ISSUES OF
COMPATIBILITY OF HUMAN RIGHTS AND ISLAM
The experience of Egypt and Indonesia

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Abstract: This paper describes the plurality of Muslim responses to the modern conception of human rights, drawing in particular on Muslim interpretations of key human rights issues in the discourse of human rights and Islam –women's rights, religious freedom and minority rights, and corporal punishment– in Egypt and Indonesia. The case studies of Egypt and Indonesia point to wide range of responses among Muslims to these issues, but also suggest that Islam is not incompatible with the modern conception of human rights. This paper argues that on the issues of human rights, Muslims do not share a single, monolithic stance. Instead, there is a variety of arguments based on various Islamic schools of thought and Islamic religious groups. As a result, the issues of human rights and their implementation have elicited a wide range of responses among Muslims.

Keywords: Human rights, Indonesia, Egypt, *Shari‛ah*, *ijtihad*.

Introduction

Contemporary discussion in political science and human rights literature, especially in Western academic circles, often considers Islam and Human Rights incompatible. The sceptical outlook about the compatibility of Islam with universal human rights often points to conditions in Islamic countries as evidence that the religion itself is responsible for human rights violations.[1] In all fairness, to some

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[1] A. S. Hikam, "Islam and human rights: tensions and possible cooperation: the case of Indonesia" in http://www.asiafoundation.org/publications/rpt_othe1.htm#Islamic, 1997. (accessed 05/05/2003).

degrees Western criticisms of Muslims' attitude toward human rights issues might be true. In fact, some Muslim countries do have a poor human rights record. This especially concerns the issues of women's rights, religious freedom and minority rights, and corporal punishment.[2]

However, not all Western academics' criticisms are entirely valid. This is because they often overload their arguments with stereotypes and prejudiced views of Islam. In this regard, Nasr argues that Islam has been portrayed by Western academics as "unchanged" and "unchangeable", and as having little or nothing to offer on issues of global importance that have risen in the last few decades; issues such as democracy, pluralism and human rights.[3] In fact, most Western academics have traditionally engaged in a discourse with Islam solely in order to "build an argument that there is a culturally based resistance to human rights in Islam".[4]

Other factors may contribute to the human rights violations in Muslim countries; factors that sometimes elude the attention of Western academics, most importantly, social, economic and political conditions. Moreover, Western commentators sometimes ignore Islam's complexity, which harbors various, and frequently conflicting, interpretations of its inherent normative demands, it is also ignores the reality of modern Islamic movements that have created a plurality of socio-religious groups, ideas and strategies in Muslim countries. Consequently, the issues of human rights and their implementations have incited various responses among Muslims.

With regard to the argument above, this paper investigates the plurality of Muslim opinions toward the issue of human rights in two influential Muslim countries, Egypt and Indonesia. They have been selected as case studies because of their size and regional influence.

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[2] These three aforementioned issues have become a source of resentment among Muslims in their responses to the modern conception of human rights. For instance, the objection of Saudi Arabia to the article 18 which regulate freedom of thought, conscience and religion, including the right to change one's religion and belief, which raised since the drafting of Universal Declaration of Human Rights, see for instance (Ignatieff, 2002:102-16, 2001: 3-53).

[3] Nasr, S.H., *The Heart of Islam: enduring values for humanity* (New York: Harper San Francisco, 2002), p. xii.

[4] P.F. Strawson, *Entity and Identity: and Other Essays* (Oxford and New York: Oxford University Press, 1997), p. 33.

Both countries have developed domestic human rights movements of considerable size and visibility. However, these movements have evolved in divergent circumstances. Egypt's attitude toward international human rights standards is ambivalent, while Indonesia, despite the persistence of patterns of human rights violations, human rights conditions, seem to be better than in Egypt or many other Muslim countries[5].

The discussion throughout this paper will focus on the following questions: does the experience of Egyptian and Indonesian Muslims support or deny the compatibility of Islam and human rights in practice? How do the experiences of Muslim countries (Egypt and human rights in practice? How do the experiences of Muslim countries (Egypt and Indonesia) in dealing with the issue of women rights religious freedom and minority rights and corporal punishment as the challenges to reconcile Islam and human rights?

In addressing those questions this paper refers to previous works on the issue of the compatibility of Islam and human rights which define Muslims responses in the international human rights discourse. In this regard, scholars argue that participations of Muslims in the international human rights debate do not subscribe to single interpretation, but they have diverse opinions toward the notion of human rights. At least there are two major arguments Muslim respon-

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[5] Broadly speaking, despite the persistence of deeply entrenched patterns of human rights violations, the human rights movement in Indonesia has worked within the broader context of a liberalizing polity in which substantive human rights progress is being made (Watch Indonesia, 2003, Freedom House, 2001). On the other hand, human rights situation in Egypt has deteriorated in the last two decades, and the human rights movement has worked in de-liberalising polity (N Hicks."Does Islamist human rights activism offer a remedy to the crisis of human rights implementation in the Middle East?", *Human Rights Quarterly*, Vol. 24, No. 2 (2002): pp.361–81.). Meanwhile, the Freedom House also suggests that Indonesia has made substantial progress in the field of human rights, despite many continuing problems in this area. The Freedom House, in its Annual Survey of Freedom Country Rights has attempted to quantify the level of freedom in states around the world since 1972-1973. This has been inevitably an imperfect process, with many detractors. Yet, it is interesting to note that in 1972-1973 Freedom House allotted Egypt a score of 6.6, placing it firmly in the not free category (Freedom House, 1973). In 1999-2000 Egypt's score was virtually unchanged at 6.5 (Freedom House, 2000:596). Indonesia attained the score of 4.5 placing it in the Partial Free category, in 1999-2000, having risen from a low of 7.5 in 1997-1998. In the year 1972-1998, Indonesia under the authoritarian regime of Suharto, the Freedom House scored at 5.5, then virtually changed to be lower at 6.5 and reached the peak at 7.6 during 1994-1996 (Freedom House, 2003).

ses in international human rights discourse: conservative and liberal argument.

It is important to dispense with theoretical models that assume that Muslim politics and religion are all of a single stripe. Viewed historically, in fact, it is clear that Muslim politics was never monolithic but, like politics and culture in all great civilisations, plural and changing. Even in the early classical period of Umayyad and Abbasid empires during Islam's first centuries, there was a lively pattern of extra-state religious organisations, centred around the twin institutions of learned Muslim scholars (*Ulama*) and religious law. Neither was totally controlled by state.[6]

Islamic Responses
in the International Human Rights Discourse

In participating in the human rights discourse, Muslims all over the world are facing the underlying tension between religious tenets and the existing social, political and economic realities that are not always conducive to the realisation of those beliefs. Moreover, the dynamic of modern Islamic movements has left an indelible mark on Islam, namely in the plurality of socio-religious groups, ideas and strategies.[7] Consequently, human rights issues and their implementation have incited different responses among different Islamic groups.

Bielefeldt has divided positions of Muslim authors into two groups which are called the *conservative* group and the *liberal* group. *Conservative'* here means that the idea of human rights follows the conception of rights as prescribed by the *Shari'ah*. The *Shari'ah*, according to conservative Islam, has accommodated all the needs of the humanity, including human rights. However, using the *Shari'ah* for the basic concept of human rights in Islam mostly refers to the experience of pre-modern Islamic legal culture and the values of traditional societies, and does not examine whether they are still appropriate or not to modern society.[8] Thus, conservative Islam tends to neglect the conflict

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[6] Robert W. Hefner, "Public Islam and the problem of democratisation", *Sociology of Religion*, Vol. 62, No. 4 (2001), p 3.

[7] D. Eickelman, and J. Piscatori, *Muslim Politics* (Princeton, New Jersey: Princeton University Press, 1996); John. L. Esposito and J.O. Voll, *Islam and Democracy,* (New York: Oxford University Press, 1996).

[8] Ann Elizabeth-Mayer, *Islam and human rights : tradition and politics* (Boulder, Colo.: Westview Press, 1995), pp. 167-8.

between the limited view of the *Shari'ah* on human rights and the modern concept of human rights.

Moreover, using the *Shari'ah* as the main reference to the human rights concept in Islam has resulted in an ambivalent attitude of among Muslims toward international standards of human rights. This is because, on the one hand, there is the pull of historical religious traditions which sanction discrimination on the grounds of religion and gender. On the other hand, there is push of modernist domestic and international forces in favour of human rights and against discrimination on the grounds of religion or gender.[9]

In order to implement the principles of human rights according to Islamic law, conservatives advocate legal formalistic strategies. This approach is based on the idea that the formalisation of Islam in all dimensions of life, through laws and supported by the state, is the only option to fully implement Islamic teachings. The necessity of establishing an Islamic state or developing an Islamic society based on the *Shari'ah* as a prerequisite is indispensable.[10]

Meanwhile, according to liberal Muslims, Islam and human rights are not totally incompatible. Some of their basic principles are not mutually exclusive. Moreover, liberal Muslims do not deny the tension between Islamic principles of human rights and the rights stipulated in the UDHR. According to liberal Islam, the rights in Islam which refer to the classical *Shari'ah* need to be re-interpreted because they are not appropriate to be implemented in the modern era.

The Islamic liberal view on human rights issues goes one step further than its conservative counterpart by attempting to provide fresh interpretation of the classical *Shari'ah*. According to Islamic liberalists, the *Shari'ah* was shaped and developed in the early Muslim era and was justified by the historical context.[11] Moreover, the classical *Shari'ah* does not form a comprehensive legal system but consists mainly of general religious and ethical principles, such as prayer and fasting, solidarity within the community, respect between the genders

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[9] A. A. An-Naim, *Towards an Islamic Reformation: civil liberties, human rights and international law* (New York: Syracuse, 1990), p. 178.

[10] D. Brumberg, "Islamists and the politics of consensus", *Journal of Democracy*, Vol. 13, No. 3, (2002), p. 110 (1994).

[11] A.A.An-Naim, *"Towards an Islamic Reformation",* p. 170.

and tolerance towards minorities.[12] Therefore, with regard to the current discourse of human rights, the *Shari'ah* as a source of Islamic rights may need to be re-developed further in order to create an alternative formulation of Islamic public law that eliminates the limitations of *Shari'ah* on human rights issues.[13]

The breakthrough of liberal Muslims is a significant contribution to the discourse of Islam and human rights.[14] Liberal Muslims facilitate reforms both in the field of law and in theology. These critical approaches pave the way for political and legal changes. Moreover, liberal Muslims also provide a new awareness of the humane character of the Qur'anic revelation which is the most important source of the *Shari'ah*. Liberal Muslims' attitudes reflect the responsibility of the human being as deputy of God *(khalifahs)* on earth, where they must respect human dignity and honour, as is stated in the Qur'anic verse (QS) 2:30. In another Qur'anic verse, it is mentioned that God has bestowed a special trust upon humankind, elevating the human person above all cosmic power (QS, 33:72).

The main concern of liberal Muslims is how to eliminate the limitation of the *Shari'ah's* view on human rights. For instance, on the issue of religious liberty, liberal Muslims like Mohammed Talbi (1991:31) suggest the necessity to recognize that in relation to religious tolerance, the *Shari'ah* has a limited view. Thus, he suggests that a faithful Muslim's submission to the unfathomable divine should lead to the mutual recognition of human beings in their freedom of conscience, because no one can pretend to know God's plans concerning his or her fellow humans.

In light of the discussion above, it suggests that the plurality of Muslim argument in international human right debate is inescapable. The diverse of Muslims community in societal and religious life has forced Muslim to participate differently toward international human rights discourse. The next discussion delineates the Muslim experience in Egypt and Indonesia in dealing with human rights issue.

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[12] M. S. Al-Asmawy, *L'Islamisme contre L'Islam* (Paris La Ecouverte and Cairo: Edition La Fikr, 1989), pp. 124-25.

[13] A. A. An-Naim, "*Towards an Islamic Reformation",* pp. 170-74.

[14] H. Bielefeldt, "Muslim voices in the human rights debate", *Human Rights Quarterly*, Vol. 17, No. 4 (1995), pp.587–617.

Egypt, Islam and Human Rights:
Conservative Islam Experience

The attitude of Egyptian Muslim to international human rights discourse is considerably ambiguity. On the one hand Egypt has actively involved in international human rights debate since the drafting of Universal Declaration of Human Rights and it has ratified many form of international covenants since 1967, among them are: the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights in 1982. However, on the other hand the implementation of human rights norms in Egypt remains low.[15]

There are, of course, many explanations on the ambiguity attitude of Egyptian toward international human rights principles, such as political condition, social and economic circumstances. However, the most significant cause is the interpretation of modern conception of human rights which has been put on the contradiction position with *Shari'ah*. While the *Shari'ah* has been placed as the main sources of constitutional law, automatically the main reference to human rights principle in this country mainly refer to the rights that articulated in the *Shari'ah*.

Meanwhile, as it has been argued earlier in this paper that using *Shari'ah* as the main reference to the human rights concept in Islam has resulted in an ambivalent attitude of among Muslims toward international standards of human rights, likewise in Egypt. This ambivalence is reflected in Egypt's subscription to international human rights documents that it cannot uphold within its national jurisdiction because of the role of *Shari'ah* in the domestic legal system.

For instance, in ratifying the convention on the Elimination of All Forms of Discrimination against Women, Egypt has entered reservations on Article 16 (United Nations, 2002). Whereas this Article requires complete equality between men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, Egypt's reservations stipulate that its obligations "must be without prejudice to the Islamic Shari'ah provisions" (United Nations, 2002). According to An- Na'im this reservation indicates that

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[15] N. Hicks, "Does Islamist human rights activism offer a remedy to the crisis of human rights implementation in the Middle East?", *Human Rights Quarterly*, Vol. 24, No. 2 (2002), pp.361–81.

Egypt is "aware of the conflict between the international obligation established by that article and its own Shari*ah personal law for Muslim".[16]

Considering to the fact above, it may fair to put Egyptian Muslims' attitude into theoretical landmark of conservative as mentioned earlier in tis paper. Some scholar also consider that the discourse of compatibility between Islam and modern conception of human rights in Egypt has been dominated by the conservative Islam.[17] According to Dalacoura the conservatism toward issues of human rights in Egypt has been exhibited by three actors:[18] *ulama*, Islamic activists and the government.[19] The *ulama* are the learned men of Islam who are centred in the Al-Azhar University, the most to educational thoughts and practices contradicted and even opposed the modernist premises.[20]

The Egyptian *ulama*, in matters pertaining to human rights, ought to be considered as conservative. Dalacoura argues that many of them see the *Shari*ah* as a total way of life and consider its imposition imperative—even though they may disagree on what the *Shari*ah* means and on the permissibility of *ijtihad*.[21] A salient example of the conservatism of the *ulama* toward human rights occurred when the Islamic Research Academy of Cairo, which is affiliated with the Azhar University, internationally prestigious institution of higher education in Sunni Islam. This institution is a centre of conservative Islamic thought.[22] The Azhar's contributions produced the rights provision in

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[16] A. A. An-Naim, *"Towards an Islamic Reformation"*, p. 179.

[17] K. Dalacoura, *Islam Liberalism and Human Rights: implications for international relations* (London: I.B. Tauris, 1998) 123-5; N. Hicks, "Does Islamist human rights activism offer a remedy," pp. 370-4; F. Halliday, *Islam and the Myth of Confrontation* (London: I B Tauris Halliday, 2003), p. 157-8.

[18] From a sociological perspective, Egyptians seem to behave conservatively in society. As Yadlin argues, some sociological studies have shown that social attitudes in Egypt are very conservative. Traditional views and suspicion of authority predominate; social atomism is paramount. The attitudes of the younger generation on the family and the position of women are similarly conservative. Also, authenticity is conceived of as diametrically opposed to Westernisation. (1983:161-3).

[19] K. Dalacoura, *"Islam Liberalism and Human Rights"*, pp. 129-30.

[20] G. Talhami, *The Mobilization of Muslim Women in Egypt* (Gainesville, Florida: University of Florida Press, 1996), p. 33.

[21] K Dalacoura, *"Islam Liberalism and Human Rights"*, p. 126.

[22] Ann-Elizabeth Mayer, *"Islam and Human Rights,"* p. 22.

the "Draft of the Islamic Constitution". It was published in 1979 in Volume 51 of the Azhar journal, *Majallat al-Azhar*. According to Mayer, the rights provisions in the Draft of the Islamic Constitution appeared to represent an official position of that institution as to what rights should be recognised in a political system based on Sunni Islamic principles.[23] The language of human rights in this draft simply merged with the conception of rights in the *Shari'ah*.

The second actor is Islamic activists, associated with the Muslim Brotherhood and other Islamic groups, such as *Gamaat Islamiyya*. Their commitment to human rights is superficial.[24] In this regard Hicks argues that Islamists like the Muslim Brotherhood, hold views on human rights which are "backward-looking, obscurantist and a threat to basic freedoms".[25] Thus, as Hasan argues an Islamist might not be a good partner to implement human rights in Muslim countries.[26] Islamists are interested in human rights as a way of attacking a government or state authorities which they oppose; thus, should they come to power, "they would have no compunction about denying rights to others that they had claimed for themselves".[27]

Moreover, according to Egyptian Islamists, any talk of human rights beyond the Shari'ah can be construed as *jahiliyya*. The term of *jahiliyya* was highlighted by an Egyptian radical Muslim thinker, Sayyid Qutb (1906-66). It refers to Arabian society during the century prior to Muhammad's prophesy, and translates "the Age of Ignorance" (Shepard, 2003:522).[28] Islamists use this term to describe the behaviour of Western society and its tendency to discredit Islamic culture, morals

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[23] The Azhar draft may be seen as a Sunni response to the political repercussions of the Iranian Revolution and an effort to demonstrate that Sunni Islam was not bereft of resources to fashion a constitution for a modern government. Mayer (1995:22).

[24] On the Brotherhood's pragmatic shift towards support of democracy, see for instance Ally and Werner and Abeh-Kotob (1982:352:4) (1995:321-39).

[25] N. Hicks, "Does Islamist human rights activism offer a remedy", pp. 362.

[26] B.E. Hasan, "Toward human rights enforcement in the Arab world: a comprehensive strategy", in Lawyers Committee for Human Rights (eds), *Islam and Justice: Debating the Future of Human Rights in the Middle East and North Africa* (New York: Lawyers Committee for Human Rights, 1997), p. 147.

[27] N. Hicks, "Does Islamist human rights activism offer a remedy", p. 367.

[28] William E. Shepard, *Sayyid Qutb and Islamic activism: a translation and critical analysis of Social justice in Islam* (Leiden: E.J. Brill, 2003), p. 522.

and the Islamic way of thinking.[29] Therefore, the idea of using standards on human rights issues based on Western concepts is regarded as *jahiliyya*.

The third actor is the Egyptian government, which has failed to understand the genuine force of Islamic liberalism. Many political observers in Egypt believe that the state interpretation of Islam is a mixture of modernist and traditionalist elements without, however, a clear emphasis on Islamic liberalism.[30] For instance, in the era of Anwar Sadat (1970-1981), Sadat lacked understanding of the major issues surrounding a genuine Islamic liberalism and was content to appeal arbitrarily to whichever element of Islam served his policies. As a result, Islam was moulded as an integral part of his political make up.[31] He projected the image of the "believing president" and the "patriarch of Egyptian family".[32] In many instances, Sadat's attitude toward modernity and Islam seemed to be contradictory. For example, he claimed that he was committed to the sovereignty of the people as the supreme authority and source of legitimacy in Egypt, but he also argued that the ruler was ordained by the Allah. Sadat asserted that he had re-established the rule of law, but he also implied that he, as personification of the country as a whole, conceded liberties and rights to the people.[33]

Meanwhile, the current government under Mubarak, although Mubarak is less outspoken on Islam, and his outlook more secular, he has had to appease the powerful Islamic forces in the country. For instance, Esposito noted that,[34] under Mubarak the Egyptian government tried to placate the Islamists by promising to revise existing legislation to bring it more in tune with the *Shari‘ah*. His strategy to gain popular support from Muslims relies mainly on "establishment Islam". Mubarak supports the established religious

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[29] Ibid., p. 523.

[30] John L. Esposito and J.O. Voll, "*Islam and Democracy*", 174-5; Hafez, 1997: 302; K. Dalacoura, *Islam Liberalism and Human Rights*, p. 138.

[31] John L. Esposito and J.O. Voll, *Islam and Democracy,* p. 174.

[32] K Dalacoura, *Islam Liberalism and Human Rights*, p. 125.

[33] Ibid.

[34] John L. Esposito, *The Islamic threat: myth or reality?* (New York: Oxford University Press, 1992), pp. 97-100.

institutions, such as the al-Azhar University and the ministry of religious Endowments (*Awkaf*).

In this regard, Dalacoura argues that the official religious establishment has a crucial role to play in the interpretation of religion, and in some instances the government needs them to support its public policies.[35] For example, during the reversal of political liberalisation from 1977-1981, the Azhar, through its periodical *Majallat al-Azhar,* argued that the government could wage jihad against civil disorder. On other occasions, the government supported the policies or opinion of the Azhar on some Islamic issues in society. For example in the recent controversy over the publication of novels deemed offensive to Islam, the state has defended Al-Azhar in the banning of books.[36] By doing this, the government wants to show its people that the state has a commitment to defend Islam.[37]

It transpires from the above discussion that none of the discourses on human rights and Islam in Egypt is predominantly liberal. Neither government, nor opposition (Islamists) are proponents of Islamic liberalism proper. In other words, conservative Islam is more dominant in interpreting human rights for Egyptian society than liberal Islam. In some instances, the liberals or reformers occupy a difficult position in Egypt. They have to suffer physical threats or terror from conservative or radical Islamic groups, or even from the state. For instance, in the 1992, Muslim militants assassinated the Egyptian human rights activist and essayist Farag Fouda (Human Rights Watch, 1993). Moreover, in 1997, Egypt's Hight Court ruled that the writing of a Cairo University professor, Nasr Hamid Abu Zayd, were tanta-mount to apostasy. The latest issue is the detention of human rights and civil society activist, Saad Edin Ibrahim. These three incidents show that outspoken Muslim reformers in Egypt are threatened; in some instances their lives are in jeopardy.

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[35] K Dalacoura, *Islam Liberalism and Human Rights*, p. 126.

[36] President Mubarak has cautioned writers and intellectuals against offending the religious sensibility of the people. The rehabilitation of the Muslim Brotherhood, after several years of severe repression, whereby its members now sit again in the parliament, and its list emerged victorious in the recent bar association elections, suggests a modus vivendi whereby the state defends Islamist positions in the social and cultural spheres, in return for which the Brotherhood will stay out of security policy and pushing for political reform. See for instance, Springborg (1989:ch.2).

[37] N. Hicks, "Does Islamist human rights activism offer a remedy", p. 373.

The outlook of conservatism is particularly salient when one analyses the attitude of ulama, Islamic activists and government toward reconciling Islam and modern conception of human rights concept, on the issue such as women's rights, religious freedom and minority rights, and corporal punishment.

Women's Rights

Despite the growing presence of women in the public sphere in recent times, the status of women in Egypt remains grave. Women remain subordinate and do not enjoy rights on equal footing with men.[38] In this regard, Elizabeth Fernea argues that the growing number of women in the public sphere has not been paralleled by more equity.[39] She notes that the large number of university graduates among Egyptian women, their increased presence in the public sphere, the fact that they have come to occupy top positions in the economy and in the states apparatus, are countered by high rates of illiteracy among women, minimal political participation, declining representation in parliament and the reappearance of modest dress.[40]

While there are many factors that account for the prevailing gender gap in society, Guenena and Wassef suggest that the problem of gender inequality in Egypt is mainly caused by the dominance of the conservative interpretation of religious teachings on women's issues, coupled with patriarchal culture in society.[41] The conservative interpretation of women's issues according to the *Shari'ah*, has reinforced the idea that women should retreat from the public sphere and urged women to be more active in the private sphere.[42]

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[38] N. Guenena and N. Wassef, *Unfulfilled Promises: women's rights in Egypt* (Cairo: West Asia and North Africa Regional Office, Population Council, 1999), p. 5.

[39] Equity here means equal opportunity for equal contribution. The emphasis on women as agents of production within this view constituted a challenge to the sex-role dichotomy that denied women's role instrumentally and therefore their due share in the production process. For further discussion on the concept of equity, see Kabeer (1994) and Guenena and Wassef (1999).

[40] E. W. Fernea, *In Search Of Islamic Feminism: one woman's global journey* (New York: Doubleday, 1998), pp. 241-2.

[41] Ibid, p. 31.

[42] M. Badran, "Competing agenda: feminists, Islam and the state in nineteenth and twentieth century Egypt", in D. Kandiyoti (ed.), *Women, Islam, and the State* (London: Macmillan, 1991), p. 10.

The conservative interpretation of the issues of women's rights is reflected by the so called the Azhar Draft of the Islamic Constitution, which suggests that women are the safeguard of family, and the role of women in the domestic sphere is therefore more important than in the public sphere.[43] It implies that, when women choose to work outside home, the type of job must not be removed far from the domestic business. As is mentioned in Article 38 of the Azhar Constitution, women are allowed to work within the limits of the precepts of the *Shariʿah* (*hdudd ahkam al-Shariʿah al Islamiyya*). The limits of the *Shariʿah* might be unclear because the Azhar Constitution does not explain them further. However, according to Mayer (1995:114), because many conservatives Islam believe that a woman is allowed to work as long as her husband give her permission, their job must be suitable only for women, and they will be barred from work that brings them into inappropriate proximity with men.[44]

In the Azhar Draft, Article 8 of provide that the state should encourage early marriage and provide "the means according to which wife would obey her husband and look after her children and consider keeping the family the first of her tasks".[45] This shows the extent of the conservatism of the 'ulama in Egypt (Azhar) toward women's rights. The Azhar Constitution also suggests that women are to avoid immodest or provocative clothing or ornaments, and according to Islamic conservatives this means that heavy veiling and no makeup is *de rigueur* for women whenever they are exposed to the sight of men who are not members of their own family circles.[46]

The above synthesis of women's rights is also adopted by activists of the Muslim Brotherhood. The Muslim Brotherhood's views on women, although not uniform, tend to converge on the fact that there is a fundamental inequality between the sexes, which is often explained away as being a 'difference in roles' or about the protection of women.[47] This view seems to be detrimental to women's rights.

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[43] Ann Elizabeth-Mayer, *Islam and Human Rights*, p. 113.

[44] Ibid., p. 114.

[45] Ibid., p. 115.

[46] Ibid.

[47] K. Dalacoura, "*Islam Liberalism and Human Rights",* p 128. Further discussion on the Muslim Brotherhood's view of society, especially the question of female participation in the Islamist movement, is, however, extremely complex because the movement in

However, it is widely supported and even more pronounced among members of *Gamaat Islamiyya*, a radical Muslim group which is based on the campuses, and promotes conservatism *vis-a-vis* women and the separation of sexes. Moreover, *Gamaat Islamiyya* also enforces Islamic dress and bullies unmarried couples seen together in public.[48]

The government's position on women's rights is ambivalent.[49] For instance, as mentioned elsewhere in this chapter, the government espoused some reservations based on the *Shari'ah* when it signed international conventions on discrimination against women. Another example is the government's inconsistency in reforming family law. The first Family Law code was introduced in 1925, and amended in 1929. The Family Law in general deals with women as part of the regulation of the organisation of the family, not as individuals with their own separate or equal rights.[50] Anwar Sadat reformed the Family Law in 1979, slightly enhancing women's rights. Women were given the right to divorce should their husband take a second wife and to be informed in the event of divorce and be given alimony; they were also given greater rights of custody. However, this family law was amended in 1985 under President Mubarak to meet the demand of Islamists who believed0 that the 1979 Family Law violated the *Shari'ah*.

Thus, the situation with women's rights in Egypt remains grave. In general, women continue to suffer discrimination from the state and society. This is because conservative interpretation of religious teachings about women persists and is coupled with the prevailing of patriarchal culture in society.

Religious Freedom and Minority Rights

The conservatism of Muslims in Egypt can be seen from the issues of religious freedom and the rights of minorities. Conversion from Islam to another religion is regarded as apostasy, and is punishable by death. The most prominent example, as mentioned before, was the

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fact empowers many women rather than restricts them. See Mitchell (1969:254-9), and Farah (1983:61-4).

[48] G. Kepel, *Muslim Extremism in Egypt: the Prophet and Pharaoh,* translated by J. Rothschild (London: al-Saqi Books, 1985).

[49] N. Guenena and N. Wassef, *Unfulfilled Promises: women's rights in Egypt* (Cairo: West Asia and North Africa Regional Office, Population Council, 1999) p. 1.

[50] M. Hatem, "The enduring alliance of nationalism and patriarchy in Muslim personal status laws: the case of modern Egypt", *Feminist Issues*, Vol. 6, No. 1 (1986), p. 28.

murder of Farag Fouda by a member of *Gamaat Islamiyya*. He was accused of apostasy, because he suggested that secularism should be applied in Egypt. This assassination gained support from a radical Muslim cleric, Sheikh Ahmad Ghazali, who believed that secularists like Farag Fouda were apostates who should be put to death by the government. If the government failed to carry out that "duty" then pious individuals were to do so.[51]

In addition to the issue of religious conversion, the US State Department Country Report 2003 revealed that there are no restrictions on the conversion of non-Muslim to Islam. However, in cases involving conversion from Islam to Christianity, authorities have charged several converts with violating laws prohibiting the falsification of documents. Converts who fear government harassment if they officially register the change from Islam to Christianity, have altered their identification cards and other official documents themselves to reflect their new religious affiliation.[52]

Religious tolerance in Egypt reflects a negative picture, where the relationship between Muslims and non-Muslims is not always easy. The Constitution mentions that Islam is the official state religion and a primary source of legislation (Article 2). Accordingly, religious practices that conflict with the *Shari'ah* are prohibited. However the practice of Christianity or Judaism does not conflict with the Shari'ah. Consequently, the existence of other religions streams is not welcome in Egypt, such as a small group of Bahai. Although, the existence of Christian (Copts) is recognised by the state, in many cases they have difficulty building places to worship. Some conditions have to be met by the Coptic community to build a church. These conditions are set down in a 1934 Minister of Interior decree, which is based on an 1856 Ottoman decree governing the building of places of worship for non-Muslims.[53]

There have been some reports that Christians have had difficulties building a church and have become subject to security authorities' approval. During the period covered by the International Religious

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[51] Times Cairo, "Remembering Egypt's Cassandra", 9 January 2002.

[52] US Department of State**,** 2003a. 'Egypt', *International Religious Freedom Report 2003*, Washington, DC: US Department of State. Available online at http://www.state.gov-/g/drl/rls/irf/2002/13994.htm [accessed on 11 May 2003].

[53] Ibid.

Freedom Report 2003, the President approved a total of 23 permits for church-related construction, including one permit for the construction of a new church; 2 permits for demolition and reconstruction of churches; 10 permits for churches previously constructed without authorisation, 8 permits for construction of additional church facilities; and 1 permit for cemetery construction.[54] The restriction on building churches in some instances has triggered conflict between Muslims and Copts, for instance the 1972 riot in Alexandria which destroyed Coptic houses, shops and Church.[55] Thus, although the existence of Christianity and Judaism is recognised by state and the Shari‘ah, these religions still suffer from acts of discrimination.

The discriminatory attitude toward non-Muslims also comes from Muslims in general. Their behaviour has been inspired by the conservative view on Islam. For instance, the Muslim Brotherhood recognises the rights of non-Muslims in society, but in numerous instances Christians, and particularly Jews, are pictured in their publications as inherently "hostile" to Islam and the growth in the Brotherhood's influence has contributed, "undeniably", to inter-communal tension between Muslims and Copts.[56] Islamic militant groups demand that, as a consequence of the enforcement of the *Shari‘ah*, non-Muslims should be regarded as *dhimmi,* and therefore, Copts must pay the *jizya* tax and be barred from the Army of an the Islamic state.[57]

On the state and discriminatory practices in Egypt, International Religious Freedom Reports 2003 notes that although the Constitution provides for equal public rights and duties without discrimination due to religion or creed, discrimination against non-Muslims does exist. No Christians serve as governors, presidents of public universities, or deans. Furthermore, International Religious Freedom Reports 2003 reveals that the practices of discrimination against Christian occur in the public sector; in staff appointment to public universities; in

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[54] Ibid.

[55] M. Khalil, *The Copts in the Immigration Countries: a field study of the troubles of the home country and citizenship* (Cairo: Dar-Al Khayal, 1999), p. 7; John L. Esposito and J.O. Voll, *"Islam and Democracy",* p.188.

[56] Dalacoura, *Islam Liberalism and Human Rights*, p. 128.

[57] *Al Ahram Weekly,* 17–23 April 1997. Available online at http://weekly.ahram.org.eg/ [accessed on 27 November 2003].

payment of Muslim *imams* through public funds (the Christian clergy are paid by private church funds); and refusal to admit Christians to Al-Azhar university (which is publicly funded). In general, university training programs for Arabic-language teachers refuse to admit non-Muslims because the curriculum involves the study of the Qur'an.[58]

Corporal Punishment

Certain provisions of the Islamic penal code, such as hand amputation for thieves, *rajam* for those who have committed adultery or the death penalty for those who convicted apostates might not be recognised by the criminal law in Egypt. However, practices like torture or maltreatment of those who are arrested or detained are common and persistent in police stations or detention centres. There are numerous and credible reports that security forces torture and mistreat citizens, including at police stations. For instance, the Egyptian Organization for Human Rights (EOHR) reported 59 incidents of torture in March 2001 in police stations and other detention centres, in which 11 victims died. The report included nine cases of citizens apparently unaffiliated with any political group or trend (EOHR, 2003). In 2003, the practice of torture continued, for instance Amnesty International has noted the arrest of an Egyptian activist for Palestine who has been caught and tortured at a police station.[59]

Within conservative Islam, however, the desire to implement Islamic penal codes remains strong, or at least conservative Muslims believe that Islamic penal codes can be validly implemented in modern society. For instance, Sheikh Ahmad Ghazali's opinion concerning the murder of Farag Fouda, as mentioned before, is evidence of that. In this regard, Moosa argues that death penalty for apostates was not derived from the Qur'an, but is simply referred to in the Prophetic reports or the Hadith.[60] It means that the practice of death penalty for

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[58] US Department of State, 2003a. 'Egypt', *International Religious Freedom Report 2003*, Washington, DC: US Department of State. Available online at http://www.state.gov/-g/drl/rls/irf/2002/13994.htm (accessed on 11 May 2003).

[59] Amnesty International *Egypt* (London: Amnesty International, 2003a). Available online at http://web.amnesty.org/library/eng-egy/index (accessed on 27 August 2003).

[60] E. Moosa, "The dilemma of Islamic rights schemes", *Journal of Law and Religion*, Vol. 15, No. 1–2 (2000/2001), p. 202.

apostates might apply to the social milieu of early Islamic history, when apostates could be regarded as disturbing social harmony. Therefore, it might be not appropriate in the current situation.

In light to the whole discussion above, the discourse in Egypt on the compatibility between Islam and contemporary conceptions of human rights in that country is dominated by conservative Islam, which simply merges the conception of human rights with the language of the classic *Shari'ah*. It might be difficult to draw a conclusion that the *Shari'ah* is the cause of the deterioration of human rights conditions in Egypt, but the modern day conservative interpreters of *Shari'ah,* to some degree, have contributed to the ambiguity and ambivalence of Egyptians toward international standards of human rights.

Indonesia, Islam and Human Rights:
Liberal-Moderate Islam Experience

In relation to human rights issues in Indonesia, the views of neo-modernists are very influential in the public discourse. Neo-modernists using the liberal argument opine that the Islamic and the modern, secular perspectives on human rights do not contradict one another; they even share communalities reflected in some basic principles. This makes it possible to open the door for reconciliation and cooperation between them.[61] A study on the response of Muslim intellectuals in Indonesia to the concept of human rights shows that "all Muslim intellectuals in Indonesia support the idea of modern human rights" although their opinions on them vary.[62]

The liberal perspective on human rights and Islam is also found in the views of the *ulama*, which associate with the *Nahdlatul Ulama* (NU) . The *Nahdlatul Ulama* represents the traditional *ulama* and their disciples, but *Nahdlatul Ulama's* view on Islam and modernity seems to be more accommodative and modern.[63] On the issues of human rights and

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[61] A.S. Hikam, "Islam and human rights: tensions and possible cooperation: the case of Indonesia" in http://www.asiafonadtion.org/publications/rpt_othe1.htm#Islamic, 1997. (accessed 05/05/2003).

[62] M. Abdillah, "Theological responses to the concepts of democracy and human rights: the case of the contemporary Indonesian Muslim intellectual", *Studia Islamika: Indonesian Journal for Islamic Studies*, Vol. 3, No.1 (1996.), p. 23.

[63] M. Woodward, "Indonesia, Islam and the prospect for democracy", *SAIS Review*, Vol. 21, No. 2 (2001), p. 32.

Islam, *Nahdlatul Ulama* has produced a *fatwa*(religious decree) at the National Conference of *Ulama* NU in 1997 (*Musyawarah Nasional 'Alim Ulama*).[64] The *fatwa*revealed that human rights need to be respected and upheld in Indonesia by all components of the nation, including the *ulama*, *umara* (government) and *umma* (society). The *fatwa*mentions five basic principles: (1) the protection of religious consciousness and observances (*hifz al-din*); (2) the protection of life (*hifz al-nafs*); (3) the protection of thought and freedom of opinion (*hifz al-'aql*); (4) the protection of property (*hifz al-amwal*); and (5) the right to enter into marriage and protection of reproductive rights (both are included under the rubric of *hifz al-nasl*) (PBNU and Lajnah Ta'lif Wan Nasir, 1997:51-53).[65]

The five principles above parallel and perhaps are similar to the universal principles of human rights. Therefore, the *ulama's* NU recommended to the National Board of NU to use those principles in struggling for human rights in Indonesia. At the National Conference of NU (*Muktamar XXX*), the conference recommended the government to implement human rights legislation and bring to justice the perpetrators of human rights violations in the past (NU online, 2003).

While neo-modernists support the idea of human rights, they also suggest a self-criticism of the Shari'ah point of view on human rights. For instance, Munawir Sadzali (d.2005)[66] argues that, to increase Muslims' participation in international human rights discourses,

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[64] The Nahdlatul Ulama held a National Conference of Ulama on 17-21 November 1997 in *Pondok Pesantren Qomarul Huda*, Lombok Tengah Nusa Tenggara Barat. Besides discussing some issues related to organizational matters, the conference also discussed the current agenda which relating to daily life, such as social, economic, and political problems.

[65] Interestingly enough, although these five concepts appear to constitute the neo-modern outlook, these principles are taken from a thousand year old concept contained in the literature of Islamic jurisprudence and is known as *kulliyat al khams* (simply "five basic necessities"). They are taught within NU's intellectual tradition and transmitted in *pondok pesantren* (Falaakh, 2001:36). These five principles can be also found in Kamali (1991) especially Chapter XIII, see also Masood (1989), especially Chapter 4-5 and 7.

[66] Munawir Sadzali is one of the leading Muslim intellectual in Indonesia. He was Minister of Religious Affairs (1983-1993), a former diplomat with an education in both *pesantren* and the West. He suggests re-actualizing the *Sharia* in a way that is more responsive to the demands of Indonesian Muslims, who live in a plural society.

Muslims should look not only to the relative texts (*nass ẓanni*) of the Qur'an and the Sunna, which certainly can be interpreted, but also their absolute texts (*nass qat'i*), which are not interpretable.[67] Sadzali uses an example about the issue of slavery and right to life as a free human being. According to Sadzali, it is true that the Prophet appealed to slave owners to treat their slaves more humanely or set to them free all together, but up until the death of the Prophet Islam did not totally abolish slavery. Meanwhile, in modern times, humanity has condemned slavery in all its manifestations as a human evil. If Muslims had maintained the verses that recognised slavery as part of the status quo of the Prophet's period and had not finished what the Prophet had begun in setting slaves free, they would not have been able to discuss the question of human rights, because the most fundamental human right is the right to life as a free human being.[68]

In responding to the "open-mindedness" (my emphasis) of Indonesian Muslims toward issues of human rights, the government takes a pragmatic position. In this context, government plays a safe role when dealing with Islamic forces, especially if it is touching upon issues of democracy and human rights. During the Suharto regime, for instance, the state attempted to galvanise support from Islamic groups and leaders in order to respond to the increasing scrutiny domestically and internationally, in the field of human rights (Hikam, 1997).[69]

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[67] Munawir Sadzali, "Reaktualisasi Ajaran Islam" in Iqbal Abdurrauf Saimima (ed.), *Polemik Reakualisasi Ajaran Islam* (Jakarta: Pustaka Panjimas, 1988), p. 9.

[68] The idea of reinterpreting the *Sharia* is also suggested by prominent Islamic scholars such as Abdurrahman Wahid and Nurcholish Madjid. They call for understanding Islam through *contextualised ijtihad.* Nurcholish Madjid (1980:196) for instance believes that *ijtihad* provides the manner in which social and historical phenomena can be evaluated to determine their continued correctness and appropriateness to current cultural situations. Similarly, Wahid as quoted in Istiadah (1995:5) argues that Islam must be understood through *contextualised ijtihad*, where the social teaching of Islam are to be reinterpreted in accordance with demands of a rapidly changing society and in response to modernity. Therefore, the social teaching of Islam in Indonesia must be understood as a characteristic of the Indonesian community, which is pluralist and tolerant.

[69] The religiously motivated riots (September 1995) in East Timor may be relevant here. In this case, many Islamic leaders were provoked by the incident, which unwittingly caused them to react negatively toward other religious groups. This in turn strengthened the existing prejudice toward Islam among non-Muslims in the province and strained their relations. See, for instance, Simmons (2000:57-77) also Hikam (1997:5).

Moreover, the state defended the idea of cultural relativism concerning universal human rights by appropriating and reinterpreting existing traditions, cultures and religions. In this case, the government repeatedly stressed that the principles of universal human rights are not appropriate to be applied in Indonesia because they would contradict the religious and cultural values of Indonesia. According to Hikam (1997) this only served to legitimise the state under the pretext of representing the interest of the entire community, as opposed to individual basic rights.

On the other hand, Islam is repressed when the government thinks that it will threaten its power. Many Islamic activists have suffered from state oppression. According to Asia Watch Report, Muslim activists have been charged with offences ranging from using violence in pursuit of the establishment of an Islamic state to undermining the state ideology, but in many cases Muslims were persecuted on the basis of their non-violent expression of religious beliefs.[70] The attitude of the government was to pursue political stability and economic development, at the expense of the basic rights of its citizens (Lubis, 1993:12-3).[71]

Neo-modernists' thought on human rights of Muslims in Indonesia can be seen from the way they have responded to three significant challenges of reconciliation between Islam and the modern conception of human rights; including women's rights, religious freedom and minority rights, and issues of corporal punishment.

Women's Rights

Although Muslim women in Indonesia do not enjoy human rights in the same way as women in the Western society, compared to other Muslim countries (especially Egypt) they seem to fare better. In particular, it relates to the issues of women's participation in public

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[70] D. F. Orentlicher, *Human Rights in Indonesia and East Timor* (Washigton, DC: The Asia Watch Committee, 1989), pp. 75-121.

[71] After Suharto fell, the situation with human rights has improved, especially the freedom of expression, and political participation. It can be seen from the large number of political parties (48) that participated in the 1999 election (Freedom House, 2002). Moreover, religious freedom has also taken a positive step; the government in 2000 under Abdurrahman Wahid recognised the existence of Confucianism as a religion (Islam, Christianity, Catholicism, Hinduism, and Buddhism). The rights of the Chinese minority are accommodated by allowing using the Chinese language and pursuing other cultural activities that previously had been banned by Suharto regime.

sphere. Istiadah argues that participation of Muslim women in the Indonesian public sphere has increased significantly in the last decade, especially in the education sector and workplaces.[72] Whereas women cannot participate in public sphere in many Muslim countries, women in Indonesia can even become a president of the country.

That Indonesia ever had a woman as a president; it does not necessarily reflect that the rights of all women in Indonesia have improved. In fact, in some areas women still suffer from discrimination, for example, workplace inequality, domestic violence, and sex trafficking.[73] However, the appearance of Megawati as the president of Indonesia at least shows the world that the political system and Islam (although not the official religion) of Indonesia are accommodating towards women. Furthermore, it shows that Muslims in Indonesia respect to the women's rights in public sphere.

The improvement of Muslim women's participation in public sector is as a result of the campaign of neo-modernists who resist a patriarchal interpretation of the Qur'anic verse on women's status in Islam.[74] The most popular verse concerning women's status in Islam is the QS Annissa: 34, which regulates the rights and responsibility between men and women. In interpreting this verse, neo-modernist Muslims like Abdurrahman Wahid argue that the word "lead" (*qowwamun*) in this verse has an anthropological meaning, which indicates that this verse is not the transcendental norm; rather this verse explains the situation at the time this verse was revealed.[75] Moreover, in relation to the issues of women's role at home, Mas'udi argues that they remain important especially as an educator for their children but that they should not neglect their role in the public

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[72] Istiadah, *Muslim Women in Contemporary Indonesia: investigating paths to resist the patriarchal system*, CSES, Working Paper No 91 (Clayton: Monash University, 1995), p. 2.

[73] S. R. Dzuhayatin, "Women, globalization and spirituality", *Islamic Millennium Journal*, Vol. 1, No. 1 (2001), pp. 132-133.

[74] Istiadah, "*Muslim Women in Contemporary Indonesia*", p. 9.

[75] Abdurrahman Wahid, "Religious Pluralism: democratisation in Indonesia—an assesment", in Democratization in Indonesia, Stockholm: IDEA. Available online http://-www.idea.int/publications/democratization_in_indonesia/11_religious_pluralism.pdf (2003)[accessed 27 August 2003].

sphere.[76] While a wife works for income, Mas'udi argues that the income will belong to her personally.[77] Commenting on a wife's obligation to obey her husband, Ali Yafie argues that husband's consent is not absolute.[78] For instance, a wife who refuses to have sex with her husband is not automatically sinful. This implies that domestic violence should not happen to women.

A controversial Islamic message on women's status in Islam is the Hadith from Abu Bakar, transmitted through Bukhari, Nasa'i and others, which specifies that "society will not survive (prosper) if it submits its affairs to women". This Hadith suggests that women, for many reasons, cannot hold a top public position or be a leader of the community. Responding to this, *Muhammadiyah*, the second largest Islamic organisation in Indonesia, has its own interpretations ─ that at the time of the Hadith women were not educated and were thus, incapable of holding authority.[79] *Muhammadiyah* believes that the situation now is quite the reverse, and women are fully capable of assuming public responsibility. They are qualified for authority. This position is reinforced by QS 16:97. "…We will bestow [on man and women] their reward according to the best of their action".

Meanwhile, NU has also produced some *fatwa>*with regard to the permissibility of women participating in the public sphere. For instance, NU's *fatwa>*in 1997 suggested that the status of women in society is equal to that of men; women are not subordinated in society. This *fatwa>*also suggests that women can take an active role in the public sphere as long as they have capacity and capability.[80] In relation

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[76] M. F. Mas'udi, "Reinterpreting Islamic teaching on women", in Forum for Islam and the Advancement of Women, *Islam and the Advancement of Women* (Jakarta: The Forum for Islam and the Advancement of Women, 1994), p. 27.

[77] Ibid, pp. 27-8.

[78] A. Yafie, "Women's status and leadership" in Forum for Islam and the Advancement of Women, *Islam and the Advancement of Women* (Jakarta: The Forum for Islam and the Advancement of Women, 1994), p. 107.

[79] M. B. Hooker, *Indonesian Islam Social Change through Contemporary Fatwa* (Honolulu: ASAA in association with Allen & Unwin and University of Hawai'i Press, 2003), p. 138.

[80] PBNU dan Lajnah Ta'lif Wan Nasir, *Hasil-Hasil Musyawarah Nasional Alim Ulama dan Konferensi Besar Nahdlatul Ulama, Tanggal 16-20 Rajab 1418/H 17-21 Nopember 1997 M, Di Pondok Pesantren Qamarul Huda Desa Bagu, Prngrata, Lombok Tengah Nusa Tenggara Barat* (Jakarta: Sekteratiat Jenderal PBNU dan Lajnah Ta'lif Wan Nasir, January 1998), pp. 57-60.

to the right of women to sit in parliament, NU produced a *fatwa* in 1935 which allowed women to hold positions in parliament.[81] Similar views can also be found in the Collection of Principles of the Muhammadiyah Council of Opinion (*Himpunan Putusan Majlis Tarjih Muhamadiyah*), which suggests that women can be active in the public sphere, including the political arena, because their capacity enables them to do that The reason is simple, women now have better education than previously.[82]

Religious Freedom and Minority Rights

The commitment of Muslims in Indonesia to the issue of religious freedom and minority rights has been strong since independence was gained 1945. Although Muslims form the majority of population, they agreed to not establish an Islamic state. Instead, they agreed that the country was based on patriotic, humanist and religious values, that later formed what is called *Pancasila*. It represents an ideology of tolerance in Indonesia (Ramage, 1995).[83] Then, in reality, Indonesia has often been held up as an example of religious pluralism successfully implemented in one country where one religion, Islam, is the faith of a large majority of the population.[84] Although in the last several years the country has witnessed some religious and ethnic conflicts, many believe that those conflicts are not solely triggered by religion. The causes of the conflicts are multi-layered, and the conflicts are provoked by power struggle between rival elites.[85]

Over the past 50 years, many fundamentalist Islamic groups have sporadically sought to establish an Islamic state, but the country's

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[81] M. B. Hooker, *Indonesian Islam Social Change through Contemporary Fatwa*, (Honolulu: ASAA in association with Allen & Unwin and University of Hawai'i Press, 2003), p. 138.

[82] Ibid, pp. 137-8.

[83] In this regard, Nurcholish argues that the ideology of *Pancasila* is compatible with Islam and it contains the spirit of the Madinah Charter. For Indonesian Muslims, accepting the ideology of *Pancasila*, is a guarantee of the harmony of religious pluralism in Indonesia (1983:10).

[84] B. Tibi, *Islam between Culture and Politics* (New York: Palgrave, 2001); M. Woodward, "Indonesia, Islam and the prospect for democracy", *SAIS Review*, Vol. 21, No. 2 (2001).

[85] Martin Van Bruinessen, "Genealogies of Islamic radicalism in post-Suharto Indonesia", *South East Asia Research*, Vol. 10, No. 2 (2002), pp. 117; Abdurrahman Wahid, "Religious Pluralism", [accessed 27 August 2003].

mainstream Muslim community, including influential organisations such as the *Muhammadiyah* and the *Nahdlatul Ulama*, continued to reject the idea. Proponents of an Islamic state argued unsuccessfully in 1945 and throughout the parliamentary democracy period of the 1950s for the inclusion of clauses (the so called "Jakarta Charter") in the Constitution's preamble making it obligatory for Muslims to follow the *Shari*ah*. During the Suharto regime, advocacy of an Islamic state was forbidden. With the loosening of restrictions on freedom of speech and religion that followed the fall of Suharto in May 1998, proponents of the "Jakarta Charter" resumed their advocacy efforts. The secular political parties and appointed police, military and functional representatives, who together hold a majority of the seats in the People's Consultative Assembly (MPR), oppose proposals to amend the constitution to include the *Shari*ah*. The Muhammadiyah, the NU and many prominent Muslim clerics also oppose such a charge.[86]

The idea of secularisation is supported by prominent Muslim intellectuals such as Nurcholish Madjid and Abdurrahman Wahid. Both scholars argue that secularisation is necessary for a plural society like Indonesia, and the position of religious teaching, including the *Shari*ah,* can be addressed by stressing the ethical aspects of religion.[87] Thus, the state maintains the neutral stance *vis-a-vis* the religion in order to guarantee religious freedom to the public. Therefore, Wahid argues that any government regulation on religious activities is contrary to the idea of religious freedom and pluralism.[88] During the Suharto era, the government produced laws to maintain religious pluralism in Indonesia. For instance, the Marriage Act of 1974 was an attempt to weaken the Islamic courts in relation to polygamy issues, which caused great consternation among some Muslim leaders.

With regard to the rights of minorities, non-Muslims in Indonesia are not regarded as *dhimmi* but citizens of equal standing. There is no discrimination against any religion in employment, education, housing and health. Non-Muslims can have a top position in the public arena.

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[86] US Department of State**,** 'Egypt', *International Religious Freedom Report 2003*, Washington, DC: US Department of State, 2003a. Available online at http://www.state.gov/g/drl/rls/irf/2002/13994.htm [accessed on 11 May 2003].

[87] A. Kull, *Modern Interpretation of Islamic History in the Indonesian Context: the case of Nurcholish Madjid,* Paper presented at the The Fifth Nordic Conference on Middle Eastern Studies, Lund University (25–28 October 2001), pp. 4-5.

[88] Abdurrahman Wahid, "Religious Pluralism", p. 205.

The country has witnessed many non-Muslims (Christian, Hindu, and others) with a high rank in the military and civilian hierarchy. Although there has not yet non-Muslims been a president, there are some ministers, governors or city majors are non-Muslims.[89]

The conception of *dhimmi,* according to Sadzali, is not relevant in the 21st century. It was the old practice of Islam which was only relevant in the 8th century.[90] Moreover, Indonesia was not a conquered by Islamic invader instead; country emerged from the common consciousness of its citizens to establish a nation state, Indonesia. Sadzali suggests that to maintain a tolerant attitude between religious followers in Indonesia is to refer to the spirit of the covenant of Medina, where the Prophet has laid a foundation to create an Islamic community based on religious and ethnic pluralism.[91]

Corporal Punishment

The attitude of Muslims in Indonesia seems to be ambiguous on the issue of corporal punishment. On the one hand, Muslims recognize the state's penal codes, but on the others hand the *ulama* (*Nahdlatul Ulama* and *Muhammadiyah*) recognise the existence of Islamic penal codes, including *rajam* and *hudd* punishment. At the state level itself, practices of torture continue to prevail, especially among military and police involved in areas of conflict, such as Aceh, Papua and Maluku.[92] The death penalty is also applied to those convicted of drug trafficking, severe crimes or terror, like perpetrators of the Bali Bombing.[93] However, there are almost no cases reported regarding the abuse based on *Shari'ah*.

There have been only two cases in relation to *rajam* and a threat of death penalty for liberal Muslims. However, these two cases did not receive any support either from the Muslim society or the government. The first case is the carrying out of *rajam* in Maluku in 2001. This punishment was conducted by Ja'far Thalib, a leader of *Laskar Jihad* on

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[89] US Department of State**,** 'Egypt'.

[90] Munawir Sadzali, "Penegakan HAM dalam Pluralisme Agama: Tinjauan Konsepsional" in Anshari Thayib et. Al., *HAM dan Pluralisme Agama* (Surabaya, Indonesia: PKSK, 1997), p. 52.

[91] Ibid, p. 55.

[92] http://www.home.snafu.de/watchin/Index-engl.htm.

[93] Amnesty International, *Egypt*, London: Amnesty International 2003a. Available online at http://web.amnesty.org/library/eng-egy/index, [accessed on 27 August 2003].

a follower (Abdullah) who had committed the sin of adultery. In this case, the police has arrested and charged Ja'far Thalib, the perpetrator of the punishment with causing the death of another person.[94] The Indonesian police argue that *rajam* is not recognised by the Indonesian law.

Other case was a threat of death penalty to a liberal Islamic activist, in December 2002. The Forum of Indonesian Clerics and Islamic Followers called on the police to investigate Ulil Abshar-Abdalla, the leader of Liberal Islam Network, for writing an article that urged a less literal interpretation of Islamic doctrine. The article stated that some aspects of the *Shari'ah*, such as cutting off the hands of thieves, might not be applicable in this culture and this century. The Bandung-based Indonesian People's Ulama Forum, a group of religious scholars, called the article an insult to Islam. They stated that, according to Islam, a person who insulted Islam should be sentenced to death. However, the police did not arrest Ulil, and the religious scholars later distanced themselves from their earlier statement, saying they had not meant that Ulil should be sentenced to death.[95]

The two cases above show that there is still ambiguity amongst Muslims in Indonesia toward the issue of punishment according to the *Shari'ah*. Fortunately, prominent liberal Muslims like Abdurrahman Wahid, Nurcholish Madjid and among the younger generation Ulil Abdalla constantly affirm the need to reinterpret the text of classical *Shari'ah*. Quoting Ibn 'Abd al-Salam, an Islamic jurist who lived eight centuries ago, Wahid argues that some practices of the Islamic penal codes, like *rajam* and hand amputation, are inapplicable in the modern society.[96] This is not only because they would violate the principles of humanity, but because there are many conditions that should be fulfilled before those penal codes are put into practice.

Conclusion

The preceding discussion reflects the pluralism of Muslim responses to the modern, secular perspectives on human rights. On the one hand, the conservative argument seems to be more dominant

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[94] Police arrest paramilitary Muslim leader in Surabaya, Jakarta Post, 5 May 2001.

[95] US Department of State**,** 'Egypt'.

[96] Abdurrahman Wahid, "Hukum Pidana Islam dan Hak-Hak Asasi Manusia", in *Muslim Ditengah Pergumulan* (Jakarta: LAPPENAS, 1983), p. 98.

in Egypt, while in Indonesia the moderate-liberal argument seems to prevail in the public debate on human rights. In other words, Muslims in both countries have different attitudes toward international standards of human rights. However, despite the difference, there is a similar trend in the way Muslims take part in the discourse of human rights. That is, Muslims' participation in the human rights discourse is determined by the dynamic tensions among three interconnected poles. The first pole is conservative Islam, which argues that Islam is a religion whose universal claims encompass the realm of human rights. The second pole is liberal or reformist, and argues that the modern, secular-based concept of universal human rights is compatible with Islam. The third pole, the most complex, is the state's own interpretation of human rights principles in accordance with national interests real or imagined.

The fact that Islam contains universal principles, which may or may not be compatible with the secular-based universal principles of human rights, is beyond dispute. Because of this, tensions between the first two poles are influenced by the ways in which Islamic groups and leaders interpret such universal principles. They are also influenced by the responses from advocates of secular-based human rights principles to certain Islamic principles.

Thus, coming to grips with the diversity of opinions on, and interpretations of, basic principles advocated by different groups within the Islamic community is important. For instance, the conservatives maintain that Islamic teaching can never be reconciled with ideas and practices based upon secularist foundations.[97] Nevertheless, for those Muslims with liberal inclinations, such reconciliation and cooperation between the two are at least theoretically possible and worth trying in the real world. In this regard, Monshipouri argues that "fusing secular and Islamic principles can effectively promote human dignity."[98]

Conservatives advocate legal formalistic strategies in putting their ideas into practice, while moderates advocate transformative and gradual approaches through inculcating Islamic ethics in society. The first approach is based on the idea that the formalisation of Islam in all

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[97] F. Halliday, *Islam and the Myth of Confrontation* (London: I B Tauris, 2003), p. 109.

[98] M. Monshipouri, *Islamism, Secularism and Human Rights in the Middle East* (Boulder: Lynn Reiner Publisher, 1998), p. 25.

dimensions of life, through laws and supported by the state, is the only option to fully implement Islamic teachings. The necessity of establishing an Islamic state or developing an Islamic society based on the *Shariʿah* as a prerequisite is indispensable.[99]

On the contrary, the second approach maintains that the formalisation of Islamic teachings by imposing the Shariʿah is not the only option, and it could even be dangerous in a pluralist society. Developing a modern society in which Islam will attempt to influence its moral and ethical bases without using legal formalistic means is important. Islam, in this view, is but one among many value systems that exist in society and should not claim to be the only alternative for the development of the new society.[100] If the second approach is rights, then the main task is to determine common ground on which Islam can promote human rights with other forces.

Turning now to the third pole, namely the state's interests, which is the most complicated one. The dynamic relations between Islamic forces and the state in both countries, has a tremendous impact on the efforts of Islamic groups willing to work in the field of human rights. But it is not simple; in fact Islam as a political and social force in both countries has been disunited on the issue of human rights. This is partly because of the state's strategy of co-optation – for instance, the establishment of religious authority in both Egypt and Indonesia. The establishment religious authority in many instances has interpreted religious teachings according to the interests of government. In Indonesia, the MUI (*Majelis ulama Indonesia,* the Council of *Ulama*) has supported the government's program on *Keluarga Berencana* (family planning) by producing a *fatwa* on this issue.[101]

In Egypt, the religious establishment has been useful for the Egyptian government in supporting government policies. The most striking example was the Azhar decision, following the Camp David Accords, to proclaim that peace with the Israel was in agreement with Qur'anic injunctions, reversing its previous position, which forbade

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[99] D. Brumberg, "Islamists and the politics of consensus", p. 110.

[100] M. Monshipouri, *Islamism, Secularism and Human Rights in the Middle East* (Boulder: Lynn Reiner Publisher, 1998), p. 39.

[101] M. B. Hooker, *Indonesian Islam Social Change through Contemporary Fatwa*, (Honolulu: ASAA in association with Allen & Unwin and University of Hawaii Press, 2003), pp. 166-75.

such an outcome. In domestic politics also the *ulama* would buttress government policies with elaborate Islamic justifications, which include the *fatwa* of Abd al-Halim Mahmud, the Azhar's sheikh, about communism in 1976, declaring it heretical and asserting that Islam sanctions private property and individual endeavour, and in 1961 when the Mufti of Egypt sanctioned the socialist path of development.[102]

Meanwhile, there is an interesting phenomenon that, in both Egypt and Indonesia, the commitment of Islamists or conservative Islam to human rights issues is motivated by same reasons: ideological and strategic interest. The first is their rejection of secular and western values, while the second is a long-term strategy of Islamising the political culture. In such an environment, advocates of human rights in the Muslim community face increasing pressure from both the state and Islamist groups. Their voices are muted and suppressed by censorship or harassment, making it difficult for them to participate openly in the discourse and practices regarding human rights issues in both countries.

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[102] F. Ajami, "In the Pharaoh's shadow: religion and authority in Egypt", in J.P. Piscatori (ed.), *Islam in the Political Process* (Cambridge: Cambridge University Press in association with Royal Institute of international Affairs, 1983), pp. 14–19.

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