

Surfacing

Selected Papers on
Religious Fundamentalisms and
Their Impact on Women's Sexual
and Reproductive Health
and Rights

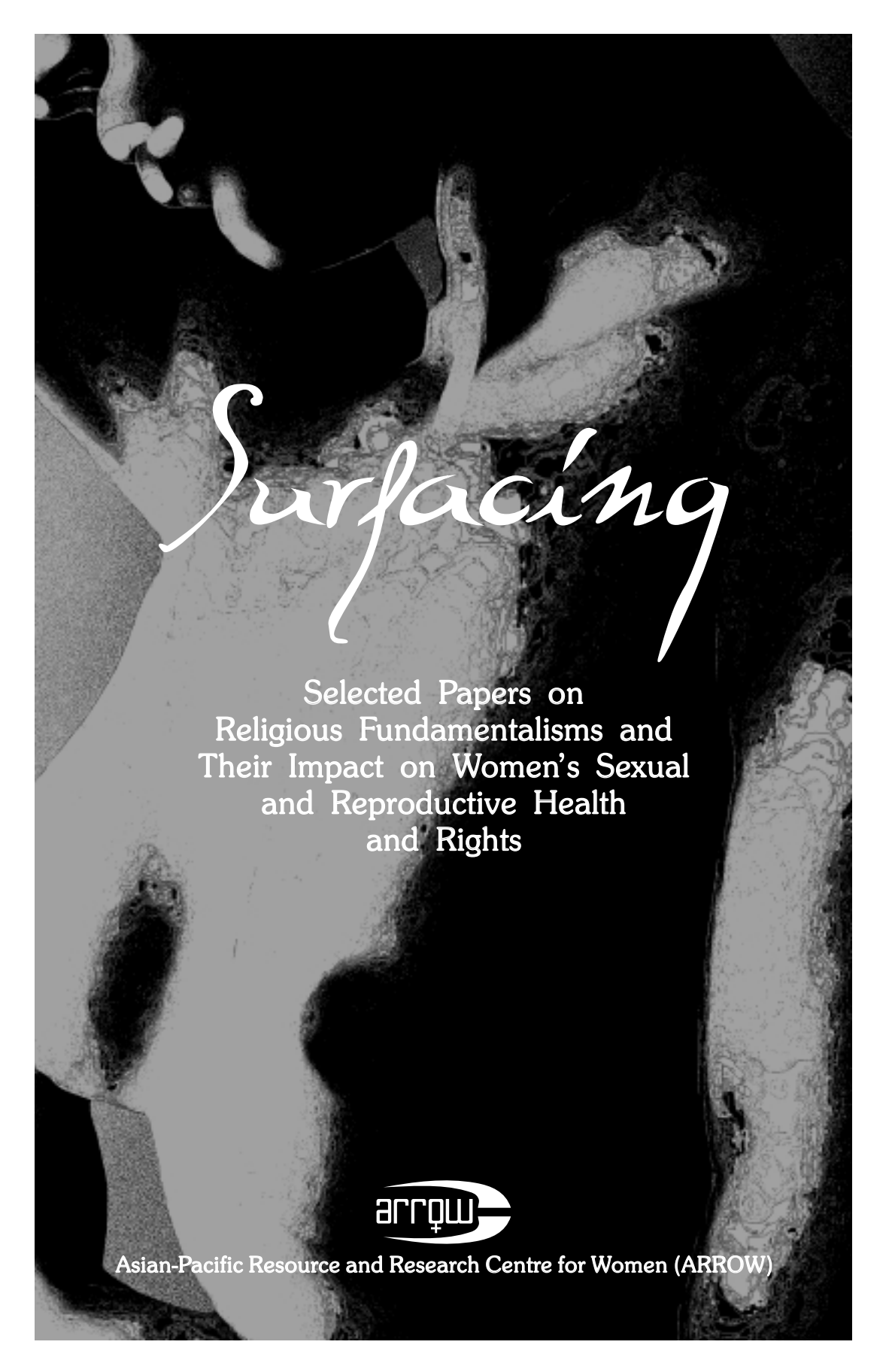


Asian-Pacific Resource and Research Centre for Women (ARROW)

A brief note on terminologies

“Religious fundamentalisms” is a greatly contested term, including amongst women’s rights groups. At a symposium on religious fundamentalisms organised by ARROW at the 2007 *Asia Pacific Conference on Reproductive and Sexual Health and Rights* (APCRSH), the symposium chairperson, Michael Tan, introduced “religious exceptionalism” as an alternative term. He defined religious exceptionalism as “the view that one’s own religion has a monopoly on truth and the interpretation of ‘good,’ usually accompanied by a notion that one’s own God is the only ‘true’ God.” He added that “religious exceptionalists lobby to impose their values on an entire community, or even country, through public policies and laws.”

In this book, ARROW retains the use of the term “religious fundamentalisms,” given that the book presents a compilation of papers that came out of a symposium using this term (the title was “Religious Fundamentalisms and Sexual and Reproductive Health and Rights: A Symposium on the Impact of Catholic, Hindu and Islamic Fundamentalisms on Women’s Sexual and Reproductive Health and Rights”). The paper writers have also used the term “fundamentalisms” and given their own definitions of the term.



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SURFACING:

*Selected Papers on Religious Fundamentalisms and
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Foreword

During ARROW's strategic planning process of 2006, our NGO partners from across the Asia-Pacific region identified three critical issues to be prioritised for action within the next five years. Of these, one of the most challenging has been the impact of religious and political conservatisms and fundamentalisms on sexual and reproductive health and rights (SRHR).¹ The main obstacle continues to be the lack of a coordinated response by civil society organisations to counter the curtailment of access to SRHR information and services, as a result of justifications drawn from religious sources, in conjunction with prevailing belief systems and cultural practices.

As part of our commitment to action on this issue, ARROW suggested the idea of organising a symposium at the *4th Asia Pacific Conference on Reproductive and Sexual Health and Rights (APCRSH)*² on religious fundamentalisms and its impact on SRHR. We were fortunate to find partners in the David and Lucile Packard Foundation as well as the Global Fund for Women, both of whom generously supported and helped facilitate the realisation of the symposium. The event itself was oversubscribed with a maximum capacity crowd within the symposium venue, and eventually led to over 12 different media articles reporting the issue in both local and international media.

The initial discussion around the content of the symposium and the selection of speakers was a learning process. There was a clear need to build alliances with progressives who were committed to promoting feminist interpretations of religion. However, it proved difficult to do so without first defining what exactly the challenges were, why they occurred, and under what circumstances they flourished or became prominent in resisting full and fair access to sexual and reproductive health and rights.

The process of obtaining consensus on the use of terms was also difficult, as we strived to accurately describe what we were against, yet also satisfactorily represent both the commonalities as well as the differences in the various religious movements that were actively working against the fulfillment of women's SRHR. There was

expressed interest from various stakeholders not only on secular frameworks, but also on the work of those where were exploring feminist approaches or interpretations of religious texts that challenged prevailing patriarchal understandings of religion, towards a more rights-based and gendered practice of spirituality within society. This area is certainly one that warrants further attention.

It is our hope that this book will contribute toward the increased effectiveness of civil society, in terms of countering that which is detrimental to women, while at the same time seeking new paths of consensus that involve women and generate the opportunities that will create a better tomorrow.

We are greatly indebted to our eminent panel of presenters - Elizabeth Aguilung-Pangalangan, Jashodhara Dasgupta, Kalpana Kannabiran, and Zaitun Mohammad Kasim (Toni) - all of whom have developed their presentations into papers articulating eloquently the impact of religious fundamentalisms in their countries and sub-regional contexts, and begun the discussion on strategies. We are also thankful to the chairperson of the panel, Michael Tan, who contributed the overview of this book, drawing out clearly the convergences around the various types and forms of religious fundamentalisms across the region.

We are also grateful to Rashidah Abdullah, the co-chair of the panel, for writing the conclusion of this publication. Rashidah offers some ideas and ways of moving forward toward meeting the challenges of religious fundamentalisms, while at the same time ensuring that our advocacies are contextualised in the very spiritual lives of a large majority of women who live in this region.

Saira Shameem

Executive Director, ARROW

endnotes

¹ The other two issues were the impact of neo-liberal globalisation and related health sector reforms on sexual and reproductive health and rights; and the need to de-maternalise the concept of maternal mortality and morbidity, and develop a feminist analysis to the issue so that women are not marginalised based on such categorisations as age, class, caste, the legal status of abortion in the country, marital status, sexual activity, sexual orientation, or other socio-political and economic constructs. We are presently referring to this approach as “Pregnancy and Childbirth-related Morbidity and Mortality.”

² The 4th APCRSH was held on 29-31 October 2007 in Hyderabad, India. The symposium was held on 30 October, from 11.00am - 12.30pm.

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ARROW would like to thank the individuals and institutions whose assistance, inspiration and support have made the publication of this book possible.

Our sincere gratitude goes to the David and Lucile Packard Foundation for co-funding and co-organising the “Religious Fundamentalisms and Sexual and Reproductive Health and Rights: A Symposium on the Impact of Catholic, Hindu and Islamic Fundamentalisms on Women’s SRHR” at the 2007 Asia Pacific Conference on Reproductive and Sexual Health and Rights (4th APCRSH) from which the papers in this publication are drawn.

Our warmest thanks go to the Global Fund for Women (GFW) whom through the years we have relied on for event organising and travel grants. GFW funded the participation of ARROW staff, partners and the symposium resource persons at the 4th APCRSH as well as the publication of this book.

We are equally indebted to our core funders Oxfam Novib and the Swedish International Development Agency (SIDA) whose continued confidence in our work and generous support allows us to address emerging challenges in the field of SRHR proactively and effectively.

We would also like to acknowledge and thank ARROW’s Board of Directors and staff for the technical and practical support and inspiration they lent to the conduct of the symposium as well as the subsequent publication of this book. We would like to especially thank Rashidah Abdullah for co-chairing the symposium, contributing to its conceptualisation and writing the end chapter of the book, and Junice Melgar for recommending and connecting us with resource persons and serving as reviewer and sharing excellent comments on one of the book’s papers.

Our thanks as well to Nicolette de Lange Mallari for the book’s graphic design and layout and to the individuals and organisations who generously contributed the images used in this publication.

To the symposium resource persons/publication contributors - Elizabeth Aguilin-Pangalangan, Jashodhara Dasgupta, Kalpana Kannabiran, Michael Tan, Rashidah Abdullah and Zaitun Mohammed Kasim (Toni

Kasim)*: thank you so much for your dedication to the cause of women's rights; generosity with your time, minds and energy which you committed to the symposium and the book publication; courage for speaking out and writing about a topic which is fraught with controversies; and patience. It has been, and continues to be, an honour to work with you.

ARROW also acknowledges the efforts and commitment of Rodelyn Marte and Maria Melinda Ando, without whom this book would not have been possible.

** Toni Kasim passed away on 4 June 2008, before this book was published. Her paper in Surfacing is one of her last published works.*



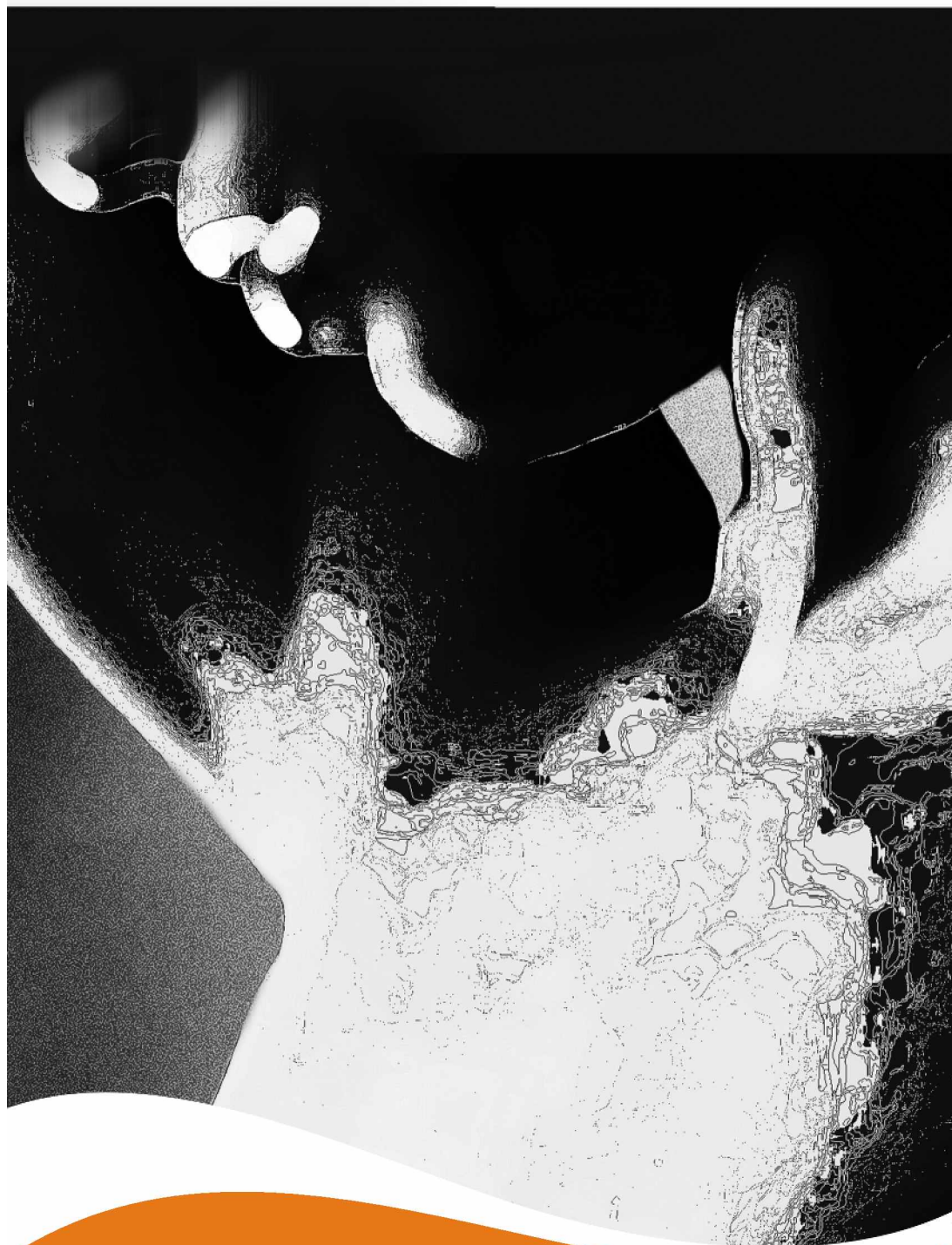
Zaitun “Toni” Mohamed Kasim

1967 - 2008

This book is dedicated to Toni, a leading human rights, sexual rights and women’s rights activist, who passed away on the 4th of June, 2008. She was also a member of ARROW’s Programme Advisory Committee.

We will miss Toni’s courage, her tireless commitment and passion for social justice, her analytical mind, her encouragement of young activists, her warm and accepting nature, and her vivacity and sense of humour.

Toni’s legacy will live on in the work of those whose lives she touched with her wisdom, knowledge and kindness.



Introduction



michael l. tan

convergences on religious exceptionalism: a synthesis of the *arrow* symposium on religious fundamentalisms on sexual and reproductive health and rights

While the ARROW-organised symposium at the *4th Asia Pacific Conference on Reproductive and Sexual Health and Rights* (APCRSH) looked at Catholicism, Hinduism and Islam, we saw many convergences in the excellent presentations showing all too graphically what religious exceptionalism¹ is, and what impact it can have. I will summarise these convergences around six points:

- 1) **Rhetoric:** Religious exceptionalisms invoke strikingly similar rhetoric that describes what should be, a proper 'natural' or 'traditional' order. Zaitun Mohammed Kasim's presentation offered a particularly rich description of this rhetoric, together with prescriptive values (usually female chastity) and behaviour (obedience). Other rhetorical terms like 'honour' and 'morality' are used with reference to the 'family.'
- 2) **Othering:** Kalpana Kannabiran describes the links between intimate violence and inter-group violence in South Asia, particularly around the Partition between India and Pakistan, of women suffering from sexual assault, forced marriages, sterilisation, because they did not 'belong' to the right group. That 'othering' continues today, a vital part of the agenda of religious exceptionalists. To justify religious exceptionalism, we see how the 'enemy' has to be othered, through new mythologies and demonologies. Thus, for Christian exceptionalists like George W. Bush, the enemies are terrorists, forming an axis of evil. For Filipino Christian exceptionalists, the enemy is 'western imperialism' and its 'imposition' of contraception. For Hindu and Islamist exceptionalists, the enemies are 'western liberals.' All exceptionalists tend to identify 'secularism' and 'humanism' as the 'other.'

- 3) **Arenas:** There are many arenas in the battles being waged by religious exceptionalists. Within their own faith-based institutions, religious exceptionalists fight to impose their brand, their interpretation of their religion. The battles in the interpretations of religious dogmas and theologies and, in Islam, of *syariah* (religious law) often centre on the personal and on bodies, and on households, with definitions of women's impurity (epitomised in menstruation), and on their potentials as temptresses and seductresses. These arenas are important in the way they control daily life and discourse.

We saw, too, in the presentations, the dynamics of both globalisation and localisation, some of which go back in history, such as in the ways colonial laws coincided with the moralism of older local traditions. Today, conservatives wage global campaigns in international meetings and in the United Nations, and in individual countries and communities, challenging national laws as well as custom law (*adat*). Elizabeth Aguilin-Pangalangan's presentation highlights how a country's laws may be quite progressive, and yet face threats from religious exceptionalists invoking cultural traditions.

- 4) **Impact:** The presentations show how vicious the impacts of religious exceptionalism can be. Religious exceptionalism draws from the rhetoric of 'what should be,' and on the labeling of the 'other' to prescribe often severe forms of moral policing. More than marginalisation and stigmatisation, we see how religious exceptionalism engenders violence, assault, partitions and polarisation. At the same time, the presentations remind us to be alert to more subtle forms of control and ideologising, especially in the domestic sphere. The attempts to restrict divorce, for example, further sequester battered women, limiting their options to take action.
- 5) **Strategies:** The presentations do not stop with a description of problems. Throughout Asia, the speakers encourage the ensuring of the separation of religion and State and the strengthening of secular institutions especially around education. Moreover, Zaitun emphasises how we need to 'affect, broaden and redirect' the discourse, tackling the issues at all levels and arenas.

In retrospect, it would have been useful to look at the reasons why we have these disturbing trends toward religious exceptionalism. As early as the 19th century, western social scientists were already predicting the demise of religion and the rise of secularisation as the inevitable result of modernity and liberal democracies. By the 1950s and 1960s, scholars looking at religion were confident that secularisation was taking place all over the world.

Today, some of these secularisation theorists have admitted they were wrong. One of them, Peter Berger, wrote a book in 1999 whose title describes what has actually happened: *The Desecularisation of the World: Resurgent Religion and World Politics*. After the 9/11 attacks in the United States, social analysts like Samuel P. Huntington have talked about a ‘clash of civilizations.’ The battle is depicted as one between the ‘west’ with its Christian liberal values and the ‘east with Islamist fundamentalism. In reality, especially around issues of gender and sexuality, we have seen an alliance of conservatives from Christian religions (notably Catholicism) and Islam to reverse secularisation, and to try to impose particular conservative religious beliefs within countries.

We need to pay more attention to the broader contexts of these exceptionalist movements, particularly the way they prey on people’s fears: of modernisation, of personal freedoms, of democracy, even of empowering and liberating variations of religion. The ‘othering’ process is especially important, inflating people’s fears of an external threat or of a local minority and driving them to the religious extremists who promise a return to tradition and order.

Even more importantly, Jashodhara Dasgupta reminds us in her presentation that religious exceptionalism does not just reproduce regressive religion, but also reproduces social inequities such as those of caste and class. Whenever politicians give in to the demands of religious exceptionalists to limit or even abolish reproductive health services, it is poor women who suffer the most.

The presentations have avoided prescribing one solution for all forms of religious exceptionalisms, but they all point to the need to continue dialogue and exchange of experiences among groups,

across countries. More than defending secular institutions, we need as well to be able to defend, at a global level, secularisation itself, showing that it is in fact secularisation with its emphasis on choice that has allowed religious freedom, maybe even the current resurgence of religion.

Ultimately, we might yet see a resurgence of religion in a different sense, as more people speak out and say, “I am Muslim too,” or “I am Catholic too,” or “I am Hindu too” and, in the same breath, argue that “and I believe my religion does not conflict with my beliefs in gender equality and sexual freedom.”

endnote

¹ “Religious exceptionalism” is the view that one’s own religion has a monopoly on truth and the interpretation of ‘good,’ usually accompanied by a notion that one’s own God is the only ‘true’ God. Religious exceptionalists lobby to impose their values on an entire community, or even country, through public policies and laws. Some groups and individuals suggest this as an alternative term for “religious fundamentalism.”

about the author

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Ultimately, we might yet see a resurgence of religion in a different sense, as more people speak out and say, “I am Muslim too,” or “I am Catholic too,” or “I am Hindu too” and, in the same breath, argue that “and I believe my religion does not conflict with my beliefs in gender equality and sexual freedom.”

- Michael L. Tan -



The Papers



kalpana kannabiran

the troubled contexts of human dignity: women's engagements with patriarchy, community and conflict in south asia

Fundamentalisms present a very inhospitable terrain for feminist mobilisation. And yet, across the world, women have built movements for peace. They have rebuilt communities blown apart by weapons of war and torn apart by identity politics and fundamentalist mobilisations, and nurtured those that have been scarred by the violence of conflict in unimaginable ways, returning them to 'normalcy' under the most difficult conditions.

What are the concerns that arise in the course of this 'return' to peace? How may we articulate women's right to health in situations that are fractured by right wing politics? What are the limits of 'health' in the contexts of fundamentalism and war? What are the preconditions to human dignity as indispensable to the realisation of the right to health on a day-to-day basis and in the *longue duree*? In this presentation, I will attempt to reflect on some of these larger questions as a way of deepening our understanding of the specific health impacts of fundamentalisms.

Questions of women and peace must be located at the outset within the larger arena of culture as ideology and practice that shape the ways in which communities act on women prior to, during and after conflict. Questions of culture in turn must be viewed in the context of the larger politico-economic forces of globalisation and neo-liberalisation that condition and select specific articulations of 'tradition,' tying wars of imperialism to wars of faith, so that it is no longer possible to distinguish between the two.

Within this larger context, culture makes women's lives intelligible within patriarchal moorings, seeking to entrench them further in

times of disturbance. The more one looks at women's engagement with fundamentalisms, therefore, the more necessary it becomes to look at ideas/ideologies of culture and belonging that undergird these responses. One part of the question of culture - an important part of it - is that of religion as belief and community of belonging. The impossibility of silence on the troubled relationship between women, fundamentalisms and war is brought home, for instance, by the question that has become the cornerstone of patriarchal legends in different regions in the world, and most certainly in South Asia: "Haven't the greatest battles been fought over women?" The power of hegemonic-patriarchal versions of mythology in a religio-political context that witnesses frequent violent polarisation between different religious groups can scarcely be understated.

Mythology and legend run into the history of the present - reinventing the agency and/or the victimisation of women in occupied territories; replaying themes of abduction, sexual assault, forced pregnancy, chastity/wifely virtue, selfless motherhood, and the denial of the right to abortion; the war cry dismembering women's bodies, extending the battlefield into homes and communities.

Martha Minow¹ draws an interesting parallel between intimate violence and inter-group violence, pointing to the similarities, continuities and disjunctions in experience and law with respect to these two kinds of violence. This is particularly relevant in situations where inter-group violence on women, especially in times of conflict, often involves 'intimate' violence - sexual assault, forced marriage, forced pregnancy/sterilisation and others.

The use of the word 'intimate' in this context is without doubt deeply problematic. Yet, it is in the context of this very problematic usage that one needs to look at intimate violence [within the family] in conflict and post-conflict situations. Take the case from India, for instance. Gudiya's experience in the past couple of years - the return of her 'disappeared' soldier-husband from a Pakistani prison, the public debate (conducted by the globalised electronic media) on whether she should return to him or continue to live with the man she married out of choice subsequently and whose child she was carrying; the decision of

the community to return her to her first husband and return her child, when born, to her second husband who must now divorce her; the birth of that child; her unsuccessful attempts to bear a child for her 'original' husband; and her illness and death in an army hospital - encapsulate women's predicament within families and communities in times of conflict and in times of fundamentalisms. And this draws for us in very poignant ways the connections between intimate and inter-group violence against women.

But Gudiya's tragic experience also draws our attention to the insidious role played by the media in the new global era in manufacturing consent and denying the right of people to choice in their private lives by preying voyeuristically on vulnerability. Economic forces do not stay out of community spaces - in fact they shape them in images of increasing conservatism that are spawned and entrenched through the global media.

The history of the Partition of the Indian sub-continent into India and Pakistan in 1947, especially women's experiences of abduction, recovery and rejection,² echo the eerie timelessness of women's experiences of glorious battles and their sacrifice at the altar of family honour in times of war. Abduction is not a story of one side of a border alone; it is often countered by deceit, appropriation and assault on women from the other side. The experiences of women across borders are starkly similar - women tell stories of loss even in times of victory. (Although stories of loss and violation in times of defeat, occupation or subjugation are also numbing in their raw, endless pain and victimisation, the experiences of women in Gujarat in 2002 being yet another signpost in a long history of violation.)

While the recovery of women in the aftermath of the Partition and their rejection by their families has been written about, Minow's observation that situations of conflict also lead to an escalation of domestic violence bears reiteration.¹ The assertion of dominance of those engaged in fundamentalist mobilisations is often offset by increasing conflict and violence in the home, virtually the only space where the men in these groups are certain of their authority and control. This could of course be extended to argue that fundamentalisms, militarisation and militancy interlock in

situations of conflict and rely on the use of weapons of war, which are essentially also symbols of masculinity and domination.

For women in fundamentalist movements - and women's agency is a critical question that we need to contend with - the test is inevitably about how well they are able to master masculinist discourses and strategies, and how well they are able to reconcile their 'femininity' with aggression. For those who nurture men in combat, part of that nurturance is complete acquiescence, and submergence under the larger goals of combat, personal liberty in the home being but a small casualty - the chaste, compliant wife and the selfless, devoted mother being the ideal supports of men out at wars of 'faith.'

Efforts by women to rebuild their lives in this situation, therefore, attains a new significance. These efforts are in a sense pitted against heightened patriarchal cultural sensibilities and try in very poignant ways to subvert the power of entrenched patriarchy - a far more painful project in the context of polarised conflict and its aftermath than in the context of 'normal times.'

The critical element in feminist politics is the need for women to build alliances across borders, boundaries and identities, even while acknowledging the fact of diversity. Mothers' fronts across the sub-continent have consistently questioned the gains of war and juxtaposed them to the loss of kin, of homes, of land and livelihoods.

This brings us to the relationship between identity, belongingness and citizenship in times of conflict. Women engage with the realities of conflict from specific locations - Bengali, Buddhist, Chakma, Hindu, Mohajir, Muslim, Naga, Sinhala, Tamil, or one of several others on the subcontinent. In articulating their position with respect to specific episodes/contexts of violence, therefore, they rely on the notion of 'belonging,' which refers primarily to patterns of trust and confidence, constantly grappling with the shifting relation between forces of community and society. The longing for a stable national, indigenous and cultural territory is situated within the material context of strife, displacement and instability, with the state playing a critical role in the shaping of this context.

Finally, the problem of exclusion. Despite the fact that women have mobilised against heavy odds to retrieve stability and rebuild communal life, official peace initiatives in periods of suspended conflict rarely invite women to negotiate peace. On the other side, fundamentalist movements appropriate women's bodies and sexuality in violent ways. On the third side, 'secular spaces' of government, resistance, human rights, and peace processes, scarcely move beyond rudimentary paternalism in their understanding of the women's question, drawing on the same logic and frameworks that support fundamentalism.

The challenge is in confronting and dismantling what I call "sexual fundamentalism." Because after all is said and done, the post-fundamentalist formation will certainly reflect sexual fundamentalism, unless that is addressed centrally. The crux of resistance therefore has to focus on the concerted resistance to compulsory heterosexuality and its patriarchal ideological apparatus. This assertion must place at the centre the right to sexual choice, identity and freedoms, and recognition of all persons across the widest scale of diversity as the necessary precondition for the sustenance of human dignity.

endnotes

¹ Minow, Martha. 2000. "Between intimates and between nations: Can law stop the violence?" *Case Western Law Review*. Vol. 50, Issue 4, p.851.

² Menon, R.; Bhasin, K. 1998. *Borders and Boundaries: Women in India's Partition*. New Delhi, India: Kali for Women. 274p.

about the author

Kalpana Kannabiran is a professor of Sociology at NALSAR University of Law, Hyderabad, India, and a founding member of Asmita, a women's collective that has worked for 15 years on issues of free speech, human rights and feminist mobilisation in the south Indian state of Andhra Pradesh. A lawyer and sociologist, she is widely published on a range of human rights issues.



jashodhara dasgupta

religious fundamentalisms in india: the impact of hindu fundamentalisms on sexual and reproductive health and rights

Defining religious fundamentalisms

“Religious fundamentalisms” is a term used to describe “politically motivated ideologies” fuelling a “range of movements and tendencies in all regions of the world which aim to impose what they define as tradition...on societies they consider to be in danger of straying from the fundamental tenets that hold them together.”¹ Looking at fundamentalisms in South Asia, Jayawardena and de Alwis state unequivocally, “fundamentalism uses women’s bodies as a battlefield in its struggle to appropriate institutional power, and is therefore a political phenomenon.”² Using the Women Against Fundamentalism (WAF) definition, Feldman and Clark define fundamentalism as a “type of modern political movement which uses religion as a base from which to try to gain power and extend social control.” The WAF founding statement says, “At the heart of the fundamentalists’ agenda is the control of women’s minds and bodies (by) the patriarchal family.”³

Freedman attempts to list out some characteristics of the fundamentalist political project, such as the construction of a worldview “premised on difference and confrontation”; an absolutist approach to law and religious authenticity; the deeply cynical use of religious language and imagery; the identification of a threat to the community that will be the source of social chaos and disorder; the adoption of militant and violent methods; and selective use of the implements of modernity.⁴ Feldman and Clark add to this list the appeals to tradition invoking a mythical past as a common method of social control.³ Jayawardena and De Alwis argue further that religious nationalists try to homogenise society,

despite apparent social and economic differences, by creating a strong image of a potential disruptor or threat, an ‘internal enemy’ who may be of a different religion or race, or even immoral “westernised” women.²

However, there are hesitations around the use of the term “religious fundamentalisms” as the ‘fundamentals’ of every religion are also considered sacred by women around the world. But Freedman warns that tradition and customs are not static entities: the so-called ‘fundamental’ beliefs and practices are not retrieved from ancient authentic texts or customs but are actually invented and constructed by fundamentalists themselves.⁴

Religious fundamentalisms and sexual and reproductive health and rights (SRHR)

Religious fundamentalisms, according to Freedman, are fuelled by a sense of social dislocation and disorder, particularly by the “breakdown of patriarchal structures that keep women in carefully circumscribed roles, particularly within the family.”⁴ Both Freedman and Feldman and Clark reason that political and economic crises of the modern world are fuelling religious fundamentalist movements; however, the South Asian experience indicates that religious fundamentalisms were also part of anti-colonial movements.²

What Freedman sees as important for the SRHR movements is that the “confrontation and boundary building” that goes with religious fundamentalisms uses “women to map its territory and construct its borders.” Women’s sexuality and reproductive capacity are viewed as points of vulnerability and opportunity within the heightened concern about ‘authenticity’ and ‘purity’ of race or religion; therefore, these must be policed. Women’s wombs need to be controlled to produce the ‘pure’ heirs of their race or religion.⁴

One of the most successful ways to control and discipline women’s sexuality is by confining them within the home and interpellating them into predominantly subordinate and familial subject positions such as daughter, sister, wife and mother. These interpellations are facilitated through what Althusser calls the “ideological state apparatuses” such as the family, school, media, religious

institutions and so on.⁵ Religious fundamentalists use a “powerful and essentialist image of women’s role based on natural and God-given differences” as being that of dutiful wives and self-sacrificing mothers.³

Bagchi notes that “women themselves often get drawn to fundamentalist configurations because of (their) so-called cultural authenticity and because they are made to feel empowered.”⁶ Women are elevated through the apparently empowering role of being “mothers of the nation and transmitters of the cultural inheritance” which actually serves to confine them to the gendered role of social reproduction: motherhood, household chores and childcare.³ During the revival and nationalist movements in South Asia, women’s biological role as reproducers of the nation, as cultural carriers of tradition, was highlighted. This instrumentalised women’s reproductive functions and their bodies in the interests of the state.²

Women’s duty to procreate and to limit themselves only to socially sanctioned sex within marriage is posited against the anarchic notion of women’s autonomy and rights to choice.³ Women who seek their human rights are labelled as selfish individualists who are betraying their family and community identity. The ‘uncontrolled woman’ and her ‘uncontrolled sexuality’ are seen as symbolic of the disorder all around. In this regard, feminist movements that seek to affirm women’s rights are seen as a threat.⁴ They are labelled in South Asia as the ‘urban Westernised Feminists’ and caricatured or stereotyped in various ways.

As Freedman and others have pointed out, fundamentalists focus strongly on a bi-polar construction of the ‘Us’ versus the ‘Other,’ an enemy or threat leading to chaos and breakdown of the social order, from which society or the purity of their own community has to be protected. In this vilification of the ‘Other’ and glorification of their own community, religious fundamentalisms also attempt to provide unifying symbols to establish a forced hegemonic identity, such as images of the ‘ideal woman.’²

For the Hindu revivalists of South Asia in the early 20th century, the ‘Other’ was the invading outsider who had destroyed the ‘golden past’ and who had stayed on: the Muslim community. They also represented the threat of rape and possible pollution of

daughters: thus, women become sex objects in the custody of a male national collectivity.² As such, communal violence frequently resorts to the sexual violation of the womenfolk of the Other community; for a woman's modesty signifies the masculinity of her community, and her shaming becomes symbolic of the subjection of her community. As Michel Foucault puts it, sexuality is a "dense transfer point for relations of power"⁷ and patriarchal discourses about women's modesty are really about controlling her sexuality.²

Hindu fundamentalisms: Origins

Modern Hindu fundamentalisms have their root in the nationalist project of Hindu revival and reform that started in the 19th century. Some key ideologues included social reformers like Dayanand Saraswati and Raja Ram Mohan Roy, who were followed by Hindu revivalists like Bal Gangadhar Tilak and, in Bengal, Rajnarain Basu and Bankim Chandra Chattopadhyay, whose writings glorified the golden past of the Indian sub-continent and who demanded militant action to return to that past. As mentioned above, the Muslim community was constructed as the polluting 'Other'; Hindu supremacy and exclusivity was the slogan.

Bagchi describes how a purely symbolic 'empowerment' of Hindu women was validated by these writers through mythological references to the self-denying Sita and Savitri or the avenging, all-powerful Durga or Kali.⁸ They chose to overlook more concrete reform measures of women's education, raising age at marriage and improving the status of widows.⁶ Women's sacrificial protection of their own chastity was lauded as courageous, as in the case of medieval Indian women who committed suicide rather than fall into the hands of the Muslim invaders, or of women who burnt alive as *Sati* at the funereal pyre of their dead husbands.

Chakravarti narrates how consummation of non-consensual marriages of girls at ages below ten was seen as a Hindu sacrament not to be questioned, despite the incident of a ten-year old bride bleeding to death due to marital rape by her 35-year-old husband. The violent controversy over the Age of Consent Bill in 1890-91 was a defence of Hindu culture as symbolised by Hindu womanhood, and led to consolidation of a nationalism that was conflated with deeply conservative Hinduism.⁹ In this unification,

of course, the internal divisions of class and caste within the group were made invisible, and 'Hindus' were seen as a homogeneous category.

In the 1920s, a book about *Hindutva* (Hindu-ness) was written by V. D. Savarkar, and K. B. Hegdevar founded the RSS or Rastriya Swayam-Sevak Sangh (National Volunteers' Organisation) whose goal was to unify the Hindus and build their character in order to resurrect the Hindu nation.¹⁰ Defining itself as a 'cultural' and not a political organisation, the RSS set up political parties such as the Bhartiya Janata Party (BJP), and a host of other 'family organisations' called collectively as the Sangh Pariwar. The first of these organisations was the women's wing called the Rashtra Sevika Samiti (Nation Servers' Association, where the female gender is implied) set up in 1936. The RSS has over three million core members, while the women's wing has at least a million. Many organisations that are the face of Hindu fundamentalisms today are part of the Sangh Pariwar, within India and in other countries, and the RSS functions as the think-tank for the ideology of affiliated politicians, as well as raises political issues in the public discursive space.¹⁰

Hindu fundamentalisms: Today

Paola Bacchetta's study of discourses of the Sangh and its women's wing, the Samiti, provide many insights into the current ideological framework of Hindu fundamentalists today.¹⁰ The Sangh's literature has a binary mode, in which the mutually exclusive halves are polarised against each other: the homogenised concept of Hindu people constructed in direct opposition to the non-Hindu 'Other.' According to the Sangh, Hindu culture is a unitary, uniform heritage representing the essence of the Hindu religion. Hindus are portrayed as a 'homogenous people': there is no regional difference and no sense of caste or class conflict here. The pre-Muslim 'Hindu period' of history is constructed as politically and culturally excellent, followed by periods of Hindu struggles against the Muslims then against the British. This reformulation of history has been a recurrent key strategy of the Sangh Pariwar. The nation is represented as 'Motherland,' a chaste but motherly figure, asexual but vulnerable to assault by invaders.¹⁰

The ideal Hindu is a patriotic, strong male, preferably celibate, as contrasted to the Muslim Other who is an anti-national, sexually overactive male, lusting after and raping Hindu women and symbolically desecrating the feminine Motherland by raising mosques. The memory of the Partition¹¹ is evoked continually to conjure up demonised images of Muslims as rapists and looters, and their presence in India is constructed as a threat of future violence, so as to justify continual 'retaliation' against Muslims. Both are characterised in masculine terms, since males are the essential community agents.¹⁰

On the other hand, Hindu women are assigned an ideal of domesticated, motherly and sisterly femininity, whereas Muslim women are seen as weak victims of a religion degrading to women. Mythological references, such as to the goddess Durga, are intended to build a sense of women's empowerment. Bacchetta concludes that the Sangh regime accepts Samiti women's slightly differential modes of perception insofar as their discourses remain the means to ensure women's complicity in the overall Hindu fundamentalist political project.¹⁰

Although India is a vast country with enormous cultural diversity, the Sangh functions with military precision in most regions and Hindu fundamentalist actions are similar across the country. In areas where there is a syncretic form of Sufi religious belief combining elements of both Hinduism and Islam, religious tolerance and co-existence is being insidiously undermined. In some cases, the hegemonic form of Hinduism that is being constituted by the Sangh-related organisations is at odds with local culture and customs, as in tribal-dominated regions, yet has managed to make strong inroads. This is often done through militant actions that occur in collusion with the state machinery.

The media in India today has a key role to play in extending the Hindu fundamentalist ideology. Through subtle ways such as television serials and advertisements, and not so subtle coverage of positions taken on issues by fundamentalists, the media provides a broad public platform to disseminate this ideology. The homogenising project of Hindu fundamentalists is taken forward by the portrayal of Hindu women in television soaps who are inevitably upper middle class and follow rites and rituals that are

projected as ‘universal.’ Hindu festivals, especially those that have a female component in the rituals, are an occasion for aggressive media advertising of products targeting women as devoted consumers. A more direct approach is taken by television channels devoted to religious and spiritual discourses and activities. These include both majority and minority religions.

The minority community has not remained unaffected by the ‘othering’ rhetoric of fundamentalists and their communal violence. Muslims in India have reacted through progressive ghettoisation of their residences, living and working in communally safe spaces as far as possible. There have been regressive measures aimed at protecting ‘minority culture,’ including demands for banning of writers and books considered offensive. The restrictions and controls on women have tightened, with overt assertions of patriarchy. The community is also suspicious of the intentions of the majority community, especially where there is some coercion involved, such as the mandatory sterilisation programme of the government.

The impact of Hindu fundamentalisms on SRHR in India

As described above, Hindu fundamentalists have a particular ideological construction of history, society, culture, gender and religious difference. This has a multi-faceted impact on sexual and reproductive rights and health in India today, which is manifested in myriad ways, as the examples below indicate. Some of the basic premises on which the fundamentalists base their arguments are:

- The woman’s body is the site of ‘community and family honour’ - women of one’s own community have to be strictly guarded and women of the ‘other’ community can be sexually violated to punish the ‘other’ community.
- Women’s sexuality or non-reproductive sexuality must be restricted; women’s self-esteem must be curtailed.
- If a national health programme fails, there is a ‘communal reason’ for this: the ‘other’ minority community is planning to destroy the majority community.

These premises play out in the aggressive stance of Hindu fundamentalists regarding various aspects of reproductive and sexual health and rights, in which women's bodies and autonomy become the ground for political action. They violently oppose exercise of the right to choice of partners, adolescent sex education, and any depiction of sexuality that implicates Hindu women or goddesses. They have urged the Indian government to 'recover' Hindu women who had been 'abducted' by Muslims during the Partition of the sub-continent, while using continued sexual violence against women as a means of retaliating against Muslims. Rumours are spread that Muslims are attempting to become a majority community through refusing family planning measures. Hegemonic Hinduism, in tune with Catholic Christianity, also disapproves of abortion, calling it 'foeticide,' and attributes the foetus with personhood.

Hegemonic Hinduism considers daughters inferior to sons, promoting son-preference through cremation rituals that may only be performed by sons. There are also traditional beliefs that consider menstruation as polluting, and menstruating women may be even be prevented from access to the kitchen. Current religious practice is replete with fasts for women almost every other day of the week. While women's reproductive capacity is a social resource, it has to function within a strictly controlled framework; unbridled female sexuality is taboo. Widows are considered 'bad omens' and even if young, are advised a life of seclusion, abstinence and prayer, which may mean leaving them in the convent-like *ashrams* of the Hindu holy cities.

Some selected aspects of the above impacts of Hindu fundamentalisms on SRHR are discussed below in some detail, including sexual violence against women during communal conflict, opposition to adults exercising their rights to choose sexual partners, 'saffron demography,' and opposition to young people's access to sexual and reproductive health information.

Sexual violence and communalism

Menon and Bhasin¹² term the 1947 Partition of the Indian sub-continent as an event that still "reverberates in the national consciousness" 45 years later: "That terrible stunning violence and then the silencing pall that descended like a shroud around it have

always just hovered just at the edges of history; the story of 1947, while one of the attainment of independence, is also a gendered narrative of displacement and dispossession, of large scale and widespread communal violence, and of the realignment of family, community and national identities....” Menon and Bhasin argue that the location of women at the intersection of these forces casts an entirely new light on the apparent fixity of the defining features of identity like religion and nationality.¹²

The migrations across the newly created borders, on foot, by train or by air, consisted of about eight million Hindus, Sikhs and Muslims. This was accompanied by violence visited by the three communities upon each other, “unmatched in scale, brutality and intensity,” leading to a half million lives lost, according to official estimates, although the actual figures are suspected to be much higher. Convoys were ambushed, entire trainloads of refugees butchered, families separated, children orphaned. In this extreme disruption of life at all levels, women were raped, abducted, humiliated, murdered, taken away from their families, then reclaimed, then again rejected or separated from their children - by the multiple patriarchies of the State, the police, the community and the family. The material, symbolic and political significance of the abduction of women, often accompanied by forcible conversion and marriage, was simultaneously an assertion of identity and a humiliation of a rival community. It compelled many families to kill their women, and pushed many hundreds of women to taking their own lives, either as a preventive measure, or ‘after being polluted.’¹²

The forcible recovery of Hindu women from the ‘polluting’ embrace of Muslim men extended to the ‘products’ of these women’s bodies, with women either compelled to abort or leave their small children behind while being restored to their own community.² Menon and Bhasin interrogate the so-called ‘amicable exchange’ of abducted women between India and Pakistan, especially the ‘recovery operations’ carried out by the Indian state and question its definition of itself as ‘secular and democratic.’ They argue that the Indian state, in its articulation of public policy, underlined the primacy of community identity and departed from its neutrality in assigning values to the ‘legitimate’ family and community ‘honour’ through the regulation of women’s

sexuality and reproductive capacity.¹² There was no space for women's own rights, choices or agency in preferring to continue with their lives in Pakistan; their reclaimed bodies and products provided the crucial statistics through which the diminished nation's masculinity could be gauged: their recovery was thus not a project of salvation but a battle for virility.²

The spectre of horrific communal violence came back to haunt the nation repeatedly: the attacks on Sikhs in 1984, the attacks on Muslims after the demolition of the Babri Masjid in 1994, and most recently, the pogrom against Muslims in Gujarat in 2002. This was apparently 'a retaliatory measure' following the inflammatory headlines of the newspaper *Sandesh* on 28 February 2002 that Hindu women had been dragged out of a railway carriage, raped and their breasts cut off. The sexual and communal tone was used to deliberately start a frenzy of communally ignited sexual violence against Muslim women. The women later testified that the local police colluded with the rampaging mobs and later continued to target women with obscene gestures, beatings and sexual abuse.¹³

Agnes gives us the narrative of Hameeda, a 14-year-old survivor of the Naroda Patiya massacre (where 150 people were killed within a few hours on 28 February 2002): her 11-year-old sister was gang-raped and burnt while Hameeda ran and hid behind a wall, watching as her sister screamed until she was dead. It was in Naroda Patiya where Kausar Bano fell into the clutches of the chasing mob that slit open her belly, scooped out her foetus and roasted it before her eyes, before they killed her too. Agnes writes of how her volunteer workers broke down when they had to deal with "bodies of women, disfigured beyond recognition, brutally dismembered," one of which had a sword inserted into the vagina:¹³

In a society which holds such scant respect for its women, gendered violence is a foregone conclusion. But these riots have scaled new heights and have reached a peak in sadism and barbarity...It is this horror, this extreme sexual perversion, unleashed upon women in times of conflict in order to defile the community, that needs to be recorded.

Agnes acknowledged that the stories of rape and abduction during the Partition were brought out only after the women's movement brought sexual violence out of its 'closeted existence.' She adds, "Within the patriarchal scheme of social structures, sexual violence remains hidden through a conscious design....Unlike murder, theft, arson, this crime has...no visibility."¹³ Yet in keeping with the pattern during the Partition, here too, women have been denied the space or legitimacy to seek justice, as the state has colluded with the judiciary in denying them legal redress. Six years after the Gujarat massacre, partial justice has been obtained in only one case of gang-rape and murder, after the courageous survivor Bilkis Bano had battled endlessly with the help of civil society support.¹⁴

The right to choice

The right to choose one's sexual partner is a basic sexual right and is also the premise behind safe and consensual sexual relations. However, Hindu fundamentalists vociferously oppose the exercise of women's choice in sexual partners. Chakravarti argues that the reproduction of the caste system is contingent upon 'endogamy' or carefully controlled marriages within bounded groups. Violation of the marriage code is considered an attack upon *izzat* or honour, a masculine concept, and retaliation may include extreme violence upon those who defiled the *izzat*. Women, as a kind of sexual property, are considered the repositories of the family and community honour in the patriarchies of almost all cultures on the South Asian sub-continent, and this is used to enforce on them the code of appropriate conduct. The marriage code is threatened by 'love marriages,' since acceding to choice or 'love' means that choice may extend beyond the acceptable circle of males belonging to the same caste group.¹⁵

Right-wing Hindu mobilisation in recent years has led to ideological and organisational moves to counter such relationships. Moral policing by Hindu right-wing groups has been rampant in several areas where couples are publicly humiliated in parks and coffee shops. These actions usually intensify on Valentine's Day, with Hindu right-wing gangs routinely vandalising shops selling greeting cards or offering special products for the occasion. They also prowl around restaurants and cafes to intimidate couples out for a meal together. The police usually turn

a blind eye to this. In Uttar Pradesh and Madhya Pradesh, the police have even taken on this role and invited the media to observe how they preserve 'social decency' by attacking couples in parks and threatening to 'expose' them to their parents.

By emphasising women as repositories of the 'honour' of the Hindu nation, *Hindutva* (Hinduness) ideology has also expanded the legitimacy for violence against couples marrying across caste or religious boundaries. Violence before and after runaway marriages is the norm; several cases of imprisonment at home, forcible retrieval, coerced remarriage, and even killing of Hindu women have been documented over the last few years in Uttar Pradesh, a state in northern India (see Chakravarti). In June 2003, media reports mentioned a Hindu woman being forcibly separated from her Christian husband in Gujarat and compelled to abort her 4-month pregnancy by militant right-wing groups.¹⁵ The violence intensifies if their male partners happen to be Muslim or from a lower caste: they would in all likelihood be killed, or women family members raped or abused.

As a throwback to the debates around the age of sexual consent in the 19th century, the Hindu customary law itself permits the use of force in marriage. Legally, women are minors before the age of 18, and therefore cannot give their own consent to a contract, and as such, a marriage of choice would be rendered void. In fact, if the girl is under 16, the sexual act (within such a marriage) would be considered rape, as 16 years is the age of consent for sex. However, under Hindu and Muslim customary law, parents may arrange for the marriage of their daughter before 18 years and this marriage would not be considered legally void; neither would sexual relations with a minor in such a case be considered criminal, even if she was 15 years old.¹⁵

The police and lower levels of the judiciary act as extensions of the father's authority over the woman by using penal clauses of kidnapping, abduction and rape on the male, and, if possible, on his family members as well. The statements of the girl may not be accepted in court since she has 'been under the influence of the male accused,' while the parents would be permitted to have full access to (i.e. put pressure on) their daughter as they are her 'natural guardians.' On matters of custom, the administration

prefers to side with the (majority) community rather than protect the rights of the two individuals concerned, and the excuse to capture the woman and return her to the community or family is always the prevention of a 'law and order' problem. Women are assumed to have no capacity for rational judgement or consent: it is assumed that their family knows what is best for them.¹⁵

Thus, the possibility of consensual sexual relations among adults is pre-empted, and sexual choices severely curtailed for women. The default assumption is that a woman's guardians are best placed to decide at what age and with whom she should have sexual intercourse within marriage, as a way of cementing existing caste and religious divisions.

This 'parental' approach towards choice extends to relations between same-sex couples, even if they are consenting adults. The Hindi film *Fire*, which depicts a sexual relationship between two women, faced violent opposition from the Hindu Right groups to the extent that it was actually banned. The law against 'unnatural sex' that was in all erstwhile British colonies as Section 377 of the Penal Code, and which is used to harass and penalise *hijras* and gay men, continues to be in effect in India today (even though this has long been removed in the United Kingdom). Following a police clampdown on members of an online gay club, leading to arrests of four men, the Senior Superintendent of Police in Lucknow district of Uttar Pradesh is quoted by the media as having said, "Gay culture is against Indian culture and we are doing things under the law." His junior officer (who actually got the arrests done) is quoted by the media as saying, "homosexuality is legally and socially not recognised in our culture."¹⁶ The invocations of '(our) Indian culture' to justify attacks against the human rights and right to privacy of consenting adults is a significant indication of the 'moral policing stance' favoured by the bureaucracy.

Population control: "Saffron demographics"

According to Jeffery and Jeffery, "saffron demography" comprises a set of pernicious myths repeated often by right-wing Hindu politicians who claim essential differences between Hindu and Muslim population dynamics in India, reflecting an obsessive

concern with Muslim fertility and arguing that Hindus face a minority status at some point in future. The scare-mongering purpose is evident from statements such as, “Muslim population in India is exploding while Hindu population is declining.”¹⁷

Since the early 1970s, Hindu Right propaganda has vigorously insisted that Indian Muslims are anti-national because of their supposed refusal to accept ‘modern’ contraception (read, the terminal/sterilisation methods promoted by the State). Some Hindu Right leaders, with support from communal political parties have advocated population growth for Hindus to avert the threat of being out-numbered by the Muslims. For saffron demographers, Muslims pose a threat to the Hindu nation by contributing to excessive population growth as well as, when their numbers will permit, providing Pakistan with the opportunity to invade India.¹⁷

The focus is on homogenising Hindus and Muslims as mutually opposed groups, ignoring the conflicting intra-group interests on the basis of region, caste, class or gender. The essentialised Muslim woman is supposedly victimised by Muslim men, who are caricatured as sexually voracious and polygamous. The common wisdom is that Muslims have more children because their women are more backward and constrained by religion, while Muslim men have more children because they can take more than one wife and can divorce more easily. Around one-third of Muslims live in northern India, specifically Bihar and UP, which are also the higher fertility states. Jeffery and Jeffery argue that ironically while Muslims in general are blamed for their backwardness and fertility, the communalised nature of the already very limited health and education services often leave out Muslim women in Northern India.¹⁷

On the other hand, the Hindu woman is seen as being too submissive to the ‘small-family norm.’¹⁷ There have been exhortations to Hindu women to produce more children, to combat the perceived threat of Muslim over-population. Hindu women are thus being discouraged from abortion by religious leaders, and the foetus is being ascribed with personhood. In fact, this has led the Indian state and some activists to suggest monitoring of the outcomes of every pregnancy in order to prevent sex-selective abortion (commonly termed as ‘female

feoticide'), overlooking the fact that this will drive abortions underground and make them further unsafe.

In this way, women of both communities are instrumentalised as agents of social reproduction, and their preferences or their rights to be informed, to choose and make their own reproductive decisions are by-passed.

Young people's right to information about sexual and reproductive health

In 2007, the government introduced an Adolescent Education Program (AEP) in schools with funding and support from the United Nations Children's Fund (UNICEF) and the National AIDS Control Organization (NACO). The AEP had been developed around five key components of integrating HIV prevention in education, and consisted of a Frequently Asked Questions (FAQ) booklet for students, a Facilitators' Handbook for Peer Educators' training and a Teachers' Workbook. These were tried out on a pilot basis in a few states, and NACO and UNICEF put out a publication reviewing these ongoing trials in 2007.¹⁸ While this is not a discussion of the merits or demerits of the curriculum, it is significant that the reaction across many states of India was to emphatically oppose the material. It was banned entirely by the governments of around ten states and opposed by politicians of several parties, teacher and headmaster associations, youth organisations and some sections of the media.

From July 2007, the AEP curriculum faced considerable criticism for its 'explicitness' and defacing of Indian tradition and morality, which was highlighted in the media. The Madhya Pradesh government states that the program "devaluated Indian culture and its values....Instead, the younger generation should be taught about yoga, Indian culture and its values."¹⁹ Murli Manohar Joshi of the BJP Party said, "The sex education curriculum was a conspiracy by multi-national corporations to boost condom sales in the country by creating a fear of AIDS. It was based on western values and would strike a blow against Indian culture and the institution of the family." He termed this a struggle to save not just education but the nation and its cultural heritage.²⁰ One headmaster declared that the curriculum would encourage

children to buy condoms and promote sexual experimentation, and said he refused to turn his schools into ‘temples of sex.’²¹ A media feature writer expressed her fears that this curriculum would promote “unnatural sexual behaviour such as homosexuality which would strike a blow against Indian values and traditions.”²²

The fears of enemies conspiring to gain profits through condom sales are at odds with India’s own preoccupation with condom-promotion programmes for HIV prevention. Given that large numbers of Indian youth are nudged into early sexual activity (usually both uninformed and unprotected) through the widespread practice of early marriage, the concerns about sexual experimentation during the teenage years is possibly a middle-class anxiety. This also reflects a deliberate naivete about the impact of sexually explicit actions in current popular Hindi cinema. What comes through overall is a nation-wide moral panic that uses arguments of cultural essentialism to prevent the youth from engaging in an informed discussion on sexual matters.

Conclusion and ways forward

In conclusion, it is evident that Hindu fundamentalisms have been active for over a century and their hold over popular imagination has strengthened in the last 20 years. In this regard, the role of media remains to be investigated. With the collusion of a supposedly secular Indian state, there is careful separation of what is ‘unacceptable’ (such as sex education or a film showing a lesbian relationship) and what can be done with impunity (such as extreme sexual violence against minority women). The Hindu Right have worked on their project of demarcating and controlling women’s sexuality, reproduction and rights in myriad ways. This has impacted on the identities of both Hindu and Muslim women, who are interpellated into submissive sexual beings as their bodies, especially their reproductive capacity, become the “battlefield in the struggle to appropriate institutional power.”²

Civil society in India has responded by constantly challenging this through academic analyses, strategic use of media, legal action and varied forms of protest. There have been sustained civil society efforts at bridge-building between the people of India and Pakistan, in contrast to the aggressive posturing that characterises official interactions. Campaigns for peace have continued despite

the uneven nature of the inter-governmental relationship. Almost every violent expression of the Hindu fundamentalists has seen responsive civil society protests, accompanied by legal action for the restitution of constitutional guarantees. These efforts by human rights defenders have included public interest litigation, following through individual cases in their battle for justice, or use of instruments such as the Right to Information Act. Writers, researchers and film makers have chosen to record and analyse the incidents of violent communalism and attempted to create a true picture of the cynical use of religion for political ends. Hegemonic masculinity has been brought under question by gender activists, including the construction of masculinity by the Hindu Right. Feminists and queer activists have constantly questioned the arbitrary regulation of sexualities and sexual choices by the fundamentalist forces.

It is these social responses that provide glimmers of hope in an otherwise darkening landscape in India today, where the major political formations are implicated in the history of using religion as a base from which to try to gain power and extend social control.

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about the author

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zaitun mohamed kasim

religious fundamentalisms in muslim societies: the impact of the religious right on sexual and reproductive health and rights

Defining ‘religious fundamentalism’

Probably the biggest challenge in defining “religious fundamentalism” is to pull apart what is now a conflation of patriarchal heteronormative culture, religious orthodoxy and ideology, the political Islamic revivalism of the 1970s to the 1990s, and more recent ‘post-9/11’ global events that, more than ever, see fundamentalism as made synonymous with Islam. The sum total of this conflation, however, is in the growth and political prominence of religious right ideologies that increasingly use discourses couched in religion and culture to maintain and extend their political power over both public and private domains.

There are several devices employed to achieve this. These include substituting basic tenets with rituals and calling them *syariah*. Textual Islam may also be confused (deliberately or unwittingly) with political Islam. Shifting smoothly between textual and political Islam removes the distinction between them and results in an undue association of Islam with certain practices or regarding as Islamic that which are merely cultural practices of certain communities in the Middle East.

This leads one to conclude that the proponents of ‘greater Islamisation’ are perhaps fundamentalists to their political projects but not to the spirit of the religion. The fact that the formulation and practice of ‘Islamic’ laws can vary tremendously from one country to another, and even from one community to another, shows that ‘*syariah* laws’ or ‘Islamic laws’ have more to do with

political choices that are made within different contexts than what is purportedly within the texts or 'fundamental' to Islam.

It is also worth noting that the growth of Islamophobia (both deliberate and unwitting) has moved the religious right even further to the right. It has also given regressive nation states the opportunity to deploy the 'Islam-under-siege' idea at the personal, national and the trans-border 'brotherhood' levels. The terms 'liberal,' 'progressive,' and 'Muslim feminist,' amongst others, have been positioned in opposition to terms such as 'militant,' 'radical,' 'conservative,' and 'Islamist.' This framing has, on the one hand, provided the opportunity for enlarging the discourse, but at the same time has created dichotomies that are simplistic and often damaging to subtle and nuanced discussion.

Impacts on women

The dynamics above have not only failed to address the existing human rights violations against women, such as sexual and gender-based violence, marital rape, female genital mutilation (FGM), honour crimes, forced and early marriages, acid attacks, mass rapes, trafficking in women, virginity tests and morality policing against women, which are perpetrated in the name of Islam in various Muslim contexts. Together with the negative effects of the ongoing wars, military interventions and economic globalisation, these dynamics have exacerbated the violence and discrimination faced by women. This paper is intended to present a brief insight into the impacts that arise from existing as well as new forms of political Islam on sexual and reproductive health and rights (SRHR).

Pleasing men, policing women, protecting 'honour'

Muslim communities are not peculiar in frequently regarding women as needing to be 'pure' and 'chaste' virgins until marriage (and therefore requiring control), and men as needing to be 'macho' with sexual needs that are a 'given,' legitimate and something that they cannot control. However, there are many violations that are perpetrated against women to keep this 'social order' in check that are legitimised in the name of Islam. These include FGM, honour crimes, honour killings, virginity testing and restrictions on women's clothing, mobility and economic/political

participation. These violations will find no support within textual Islam. Instead, they are merely legitimised by drawing on the power, authority and respect that people have for a higher order, which in this case is Islam.

There is also a growing trend of many *syariah* and ‘*syariah*-inspired’ laws to control ‘moral conduct and sinful behaviour,’ turning what are otherwise personal obligations into legal obligations, replacing personal values with ‘state values’ that have the force of law. Both Malaysia and Indonesia for example, are seeing the growth of morality policing sanctioned by the state at different levels. This moral policing is enforced by employees and other representatives of state bodies/institutions. In addition, members of the public are sometimes called on to assist by reporting errant behaviour or through other forms of vigilantism and ‘snoop squads.’ Records of prosecutions of Muslims in both countries under such religious offences indicate that there is a clear bias against working class men and women, students and young Muslim women.

Women also find themselves the site of a perceived contest between the values of the ‘permissive West’ and the ‘pious East.’ The headscarf and *hijab*¹ have come to act as an index of where a woman stands in relation to this context. Whatever the choice, it is the women’s body which remains the greatest battlefield for social and political control.

‘Family’ laws

Sexual relations and pregnancies outside of a ‘legitimate’ heterosexual marriage are generally deemed unacceptable in most parts of the Muslim world. There seems to be a ‘womb to tomb’ obsession with policing the morality of a woman. She is expected to be completely ‘chaste’ before marriage and completely compliant with regards to sexual and reproductive matters after marriage.

State services have come to structure this and give it state legitimisation. In Malaysia, for example, sexually active single women, whether Muslim or non-Muslim, will find it nearly impossible to access state health services. Such services have been

organised primarily around the expected reproductive role of a married woman.

In matters of marriage and divorce too, women are constantly reminded ad nauseam of their subordinate positions in the home and are warned of the dire consequences of challenging this. Ways in which this occurs include the following:

- The presence of a *wali* (male guardian) to 'give the woman away' in marriage is still a legal requirement in many countries with Muslim populations.
- Polygyny has become synonymous with Islam, when clearly its origins preceded the growth of Islam. The verse on polygamy is frequently interpreted and codified as the right of a Muslim man in several countries. In other contexts, however, the verse is interpreted as a restriction towards banning the practice altogether (and polygyny is indeed legally banned in some Muslim countries).
- Obedience and the offence of *nusyuz* (disobedience) hangs like the proverbial Sword of Damocles over Muslim women's heads as it is linked to losing their spousal rights to financial maintenance.
- Domestic violence is under reported as some women believe that Islam gives men the right to beat their partners.
- In some countries, women still face great difficulty in accessing divorce when the reverse is rarely the case. Unilateral divorces and the manner of their pronouncement by the husband have seen various injustices perpetrated on women. These include pronouncements of divorce over the phone and via mobile phone SMSes/text messaging as have happened in Malaysia.

Access to contraception and abortion

As with many other aspects of Islamic jurisprudence, there are varying levels of acknowledgment and acceptance of contraception and abortion. In most Muslim-majority countries, abortion is generally prohibited with exceptions usually made where the health of the mother is at risk. Perceptions and interpretations of what is *haram* (prohibited) or *halal* (permitted) in Islam similarly has an effect on contraceptive use.

HIV, sex education and access to information

More so than many other diseases, many people often closely link HIV/AIDS with issues of morality; many regard HIV/AIDS as an indication of poor moral standards. This results in a tendency to move the response to the virus from one of prevention, treatment and care, to one that judges the behaviour of infected person and their moral integrity.

In Malaysia, for example, a religious leader suggested that persons living with HIV/AIDS (PLWHAs) ought to be left on an island to die, and the infection deemed punishment from God. In many contexts, access to information on HIV is limited (sex education in Malaysia is reluctant to frankly discuss the issue). In any case, the orthodox understanding of obedience to the husband means that refusing sex is seen as a sin and as being *nusyuz* or disobedient. As this has bearings on financial maintenance, the wife is not in a bargaining position to negotiate condom use.

Impact of Islam on persons of other faiths

► ***The case of conversions in Malaysia***

In the case of Malaysia, converting from Islam to another religion has become highly politically charged. An example is that of Shamala Sathyaseelan, whose children were converted out of their religion and into Islam without her knowledge and consent. Another is the case of Lina Joy, who wishes to be administratively recognised as having left Islam in order to marry her Christian partner but whose applications have been rejected. More recent is the case of Revathi who was incarcerated for six months in a ‘rehabilitation’ centre, losing access to her husband and children because she was deemed to still be a Muslim.

► ***‘Islamic’ norms and notions applied to non-Muslims***

In addition to the above, notions of proper gender/sexual/moral conduct that are founded on orthodox notions of ‘Islamic understanding’ have increasingly become applied to Malaysia’s significant non-Muslim minorities (which constitute as much as 40% of the population). To give but two examples of this: non-Muslim couples have been charged under municipal laws for holding hands in public. In one

prominent case, an elderly married American couple, who were holidaying in Malaysia, were asked in their hotel room to demonstrate to Malaysian Islamic authorities that they were married.

► ***Impact on sexual minorities***

Transgendered and transsexual persons are often vulnerable to social persecution and violence as well as legal prosecution. In Malaysia, for example, transsexuals can be detained under either the Civil Laws as well as the *Syariah* Laws. However, Muslim transsexuals, in particular male-to-female transsexuals, are more often arrested under the *Syariah* Criminal Offences Act for “wearing women’s clothes for immoral purposes” and are fined between US\$200 to US\$800, or imprisoned. Compare this with the US\$7-14 fine for non-Muslims under the Civil Laws.

Sex-reassignment surgery for Muslim transsexuals is illegal in some Muslim majority countries, but legal in others such as Iran or Egypt. This does not however suggest that Iran or Egypt is particularly lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ)-friendly. Reports of capital punishment of gay men in various ‘Islamic’ countries continue to be heard, and the infamous Queen Boat arrests in Cairo in 2001 in which 52 gay men were arrested, tortured and tried under the law has shown that the expression of sexual preferences other than heterosexuality is more unacceptable than defying gender norms.

Civil society responses

Before outlining some specific responses from civil society on the growth in political Islam, it is worth noting the debate on whether to engage in the Islamic/religious framework or not, and to what extent women can resist the impacts of religious fundamentalism from within the religious framework.

Approaching the discourse from a secular perspective with no references to religious texts may work in some contexts. In other contexts, however, such as where there is no functioning democracy, engaging with the religious framework may become necessary.

Because religion does matter to many women, even when a piece of legislation may protect their rights (as in the case of domestic violence or access to contraception), they may not necessarily access those rights because they deeply believe that the religion says otherwise. So the rejection of the religious discourse may not be useful for women who hold religion dear to their hearts. Religion is a source of strength for many, including for many feminists who believe that there is no contradiction between the basic tenets of the religion and the basic principles of human rights.

In some contexts, Islam is used as a source of public policy. As such, not engaging from within a faith-based framework leaves the space to the right-winged discourse to define what religion means for all of us, codify it and then use it to discriminate. Groups that engage with the religious framework assert that if Islam is used as a source of public policy, everyone must be able to discuss it. In addition, these groups emphasise that there is a diversity of opinions (both classical and contemporary) where interpretation is concerned and the state position may not be the 'authentic' position. They also promote the understanding that there is a wide difference between the text and human understanding (which is fallible and changeable).

Whether one engages with the religious framework or not, however, it is evident that either of these strategies does not exist in isolation but is indeed mired within many other local and global dynamics. If we are to advocate for meaningful change in the lives of women, then it is important to also work on effective democratisation and advancement of human rights, long-term work on building gender equality, challenging politicisation of Islam as well as Islamophobia, and addressing the economic and political hegemony of global politics.

Below are some examples of the work that has been undertaken by civil society groups around the world to address the impacts of the religious right on the lives of women:

Reforming the law, testing the law, testing the judiciary

There is a trend towards codification and a change in basic understanding of the basis for marriage. Morocco, Fiji, the United

Arab Emirates (UAE), Bahrain and Francophone Africa (Benin, Chad, Mali and Niger), for example, have seen entire new codes either being introduced or are awaiting final passage. Others have made either significant modifications or advocated change to single aspects of the law. What is interesting to note is that in several countries (e.g., Morocco, Bahrain, Algeria), there has been significant discussion around the basis for marriage, with the relationship being recasted from one of ‘servitude’ and obedience to one of mutual partnership. Reference has also been made to changed or changing social conditions and the need for reform in response to this.

Affecting, broadening and redirecting the discourse

Many groups have found it necessary and important to get the issues into the public domain and to ensure public discourse on matters related to Islam to guard the discourse from being hijacked by a small and loud minority. They have used a myriad of ways, including media work, training workshops, seminars, forums and publications. They have increased public awareness and capacity to take on the questions of the role of religion in politics and democracy and to deal with conflicts in the legal system, as well as offered a rights-based understanding of Islam, and others.

Capacity building for activists and communities

There are also several groups (e.g., in Malaysia, Indonesia and the Philippines) that actively engage in capacity building for activists and communities alike to be able to engage in the religious discourse. ‘Engaging with the religious discourse’ has for several civil society groups included:

- a) building jurisprudential literacy on how laws are formulated;
- b) researching alternative interpretations and opinions among traditional and contemporary scholars; and
- c) promoting new interpretations based on independent reasoning that responds to contemporary challenges.

In many contexts too, this has gone hand in hand with building critical literacy on democracy and human rights, and the need for effective democratisation in both politics and interpretation of religious texts if rights are to be upheld.

Building coalitions across movements locally, as well as regionally and internationally

► ***At the local level:***

Article 11 in Malaysia is one example of how the conversion case of one woman led to two women's groups highlighting the case, and subsequently the formation of a coalition that now deals with the larger issues of freedom within and of religion.

Reforms to the Muslim Family Laws as in the case of Morocco and Turkey, for example, have often been the result of major and lengthy campaigns by coalitions of women's groups (faith-based and secular groups). The latter have used documented cases of how the laws cause harm and injustice, as well as have provided templates and guidelines for reforms.

► ***At the regional and international levels:***

There are several coalitions, networks, trans-border organising and research groups that have formed across national boundaries to highlight and advocate for changes to laws and practices that are harmful to women. Examples include, the Collective '95, Women Living Under Muslim Laws, the Coalition on Sexual and Bodily Rights (CSBR) and the research network Women's Empowerment in Muslim Communities.

CSBR, for example, is a bi-regional network which currently includes 38 organisational members from Algeria, Bangladesh, Egypt, Indonesia, Jordan, Lebanon, Malaysia, Morocco, Pakistan, Palestine, the Philippines, Tunisia, Turkey and Yemen. The activities of the coalition include organising regional and international meetings, conferences, workshops and trainings on sexuality and sexual rights; supporting national campaigns and efforts to promote sexual rights; advocacy and lobbying for legal reforms in the domain of sexuality; producing and disseminating research and

publications; and advocacy at the United Nations level for the advancement of sexual and reproductive rights.

Engaging ‘progressive’ Muslim scholars

There is a sizeable number of Muslims scholars who champion greater accountability in the democratic process and human rights principles, and in so doing have become to be recognised as ‘moderate’ or ‘progressive’ Muslims. These scholars, however, are sometimes ambivalent towards, or at times outrightly reject, gender-inclusive or sexuality-inclusive understanding of Islam. Some civil society groups have seen it necessary to engage these scholars and to raise their gender awareness and sensitivity.

endnote

¹ *Hijab* refers both to the Islamic headscarf worn to conceal hair and neck, as well as the Islamic practice of dressing modestly in clothing that covers most of the body.

about the author

Zaitun “Toni” Mohamed Kasim (1967-2008) is an activist, facilitator, trainer and writer on social justice issues, whose expertise covered such issues as gender, sexuality, sexual rights, human rights and women’s rights, as well as the rights of women in Islam. Before she passed away in June 2008, she was actively involved in the women’s rights and human rights movements in Malaysia, including Sisters In Islam, Amnesty International Malaysia and Suaram. Toni was also a member of regional and international networks, such as the Coalition on Sexual and Bodily Rights, the Consortium Advisory Group for the Research Programme Consortium on Women’s Empowerment in Muslim Contexts, and ARROW’s Program Advisory Committee. In 1999, Toni ran in the Federal Elections in Malaysia as the first independent women’s candidate running on a gender platform. She announced her intention to contest again in the Malaysian 2008 General Elections, but her failing health forced her to withdraw. Her passing away is a huge loss not only to her friends and family but to the human rights, sexual rights, and women’s rights movements in Malaysia and the world.



elizabeth aguiling-pangalangan **roman catholic conservatism and fundamentalism in the philippines and their disparate impact on women**

Background

Although Islam was the first religion introduced in the Philippines with the arrival of merchants and missionaries from the Arabian peninsula and from India during the 14th to 15th century, its expansion was confined to the southwest islands of the country.¹ In 1521, Ferdinand Magellan's expedition started the Spanish campaign to conquer the Philippines. An expedition led by Miguel Lopez de Legazpi in 1565 paved the way for the formation of the first Spanish settlements, wherein the task of converting the inhabitants into Christianity was taken seriously, as evidenced by the inclusion of several Catholic priests.¹ However, the numerous abuses made by Spanish colonisers led to the ouster of Spain from the Philippines in 1898.

Thereafter, the Americans came to the Philippines and stayed until the end of World War II. Protestant missionaries came to the country to 'purify syncretic characteristics' of Filipino Roman Catholicism.² However, only a few were prepared to leave the Church's familiar rituals. Since then, the Roman Catholic Church (also called Catholic Church or more simply, the Church in this paper) survived World War II, schisms and internal splits, and has remained the dominant Christian denomination in the country. 82.9% of the population is Catholic, 5.4% is Protestant, 4.6% is Muslim, and another 4.9% comes from home-grown religions like the Iglesia ni Kristo and Philippine Independent Church.^{3,4}

The role that the Roman Catholic Church plays in the lives of the Filipino people has been consistent and significant, as it uses the pulpit to spread its views on contemporary issues of abortion,

contraception and divorce. With weakened social institutions and a government that cannot command the loyalty of its people, many Filipinos have turned to the Church for guidance on religious and social concerns. Internationally, the Roman Catholic Church likewise wields considerable clout, enjoying a privileged status in the United Nations (UN). With the Holy See serving as a Non-Member State Permanent Observer, it participates in UN conferences with full voting rights while other religions are represented as non-governmental organisations.⁵

Religious conservatism and fundamentalism

In this paper, I discuss the part that the Catholic Church carries out particularly on three crucial issues affecting women - divorce, abortion and contraceptive access. It looks at whether Catholic fundamentalism or conservatism has a disparate impact on the rights and lives of women.

It is important, at this point, to clarify terms. Fundamentalism is defined as “a religious movement or point of view characterised by a return to fundamental principles, by rigid adherence to those principles, and often by intolerance of other views and opposition to secularism.”⁶ The term was first used to describe *The Fundamentals*, a collection of 12 books published in 1910 by Milton and Lyman Stewart, that dealt with five subjects, the first of which is the infallibility of the originals of the scriptures.⁷ It refers to a “‘deep and totalistic commitment’ to a belief in, and strict adherence to a set of basic principles (often religious in nature), a reaction to perceived doctrinal compromises with modern social and political life.”⁸

There remains a controversy on the use of the term and whether it could include a broad range of conservative religious movements. Conservatism has generally been used to refer to some “resistance to change in society, which seems to transcend changing times and define the core mind set of conservatism.”⁹

For the purpose of this paper, the terms “religious fundamentalism” and “conservatism” are used interchangeably given that both show a marked intolerance for the views of others or for interpretations of core Christian texts. Likewise, they endeavour at transforming religious doctrine into legal rules as

exemplified in the strict prohibition against abortion, divorce and the use of contraception. For instance, according to Catholic fundamentalists, the Bible prohibits divorce and states that reconciliation and forgiveness should be the marks of a believer's life (Luke 11:4; Ephesians 4:32). However, with equal ease, we can turn our attention to verses in the Bible that provide for exemptions to the general rule and these are marital unfaithfulness (Matthew 19:8 and 5:31-32) and having an unbeliever spouse (1 Corinthians 7:10-16). These exemptions are proof that the prohibition against divorce is not absolute.¹⁰

Interestingly, there are no express biblical prohibitions regarding abortion. In the Bible, life begins after a newborn takes its first breath. Such is in reference to the recurrent image of breath to represent life. In Genesis 2:7, it says that "when God breathed into his nostrils the breath of life; and man became a living soul." In Jewish tradition, personhood is said to begin at birth.¹¹ Since there is no consensus amongst religions that the foetus or embryo is a human being, then it can be argued that the Sixth Commandment ("Thou shall not kill") does not apply.

The same is true with contraception. The story of Onan found in Genesis 38 is frequently cited by anti-contraception advocates. In this particular chapter of the Bible, Onan was punished for spilling his seed on the ground, the oldest form of birth control. However, further examination will reveal that Onan was punished by the Lord not because of using contraception *per se*, but because of his selfish motive in using his wife for pleasure and refusing to create an heir so as not to split his inheritance.¹²

This restrictive reading of the Bible shows unmitigated belief in absolute religious authority despite the fact that the same Bible and Bible passages have been interpreted by other Christian religions to allow divorce, contraception and abortion under certain circumstances.

On divorce

There are only two countries in the world where divorce is not recognised: Malta and the Philippines.¹³ Except for the recognition of foreign divorce decrees and Muslim divorce, the Philippines has no divorce law. Since unhappy, loveless marriages are a reality,

Filipinos avail instead of a declaration of nullity of marriage based on psychological incapacity found in Article 36 of the Family Code. Often dubbed as ‘divorce, Philippine style,’ the law provides:

*A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnisation.*¹⁴

This provision is borrowed from Canon 1095 of the Roman Catholic Canon Law, which states that:

*The following are incapable of contracting marriage: (3): those who are not able to assume the essential obligations of marriage for causes of a psychic nature.*¹⁵

Psychological incapacity as a ground for nullity of a marriage was lifted from Canon Law, which refers to it as a ground for annulment of marriages. This provision from the Canon Law was made to apply in civil law for three reasons.¹⁶ First, it was intended to be a substitute for divorce. Second, it was viewed as a solution to the problem of church-annulled marriages. Third, it served as an additional remedy for problematic marriages not falling under the Family Code provisions on void and voidable marriages. Consequently, it now appears that Civil Law has to be reconciled with Canon Law. It should be noted, however, that parties who had their marriages annulled in the Catholic Church have to file a separate case for Declaration of Nullity in the Family Courts.

Nevertheless, in *Republic vs. Molina*,¹⁷ a case wherein the Supreme Court set forth seven guidelines in the interpretation of Article 36 of the Family Code, the Supreme Court held that “interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.”

In a succeeding case, the Court decided on the validity of a marriage where the wife was found to be suffering from psychological incapacity as evidenced by her compulsive lying. The Court of Appeals supported the validity of said marriage

despite an annulment of marriage granted by the Catholic Church on the ground of psychological incapacity. Applying the Molina guideline to reverse the judgment of the Court of Appeals, the Supreme Court held that:

The Court of Appeals clearly erred when it failed to take into consideration the fact that the marriage of the parties was annulled by the Catholic Church. The appellate court apparently deemed this detail totally inconsequential as no reference was made to it anywhere in the assailed decision, despite petitioner's efforts to bring the matter to its attention. Such deliberate ignorance is in contravention of Molina, which held that interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts....¹⁸

The persuasive effect of and respect commanded by decisions of the Catholic Church tribunals have been recognised and henceforth, interwoven into the fabric of civil law, the law which is applied uniformly to Filipinos (except for Muslim Filipinos¹⁹) whether those seeking declaration of their marriage are devout or non-practicing Catholics, members of other Christian religions, atheists or agnostics.

A serious consequence of a no-divorce but pro-nullity stance of the Philippines is that it muddles up these two remedies which are conceptually and legally poles apart. Nullity of the marriage is premised on the absence of an essential or formal requisite of a valid marriage *at the time of its celebration* hence, no marriage ever came to be. Divorce, on the other hand, presumes a valid marriage but *in the course of their married life*, a marital offense is committed or differences between the parties crop up. However, since there is no divorce law in the Philippines, spouses latch on the weakness of Article 36. By allowing psychological incapacity that manifests itself later, even decades after the wedding ceremony, the petitioner in the nullity case presents a psychiatrist or clinical psychologist who will testify that it was merely a delayed appearance of a latent personality disorder that already existed at the time the couple made their marital vows. This has provided a fertile ground for spinning stories and spreading falsehoods all for the 'honour' of being the 'only' Catholic country in Southeast Asia.

Certain reasons have been advanced to justify the prohibition of divorce in the Philippines. Foremost of these are the provisions on the ‘protection of the family’ found in the Constitution. Article II Section 12 of the 1987 Constitution upholds that “the State recognises the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution.” This has been read to enjoin the State to strengthen the family, and in the negative, prohibit the State from adopting measures which would impair the ‘solidarity’ of family life.²⁰

Article XV Section 2 of the Constitution has been likewise used to validate the prohibition against divorce given that “[m]arriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.” However, the legislative intent, as gleaned from the deliberations of the Constitution Commission, does not support a conclusion that this provision was meant to institutionalise a permanent and sweeping exclusion of divorce as a solution to indubitably and hopelessly failed marriages. Characterising marriage as an “inviolable social institution” is meant to underscore its importance and the concomitant duty of the State to protect it. Surely, this shows a marked preference for ‘legitimate’ families, where heterosexual parents are wedded to each other, and mirrors the Catholic view that sex should only be within marriage and between a man and a woman. Yet, there is nothing in this provision that takes away or diminishes the power of Congress to pass a law that sets forth the specific circumstances when absolute divorce may be allowed. It is my view that the ten grounds for legal separation provided in the Philippine Family Code, including attempt on the life of the spouse, sexual infidelity, attempt to corrupt the petitioner or child to engage in prostitution, unjustified abandonment and repeated physical violence, could very well be the grounds for divorce.²¹

From these Constitutional provisions stem Article 1 of the Family Code, which provides that “[m]arriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life....” The permanence of the marriage union, the identification of the sex of the parties to the marriage (effectively prohibiting the recognition of same sex marriages), and categorical statement of accepted purposes for marriages (which is the establishment of

‘conjugal and family life’ and no other) reveal civil law that very closely hews to Roman Catholic religious teachings that views marriage as a union instituted by God. As such, the relationship between husbands and wives is likened to the relationship between God and his people.

The no-divorce law in the Philippines has been criticised for its failure to take into consideration the reality that some individuals are trapped in miserable marriages. Proof of this is the number of petitions filed for the declaration of nullity of marriage under Article 36 of the Family Code. According to the Office of the Solicitor General, petitions for civil annulment increase by 15% every year.²² Annulment cases (cases of annulment and declaration of nullity including those based on psychological incapacity) increased from 4,529 in 2001 to 7,753 in 2007. Second, the reality of marital violence contradicts the very foundation of marriage. According to the House Bill 4016 filed before the House of Representatives, the 2003 report of the Philippine National Police shows that wife battering accounted for 53.6% of the total 8,011 cases of violence against women.²³ Third, spouses in an irreparably broken marriage who engage in another relationship will provide a ground for the crime of adultery or concubinage. These offences grossly differ for men and women in terms of elements of the crime and penalty, with the married women most severely punished compared to the man she has a relationship with or her unfaithful husband or his new partner. Consider, for instance, that every act of sexual intercourse by a married woman with a man not her husband is one count of adultery.²⁴ For a married man to be found guilty of concubinage, several sexual acts would constitute only one count of concubinage and only if done under scandalous circumstances, or if the husband keeps the concubine in the conjugal dwelling or cohabits with her in another place.²⁵

On abortion

The Papal encyclical, *Humanae Vitae* (On Human Life by Pope Paul VI), subtitled *On the Regulation of Birth*, confirms the traditional Catholic teaching that abortion is forbidden. The said encyclical anchors its arguments on the nature of marriage,

parenthood and human life. It stresses that marriage is a means to exercise “faithfulness to God’s design.” It states:

*But to experience the gift of married love while respecting the laws of conception is to acknowledge that one is not the master of the sources of life but rather the minister of the design established by the Creator.*²⁶

And because all “[h]uman life is sacred,” and that “from its inception it reveals the creating hand of God,” natural law prohibits artificial means of contraception, and more so, abortion. *Humanae Vitae* states that “directly willed and procured, abortions, even if for therapeutic reasons, are to be absolutely excluded as licit means of regulating births.”²⁶

In the Philippines, abortion is a crime and is punishable under the Revised Penal Code.²⁷ The Philippines is one of the countries with the most restrictive abortion policies. According to the Center for Reproductive Rights’s map of abortion laws for 2007,²⁸ the Philippines is one of 69 countries (or 26% of the world’s population) where abortion is not explicitly allowed even if it is to save a woman’s life. 61% of the world’s population allows abortion for various reasons (physical health, mental health, or socioeconomic grounds) or does not require a woman to give any reason.

However, Article 11 of the Revised Penal Code on justifying circumstances could be cited as the legal basis for allowing physicians to perform a medical procedure to save the life of the mother although it may result in the termination of pregnancy. The law says that no criminal liability is incurred by “[a]ny person who, in order to avoid an evil or injury, does not act which causes damage to another, provided that the following requisites are present: First, That the evil sought to be avoided actually exists; Second, That the injury feared be greater than that done to avoid it; Third, That there be no other practical and less harmful means of preventing it.”²⁹

Thus, I argue that present Philippine law provides an exception to the abortion ban which can be inferred from the duty of physicians to save the life of their patients. The ethical principle of “double effect” may be invoked to explain the “permissibility of

an action that causes a serious harm, such as the death of a human being, as a side effect of promoting some good end.”³⁰ Under this doctrine, it is acceptable for a doctor to perform a procedure or dispense medication that would cause such ‘harm’ (the termination of the pregnancy) as a side effect (or “double effect”) of bringing about a good result (saving the life of the mother).

However, criminal liability for abortion is not only confined to the woman who procures the abortion but extends to the physician and midwife who shall cause the procedure, the parents of the pregnant woman who consent to the abortion, and the pharmacist who shall dispense abortifacients without the proper prescription from a physician. With the express prohibition and stiff penalty attached to abortion, a doctor who is timid (unwilling to take any personal risk whatsoever even at the expense of the patient’s life), or close-minded (inclined to read legal and religious doctrines restrictively, again at the expense of the patient), will certainly take the safe path, disregarding the patient’s welfare and autonomy. Realistically then, without an explicit and clear exception, many women’s lives will be lost or put in unnecessary and avoidable peril.

Numerous assertions have been advanced for the prohibition and criminalisation of abortion. The primary source of the prohibition is Article II Section 12 of the 1987 Constitution, which states that “It [the State] shall equally protect the life of the mother and the life of the unborn from conception...”³¹ The legal intent for the said provision is to prevent the state from adopting the doctrine established by *Roe vs. Wade*.³² Second, abortion is viewed as akin to infanticide and the destruction of the innocent, believing that the ensoulment of the foetus occurs at the moment of conception. When the precise moment of conception is, however, remains undetermined using extant scientific and medical procedures. Under Articles 40 and 41 of the Civil Code, enacted into law in 1950, the general rule holds that birth is the only factor that determines personality. Hence, before the actual live birth, the foetus has no legal personality, and enjoys only limited rights, such as the right to inherit. Even these rights are subject to the foetus being subsequently born alive. However, due to the strong influence of the Catholic Church, the doctrines of which were

espoused by staunch supporters who were members of the Constitutional Convention, pregnancy has been considered as fertilisation which is deemed as the beginning of life. The Roman Catholic Church has not made any palpable delineation between the moment of conception and ejaculation, giving the impression that these happen at the exact same time.

Despite its criminalisation, the reality is that a significant number of pregnant women avail of abortion. According to the publication *Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences*³³ by the Guttmacher Institute, about 1.43 million pregnancies each year are unintended, and almost a third (or 473,000) of the pregnancies end in abortion.

Demographically, these women are usually Catholic, married and have three or more children. They are usually poor and have had some high school education. But precisely because abortion is criminalised, safe abortion services are difficult to access; thus many of the abortions that occur are unsafe, performed by persons without the necessary skills and/or in circumstances lacking minimum medical standards.^{34,35} Correspondingly, thousands of women are hospitalised for post-abortion complications, with severe complications more common among poor and rural women. The Guttmacher study estimates that two out of three Filipino women who terminate a pregnancy are said to experience complications, such as severe pain, infection and even death. Meanwhile, 800 women per year are estimated to eventually die from infection, haemorrhage and other complications.³³ According to the 2003 Department of Health study, 10.5% of maternal deaths are caused by abortion complications, making pregnancies with abortive outcomes the fourth leading cause of maternal mortality in the Philippines.³⁶

There is a gaping chasm in terms of legislative measures that compel hospitals and health care professionals to provide quality care for post-abortion complications. Turned away for being 'sinners' or criminals, the plight of women who suffer botched abortions is exacerbated and their lives again put at risk at the altar of religious conservatism and self-righteousness.

On the use of contraceptives

The Vatican encyclical *Humanae Vitae* is adamant in prohibiting the use of contraceptives. Based on a “premodern concept of natural law, this document reaffirms that the biological finality of procreation is normative for each single conjugal act, thereby condemning so called artificial contraception as intrinsically evil.”²⁶ On this point, the Church believes that abortion and contraception are similar in that they interrupt the generative process and therefore violate natural law.

Anti-choice, mislabelled as ‘pro-life,’ groups also cite the *Evangelicum Vitae*, an encyclical by Pope John Paul II. It states: “It is of the greatest importance to re-establish the essential connection between life and freedom. These are inseparable goods: where one is violated, the other also end up being violated. There is no true freedom where life is not welcomed and loved; and there is no fullness of life except in freedom.”³⁷ As a result, the only fertility control or family planning method acceptable is conjugal abstinence during the wife’s fertile period or ‘natural’ family planning (NFP).

On February 2000, Executive Order (EO) 003 was issued by then Manila City Mayor Jose Atienza to promote ‘natural’ family planning methods. In practice, however, it prohibited modern contraceptive services in all city hospitals and health centres. According to the said ordinance:

The City shall establish programmes and activities in the City Health Department and its health centres and city hospitals which promote and offer counselling services for natural family planning and responsible parenthood...as a way of self-awareness in promoting the culture of life while discouraging the use of artificial methods of contraception.

In 2001, the Gloria Macapagal Arroyo Administration adopted population and reproductive health policies deemed consistent with the country’s ‘culture and values.’ In 2002, Arroyo laid down the four pillars of her population policy: responsible parenthood, respect for life, birth spacing and informed choice, all of which are in fact reiterations of the position of the Catholic Church concerning population issues. As the publication *Imposing Misery*

points out, “[t]he bishops’ position was, and still is, that family planning may only be (1) at the decision of couples without state interference, (2) prompted by ‘grave motives and with due respect for the moral law’ (e.g., not to avoid the responsibility of having a child), and (3) using only ‘natural’ family planning (NFP) methods.”³⁸

In keeping with this ideological framework, President Arroyo has made it crystal clear that the national government will not spend its funds to procure contraceptives. This is despite the United States Agency for International Development (USAID)’s declaration in 2007 of total cessation of contraceptives donation in the Philippines. Instead, the Arroyo Administration is pushing NFP as the only family planning method with utter disregard for the Constitutionally protected rights of its citizens and the Philippines’ state obligations under international law.

The arguments that have been raised by government to defend the ban on contraceptives have an uncanny resemblance to fundamental Catholic standards of morality. In an article, Father Matthew Habiger, O.S.B., Ph.D., enumerates certain reasons why the use of contraception is ‘wrong.’³⁹ Among those cited were:

1. *It [contraceptives] breaks the intrinsic connection between the unitive and procreative dimensions of the marital act.*
2. *It considers the periodic abstinence required by NFP to be harmful to marriage and sexual urge to be virtuous.*
3. *It elevates the pursuit of pleasure to the highest principle of marriage, disparaging self-discipline and self-denial.*
4. *It attacks fertility as unhealthful, seeing illness where there is none.*
5. *It leads directly to abortion; in fact, we have noted, much of so-called contraception involves very early abortion, e.g., Pill, IUD, Norplant and Depo-Provera.*
6. *It sets a horrible example for youth, who logically ask why they cannot enjoy sex if adults can.*

7. *It legitimises other acts such as homosexual and other perversions.*

The grim effect of the government's reproductive health policy on women's lives and health, and the denial of women's basic human rights, is best illustrated in the study of the Manila policy conducted by my centre, the Reproductive Health Rights and Ethics Center for Studies and Training (ReproCen), Likhaan,⁴⁰ and the Center for Reproductive Rights, an NGO based in New York. The research on the experiences of women and reproductive health providers documented the harm resulting from the city-wide proscription against contraception. First, although poverty and non-recognition of reproductive rights are interrelated but not causal, our study established that one of the direct outcomes of the EO was that it drove families into extreme poverty. According to the International Food Policy Research Institute, 11 million Filipinos are among the 1 billion people across the globe living on less than US\$1 a day.⁴¹

Our report showed that the primary reason Filipino women gave for not wanting to get pregnant was that their families were simply too poor to have another child. However, under the EO, these women faced barriers in getting the necessary family planning services and supplies to avoid pregnancy. In the case of Tina Morales, a mother of eight, having many children to feed and care for had stretched their income so that it was barely enough to provide for their basic needs. The thought of getting pregnant again worries her.

*...My children are malnourished. Oftentimes, they miss a meal. My sixth child who was underweight at birth, hasn't recovered yet. I give each of my children five pesos [10 US cents] for school allowance. I feel sorry for them because I can't buy them school shoes. They miss lunch if they have to pay something in school. One of my children had to stop going to school....If the mayor is concerned about poor women like me, he should bring family planning supplies and services back to Manila so women don't have unwanted pregnancies.*⁴²

The reproductive policy that the EO advances jeopardises women's health. Even in cases where women were advised that another pregnancy could endanger their lives, health personnel in

Manila city hospitals could and would not provide for the necessary medical intervention because of the EO. In an interview, a woman with eight children had this to say:

I had a difficult labour with my fourth child. I got dehydrated and was told that I had to undergo caesarean section but could not for lack of money. Aware of my fragile condition, all I could do was pray. I believe I had a difficult labour because I would always starve even while pregnant.

The doctor at Ospital ng Maynila (Manila Hospital, funded by the City of Manila) advised me not to get pregnant anymore because of my rheumatic heart condition. I wanted to have ligation but Ospital ng Maynila hasn't been providing FP [Family Planning] services. I was referred to Fabella Hospital (also in Manila and under the Department of Health) but I couldn't afford the 2000 peso [US\$42] fee...⁴³

Consequently, the lack of adequate provision of contraceptive services has led to an increase in the number of abortions. Since abortion is illegal in the country, most are done underground and many are unsafe. Unsafe abortion is an expected and dangerous consequence of keeping a tight rein on women's ability to control the number and spacing of their children. (See discussion on abortion above.)

The women interviewed for the study likewise said that the EO had the effect of straining intimate relationships, and ultimately predisposing them to be victims of sexual violence. To cope with absence of contraceptive supplies, some women declined to have sexual intercourse with their husbands/partners to avoid getting pregnant. Given that the Philippines remains a patriarchal society where law and culture deem men as the ultimate decision-makers, this refusal precipitated heated altercation, temporary separation and even sexual violence. Some women had no choice but to yield to the demands of their partners in order to steer clear of hostility, humiliation and marital discord.

One woman, said in her narrative:

My husband and I would quarrel when I refused to have sex for fear of getting pregnant. He suspected me of having an extra-marital affair. He would hit me on the thighs. He left us for the province and didn't communicate. I went to my

*sister's place with my six children and worked as a laundry woman to support myself and my children. We were separated for one year.*⁴⁴

Manila's EO 003 violates fundamental rights protected by both national and international law. Section 11, Article II of the 1987 Constitution guarantees the dignity of every human person and full respect for human rights.⁴⁵ The United Nations Charter and the Universal Declaration of Human Rights passed on December 10, 1948 expressly recognised equality of all human beings as an imperative of non-discrimination on the basis of sex. In 1979, the UN General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The UN recognised that the commission of discriminatory acts against women was an international issue that needed immediate attention and action. Subsequently, the CEDAW Committee in 1992 passed a General Recommendation to prohibit not just gender-based discrimination. The CEDAW mandates that State parties "take all appropriate measures" to eliminate discrimination against women and "to ensure, on a basis of equality of men and women...information and advice on family planning" and access to "health care services, including those related to family planning."⁴⁶

The contraceptive ban infringes on the constitutional rights of every person to health, education and the formation of a family. The Constitution mandates that the State "protect and promote the right to health of the people."⁴⁷ Likewise, the State is directed to "adopt an integrated and comprehensive approach to health development which shall endeavour to make essential goods, health and other social services available to all the people at affordable cost."⁴⁸ The contraceptive ban violates women's right to health by limiting their access to affordable and acceptable reproductive health services and information. Under the Economic, Social and Cultural Rights Covenant, the Philippines, as a state party, is obliged to ensure that health goods and services are available in sufficient quantity, accessible, acceptable and of good quality. Despite this unambiguous health policy advanced by the fundamental law and international treaties, the Manila EO restricts the provision of basic health services, making

these essential services unaffordable and inaccessible for poor women.

The Constitution, under Section 3(1) Article XV, likewise, affords spouses the right “to found a family in accordance with their religious convictions and the demands of responsible parenthood.”⁴⁹ The EO contravenes the individual’s right to decide the number and spacing of children pursuant to the teachings of their religion. Compelling spouses to use ‘natural’ family planning solely, the EO deprives them of making a genuine choice to have or not to have children and if they do decide to have them, how far or closely-spaced the children’s births should be. In a developing country like the Philippines, many cannot afford to purchase modern contraceptives from pharmacies or privately owned clinics and hospitals and depend completely on free supplies from government and NGOs. Thus, the ban discriminates among economic classes by making reproductive health services inaccessible to those who cannot afford them. The EO unequivocally imposes one religious and moral viewpoint regarding family planning and restricts the free exercise of religion by those who live by a different faith.

This brings us to the central principle of separation of church and state of which the contraceptive ban is in breach.⁵⁰ The Philippine Supreme Court has decided in a case that in order to survive the test of separation of church and state, the government’s action must “have a secular legislative purpose and a primary effect that neither advances nor inhibits religion.”⁵¹ This doctrine is interpreted as preventing the government from establishing a state religion, providing tax money in support of religion, or showing any preference for a religion. Government policies that brazenly ordain the teachings of one religion, even with the best intentions of laying down rules of ethical conduct, damage the wall of separation.

The Philippine government egregiously violates Constitutional, international and statutory laws owing to its desire to please the powerful Catholic Church leadership in exchange for its support in times of election and political upheavals. This evidences the “core dilemma” of the separation doctrine “namely, that it operates in a democracy governed by the rule of the majority where the

majority are Roman Catholic” and “to read the non-Establishment clause as requiring absolute neutrality among competing faiths is to ignore that they do not compete on a level playing field and that...the dice is loaded.”⁵²

The Manila contraceptive ban is a bare-faced violation of these obligations and increases the risk of maternal mortality and morbidity and of complications resulting from induced abortions.

The absence of a sound population policy makes the government’s target of reducing poverty from 30% in 2003 to 17% in 2010 unattainable, rapid population growth being a “hindrance to faster economic growth, which is key to sustained poverty reduction.”⁵³

Catholic fundamentalists in government, elected by the general public, act as religious advocates who cling to their rigid, entrenched position that defies reason and indisputable evidence of grinding poverty, as well as continuing maternal and infant deaths and illnesses.

Conclusion

The Philippines has an existing legal framework that respects the right to liberty and privacy of individuals in the choice of contraceptive method; yet, this has been overlooked by national and some local governments. Meanwhile, the government has held steadfast against allowing divorce and abortion even under special circumstances, in keeping with Catholic doctrines and in disregard of women’s human rights.

The constitutional intent is for the Philippines to remain a secular state. But the failure of the government to introduce true reforms to directly improve the lives of people and this particular government’s avarice amidst glib talk and empty promises, has led to distrust and cynicism. Thus, Filipinos turn to religious institutions, the most hegemonic of which is the Catholic Church, for guidance. As a constant and dependable anchor in times of political and economic crises, the Church’s interpretations and selective literality of what it claims to be core Christian teachings, is rarely questioned. This has caused the suffering of many, most

especially of women, on which the non-recognition of reproductive and sexual rights disparately impacts.

In the Philippines, families that belong to the middle and upper economic classes send their children to the private schools, most of which are Catholic. The public school system must be strengthened so that the formation of our children's values and thinking are not left largely in the hands of religious schools. A first-rate secular education will prepare us to survive and excel in the real world yet inculcate in us secular morality that is not based on a particular religion's concept of right and wrong.

The best way to guard against religious fundamentalism is to keep church and state separate. Ensuring the separation of church and state necessitates guaranteeing that the "majority church does not end up using state power to promote its own agenda (e.g. against population control) while still enabling members of the majority church to operate freely...to advance its welfare causes."⁵⁴ The Philippine experience in the area of sexual and reproductive rights undeniably confirms that the state favours Catholicism given that government has consented to, nay, encouraged, the transformation and adaptation of Roman Catholic Church teachings to civil rights, irrespective of the actor's own religious beliefs or non-beliefs.

The right to gender equality and the protection of women's rights enshrined in the Constitution⁵⁵ and the Women in Development and Nation Building Act⁵⁶ are likewise ignored. It is evident that although both men and women are affected by the ban against contraception, only women are exposed to harm such as dangerous pregnancies and other health consequences. Ultimately, only women suffer the social and economic consequences of the lack of contraceptive services and are deprived of their right to equal development with men.

Restrictive laws that deprive women of the right to exercise their reproductive autonomy offend international law as it denies the right to access to family planning services and information. Women's reproductive autonomy can be attained only when women have a choice in planning their family and the information and means to do so.⁵⁷

To allow the predominant church to direct public policy and government to apply it equally to Catholics and non-Catholics alike is to ignore human rights protected by the Constitution and other laws. It dilutes the role of free will and the duty to act according to one's conscience, which ironically, the Church likewise teaches. It perpetuates the discrimination of women and the continued subjugation of their rights, freedoms and identity.

endnotes

¹ Goh, Robbie. 2005. *Christianity in Southeast Asia*. Singapore: Institute of Southeast Asian Studies. p.20.

² Russell, Susan, "Christianity in the Philippines," www.seasite.niu.edu/crossroads/Russell/christianity.htm

³ Goh, pp.26-7.

⁴ The breakdown of religious groups in the Philippines is taken from the Department of Tourism website. www.wowphilippines.com.ph/discover/religion.asp.

⁵ Borresen, Kari Elisabeth. 2004. "Religion confronting women's human rights: The case of Roman Catholicism." In T. Lindhol; W. Cole Durham; B.G. Tazib-Lie. (Eds.) *Facilitating Freedom of Religion or Belief: A Deskbook*. Norway: Martinus Nijhoff Publishing. p.546. In this article, Borresen states that institutional Catholicism opposes women's reproductive autonomy. She points to the main themes in traditional sexology, which considers the twin human drives of religion and sexuality as antagonistic. The "perfect human prototype was defined as male or presexual" and femaleness was merely the "consequence of primeval sin."

- ⁶ Houghton Mifflin Company. 2003 (4th ed.). *The American Heritage Dictionary of the English Language*.
- ⁷ “Fundamentalism.” Catholic Answers. www.catholic.com/library/Fundamentalism.asp
- ⁸ Beit-Hallahmi, Benjamin. “Fundamentalism.” Global Policy Forum. www.globalpolicy.org/wtc/fundamentalism/0501def.htm
- ⁹ “Political conservatism as motivated social cognition.” www.awitness.org/journal/political_conservatism_as_motivated_social_cognition_summary.html
- ¹⁰ “What does the Bible say about divorce and remarriage?” Got Questions. www.gotquestions.org/divorce-remarriage.html
- ¹¹ “What does the Bible say about abortion?” Freedom from Religion. <http://ffrf.org/nontracts/abortion.php>
- ¹² “What does the Bible say about birth control? Should Christians use birth control?” Got Questions. www.gotquestions.org/birth-control.html
- ¹³ Alave, Kristine. 2008, February 10. “OSG alarmed by rising marriage annulment cases.” *Philippine Daily Inquirer*.
- ¹⁴ Executive Order No. 209: The Family Code of the Philippines. www.chanrobles.com/executiveorderno209.htm
- ¹⁵ Canon 1095 of the Code of Canon Law. www.vatican.va/archive/ENG1104/_P3Z.HTM
- ¹⁶ Alicia Sempio-Diy. 1995. *Handbook on the Family Code of the Philippines*. Quezon City: Joer Printing Services. p.42.
- ¹⁷ 268 SCRA 198 (1997)
- ¹⁸ Antonio v. Reyes, 484 SCRA 353 (2006)
- ¹⁹ Personal and family relations of Filipino Muslims are governed by the Code of Muslim Personal Laws.
- ²⁰ Bernas, Joaquin S.J. 2003. *The 1987 Constitution of the Republic of the Philippines: A Commentary*. Manila, Philippines: Rex Book Store. p.84.
- ²¹ Article 55 of the Family Code provides: “Art. 55. A petition for legal separation may be filed on any of the following grounds:
 (1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
 (2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
 (3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
 (4) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
 (5) Drug addiction or habitual alcoholism of the respondent;
 (6) Lesbianism or homosexuality of the respondent;
 (7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
 (8) Sexual infidelity or perversion;
 (9) Attempt by the respondent against the life of the petitioner; or
 (10) Abandonment of petitioner by respondent without justifiable cause for more than one year. For purposes of this Article, the term ‘child’ shall include a child by nature or by adoption. (9a)” www.chanrobles.com/executiveorderno209.htm
- ²² “Civil annulments rise in RP official surveys.” Inquirer.net. <http://newsinfo.inquirer.net/breakingnews/nation/view/20080213-118660/Civil-annulments-rise-in-RP-official-surveys>
- ²³ House Bill 4016, otherwise known as the Divorce Bill, was introduced by GABRIELA Women's Party Representative Liza Largoza-Masa.
- ²⁴ Revised Penal Code. Art. 333. Who are guilty of adultery. Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her knowing her to be married, even if the marriage be subsequently declared void. Adultery shall be punished by *prision correccional* in its medium and maximum periods. If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed.
- ²⁵ Revised Penal Code. Art. 334. Concubinage. Any husband who shall keep a mistress in the conjugal dwelling, or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by *prision correccional* in its minimum and medium periods. The concubine shall suffer the penalty of *destierro*.

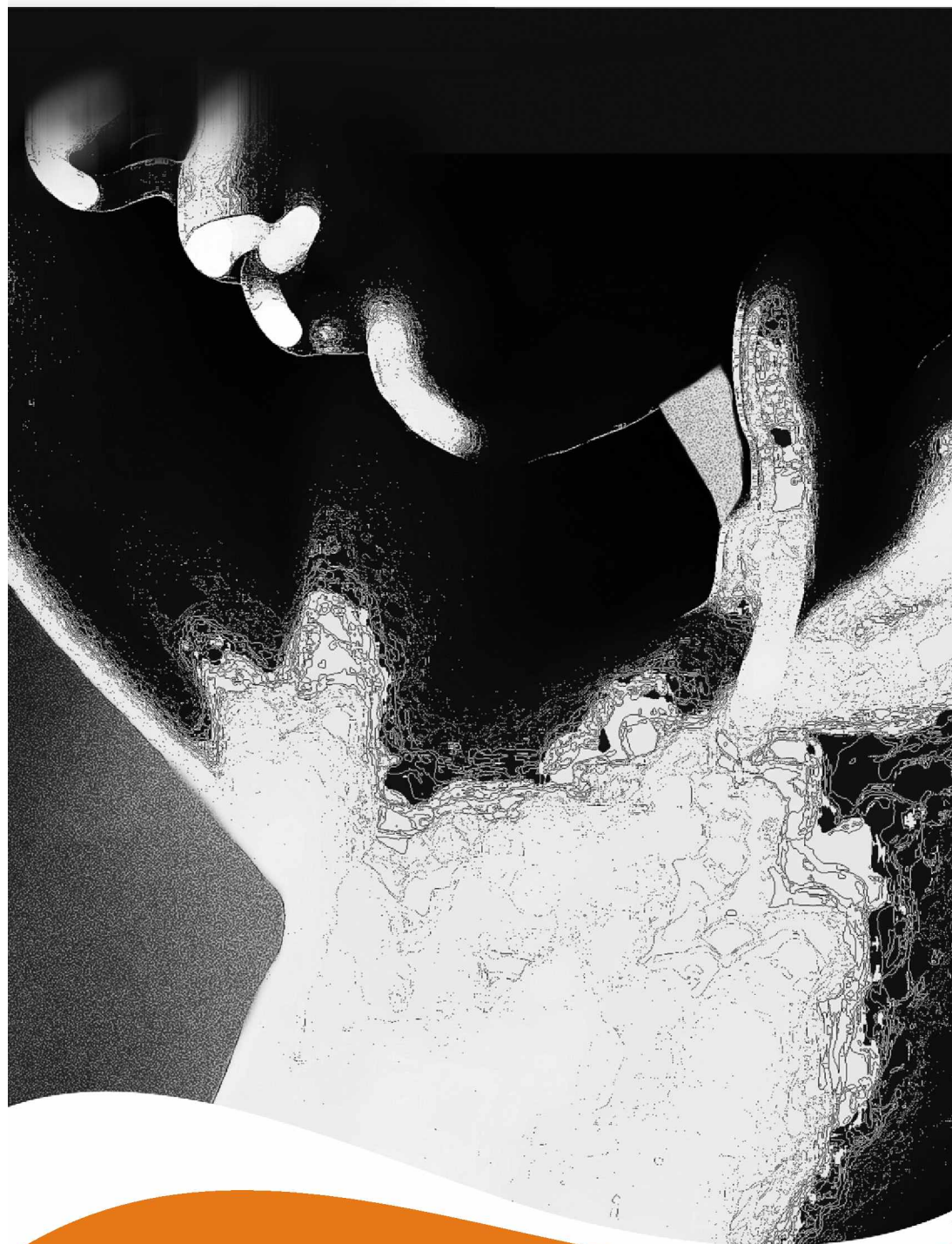
- ²⁶ Pope Paul VI. 1968. *Humanae Vitae*. www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html
- ²⁷ "Art. 256 Revised Penal Code. Intentional abortion. Any person who shall intentionally cause an abortion shall suffer:
1. The penalty of *reclusion temporal*, if he shall use any violence upon the person of the pregnant woman.
 2. The penalty of *prision mayor* if, without using violence, he shall act without the consent of the woman.
 3. The penalty of *prision correccional* in its medium and maximum periods, if the woman shall have consented.
- Art. 258. Abortion practiced by the woman herself or by her parents. The penalty of *prision correccional* in its medium and maximum periods shall be imposed upon a woman who shall practice abortion upon herself or shall consent that any other person should do so. Any woman who shall commit this offense to conceal her dishonour, shall suffer the penalty of *prision correccional* in its minimum and medium periods.
- If this crime be committed by the parents of the pregnant woman or either of them, and they act with the consent of said woman for the purpose of concealing her dishonour, the offenders shall suffer the penalty of *prision correccional* in its medium and maximum periods.
- Art. 259. Abortion practiced by a physician or midwife and dispensing of abortives. The penalties provided in Article 256 shall be imposed in its maximum period, respectively, upon any physician or midwife who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same. Any pharmacist who, without the proper prescription from a physician, shall dispense any abortive shall suffer *arresto mayor* and a fine not exceeding 1,000 pesos." Revised Penal Code of the Philippines.
- www.chanrobles.com/revisedpenalcodeofthephilippines.htm
- ²⁸ Center for Reproductive Rights. 2007. *The World's Abortion Laws Map 2007*. www.reproductiverights.org/pub_fac_abortion_laws.html
- ²⁹ "Art. 11. Justifying circumstances. The following do not incur any criminal liability: xxx
4. Any person who, in order to avoid an evil or injury, does not act which causes damage to another, provided that the following requisites are present;
- First. That the evil sought to be avoided actually exists;
- Second. That the injury feared be greater than that done to avoid it;
- Third. That there be no other practical and less harmful means of preventing it."
- Revised Penal Code of the Philippines. www.chanrobles.com/revisedpenalcodeofthephilippines.htm
- ³⁰ "Doctrine of double effect." *Stanford Encyclopedia of Philosophy*. <http://plato.stanford.edu/entries/double-effect/>
- ³¹ The 1987 Constitution of the Republic of the Philippines, Article II, Section 12. www.chanrobles.com/article2.htm
- ³² Bernas, Joaquin S.J. 1996. *The 1987 Constitution of the Republic of the Philippines: A Commentary*. Manila, Philippines: Rex Book Store. p.85.
- ³³ Singh, Susheela, et al. 2006. *Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences*. New York: Guttmacher Institute.
- ³⁴ In a global review of abortion incidence, Susan Cohen states that "[a]bortion is generally safe in settings where the procedure is legal and openly available. Where abortion is highly restricted or banned outright, it still occurs, although clandestine; as a result, it is most likely to be unsafe. The WHO defines an unsafe abortion as 'any procedure to terminate an unintended pregnancy done either by people lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.'" Cohen, Susan. 2007. "New data on abortion incidence, safety illuminate key aspects of worldwide abortion debate." *Guttmacher Policy Review*. Vol. 10, No. 4. www.guttmacher.org/pubs/gpr/10/4/gpr100402.html
- ³⁵ According to NARAL Pro-Choice America Foundation, "legal abortion care entails half the risk of death involved in a tonsillectomy and one-hundredth the risk of death involved in an appendectomy. The risk of death from abortion is lower than that from a shot of penicillin." "The safety of legal abortion and the hazards of illegal abortion." www.prochoiceamerica.org/assets/files/Abortion-Access-to-Abortion-Science-Safety-of-Legal-Abortion.pdf
- ³⁶ Department of Health. 2003. "Maternal mortality by main cause number rate/1000 livebirths and percentage distribution Philippines, 2003." Department of Health. http://doh.gov.ph/data_stat/html/maternal_deaths.htm
- ³⁷ Pope John Paul II. 1995. *Evangelium Vitae*. www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html

- ³⁸ Linangan ng Kababaihan, Inc. (Likhaan); Reproductive Health, Rights and Ethics Center for Studies and Training (ReproCen); Center for Reproductive Rights (CRR). 2007. *Imposing Misery: The Impact of Manila's Ban on Contraception*. www.reproductiverights.org/pdf/Philippines%20report.pdf
- ³⁹ Habiger, Matthew. "Contraception, why not?" PRO-Life Philippines. www.prolife.org.ph/page/contraception4
- ⁴⁰ Likhaan stands for "Linangan ng Kababaihan" and is headed by Junice D. Melgar.
- ⁴¹ Generalao, M. Victoria E. 2007, November 8. "11 M Filipinos among 1B living on less than \$1/day." *Philippine Daily Inquirer*.
- ⁴² Likhaan, ReproCen, CRR, p.17.
- ⁴³ Likhaan, ReproCen, CRR, p.20.
- ⁴⁴ Likhaan, ReproCen, CRR, p.23.
- ⁴⁵ 1987 Constitution, Article 2, Section 11 (Philippines) provides that "The State values the dignity of every human person and guarantees full respect for human rights."
- ⁴⁶ CEDAW, articles 10(h), 12(1), 14(2)(b), 16(1)(e)
- ⁴⁷ 1987 Constitution, Article 2, Section 15 (Philippines) provides that "[t]he State shall protect and promote the right to health of the people and instill health consciousness among them."
- ⁴⁸ 1987 Constitution, Article XIII, Section 11 (Philippines) provides that "[t]he State shall adopt an integrated and comprehensive approach to health development which shall endeavour to make essential goods, health and other social services available to all the people at affordable cost."
- ⁴⁹ 1987 Constitution, Article XV, Section 3(1) (Philippines) provides that "The State shall defend: (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood."
- ⁵⁰ 1987 Constitution, Article 2, Section 6 (Philippines) provides that "[t]he separation of Church and State shall be inviolable."
- ⁵¹ *Victoriano v. Elizalde Rope Workers Union*, 59 SCTA 54 (1974)
- ⁵² Pangalangan, Raul C. 2008. "Transplanted constitutionalism: The Philippine debate on the secular State and the rule of law." *Philippine Law Journal*. Vol. 82, No. 3, pp.1-23.
- ⁵³ Pernia, Ernesto. 2007. "Population as public interest." UP-CIDS Shame of the Nation Series. Vol. 1 No. 3, E. Aguiling-Pangalangan, ed.
- ⁵⁴ Pangalangan, Raul, p.19.
- ⁵⁵ 1987 Constitution, Article 2, Section 14 (Philippines) provides that "[t]he State recognises the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men."
- ⁵⁶ Republic Act 7192. February 12, 1992.
- ⁵⁷ Borresen, p.522. Borresen says that 'since the concept of female autonomy remains alien to all global religions, women's human right to control their own voluntary fertility represents a fundamental challenge to traditional gender models.'

about the author

Elizabeth Aguiling-Pangalangan is a professor at the University of the Philippines (U.P.) College of Law where she teaches Family Law, Children's Rights, Conflict of Laws and Legal Ethics. She is the Executive Director of the University Center for Integrative and Development Studies and Project Director for the Reproductive Health, Rights and Ethics Center for Studies and Training (ReproCen), which serves as the Reproductive Health Section of the Social Medicine Unit of the U.P. College of Medicine where she also lectures on Legal and Ethical Issues in Obstetrics and Gynaecology and Law and Bioethics. Beth earned her Bachelor of Law degree from U.P. and her Masters of Law from Harvard University. She was a Fellow at the International Family Planning Program for the US International Health Programs in 2004 and a Research Fellow at the East Asian Legal Studies Program of the Harvard Law School in 2007.

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Conclusion



rashidah abduallah

challenging religious fundamentalisms: ways forward

The issue of the increasing impact of religious fundamentalism on women's rights and sexual and reproductive health and rights (SRHR) has been recognised as very important for more than a decade among feminists and the SRHR community of activists, donors and service providers. Despite this, there has been little regional work done to understand what is happening and what the solutions are. ARROW's symposium took a bold step to begin this discussion within the diverse stakeholders of the *Fourth Asia Pacific Conference on Reproductive and Sexual Health and Rights* (APCRSH). For the first time at the APCRSH, activists and researchers who engage in the issue at local levels have spoken out on religious fundamentalisms, addressing three of the major religions together with strategies for moving forward.

The influence of religious interpretations that do not support women's sexual and reproductive rights and gender equality are having an increasing impact in many countries of our region. This extends from negatively influencing sexuality and reproductive policies and laws and their implementation, to actual access to health services, as well as morality norms and behaviour on women's sexuality and dress codes.

While there is still a need for more conceptual clarity and clear frameworks to guide activism, the bigger challenge now is to map and monitor country and local community situations in order to provide evidence of what is happening, how this is affecting women, men and young people, and what kind of activism and resistance is succeeding. There is also a need to provide more space for people and organisations to speak out and give alternative theological views interlinked with human rights principles. We need to claim back our religions and reform them

to be just, compassionate and gender equal religions in practice. In a region like Asia and the Pacific where institutional religion still plays a central role in the daily lives of many people, this reform is essential for gender equality in practice.

Moving ahead to work after this symposium, there are several specific areas to work on. Conceptually, there is further need for clarity of terms to describe the issue both in the practical and strategic sense. Practically, we need to be very clear of what concepts actually mean, whether the terms we decide to use are 'fundamentalism,' 'conservatism' or 'extremism.' Then, we need to decide what concepts we are going to use together as a diverse SRHR community - what is most acceptable and strategic for us?

The framework of the impact of fundamentalisms on SRHR and women's rights also needs more operational clarity. For example, impact can be on sexuality norms and behaviour, including dress requirements, prohibitions on pre-marital sex, denial of homosexual and transgender identities, and marital sexual relationships, including coercion and rape. It can be on women's and men's overall relationships - religions can institutionalise gender power differences and inequality, giving more power to men in making decisions on sex, contraception and abortion, among other things. Or they can be interpreted as embracing the concept of gender equality with men and women as equal partners, and women having the edge on reproductive rights as they are the ones to bear and rear children. Overall, are women's actual choices and decision-making power on abortion, contraception, dress, and sexual choices reducing or increasing? Do women have more freedom from violence, coercion and discrimination, or have women's lives become tighter?

Then the impact of conservative and fundamentalist religious views on the health system and access to health services need to be examined. Are health systems, as well as the health providers, taking on conservative positions? Are they reducing women's access to services as moral gatekeepers by denying services that are in law and policy and to which women have a right to be available and accessible? Are SRHR services more available and accessible or are there more restrictions?

And finally the State itself. Is it colluding with conservative religious forces either openly in policy statements and practice as in the Philippines or more covertly as in Malaysia, and reducing access to contraceptive and abortion services?

With greater conceptual and operational clarity, the next task of mapping reality - what is actually happening in our countries - will be easier. This is a huge and complex task which involves both monitoring and research methodologies. We can monitor what SRHR services are available and whether or not some services have been removed (as have contraceptive services in Manila City, Philippines) based on religious reasons. We can also monitor the violations to SRHR which have been documented. But there is a need for deeper research too to find out what local people are believing, thinking and doing that are being directed by their religious beliefs.

Some of the symposium presentations spoke on impact more at a theoretical level, probably indicating that there is yet to be an evidence-based country mapping and analysis. Interviews with women, men, health providers and policymakers could be an important research methodology to find answers to these questions. Even national opinion polls on beliefs on religion and contraception would help. Whatever the methodology, we need to be sure that what we are saying about the situation is accurate; otherwise, our intervention strategies will not succeed.

Mapping and documenting successful interventions at country level will be easier but is just as critical. There have been a number of innovative and successful strategies which are not widely known. For example, Sisters in Islam in Malaysia brought the population advisor of Al Azhar University in Cairo as a resource person for a 1998 Southeast Asian seminar to clarify the majority global positions of Islam on contraception and abortion and to dialogue with health providers on ethical issues. A question and answer booklet on Islam and contraception and abortion was published after the forums and is the only source of information of its kind in Malaysia. As well, Indonesian women's groups have successfully worked with *ulama* (Islamic scholars) - a *fatwa* (judgement) on the permissibility of abortion for Muslims in

certain circumstances, which goes beyond the civil law conditions - was the advocacy outcome.

Unfortunately, this first symposium was too short to allow a full discussion of strategies. As with other complex conceptual areas of SRHR such as sexuality, men's responsibility, and an SRHR rights-based approach, we SRHR advocates need to be able to move quickly beyond the conceptual discussion of the issues to providing evidence of reality. In addition, what interventions are working to change that reality need to be in line with our vision of SRHR as in the Cairo Programme of Action and the Beijing Platform for Action agreements and with our goals of gender equality and social justice.

about the author

Rashidah Abdullah is the founder director of ARROW, has been in its Board of Directors since 1993, and was its executive director for 12 years. A keen policy researcher, writer and activist, Rashidah has been active in women's health, reproductive health and feminism since the early 1970s, both in Australia and Malaysia. She has co-founded in 2006, together with diverse partners, the Reproductive Rights Advocacy Alliance Malaysia (RRAAM). Rashidah is also a founder member of Sisters in Islam (SIS).

Other ARROW publications

ARROW. *ARROWs For Change*. Volumes 1-14. This action-oriented bulletin provides gender and rights perspectives on key sexual and reproductive health and rights issues. It is produced tri-annually in English and bi-annually in selected Asia-Pacific languages. Free of charge for Asia-Pacific, African, Eastern Europe and South American subscribers. For North America and Western Europe, subscription fees are US\$10.00 for individuals and US\$15 for organisations. Publications exchange is welcome.

ARROW. 2008. *Advocating Accountability: Status Report on Maternal Health and Young People's SRHR in South Asia*. 140p. US\$10.00

ARROW. 2007. *Rights and Realities: Monitoring Reports on the Status of Indonesian Women's Sexual and Reproductive Health and Rights; Findings from the Indonesian Reproductive Health and Rights Monitoring & Advocacy (IRRMA) Project*. 216p. Price: US\$10.00

ARROW. 2005. *Monitoring Ten Years of ICPD Implementation: The Way Forward to 2015, Asian Country Reports*. 384p. Price: US\$10.00

ARROW, Center for Reproductive Rights (CRR). 2005. *Women of the World: Laws and Policies Affecting Their Reproductive Lives, East and Southeast Asia*. 235p. Price: US\$10.00

ARROW. 2003. *Access to Quality Gender-Sensitive Health Services: Women-Centred Action Research*. 147p. Price: US\$10.00

ARROW. 2001. *Women's Health Needs and Rights in Southeast Asia: A Beijing Monitoring Report*. 39p. Price: US\$10.00

Abdullah, Rashidah. 2000. *A Framework of Indicators for Action on Women's Health Needs and Rights after Beijing*. 30p. Price: US\$10.00

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Please add US\$3.00 for postal charge.
For more details, email arrow@arrow.po.my



About ARROW

Our mission

ARROW is committed to advocating and protecting women's health needs and rights, particularly in the area of women's sexuality and reproductive health. We believe that good health and wellbeing, and access to comprehensive and affordable gender-sensitive health services, are fundamental human rights.

Our long-term objectives

ARROW's work will be done when:

- Health, reproductive health and population policies and programmes are re-oriented to become more accessible, affordable and comprehensive, and include a gender and rights approach;
- The women's movement and civil society become stronger and more effective in holding governments accountable to international commitments, influencing policy agendas on women's health and rights, and gaining sustained representation in decision-making structures; and
- Women's health outcomes and women's lives improve, particularly in the area of sexual and reproductive health and rights (SRHR) and violence against women (VAW), especially for poor and marginalised women and girls.

Our structure

ARROW is a regional non-profit women's NGO co-founded in 1993 by Rita Raj and Rashidah Abdullah. Its office is based in Kuala Lumpur, Malaysia.

- ARROW's operations are handled by the Management Team, led by the Executive Director and assisted by an Administration Manager and two Programme Managers.
- ARROW is governed by a Board of Directors, made up of five committed and experienced voluntary members and the Executive Director.
- The Programme Advisory Committee (PAC), composed of committed and knowledgeable activists from the region, provides programme advice and direction-setting.
- ARROW's programmes and activities are implemented by paid staff and occasional interns.

Our strategy

ARROW believes in a united effort to make a difference in women's lives, including their sexual and reproductive health, and thus relies on effective collaborations and partnerships. Our partners are seen as integral to our structure, and capacity building with them - and of ARROW itself - is seen as an important mechanism to facilitate their effective participation in achieving our goals. ARROW's programme strategies are:

- Production and dissemination of innovative materials for advocacy, policy and programme implementation;
- Policy advocacy with governments and other key stakeholders backed by research-based monitoring of implementation of the 1994 International Conference on Population and Development and the 1995 Fourth World Conference on Women; and
- Capacity building of women's NGOs and strengthening the women's movement.



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Surfacing: Selected Papers on Religious Fundamentalisms and Their Impact on Women's Sexual and Reproductive Health and Rights is a compilation of papers that came out of an ARROW symposium on the theme. In these papers, Elizabeth Aguilang-Pangalangan, Jashodhara Dasgupta, Kalpana Kannabiran and Zaitun Mohammad Kasim articulate the impact of Roman Catholic, Hindu and Islamic fundamentalisms on sexual and reproductive health and rights in their countries and sub-regional contexts, and begin the discussion on strategies for addressing these obstacles. Michael Tan, in his synthesis, draws out the convergences around the various types and forms of religious fundamentalisms across the region. The book concludes with Rashidah Abdullah's paper on ways to move forward toward meeting the challenges of religious fundamentalisms, while ensuring that our advocacies are contextualised in the spiritual lives of a large majority of women in the Asia-Pacific region.

ARROW hopes that this publication will contribute to the flourishing of discourses on this issue, towards the increased effectiveness of civil society in countering that which is detrimental to women, while at the same time seeking new paths of consensus that involve women and generate opportunities for a better tomorrow.

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