

## **Women's Reproductive Rights and the Politics of Fundamentalism**

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As women become more involved in public life and break patriarchal control in the process, they also deal with the backlash of cultural, traditional and religious reaction. Various interpretations of Muslim law are promoted by different groups in the struggle over women's rights. Sadly, however, actual experiences are overlooked in the process, including the significance of such knowledge in setting standards with which to secure women's rights.

The Bangladesh 1972 Charter guarantees basic freedoms that include the right to life, liberty, equal protection before the law, etc.; the right to health and education is explicitly stated as government's obligation. The articulation of reproductive rights, however, is subsumed under the right to health on the basis that access to health security is a basic need.

Today, an aggressive family planning program is in place reflecting government's view that overpopulation is Bangladesh's principal problem. From 7.7 percent in 1975, the population growth rate leaped to 30 percent in 1989 and 43 percent in 1993. And since the national program single-mindedly seeks to reduce population growth, sourcing contraceptives is no longer a major problem, at least for married women.

The overzealous implementation of this program has, in fact, roused criticism from, women's groups because it does not address comprehensively reproductive health needs. Other factors essential to women's health, as advocates have painted out, are freedom from violence, from coercion and the inappropriate use of reproductive technology. In more positive terms, this translates to greater access and better quality services for all women's health needs, and not only in fertility control.

Except abortion, all other family planning services are legal. In truth, however, abortion since the 70s has been commonly practices in the first semester of

pregnancy, disguised by the term "menstrual regulation (MR)." Initially a move to prevent backroom abortions and reduce maternal mortality, it has found basis in the legal interpretation of MR Services as "an interim method of establishing nonpregnancy."

### **Rising Contraceptive Prevalence in Bangladesh**

The rapid escalation of contraceptive use in Bangladesh has been attributed to the vigorous promotion of the family planning scheme as a solution to overpopulation. Married women's access to contraception saw a five-fold increase from 10 percent to almost 50 percent. Figures are even higher among women who have participated in livelihood/credit plans which allow them independent access to cash and income.

### **Religiosity and Religious Opposition**

Studies show that while religiosity is not statistically related to contraceptive use, religious fervor does prevail upon women not to opt for sterilization which is a legal method of birth control in Bangladesh. For one, women are prohibited from contract with nonkin even in health matters, and secondly, most doctors who perform the sterilization process are male.

Many religious leaders have matured in this respect through educational programs that particularly address religious opposition. At the onset of the family planning campaign, these leaders had been visibly critical, encouraging social ostracism, refusing burial, sanctioning lashings and other forms of chastisement imposed by the shalish (tribunals).

This resistance has gradually faded over time but the fear of religious reprisal still deters women from accepting certain contraceptive services. In this respect, the religious have been urged to publicize their endorsement of the family planning program. These have been largely based on liberal interpretations of the Quran. One of the concrete outcomes was a book on interpretations published by the Islamic Foundation in 1985.

## **Muslim Laws and Reproductive Issues**

But progressive interpretations of Muslim laws in support of family planning are increasingly becoming popular in Bangladesh and other countries. Eminent fatwas (leaders) have at one time or another issued statements supporting the program.

As in the religious sector, jurists are split over the issue of contraception and the forms of control. There are those who reject the procedure despite the absence of prohibition in the Quran or the Hadith. Indeed, some jurists stress the fact that "the preservation of reproductive power is not one of the obligations of Islamic law." Sterilization is legally allowed in most Muslim-populated countries like Egypt, Tunisia, India and Bangladesh and banned only in Iran and Saudi Arabia.

However, the interpretation of the right to abortion has not been as liberal as regards contraception. Abortion is consistently rejected by various schools except one which agreed to use the procedure when the mother's life is at risk and only after the fetus' ensoulment.

This condition has of course opened another floodgate of contrasting opinions. The Hanafi School permits it with just cause, but only before ensoulment. In other Muslim nations, abortion is also permissible in the first trimester whether it is to save the mother, ensure her well-being or any other reason for that matter.

Despite such legal recognition of MR services and its widespread use, culture and tradition have attached a criminal stigma to the practice. It is thus secretly done, specially in rural areas where the extra-legal mandate of village fatwas and shalish to impose sanctions as they deem fit is still very much recognized.

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## **Furthering Reproductive Rights**

The nebulous interpretation of Muslim law on fertility issues is apparent. On one hand, it permits the development and practice of family planning; on the other it appears that Muslim law alone cannot ensure women's reproductive rights. It

agrees to family planning, but the notion that a woman would actually use contraceptive methods and devices is impugned.

Muslim law encourages marriage for all its followers, and with this set-up comes a whole set of restrictions that impinge on a woman's status and right to self-determination within the family. In many situations where polygamy or unilateral divorce is the norm, her capacity to bear sons is often her only shield against violence and repression. Further, the Quran and the law as interpreted traditionally all the more emphasize gender inequalities, such as rights in marriage, to inheritance, and equal treatment before the law.

In view of the foregoing, some may contend that Muslim law is irrelevant to reproductive issues. This is erroneous because the great ideological impact of Islam on all facets of Muslim life cannot be denied. Women's groups have thus tried to discuss religious text from a human rights and feminist perspective, but only in the particular historical context in which they were written and subject to reinterpretation by an evolving society.

While this strategy in working for women's reproductive rights has its merits, there are also limitations insofar as ensuring acceptance among fatwas and arriving at solutions across different religious groups are concerned. A more viable approach could be the adoption of a framework that takes into account not only Muslim and Islamic law but is also context-specific and anchored on universal human rights standards.

### **The Fundamentalist Challenge**

Recent fundamentalist movements, otherwise bearing different political stripes, apparently follow one agenda with regard to women's reproduction faculties: the control of their reproductive rights. True enough, there is no direct attack on government's family planning program, but fundamentalist groups seem to be building a monolith of repressive legal measures with which they challenge women's assertion of their freedoms. Significantly, the most common arguments used are without basis in the Quran or in Bangladeshi law. Instead, extremists whip up fears of an anti-Islamic conspiracy being waged, sexual promiscuity, broken families and the breakdown of women's traditional roles.

Vatican-led Christian orthodoxies and Muslim fundamentalists were momentarily strange bedfellows in the Cairo conference as they opposed certain

sections in the promotion of reproductive rights and reproductive health. While they succeeded in part to change certain terminologies, the Program of Action itself remains clear that only national legislatures can make changes in abortion law.

Judging from initial criticism by extremists to the Cairo proposals, it is likely that these will face stiff opposition in the home front, again on the same grounds of encouraging promiscuity, immoral behavior, sexual anarchy, etc. Such intolerance to more progressive readings of Muslim law leading to more socially responsive implementation exposes the fundamentalists' essentially autocratic agenda. In turn, actions by women's groups are seen as a threat to the status quo and used in this context to justify violent reprisal.

### **Attacks on Sexual and Reproductive**

The increasing visibility of women in urban and rural areas has become a catalyst for fundamentalists to mount their campaign against women's groups that seek to curb their extremist ways.

In the case of 25-year-old Dulali, leaders used the *shalish* with impunity to decide one woman's fate for an act that does not violate any article of Bangladeshi law. Upon learning that she was pregnant from a premarital relationship, Dulali's family married her off posthaste to another man who eventually learned these circumstances and secured a divorce. At a *shalish* requested by Dulali's family, she was sentenced to be caned 101 times, a week after delivery. No accusation was ever made against the child's father. National women's organizations were able to intervene, alerting police to the blatant disregard of Bangladesh law.

Often, in cases like this, religious law or *sharia* is invoked but the *shalish* in Dulali's case is clearly illegal as it has no lawful authority to hold trials and pass sentence on arbitrarily perceived offences. The culpability of the State in this matter is in the inability to enforce promptly and fully constitutionally-guaranteed rights which could offer some degree of protection against the abuse and marginalization of women.

It was later observed that the fundamentalist web of threats and intimidation also cover development organizations, while pursuing direct assaults such as the

burning of schools teaching secular education, refusal of burial rites and application of unilateral divorce.

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### **The Backlash Effect**

The Cairo conference showed that fundamentalists are at the helm of religious opposition although they appear fueled not by theological doctrine but by the need to reassert themselves politically. There is in part some success in this respect as government fails to legislate decisively on women's reproductive rights, upholding in effect the authority of the *shalish* to decide the future of Bangladeshi women solely on the basis of custom and tradition.

The challenge for women's groups is to grasp the unassailable framework provided by the Cairo proposals and international human rights law, so that Dulali and all other women may employ it in pressing for the enforcement of reproductive rights and freedoms.