amplified by the revival of *zina* laws, therefore create a serious aberration not only in international but also in domestic justice system(s).

The Politics of *Zina*

Apart from the patriarchal demands, the primary reasons for (re)introducing *zina* laws have been purely political; that is, based on (overt or covert) ambitions to gain or hold political influence and power. Exposing this, however, is not always an easy task, given that '*zina*-related' politics are carefully coated with a highly moralist religious veneer, and are often part of larger projects to regulate the public and private behaviour of the *umma*. Moreover, the political appetites of some '*ulama*' (Muslim religious scholars), populist religious movements or military elites are frequently justified as 'moral necessity', given a supposed failure of politicians to provide good governance. Hence, the dictator General Muhammad Zia-ul-Haq sought to consolidate his power as a political leader in Pakistan by means of an 'Islamisation' programme, which included a forceful legal revival of *zina* legislation, as well as the imposition of dress codes and the repression of religious minorities. The resistance movements use various strategies to counter the politics of *zina*, from street demonstrations to co-operation with national and international human rights institutions (in particular within the mechanisms of the United Nations), from media campaigns to strategic political coalitions.

The Community Impact of the Revival of *Zina* Laws

'Honour' murders, rape, physical and psychological torture, cruel and degrading treatment, domestic violence and an outright denial of a wide range of fundamental rights, as well as impunity for perpetrators of such atrocities, are some of the widespread consequences of the revival of *zina* laws. They are clearly at odds with the goals and purposes (*maqasid*) of Islamic jurisprudence, as well as with the objectives of *any* national legal system. Hence, monitoring, documentation, litigation and other forms of direct support for victims of human rights violations, committed – by state or non-state actors – on the pretext of *zina*, represent essential tools in exposing and countering the true nature of the re-emergence of *zina* regulations. An analysis of these cases reveals that factors such as social and economic status or level of education intersect with sex, gender, sexual orientation or gender identity of the victim to the effect that certain categories of people are much more affected by the revival of *zina* laws than others. Those severely affected are, in particular, poor women and girls from rural areas with limited access to education; female migrant workers; and lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ) individuals. Resistance movements have demonstrated how the markedly uneven community impact of the revival of *zina* laws attests to its inherently patriarchal nature.

The explanatory systems behind resistance strategies are equally diverse. Islamic feminism has proved a valuable analytical approach, since it provides for a comprehensive understanding of two tremendously important aspects of the revival of *zina* laws – the misconception of religious justice and the misconception of gender justice. Political, historical, legal and other discipline-specific analyses are also important, as they reveal the complexities and inconsistencies behind purportedly ‘straightforward’ moralisms advocating the re-emergence of *zina* laws. Overall, an informed human rights-based critique is also necessary, especially on the aspect of state responsibility to abide by international human rights law.

The abovementioned levels of analysis have also been utilised by the two authors of this book in an attempt to develop a holistic and integrated approach to the phenomenon of contemporary *zina* legislation. The key message this book intends to convey is that current and historical *zina* regulations are not fundamental to Islam and Muslim cultures. They stand in stark and alarming contrast to the Qur’anic obligation (e.g. 3:110, 3:104, 7:157, 9:71) to *enjoin what is good and forbid what is wrong*. This study, therefore, offers some existing and some novel avenues towards their eventual and necessary eradication.

Bibliography

- Abdullah-Olukoshi, H. (1990), 'Women in Islamic Societies in the Kano Setting', mimeo. Hull: University of Hull.
- Abou El Fadl, Khaled (2009), 'The Human Rights Commitment in Modern Islam' in Zainah Anwar (ed.), *Wanted: Equality and Justice in the Muslim Family*. Kuala Lumpur: Musawah.
- BAOBAB for Women's Human Rights (2003), *Sharia Implementation in Nigeria: The Journey So Far*. Lagos: BAOBAB for Women's Human Rights, <http://www.baobabwomen.org>
- Chandrakirana, Kamala (2009), 'Women's Place and Displacement in the Muslim Family: Realities from the Twenty-First Century' in Zainah Anwar (ed.), *Wanted: Equality and Justice in the Muslim Family*. Kuala Lumpur: Musawah.
- El-Rouayheb, Khaled (2005), *Before Homosexuality in the Arab-Islamic World, 1500–1800*. Chicago: University of Chicago Press.
- Ertürk, Yakin (2004), 'Considering the Role of Men in Gender Agenda Setting: Conceptual and Policy Issues', *Feminist Review* 78: 3.
- (2009), *15 Years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences (1994–2009) – A Critical Review*. Geneva: OHCHR, <http://www2.ohchr.org/english/issues/women/rapporteur/docs/-15YearReviewofVAWMandate.pdf>
- Greiff, Shaina (2010), 'No Justice in Justifications: Violence against Women in the Name of Culture, Religion, and Tradition', Resource Paper, *Global Campaign to Stop Killing and Stoning Women*, March 2010, <http://www.stop-stoning.org/node/881>
- Hefner, Robert W. (ed.) (2005), *Remaking Muslim Politics: Pluralism, Contestation, Democratization*. Princeton, NJ: Princeton University Press.
- İlkkaracan, Pinar (2008), 'How Adultery Almost Derailed Turkey's Aspirations to Join the European Union' in Pinar İlkkaracan (ed.), *Deconstructing Sexuality in the Middle East: Challenges and Discourses*, 41–64. Surrey: Ashgate.
- International Council on Human Rights Policy (2009), *When Legal Worlds Overlap: Human Rights, State and Non-State Law*. Geneva: International Council on Human Rights Policy.
- Jackson, Stevi (1999), 'Marxism and Feminism' in Andrew Gamble, David Marsh and Tony Tant (eds.), *Marxism and Social Science*. London: Macmillan Press.
- Kardam, Filiz (2005), *The Dynamics of Honor Killings in Turkey: Prospects for Action*. Ankara: UNDP.
- Coçak, Mustafa (2010), 'Islam and National Law in Turkey' in Jan Michiel Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, 231–272. Leiden: Leiden University Press.
- Masud, Muhammad Khalid (2009), '*Ikhtilaf al-Fuqaha*: Diversity in *Fiqh* as a Social Construction' in Zainah Anwar (ed.), *Wanted: Equality and Justice in the Muslim Family*. Kuala Lumpur: Musawah.

- Maudoodi, Sayyid Abul A'la (1967), *Purdah and the Status of Women in Islam*. Lahore: Islamic Publications Ltd.
- Mir-Hosseini, Ziba (2009), 'Islam and Feminism: Whose Islam? Whose Feminism?', *Contestations: Dialogues on Women's Empowerment* 1, <http://www.contestations.net/issues/issue-1/response-to-hania-sholkamy/>
- (2009), 'Towards Gender Equality: Muslim Family Laws and the *Shari'ah*' in Zainah Anwar (ed.), *Wanted: Equality and Justice in the Muslim Family*. Kuala Lumpur: Musawah.
- Okkenhaug, Inger Marie and Ingvild Flakerud (eds.) (2005), *Gender, Religion and Change in the Middle East: Two Hundred Years of History*. Oxford: Berg.
- Otto, Jan Michiel (2010), 'Introduction: Investigating the Role of Sharia in National Law' in Jan Michiel Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, 17–49. Leiden: Leiden University Press.
- al-Qaradawi, Sheikh Yusuf (2001) [1997], *The Lawful and the Prohibited in Islam*, translated by K. al-Hilbawi, M. Siddiqi and S. Shukri. Cairo: Al-Falah Foundation.
- 'Sakineh Mohammadi Ashtiani', *The Guardian*, <http://www.guardian.co.uk/world/sakineh-mohammadi-ashtiani>.
- Schacht, Joseph (1964), *An Introduction to Islamic Law*. Oxford: Clarendon Press.
- Shalakany, Amr A. (2008), 'Islamic Legal Histories' *Berkeley Journal of Middle Eastern and Islamic Law* 1: 2.
- Sonbol, Amira El-Azhary (2009), 'The Genesis of Family Law: How *Shari'ah*, Custom and Colonial Laws Influenced the Development of Personal Status Codes' in Zainah Anwar (ed.), *Wanted: Equality and Justice in the Muslim Family*. Kuala Lumpur: Musawah.
- Toprak, Binnaz (2003), 'Türk Modeli Laikliğin 21. Yüzyılda Geleceği' in *Devlet ve Din İlişkileri: Farklı Modeller, Konseptler ve Tecrübeler*. Ankara: Konrad Adenauer Vakfı Yay.
- Wadud, Amina (2009), 'Islam Beyond Patriarchy Through Gender Inclusive Qur'anic Analysis' in Zainah Anwar (ed.), *Wanted: Equality and Justice in the Muslim Family*. Kuala Lumpur: Musawah.
- Women Living under Muslim Laws (WLUML) (1994), 'Feminism in Turkey in the 1980s: An Interview with Ayfle Düzkan and Meltem Ahiska', WLUML Occasional Paper No. 6. Grabels: WLUML, <http://www.wluml.org/node/351>.
- 'Zina (Arabic)', *Wikipedia: the Free Encyclopaedia*, http://en.wikipedia.org/wiki/Zina_%28Arabic%29