

Sharia, Justice, and the Politics of Intimacy

Rafia Zakaria

Abstract: In the war-ravaged decade following 9/11, every aspect of Muslim women's lives has become a fulcrum of political contestation. From burka bans in Belgium to proposed Sharia bans in Oklahoma and Tennessee, saving Muslim women is advertised as a purported aim for broad and varied campaigns that in actuality have little to do with them. In private conversations and in public forums on these issues, the questions on many lips are inevitably "But doesn't Islam really oppress women?" or "Doesn't Sharia law treat women as second class citizens?" Because these observers see Islam, Sharia, and Muslim women undifferentiated monoliths, the answers to their questions consequently fit the binaries that produce them: good and bad, just and unjust, oppressive and liberating. The assumptions buried inside these perceptions rest on western law, in which gender equality is safe, while in Sharia law, its specter hung with images of hacked hands and stoned women, it is not.

The consequence of looking through these prisms is that everyone, reader and writer, scholar and student, is required to pick a team and then sit as onlookers in a civilizational contest that had little room for nuance or dialogue. All writing about Islam and Muslim women must thus ascribe to this paradigm, either an unequivocal defense or a fervid denigration, a prioritization of being either Muslim or female, and always an "either/or" and never ever a uniting "and."

The essay presented here is a small rebellion against precisely this arrangement, one that insists that we choose a side, and immediately agree or disagree, before we understand or empathize or make any attempt to feel how the world appears to others seated at different places in the arena or to those in the ring itself. Rather, liberation and justice are complicated issues that defy the construction of neat lines across cultures and contexts and individual lives.

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I grew up in the eighties in a Pakistan that had recently escaped the shackles of military rule. It was an euphoric time when Pakistan was about to elect its first female Prime Minister, Benazir Bhutto (1953-2007). It had been a grisly decade, one in which Sharia law, or at least Pakistan's own militarized version of it, had played a defining role in creating a new kind of Pakistan. In an effort to legitimize his dictatorship, General Zia ul Haque (1924-1988), who had grabbed power in a military coup in 1977, had initiated an "Islamization" program. With the goal of producing a "pure" society by criminalizing all temptation, Zia and his allies produced laws whose true character was cleverly disguised in Islamic-sound-



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ing terms and references, which served to mask the draconian, authoritarian, and misogynistic rule that served his interests. What did this mean for the everyday life of a child in Pakistan? Children like me watched British sitcoms so drastically censored that they often lasted only ten minutes. Women appearing on television suddenly were required to cover their hair. Women were never shown having any physical contact with men on screen. Aside from what was happening on television, men and women could be asked at any time to produce their marriage documents by any police officer. In other words, the introduction of 'Islamic' norms, which were quite new to the population, suddenly transformed the daily lives of Pakistanis.

I certainly was not preoccupied about Islamic law in those early years of my life, nor was I worried that legally I counted as only half a witness, while my twin brother, with whom I competed daily, counted as a whole. Yet the existence of these precepts and their ubiquity in determining relations between men and women were an invisible, though determinative, aspect of my life. They dictated, for example, the manner in which our home was arranged, such that an unrelated male, upon entering, would be led directly to a reception room in the front of a house and never encounter any of the women. In later years, it would constrain whom I was allowed to visit and when, as well as which schools I would be sent to for study. Eventually, the extension of President Zia's rule had an effect upon a myriad of details in my life, as well as the lives of the other women in my family. The "Islamization" programs that had been initiated under Zia's rule continued long after his death in 1988.

My Aunt Amina was married before I was born and so, though she was a frequent visitor to our home, she did not live with us. Her visits were a cause of much excitement to my brother and me, whose ordered lives of school and homework did not allow for the many novel experiences her visits invariably produced. For example, in the early years of their marriage, Aunt Amina's husband, Uncle Sohail, rode a motorcycle, providing us kids hours of entertainment and excited speculation. If adults were around, we were sometimes allowed to sit and pose on it, a delight for my brother especially. But would we be allowed to ever ride the motorcycle? On one and only one occasion, I remember our being given a ride around the block. Oh, the exhilaration, when the achingly familiar landscape of our block was suddenly and completely transformed into a whizzing blur of shapes. We may not have gone very far in distance, but in terms of our imaginations we had traveled to another place altogether! On other occasions, Aunt Amina would come alone to spend an afternoon with us. She often came bearing special treats that she had made just for us. Whether it was with her thoughtfulness or new experiences, Aunt Amina occupied a much beloved position in the hearts of her young niece and nephew.

In fact, Aunt Amina's position in our minds was even more special because ordinarily the adult worlds of our elders were separated from us not simply by the boundaries of generation, but also of language. My paternal grandparents, migrants from India, spoke a North Indian dialect that I was never formally taught. A quick turn into this language could insulate adult discussions from the curious ears of children and servants, in a world with very little privacy from either. Of course, despite having not been taught the language of the elders, by the age of six I was beginning to decipher just enough, quickly translating the words falling from my grandmother's mouth as I played with a doll or stared at a jigsaw puzzle. When conversation slipped into the mysterious dialect, I became immediately alert that some juicy bit of news was about to be divulged. It was through these shifts in language that I pieced together my Aunt Amina's increasing struggles with her in-laws and her husband.

After seven years of marriage, Aunt Amina had failed to bear her husband any children.

Her apparent infertility was the source of unending troubles for her, which were becoming increasingly serious and painful. Subject to constant taunts in her own home, she was treated like a maid by some, rather than being afforded the respect due a wife. She was relegated to some of the crudest of domestic tasks as a reminder (or was it a punishment?) of her status as a barren woman. Weddings were particularly difficult times for Aunt Amina, as she found herself excluded from celebrations. In one particularly cruel instance, Aunt Amina's eldest sister-in-law forbid her from greeting and kissing the young, new bride, proclaiming loudly to all who were present that the touch of a barren woman was too inauspicious on such an occasion. I pieced together all of this, bit by bit as unfamiliar words fell word from word from the mouths of our elders.

It is difficult to know precisely when and where cultural perceptions are transmitted to children, but I remember feeling terribly sorry for my aunt on many occasions. My brother and I, always looking for new playmates, who in our imaginations would have piles of new toys to share with us, imagined Aunt Amina's childless house to be a singularly boring place. No playmates meant no toys, or so we thought. Aunt Amina proved us wrong every time we visited by pulling out a collection of toys that she kept just for us. Her little house, fascinating to us because it represented a miniature version of the large dwelling we inhabited ourselves, was decorated everywhere with pictures of children. Pictures of babies from all over the world, cut out from calendars and magazines, adorned the walls of the kitchen and living room, and were stuck between cabinets and even under the glass of the dining table. For Aunt Amina, they were perhaps shining talismans of hope. They formed a silent chorus of encouragement for my aunt; she clung to the dream of becoming a mother.

It was just another pleasant winter morning when I woke to find Aunt Amina sitting at our breakfast table. Her presence was ominous since she had never, in my ten years, spent a night in her father's house. She always returned to sleep in her husband's home, as tradition and culture demanded. Her hair, always neat and in a thick dark braid, was strangely unkempt; her wheat-colored skin, usually flawless, was noticeably covered with blotchy tear stains. She managed a weak smile when she saw me sit at the table, already in my school uniform. I looked at her with the mixed curiosity and apprehension of a child who did not yet know how to react to distraught adults. None of the elders gave me much information that morning. On my way to school, I finally worked up the courage to ask my mother what I imagined to be the worst possible scenario: "Has Uncle Sohail died?" I can only imagine what my mother must have thought of that question. Uncle Sohail hadn't died, but perhaps it would have been better for Aunt Amina if he had.

Uncle Sohail had chosen to take a second wife, a woman who worked with him at the bank. He had known her for many years, before he had married Aunt Amina. For three days and nights she had pleaded with him to reconsider and every time he had refused, reminding her that this was his right as a Muslim man. Polygamy is not very common in urban Pakistan; indeed, I had never before heard of it and no one in our family at the time had multiple wives. But, as of late, it had become more acceptable as a religiously prescribed social panacea to the problem of too many destitute women. Aunt Amina had come to our house after she refused to accept Uncle Sohail's decision to take a second wife. She must certainly have known that polygamy was a possibility—men were increasingly throwing around the threat of another wife—but she had never really expected it to happen in her own home. She did not know any other family where there was more than one wife. She had told Uncle Sohail that it was better to kill her than to force her to watch him marry again, sharing everything that was theirs with another wife. As it turned out, Uncle Sohail's decision had not been taken in anger or at the spur of the moment. The annex that he had

been building all year, under the pretext that they might need to accommodate visiting relatives, was in fact additional space for his new wife.

Again and again, Aunt Amina pleaded for help from my grandfather and father, her male guardians. In hushed tones, the topic of divorce, or *khula*, was discussed. But how would this happen? Would Uncle Sohail allow it? Aunt Amina's marriage contract had been drafted by an old imam, who had not thought to add a clause allowing her to petition for divorce. I did not understand the gravity of the discussions then. I did know that I had never heard of divorce; the women around me, every single one, were either too young to be married, awaiting marriage, or married with broods of children. I understood the idea of divorce with the same foreboding invested in it by all of the women of my family. For days, my aunt remained in my grandmother's room, leaving only to pray after the call was sounded from the neighborhood mosque. Sometimes she would join us at the dinner table, but she ate little and did not speak at all. A few times, my brother and I tried to joke with her, imagining that our childish insistence could lift her out of her misery, but we were unsuccessful. Parades of older male relatives came to the house and had conferences with my father and grandfather; the women of the family were completely excluded. The Imam, who had performed her marriage and authored the marriage contract, came to advise the family of the religious and legal options, providing little solace. The marriage contract he had drafted did not provide any options for her: it did not contain a clause forbidding polygamy, it did not provide for a significant settlement to be paid to her in the event of divorce. As a divorced woman, Aunt Amina would not only be destitute but also stigmatized. It would be even worse than her humiliation as a rejected wife. Aunt Amina found little comfort from either her religious community or her family.

And then, one morning, as suddenly as she had appeared, my Aunt Amina was gone. The belongings that she had neatly arranged on a bureau in my grandmother's room had been replaced by the porcelain knick-knacks that stood there before her arrival. I was told that she had returned to "her" house; Aunt Amina had returned to her husband's home. Because the information supplied was so meager and because the uncomfortable silence she left in her wake provided so few clues to what had happened, I spent hours imagining what she must be going through. Her husband would marry a new woman and she would be there to witness it. Uncle Sohail for his part had offered Aunt Amina the new annex to the house as a sort of consolation. I imagined her standing at the upstairs window of her house looking down into the central courtyard and the other apartment where the new bride would soon live. Weddings are such noisy affairs in Pakistan. The arrival of a bride would certainly be accompanied with fireworks, music, and great fanfare. I imagined Aunt Amina alone and watching her husband as a bridegroom greeting his new bride. There would be a grand feast with the very relatives who had previously welcomed Aunt Amina into their family years ago. These people knew her family. Had they pretended to care for her at the time of her wedding? For all these years? I imagined her as she watched them down below consuming celebratory plates of rice and mutton, as well as the sweet delicacies provided to celebrate the second wife's arrival. How unconcerned they all were at the life that lay destroyed just upstairs from these festivities.

And so the marriage took place. The new wife's name was never mentioned in our house, a wishful invisibility perhaps that became a habit. In the end, the marriage arrangement was both surreal and terribly ordinary in its pragmatism. Her husband rotated wives every week; during "her" week he would live upstairs, taking all his meals with her. The following week he would switch. In the weeks she was "off" my aunt was excused from all wifely duties. His affections, of course, were similarly divided.. Much of my aunt's life

became defined by watching from her windows. She kept vigil to see how her husband changed as he descended the stairs from his life with her to another one life entirely. She would talk of how hurtful it was to watch from her upstairs window, stranded and alone, as her husband and new wife got dressed and went off in the car for the evening. Divided thus between off and on weeks her life oscillated between loved wife and abandoned wife, between servitude and loneliness.

In the decades since I migrated to the United States, it was convenient to relegate Aunt Amina's story to an instance that took place "back there at home" with little or no seeming relevance to my life as a Muslim woman in the United States. The term Sharia was imbued with all the emotional negativities of Aunt Amina's situation. I felt that a clean line could be drawn between the legal secular world of American law in which I was being trained as a scholar and practitioner on the one hand and the transcendent gray areas of women's rights and responsibilities in Islam on the other. Certainly Muslim women living in the West, like myself, could take advantage of the rights available to women here, get divorced, remarry, and not have to worry about the possibility that their husband would take another wife against their wishes. Although a practicing Muslim, I did not believe that the messy issue of Sharia or Islamic law had any place in an American courtroom. It was easy, it seemed to me, to simply take the rights available and leave the vexing terrain of Sharia to be wrestled with in the Muslim world.

So it was with these assumptions that I began a one-year stint working at a domestic violence shelter in Indianapolis, Indiana. I had just finished defending a dissertation that focused on the choices between religious and gender identity that Muslim women face as members of minority communities in the West. A partnership between the domestic violence shelter and a local Muslim community organization provided a unique opportunity to work with women I had written about. The project aimed to provide legal assistance to Muslim women filing for divorce, with the idea to show them that the community supported survivors and not their abusive husbands. It was meant to tackle head-on taboos that would otherwise prevent women from seeking separation. Providing a context that was sensitive to religious and cultural identity would help in the transition to independence.

Academia, with its well-known insularity, provides depth but also isolation from many of the challenges that face people in their daily lives. So while I had passed the bar and begun to practice law, I had little direct experience working with abused women and the problems that they face. I was well-schooled in the battles of Muslim women in the United States to advocate for changes within their own communities, including efforts to redefine the faith from within and to lobby for increasing representation and equality within mosques, but I continued to view the battle to define women's equality within American Islam as an issue of interest only to a small group of activists and even smaller number of scholars. In other words, the latter groups were for the most part engaged in issues that were far from the everyday realities of ordinary Muslim women and their lives. My views on all these matters were informed by feminism, but one that was situated both within my religious community and certainly not particularly urgent. I believed that the task of re-interpreting Sharia law was integral to reclaiming the arena of faith as one of equality for Muslim women, but did not understand what role I had to play in that process. As I lived in the West, I saw myself and my most direct concerns focused here. The secular U.S. legal system, in my opinion, provided sufficient protection to Muslim women in diaspora communities. I believed lay the bulwarks of equality lay in American law, rather than religious law, and would ensure that, at least in the West, Muslim women would not be discriminated

against. The shelter at which I went to work provided me with a shocking first step into the world of the proximate and urgent problems facing Muslim women in the United States.

I picked up Zainab¹ from the motel where her husband, Said, had abandoned her three days earlier. Married only a year earlier in Amman, Jordan, she could not drive and spoke little English. Zainab had left behind friends, family, and a job to be with a man who had promised her a life of comfort in the United States. She had met her future husband at a wedding two years before, when her cousin had wed one of his brothers. Their encounter was punctuated with the romance of the wedding, one of the few instances when young men and women could socialize in Amman with some degree of freedom, although under the watchful eyes of their families. Once or twice they had been able to have a few clandestine conversations, when a lenient chaperone left them alone. During one of these rare moments of privacy, he had slipped her a small gold ring and asked her to marry him. The act was unusual and certainly unexpected. Marriages were nearly always initiated by elders in Zainab's conservative community and the fact that Said had taken the step of asking her himself, even if secretly, won her heart.

A few months after Said's departure following the wedding, his family showed up at Zainab's home to arrange the marriage. Said's family was already known to Zainab's, but this was the first time they had visited her home. Zainab remembered well serving tea to his old mother, who inspected her from head to foot without any hesitation or embarrassment. A little daunted by the severity of her potential mother-in-law's black attire and sharp, scrutinizing gaze, Zainab consoled herself with the thought that she and Said would live in the United States after their marriage, not with the old lady. When her father called her to his room later that night to ask if Zainab wanted to accept Said's family's proposal, Zainab was delighted to say yes. Even though she had exchanged barely twenty words with Said at the wedding and had only a few brief moments alone with him, Zainab called their match a "love" marriage.

This kind of transnational marriage has become a common occurrence in many Muslim families with the departure of many young males to foreign countries. Embellished with the glamour of life abroad, young men return to their home countries and often have their pick of brides. Young women, like Zainab, daunted by the specter of marriages defined by meddling mothers-in-law, expectations of producing broods of children, and juggling careers in tough economic times, have their own interests in accepting proposals from men settled abroad. Many imagine that the man himself, after having lived abroad, is likely to have a far less traditional view of marriage and will necessarily be freed of the dominating views of his family. In other words, young women like Zainab assume that matches with foreign settled men provide freedom in many forms, adding to the allure of such a match. In the piles of glossy wedding pictures that Zainab and I pored over in the days that followed our first meeting, I saw an opulent ceremony attended by hundreds of guests and well wishers and a resplendent bride who barely resembled the drawn and terrified woman I saw before me.

Things had unraveled very fast after her arrival in the United States. During a hurried "honeymoon" in Chicago, Said appeared preoccupied, a marked and drastic change from the attentive groom of barely a week earlier. Several times during the night, he had stolen outside to talk on his cell phone in rapid English, which Zainab did not understand. It was after one of these conversations, when Zainab insisted on knowing with whom he had been speaking, that Said struck her across the face. It was the first but not the last time. A stunned Zainab recounted that she lay in her bed crying for the rest of the night, suddenly filled with trepidation about this new life in which she was all alone. After months of nights

spent imagining what America would be like, and how she would decorate her new American home, Zainab longed for her childhood room and the bed she had shared with her younger sister. She longed for her family and the support that they could offer in her time of trouble.

It was not long after arriving at their suburban condominium that Zainab discovered that Said had an American girlfriend. He made no effort to hide either his phone calls with her, his visits to her, or the fact that he had no intention of leaving her now that he was married. In a photograph stuck in a kitchen drawer, Zainab saw that she was an older woman, perhaps even older than Said, who at thirty-five was ten years older than Zainab. Zainab confronted him one night when he returned home. "Why had he said nothing in their long conversations and Internet chats over the ten months of their courtship? Why had he married her and told her he loved her when he was in love with someone else?" She had many questions for him that night, but in exchange she received only blows. Later that night he raped her. This became the pattern of their marriage. Every time she confronted him about leaving her alone while he went to visit his girlfriend, she was punished. After one grisly fight during which she threatened to tell her parents and his family what was going on, he imprisoned her in a closet for two days. He disconnected the phone line in the apartment and allowed her to call home only through his cell phone with a phone card. He watched her the entire time she spoke to her family; she spoke for no more than ten minutes at a time. If she gave any indication of her unhappiness during these conversations, he promised to punish her.

Despite the pain and humiliation she faced, Zainab did not leave Said. Even as she recounted the story to me in tears in the shelter office that first day, Zainab insisted that she had wanted desperately for the marriage to work. She did not know how she would face her friends and relatives at home if she were sent back a divorced woman. As was the case for Aunt Amina and the women in my family in Pakistan, divorce for a woman was too terrifying prospect to pursue.

Zainab had not spoken to her family in over three months when Said dropped her off that day in front of the Extended Stay America Motel where I would pick her up a week later. Sitting in the brand new Nissan Altima that he had bought with the wedding money they had received in Jordan, he looked at her calmly and in Arabic pronounced the words "I divorce you" three times. Then he had gotten out of the car and unloaded her things on the sidewalk. Before driving off, he had handed her a stack of legal papers. In the long days that Zainab spent sitting alone, hungry, and frightened in the motel room, she had gone over each page as best as she could. They were divorce papers from a court in Indiana that had pronounced her divorced. Said had evidently signed Zainab's name fraudulently several times, alleging in the papers that they mutually agreed to the divorce. Only once did she remember signing a single page at his request, which Said had pulled out after a rare meal they had shared at a restaurant. Zainab had been so delighted at his affectionate behavior that evening, reminiscent as it was of better days in Jordan, that she had not even read the page before she signed it, only glancing at it before printing her name in neat letters. Through a string of deceptions, Said had managed to legally divorce Zainab in the United States without ever entering a courtroom and without her even knowing what was happening to her.

Poring over Zainab's case in those first few days, I felt dejected. While I could get her case re-opened by demonstrating the fraudulent circumstances behind the divorce decree, there were few options to get her the much-needed monetary support she would need beyond the basics of survival that were available to her at the shelter. Why did she face such

an uphill battle? In recent decades, most states have passed legislation that makes divorce a “no-fault” issue. This means simply that if either a husband or wife asks a court for a divorce, it is automatically granted without anyone having to prove extreme conditions, such as adultery or abandonment, as was the case in decades past. Divorce in America is no longer treated in punitive terms. Instead, courts have turned away from deciding whether the husband or the wife is responsible for the breakdown of the marriage, an issue considered legally irrelevant to their future lives or their rights at the time the marriage is dissolved. These changes make sense in a post-feminist society, where women can marry and divorce at will and are unlikely to be stigmatized by the breakdown of a marriage. With the emergence of “no-fault” divorce as the standard in family law, litigation focuses on property division rather than the moral contours of why the relationship had broken down. In a world of blended families and frequent divorces, few U.S. judges imagine a marriage as short as a year to have significantly impeded the life of either the husband or the wife. Spousal support, or the idea that the husband should have to pay the expenses of his former wife until she gets back on her feet, is largely unimaginable.

And so I faced the task of explaining an American legal reality of freedom and consent to a woman who had been married under circumstances that could not have been more different. Zainab expected spousal support and her argument for it was simple; she had given up everything to be married to Said and she feared the pain of an ineradicable stigma if sent back to Jordan as a divorced woman. Again and again, she would ask me about her rights under the Islamic marriage contract, and repeatedly, I would tell her that an Indiana court would not enforce a marriage contract based on Sharia law. Then she would exclaim aghast that if she could not get any rights or restitution under Islamic law, what indeed were her options under American law? My response that I expected that all she would receive from an American court was a legally recognized divorce, no property, no spousal support, and no amount awarded for repudiating the marriage contract was impossible for Zainab to digest. “How can this be?” she would ask. “This is America...women are supposed to have rights here...how can a judge tell me that I deserve nothing after having been abused and abandoned?”

There I was, with my first Muslim client, confronting a predicament in which the American legal tools at my disposal did not promise the best result for my client, a Jordanian Muslim woman. In my legal training, as well as my academic work, my focus had been almost entirely on the task of introducing women just like Zainab to the idea that the American legal system allowed them a level of equality and self-realization that was not yet available in Muslim countries. But figuring out what precisely would be judicious in this case was challenging. Should Zainab, who had been so visibly wronged, be treated like the average American woman petitioning for divorce after a few months of marriage? Should Said be treated like any other American husband whose marriage hadn’t worked out as he had hoped and who therefore wanted to be with another woman? Should Zainab’s unique situation as a Muslim woman, whose chances of remarriage were severely affected by her divorce, be considered in the case or ignored? More importantly, should Said have to pay to support a woman he had only been married to for a little over a year? All of these thorny questions were implicated in Zainab’s case, which questioned the core premises of fairness and equity in marital relationships.

As a lawyer, I had been trained to find the fair and just result for my client, one that would make her whole and give her the best chance at rebuilding her life. And ironically, it was Zainab’s Islamic marriage contract that seemed to me to provide her the best hope in this regard. Unlike the perfunctory and often poorly drafted marriage contracts frequently

used in my native Pakistan, Zainab's contract had been drafted by an attorney, duly signed and witnessed, and had certified translations in English. Its clear stipulations mandated not only that Said did not have the right to contract any polygamous marriages, but also that Zainab had the right to divorce him, something otherwise difficult for many Muslim women to do. The contract also imposed additional duties upon Said in event of divorce. He would have to provide spousal support for two years, and also pay Zainab a pre-fixed amount, \$10,000 dollars in this case, if he chose to divorce her. The terms of the contract were indeed hopeful in their specificity, if they could be enforced in the United States. But in the post-9/11 climate, where the term Sharia evoked imaged of the Taliban and of gruesome amputations, I struggled to find a way to introduce the Islamic marriage contract into the case without prompting a flood of negative impressions about Islam and the Sharia that might destroy Zainab's chance for success.

Further research into the matter provided more hope than I had expected. After a discussion with some colleagues, I found that the Islamic marriage contract, because it had been so carefully worded, fulfilled all the requirements of an enforceable contract under U.S. law; there was no reason to keep me from asking that it to be honored as a prenuptial agreement. While it had indeed been prepared under the directives of Islamic law, there was nothing in it that contravened any of the principles of American law. The contract's specific requirement that Said pay Zainab the equivalent of \$10,000 if he divorced her provided me with the legal ground I needed to reach the best solution for my client, who was at the time living alone and penniless in a domestic violence shelter. In the end, I decided that I would risk admitting the Islamic marriage contract into the court's record as a valid prenuptial agreement that must be honored as part of the divorce settlement.

I represented Zainab in a U.S. court with this argument. Only few days after I submitted it to the court, I got word that the judge had signed the order and approved the proposed settlement. The judge had not questioned the premises of the agreement at all, accepting the Islamic marriage contract as a valid contract, rather than investigating the legal basis of its origins. Said and Zainab's marriage contract was accepted by the court as a prenuptial agreement since it met all the criteria for an enforceable contract under Indiana state and U.S. federal law. The final order of the court was that Said should pay support to Zainab for two years, as well as the \$10,000 to be paid in installments during the same period. Clutching the court's order that summer afternoon, Zainab was happier than I had ever seen here before; the Court's decision meant that Said could not simply use Zainab and then cast her away without any consequences. Surprisingly, neither U.S. law nor Islamic tradition alone had shielded Zainab from Said's actions. Instead, the traditions of her Muslim faith and the legal system of her American future worked together in a manner that avenged, at least partially, the abuse she had suffered. Within a month, Zainab had moved out of the shelter and into an apartment and was beginning to take the first tentative steps toward a new life in the United States.

For me, Zainab's case called up the very ghosts I thought I had left behind in Pakistan. Zainab and Aunt Amina's stories, though separated by culture, time, and the vastly different Muslim societies in which they lived, illustrate the complexity of Muslim women's position within the context of varying forms of Islamic law. In the patriarchal culture of Pakistan, Aunt Amina's remaining a rejected wife was better than being a discarded one. Decades later, Zainab struggled with the same issues, and yet could not simply turn to western culture or legal conventions alone. Instead, she had to rely upon the type of marital contract that had failed Aunt Amina. Because Zainab's contract was so specific and it could be

enforced in the United States, Zainab's life was not constrained by polygamy under threat of divorce. Her story exposed to me the superficiality of the logic that in America and under American law, justice is a guarantee for women, in contrast with Islamic law, under which women would perennially be oppressed.

Zainab's case does not and cannot change the fact that in the vast majority of Muslim countries, Islamic law, interpreted for centuries by men, continues to be used as a tool to enslave women and enable the sort of tragedies that defined Aunt Amina's life. But it also suggests that if things are to change, the solution lies not in eliminating faith from the legal sphere entirely, but rather in redefining faith's relationship with the law in such a way that it empowers women rather than enslaves them.

Cases like Zainab's, even if they do occur far away in America, provide Muslim women with strategic avenues to take back their faith and the instruments of law that have been appropriated by male jurists and interpreters for centuries. Arguably, it is precisely in places like Canada and the United States, where the state ensures that reform is more likely to go in the direction of providing more rights to women, that this act of crucial taking back can be possible. This then, is the project of Islamic feminism, one defined in small piecemeal victories, perhaps even in countries without predominantly Muslim populations, that represents taking back of a realm instead of surrendering it. The outcome of the case empowered Zainab not merely because she had received a monetary settlement crucial to her survival, but also because she had, in a basic, fundamental way, been able to use her faith to define her empowerment, a prospect denied to too many Muslim women for far too long.

NOTES

¹ All names and identifying details of the case have been changed to protect client confidentiality

COMPANION READINGS

The Editors, in consultation with Laura Ring (Assistant South Asia Bibliographer, University of Chicago) suggest the following readings as companion pieces for delving deeper into some of the issues raised by Rafia Zakaria's article.

Ali, S. S. and Naz, R. "Marriage, Dower and Divorce: Superior Courts and Case Law in Pakistan" in Shaheed, F. et al (eds.) *Shaping Women's Lives Laws, Practices and Strategies in Pakistan*. Lahore: Shirkatgah, 1998.

Fazalbhoy, Nasreen. "Marriage practices: South Asia," *The Encyclopedia of Women & Islamic Cultures: Family, Body, Sexuality and Health*. Brill Academic Publishers, 2005.

Hassan, Riffat. "Marriage: Islamic Discourses" *The Encyclopedia of Women & Islamic Cultures: Family, Body, Sexuality and Health*. Brill Academic Publishers, 2005.

Zia, Afiya Shehribano. "The reinvention of feminism in Pakistan" *Feminist Review* 91 (2009): 29-47.