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**WOMEN IN SACRED SPACES: AN ANALYSIS
OF TRADITIONAL ISLAM AND JUDAISM IN
THE COMMUNITIES OF CAPE TOWN**

A dissertation submitted by

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in fulfillment of the requirements for the award of the degree

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in

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Declaration

This work has not been previously submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work, or works, of other people has been attributed, and has been cited and referenced.

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Yusuf Mataar

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Date

University of Cape Town

Dedication

In the name of God, the Most Gracious, the Dispenser of Grace.

To my late father, Hasan, who imbued me with traits of gender sensitivity, even though, he was unschooled. And to my aging mother, Khadija, who has afforded me the space to acquire an education, which has shaped my gendered perceptions and concerns.

University of Cape Town

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Abstract

The New Constitution protects Muslims and Jews as part of the minority religions in a pluralistic South Africa just like the rights of women are procured in the public and private arenas. Multiplicity usually exacerbates a more interactive relationship between divergent faiths thereby bringing into sharp focus the strained association of local Muslims and Jews considering the escalating violence in Palestine/Israel.

This study firstly attempts to examine the status of traditional Muslim and Jewish women autonomously in the sacred spaces of the mosque, synagogue and home to highlight the customary gendered issues in the related spaces. These gendered sacred spaces are managed via ritual activity determined in traditional law, which is rooted in genderized cosmogonies and myths founded in theology consequently exhibiting the interplay between theology and law.

The study also endeavors to analyze the position of traditional Muslim and Jewish women reciprocally in the public and private sacred terrains of Cape Town to underline gendered similarities. These commonalities akin to genderized sacred spaces could serve as a forum for bridging the local Muslim-Jewish divide by stimulating discourse among intellectuals; community organizations negotiating public and private matters; and individual members of the respective religious traditions. Gendered resemblances could additionally amplify the debate of women's rights in the public and private sacred domains to evoke an equitable understanding of each other (in the binaries of Muslims and Jews as well as men and women).

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Introduction

[D]ialogue is the only possible vehicle that can help to breach the present divide and break the impasse between South Africa's Muslims and Jews. Dialogue requires self-examination and honesty as well as the capacity of both sides to appreciate the pain of the other...There is a great deal of positive work to be done and it needs balance between a more outward-looking approach and greater introspection [Hellig 1999: 15].

Postmodern discourse alleges that it is unhelpful to look at things in terms of binary opposites like Muslim and Jew; male and female; public and private; introspection and outward-looking; or historical and contemporary, as demonstrated in the philosophy of deconstruction, which eschews placing the 'other' in the center by means of the episteme of decentering and accentuates multiplicity [Derrida 1976]. It is my hypothesis that it is indeed beneficial to look at commonalities of such binaries in order for the former to develop a better understanding of the latter or 'other', and thereby create fertile ground for informed and honest discussions of common interest. Where the majority of the adherents to a religious community in South Africa consist mainly of traditional religious members, especially in an environment of multiple and divergent faiths, it is useful to compare two traditional minority religions like Islam and Judaism, in relation to those arenas which are most sacred in local belief and practice. What then are the similarities between traditional Islam and Judaism in sacred places?

Contextually the legal rights of minority religions as well as women are guaranteed in the New South African constitution that addresses both public and private matters. Additionally, while current Muslim-Jewish relations are extremely tense and both traditional religions are patriarchal in the public as well as private spheres it would be effective for purposes of discourse to elicit points of commonality in the position of Muslim and Jewish women within public as well as private sacred spaces from a historic (introspective) and contemporary (outward-looking) perspective. So therefore what are the commonalities of traditional Muslim and Jewish women in the public as well as private sacred spaces of Cape Town?

Background

In a previous study of women in sacred space in Cape Town mosques, I ascertained a similarity between the traditional issues of Islam and Judaism pertaining to women in sacred space. I found that the separation of the sexes in sacred mosques, and synagogues was instituted to protect men and women from illicit sexual desire, while the avoidance of such behavior was better for the purity of the heart during sacred times of congregational worship. This finding motivated me to further investigate other points of commonality between the two religious traditions in relation to the status of women in sacred spaces of Cape Town. Subsequently, I learnt that the two also prohibit the leadership of women in congregational prayers as well as sermons at mosques and synagogues.

A comparative project of commonalities is the antithesis of one that highlights differences from a point of superiority against the other of inferiority as displayed in offensive public discourse, and action between Muslims and Jews in Palestine/Israel. This frequently results in the portrayal of negative images of the other and inevitably promotes a situation of misunderstanding, hostility and constant discord. A relationship that has recently produced renewed fury and continued violence regularly depicted in local as well as international media. Concurrently, local relations between Muslims and Jews have been strained particularly with the break down of the Middle East Peace Plan [Hellig 1999b]. These estrange relations have further been exacerbated through the intense local as well as global debate around equating "Zionism with Racism" during the weeks leading up to and during the 2001 United Nations Annual Summit on Racism as well as with the language usage adopted in the Durban Declaration [Saks 2002]. Furthermore, as violence between Muslims along with non-Muslim Arabs and Jews subsists, and escalates in Palestine/Israel defensive public discourse in the local Muslim in addition to Jewish community would continue to mar and thwart a true understanding of the other.

By embarking on a comparative study of Muslim and Jewish women in the sacred spaces of the communities of Cape Town the research on the undercurrent gender issues should act as an area of agreement and submission due to the examination of the envisaged resemblances between the two traditional faiths. The examination would only focus on contemporary traditional (or not strictly orthodox)

Muslims and Jews in Cape Town because presently they constitute the majority in both communities. Such a study would also be a pioneering work as no research has previously attempted to compare the position of women in sacred spaces vis-à-vis traditional Islam and Judaism in the communities of Cape Town. Accordingly, I have been motivated to undertake such a study in an attempt to bridge the current divide between local Muslims and Jews by evoking debate in the academic arena; community organizations engaged in public as well as private matters; and amongst individual members of the respective traditional faiths. Concurrently, I would use gender as a focus of analysis, since the situation of women in developing countries could vividly be expressed in Amartya Sen's calculation that 100 million women who should be alive today are not because of gender discrimination [Nussbaum 1999]. As a result my study would contribute towards the evolving debate on the status of women in public and private sacred spaces. Hence the befitting title "Women in Sacred Spaces: An Analysis of Traditional Islam and Judaism in the Communities of Cape Town" for the dissertation.

Areas Explored and Analyzed

Specific locations of women were mapped out and explored for the religious traditions of Islam and Judaism. For Jonathan Z. Smith these traditions and others were meaningfully regarded as processes of managing as well as negotiating among mapping strategies for various territories or areas [Gill 1998]. These areas of analysis incorporated as sacred spaces, i.e. (i) women in public sacred places like traditional mosques and synagogues; and (ii) women in the traditional home, since the private space of the home as well as family in traditional Islam [Nasr 1987] and Judaism [Fishbane 1987] was predominantly a sacred domain for women. While the mosque and synagogue were considered as central places of worship and assembly for the people where God can be met in prayer, the home was deemed important for customary ritual and family law. Within these spaces sacred rituals, festivals and celebrations were usually observed. Traditional Muslims as well as Jews had no doubt that the aforementioned locations were sacred and that any area can become sacred depending on the rituals that were performed therein [Smith 1987], and cosmogonies and myths, which were intertwined with rituals. Whilst cosmogonies and myths

provided a foundation for traditional thought, as determined within theology, the emanating rituals yielded the active dimension of the faith founded in traditional law.

The public and private territories were analyzed in the Cape Town context from a historical, theological and socio-legal standpoint. Historical in order to contextualize the project, and theological and socio-legal, since the former gave the latter its spirit, and often engendered its male or female adherents towards ritual or subordination, tradition and justice or inequity, e.g. in the mosque, synagogue, home and amongst individual family members. The sacred spaces of the mosque and synagogue were managed via traditional law related to these spaces and ritual activity therein, while the sacred place of the home was negotiated by way of Islamic or Jewish customary family law amidst the broader South African secular law environment.

Rationale

For Muslims and Jews sacred space is not only confined to mosques and synagogues, since every area has the potential of becoming a sacred terrain, and includes, as in the words of J.Z. Smith, “space set apart” or “ritualized space” [1987] located in the public or private sphere. This belief is moreover intensified by the view that whatever occurs in and around the chief sacred sites of Palestine/Israel, i.e. in hostile Jerusalem, somewhat impacts on the way local traditional Muslims and Jews perceive sacred space and the world [Harvey 1990], especially with regard to their attachment to Jerusalem and Palestine/Israel [Hellig 1999b]. An atmosphere of division in addition to indifference would thus be advanced amongst Muslims and Jews locally and globally. Consequently, there would be a need to contrast the binary pairings of local Islam and Judaism fueled by the prevailing enmity between the two faiths. In addition the two traditions are both patriarchal where the male is traditionally deemed dominant and female subordinate within the public and private terrains [Ardener 1993]. Hence the necessity to examine the superior relationship of Muslim and Jewish men against inferior women in sacred places, while eliciting the similitude of gender issues rooted in misogynistic, androcentric and unjust tendencies. Inclinations that are mainly rooted in theological thought located within the cosmogonies and myths of the creation of the first man as well as woman for both traditions. The predisposed relationship located within public as well as private gendered sacred spaces would thus

necessitate an analysis using gender as a category filtered through socio-legal principles like justice, equity and equality, since feminism alone has little power to critique tradition [Nussbaum 1999].

Research Methodology

The thesis contends that by comparing the sacred places of Muslims or Jews towards each other and by examining the gendered relationship of men against women therein determined through the extrapolation of similarities between 'traditional' Cape Muslims and Jews the one would develop a better understanding of the other. Traditional is related to adopting the attitude that one is doing something in the way in which it has been done before. Traditional Islam, on the one hand, emphasizes the following of the Islamic legacy as there is little need to go back directly to the Qur'an and Prophetic example or Sunnah, since Islam was adequately expressed in the past. Traditional Judaism, on the other hand, underscores the adherence of the Torah in its written and oral form as enunciated through the rabbinic heritage manifested in Jewish belief as well as practice. Whilst modern or progressive is linked to embracing aspects of contemporary society, traditional does not mean the total rejection of these. Rather it is the continuation in certain aspects of social life in a mode authorized by the past [Rippin 1993].

In order to direct my thesis and test my hypothesis I formulated a number of focus and problem questions as indicated above. These questions were inextricably rooted in discourses on the sacred, viz. in terms of 'sacred space' in relation to power relations, as designated in the theories of David Chidester and Edward Linenthal. According to these theorists sacred places are arenas in which power relations can be reinforced. Typically relations between insiders and outsiders; men and women; those who are included and those who are excluded; those who are active and those who are passive; those who are dominant and those who are subordinate; etc., can be distributed, even though, these power relations are seldom resisted. Sacred places among the religious traditions were thus charged sites for contested negotiations over the management of the symbolic capital that signified power relations [Chidester 1995]. Given that the main focus of the thesis is confined to gendered sacred spaces the respective theories of Shirley Ardener and Martha Nussbaum, i.e. mapping of gendered spaces through socio-legal principles or innate human qualities, are utilized

in tandem with those on sacred space, i.e. the equivalence of 'genderized sacred space'.

For Ardener structural relationships like hierarchies were regarded as social maps that were oft realized by placing individuals within shared spaces. Here individuals were a part of numerous binaries where a woman was inferior relative to her husband, but superior in relation to her children in their domestic domain. Additionally, since space was considered an ordering principle, like the sacred and profane, public and private,¹ right side and left side, central and peripheral, front and rear, etc., so too was gender. It was no accident then that God allegedly created the first woman from the left side of a man where the same essence characterized the nature of the woman and left side of the body. While the left side was connected with the weak and defenseless part of a human being women were in turn destined to a passive as well as subordinate condition [1993]. Nussbaum, furthermore, asserted the notion that human beings have a "core of moral personhood", i.e. innate qualities such as justice, equity, dignity, etc., and this was predicated in a perception that women needed to vindicate their equality as well as argue for change. Claims for justice in the legal or political sense would hence arise where the disparity between humanity and its social deformation were manifested [1999]. The implications of the theories in 'genderized sacred space' thereby formulated the basis for analyzing the historical, theological, and socio-legal context of traditional Cape Muslim and Jewish women within the mosque, synagogue as well as home.

From a deductive perspective some of the data of the dissertation was extracted from primary² and secondary sources, especially the aforementioned theories as well as philosophies grounded in postmodern discourse, and information dealing with the historical, theological (i.e. focusing on the Genesis Creation Story), sociological and legal (i.e. customary law) framework of traditional Islam and Judaism. Qualitatively, on the other hand, the contextual data was collected from local journals and newspapers, and through semi-structured open-ended interviews in addition to participant observations, since no previous research had attempted to probe into a

¹ "The notion of 'private' as opposed to 'public' is seen as a criterion for 'mapping' metaphysical space, as 'inner' does in opposition to 'outer', regardless of the fact that some 'private place' can really be walked into." See quote in Shirley Ardener's, "Ground Rules and Social Maps for Women: An Introduction", in S. Ardener, ed., *Women and Space: Ground Rules and Social Maps*, (Oxford: Berg Publishers Limited, 1993), 4.

² All the Qur'anic translations have been extracted from Muhammad Taqi al-Din al-Hilali & Muhammad Muhsin Khan's, *Interpretation of the Meanings of the Holy Qur'an in the English Language*, (Riyadh: Dar al-Salam Publications, 1995). While all Biblical translations have been derived from Rodney Mariner's, *The Torah*, (Holt, Henry & Company, 1996).

comparative study of women in sacred spaces vis-à-vis traditional Islam and Judaism specific to the communities of Cape Town. Due to the deficiency of comparative as well as gendered resource material in the local context an amalgam of sources were deployed to construct historical and socio-legal data.

In considering the interviews these were regulated by closed and open-ended (historical, theological and socio-legal) questions, as depicted in Appendix I & II, and were recorded by audio equipment and extensive note taking. A sample of 8 interviews (or 2 males and 2 females for each respective community) were conducted with learned persons who are community oriented limited to Cape traditional Muslims and Jews. Due to the sensitivity of the info acquired from the persons interviewed they requested to remain anonymous. In this regard I have broadly denoted their relevant contributions by commencing and specifying the related sections with “tradition Muslim/Jewish learned women/men”. These interviews in sum delineated the specific locations for women that were mapped out and the 2 spheres, i.e. mosque or synagogue and home, which were explored and analyzed.

Additionally, I conducted a number of participant observations in traditional mosques and synagogues during specific ritual, festival and celebration periods. I also gathered data from traditional Muslim and Jewish organisations like the Muslim Judicial Council (MJC) as well as Union of Orthodox Synagogues South Africa (UOS), Cape Town branch, since they are the main traditional service providers or coordinators of matters associated with public and private sacred domains in the Cape. I independently obtained access to the Muslim community in undertaking the interview process, since I reside in and interact predominantly with members of the tradition sector. It should be noted that as a researcher I am community oriented and come from a traditional background, though, I am studying religion at a modern institution. These biases give me the ability to move freely between the various categories of the subjects of my research analyses portraying the role of an insider-ethnography. Gaining access to the field in the Jewish community I particularly depended on my co-supervisor, Azila Reisenberger, who selected as well as introduced me to the candidates that I interviewed and synagogues I attended.

Content of Chapters

Where a comparative study is undertaken it should be useful to dilate on those dimensions of the research that would be contrasted separately, in this instance traditional Islam and Judaism in sacred spaces, to formulate a sound initial theoretical base for the analysis in the contextual setting of Cape Town. Even though the two traditions would be compared independently similarities associated with the other would still be alluded to for precursory purposes. While the theoretical sections on sacred spaces in Islam and Judaism structures the first two chapters, the final one should as a result demonstrate how the theory would be applied in the practical environment through a dialogue. Here local Muslim and Jewish women in sacred spaces would be analyzed mutually, notwithstanding, the implications of the theories on 'genderized sacred space'. Each chapter and section would also commence with a quote representing the major theme(s) within the particular chapter or section.

In as much as theological assumptions constitute the basis of an Islamic traditional community gendered sacred spaces would be analyzed via reinterpreting and deconstructing the related cosmogonies or creation myths extrapolated from the primary or classical texts and narratives. An attempt would therefore be made to develop a better insight into the status of (men as well as) women in sacred public and private spheres of the traditional Islamic community retrospectively as well as proactively. Moreover, as Islamic law allegedly suffuses the entire understanding of the lives of Muslims, the first chapter, entitled "Islamic Cosmogonies v Islamic Law and the Traditional Position of Women in the Mosque and Home", seeks to investigate the integral relationship of Islamic law with scholastic Islamic theology, while considering the traditional status of women in the public sphere of the sacred mosque and private domain of the family within the sacred home, using gender as a category of analysis. On that account the key areas of investigation would be: Cosmogonies in Islam; The Interplay of Traditional Islamic Theology (*Kalam*) and Law (*Shari'ah*); Muslim Women in the Traditional Mosque (*Masjid*); and Muslim Women in the Traditional Home and Family.

Where Judaism's system of laws for the most part determine the way in which Jews should walk their path through life and as all aspects of their relationship with God as well as their relationship with human beings are directed by clearly defined rules and regulations, this second chapter, entitled "Jewish Lore v Jewish Law and the

Traditional Status of Women in the Synagogue and Home”, seeks to examine the connection between Jewish lore and law. Here it would be displayed how this association primarily shaped the traditional status of women in the public arena of the sacred synagogue as well as private sphere of the family within the sacred home. In ascertaining the connection between lore and law within gendered sacred spaces utilizing gender as a tool of analysis the major areas of examination and focus would be: The Genesis Creation Myth in Judaism; Traditional Jewish Lore (*Aggadah*) and Law (*Halakhah*) Interwoven; Jewish Women in the Traditional Synagogue; and Jewish Women in the Traditional Home and Family.

In briefly delineating and constructing some of the salient elements of Cape Muslim and Jewish traditional “history” or “his story”, this third and final chapter, entitled “Cape Traditional Muslim and Jewish Women in the Mosque, Synagogue and Home”, seeks to analyze similarities in gendered traditional sacred spaces. In addition the chapter intends to conversely depict “her story” retrospectively (or historically) as well as proactively (or contemporarily) in the analysis of the status of women in Cape traditional public and private sacred spheres within the Muslim as well as Jewish communities. Using gender as a prime category of scrutiny, while extrapolating points of commonality the principal areas of analysis would be: Women in the Traditional Mosque and Synagogue; Women in the Cape Traditional Mosque and Synagogue; Women in the Muslim and Jewish Traditional Home; and Women in the Cape Muslim and Jewish Traditional Home.

Chapter 1

Islamic Cosmogonies v Islamic Law and the Traditional Position of Women in the Mosque and Home

Introduction

[I]t is demonstrated that the way in which Eve is portrayed and understood has immediate and obvious ramifications for the Muslim view of women in general. In the Islamic case, the scriptural references to the wife of the first man show her neither as inferior (n)or secondary to Adam in creation, nor in any way culpable in tempting him to eat of the forbidden tree. In the traditional narratives this situation is generally reversed, and both modes of creation and culpability are used to explain the nature of the female. References in modern writings represent a range of perspectives – some more Qur’anic and some more traditional – and reflect the struggle of contemporary Islam to come to terms with the nature and role of women within the context of what is perceived as the Islamic view of humanity [Smith 1982: 135].

Terms such as male and female are essentially void of authoritative meaning unless they are invested with interpretations of gender rooted in traditional religion, since it has the authority of the Divine. Religion usually expresses to society, what it means to be a man or woman when it develops and extends gender symbols from sacred texts or narratives into theological, ethical, sociological or legal ideals, via powerful religious men who dominate the public domain, e.g. religious leaders (*imams*), sages, rabbis, etc., while women customarily govern the private or domestic sphere. These sacral roles have been extrapolated mostly from cosmogonies in sacred texts and narratives, which often explicitly express traditional religions like Islam and Judaism’s understanding of gender, such as the proper labor for the man and woman, i.e. Adam tills the fields and Eve bears the children.

Of the numerous sacred texts and narratives preserving cosmogonies in the religious tradition of Islam the two most significant is the Qur’an and example or way

of the Prophet Muhammad (*sunnah*) as recorded in his traditions (*ahadith*). Men, who have somewhat arrogated to themselves the enterprise of defining the theological, sociological and legal status of Muslim men and women, have mostly deduced as well as constructed interpretations of their status from the aforementioned texts and narratives. The classical male Qur'anic exegetes (*mufasssirun*), historians and traditionists (*muhaddithun*), and jurists (*fuqaha*) then formulated a theological, ethical and socio-legal paradigm, which enshrined cultural assumptions about gender that mirrored a rigid patriarchal social reality. Here they have interpreted the sacred texts and narratives to show that men are superior to women as extrapolated and defined through cosmogonies. Once they formulated the paradigm it persisted due to the absence of internal or external challenges to displace it. Women were thereby secluded from public life maintaining the private/domestic sphere, while men continued to dominate institutionalized participation in the public domain [Stowasser 1994: 3-9].

Most traditional Muslims consider it an indisputable fact that women are inferior and not equal to men, since they are above women in status or have a degree of advantage over them, a belief that affects almost everything in the life of a woman. A state of affairs that have continued to underlie the theological, ethical and socio-legal interpretation of sacred texts and narratives, which contain the understanding of what it means to be a man and woman. This also suggests that Riffat Hassan, a contemporary Muslim feminist, is not far off the mark when she alleges that the conviction that women are inferior to men follows from a primary understanding that is rooted in three theological assumptions encapsulated in the "cosmogonies", i.e. (a) the belief that the first woman (Eve) was created from the left rib of the first man (Adam), God's main, dominant and superior creation, while the woman is secondary, subordinate and inferior; (b) that all women are to be treated with suspicion and contempt because the first woman was responsible for man's fall from the Garden of Eden (*jannah*); and (c) that, since the woman was created from man she has also been created for him making her as well as all other women's existence merely instrumental rather than fundamental where "God has made one of them to excel the other" or "men have a degree over them" [1993: 43-4].

In as much as the above-mentioned theological assumptions constitute the basis of how women are perceived within an Islamic traditional community, by subjecting to scrutiny gendered sacred spaces via reinterpreting and deconstructing the

related cosmogonies, there would be an attempt to develop a better understanding of the status of men and women in an equitable Islamic community retrospectively as well as proactively. Furthermore, as Islamic law allegedly pervades the entire understanding of the lives of Muslims, this chapter seeks to investigate its integral relationship with scholastic Islamic theology, particularly focusing on the traditional status of women in the public sphere of the sacred mosque and private domain of the family within the sacred home, using gender as a category of analysis. On that account, the main areas of examination would be: Cosmogonies in Islam; The Interplay of Traditional Islamic Theology (*Kalam*) and Law (*Shari'ah*); Muslim Women in the Traditional Mosque (*Masjid*); and Muslim Women in the Traditional Home and Family.

Cosmogonies in Islam

The Qur'an's cosmogony is not a story of pristine perfection limited to an initial account of creation and ordering of the world. To the contrary, the text describes an intentionally incomplete cosmogony and emphasizes the divine activity responsible for the continuous of the world through to the last day. Only then, with the final transformation and rearrangement of created order, will creation be complete. The study of cosmogony in Islam, therefore, requires that the narrow definition of the term, pertaining solely to the initial creation of the universe at the beginning of time, be set aside in favor of a general definition which recognizes the continuation of cosmogonic activity through time [Burkhalter 1985: 227].

Cosmogonies have to do with myths or stories frequently utilized when describing the theological foundations for creation of the universe, e.g. the creation of the first man (Adam) and woman (*Hawwa*'/Eve). However, in the words of Frank E. Reynolds, those aspects that inform the term cosmogony could entail a "more inclusive understanding of origins" where it also "encompasses accounts or conceptions of the way in which the cosmos is continually being generated and structured" [1985: 203]. Part of this developmental process includes the plethora of interpretations and constructions/deconstructions of the creation story in the sacred text and narratives through the evolution of time (historically and presently), which shapes our

“understanding of origins”. With the prototypical story of the first creation, the cosmogonic myth provides a model that is founded, recapitulated and constructed/deconstructed in the creation of all other men and women, since it expresses a charter for social and hence gendered conduct. In this regard consideration should be given to the three previously mentioned theological assumptions that are embedded in the cosmogonies generally deployed to discriminate and subordinate Muslim women (against men) in the public and private spheres as constructed/deconstructed in the interpretations of the Qur’an.

Relating to the first assumption generally traditional Muslims believe just as Jews that Adam was God’s primary creation and that Eve was secondary made from Adam’s rib. Even though this cosmogony has foundation in the Genesis creation story it has no basis in the Qur’an, since the aspect of human creation in the sacred text is always dealt with in egalitarian terms. Evidently, the Qur’an does not make a distinction between the creation of man and woman despite Muslim belief that *Hawwa*’ was created from the rib of Adam. This conviction has most probably become a part of the Islamic tradition via its incorporation in the corpus of traditions of the Prophet as is apparent in a host of *ahadith*.³ Details narrated in the *ahadith*, often originating in Bible-related sources (*isra’iliyat*) not only fleshes out the story of the creation of *Hawwa*’ and the creation myth, but also significantly changes it especially in relation to the status of the woman. The first woman thus represents her sex, since she is a symbol that denotes a model for the value structure of society. According to the classical exegete and traditionist, Abu Ja’far Muhammad ibn Jarir al-Tabari (d. 923), in his exegesis (*tafsir*) *Jami’ al-Bayan ‘an Ta’wil ay al-Qur’an*, quoting a *hadith* (sing. of *ahadith*) in explaining the purpose for which the first woman was created, he narrates, “after Satan (*Iblis*) had declined to prostrate himself before Adam, and had been cursed and banished from the Garden (of Eden), Adam was made to reside there. But, he felt lonely without a mate ‘in whom he could find the pleasure of living with’ [Q 7:189].

³ See Riffat Hassan’s, “Muslim Women and Post-Patriarchal Islam”, in Paula M. Cooney, William R. Eakin & Jay B. McDaniel ed’s, *After Patriarchy: Feminist Transformations of the World Religions*, (New York: Orbis Books, 1993), 44-5. See the same author for examples of numerous *ahadith* on the creation of *Hawwa*’ from the rib of Adam, quoted from the two most venerated *hadith* collections, *Sahih al-Bukhari* and *Sahih Muslim*, compiled respectively by Muhammad ibn Isma’il al-Bukhari (d. 870) and Muslim ibn Hallaj (d. 875), *Ibid.*, 45-6. For a commonly narrated *hadith*, see Jane I. Smith & Yvonne Y. Haddad’s, “Eve: Islamic Image of Women”, in Azizah al-Hibri ed., *Women and Islam*, (Oxford: Pergamon Press, 1982), 136-37, quoted from the classical exegete and scholastic theologian (*mutakallim*) Fakhr al-Din al-Razi (d. 1209) in his enormous exegesis, *al-Tafsir al-Kabir*, in which he fused Ash’ari *kalam* or scholastic theology based on the Qur’an with Greek philosophy. Also see Abu al-Fida Isma’il ibn ‘Umar ibn Kathir’s (d. 1373), *Stories of the Prophets (Qisas al-Anbiya)*, translated by Rashad A. Azami, (Riyadh: Darussalam), 23-4.

Then God dropped a slumber over him, took a rib from his side, soldered its place with fleshy tissue and from the rib created his wife *Hawwa'* in the form of a woman, so that Adam would find repose in her. When Adam woke up he saw her at his side and said – according to what they contend and God knows best – ‘my flesh, my blood, my wife,’ and he found repose in her” [al-Tabari, I: 514]. Al-Tabari also links the name of the first woman to her creation via a tradition: “When Adam woke up, behold! There was a woman sitting by his head. He asked: Who are you? She replied: Woman. He then asked: Why were you created? She then replied: So you will find repose in me. The angels then longing to know the extent of Adam’s knowledge asked: What is her name? He replied: *Hawwa'*. The angels then asked: Why was she named *Hawwa'*? He then replied: For the reason that she was created from a living (*hayy*) thing” [al-Tabari, I: 513]. The classical exegete, rationalist and scholastic theologian (*mutakallim*) Fakhr al-Din al-Razi (d. 1209) in his enormous exegesis, *al-Tafsir al-Kabir*, in which he fused Ash‘ari *kalam* or scholastic theology based on the Qur’an with Greek philosophy further claims, “the agreement of the leaders of the community has identified Adam’s wife as *Hawwa'*, created from one of Adam’s ribs, but the Qur’anic text does not designate this” [al-Razi, III: 2]. He also quotes one of the popular woman-created-from-the-rib-of-man traditions found in *Sahih al-Bukhari* that reflects *Hawwa'*’s origin and nature narrating, “The woman was created from a crooked rib. If you set out to straighten her, you will break her, and if you leave her alone, while there is crookedness in her, you will enjoy her” [al-Razi, IV: 161].

With the subsequent challenge of modernity many of the enduring traditions were de-emphasized, whilst a quest for acquiring the original meaning of the Qur’an manifesting notions of women’s full humanity and equality with men before God was endeavored. In this regard, the early Islamic modernist, Egyptian theologian and jurist Muhammad ‘Abduh (d. 1905), combined his expertise in Islamic theology and law with modern Western sciences, so as to renew Muslim morality and reform traditional institutional structures in the public and private spheres. Accordingly, ‘Abduh asserts that the creation of *Hawwa'* from Adam’s rib has no basis in the Qur’an rather than a foundation within unreliable traditions, while the *raison d’être* of the cosmology (i.e. creation story of human beings) in the Qur’an is to define egalitarian human nature as well as human God-willed mission on earth [Stowasser 1994: 34]. Although, contemporary traditionalists continue to emphasize the equality of sexes simultaneously stipulating the differences of the natures of men and women, which

lacks a clear Qur'anic referent, they once again invoke one of the ever-popular woman-created-from-the-rib-of-man traditions delineating: "The Prophet said about the women that 'they were created from a crooked rib; the most crooked part is its top portion, and if you were to straighten it you would break it; so enjoy her as crooked as she is.' He was not blaming the woman when he said this, but was defining women's natural disposition and preponderance of emotion over rationality, with which God has distinguished them, unlike the male in whom rationality surpasses the emotions. Neither man nor woman is inferior one to the other. The 'crookedness' in the *hadith* does not imply any corruption or imperfection in woman's nature, because it is this crookedness of hers that enables her to perform her task, which is to deal with children who need strong compassion and sympathy, not rationality. The words 'the most crooked portion of the rib is its uppermost part' signify the compassion which the woman feels for the child and the supremacy of her emotion over her rational mind. On this basis, her 'crookedness' has become a laudatory attribute for the woman, because this 'crookedness' is in reality woman's 'straightest' qualification for her task (confined to the private domain)" [Ibid.: 37]. The cosmogony relating to the creation of the first woman from the rib of man enunciates that she and hence all other women were created in order to fulfill their primary God-ordained duties of bearing as well as rearing children. Moreover, she would not realize her full potential if she over engages in activities in the male dominated public sphere, since this would redirect her energies from the private arena of the home and family.

When turning to the second assumption, countless traditional Muslims, like many Jews, affirm that the first woman was responsible for The Fall of Man, albeit, no Qur'anic referent to warrant such an affirmation. Where the cosmogonies in Genesis are considered the dialogue preceding the eating of the forbidden fruit, by the man and woman in the Garden of Eden is between the serpent and Eve. Here this has provided the basis for the popular casting of Eve into the role of tempter, seducer and deceiver. However, in the Qur'an Satan has no exclusive dialogue with the wife (*zawj* – as grammatically used in the Qur'an) of Adam. In the verses (*ayat*) that refer to the related incident, i.e. in the chapter (*surah*) on the Cow (*al-Baqarah*) and *surah* of the Heights (*al-'Araf*) it is stated that Satan led both Adam and his *zawj* astray.⁴ As regards to the act of disobedience by the man and woman in the Garden the Qur'an deems it as

⁴ See [Q. 2: 35-9] & [Q. 7: 19-25].

a joint or shared act rather than an individual where exclusive responsibility is assigned to neither the man nor woman. Although, the Qur'anic account of the episode of The Fall varies considerably from the Biblical account, the way in which Jewish and Islamic traditions have generally interpreted it, have led to the victimization of Jewish and Muslim women, since they are viewed with suspicion and contempt. What becomes apparent is that there is no episode of The Fall in the Qur'an, but a focus upon the moral choice and responsibility that men and women in general are required to make when confronted by the alternatives presented by God and Satan [Hassan 1993: 47-51]. Influenced by Biblical narrative and tradition, the classical exegetes, though, seem to revert to a position in which the first woman carries the burden of responsibility as well as culpability for Adam's temptation through her seduction and deception [Smith 1982: 138].

When turning to the episode of The Fall, al-Tabari claims that *Iblis* tempted both the man and woman [al-Tabari, I: 528-529]. Nevertheless, the majority of the *ahadith* brought together by him, blame the woman for The Fall of the Man, due to her weakness and slyness, since it was the majority opinion of the theologians during his time [al-Tabari, I: 525 & 530]. Hence God placed His curse and condemnation upon the woman as well as the serpent, but He did not curse the man, only the earth from which he had been created [al-Tabari, I: 526], since he was banished to a life of want and work in the public sphere [al-Tabari, XII: 353]. God's curse on the woman and hence upon all other women was by far more severe, since it entailed the constitution and mental abilities of women. Given that *Hawwa'* had allegedly tempted Adam and made the tree bleed when she picked its fruit, she was condemned to bleed once a month, and to carry and deliver her children under hardship and pain as well as rear them in the private domain of the home [al-Tabari, I: 526]. Supposedly, God also fashioned the woman foolish despite creating her with intelligence, and "were it not for the calamity that afflicted *Hawwa'*, the women of this world would not menstruate, would be wise, and would bear and give birth their children with ease" [al-Tabari, I: 529]. Consequently, later classical *mufasssin* continued to utilize many of the traditions found in the exegesis of al-Tabari, whilst the majority of scholars supported the theory of the woman's responsibility for The Fall of the first man [Stowasser 1994: 29-30]. Even for the Mu'tazilah rationalist that emphasizes God's justice and scholastic theologian Abu al-Qasim Mahmud ibn 'Umar al-Zamakhshari (d. 1144), in his exegesis *al-Kashshaf 'an Haqa'iq Ghawamid al-Tanzil*, *Hawwa'* remains

responsible as she first was for the early traditionists. He upholds this tenet by summoning a *hadith* in which the angels (*mala'ikah*) encircled the first man on his deathbed. After that, when his wife attempted to join the circle in order to near him, he ordered her to leave the *mala'ikah* of God alone, since she was responsible for his Fall. Thus her culpability was of such a nature that the *mala'ikah* prevented her to take part in the ritual washing (*ghusl*), embalming (*kafan*) and burying (*dafan*) of her husband's body [al-Zamakhshari, II: 76].

By the 1940s the negative perceptions of tempter, seducer and deceiver attributed to women were still on the agenda as indicated in the work, *Tafsir al-Maraghi*, of the modern Egyptian exegete, theologian and jurist, Ahmad Mustafa al-Maraghi (d. 1945). Regarding the first woman al-Maraghi asserts, "Satan had ignited the fires of Adam's inherent desire to ascertain the unknown and want the prohibited...to the point where Adam had no power of determination left to resist and oppose his wife (or his wife's temptations)" [al-Maraghi, VIII: 120]. Here he basis his reading and understanding on a *hadith* narrating, "If it was not for *Hawwa'* no woman would deceive her husband". Al-Maraghi further alleges that it was she who suggested that Adam should eat of the tree, since "the woman was created to propose to the man what she desires (or seduces him), even by means of deceiving him" [al-Maraghi, VIII: 120]. Similarly other modern *mufasssirun* and writers continue to articulate the traditional perspective that *Hawwa'* is responsible for Adam's Fall, in view of the fact that Adam and *Hawwa'* represent all human beings. At this point the nature and role of man could understood to be significantly disparate from that of the woman [Smith 1982: 142]. Contemporary authors like 'A'isha 'Abd al-Rahman, on the other hand, have come to the defense of the first woman and hence all other women when she declares: "[T]he famous story in which *Hawwa'* commences her life through seduction as well as deception and in which the first woman, the mother of human beings, appears as an acquiescent tool of Satan of evil and as his agency for gaining control over Adam by seducing and tempting him into disobedience of his creator via the eating of the prohibited tree. The truth is that in the Qur'an there is no reference to Satan deceiving *Hawwa'* first or to her enticing her husband into eating of the forbidden tree, which caused his banishment from the Garden. Relatively, in the Qur'an she is responsible, even as he is by, both being prohibited from nearing the tree. Both ate from it through the suggestion of Satan" [al-Rahman 1972: 43].

In the final assumption, the Qur'an, as was demonstrated during the former assumptions, does not discriminate against women and does not support the theory held by many traditional Jews and Muslims that the first woman was not only created from man, but also for him. Despite, the Qur'anic affirmation of man-woman equality, Muslims by and large have never deemed men along with women as equal in the public sphere as well as the private domain of the home and family. The alleged inferiority of women to men that permeates the Islamic in addition to the Jewish traditions is not primarily rooted in traditional narratives, but also in interpretations of particular verses of the Qur'an and Torah all written by men. The interpretations form part of the theologian and jurist's vindication, in explaining the interrelated theological and socio-legal dimensions of verses like those given a decidedly misogynistic explanation, especially where the rights of women and men are contrasted in the arena of the family. The verses in the Qur'an oft invoked as referent proof and central to contrasting the rights and obligations of women in relation to men are located in *surah* 4 (The Women/*al-Nisa'*) verse (*ayah* sing. of *ayat*) 34, where God states, "Men are the protectors and maintainers of women, because (with what) God has made one of them to excel (or favor) the other, and because (with what) they spend (to support them) from their means..." and in *surah* 2 (The Cow/*al-Baqarah*) *ayah* 228, where He declares, "And divorced women shall wait (as regards their marriage) for three menstrual periods, and it is not lawful for them to conceal what God has created in their wombs, if they believe in God and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And they (women) have rights similar over them (men) to what is reasonable, but men have a degree over them, and God is All-Mighty, All-Wise" [Hassan 1993: 51-4].

One of the key words in the first portion of [Q 4: 34]⁵ is *qawwamun*. The word has been interpreted variously as "protectors and maintainers (of women)"; "in charge (of women)"; "having preeminence (above women)"; and "sovereigns or masters (over women)". Linguistically, however, the word means "breadwinners" or "those who provide a means of support or livelihood". It thus refers to a normative statement pertaining to the Islamic concept of division of labor in an ideal Qur'anic family or social structure. The idea that men are *qawwamun* does not mean that women cannot

⁵ For an examination of the different readings of [Q 4: 34], i.e. classical and modern, followed by novel theories of gender paradigms supported by the Qur'an, see Barbara F. Stowasser's, "Gender Issues and Contemporary Quran Interpretation", in Yvonne Y. Haddad & John L. Esposito, ed's., *Islam, Gender & Social Change*, (New York: Oxford University Press, 1998), 30-44.

or should not provide for themselves, but simply in lieu of the heavy burden that most women endure in terms of childbearing and rearing, they should not have the added financial responsibility of providing subsistence and living support simultaneously. Men who do not have to fulfill the obligation of childbearing are hence assigned the function of breadwinners. Women are in turn exempted from the responsibility of being breadwinners or financial responsibility so that they may fulfill their natural function as child bearers. These two functions designated to women and men are separate, but complimentary and are neither superior nor inferior to the other. What's more, man as well as woman has been created equal by God and stand equal in the sight of God, even though they have become unequal in traditional families and communities. The distinction between male and female responsibilities is established with a view to generate a system of interdependence and mutual partnership in the family. The family then is the basis of the social fabric and foundation of the community, small wonder most of the laws of the Qur'an deal with it. It remains the last bastion in Muslim communities of Islamic law that has not been secularized in the face of all secular governmental efforts to shift it to the secular legal regimes that were imposed on the Muslim world by colonial powers. The description of man and woman in marriage and hence also in the broader community portrayed in the Qur'an, conversely should be, "They are your garments and you are their garments" [Q 2: 187], implying absolute closeness, mutuality and equality between the sexes [Hassan 1993: 55-6].⁶

Another key word in *ayah* 34 is "to excel" or "to favor" (*faddala*) for which various exegetes ascribe variant interpretations to, be it "intelligence, capacity or physical strength". When considering the *ayah*, "excellence" cannot be explained and deployed like monetary means are, since it would be futile to assert that men are responsible for women "with" their excellence/favor rather than responsible "because" of it. It would thus be an unjustifiable interpretation to claim that the favor of men is their state of excellence, as God does not favor some human beings over others. God has no chosen people or a chosen gender and regardless of all the biological differences amongst human beings, "the most honorable (or favored) of ones with God, are the

⁶ For a different interpretation of the word *qawwamun* rooted in the theory of abrogation (*naskh*), see Abdullahi A. An-Na'im's, *Toward Islamic Reformation: Civil Liberties, Human Rights, and International Law*, (New York: Syracuse University Press, 1996), 54-5 & 99-100. Also as regards the conditions of being *qawwamun* see Azizah al-Hibri's, "A Study of Islamic Herstory: Or How Did We Ever Get Into This Mess?", in Azizah al-Hibri ed., *Women and Islam*, (Oxford: Pergamon Press, 1982), 218.

ones who are God-conscious” [Q 49: 13], a mission that all men and women could equally accomplish. Furthermore, the word favor when applied to God in the Qur’an is never used in the sense of subjective inclination, but in the sense of “to provide” as when God provides anything to human beings He is said to favor them. God does provide the male with more means than He provides the female with regard to marriage and inheritance as He states unambiguously a few *ayah* earlier. “He commands you as regards your children’s inheritance: to the male, a portion equal to that of two females...” [Q 4: 11]. Men are provided with more than women because it is part of living up to their financial responsibilities with reference to their female relatives from a moral and socio-legal perspective. Thus the verse [Q 4: 34] should read, “Men are responsible for women with [by using] what God has provided the ones over the others and with [by using] what they spend out of their possessions”, thereby clarifying the rationale for the distinction in shares. Building on the earlier verse [Q 4: 11], which declares that males and females have different shares in inheritance by divine diktat *ayah* 34 explicates the motivation for the larger share provided to men. A distinction that should not be coveted and envied because He reminds us, “Wish not for the things in which God has made some of you to excel/favor others” [Q 4: 32]. Here God has provided the ones over the others, a larger share of inheritance, since all that He provides men over and above the shares of women would be utilized principally to satisfy the obligation of financial responsibility in the family and community [al-Faruqi 2000: 83-7].

The other *ayah* on which, the configuration of male superiority over women rests, like the above-mentioned falls in the category of family rights, particularly divorce (*talaq*). The “degree” that men have over women in the context of *talaq* is that they have to observe a three-month waiting period (*‘iddah*) before remarriage, while men are exempted from this condition. Women are required to undergo this obligation as they may be pregnant and hence cannot remarry, whereas men are permitted to remarry without undergoing the *‘iddah* [Hassan 1993: 58]. In spite of this, the Qur’an adds in the proceeding *ayah* [Q 2: 229] and expounds on the “degree”, which men have over women in *ayah* 228. “The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you to take back any of your dowry which you have given them, except when both parties fear that they would be unable to keep the limits ordained by God. Then if you fear that they would not be able to keep the limits ordained by God, then there is no sin on either of them if

she gives back (the dowry) for her divorce. These are the limits ordained by God, so do not transgress them, and whoever transgresses the limits ordained by God, then such are the wrong-doers". Hence if the woman too desires the *talaq* or commences it, since she alone or along with her husband cannot maintain the limits set by God for fitting matrimonial conduct then it is only righteous that she should return the dowry (*mahr*) to the husband where the *talaq* was not exclusively his fault. In this instance a woman should not retain her *mahr* that the Qur'an had given her as a conclusive right. It is so conclusive that the *ayah* does not compel the woman to return the *mahr*, but merely recommends that she, ought to do so. Even supposing, the rights of men and women have been established and would not be altered, in all justice, in this individual instance, men do have the right or "degree over them" and women should return the property that her husband provided her at the time of their marriage [al-Faruqi 2000: 96].

The Interplay of Traditional Islamic Theology (*Kalam*) and Law (*Shari'ah*)

[T]he negative (socio-legal) ideas and attitudes pertaining to women that prevail in Muslim societies in general, are rooted in theology and that unless, or until, the theological foundations of the misogynistic and androcentric tendencies in the Islamic tradition are demolished, Muslim women will continue to be brutalized and discriminated against despite improvement in statistics relating to women's education, employment, social and political rights, and so on [Hassan 1993: 43].

The Qur'an has served as both the foundational basis and point of convergence for many diverse as well as particular human interpretations and re-interpretations or constructions/deconstructions. The related *tafsir* (pl. of *tafsir*) then proved to be an important record of the scholarly debates on theological and socio-legal issues, since classical and modern exegetes or *mufasssirun* endeavored to interpret the cosmogonies of the Qur'an. Thereby they provided different sacred understandings of the status of women in the community and home as well as their nature. These interpretations on male-female relations and the position of women that form part of the traditional institutionalized structures rooted in a theological-legal paradigm have generally been

preserved and applied, centering on questions of justice as well as morality, in the public and private sphere [Stowasser 1994: 3-9].

Regardless of the Qur'an's numerous theological statements early Islam considered no necessity for extensive deliberation of theology. During this period theological questions were encountered on an informal basis and were interpreted in narrow terms. Nevertheless, later as contact between Arab conquerors and their subjects in Egypt, Syria and Iraq increased thought-provoking Muslims became more conscious of the precision, comprehensiveness and consistency of Greek thought. Muslims hence realized that for Islam to survive and spread in that milieu, it would require a systematic intellectual expression of its theology. To meet that challenge the theologian, who used dialectical methods or *mutakallim*, Wasil ibn 'Ata' (d. 749), founded at Basra an intellectual movement known as the Separatists (or Mu'tazilah), which laid the basis for Islamic traditional theology or *kalam* also referred to as theological dialectics/scholastics (*'ilm al-kalam*). They concentrated on what they understood to be Islam's major themes, i.e. God's absolute unity and His absolute justice. With these themes they attempted to develop all logical implications and demonstrate that Muslim thought was superior to all other beliefs on the bases of textual plus rational (viz. common sense and intuitive) arguments. Given that Muslims generally believed that God predetermined everything, which happened it appalled the Mu'tazilites, who argued that He granted human beings the freedom to choose between good and evil. They contended that to suggest that God rewards or punishes human beings for moral choices and acts that God himself has decreed, e.g. The Fall of Adam and Eve, was to declare Him to be unjust. Here the rationalist exegete and Mu'tazilah theologian, al-Zamakhshari, in an attempt to buttress the Mu'tazilah definition of sin, not to exonerate *Hawwa'* from exclusive blame for The Fall, attributes Adam and *Hawwa'*'s repentance to their "exaggerated righteousness" and states that they acted "in the conduct of saints and the righteous who consider minor sins as major, but huge good deeds as small" [al-Zamakhshari, II: 76]. Sins or evil acts are hence not God's specific will and determination, since they emerge from the free choice of human beings. Eventually the Mu'tazilah thought declined their ideas and methods of judgment in terms of justice and morality stimulated the intellectual development of Islam to the extent that many of their ideas influenced mainstream traditional Sunni theology, which arose in response to and to combat Mu'tazilah thought, i.e. The

Followers of the Tradition and the United Community (*Ahl al-Sunnah wa al-Jama'ah*) [Moosa 1991: 220-26].

Sunni theologians or *mutakallimun* called for the creation of an orthodox theology that would lay down an intellectual middle ground and would recognize that revelation (*wahy*) was the limit in addition to the guide of the rational faculty. If a prophetic tradition did not yield to rational argumentation, it had to be accepted via consensus (*ijma'*), the other legitimizing technique. The two most renowned Sunni theologians were Abu al-Hasan al-Ash'ari (d. 936), a former Mu'tazilah of Baghdad, and Abu Mansur al-Maturidi (d. 944), of central Asia. For the most part orthodox theology developed in a strictly deterministic direction and defended God's absolute dominion just as the Mu'tazilites upheld His absolute justice. Thus to claim that anything could occur that God did not directly will or create, good or evil, was to imply that He was heedless. Even the most prudent Mu'tazilah endeavor to define a limited parameter of human freedom (or free will) was treated by traditional Sunnis as irreligious to God's dominion and freedom. The idea that God might freely limit his sovereignty to grant a measure of freedom to human beings was consequently absent from orthodox theological deliberations. God therefore decrees and creates the moral trait of evil in and for human beings, but this does not make God evil or unjust [Ibid.: 225-26].

The commandments as well as prohibitions of God establishes the moral value limit for human beings and only in terms of these divinely revealed norms are people said to obey and transgress the limits as enunciated in Islamic law. Similarly when the rationalist *mufassir* and Ash'ari theologian, al-Razi, encounters a doctrinal impasse in God's command to the angels to "prostrate themselves before Adam", a mere human being, does al-Razi invoke a *hadith*: "If I were to command anyone to prostrate before God, I would command the woman to prostrate herself before her husband because of the extent of his (socio-legal) rights over her" [al-Razi, II: 213]. This conclusion then simply substantiates the position of classical traditional theological thought grounded in justice as well as morality on the subordinate status and nature of women in relation to men within the *shari'ah*.

The word *shari'ah* linguistically means "the path or road leading to water", i.e. a way to the very source of human or social life. In its technical usage it means "the highway of good life" or religious values, which are expressed to direct human life in totality. In this regard God ordains how a person ought to conduct his or her life in

order to realize the divine will [Rahman 1976: 100-01]. It is somewhat of an oversimplification to equate law with the *shari'ah*, as the *shari'ah* could indeed constitute law, but one should consider that it embraces elements and aspects, which are not essentially legal [Weiss 1992: 1]. In content the *shari'ah* is an all-embracing body of religious duties the totality of God's commands in all its aspects and social forms. The subject matter forms part of socio-religious and moral principles found in theology. It is the epitome of Islamic thought the most typical manifestation of the Islamic way of life and the core of Islam itself. According to Joseph Schacht presently the interpretation of the law (*fiqh*), a constituent of the *shari'ah* remains a fundamental terrain in the battle, which is being fought between traditional and modern or progressive Muslims under the impact of modernization. Nevertheless, the lives of Muslims, Arabic literature and Islamic sciences are deeply imbued with the ideas of law. It is thus impossible to understand Islam without an understanding of law [1964: 1]. It can hence be asserted that Islamic jurisprudence or *fiqh* generally pervades the entire understanding of the *shari'ah* and therefore the common English translation of Islamic law.

The Qur'an as the primary source of the *shari'ah* is qualified as containing everything [Q. 16: 89]. As the primary source, the Qur'an, and *shari'ah* generally comprise of matters pertaining to belief (*'aqidah*), morality and spirituality (*akhlaq* and *tasawwuf*), and jurisprudence (*fiqh*). *Fiqh*, the element, which pervades the entire understanding of the *shari'ah*, is concerned with the utterances and actions of those who are duty-bound (*mukallafin*) in practice. It consists of different forms of worship (*'ibadat*) associated with the relationship between the individual, and God and profane business or social transactions (*mu'amalat*) governing the relationship between individuals in society [Zaydan 1987: 155-57]. It could be described as the human attempt to understand the *shari'ah* and part of the sophistication of jurists (*fuqaha*) of the various Schools of law (*madhahib*) that they recognize the limitations of humans in this enterprise. Although the Sunni jurists were in consensus on most of the major aspects of law they differed (sometimes even fundamentally) in matters of detail, subsequently giving rise to the four *madhahib* founded by the jurists Abu Hanifah (d. 767); Malik Ibn Anas (d. 795); Muhammad Ibn Idris al-Shafi'i (d. 820); and Ahmad Ibn Hanbal (d. 855).

The Hanafi and Maliki Schools, in addition to being the first to develop, also become the most geographically widespread. The Hanafi School in particular having

originated in Iraq enjoyed the important advantage of official Abbasid support and was subsequently brought to Afghanistan and later to the Indian subcontinent, while emigrants from India spread the *madhhab* to East Africa. This connection with the ruling authority was to remain a characteristic of the Hanafi School down to the period of the Ottoman Empire. Thus Hanafi law is presently followed in Turkey, Iraq (together with the Ja'fari school), Syria, the Balkan states, Cyprus, Jordan, Sudan (via Egypt), Israel (together with Shafi'i), and Egypt. The Maliki School grew out of the city of Madinah. It subsequently spread to Sudan, Eritrea, Libya, Tunisia, Algeria, Morocco, Gambia, Ghana, Nigeria, Senegal, and to the Eastern coastal territories of Arabia on the Gulf like Kuwait. The Shafi'i School started in Cairo where al-Shafi'i lived for the last five years of his life, spread to South Arabia, i.e. Yemen (and together with the Ja'fari school they presently constitute the majority), the Indian coastline, and then via the Arab trade routes to East Africa and South East Asia. Currently, Shafi'i law predominates in Malaysia, Indonesia, Singapore, the Philippines, Sri Lanka and the Maldives. The fourth surviving *madhhab*, the Hanbali, affirms the traditionalist approach to law. Before Iran became sectarian, the Hanbali School had a number of adherents there. Often on the edge of extinction, it was revived by the puritanical movements of the eighteenth century and early twentieth. Presently, Hanbali law is followed in Saudi Arabia (albeit Wahhabi) and in Qatar. In terms of the *madhahib* then, it would be correct to assert that, whilst in the Hanafi and Maliki Schools, practice preceded theory, in Shafi'i and Hanbali law, by contrast, the theory of law came before practice. Furthermore, it could generally be deduced that the content of the latter two legal schools would be closer to each other than the former two. Broadly law developed via reasoning based on considerations of juristic preference (*istihsan*) and public welfare/interest (*istislah*) that has become part of Hanafi and Maliki law, since they lacked the wealth of historical material. However, the concept of consensus or *ijma'* to a certain degree acted as a unifying force that has tended to draw the substantive law of the four Sunni Schools together via the use of independent juristic reasoning (*ijtihad*) in the areas of *'ibadat* and *mu'amalat*.⁷

'Ibadat include the obligations of humans towards God (*huquq Allah*), while *mu'amalat* comprise of the obligations of humans towards each other within the

⁷ For related historical information in the Arab world, see Bernard Weiss and Arnold Green's, *A Survey of Arab History*, (Cairo: The American University in Cairo Press, 1987), 155; and for contemporary legal info, see David Pearl & Werner Menski's, *Muslim Family Law*, Third Edition, (London: Sweet & Maxwell Ltd., 1998), 16-7.

community (*huquq al-insan*) [Bakhtiar 1996: xxxiv]. Central to the content and details of Islamic law is the distinction in the moral character of acts in social practice, i.e. between what is unlawful or prohibited (*haram*) and that which is lawful or permitted (*halal*), where the nexus of theology and law would be most ostensible. The Qur'an expressly sets forth the *haram* and *halal* forms in an instructive style. This social product of legal terminology has been handed down from the seventh century and continues to pervade and dominate present Islamic socio-legal thought [Tibi 1990: 61].

What was the status or moral character of acts, i.e. whether *haram* or *halal*, before the advent of the *shari'ah* or revelation? This hypothetical question was raised in order to resolve the issue of the moral status of acts specifically after revelation where the *shari'ah* was silent on the disposition of acts. A thorough treatment of this issue brings into focus the debate on the complex interplay between traditional legal theory (*usul al-fiqh*), *shari'ah* and *kalam* that prevailed during the second and fifth Islamic centuries. The main groups involved in this debate were the rationalist Mu'tazilites, and traditionalist Hanbalis and Ash'arites [Abu Fayd 1991: 209].⁸

There existed a general view that there was no moral status of acts before the arrival of the *shari'ah*. However, during the second and third centuries the Mu'tazilah, who was "historically conditioned pietists" of a minoritarian faith community, placed great emphasis on universal knowledge, which could be valued in the common sense and intuitive faculty (*'aql*). Their viewpoint was that the function of issuing socio-legal rulings or the moral status of acts belonged to the *'aql*. They argued that it was the ontology of an act the instrument for moral perception epistemology that gave acts their moral status or character. The status of an act was thus part of its ontological nature and discernible via the common sense as well as intuitive faculty or intellect outside revelation and hence also in situations where the *shari'ah* was silent [Reinhart 1983: 193]. Nonetheless, with the ascendancy of Islam from a minority faith community to a majoritarian one, during the fourth and fifth centuries, a radical change in the religious paradigm was ushered in. Additionally, a fragmented and less stable polity had its effects on cultural production and evidently pessimism was emblematic of the social mood in that period resulting in an exclusivist self-identity. Consequently, the status of extra-revelational authority like the *'aql*

⁸ For a historic account on the waging tension between traditionalism, and rationalism and the impact it had on theology as well as law, see Ebrahim E.I. Moosa's Ph.D. thesis, *The Legal Philosophy of Al-Ghazali: Law, Language and Theology in Al-Mustasfa*, particularly chapter two, (Cape Town: University of Cape Town, 1995), 38-60.

diminished in that changing milieu [Moosa 1996: 221], which gave rise to a growing movement spearheaded by the Ash‘arites, later joined by the Hanbalis, who believed that human beings require reliable knowledge to understand the moral status or assessment of acts. Contrary to the Mu‘tazilites they argued that it was the epistemology of an act, which made it good or reprehensible, and that such knowledge should only come from God through the medium of the sacred text, since He could and can only declare something to be bad or reprehensible - else why revelation? Accordingly, there was a general skepticism about the certainty of human knowledge and thus there grew an impulse to give primacy to revelation, in the form of the Qur’an and prophetic example, as the means by which the status of acts could be known. Furthermore, there developed a general perception that in the period after revelation all acts could be morally assessed by primarily utilizing the sources of Islamic law [Reinhart 1983: 193].⁹

In a later response to the Mu‘tazilah position, which stipulated that the common sense and intuitive faculty are suitable to determine what was naturally reprehensible or good, Muhammad ‘Abduh in the twentieth century, claimed that very few members of community were able to use their ‘*aql* with complete success in determining the utility or aesthetic perfection of acts or even in reaching essential moral truths. This was so, since individuals were held back by an imbalance in their psychological make-up by false hopes and desires as well as by distorted perceptions. He concluded that revelation makes up for the deficiencies in human nature and that it confirms the ‘*aql* as well as lends certainty to its conclusions where the ‘*aql* was right, and rectifies and supplements it when misguided or wrong. The Qur’an also enumerates special acts or duties, which cannot be determined by the ‘*aql* such as forms of worship (‘*ibadat*). Although the ‘*aql* together with the senses could provide limited practical and instinctive reasons, why a person should act in accordance to a certain situation, these reasons lack compelling force and hence the divine imperative becomes necessary. Despite, these assertions ‘Abduh recognizes and agrees that rational knowledge in *mu‘amalat* was a full representation of the truth as revelatory knowledge. Thus in the field of practical personal status matters, social ethics and politics the ‘*aql* should be granted a wider role, but needs to be guided by revelation

⁹ For a further delineation on the status or assessment of acts in view of the interplay between theology and law, especially where the *shari‘ah* is silent, see A.K. Reinhart’s Ph.D. thesis, *Before Revelation: The Boundaries of Muslim Moral Knowledge*, submitted to Harvard University, 1986 (Michigan: U.M.I. Dissertation Information Service, 1992).

only in its general moral orientation [Kerr 1966: 125]. This was particularly applicable to the role or position of women in the public arena of the mosque, e.g. with the presentation of the social transaction of the pre-sermon (*khutbah*) delivered by a woman about which the *shari'ah* is silent, and in the private domain of the home as well as family, e.g. in the social transactions of marriage and divorce for which there are more divine legislation pertaining to the rights, and responsibilities of women and men in the context of family relationships than any other subject in the Qur'an.

Muslim Women in the Traditional Mosque (*Masjid*)

[W]hile women in the Qur'an have the same religious duties and are promised the same rewards and during the time of the Prophet, were said to have prayed in the mosque, historically, their religious role and practice, particularly their access to the mosque, became restricted. In the centuries after the death of Muhammad, religious scholars increasingly cited a variety of reasons, from moral degradation in society to woman's tendency to be a source of temptation and social discord, to restrict both her presence in public life and in the mosque [Esposito 1998: xiii].

Women contributed in several ways to the success of the Indian Timurids. Through the building and maintenance of prominent mosques or tombs and through their management of imperial, religiously-sanctioned, largesse, women employed highly visible as well as powerful means to further the cause of Timurid hegemony. In another, more spiritual fashion, women devoted their energies to the growth and strengthening of that state. By attending public rituals, such as the hajj, or by couching their own identities in terms of the titles and examples of the holy women of Islamic lore, they lent the dynasty a important reputation for piety [Kozlowski 1999: 485].

The word mosque, anglicized from the French *mosquee* comes through the Spanish *mezquita* from the Arabic word *masjid*, meaning a place where a person, male or female, prostrates (*sajadah*) in front of God. The *masjid* is a structure large enough to accommodate the community of believers laid out with a place for prayer (*salah*) and gatherings oriented toward Makkah. All *masajid* (pl. of *masjid*) are built on an axis oriented in the direction of Makkah (*qiblah*) indicated by the empty niche (*mihrab*) in

the center of the wall that indicates the direction for prayer or *qiblah*. In the communal Friday mosque (*jami'*) a pulpit (*minbar*) is placed to the right of the *mihrab* for the prayer leader (*imam*) and preacher (*khatib*), traditionally a man, to deliver the authoritative sermon (*khutbah*). While most of the mosques are characterized by the *mihrab* and *minbar*, which are situated as part of the prime area of the *masjid*, hereby referred to as the "Holy of Holies", the anthropologist Patrick D. Gaffney, in his work, *The Prophet's Pulpit: Islamic Preaching in Contemporary Egypt*, claims the following. He asserts, "these two elements, (i.e. *mihrab* and *minbar*) in turn, invite investigation from significantly different perspectives in the classical theory of the sociology of religion". The latter element then denotes the affirmation of hierarchical and power relationships garnished in a bureaucratic structure. The former on the other hand, signifies the space where frequent collective rituals were performed as sacred, since it manifests the community as a harmonious whole in opposition to a divergent profane realm outside. Gaffney thus declares that each mosque propounds variant presuppositions of ideal forms of society as a result of the specific character of the moral foundation that underpins the collective consciousness of the community [1994: 23-4].

Within traditional religious precincts like mosques and synagogues there are levels of sacredness that enshrine particular holy areas. A pertinent example was the last of the Jewish temples in Jerusalem in which there was a spatial progression from the outermost court of the gentiles, to the women's court, then to the men's court of the burnt offering to the priests' enclosure, to the "Holy of Holies" wherein is the Ark of the Covenant and the special presence of *Yahveh* [Kunin 1998: 119-20]. In traditional Judaism the separation of sexes or the exclusion of women from the "Holy of Holies" was also prevalent as a requisite of entrance and attendance similar to the religious tradition of Islam, since men and women could not mingle in the main domain of the mosque.

The mosque is a sacred space, since it is a place of ritual and meaning. The symbols that give such a place meaning relate to the religious and social context in which the people reside. As use or function itself also sanctifies, it could be said that a mosque within a particular context together with the rituals performed therein and its symbols of meaning determine sacrality of the place or building. In this regard Muslims speak of the mosque as being consecrated space (*harim*) because it is set aside, for prayers and other forms of worship. Usually people do not enter this space

without performing ablution (*wudu*), prayer is regularly performed therein and women are excluded from its prime area. Thus, it would be this use or function that consecrates and sanctifies mosques. Based on the archetypal traditions of the Prophet or *ahadith* and his history (*sirah*) in the ideal forms of society, the discussion about the position of a woman in the public sacred space of the mosque, particularly the prime area and “Holy of Holies”, feature prominently.

The question that concerned many of the earlier teachers of morality was that of the admittance of women to the sacred space of the mosque for daily prayers in order to gain spiritual benefit. That some did not solicit the admission of women was evident from the *ahadith* that one cannot prevent them, as there was no defamation (*fitnah*) connected with that, and those women should not wear adornments and perfume to the *masjid*. Even though prayer for women in congregation (*jama'ah*) was not encouraged they were not prohibited from performing prayers in the *masjid*, whilst it was preferred that they pray at their homes [al-Mundhiri, I]. Other *ahadith* narrate that they would exit the mosque before the men. Normally at the end of the prayer the Prophet and his companions remained seated for some time to allow the women to leave the *masjid* before the men. There was also a separate door in the Mosque of the Prophet (*Masjid al-Nabiwi*) in Madinah for the entry and exit of women. During the caliphate of ‘Umar ibn al-Khattab (d. 644), a companion of the Prophet, strict orders were given prohibiting men from using that door [Ibid.]. Moreover, women would not mix with men in prayer nor would they stand in the front rows close to the “Holy of Holies”. It was recommended that they stand separately behind the rows of men or on the fringes of the main section. The Prophet said: “The best place for men is in the front rows, and the worst at the rear, whereas the best place for women is at the rear and the worst in the front rows”. Even a husband and wife or mother, were not allowed to stand together or side-by-side. ‘Abdullah ibn ‘Abbas (d. 688), another companion of the Prophet, reported in a *hadith*: “Once the Prophet rose for prayer. I stood beside him and ‘A’ishah, his wife, (b. 614) stood behind us” [Ibid.]. A special section of the *masjid* was subsequently railed off for them, e.g. the governor of Makkah in 870 had ropes tied between the columns near the Ka‘bah to make provision for a separate place for women. In Madinah at the present day, a wooden grille shuts off a place for women, while at one time they stood at the back of that mosque. In the Holy Mosque of Jerusalem (*Masjid al-Quds*) there were special sections cordoned off (*maksurat*) for women. The above-mentioned are entirely concerned with the daily

prayers from which both women and men obtain spiritual benefit. What then should the role and position of women be for the congregational gatherings of the two Festival prayers (*'idayn*) and Friday prayer (*jumu'ah*), in the *masjid*?

The participation of women in the two Festival prayers or *'idayn* and Friday prayer or *jumu'ah* should not be essentially connected to fears that such observance could disturb family life especially where the women is pregnant or has very young children at home to rear. Women were, however, encouraged to benefit from such occasions. It is reported by Umm Atiyah that the Prophet said: "Young girls, housewives and women in menses (*hayd*) should all go to the *'id* congregation". The women who had their *hayd* normally abstained from the prayers, but joined in the supplication (*du'ah*). According to other traditions the Prophet used to take his wives to the congregational prayers of *'idayn* [Ibid.]. Additionally, it appears from the various traditions that women participated in great numbers in educational (*'ilmi*) and devotional (*'ibadati*) gatherings. Khaula bint Qays al-Juhanniyah, referring to the voice of the Prophet, said: "I was able to hear the address or sermon (*khutbah*) of Allah's messenger very well, even though I was at the back of the women's assembly". Women also took full advantage of these occasions to increase their knowledge. One of the daughters of Harithah ibn Nu'man said: "I memorised the chapter of the Cave (*surah al-Kahf*) by hearing it from the lips of the Prophet when he read it in every Friday *khutbah* for the admonition of the people" [Ibid.]. 'Abdullah ibn 'Abbas described one *'id* gathering in these words: "First he (the Prophet) led the prayer then he delivered the *khutbah* and afterwards he went to the women. Bilal was also with him. He admonished them". This indicates that women were separate from the men and were not located adjacent to men. It also shows that they were some distance away from the men [Ibid.]. Like men then women also participated as well as derived educational benefit from the gatherings of the *'idayn* and *jumu'ah*.

In the ideal traditional forms of the community based on the archetypal traditions of the Prophet or *ahadith* and his biography or *sirah*, Muslim women should not be prevented from attending mosque space. They should not mix with men in prayer and congregational gatherings and are excluded from the prime space, since they should not stand in the front rows, in close proximity to the "Holy of Holies", and not lead the prayers or deliver the authoritative Friday sermon for a mixed audience.

With the leadership (*imamah*) of the woman for men or a mixed congregation there are three variant and contradicting traditional positions espoused by the Schools

of law or *madhahib*. Firstly, there is the view of impermissibility in the performance of the compulsory (*fard*) and recommended or optional (*nawafil*) prayers. A view held by the Hanafi, Maliki and Shafi'i *madhahib*. They argue that the Prophet had recommended the arrangement of the sexes in prayer where women were placed on the fringes of the mosque behind the men following the male *imam*. Hence the *imamah* of a woman for men is not allowed. The Malikis, nevertheless, have the extremest view, which states that a woman cannot even lead a group of women with the conditions for congregational prescribed prayer. Secondly, the view that the *imamah* for the *fard salah* is incorrect, while that of the *nawafil* like the *tarawih* prayer during the month of compulsory fast (*ramadan*) is correct, a view advanced by the early Hanbalis. They contend that the Prophet ordered a man to perform the call to prayer (*adhan*) for Umm Waraqah, daughter of Nawfal, who was a prominent scholar of the Qur'an and was among a small group of female prayer leaders, and led her household in prayer. Therefore it is correct for a woman to lead men in the optional prayers. Thirdly, there is the view that a woman can unconditionally lead men in prayer. This is the view of Abu Thawr Ibrahim ibn Khalid ibn Abi al-Yamani al-Kalbi (d. 860), Abu Ibrahim Isma'il ibn Yahya al-Muzani (d. 878) and al-Tabari, who cite the same proof as in the second position [al-Munif 1990: 128-32].

Presently traditionalists categorically state that a woman never performed the pre-*khutbah* in the entire history of Islam. They admit that 'A'ishah bint Abi Bakr, the third and favorite wife of the Prophet, frequently advised men on religious issues particularly social practice, and reported a large number of the traditions of the Prophet and also took to the battlefield. It was recorded that 1210 *ahadith* were narrated on her authority. Traditionalists also use a model to clarify the position and role of women. They mention that al-Sayyidah Nafisah bint al-Hasan ibn Zayd ibn al-Hasan (d. 824) often taught and informed al-Shafi'i about issues regarding women. Furthermore, Nafisah had a reputation for learning and piety as al-Shafi'i regularly visited her to collect traditions. On the death of al-Shafi'i his body was brought to her house so that she could recite the prayer (*du'ah*) for the dead over him. Here, though, these engagements were conditionally conducted with an adherence to the Islamic ethic of dress, and modesty¹⁰ and a distinction was made between the voices of women

¹⁰ Fatima Mernissi, a contemporary Islamic feminist, conversely alleges that the modesty of a woman has a wider symbolic function, i.e. it refers to the need for the believer to curb his/her initiative and critical judgement. See Mernissi's, *Women's Rebellion & Islamic Memory* (New Jersey: Zed Books Ltd, 1996), 113.

in opposition to the content of what was said to men. In order to justify the impermissibility of a woman performing the pre-*khutbah* address some traditionalists also argue then that the voice of the woman is part of her concealed body area that cannot be publicly exposed (*'awrah*) in terms of the Qur'an where God says: "O wives of the Prophet! You are not like any other women. If you keep your duty, then be not soft in speech, lest he in whose heart is a disease should be moved with desire, but speak in an honourable manner" [Q. 33: 32]. Hence a woman should not be permitted to address a mixed congregation for *jumu'ah* (and all other public gatherings).

With the public sacred space of the mosque current traditionalists state that it is sanctified with forms of worship or *'ibadat*, which take place in it. Furthermore, a person is recommended to perform the intention (*niyyah*) of seclusion (*i'tikaf*) as a means of maintaining a spiritual balance within the mosque as the Sufis do when they go into seclusion. Consequently, by permitting a woman to deliver the pre-*khutbah* address to an audience of men and women from the front of the sacred precincts of the mosque, one would disturb the desired spiritual balance, since the natural sexual inclinations of men could be aroused. Generally traditionalists argue that women prove to be a distraction to men during public worship not allowing the believers to concentrate fully upon the divine and thus praying separately would be advantageous for both men and women. Menstruation or *hayd* also serves as a barrier for women as far as public worship is concerned, since ritual purity is one of the prerequisites (*shurut*) of prayer, i.e. "excluding women from public performance of the daily prayer for the benefit of their privacy" [Rippin 1993: 117]. Traditionalists additionally acknowledge that there are certain traditional views, which promote the *imamah* for *salah* of a woman, but that these are isolated, and extinct and that these exceptional cases should not be used for justification in general social practice. It was thus recommended that women should position themselves separately behind the rows of men, on the fringes of the main section. Their participation in the daily prayers was to derive spiritual upliftment, and the congregational gatherings of the *'idayn* and *jumu'ah* in turn, to obtain educational benefit. The presence and participation of women in worship or *'ibadah*, and on the *'idayn* was not only a devotional act, but was necessary for their spiritual upliftment, and education and training, an ethos which is still widespread in the mosques of certain communities. There is therefore no logical reason to assume that this need terminated after the demise of the Prophet and that there is presently no such requirement or exigency.

Women have been relegated via a deconstruction of the tradition established by the Prophet to the upper levels of mosques in contemporary traditional Muslim communities and excluded from the “Holy of Holies” where they can neither be seen nor heard. In some communities women still have access to the mosque together with their abundant involvement, just as in earlier ones, while in others they are prevented from having the right of entry to mosques. In 17th century India “[w]omen of the Timurid royal house were frequently responsible for the construction of the mosques and tombs that became the most obvious monuments to Mughal glory. The emperors were responsible for surprisingly few of these buildings. An exchange between Shah Jahan (d. 1658), exceptional for his determined mosque building, and his favorite daughter, Jahanara, points to the vigor with which queens and princesses involved themselves in founding places of prayer” [Kozlowski 1999: 475]. Even though women have participated in the ritual activity inside as well as contributed to the establishment and management of the mosque, it and particularly the “Holy of Holies” has primarily remained a domain for men where knowledge and power presides.

Muslim Women in the Traditional Home and Family

...it becomes necessary for the woman to be weak and oppressed. She becomes the articulation of suffering who is in dire need of a supporter. She takes the role of the emotional being, while the man is rational; she is in the home, he challenges the world; she surrenders, he is empowered and capable; she becomes the symbol of shame and need, he the symbol of pride, self-fulfillment and pride; she is the dependent follower, the obliging servant of the master, he the master whose word is obeyed [Haddad 1998: 11].

The woman is able to break out of her traditional prison to acquire knowledge and live a productive life and share responsibilities with her husband inside as well as outside the home. The man understands that the woman’s development is a necessary condition of his own progress. Yet both are depicted as trapped by the dilemma of being pulled in the direction of modernity and progress on the one hand and traditional conditioning and defined roles on the other [Ibid.].

The safeguarding of the private terrain of the home, as a crucial traditional arena of life, becomes a significant defense against modernization and secularization, especially in environments where Muslims are in the minority and where secular legal systems dominate. In almost every area of law Western-inspired legal codes have displaced the *shari'ah* considerably reducing its legal scope. It is mainly in the area of personal status or family law (*al-ahwal al-shakhsiyah*) that the *shari'ah* has been retained. This branch of law in social transactions has survived for several reasons. Firstly, it has traditionally been the most developed area of the *shari'ah* in which the learned scholars or *'ulama* have had the highest monopoly. Secondly, in their modernizing schemes, the governments under which Muslims reside are either consciously or unconsciously deploying the Western liberal distinction between public and private domains [Mir-Hosseini 1993: 10]. Islamic family law was thus left in the hands of the *'ulama* as it was deemed private and politically less significant. Finally, family law and the home have become the last bastions representing traditional sacred space that advances Islamic traditional values and mores.

Given that the meaning of Islam is peace (*salam*) the objective of Islam should likewise be to establish peace. Peace is a positive state of safety or security where a human being is free from the anxiety of fear. Islam, as engaged-surrender and *iman*, as true faith in the unity of God, are the elements that characterize this state of *salam*. It should be noted that justice is a proviso for peace, since it is impossible to discuss the issue of peace without the abolition of inequities, inequalities and injustices, which permeate the lives of human beings on an individual as well as communal level. With regard to the establishment of justice the Qur'an has laid down more sacred legislation in the context of private family relations in terms of rights and obligations than any other area under legal focus. Implicit in Qur'anic legislation is the assumption that when human beings arrange their private domains justly so that the sacred rights of everyone within these jurisdictions, i.e. children, women and men, are protected, then they would also be able to order their community and society at large justly without discrimination. The Qur'an thus considers the private sphere of the sacred home and family relations therein, especially marriage (*nikah*), as the foundation of society and accentuates the significance of building "the abode of peace" (*dar al-salam*) in the course of just livelihood for women and men [Hassan 1993: 61].

In the Qur'an *nikah* is essentially a contract (*'aqd*) established, as with all contracts before witnesses, at least two men, or one man and two women, i.e. "O you

married life as an owner of property and with a measure of economic independence. Significantly then the *mahr* becomes, and remains the woman's property and is also regarded as a form of security for the woman against the vicissitudes of the future like divorce or death. She has no obligation to use it for the upkeep of the family, in view of the fact that the husband has to provide for the needs and maintenance (*nafaqah*) of the family, both for his wife and children [El Saadawi 1982: 200-01].

Where the home and family is considered the foundation of society the *shari'ah* provides different rights and obligations to the various members. In view of the fact that the child is helpless its rights must be protected, resulting in a series of obligations, shouldered by both the mother and father toward it, which should be discharged. Here the mother finds herself carrying the child, nursing it and providing it with its urgent needs during infancy, as the Qur'an recognizes the share of the mother at the physiological level. "And We have enjoined on the human being (to be dutiful and good) toward his/her parents. His/her mother bore him/her in weakness and hardship upon weakness and hardship, and his/her weaning is in two years – give thanks to Me and to your parents. Unto Me is the final destination" [Q 31: 14]. Notwithstanding, in the egalitarian system of the Qur'an, the father should endure an equal obligation, for the reason that the mother already endures obligations established by natural laws. He would hence be responsible for the *nafaqah* of both the mother and child in order to allow his wife to fulfill her natural obligation [al-Faruqi 2000: 79-80]. These rights and duties particularly of the woman against the man, have been enunciated during the elucidation of the former portion of [Q 4: 34] in the section "Cosmologies in Islam", which refuted the traditional position of the subordination of women. The woman could even require payment for suckling the children she has borne, or suggest that another woman be hired for this task. In this respect the husband also has to provide the abode for the family even during the waiting period of divorce (*'iddah*). "Lodge them (the divorced women) where you dwell, according to your means, and do not treat them in such a harmful way that they be obliged to leave. And if they are pregnant then spend on them until they deliver. Then if they give suck to the children for you, give them their due payment, and let each of you accept the advice of the other in a just way..." [Q 65: 6]. Furthermore, even after the demise of the man he would have to provide for the widow, i.e. a year's *nafaqah* and residence [Q 2: 240].

In the latter part of [Q 4: 34] God additionally expounds on how to deal with the ill-will/ill-conduct (*nushuz*) of women (the wives of men): "...And as to those women on whose part you see ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly if it is useful). But if they return to obedience do not look for excuses to (punish or) harm them. Surely, God is Ever Most High, Most Great". The word "beat" in [Q 4: 34] raises grave concern and thereby there are Muslims who express the opinion that this Qur'anic precept is limited to the time in which it was given, and does not hold good under present conditions where physical abuse is deemed a criminal offence under national secular law and international human rights. It is impossible to overstate the impact of the general understanding of this section of the *ayah* and moreover, in the words of Maysam J. al-Faruqi, a contemporary Muslim feminist: "*Nushuz* then can be deduced from the verses (of the Qur'an in totality) as referring to not guarding the intimacy associated with marriage and showing attraction to a person other than one's spouse. That it always has to do with another partner is clear from the fact that the Qur'an specifically refers to multiple marriages in the case of *nushuz* of men [Q 4:127-30]. Quite consistently the Qur'an uses the same word for the same meaning in both cases (women and men). For women however, the act is more reprehensible because there can be no proper justification for it, whereas for men, the case considered is the one taking place within the framework of (multiple) marriages, so it is not illegal but reprehensible and grounds for divorce. But since *nushuz* deals with misconduct rather than adultery (a form of sexual harassment, really) the word 'beating' is not a correct translation (especially since Islamic Law interprets the discipline as a clearly symbolic act, and prohibits any act that is actually violent or that leaves so much as a physical mark on a person's body, as is the case with 'beating'). The *nushuz* of the male outside of marriage brings automatically the same punishment from the judges as the one advocated by the Qur'an for women: a reprimand or a good measure of disciplining at the hands of the judge" [2000: 95].

An *ayah* on marriage that has given rise to a practice, which the Shi'ah School of law, have retained, where God mentions, "Also (forbidden are) women already married, except those (slaves) whom your right hands possess. Thus has God ordained for you. All others are lawful provided you seek (them in marriage) with dowry from your property, desiring chastity, not committing illegal sexual intercourse. So, with those of whom you enjoyed sexual relations (*istamta'tum*) (by marrying

them), give to them their dowries as prescribed... ” [Q 4: 24]. The Shi‘ah base their understanding of this *ayah* to uphold what is known as the temporary marriage or marriage of enjoyment (*mut‘ah*) that could be a marriage contract for a stipulated period (one day, one month, one year ... ninety-nine years). At first sight it seems to be a form of legalized prostitution. The permissibility granted for this type of marriage was revoked by the second caliph ‘Umar. The Shi‘ah, opposed to ‘Umar, did not accept this ruling and have maintained the possibility of this form of marriage, considering it even a special source of blessing, albeit, subject to abuse and exploitation in terms women (other wives), as in the case of polygamy. Besides this supposed blessing marriage, likewise, has impediments connected to it.

The Qur’an lists numerous impediments such as consanguinity and affinity or those related persons the man is forbidden to marry [Q 4: 23]. It should be noted that, while a man is not allowed to marry his paternal or maternal aunt, marriage with the aunt’s daughter is permissible. Marriage between cousins has always been highly prized in Arab society. A further impediment that exists is that of religion. “And do not marry idolatrous women until they believe (worship God alone)” [Q 2: 221]. However, it is permitted for men to marry women of other monotheistic religious traditions. “...And (lawful to you in marriage) are chaste women from the believers and chaste women from those who were given the Scripture (the People of the Book, i.e. Jews and Christians) before your time...” [Q 5: 5]. But, it is prohibited for a Muslim woman to marry a non-Muslim, since she should only marry a Muslim man. Although there is no stipulation in the Qur’an referring to this issue, the traditional reasoning behind this is that the offspring follow the father and if he were non-Muslim then his children would not be brought up as Muslims. Furthermore, “if a Muslim man marries a (Jewish) woman the children will be named after him and will take his religion, and thus will help Islam to spread and become more powerful. But if a Muslim woman marries a (Jewish) man, their children will take the name of the father and will be born (Jewish)” [El Saadawi 1982: 200]. In spite of this is it not the natural role of the woman to bear, and rear children and traditionally not that of the man? The notion of marrying the other is also linked to the issue of polygamy (*ta‘addud al-zawjat*) or marrying more than one woman.

The *ayah*, which allegedly allows the possibility of polygamy/polygyny, should be considered within its proper context. “And give unto the orphans their property and do not exchange (your) bad things for (their) good ones, and devour not

their property (by adding it) to your property. Surely, this is a great sin. And if you fear that you shall not be able to deal fairly with the orphan girls (in your charge), then marry (other) women of your choice, two or three or four; but if you fear that you shall not be able to deal justly (with them or so many), then only one or (the slaves) that your right hands possess. That is nearer to prevent you from doing injustice” [Q 4: 2-3]. It should be noted that what is allowed is polygamy, i.e. for a man to take several wives. Polyandry or for a woman to have several husbands at the same time is prohibited. The reason for this prohibition is that the paternity of the eventual children would be uncertain. The immediate reason for the permissibility of polygamy was related to the situation of the small Muslim community, which engaged in wars during the Madinan phase of revelation. The men had fallen in battle and numerous women and children remained without husbands and fathers. Who would maintain and support the women and children within this seventh century Arabian social-cultural context, which was highly patriarchal? The permissibility was granted to take more than one wife in order to provide for those, who were in need of support, protection and security. It should further be observed that there are certain related conditions. Legitimate wives were limited to four on condition of treating them justly in an environment where unconditionally marrying an unrestricted number of wives was normative.

The Qur’an further states, “You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provision) so as to leave the other hanging (neither divorced nor married). And if you do justice, and do all that is right and is God-conscious by keeping away from all that is wrong, then God is Oft-Forgiving, Most Merciful” [Q 4: 129]. Some traditionalists have understood this, as a Qur’anic recommendation towards monogamy, arguing that equal treatment not only in material affairs, but also in affection is impossible and that marriage to several wives suggests a preference, i.e. for the new wife over the foregoing one, making equity, equality and justice impossible. Similarly, “modernists have insisted that, while it (polygamy/polygyny) is sanctioned in the Qur’an it is contingent on men’s capacity to be just in their treatment of women. Some have argued that polygyny is an impediment to progress insofar as it fosters a turbulent home life, with discord among wives competing for the attention of the man and tensions among other members of the family” [Haddad 1998: 13]. On the contrary, many traditionalists have preferred

the literal interpretation of the Qur'an, allowing the possibility of up to four wives and have promoted that "it is a means of liberating women. It lifts her from her condition of humiliation, grief, and squalor to a noble state of matrimony in which she experiences purity, dignity, and honor...(and) '[i]t is an error to link the multiplicity of wives to primitive society, while considering the multiplicity of mistresses as signs of a progressive society'" [Ibid.]. On the other side of *ta'addud al-zawjat* there is the subject of divorce (*talaq*).

Like certain contracts are subject to dissolution similarly the ideal of good matrimonial relations within the contract of marriage does not always hold. Instead of mutuality, equality, love and compassion there could develop selfishness, inequality, misunderstanding and antipathy. The Qur'an espouses the principle that "...God desires for you ease, and He does not desire to make things difficult for you..." [Q 2: 185], and in this vein admits divorce. However, before any decision is taken, an attempt to bring about reconciliation should be made: "If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from her's. If they both wish for peace, God will cause their reconciliation. Indeed God is All-Knowing, Well-Acquainted with all things" [Q 4: 35]. This *ayah* demonstrates that marriage does not concern the couple only, but also involves their respective families. The Qur'an goes into considerable detail on the subject of *talaq* [Q 2: 226-32]. This is usually the man's prerogative with the alleged consent of the woman. Divorce could be revoked twice, i.e. a revocable divorce (*talaq raj'i*), but becomes definitive, viz. irrevocable (*talaq ba'in*), if pronounced a third time. It does not, however, become immediately effective. The Qur'an lays down a waiting-period or *'iddah* of three menstrual periods. The motivation for this is twofold: firstly, to provide a time for possible reconciliation and secondly, to determine whether the woman is pregnant in which case the husband should still be responsible for the child. But, after the waiting-period the woman's right to maintenance or *nafaqah* ceases. Alimony in the Qur'anic and the traditional conception of divorce is only paid during the 2 year suckling period after pregnancy. In the afore-mentioned reference there is mention of another type of procedure for divorce, known as *khul'*. "Then if you fear that they may not be able to keep the limits ordained by God, then there is no sin on either of them if she gives back (the dowry) for her divorce" [Q 2: 229]. In other words the woman could take the initiative to bring about a divorce (*faskh*) usually via judicial intervention, offering some financial compensation, for example to restore the

dowry that was paid. These were indicated in the explanation of the previous *ayah* [Q 2: 228], in the section “Cosmologies in Islam”, contesting the traditional exegeses for the inequality of women and men where “males have a degree over them (females)”.

Even though the Qur’an is the primary source in legal theory or *usul al-fiqh* it is not the only one. The others are the example of the Prophet or *sunnah*, analogical reasoning (*qiyas*) and consensus or *ijma’*. On these bases the *shari’ah* has been developed and constructed according to the four traditional Sunni Schools of law. To these could be juxtapose the Ja’fari, which chiefly constitutes of the Twelver Shi’ites who form the majority of the legal school for the Shi’ah. It could be stated generally that tradition under the rubric of jurists’ law has tended to harden male domination, whereas the modern and progressive codes attempt to redress the situation in favor of the equity and equality of women especially in the areas of marriage and divorce, the final bastions of the *shari’ah* that represents the foundation of the community.

Women of the Maliki, Hanbali and Shafi’i Schools do not have the capacity to contract their own marriages, since a male guardian (*wali*) would always enact the process for them. A Hanafi woman, however, could contract her own marriage, but her *wali* could question the contract if he deems that the chosen partner is not her equal (*kuff*). The Hanbali school, nevertheless, allows women to insert stipulations into the *’aqd*. This possibility could be used to permit the woman greater equity and freedom. The contract could, for instance, stipulate that the husband should allow the woman to continue working outside the private domain of the home if she so wishes. The first right of the woman and an essential part of the contract is the dower. It is not always obligatory for the man to pay the full *mahr* at the time of marriage. When it could be paid in full at the time of the marriage it is termed *mu’ajjal*, while where it could be deferred, it is called *mu’ajjal*. In the case of the latter the *mahr* only becomes payable at termination of the marriage, however, in practice the balance is normally paid off during the subsistence of the marriage. This device could also be used as a safeguard for the women against the man’s capricious use or abuse of his right to divorce or repudiate her.

According to all of the *madhahib* the wife has the right to maintenance as long as the marriage exists and during the period of the *’iddah*. This right, which extends to food, clothing, reasonable accommodation and medical expenses, holds good even if the woman is capable of maintaining herself. She, on her part, has no obligation to contribute to the *nafaqah* of her husband even if he is in need. If the wife is

disobedient then he has the right to suspend her maintenance. The law also gives him the right to inflict physical punishment on her, provided he does not cause her serious injury, though, there is debate with regard to the evidence in the Qur'an. In such situations the wife has little possibility of seeking redress especially where men and not women have the unilateral option of divorce.

The traditional husband has the right to take additional wives, as long as the number of four wives at any one time is not surpassed. According to Shi'ah law the man could also contract arbitrary *mut'ah* marriages. Here as well as with Sunni polygamy then in traditional law the husband is not required to obtain permission from his first wife before taking another. Again the Hanbali system of contractual stipulation could work in favor of the first wife to preserve justice and equity against the inequalities stemming from polygamy as well as *mut'ah*. She could insert into the marriage contract the proviso that if her husband takes another wife she would have the right to seek divorce. Such modified contracts have mostly been requested by women with bargaining power from the upper strata of community where few women are located, leaving the majority of the women in the lower sector vulnerable to continued subordination and discrimination. Correspondingly, it is in matters of the divorce of women by men that male domination over the female becomes most ostensible. Although, divorce is considered a legitimate act most abhorrent in the sight of God it is, nevertheless, supported as a man's right. Traditionally the husband could *talaq* his wife at will without any real reason leaving her destitute after the waiting period. Women have no real right equivalent to that of their husbands in this regard. Some of the *madhahib* do, nevertheless, allow the wife to appeal for a divorce on the grounds of ill treatment. Hence in the Hanafi *madhhab* the only grounds on which a woman could apply to the courts for dissolution or *faskh* is the incapacity of her husband to consummate the marriage.

After *talaq* the divorced woman retains custody of her children only for a limited period of time. The period differs according to the traditional schools, from a minimum of two years (or until the end of weaning) to the whole time of childhood until the age of puberty. Even during this period the child's legal guardian, the father or the nearest male relative has the right not only to control the child's education, but also to contract a marriage for the infant without the consent of the mother. The question of guardianship could become problematic in the cases of mixed religious marriages, which end in divorce and lead to discrimination against the mother. In this

who believe, when you contract a debt for a fixed period, write it down...and get two witnesses out of your own men, and if there are not two men (available), then a man and two women, such as you agree for witnesses, so that if one of them (two women) errs or gets confused, the other can remind her..." [Q 2: 282]. Traditionalists allege that the reason why women could become confused is that they are less reliable and of lower mental ability than men. However, this reason has no support from the words of God, but rather construed in the exegeses as indicated in the section "Cosmologies in Islam", and the episode of The Fall where God's supposed curse on women entailed their mental abilities and is similarly also present in traditional Judaism [Deuteronomy, XXII: 13-21]. As far as the reliability is concerned the Qur'an requires even of men to be two witnesses instead of one. Does this imply that God does not view men to be reliable in that the testimony of one man is not viewed as sufficient? Will both men then have to give evidence? This provision is only required if one of them misses any detail or becomes confused then the other could forward the missing information and corroborate as well as consolidate the testimony in the legal sense of supporting evidence. Here the requisite of two male witnesses does not demand that men are of low reliability or have deficient mental abilities. Similarly, when two females are necessary as witnesses instead of one male, the implication is not unreliability, but rather viewed as a process for corroboration of the evidence.

The dowry or *mahr* and not bride price¹¹ is an essential part of the *'aqd*, since God says: "And give to the women (whom you marry) their free gift of their marriage portions with a good heart; but if they, of their own good pleasure, forego any part of it (themselves) to you, take it, and enjoy it without fear of any harm" [Q 4: 4]. Here the term used is "*sadaqat*", which is similar in form to *sadaqah* or free alms giving. While elsewhere in [Q 4: 24] the Qur'an makes mention of "*ujur*" from *ajr*, which means recompense or wage. *Mahr* should thus be given freely symbolizing the husband's duty of maintaining his newly wedded wife from the occasion of the *'aqd*. Where a woman enters into marriage without any belongings owned by her, or under situations where she never owned anything of her own, the *mahr* immediately places her in a position of an exclusive owner of property. In this way she commences her

¹¹ During the latter part of the Age of Ignorance (*Jahiliyah*) or the period of ignorance that prevailed in the pre-Islamic Arab peninsula Arab fathers realized that selling their daughters for large dowries or bride-price was more rewarding financially and beneficial than their previous practice of infanticide or burying their girls alive in the ground. See Azizah al-Hibri's, "A Study of Islamic Herstory: Or How Did We Ever Get Into This Mess?", in Azizah al-Hibri, ed., *Women and Islam*, (Oxford: Pergamon Press, 1982), 209.

instance the former wife, the non-Muslim partner, would see her children taken away from her or she is prevented from coming to visit them because of her religiosity.

When we turn to examine the abovementioned socio-legal outlook toward women in historical and traditional *shari'ah* we find that the situation is more perplexing than it appears. For, on the one hand, one could see that the *shari'ah* through the lenses of the Qur'an considers women as autonomous persons with full legal capacity: they enjoy full control over their property; their consent is required for marriage (as well as in all other matters) and they have the right to initiate the process of divorce; they can initiate legal proceedings and can grant or receive the power of attorney; they can even assume public office; and serve in the capacity of judges. However, on the other hand, one could also observe that the traditional prejudice against women in general has worked against them in the historical and traditional Muslim community. Here the jurists through their exegetic readings rooted in theology managed to subordinate the independent legal personality of women by deploying various misogynistic legal interpretations, constructions/deconstructions and strategies. Nonetheless, it could be demonstrated that the desire to place limitations on the private and public status of Muslim women, were not of the same intensity from one traditional school to the other.

The most orthodox stance came from the Hanbali, and, to a lesser degree, the Shafi'i *madhahib*. The Hanafi School exhibited, on the other hand, a more *laissez-faire* attitude toward women, allocating them more power in pursuing their public and private rights. Whereas, al-Shafi'i and Malik allowed the father to compel his daughter in matters of marriage, Abu Hanifa, al-Thawri, al-Awza'i and many of the early jurists insisted that a woman has the final say in matters of personal status like marriage [Ibn Rushd, II: 5]. Correspondingly, al-Shafi'i requires the consent of the *wali* for the validation of the marriage contract, whereas Abu Hanifa, al-Shu'bi, and al-Zuhri permits a woman to marry herself regardless of her family dissatisfaction [Ibid.: 8]. Hence, while historical and traditional *shari'ah* recognized the capacity of women to enjoy certain private rights, it managed, nonetheless, to curtail these on social-cultural grounds via juristic extrapolations and constructions/deconstructions from the works of exegetes rooted in theology as exhibited in the section "Cosmogonies in Islam". Whilst all the jurists recognize the women's traditional right to end the marriage in theory, on the one hand, but only under conditions that vary from one school to another [Ibid.: 66-8]. Traditional practice of divorce, on the other

hand, resulted in harmful effects on morality where the right of the wife to request a divorce from a judge became more arduous even under cases of unlawful neglect and unlawful physical or psychological abuse. Let alone consider the husband's biased right to issue a divorce decree, which has frequently been an exploitative and abusive tool in the private sphere of the home. Moreover, while polygamy was regarded as a sound practice by most traditionalists, it evolved into an inequitable practice of unrestrained and self-centered male lust without the proviso of justice and equity [Stowasser 1998: 34-5]. Subsequently, some traditionalists and progressives have condemned the abuses of polygamy as well as divorce and therefore advocated reforms¹² to protect the rights of women and to divide obligations equitably among the husband and wife in the sacred domain of the home and family law.

Conclusion

The Qur'an does not discriminate against women and does not support the theory held by many Muslims as well as Jews that the first woman was not only created from man, but also for him. Despite the Qur'anic affirmation of man-woman equality Muslims by and large have never deemed men along with women as equal in the public sphere, and private domain of the home and family. The alleged inferiority of women to men that permeates the Islamic tradition is not primarily rooted in *hadith* narratives, but also in constructions or interpretations of particular *ayat* of the Qur'an all written by men. The interpretations form part of the theologian and jurist's deconstructed references in explaining the interrelated theological and socio-legal dimensions of *ayat* especially those given a decidedly misogynistic explanation, e.g. where the rights of women and men are contrasted in the arena of the family. The verses oft invoked as referent proof and central to contrasting the rights as well as obligations of women in relation to men are located in [Q 4: 34] and [Q 2: 228].

In a later response to the Mu'tazilah theological position, which stipulated that the *'aql* was suitable to determine what was naturally reprehensible or good in the

¹² "Modern Muslim family law reforms were initiated then by governments, implemented from top down, and often rationalized and legitimated in the name of Islam by using (or, as some would charge, manipulating) Islamic principles and legal techniques. While the ulama were generally resistant, at best they were only able to restrict the scope of reform. The power of authoritarian states and modernizing elites prevailed. The power and sacrosanct nature of classical family law was reflected in the fact that even where modern legislation reformed it, failure to comply rendered an act illegal but not invalid", see John L. Esposito's, "Introduction: Women in Islam and Muslim Societies", in Yvonne Y. Haddad & John L. Esposito, ed's., *Islam, Gender, & Social Change*, (New York: Oxford University Press, 1998), xv.

shari'ah and where it was silent, it was claimed that, very few members of the community were able to use their '*aql* with complete success in determining the utility or aesthetic perfection of acts or even in reaching essential moral truths. This is so, since society was held back by an imbalance in their psychological make-up by false hopes and desires and by distorted perceptions. It was concluded that revelation makes up for the deficiencies in human nature and that it confirms the '*aql* as well as lends certainty to its conclusions where the '*aql* is right, and rectifies and supplements it when it has been misguided and wrong. The Qur'an also enumerates special acts or duties, which cannot be determined by the '*aql* such as '*ibadat*. Although the '*aql* together with the senses could provide limited practical and instinctive reasons, why a person should act in accordance to a certain situation, these reasons lack compelling force and hence the divine imperative becomes necessary. Despite these assertions it was recognized that rational knowledge in *mu'amalat*, particularly in the area of personal status matters, was a full representation of the truth as revelatory knowledge. Thus in the field of practical marriage as well as divorce, social ethics and politics or general social transactions the '*aql* should be granted a wider role, but needs to be guided by revelation only in its general moral orientation.

The participation of women in the daily prayers in the sacred domain of the public *masjid* was to derive spiritual upliftment, and the congregational gatherings of the '*idayn* and *jumu'ah* in turn, to obtain educational benefit. The presence and participation of women in '*ibadah*, and on the '*idayn* was not only a devotional act, but was necessary for their spiritual upliftment, and education and training, an ethos which is still widespread in the mosques of certain communities. There is hence no logical reason to assume that this need terminated after the demise of the Prophet and that there is presently no such requirement or exigency. During the time of the Prophet then, women were located on the fringes of the sacred space of the mosque. However, women have been relegated to the upper levels of mosques in contemporary traditional Muslim society and excluded from the "Holy of Holies", the space of men where knowledge as well as power presides, while they can neither be seen nor heard. In some communities women still have access to the mosque together with their abundant involvement, just as in earlier ones, while in others they are prevented from having the right of entry to mosques.

Whilst historical and traditional *shari'ah* recognized the capacity of women to enjoy certain personal status rights within the sacred terrain of the private home, it

also managed to curtail these on social-cultural grounds via juristic extrapolations from the works of exegetes rooted in theology. However, all the jurists recognize the women's traditional right to end the marriage in theory, but only under conditions that vary from one school to another. Traditional practice of divorce, on the other hand, has resulted in harmful effects on morality where the right of the wife to request a divorce from a judge became more arduous even under cases of unlawful neglect and unlawful physical or psychological abuse. Additionally, considering the husband's biased right to issue a divorce decree, it has recurrently been an exploitative and abusive tool in the private sphere of the home. Moreover, while polygamy was regarded as a sound practice by most traditionalists, it evolved into an inequitable practice of unrestrained and self-centered male lust without the proviso of justice as well as equity. Subsequently, some traditionalists and progressives have condemned the abuses of polygamy as well as divorce and advocated reforms to grant greater protection to the rights of women within family law, and to divide obligations equitably between the man and woman in the domain of the home.

Chapter 2

Jewish Lore v Jewish Law and the Traditional Status of Women in the Synagogue and Home

Introduction

Man enjoys the great advantage of having a god endorse the code he writes; and since man exercises a sovereign authority over women it is especially fortunate that this authority has been vested in him by the Supreme Being. For the Jews, Mohammedans and Christians among others, man is master by divine right; the fear of God will therefore repress any impulse towards revolt in the downtrodden female [de Beauvoir 1952].

Historically traditional religions like Judaism and Islam have played a significant role in limiting the role of women in the community and society at large. At times the affirmation of the subordination of women is so central to the dominant teachings of the faith that the religion itself appears irreconcilable with most attempts to attain gender equity within the community. Here the religious sanctioning of women's systematic subjugation cannot be overlooked. Any comprehension of religion's role in the lives of women is partial if religion is only perceived as oppressive, while it could be deemed as a source of empowerment particularly in the home. Nevertheless, in contemporary times through the modern discourse of equality germane to the examination for such elements in the creation myth the religious belief that men and women are fully and equally human, has led men and women to the quest of transforming religious and social institutions to be more egalitarian. This egalitarian core has been predominantly expressed in terms of the equal creation of man and woman as described in the related creation narratives or myths within each of the religious traditions. Each tradition via its scriptural text has affirmed this in that both men and women have been created in the image of God, depicting that they are equal and that both afford to be treated with the same dignity as human beings. An egalitarian core would, however, be antithetical of traditional religious institutions and authorities, which perpetuate gender discrimination and inequality. Such institutions

and authorities that fail to espouse the egalitarian core of a religion could be liable for somewhat distorting the fundamental teachings of the tradition. The distortion could be traced to an unwarranted and unholy union between evolving discriminatory institutions formulated by religious authorities like sages, rabbis, imams, etc., and the prevailing values of a patriarchal culture out of which the institutions emerged. Religious sanctioning of such structures and institutions particularly in the public domain of traditional synagogues and mosques, and the private sphere in the traditional home of the family directly opposes the egalitarian core that affirms the full humanity and equality of women. A traditional religion would only live up to its egalitarian core when it's institutions, which it promotes within the public as well as private arena, foster the total humanity and equity of all it's members.

In traditional Judaism, as in traditional Islam, the scriptural and exegetical narratives of women have regularly been revisited during contemporary times spearheaded by the feminist movement in order to highlight the unholy union between institutions, primarily legal, developed by religious authorities and the patriarchal culture out of which these structures emerged. On the contrary, Leila L. Bronner, a contemporary Jewish feminist, asserts that it has become evident that the sages' attitude toward biblical women in the legendary literature of the Midrash and Talmud was flexible and evolving in accordance with the exegetical problem under discussion rather than static. Views expressed by the sages in a given midrashic context seldom appear to have arisen out of the needs of the specific biblical text that they were analyzing. Though some women of the Bible were revered as heroines and though the sages adopted a more lenient attitude toward them as oppose to those of their own times they were still critical even of these Biblical figures. Thus the sages perceived the women of the Bible in a similar light as the women of their own day according to the predetermined ideas concerning the restrictions placed on women by viewing them as inferior to men [Bronner 1994: xiv-xv]. With regard to the creation narrative/myth then Eve, attributed in the Bible as the mother of all life, was transformed into the mother of death in numerous androcentric analyses. Bronner further claims that various ancient exegetes, the sages included, were guided by their interpretation of the Genesis narrative in order to characterize sin and death to the primordial female character of Eve. With this discriminatory transformation Eve became the archetype whose behavior supplied the sages with the *raison d'être* to formulate rules and regulations in the name of modesty to remove women from the public sphere as well

as positions of leadership and in so doing limit them to the private domain of the home. The sages hence projected their cultural presumptions of women onto the character of Eve thereby shaping and informing the biblical characterization of the first woman. Consequently, as a result of Eve's interpreted actions in the aggadic literature, all her daughters or subsequent women were subjected to the rabbinic regime of modesty as determined under the rubric of Jewish law and therefore restricted in their public and private lives [Ibid.: xvii-xviii].

As Judaism's regime of laws predominantly determine the way in which Jews should walk their path through life and as all aspects of their relationship with God as well as their relationship with human beings are governed by clearly defined rules and regulations, this chapter seeks to examine the connection between Jewish lore and law, which primarily shaped the traditional status of women in the public arena of the sacred synagogue as well as private sphere of the family within the sacred home. In establishing the connection between lore and law within gendered sacred spaces utilizing gender as a tool of analysis the major areas of exploration and focus would be: The Genesis Creation Myth in Judaism; Traditional Jewish Lore (*Aggadah*) and Law (*Halakhah*) Interwoven; Jewish Women in the Traditional Synagogue; and Jewish Women in the Traditional Home and Family.

The Genesis Creation Myth in Judaism

Myth...in its living primitive form is not merely a story told, but a reality lived. It is not of the nature of fiction...but it is a living reality, believed to have once happened in primeval times, and continuing ever since to influence the world and human destinies [Malinowski 1954: 100].

When individuals articulate their religious needs they generally do so in the context of their preexisting religious tradition that defines for them both the character of the sacred reality and the kinds of prior relationships humans have had with that reality. Frequently a core of the connected historical information is intertwined with myths that disclose more about the deeper values than about historical beginnings. Myths or sacred narratives/stories typically recount how humans and the sacred realities became involved with each other and often depict an ideal relationship. Such myths further provide humans with models to emulate so that they may form interlocking

relationships with sacred realities and with the rest of the world. Significantly these stories could also inform humans of the creation of the world or how a primeval couple like Adam and Eve were brought forth. With the perpetual reading of the narratives and texts in which the myths are located, ongoing generations can identify themselves and their gendered roles, and relate themselves to the world and their origins. In further delineating myth, David Chidester asserts that it most often deals with origins or is frequently cosmogonic, i.e. a sacred story about creation. He further claims that no myth is narrated without interpretation from sacred texts devoid of the exegetical labor of attempting to make sense of the myth and apply its significance to the lives of men and women [1991: 18].

As would become apparent the Hebrew Bible (Tanakh), i.e. Torah or Teaching; Nevi'im or Prophets; Ketuvim or Writings, presents two versions for the creation myth of women. Here Naomi M. Hyman, a contemporary Jewish feminist, claims that two different women were created, one with Adam and the other from him. The first woman seems to disappear from the narrative as Eve takes the center role. Perceived as the archetypes, Eve and the first woman, who some have named Lilith, are viewed differently than any of the other women in the Bible. Literature and exegetes seldom see them as individuals, but rather as the quintessence of what women are or ought to be [1997: 1], which is tantamount to theological sexism.

In reading verses of the Torah, which deal with the creation myth and those that principally enumerate the dual creation of man as well as woman, God said, "And God created man in His own image, in the image of God created He him; male and female created He them. And God blessed them; and God said unto them: 'Be fruitful, and multiply, and replenish the earth, and subdue it; and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that creepeth upon the earth'" [Genesis, I: 27-8]. In contrast, with the sole creation of the woman (an apparent contradiction), God then states, "And the Lord God took the man, and put him into the Garden of Eden to dress it and to keep it. And the Lord God commanded the man, saying: 'Of every tree of the Garden thou mayest freely eat; but of the tree of knowledge of good and evil, thou shalt not eat of it; for in the day that thou eatest thereof thou shalt surely die'. And the Lord God said: 'It is not good that the man should be alone; I will make a fitting helper for him'...And the man gave names to all the cattle, and to the fowl of the air, and to every beast of the field; but for Adam no fitting helper was found. And the Lord God caused a deep sleep to fall upon

the man, and he slept; and He took one of his ribs and closed up the place with flesh instead thereof. And the Lord God built the rib, which He had taken from the man into a woman, and brought her unto the man. And the man said: 'This is now bone of my bones, and flesh of my flesh; she shall be called Woman, because she was taken out of Man'. Therefore shall a man leave his father and his mother, and shall cleave unto his wife and they shall be one flesh. And they were both naked, the man and his wife, and were not ashamed" [Genesis, II: 15-8 & 20-5].

Finally with the "Fall" or expulsion of the man and woman from the Garden of Eden, at which occasion the nature of man as well as woman were allegedly defined, God mentions, "Now the serpent was subtler than any other beast of the field, which the Lord God had made. And he said unto the woman: 'Yea, hath God said: Ye shall not eat of any tree of the Garden?' And the woman said unto the serpent: 'Of the fruit of the trees of the Garden we may eat; but of the fruit of the tree which is in the midst of the Garden, God hath said: Ye shall not eat of it, neither shall ye touch it, lest ye die'. And the serpent said unto the woman: 'Ye shall not surely die; for God doth know that in the day ye eat thereof, then your eyes shall be opened, and ye shall be as God, knowing good and evil'. And when the woman saw that the tree was good for food, and that it was a delight to the eyes, and that the tree was to be desired to make one wise, she took of the fruit thereof, and did eat; and she also gave unto her husband with her, and he did eat. And the eyes of them both were opened, and they knew that they were naked; and they sewed fig leaves together, and made themselves girdles. And they heard the voice of the Lord God walking in the Garden toward the cool of the day; and the man and his wife hid themselves from the presence of the Lord God amongst the trees of the Garden. And the Lord God called unto the man, and said unto him: 'Where art thou?' And he said: 'I heard Thy voice in the Garden, and I was afraid, because I was naked; and I hid myself'. And He said: 'Who told thee that thou was naked? Hast thou eaten of the tree, whereof I commanded thee that thou shouldest eat?' And the man said: 'The woman whom thou gavest to be with me, she gave me of the tree, and I did eat'. And the Lord God said unto the woman: 'What is this thou hast done?' And the woman said: 'The serpent beguiled me, and I did eat'. And the Lord God said unto the serpent: 'Because thou hast done this, cursed art thou from among all cattle, and from among all beasts of the field; upon thy belly shalt thou go, and dust shalt thou eat all the days of thy life. And I will put enmity between thee and the woman, and between thy seed and her seed; they shall bruise thy head, and

thou shalt bruise their heel. Unto the woman He said: 'I will greatly multiply thy pain and thy travail; in pain thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee'. And unto Adam he said: 'Because thou hast hearkened unto the voice of thy wife, and hast eaten of the tree, of which I commanded thee, saying: Thou shalt not eat of it; cursed is the ground for thy sake; in toil shalt thou eat of it all the days of thy life. Thorns also and thistles shall it bring forth to thee; and thou shalt eat the herb of the field. In the sweat of thy face shalt thou eat bread, till thou return unto the ground; for out of it wast thou taken; for dust thou art, and unto dust shalt thou return'. And man called his wife's name Eve; because she was the mother of all living. And the Lord God made for Adam and for his wife garments of skins and clothed them" [Genesis, III: 1-21].

Of all the narratives on women in the Tanakh, the story of Eve has been used more than any other as a theological base for sexism. Additionally, in the Midrash, the exegetical corpus of literature, and Talmud she serves chiefly as a foundation for *halakhah* and women's values. The rabbinic exegesis of Eve became the motivation for rules and regulations guiding women's behavior, i.e. the dos and don'ts for women. As Eve was deemed as a source of sin in the Midrash and Talmud there is a need to rein her in, to harness that dangerous energy, to create areas of seclusion for women and subordination. If consideration were afforded to Genesis I and II, the creation of man and woman would differ starkly in language, style and content. In both chapters woman and man were the direct intentional creation of God. In the first, it was stressed that both man and woman were created equal in the image of God, and given the mandate by God to populate the earth and have dominion over it [Genesis, I: 27-8]. While in the second, Eve was created from Adam and both were placed in the Garden of Eden [Genesis II: 15-25]. Both Adam and Eve disobeyed the command of God and both were punished. The added enunciation of punishments, particularly the words "he shall rule over you" [Genesis, III: 16], could be understood as a mere delineation of how things would be, rather than as a command saying that this is how things should be, as sanctioned in the Torah. Furthermore, most traditions including the midrashic also display a deep-rooted conviction that Eve tempted Adam to commit sin [Bronner 1994: 22-4], while at the end of the story it is Adam, the man, who was expelled from the Garden. Eve, the woman, was not even mentioned. Her invisibility suggests that the narrative was told from an androcentric point of view. In spite of how much one would like to prove that the extrapolated sexism is in the exegetes and

interpreters, the text could be part of the problem, as it could not be sexist, but androcentric [Bellis 1994: 30]. The androcentric nature of the narrative has thus only been bolstered via the rabbinical exegetes in their interpretations.

To the early rabbis names were deemed not only as labels, but also as symbols and in this they took their cue from the Hebrew Bible, specifically the problematic reference to Eve's name mentioned in [Genesis, III: 20]. In sound, but, not in derivation the name Eve in Hebrew could resemble the Hebrew word "life" (*havvah*). In this regard Bronner also mentions that one Midrash connects the root "to declare" (*havvah*) to make Eve an "advisor" to Adam. Eve was thus considered in a negative light, since she like the serpent was a presenter of bad advice and evil counsel. She conversely claims that the Midrash recast the narrative material of Eve having been seduced by the serpent, as in the third chapter of Genesis and presents her as the serpent like tempter of Adam. This serpent/seduction theme occurs often in the rabbinic discussion of Eve, often connecting it with her name or her manner of coming into being. Moreover, she advances another Midrash, which states that the letter *samekh* appears for the first time in [Genesis, II: 21], in the word "closed/to close" (*sagar*) that is used in connection with "the closing up of Adam's flesh" after Eve's creation. The word *sagar* is then taken to be suggestive of the word Satan, even though the word Satan and the root word *sagar* are only linked in terms of sound. Such linguistic linkages gave rise to numerous remarks positing that Satan "injected his lust into her". The rabbinic exegeses with regard to the name of Eve then reinforce the theme of connecting the first woman, and hence all subsequent women with the negative traits of lust, temptation and sin, rather than with the characteristic of life [1994: 25-6]. Besides the name of Eve the rabbis also spent a considerable time on the question of androgyny in relation to the paradox between Genesis I and II in order to elicit further negative perceptions of women.

In trying to make sense of Genesis I and the first version of the creation of the first man and woman the rabbis made use of the concept of androgyny implying that the first human creation possessed complete sets of both male and female genitalia, i.e. an original hermaphrodite. Such explanations accommodate a more egalitarian thrust to the first creation narrative as expressed in [Genesis 1: 27-8]. However, the second creation narrative [Genesis 2: 21-2] or the "rib" narrative gave rise to greater rabbinic speculation in an attempt to reconcile the first and second narratives, and in understanding the relationship between man and woman as well as their nature. Here

the word simply translated as rib/side (*zela*), became a key word in rabbinic inquiry. In the case of utilizing the translation of “side” the woman is understood as half, but equal to man. Nevertheless, the rabbis’ interpretive manipulations in reconciling the two versions of the creation narrative ultimately pushed the interpretation of the Genesis narrative in a direction that accords a perception of Eve as subordinate to Adam. It was thus understood that she was created from/of him, or his “rib”, and was the secondary creation and consequently all women were subordinate to men [Bronner 1994: 27-8].¹³ Furthermore, the rabbis also focused on the word “to build” (*wayyiven*) as in [Genesis II: 22] to explain Eve’s purpose as child bearer and in motherhood, noting that a woman’s body was structured like a “storehouse” (*binyan*), built for child bearing, and for marriage to build and manage the home. Here Bronner, moreover, indicates that rabbis use to call their wives, their “houses”. This comparison from the same root as the Hebrew for “to build” or *binah* characterized the nature of feminine intelligence as a matter of mastery of domestic or private practicalities in comparison to the intellectual demands faced by men venturing out in to the public domain. The rabbis therefore promulgated particular regulations that limited women to the private space of the home using the justificatory evidence of the negative traits they ascribed to the first woman and hence to all women [1994: 29-30].

By interweaving lore or *aggadah* and law or *halakhah* the rules and regulations of behavior are dealt with in narrative midrashic texts and rabbinic legends. These narrative texts serve to elucidate the necessity of observing rules, where lore and commentary that interpret biblical verses bolster and justify ritual obligations. Thus in the case of matrimony for Eve, and all women it entailed specific rituals and obligations laid out by the rabbis to atone for Eve’s sin. The atonement of her sin in addition to her subordinate nature is indicative in the lore: “And why was the precept of menstruating given to her? Because she shed the blood of Adam [by causing death] ... And why was the precept of dough given to her? Because she corrupted Adam, who was the dough (*hallah*) of the world ... And why was the precept of the Sabbath lights given to her? Because she extinguished the soul of Adam”.¹⁴ This *aggadah* appears to introduce three of the primary or positive

¹³ Also see Azila T. Reisenberger’s, “The Creation of Adam as Hermaphrodite - and its Implications for Feminist Theology”, in *Judaism*, Vol. 42 No. 4 (Fall 1993), 447-52; and Jacob Neusner’s, *Christianity and the Bible of Judaism: The Judaic Encounter with Scripture*, (Georgia: Scholars Press, 1990), 32-40.

¹⁴ See [Genesis Rabbah, XVII: 8] in, Leila L. Bronner’s, *From Eve to Esther: Rabbinic Reconstructions of Biblical Women*, (Kentucky: Westminster John Knox Press, 1994), 30-2.

commands (*mitzvot*) associated with women, i.e. family purity, separating the dough for consecration and lighting the candles for Sabbath as well as High Holy Days. In another lore Eve's and hence all other women's inferior nature are further delineated: "I will not create her from [Adam's] head, lest she be swell-headed; nor from the eye, lest she be coquette; nor from the ear, lest she be an eavesdropper; nor from the mouth, lest she be a gossip; nor from the heart, lest she be prone to jealousy; nor from the hand, lest she be light-fingered; nor from the foot, lest she be a gadabout; but from the modest part of man, for even when he stands naked, that part is covered. And as He created each limb He ordered her, 'Be modest woman'".¹⁵ This Midrash describes various parts of the body being rejected, since they would result in undesirable qualities in a woman like "going about". Going about for no reasonable need, but to see or be seen or to amuse her or to meddle in public affairs. To "be a gadabout" is, however, immodest and unwholesome against a woman who remains in the private area of her home.

Eve and by extension all women are thus guilty of these failings and remain in need of rules, and regulations to maintain and secure modest behavior like, e.g. covering the hair in the public realm. There are numerous talmudic passages dealing with hair covering linked to Eve and implies in particular to the married woman's submission to the authority of her husband. The commonly held notion is that women's hair is an irresistible sexual attraction. Their hair is referred to as being sexually provocative and that this is why men should not recite the *Shema* prayer in front of women with uncovered hair. Married women should as a result cover their heads so as not to distract men from their sacred prayers, especially in the public sphere of the synagogue [Bronner 1994: 30-2].¹⁶ The aggadic traditions of lore in the Midrash and Talmud accordingly not only molded very pragmatic considerations to guide the daily halakhic rules and rituals via the confinement as well as control of women in the private arena of the home and family, but even through the subordination as well as limitation of them in the public domain like the sacred space of the synagogue.

¹⁵ See [Genesis Rabbah, XVIII: 2] in, Ibid.

¹⁶ Also see Norma B. Joseph's, "Hair Distractions: Women and Worship in the Responsa of Rabbi Moshe Feinstein", in Micah D. Halpern & Chana Safrai ed's, *Jewish Legal Writings by Women*, (Jerusalem: Urim Publications, 1998), 10-22.

Traditional Jewish Lore (*Aggadah*) and Law (*Halakhah*) Interwoven

...so far as the laws describe ritual, the ritual itself is myth, in two senses. First, the ritual is myth in the sense that it was not real, was not carried out. Second, while lacking in mythic articulation, the ritual expresses important ideas and points of view on the structure of reality. What people are supposed to do, without a stage articulation of the meaning of what they do, itself expresses what they think. The explanation of the ritual, the drawing out of that explanation of some sort of cognitive statement, is skipped. The world is mapped out through gesture the boundaries of reality are laid forth through norms on how the boundaries of reality are laid forth [Neusner 1996: 1-2].

Rabbinic Judaism would generally divide their tradition, even though tradition attributes that Moses told the whole, i.e. written and oral, as one story into a narrative or exegetical discourse concerning norms of belief or lore (*aggadah*), and an analytical discourse dealing with norms of ritual and behavior or law (*halakhah*). In the former, the rabbis framed their reworking of biblical narratives in terms of principles of belief, while in the latter they formulated rules and regulations that would respond to narrative [Neusner 2000: vii-xv]. *Aggadah* then occupied itself with attitude and values or ethics, whereas *halakhah* concerned itself with rules as well as action or law. The rabbis often had them in dialogue with the Bible, while retaining the distinctive discourse that each served, i.e. the former subordinated as well as exegetical, and the latter free standing and legal. Within the Torah itself Moses' Five Books would convey a theological conviction in the idiom of narrative and so too is law rendered in the framework of narrative. Appropriately, the *aggadah* and *halakhah* or theology plus law, state systematically as well as coherently those very principles that are viewed as theology and law, which the Torah had set forth in the form of story or lore and cases in addition to rules all intermittently. Nevertheless, when the rabbis would rework aggadic topics and themes they rarely introduce considerations of normative rules and regulations, while when they set forth halakhic norms of behavior, they would seldom invoke considerations of belief. Essentially then *aggadah* and *halakhah* undertake distinct tasks despite interweaving, since "both the *Halakhah* and the *Aggadah* respond to Scripture's story: the premise of all else"

[Ibid.: 2-18]. So just as the narratives of the Torah are juxtapose with its legal sections, so too, are the *aggadah* and *halakhah* constantly interwoven in rabbinic literature like the Midrash.

The process of exegesis or interpreting the Bible is referred to as Midrash, coming from the Hebrew word meaning “to study or investigate”. There are two kinds of Midrash, i.e. Midrash *Halakhah*, which is of a legal nature with the purpose of deriving a rule or regulation from a biblical text, and Midrash *Aggadah* that is of a non-legal nature with the main purpose of uplifting as well as inspiring ethical truths and attitudes. Midrash should be understood in the context of the two approaches that interweave within rabbinic literature, viz. *aggadah* and *halakhah*. While much *aggadah* is also found in the Talmud, its primary concern is *halakhah*. The Talmud is divided into two parts, the Mishnah and the Gemara, which form part of the Oral Torah or Oral law meaning that there is a common law tradition of interpretations, decisions and customs dating back to Sinai. The Mishnah, on the one hand, is an authoritative compilation of Jewish law divided into Six Orders, the third of which is referred to as “Women” (*nashim*) that deals mainly with the laws of betrothal, marriage and divorce. The Gemara, on the other hand, amplifies the Mishnah and contains both lore and law. Besides the Talmud, the interpretations and wisdoms of the rabbis are also found in the Midrashim (pl. of Midrash), which include discussions of the rabbis around the text of various books of the Bible. Though, several of the early Midrashim focus on *halakhah*, for the most part, the purpose of midrashic literature is to explain the biblical text from an ethical and inspirational standpoint, and in this way the term Midrash became synonymous with *aggadah*. Consequently, the entire corpus of aggadic literature is referred to as Midrash [Miller 1965: 1-2].

The main aim of *aggadah* or *haggadah*, which means “telling”, contained in the Midrash is to inspire and motivate people towards the righteous behavior that the *halakhah* necessitates. Midrash is not only a vehicle for deriving meaning from the Bible, but also a means of reading meaning into the text. Jacob Neusner, a contemporary Jewish scholar, alleges that when the rabbis sought to compose Midrashim, they relied on the Bible, not stringently as a source to be interpreted, but “to serve a purpose defined not by Scripture, but by faith under construction and subject to articulation. Scripture formed a dictionary, providing a vast range of permissible usages of intelligible words” [Neusner 1990b: xi]. He further suggests that the rabbis wrote with an agenda in mind, since they wanted to develop Judaism

and reflect the reality in which they found themselves. Therefore, in order to speak in an authentic and authoritative voice they used the language as well as methodology, i.e. rules promulgated through narratives, of the Bible. With the Midrash attention was not only afforded to the current circumstances, but the tradition was also considerably regarded in helping to define the ethical and legal reality. The Midrash was as a result a way of integrating change and tradition, the rabbinic technique for coping with thoughtful theological and social changes, permitting transformation without totally dissolving halakhic ties with the earlier period [Ibid.].

The term *halakhah*¹⁷ is derived from the Hebrew root “to walk” (*halokh*), since *halakhah* is the law that points out the way of life for the Jewish people as stipulated in the Bible, “And thou shalt teach them the statutes and the laws, and shalt show them the way wherein they must walk, and the work that they must do” [Exodus, XVIII: 20]. Within Jewish law the familiar geographical supports for national legal authority is absent as a jurisdictional base due to nearly 2000 years of diaspora. It has, however, survived as an effective legal system until recent times because its authority, from its biblical roots, has been obtained from another powerful source, the commandment of God. The strong connection between the legal and divine has formulated a perception of the world in terms of organized law. Law is not merely a means to avoiding punishment, but obedience to it and study of it are central links to God who uses law to bring men and women to human fulfillment [Dorff 1988: 51]. In this sense the Biblical text repeatedly states that the law is final, and complete and needs only to be obeyed, but at other instances recognizes different ways to clarify, apply and expand the law in unexpected circumstances. Consequently, *halakhah* has tolerated much diversity of opinion,¹⁸ partly historical, in that it would be impossible to coerce Jews living all over the world to conform to a single mold of law. Then also theological, since it is assumed that the tradition is handed down to all Jewish men as well as women, and hence every Jew has both a right and duty to study it as well as engage in its development [Ibid.: 197-98]. Amidst diversity Judaism acknowledges the ethical realm embedded in the area of *aggadah*, but asserts that *halakhah* is the

¹⁷ For a reading of the definition; nature; genesis; sources; content; and procedure of Jewish law, see Menachem Elon's, *The Principles of Jewish Law*, (Jerusalem: Keter Publishing House Jerusalem Ltd., 1975). Also, for a reading of the history and sources of Jewish law from past to present, see N.S. Hecht, B.S. Jackson, S.M. Passamaneck, D. Piattelli, & A.M. Rabello ed's, *An Introduction to the History and Sources of Jewish Law*, (Oxford: Clarendon Press, 1996).

¹⁸ For a discussion on “The Legitimacy of Diversity in Interpreting Divine Law”, see Emanuel Rackman's, *Modern Halakhah For Our Time*, (New Jersey: KTAV Publishing House Inc., 1995), 5-7.

primary tool to inculcate ethical knowledge, attitude and values, by infusing these into human behavior. As ritual in addition to ethical teachings of Judaism are embodied in the imposing corpus of *halakhah* the general term “law” commonly associated therewith would be inadequate.

The 613 commandments (*mitzvot*) of the Bible form the basis of *halakhah*, the rituals, rules and standards of behavior on which “to walk” life’s path. Among these there are also those that are gender related, since they are germane to the biological attributes of men, like circumcision, and women such as menstruation (*niddah*) and family purity rules.¹⁹ Additionally, the twelfth century Talmudic scholar and philosopher, Rabbi Moses Ben Maimon or Maimonides (sometimes known by his acronym ‘Rambam’), affirms that of the 248 positive commandments of the Bible’s 613 *mitzvot* only 60 are obligatory on every adult Jew at all times as well as places. He further contends, “Of these ‘Unconditional Commandments,’ forty-six are binding upon women as well as men, and 14 are not binding upon women” [Kaufman 1993: 207-08]. Furthermore, women are obligated in virtually all positive commandments that are independent of time, but are exempted from most of those that are time dependent.²⁰ However, it is incorrect to assert that women should be totally excused from time dependent commandments primarily due to familial responsibilities in the sacred home, since there could be many single women, who do not have household tasks to attend to and others, who would be compelled to work in the public domain out of economic necessity [Meiselman 1978: 43].

Throughout the centuries and into contemporary times Biblical law has been amended, extended, expanded, and sometimes limited in the halakhic literature of the Talmud, Mishnah, Gemara, Mishnah Torah, Tur, Shulhan Arukh as well as Responsa Literature of the rabbinic authorities. In theory the Mishnah and Gemara are the final authority not to be added to or subtracted from. They are, nevertheless, subjected to extensive interpretation, and this procedure by and large seemingly sufficed to meet most problems of Jewish life. Subsequently, new problems would emerge, which required dissimilar treatment. The rabbinic law would hence make provisions for radical steps permitting the enactment by rabbinic authorities of “positive regulations”

¹⁹ Refers to the body rules restricting contact between husband and wife during the menstrual period.

²⁰ “[R]abbinically ordained time-dependent Positive Precepts that women are required to observe include *Kiddush* on the Sabbath; hearing the reading of the *Megillah*, the Book of Esther, on Purim; the lighting of the Hanukkah lamp; and drinking four cups of wine at the Passover *seder*.” See quote in Michael Kaufman’s, *The Woman in Jewish Law and Tradition*, (New Jersey: Jason Aronson Inc., 1993), 208-09.

(*takkanot*) and “negative ordinances” (*gezerot*). These legislative acts that exceeded the boundaries of the previously accepted *halakhah* are generally enacted for a fixed period and restricted locality [Gordis 1990: 88-9]. These and the afore mentioned literature develops *halakhah* by means of evolving case law based on prior precedent, albeit, telling the story of the Jewish people, i.e. where Jews have lived; what languages they have spoken; who has ruled over them; when conditions have been good and when bad; when Jews have been creative and flourishing; and when they have been oppressed and subordinate. The law often changed, evolved and developed in order to address the challenges of time and place.

Concurrently, with developments in the increase of knowledge, particularly in the Talmud and Jewish Theology as well as in the Sciences and Liberal Arts, amongst Jewish women, arose the Feminist movement of recent times, together with its ardent demands for the equality of the sexes. Orthodox women, who were no longer strictly confined to the private domain of the home alone, could not escape the influence of this movement. Having gained access to the halakhic literature, they became aware of some of the inequalities embedded in *halakhah*, which convey a sense of female inferiority and subordination, e.g. the traditional inclusion of women in the same category of minors during the categorization of witnesses. Women also became more conscious of their exclusion and omission from some of the religious rituals that *halakhah* imposes on men absolutely. Among the issues raised by Orthodox feminists were halakhic restrictions against the recent disqualification of women to constitute a quorum (*minyan*) and consequently being barred from conducting regular female congregational prayers in synagogues; the exemption of women from certain *mitzvot*, which are positive commandments and time dependent; and the ruling that only men are empowered to issue a divorce writ (*get*) [Rackman 1995: 67].

In response to the queries of Orthodox Jewish feminists, the late Rabbi Moshe Feinstein would elucidate the Torah’s exemption of women from certain *mitzvot*, especially those that are time dependent because women are by nature occupied with the rearing of children in the sacred home. He reiterates that, even though social and economic conditions could have changed “there exists no power to change anything, even if the whole world may agree to do so; and these women (i.e. feminists) who stubbornly fight for change are deniers of the Torah (*kofrot*)”. He does concede though that women could accept upon themselves *mitzvot* for which they are not

obligated by the Bible, but with the exception of putting on *tefillin*.²¹ They could do so providing they want to observe them as *mitzvot* and not in order to censure the Bible. It is noted that men, who are obligated by *mitzvot* and act thereon would receive reward (*sekhar*), while women, who are performing these voluntarily would receive less reward, since “a greater reward awaits him who is commanded and performs than the one who is not commanded and performs” [Ibid.].²² It is further reported in the Talmud that when people are in danger there is a list of priorities as to who should be saved first. The criterion is the extent to which the person to be saved has the responsibility of *mitzvot* and as the man has more halakhic duties, he has greater worth for purposes of survival, and is hence selected over and above the woman [Ibid.: 14].

The issue that has received the most treatment and yet, which *halakhah* finds almost impossible to satisfy, is the inequality in the Jewish divorce process. Various proposals have been recommended to remedy the situation, about which women have been protesting more and more. Many of these proposals are based upon some pre-nuptial contractual obligation that would penalize the noncompliant party, when the giving of a *get*, is ordered by the rabbinic court (*bet din*). However, retroactively many within Orthodoxy have found one flaw or another in such arrangements and to-date no proposal has been accepted by the religious authorities. Though, there has been one radical solution, which has precedent in a Talmudic ruling, i.e. the annulment of the marriage by a *bet din* declaring that the marriage ceremony is invalid *ab initio*. Orthodox Judaism, then, in its attempt to preserve the line of demarcation between it and Conservative Judaism, would respond to any demand for change in the same manner that its forebear’s centuries ago responded to the movement for Reform, i.e. with the slogan “anything new is forbidden by the Torah”. As the halakhist observe: his responsibility is not only to teach *halakhah*, but also to preserve its traditional integrity and authority in Jewish life [Lewittes 1994: 228-32]. This preservation of integrity and authority is especially apparent in the public sphere of the synagogue and the private domain of the sacred home and family in relation to the gendered status of women.

²¹ For an interesting discussion on the continuing debate on whether or not women could wear *tefillin*, see Aliza Berger’s, “Wrapped Attention: May Women Wear Tefillin?”, in Micah D. Halpern & Chana Safrai ed’s, *Jewish Legal Writings by Women*, (Jerusalem: Urim Publications, 1998), 75-118.

²² Also see the traditional work of Rabbi Joseph B. Soloveitchik’s, which emphasizes the centrality of men in law, *Halakhic Man*, translated by Lawrence Kaplan, (Philadelphia: The Jewish Publication Society of America, 1983), 30.

Jewish Women in the Traditional Synagogue

It becomes increasingly clear as one investigates the shul setting that men have far more access than women to the space and objects in it. Even those areas open to women are never exclusively within their control, for men may on occasion legitimately invade that space...while women and children make use of the shul, it is essentially a world of men, in which the others are visitors and guests with limited rights [Heilman 1976: 43].

The word synagogue comes from the Greek *synagogs* meaning ‘a house of assembly’.²³ During ancient times in Palestine the synagogue was already a familiar entity, with three names testifying to its many functions. The oldest term “house of study” (*bet midrash*) or literally “the house for searching out the meaning of scripture” occurred in the Wisdom of Ben Sira written at about 190 B.C.E. Then, “house of prayer” (*bet tefillah*) that occurred as a non-technical term in Deutero-Isaiah [56: 7] where this usage points to the augmentation of public prayer and the growth of a fixed liturgy, an ongoing activity to the present. Finally, which became foremost, the “house of assembly” (*bet kenaset*) depicted its usage as a community meeting-place for the discussion of public concern. The synagogue also served as the setting for numerous ancillary and relatively secular activities, i.e. as a court, as a lodging for indigent wanderers, a hostel for traveling merchants, and in the case of Jerusalem as a shelter for pilgrims coming to the Holy City. Additionally, it served as a storehouse for communal funds and at times as the residence for community officials, and intermittently it served as the scene for sacred meals connected with Torah study and religious celebrations [Gordis 1990: 102].

The synagogue as a sacred space was particularly reflected during the Medieval period where hierarchies of holiness were displayed, even though the early rabbinic texts exhibited no regulations pertaining to the structure of the building. Archeological evidence indicated that all the congregants, men and women, initially sat along walls with no manifest divisions with regard to accessibility. Subsequently, the synagogue was divided hierarchically into spaces of relatively greater holiness,

²³ It should be noted that the resource material on the origin, history and genesis of the synagogue or “shul” the Yiddish term is abundant, e.g. see I. Levy’s, *The Synagogue, Its History and Functions*, (London, 1963); J. Weingren’s, *The Origin of the Synagogue*, (London, 1964); etc.

while the building itself had an element of sacredness. This was evident in the rules that restricted the purposes for which a former synagogue building could be used for where it was sold - a synagogue could not be sold that would be used as a bathhouse, tannery, or urinal. Restrictions were also applicable where the building was in ruins, i.e. there was a restriction as to how it would be treated. The holiness of the synagogue was further portrayed by the regulations regarding the *mezuzah*²⁴ that Medieval Codes would exempt as a requirement to the building, since certain domestic acts like eating and sleeping could not be performed therein. After all a synagogue itself could be equated with a *mezuzah* due to the observance of sacred activities therein that would inversely remind the observers of God. Within the building, nevertheless, the holiest sector thereof was the Holy Ark (*Aron Hakodesh*) where the Tosefta termed it “The Holy” or *Kodesh* signifying its sacred character, since it contained the Torah scrolls and was the terrain where power as well as knowledge presides. From the Middle Ages onwards the Ark, also referred to as the “Holy of Holies”, was often located on the eastern wall of the synagogue facing Jerusalem the orientation of prayer [Kunin 1998: 50-1]. While the internal structure of the synagogue was also hierarchically organized in sectors of holiness of special interest would be the separation of the sexes and the seating of women therein.

When initially looking at the First Temple there was no apparent separation of the sexes at worship and no portion were recorded as set aside for women exclusively. There was one in the design of the Second Temple referred to as the “women’s court” (*ezrat nashim*). This designation was not legal in character and was probably not adopted by any authoritative legal body, but was the label the general public gave the outer court or the court of general assembly in the archetypal Temple. For ordinary worship and sacrificial rites the religious teachers were satisfied that mingling of the sexes would cause no immorality. However, they were disturbed by the lightheartedness of men and women crowding in the Temple to witness the festival celebration of drawing water on the *Sukkot* holiday. The festival was joyous to the point of cheerfulness and in the minds of the teachers, created temptations for sexual improprieties among less conscientious men and women. Here for the first time there was a definitive and deliberative attempt at separating men from women in the Temple

²⁴ Biblical verses from [Deuteronomy, VI: 4-9 & XI: 13-21] written by a scribe on a small piece of parchment, normally housed in a decorative container, which would frequently be attached to the right-hand door posts of Jewish homes in order to remind those who enter them of God and to confer on these private spheres sacrality.

on the grounds of ethics. Thereupon, a balcony was built in the court, and women were sent there to observe the men at the celebration. Though, the separation of the sexes at the festival of the drawing of water could have served as an example, it could not have meant to them a general segregation at worship. This was only implemented fully in post-geonic and later times, since women had become more regular in attendance at services and they were being reckoned as part of the religious community [Epstein 1967: 78-83].

The women's gallery or a section separated by a *mechitzah*, a small wall or partition, became an architectural convenience for carrying out the principle of segregation and a special sense of modesty, which deems looking at a woman as improper. Furthermore, curtains were stretched across the railing of the gallery to hide women worshipers from the view of men. Originally then the Temple provided more freedom for the mingling of the sexes than was permitted in assemblies in later and present times. On the contrary, the synagogue has retained the restrictions against the free mingling of men and women, while all other similar restrictions outside of sacred spaces have been broken down in Jewish social life. Generally, tradition Jews would not challenge the validity of separating men from women in the synagogue. Even the moderate Reformers of Central Europe to this day would retain the women's gallery in their temples. The extremists among Reform Jews were the first to break down the wall of separation and the conservatives in America tend to follow that policy. The Orthodox Jews in most countries are at peace with the old tradition, but in America they find the preservation of the women's gallery a difficult task in that it has been constrained by a prevailing environment where men and women sit on the same level, and by the diverse trends and customs in American Jewry of the tacit surrendering of segregation (*minhag America*) [Gordis 1990: 114-19]. Similar constraints have also been manifest in the issue regarding the quorum of ten males required for public worship (*minyan*).

Women are not counted in a quorum necessary for public worship or *minyan*²⁵ in terms of evidence found in the Talmud, i.e. in the section entitled "blessings" (*berakhot*). This exclusion was an affirmation of the halakhic pattern that the private sector of the home and family should be the woman's primary concern and the public

²⁵ For a debate between a Jewish traditionalist and feminist on the issue of minyan, see Michael J. Broyde's, "Communal Prayer and Women", as well as Judith Hauptman's, "Some Thoughts on The Nature of Halakhic Adjudication: Women and Minyan", both in *Judaism*, Vol. 42 No. 4 (Fall 1993), 387-94 & 396-413.

realm the man's main interest. In non-Orthodox sectors, however, there have been instances where women were counted in the *minyan*, e.g. the 1973 decision taken by the Committee on Law and Standards in America, despite having offered no precedent from traditional sources. This change was warranted on two grounds, viz. the irrationality of counting a boy in the *minyan*, but excluding grown women who are the first teachers of boys and the illogic of permitting a woman to be called to the Torah, but refusing to count her in the quorum for prayer. Here there were disagreements with the decision among rabbis, and laity and many synagogues did not adopt the practice, although, presently the ruling is slowly gaining acceptance [Ibid.: 171].²⁶ However, this is not evident in Orthodox synagogues, which are generally characterized by sexual segregation of religious responsibility. As one moves along the continuum through modern Orthodox, Conservative and Reform Jewry, one would find an increasing effort on the part of women to share male customary custody of public religion. Women's participation has also increased to the point where some non-Orthodox congregations have taken to counting them for a *minyan* and recently ordaining them as rabbis. It is difficult to claim whether this growing influence of women in the public house of prayer is just a representation of present feminist trends in western society or whether it reflects an effort to entrench involvement in religious life especially in the public sphere [Heilman 1998: 72-3].

As men are chiefly the architects of *halakhah* and tradition that reflect the experiences of men in an attempt to predominantly meet their needs, by excluding women from serving in religious or political leadership, they have maintained the sources of power as well as influence. The quest for women's rights in the public domain of the synagogue would thereby reach its culmination, though not its end, in the ordination of women as rabbis. Orthodox Judaism in particular has to a certain degree, not encountered a problem in this terrain, since it rejects it completely. Orthodox dogma in theory, though, not in practice, maintains that *halakhah* is an immutable manifestation of the divine will. Since women have not been ordained as rabbis in the past they could not be rabbis in the present as well as future. Rabbinic literature would often be invoked to prohibit women's ordination. Thus, Maimonides oft quoted as justification, for example, in his Mishnah Torah repeats the substance of

²⁶ Also see Rabbi Aaron H. Blumenthal's "Justification For Women in a Minyan" and the response by Rabbi Tibor H. Stern entitled "Rabbi Blumenthal Misquotes His Sources On Women in Minyans", in David R. Blumenthal ed., *And Bring Them Closer to Torah: The Life and Work of Rabbi Aaron H. Blumenthal*, (New Jersey: KTAV Publishing House Inc., 1986), 149-52.

a tannaitic midrash related to the biblical qualifications of a king, which includes the provision, “Thou shalt in any wise set him king over thee, whom the Lord thy God shall choose; one from among thy brethren shalt thou set king over thee; thou mayest not put a foreigner over thee, who is not thy brother” [Deuteronomy, XVII: 15]. The Sifre further comments that “a king and not a queen”. On this basis Maimonides broadens that statement to mean “every position of authority [*mesimut*] shall be limited to ‘one of your brothers’, and therefore not a woman”. In view of an *aggadic* statement comparing rabbis to kings, Maimonides’ judgment that women could not be kings has been used to declare them ineligible to serve as rabbis [Gordis 1990: 178-79]. Acting in accordance with this decision would effectively rule out the appointment or election of a woman to any position of public authority and leadership.

The argument of the separation *halakhah* enjoins for the period before, during, and after menstruation (*niddah*) has additionally been raised to effectively preclude women from serving as rabbis. Presently where many women are gainfully employed or active in the public sector and who observe the regulations of the ritual bath (*mikveh*) tend to be a bit more relaxed in the other prohibitions in their daily lives, like the social contact with men outside of their homes or shaking the hand of a man. In Conservative and certain Orthodox circles these prohibitions on social contact during the menstrual period have mostly been disregarded. Conversely, if a woman wished to abide by these and other related prohibitions, she would still be free to do so, while serving as a rabbi [Ibid.].

The strongest halakhic argument against the ordination of women as rabbis would appear to be the contention that traditional *halakhah* exempts women from the obligation (*hiyyubh*) of public prayer in the synagogue. Women are thus excused from observing *mitzvot* having a specific time frame. As often occurred, the Gemara, observing a series of concrete statements of the Mishnah on different issues, sought to develop an underlying principle to cover most commands. In terms of prayer, then, the Mishnah exempts women from reciting the *Shema* and putting on *tefillin*, but makes the recitation of the *tefillah* obligatory for them. The Talmud also explains the exemption by the fact that women should be free from *mitzvot*, which must be performed during specific times, but it has trouble elucidating the distinction. As women are not expected to attend the public prayer at the synagogue, the rule exempting them from prayer, in whole or in part, would be a rationalization after the fact. The retention of this rule is an indirect expression of the inferior status of women

and of their segregation in public life. Indicative in the justification offered by the fourteenth century scholar, David Abudarham, in exempting women from the positive commandments fixed at a specific time. He asserted that in terms of household or family duties a husband has a prior claim on his wife's services at any particular time [Ibid.: 180-83]. Moreover, since rabbinic law claims that women are ineligible to serve as witnesses it has also argued that a woman rabbi would be unable to be a witness to a wedding. Other arguments have also included whether a woman's voice is sexually enticing and whether she may hold a Torah Scroll.²⁷ In reality, nonetheless, *halakhah* neither directly sanctions nor forbids the ordination of women as religious leaders in the rabbinate.

While the position of women in public worship was limited they have expressed their connection to the sacred terrain differently than men, e.g. by contributing money so that they could experience a sense that they were part of the sacred place; by donating handicrafts and candles in order that they would feel satisfied with their donations forming part of the holy domain; and through their acts of physical labor within the synagogue so that they could merely extend their traditional household tasks [Grossman 1992: 5-6].

Presently women are active in the public sphere, not only through their contributions, donations and labor, contrary to the private role that *aggadah*, *halakhah* and tradition purport. Women should have the prerogative to embrace or reject the position of rabbis and to play a more significant role in the community of worshipers in the synagogue, opposed to the bias insistence of men, who have essentially constructed the tradition to exhibit male experiences as well as meet male needs. Additionally, they, who retained the sources of power and influence, have vindicated the exclusion of women from the "Holy of Holies", the total prohibition of the ordination of women, their inclusion from the *minyan* and participation in congregational prayer in the sacred public domain.

²⁷ See Rabbi Dr Moshe Zemer's, *Evolving Halakhah: A Progressive Approach to Traditional Jewish Law*, (Vermont: Jewish Lights Publishing, 1998), 275-80. Also on the specific issue of the ordination of women into the rabbinate, see David Novak's section on "Women in the Rabbinate", in his book, *Halakhah in a Theological Dimension*, (California: Scholars Press, 1985), 61-71.

Jewish Women in the Traditional Home and Family

[T]he rabbis' interpretation of scriptural material first discerns in it stereotypes of female weakness and sexual allurements, and then formulates codes of behavior to enforce female confinement to domestic sphere of home and family responsibility, remove her from learning and leadership, the keys to power and prominence in the community. But even here (i.e. in the home and family) there are significant complications and contradictions evident in the attitudes of the rabbis and in the scriptural material they are interpreting [Bronner 1994: xxi].

When a traditional individual or a Jewish family move into a dwelling place, that house or apartment, is usually consecrated and dedicated as a Jewish home. The private terrain of the Jewish home is always the domain where women reign supreme, where they pray privately, and where Jews are reared and nurtured. With the absence of such a home the sacred space of the public synagogue would remain an empty place. The Jewish home is elucidated as a "miniature sanctuary", and the table from which the food is eaten referred to as a "miniature altar", while the kitchen is the heart for sacred activity in preparations to revere the Sabbath and High Holy Days. Apart from the placing of the *mezuzah* on the doorpost the "dedication of the home" (*chanukat habayit*) is the ceremony that formally marks the family's entry into the home and consecrates the home to its sacred purpose. The home is not just a place where people live, but also a domain where people live according to the ideas and ideals of Jewish faith as well as the traditions and values of the Jewish family [Dosick 1995: 247].

The time related commands of which women are exempted are those *mitzvot* whose observance could conflict with the important duties associated with women's role as wife in the conduct of their households and mother in the education of their children. As some women are unmarried and single or gainfully involved in the employment market out of economic urgency they would not retain the responsibilities associated with wife or mother and therefore be available to adhere to many time dependent *mitzvot*. However, with those who conduct their household duties and those involved in rearing children tension could result between their religious as well as familial obligations, since both areas of obligation are time dependent. Here the harmony and peace within the home (*shalom bayit*), elements

that are required for the maintenance of the family and private sacred domain, could be vulnerable. In terms of this reality maintenance of the Jewish home would necessitate more than the duties of childbearing, childrearing and basic domestic obligations related to homemaking, since it is not easy to nurture children in the Jewish mold and prepare them for adulthood, an enormous task that is not assigned to women solely. The man for example should thus teach the child Torah discipline, while the woman communicates fundamentals of Jewish belief and practice, allowing for dual participation in the upkeep of the private family and sacred home [Meiselman 1978: 16-8].

In traditional Judaism social, political and religious roles have been disseminated according to sex with the most prestigious roles and duties falling to men, as is characteristic of all patriarchal traditions. Such discrimination could have had its origins in biological differences between men and women, since women give birth to children, and are often confined to the home and its immediate environs for much of their lives. Even as they are sometimes or even frequently important contributors to the family economy, their biology and responsibilities for the family are still used to justify their virtual exclusion from public responsibilities beyond the private home and family. While access for women to the public sphere of the synagogue, where they could be seen by other men and distract them, is restrictive, their accessibility to the private domain of the sacred home, where there could be no fear of seduction amongst family members, is normal. However, contact between the husband and wife is limited during the *niddah* of the woman in the sacred home. In order to confine the activities of women to the home certain legal and ritual family institutions rooted in sexual politics were formalized. In this regard Rabbi Saul Berman noted that *halakhah* created an “independent juristic status” for women that shaped every relationship in which women engage. *Halakhah* could not specifically legislate that a woman must define herself primarily as a wife and mother, like in the case of single women who would not have any children, but it merely favored that role, and adjusted her responsibilities to protect and procure it. Since family is an important institution, the maintenance of sex-role differentiation has been connected via the family and is particularly manifested within the legal aspects of marriage as well as divorce [Ackelsberg 1976: xv]. Thus the fundamental relationship for the traditional woman is with her family particularly her husband. The marriage bond in particular is referred to as “sanctification” (*kiddushin*), as it should set the woman

apart when the husband prohibits her to all other men, implying sacrality [Hellig 1993: 15]. Sacred marriage and the joys as well as sorrows it could occasion, and the complications stemming from divorce and desertion are some of the experiences that women within the home and family have to contend with regularly.

Historically rabbinic authorities have endeavored to preserve standards of family morality for which they understood the subordinate position of women to be essential, as was depicted in the section “The Genesis Creation Myth in Judaism” with the problematic reference to Eve’s name and nature. Women are usually deemed as the dominant source of sexual arousal (or seduction like a serpent) and the supreme temptation to sin, since “when woman was created, Satan was created with her”, while her voice, hair and legs are all perceived as sexual attractions. As *halakhah* directs the sexual drive by elevating it to holiness under disciplined conditions in matrimony the rabbis were adamant that women should be sexually satisfied and that they could modestly request sex, even though, they would be constrained from initiating the act within marriage [Ibid.: 15-6]. Alternatively, rabbinic leaders perpetually did their utmost to guarantee that women received sufficient protection from the insensitivities of men and that their requirements were met, however, regrettably limited to the sacred area of marriage alone. In the marriage ceremony the bride as well as groom stands under the canopy (*chuppah*), a covering, which encloses the couple and symbolizes the family that they would build. The essential features of the ceremony entail the sanctification or *kiddushin* and the entry into the man’s home (*nissuin*) that revolves primarily around the reading of the marriage contract (*ketubah*). The drafting of the *ketubah* therefore protects the woman by defining her husband’s material duties toward her: during the period of marriage; in the event of his death; or in the instance of divorce [Ibid.: 15].

During the biblical period the consent of the woman to marriage was sought, but only in a dutiful manner after the man initiated the contract (*kinyan*). Her father negotiated with the groom and his father, and it was difficult or impossible for the woman to withhold her consent after her entire family had established her match. Although, the *kinyan* requires the alleged consent of both parties the man ultimately executes it, since the woman is passive and the man the initiator (as would be the case with all contracts). Furthermore, the basic emotional drive to initiate marriage could be traced to the Genesis creation myth where the woman was created from the man and hence man would feel incomplete as well as a need to marry [Meiselman 1978:

98-99]. While the initiative of the man would not make the woman his chattel, the property that she brings into the marriage and that which she acquires during it becomes the property of the man, but is at his disposal for usage only during the term of the marriage [Kaufman 1993: 204].

As time evolved marriage increasingly took on the character of a unilateral contract, a betrothal or engagement for future cohabitation rather than present acquisition. By the time of the Mishnah there was generally three sums of money that entered into the common marriage contract or *ketubah*, i.e. the *ketubah* money proper or formerly the equivalent of the bride price (*mohar*); “the additional sum” (*tosefet*) or previously referred to as the gifts presented to the bride and the groom (*mattan*); and the dowry (*nedunyah*). Besides these the formal consent of the woman also become an element of the contract. Though a woman was consulted in the process of selecting a partner and often negotiated the conditions of the marriage herself in most communities it was ultimately the parents rather than the women who selected their spouses and negotiated contractual agreements. Jewish law deals in great detail with every aspect of marriage, but the role of the contract was to spell out the financial responsibilities of each party. This was above all important for the woman, since the *ketubah* was the primary instrument by which rabbis could extend her rights in marriage and provided for her security. Thus the Mishnah determined the obligations of the man in detail as positive law creating a foundation for court intervention on the wife’s behalf to enforce the husband’s obligations. Nonetheless, where it was sufficiently deemed that the woman had failed in her duties, like raising and educating children to full Jewish adulthood, she was deprived of her *ketubah* payments when her husband exercised his sole prerogative right to divorce her. Presently the traditional *ketubah* is considered more as a marriage settlement, assigning property and other interests, i.e. a type of ante-nuptial agreement. When the feminist movement started challenging traditional gender roles, such contract agreements became a popular vehicle for couples to spell out their new expectations of each other in marriage and in the event of divorce [Dorff 1988: 443-61]. But, marriage is more than an individualistic agreement it also has sacred, as afore mentioned, and social elements.

From a sacred as well as theological perspective marriage, and the sexual relations and procreation that accompanies it, are nothing short of divine activities, since they aid God in His continuing acts of creation and fulfills His commandments for husband and wife to assist Him in that fashion. Furthermore, for the Torah to be

transmitted from one generation to another requires a strong educational effort and parents, both mother as well as father have the primary responsibility for that, i.e. “and thou shalt teach them diligently unto thy children” [Deuteronomy, VI: 7]. Noteworthy is the biblical allusion to shared responsibility amongst husband and wife in the divine acts of creativity and education [Dorff 1988: 492-93].

Marriage could be social in that it is especially crucial for the group self-perpetuation of Jews. Here a Jewish community is defined by common-descent and the family, the place where education and acculturation occur. Deficient in common land or political sovereignty, Jews acquire identity mainly through being born to a Jewish mother and father, and via their membership in a Jewish family as well as community. In addition marriage creates a new social unit of husband and wife. The Genesis creation narrative of Adam and Eve as well as the related *aggadah* are exemplary in this regard. *Halakhah* via *aggadah* captures the essence of the union of man and woman in one flesh. Here the Bible does not require a monogamous and lifelong union, since polygamy as well as divorce is permitted. The model of human life in the Bible and later traditional sources is grounded on a life shared with a single spouse, as with Adam and Eve, the undeniable preference of the Jewish tradition [Ibid.: 467-86]. Nevertheless, when a woman becomes insane, her husband would have the privileged option of polygamy. Given that polygamy was prohibited, not by the Bible or Talmud, but by the enactment of Rabbi Gershom and his synod in the early Middle Ages, a special *modus operandi* “the permission of one hundred rabbis” (*heter me'ah rabbanim*) was accessible to the husband. The one hundred signatures could be normally solicited through mail, and now e-mail, to set aside the prohibition of polygamy in his case. With the awareness that he maintains and supports his insane wife throughout her life, he would be granted permission to remarry. While one is appreciative that a measure of relief in this familial calamity was available for the husband, inequality of the sexes in *halakhah* still exists, especially where the husband goes insane. In view of the fact that he was legally incompetent, he would be unable to issue a bill of divorce or *get* and the woman remains “chained” (*agunah*) to him as long as they mutually exist [Gordis 1990: 158-59]. The woman’s fate would not be in her hands for the reason that she is only a passive recipient of a divorce and not an initiator.

The family law area of *halakhah* in which the most problems are prevalent is divorce and the connected area of the “chained woman” or *agunah*. *Halakhah* has

recognized divorce by an individual act of the man, since Biblical times as indicated in [Deuteronomy, XXIV: 1-4]. The rabbis would later use these verses to additionally protect the man and woman from public interference. Divorce was then affected by the husband's writ and not by a court decree. No court had the power to break up the relationship without the husband's sole initiative leaving the wife in a disadvantaged position. While early Jewish law required a writ, it would not demand the wife's consent. A man could even affect a divorce by throwing the writ into a woman's property. It was only after the decree of Rabbenu Gershom (1000 C.E.) that Jewish law required a woman's consent to a divorce. Thus if a woman refused to accept a writ of divorce the Jewish ecclesiastical court or *bet din* determined whether she had grounds for refusal. Furthermore, in the case of the recalcitrant woman, who refused consent, the *bet din* could resolve the matter against her wishes by merely suspending the decree of Rabbenu Gershom thereby allowing the man to divorce her despite the absence of her consent. Nonetheless, if the woman had been taken captive or disappeared, it was advisable to redeem her by divorcing her, while she remained in captivity or missing, contrary to the situation where the man disappeared. The man's consent to the divorce was implicit, since he alone initiated the action. A court could also coerce a man to divorce a woman, but even then the court only "exerted pressure on him until he says 'I want to' " because the man's consent was required even under coercion [Dorff 1988: 445-47].

If the man vanished without a trace or refuses to issue a divorce writ to the woman, she becomes an *agunah* and would be unable to remarry. In order to lessen the affliction on women and liberate them from "living widowhood" (*al-memut hayyah*) when their husbands disappeared, the sages amended the law of evidence. According to the Bible, "One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth; at the mouth of two witnesses, or at the mouth of three witnesses, shall a matter be established" [Deuteronomy, XIX: 15]. Thus in the problematic case where a woman's husband vanished in battle and only one witness appeared to testify his death the sages decided to permit her to remarry on the basis of this unconfirmed testimony. The sages even allowed her to marry on the basis of unconfirmed testimony of women and slaves, which was usually totally inadmissible [Zemer 1998: 16]. However, in the instance where there was no testimony and the woman consequently marries another man, while in the state of "living widowhood", whatever children were borne thereof were regarded as

illegitimate (*mamzerim*) and forever prohibited to marry normative Jews. Additionally, *halakhah* states that where the husband reappears the woman should be compelled to divorce the second man and prevented from reuniting with her first husband [Kaufman 1993: 192]. In contrast, if the husband established an adulterous relationship with an unattached woman, and has children thereof they would not be illegitimate and not have to suffer the same consequences as the children of the married woman whose first husband had disappeared or who refused to grant her a *get*.

Presently there is an impressive array of literature on the subject of *agunah*. Prof Eliezer Berkovits wrote an entire book suggesting a solution to virtually all the problems of *agunah*, while Prof Menachem Elon has also submitted valuable proposals in resolving the issue. To avoid such problems it was initially suggested that the father's of the brides should have to make the marriage conditional. Thus one approach to solving the problem was to have an agreement before marriage in the form of a pre-nuptial agreement. But, since this proposal of Prof Eliezer Berkovitz resembled the one of Conservative Rabbi Louis Epstein and other Conservative rabbis, Orthodox rabbis dismissed his proposal. Similar proposals were also dismissed, albeit, the anguish of *agunah* continues. Attempts have also been made to find ways of annulling marriages whereby the woman was deemed as one whom never had a husband. Here there was no consideration granted to whether the husband was dead, insane or simply disappeared and he just became irrelevant when a *bet din* decided so on adequate grounds. The enormous power that the *bet din* has with regard to marriage, divorce and annulment was based on the Talmudic principle that all marriages are subject to the consent of the *bet din*. Though, there was currently a central authority in Jerusalem that could develop a universal Jewish family law, the multiplicity of halakhic systems, and resultant diversity only renders such an enterprise challenging and problematical [Rackman 1995: 68-73]. Accordingly, despite the outcry for reform, a fundamental change within *halakhah* regarding the problems of *agunah* would seem unlikely. The diversity amongst halakhists and a general traditional mood could retard the formation of a consensus desperately required for instituting halakhic relief for the subordinated women suffering under family law.

Conclusion

The aggadic traditions of lore in the Midrash and Talmud have molded, and constructed pragmatic concerns to guide the daily halakhic rules, regulations, duties and rituals in Judaism. With particular consideration to the Genesis creation myth these matters especially with regard to gendered sacred spaces have not only been provoked through the confinement and control of women in the private arena of the sacred home as well as family, but also via the subordination and limitation of women in the public domain like the synagogue.

Essentially *aggadah* and *halakhah* undertake distinct tasks despite interweaving, since both respond to the Bible, the premise of everything. So just as the narratives of the Bible are juxtaposed with its legal sections, so too, are the *aggadah* and *halakhah* constantly interwoven in rabbinic literature like the Midrash. Midrash is a means of integrating theological and social change, permitting transformation without totally dissolving halakhic ties with the tradition. Judaism acknowledges the ethical realm embedded in the area of *aggadah*, but asserts that *halakhah* is the primary tool to inculcate ethical knowledge, attitude and values, by infusing these into human behavior.

Currently women are active in the public sphere contrary to the private role that *aggadah* and *halakhah* traditionally purport. They are active through their contributions, donations and labor in the synagogue, divergent to their traditional status of limitation and exclusion from the "Holy of Holies", the domain for men, where knowledge as well as power presides. Despite their subordination they should have the prerogative to embrace or reject the position of rabbis and to play a more significant role in the community of worshipers in the synagogue, opposed to the bias insistence of men, who have essentially constructed the aggadic and halakhic tradition to exhibit male experiences as well as meet male needs. On the contrary, they, who retained the sources of power and influence, have vindicated the total prohibition of the ordination of women, their inclusion from the *minyan* and participation in congregational prayer in the sacred public domain.

The fundamental relationship for the traditional woman is with her family particularly her husband, albeit, the prevalence of numerous single Jewish women. Marriage and the joys as well as sorrows it can occasion, and the complications stemming from divorce and desertion are some of the experiences that women within

the home as well as family have had to contend with regularly. While women are usually passive and flaccid in contracting of the marriage, similarly they are inactive as well as submissive at the dissolution of the marriage due to the unilateral right of the man to procure contracts. Despite the resulting outcry for transformation, a fundamental change within *halakhah* regarding the added problems of *agunah* seems unlikely. The diversity amongst halakhists and a general traditional mood retards the formation of a consensus desperately required for instituting halakhic relief for the subordinated women suffering under family law. In view of reform the home need not be synonymous with the persistence of the traditional women's role and correspondingly, to allow women to move out of the home need not mean its disappearance. Such a paradigm shift merely demands more creativity with the goal of achieving the same ends via different means, where women and men together share responsibility for the home and equally benefit from the sacred public and private spheres.

Chapter 3

Cape Traditional Muslim and Jewish Women in the Mosque, Synagogue and Home

Introduction

The role of women in history and their contribution to nations, societies and communities seems to be a theme greatly neglected in the records of history. True to the gender bias displayed in its morphological structure, the term “history” depicts essentially the story of males. It is “his” stories, which are important. Men are the dominant characters and history is essentially a depiction of “his” achievements and “his” contributions. Occasionally some of the “sisters” do become “brothers” and finds a centre place in “his story”. For this, their contribution or their sacrifice must be exceptional. Yet without women, would there really have been a “history” [Davids 1997: 11]?

Within the South African context, given its rich cultural diversity, Cape Muslim society comprises of an ethnic mix of ‘Malays’ and ‘Indians’, with the ‘Malays’ in the majority.²⁸ Cape Muslims have made a significant contribution to the development of Cape Town. They were the master builders, traders, artisans, tailors, dressmakers, and cooks, masons and laborers, who contributed to the building of Cape Town into a modern functional city and to non-material culture. In addition Cape Muslims made a profound cultural, and social impact on the Afrikaans language and the Cape Town lifestyle, which now distinguishes it from other South African cities. As such, they have rooted themselves to become an inherent part of the South African rainbow nation [Davids 1980: 8-9]. Conversely, prior to the first democratic elections there has never been a melting pot dynamic in South Africa, a country that has promoted ethnicity.

²⁸ The terms ‘Malay’ and ‘Indian’ are socially, and racially repugnant and have originated during colonial times. They have only been mentioned as a means of distinction and to indicate the content of the Cape Muslim ethnic mix. Cape Muslims did not all originate from the Malay Peninsula, but have stronger roots in India and the islands of the Indonesian Archipelago, i.e. Southeast Asia. See Achmat Davids’, *The Mosques of Bo-Kaap: A Social History of Islam at the Cape*, (Cape Town: The S.A. Institute of Arabic and Islamic Research, 1980), 8.

Like Muslims, Jews in South Africa were encouraged to maintain a separate identity determined by their Anglo-Litvak (English and Lithuanian) origins. Jews, however, generally constituted a noticeably successful minority of whites, albeit, the earlier influx of Jewish peddlers, craftsmen and shopkeepers of Lithuania.²⁹ Reminiscent of Jews in the rest of the country, who formed part of the white privileged class, Jews in the Cape have displayed ascendant economic, educational and occupational mobility, and have traditionally played a prominent role in the political, economic and cultural life of the country [Hellig 1999b: 181].

Cape Muslims of 'Malay' origin have managed to develop a particular culture over 350 years of coexistence with dissimilar communities. The synthesis of Southeast Asian Islam, and elements of Afrikaner and native cultures has given traditional Cape Islam its visible cultural pliability and adaptability. 'Indian' Muslims are comparatively late immigrants considering their residence here for just over a hundred years. They appear to have resisted conversion and emphasized a cultural uniqueness that engenders rigidity and traditionalism. However, like Islam as it is usually seen and learnt by the majority of Muslims globally, Islam in the Cape is also predominantly traditional, i.e. many Muslims typically learn Ash'ari belief or *'aqidah* and for religious practice, Shafi'i jurisprudence or *fiqh* [Moosa 1995: 143-44], under a religious leader or *imam/shaykh/mawlana* at a traditional mosque or *masjid* or at a traditional religious school or *madrasah*.

Cape Town Jewry developed its own qualities as a product of its 'Anglo-Litvak' legacy. Lithuania the area from which most of the Jewish immigrants of the Cape arrived, at the close of the nineteenth and beginning of the twentieth centuries, have predicated a strong attachment to traditional Judaism. Like South African Jewry, the Cape Jewish community has always been one that is by and large orthodox with at least 80% of Jews affiliated to orthodox synagogues and has thus been characterized as traditional [Hellig 1986: 233-42]. It derived its forms and institutions from the 'Anglo-Jewish' legacy, e.g. in the order of service of the major synagogues and in the organization of the community, while it inherited its attachment to tradition imbued with a particular form of Talmudic piety and love of Zion from the 'Litvak-Jewish'

²⁹ For a delineation of the xenophobia toward the early Lithuanian immigrants, see Milton Shain's, *Jewry and Cape Society: The Origins and Activities of the Board of Deputies for the Cape Colony*, (Cape Town: Historical Publication Society, 1983), 3-8. Also for a description of the disparity between the Anglo-German and Lithuanian settlers in terms of their occupations and residence, see Bonny Irma Feldman's unpublished honours thesis, *Social Life of Cape Town Jewry, 1904-1914, With Special Reference to The Eastern European Immigrant Community*, (Cape Town: University of Cape Town, 1984), 16-47.

legacy. The new immigrants or Lithuanian Jews, who were initially poverty stricken, were often compelled to transgress *halakhic* observance particularly the Sabbath performance due to economic necessity. The combination in early characterization and contextual factors have resulted in the distinctive formulation of a community of ‘non-observant orthodox’ Jews³⁰ that are contented to belong to orthodox synagogues, but who do not necessarily live a committed Torah lifestyle; ride to the house of assembly or place of prayer (*shul*); and generally select which commands or *mitzvot* to observe and which to neglect [Hellig 1991: 158-63].

With regards to Islamic law or *shari’ah* rooted in the Sunni tradition, the Cape was and remains a domain in which the traditional Shafi’i School of law or *madhhab* prevails, since Islam in the area stemmed from South East Asia where the Shafi’i *madhhab* reigned supreme. Although the traditional *madhahib* do not have any major doctrinal implications inter-school discord has produced fanatical antagonism [Moosa 1995: 140-41]. In spite of the Shafi’i majority legal dogmatism later began waning, due to the attitude that most of the Cape traditional learned men or jurist-theologians (*‘ulama*) during the twentieth century were trained in the Middle East, e.g. in Saudi Arabia, Egypt, Lebanon and Jordan, where legal eclecticism (*talfiq*) was encouraged and legal dogmatism renounced [Ibid.: 143-44]. In an attempt to establish a common traditional religious authority the *‘ulama* of the Cape formed the Muslim Judicial Council (MJC) in 1945 and committed themselves “to the preservation and strengthening of Islam in all its dimensions”. With regard to the broader principles of the vision of the current president of the MJC, Shaykh Ebrahim Gabriels, assured that it is his undertaking “to tackle and attend to and strengthen the Political, Educational, Economic, Religious, *Da’wah* (Propagation) and the Social/Welfare (i.e. particularly marriage and divorce) direction of the MJC”.³¹

The establishment of the United Council of Synagogues in 1931, a body representative of all the synagogues in the Cape Peninsula, gave rise to the formation and opening of the Cape Jewish ecclesiastical court or *bet din* in 1933. The function of the *bet din* was initially to provide settlement of civil or any disputes (*dinei torah*)

³⁰ “Unobservant orthodoxy in South Africa is, on the one hand, a legacy from the traditional piety of South Africa’s Litvak forebears and on, the other, a reflection of the conservative Calvinist context in which the South African Jewish community grew.” See quote in Jocelyn Hellig’s, “The Role of Religion in the Transformation of Southern African Societies: A South African Jewish Perspective”, in Thomas G. Walsh & Frank Kaufman, ed’s, *Religion and Social Transformation in Southern Africa*, (Minnesota: Paragon House, 1999), 182.

³¹ See the MJC’s official newspaper with article entitled “A new era for MJC” and the mission statement of the MJC, the major judicial, though, not the only, organization addressing the traditional public and private needs of the Cape Muslim community, *ad-Da’wah*, Vol. 6 No. 3, July 1999, 1-3.

amidst members of congregations in order to prevent recourse to the secular law courts [Herrman 1941: 126-27]. Although, a *bet din* was previously established in Johannesburg in 1915, the court in the Cape was autonomous and had its own jurisdiction. However, to the latter part of the twentieth century this situation changed when the two major bodies for orthodoxy in South Africa, i.e. the Cape United Council of Synagogues and the Federation of Synagogues formed in Johannesburg in 1933, merged to form the Union of Orthodox Synagogues (UOS) of South Africa in 1986. Currently, there is one Chief Rabbi for the entire South African Jewish community, i.e. Rabbi Cyril K. Harris, while the head of the Jewish ecclesiastical court (*rosh bet din*) in Johannesburg occupies the same office in the Cape in order to maintain uniformity in the community as a whole particularly in *halakhic* matters of dietary regulation (*kashrut*), conversion and personal status like religious divorce or *get* [Isaacs 2000: 40].

Considering the significance of the sacred space of traditional mosques in the Muslim community as a public domain of worship, both the Dorp Street/First (*Awwal*) Mosque or “Saartjie’s Mosque” at the Cape, the first mosque founded in South Africa in 1794 and Palm Tree Mosque or “Samida’s House” in Long Street established in 1820 depended on the benevolence and financial assistance of women, concurrently not neglecting their pivotal role in the sacred space of the traditional home. In this regard Saartjie van de Kaap (d. 1847) and Samedia van de Kaap (d. 1860), close to Abdullah ibn Kadi Abdul Salaam, also known as Tuan Guru (d. 1807), the first *imam* and teacher at the First Mosque, and Jan van Boughies (d. 1846), the second *imam* at the Palm Tree Mosque respectively, featured prominently in the establishment and maintenance of the mosques [Davids 1997: 11-6]. Despite the traditional Shafi‘i dominance in the Cape, at least two mosques have also recognized the Hanafi School. Notwithstanding, earlier the establishment of the two Hanafi mosques was the culmination of antagonism between the two schools. The first, Long Street Mosque or *Masjid Jamia* was instituted in 1881 by the sons of Abu Bakr Effendi (d. 1880), a scholar of Kurdish origins and the founder of the Hanafi *madhhab* at the Cape in 1863. It is interesting to note that the conflict between the two schools dwindled when the traditional doctrines of both schools were taught at the mosque. The Indian Muslims, who were Hanafis, in 1892, built the other mosque, the Loop Street or Quawatul Islam Mosque. The new Indian settlers endeavored to maintain their cultural identity, since the Shafi‘i religious practices were alien to them and they were not ready to integrate

into the old settled community [Davids 1980: xxii-xxxi]. Presently these two mosques form a part of the 132 traditional mosques, while one out of the total is considered progressive, i.e. the Claremont Main Road Mosque,³² that have been established in the Cape. Only 5 of these do not provide prayer facilities for women, while 95 provide facilities for them on the Friday congregation prayer or *jumu'ah* and 80 on the two festival prayers or *'idayn*.³³

As Judaism recognizes the centrality of the traditional synagogue in the community as a public terrain of worship, Jews established the first synagogue, the Hope of Israel (*Tikvat Israel*), at Cape Town, in 1841, and purchased its property at Bouquet and St. John's Streets in 1849 with its first minister, selected by the Chief Rabbi of the British Jews, Rev. Isaac Pulver. It is notable that the ladies of the new Cape Town Hebrew Congregation (or "Mother Congregation") provided the vestments and embroidered curtains for the Ark of the synagogue [Herrman 1941: 7-21]. With the subsequent influx of the East European Jews (of which the 'Litvaks' constituted the majority), the Anglo-German Jews, who were the pioneers of the first quorum required for congregational prayer or *minyan* and synagogue, deemed the new arrivals as "crude and unmannerly", while the former regarded the latter as "ignorant and heathenish". Consequently, soon after the arrival of the Lithuanian Jews they felt an antagonism toward as well as from the Anglo-German Jews, and they refused to join the existing synagogue or "*Englishe shul*" and established their own synagogues [Hellig 1991: 162]. They formed the two main synagogues, i.e. the New Hebrew Congregation or Roeland Street Synagogue in 1900 and the House of Study and Prayer (*Bet Hamidrash Hekhadosh*) at Constitution Street in 1902 that was referred to as the greenhorn or newcomer synagogue ("*Greene shul*")³⁴ [Feldman 1984: 12-4]. The latter synagogue was initially characterized by the observance of two Sabbath morning services in order to accommodate those congregants, who had to attend to their stalls on the Grand Parade out of economic necessity [Simon 1995: 72]. Despite the

³² For an analysis of the Claremont Main Road Mosque within the context of the tradition of the Cape mosques; the spatial production of sermons; and gendered space in the Claremont Mosque, see Abdulkader I. Tayob's, *Islam in South Africa: Mosques, Imams, and Sermons*, (Gainesville: University Press of Florida, 1999), 40-59 & 102-14.

³³ See the descriptive summary and statistics of most (or all) of the mosques in the Cape, in *Taraweeg Survey 2001*, Vol. 13, (Cape Town: Boorhaanol Islam Movement, 2001).

³⁴ "The *Shul* was open the whole forenoon when services followed each other in rapid succession. In the evenings between *Minchah* and *Maariv*, the Synagogue presented a scene of animated activity. The hard struggling Jew, be he shopkeeper, pedlar, "trier" or artisan, would foregather at the conclusion of the day in the *Beth Hamedrash* and between the services he would "sit" at one of the "*Shiurim*" or lectures delivered at long tables with benches all around". Quoted from Milton Shain's, *Jewry and Cape Society: The Origins and Activities of the Board of Deputies for the Cape Colony*, (Cape Town: Historical Publication Society, 1983), 78.

distinction between congregations established by the Anglo-German and Lithuanian Jews there was a further difference with regard to religious expression. Ashkenazic Jews³⁵ represent the major body of orthodoxy as well as congregations and Sephardic Jews³⁶ the minor, albeit, the presence of a lively congregation in the Cape via entry from Zimbabwe [Hellig 1991: 170]. Currently there are 15 Ashkenazic traditional synagogues and 1 Sephardic in the Cape. Despite the pivotal position of the sacred space of the traditional home, where the role of women is most significant, 12 of the synagogues provide facilities for women.³⁷

After briefly delineating and constructing some of the salient elements of Cape Muslim and Jewish traditional “history” or “his story”, this chapter of the thesis, which examines similarities in gendered traditional sacred spaces, intends to conversely depict “her story” retrospectively (or historically) as well as proactively (or presently) in the analysis of Cape traditional public and private sacred spheres. Using gender as a prime category of analysis in extrapolating points of commonality this chapter hence seeks to interrogate: Women in the Traditional Mosque and Synagogue; Women in the Cape Traditional Mosque and Synagogue; Women in the Muslim and Jewish Traditional Home; and Women in the Cape Muslim and Jewish Traditional Home.

Women in the Traditional Mosque and Synagogue

Women’s role in the spiritual, liturgical and intellectual spheres is in the process of being redefined, and there is a shift from the private to the public realm. Women’s presence in sacred settings is becoming a norm [Greenberg 1981: 96].

The position of women in mosques and synagogues in the Cape Town historical context has been symptomatic of how Muslims as well as Jews have managed traditional sacred space as a public realm.³⁸ Achmat Davids (d. 1998), a Cape historian of Islam, claims that the traditional First (*Awwal*) Mosque in the Cape saw the birth of

³⁵ Originally referring to Jews of German decent presently the term refers to all Jews of European background. European custom frequently differs from Middle Eastern, Mediterranean and Oriental, e.g. in the pronunciation of liturgy.

³⁶ Formerly referring to Jews of Spanish decent, while presently the term includes reference to Jews from Arabic or Middle Eastern, Mediterranean and oriental countries. Middle Eastern private legal practice often differs from European, e.g. in polygamy/polygyny.

³⁷ Contemporary information obtained from the Union of Orthodox Synagogues (UOS), Cape Town branch.

³⁸ The historical context depicts a paradigmatic shift, in terms of the position of Cape Muslim and Jewish women in the sacred space of the traditional mosque as well as synagogue.

most of the Cape Muslim cultural traditions in the early part of the nineteenth century. *Rampie-sny*, the cutting of orange leaves and placing them in colorful sachets on the celebration of the Prophet's birthday (*mawlid*), and *merang*, a religious ceremony followed by feasting must have originated here. *Merang* in the present-day Cape society is held on the seventh, fortieth and hundredth day after the event of a death [Davids 1980: 94-95]. The *mawlid* celebrations were the most popular and involved both men and women. The women gathered at the mosque in the afternoon dressed in colorful traditional attire to cut orange leaves and prepare the *rampies*, while reciting paregyric poems (*qasa'id*) and verses or *ayat* on facets of the life of the Prophet. Only women were present at the mosque in the afternoon giving them power of the main domain of the mosque. The men gathered at the mosque in the evening to listen to lectures on the life of the Prophet and to recite poems commemorating his life. The *rampies*, which were prepared by the women were also handed out [Ibid.: 24-5]. By way of the participation of women in popular Islam practices then, it gave them a sense of power over the main terrain of the mosque as opposed to the tradition that allotted the power to men alone. Though, there is no indication of major involvement in the ritual prayer or Islamic religious school or *madrasah* education in the sacred space of the mosque in the early 1800's, there were definitive signals of their role in the establishment of mosques due to their property ownership as exhibited in the cases of Saartjie and Samida. It is noticeable that, although, a great deal has been written about the activities in and around the *Awwal* Mosque not much has been recorded on the structural or architectural aspects of the first traditional mosque especially those designated for women. With the present structure of the mosque women enter their domain on the upper level where they can neither be seen nor heard via a separate entrance, while men go into the main terrain, which incorporates the empty niche that indicates the direction of prayer or *mihrab* and pulpit or *minbar* (or the area designating the "Holy of Holies") from which the *imam* normally delivers the authoritative sermon, through another entrance. This structural feature is only tantamount to a deconstruction of the tradition of the Prophet or *sunnah* and therefore only accentuates gendered sacred space.

Apart from the structural features of the first traditional synagogues, the public actions in and around these synagogues also shaped the public position of Jewish women in the traditional sacred domain. Effectively, the Cape Town Hebrew Congregation made special provision for women in the *Tikvath Israel* or the Old

Synagogue/Mother Synagogue with the construction of a traditional gallery for the wives and daughters of the men in the congregation [Herrman 1941: 22]. However, as the Old Synagogue became too small to cater for the needs of the community the Great Synagogue was constructed in 1905. The new synagogue had separate entrances for men leading to the main section of the synagogue that included the Ark or the “Holy of Holies” and for women connected to the gallery above the main domain where they could be seen and heard, but not touched.³⁹ This arrangement was typical of all the early synagogues, i.e. *Englishe Shul* and *Greene Shul*, and indicative of gendered sacred space. Under the leadership of the Rev Alfred P. Bender (1895-1937), just after his inception as minister of the Mother Congregation, the Jewish Ladies’ Association was instituted in 1895 of which Mrs. Gabriel was the first president. These women of the congregation worked in cooperation with the Philanthropic Society of the Jewish Community of Cape Town that was founded in 1859 to particularly relieve distress amongst women and children. The ladies also assumed the responsibility for the maintenance of the vestments of the Torah scrolls located in the Ark and other accessories of the synagogue, especially in the preparation for festival celebrations and specific services.⁴⁰ Significantly, subsequent structural renovations were made to the Ladies’ Gallery of the synagogue to increase the seating and accommodate for the greater attendance of women [Herrman 1941: 77-90]. Evidently, there was a constant concern about the accommodation of women within the synagogue especially in view of their traditional maintenance of the interior of the sacred domain, albeit, their traditional exclusion from the main terrain and the “Holy of Holies” dominated by men where knowledge as well as power presides, during congregational worship. Assuredly, though, the participation of women associated with the synagogue in the public sphere via community or philanthropic work was encouraging, since they, who best understand the plight of other women and children, could attend to the distresses of women, and children in the Jewish and broader community.

In the middle of the nineteenth century there was another shift regarding the position and role of Muslim women. Abu Bakr Effendi, a Turkish scholar who arrived

³⁹ For the exterior and interior images of the Great Synagogue, see Louis Herrman’s, *The Cape Town Hebrew Congregation 1841-1941: A Centenary History*, (Cape Town: Cape Town Hebrew Congregation, 1941), 82-3 & 108-09. Similarly, for an exterior image and a detailed description of the interior of the Roeland Street Synagogue, see Israel Abrahams’, *The Birth of a Community: A History of Western Province Jewry from Earliest Times to the End of the South African War, 1902*, (Cape Town: Cape Town Hebrew Congregation, 1955), 110-11.

⁴⁰ For the aims and objectives as well as relationship between the Ladies’ Association and Philanthropic Society, see Gwynne Schrire’s, “Women and Welfare: Early Twentieth-Century Cape Town”, in *Jewish Affairs*, Vol. 48 No. 2, Winter 1993, 86-7.

at the Cape in 1862, was responsible for the wearing of fezzes by men and head covering by women. He was well schooled in Islamic law or *shari'ah* and was a staunch adherent of the Hanafi legal school. It was under his influence that the first Islamic religious school or *madrasah* for women was established in this country and through which women were made conscious of the head covering [Davids 1985: 53-63]. During the second half of the nineteenth century the role of women in Cape society was, nevertheless, wide ranging seeing as they played important roles in the public sphere. As men dominated the community and the duties of the *imam* included both mosque leadership obligations as well as pastoral responsibilities essential to men and women beyond the congregation,⁴¹ women accordingly organized their own congregational structures within mosques. They appointed their own leader, referred to as the “Lady Leader” (*Motjie Imam*), and assumed those duties usually neglected by males, predominantly those affecting the women and children [Davids 1997: 11-6]. Unmistakably then, women were not only involved in and empowered with folk Islam, but partook in Islamic religious education, even though, it was independent of males. They were furthermore involved in social welfare obligations, from the public sacred domain, focusing on those weaker segments of the community neglected by men and the *imam*, hence widening their roles in the traditional mosque.

Once again it was under the guidance of Rev Bender that a shift in the status of women in traditional sacred space occurred. In order to foster the interest of Jewish boys and girls of the community he held a Sabbath service during the afternoon in the synagogue to cater for the needs of the youth. This service for boys as well as girls became an enduring institution under his leadership. Additionally, he organized Sunday morning religion classes under the instruction of women of the congregation for boys and girls at the synagogue in Hebrew, Scripture and Jewish traditions. As he was aware of the parental neglect of the education of girls in particular he introduced a Girls' Confirmation Service to focus on the religious rights and duties of Jewish women. The first service in Cape Town took place on the 8th of November 1896⁴² and thereafter this popular practice was held regularly attracting large congregations [Abrahams 1955: 94]. Although, the Cape Town Hebrew Congregation founded the

⁴¹ For examples of some of the duties of early religious leaders at the Cape, in terms of ‘rites of passage’, see Robert C. Shell’s, “Rites and Rebellion: Islamic Conversion at the Cape, 1808 to 1915”, in Christopher Saunders ed., *Studies in the History of Cape Town*, 6 vols., (Cape Town: University of Cape Town History Department, 1984), V: 1-46.

⁴² The first Confirmation Service for Jewish girls held in South Africa was in Port Elizabeth on the 29th of May 1887.

Hope Mill School in 1897 and the New Hebrew Congregation established the Talmud Torah School in 1899, both did not initially accept girls as pupils. It was only subsequent to the “Sisters/Daughters of Zion” (*Bnoth Zion*) Association setting up Hebrew classes for girls in 1905 that the congregations admitted girls to the schools as well [Feldman 1984: 60-1]. In 1934, however, Rev Bender revived the innovation of ceremonial consecration of girls to the sacred duties of religion similar to the celebration marking the transition to adulthood (*bar mitzvah*) that was the privilege of boys alone⁴³ after falling into disuse. Formal classes were once again instituted to prepare girls for the ceremony and to instruct them in the practice of Jewish rituals especially required in the home [Herrman 1941: 117]. Demonstrably then, there was an earnest attempt to somewhat bridge the gap in religious education between girls and boys: firstly through their joint attendance of the Sabbath afternoon service; secondly with their coeducation on Sundays under the instruction of women in traditional subjects; and finally in the confirmation services for girls and the related celebration like boys, all conducted in the synagogue. Additionally, girls were also accommodated at the Jewish public schools that initially accepted boys alone. These were innovative introductions via the deconstruction of the tradition that gave preference to boys over girls given that the former are chiefly associated with the public sacred sanctuary.

At the beginning of the twentieth century there was a further paradigm shift in terms of the position of women in the sacred space of the mosque. Imam Ismail Manie, who was trained in Makkah, Saudi Arabia, was one of the most competent religious or mosque leaders at the Cape during the early 1900’s. He was not only concerned with his duties as an *imam*, but had a greater interest in education. During his time the Hanafi Mosque in Long Street, Cape Town, was extensively used as an Islamic religious school. This school became very popular in the Cape teaching both traditional Hanafi and Shafi’i *fiqh*. Here women were given the same schooling as men and it also had numerous women as graduates [Davids 1980: 183-84]. Thus both

⁴³ *Bar/Bat Mitzvah* are ceremonies, the age at which a child becomes responsible for observing all religious obligations, traditionally 12 years for a girl and 13 for a boy. This transition to adulthood is often marked by a celebration held in the synagogue. “Since women do not participate in the conduct of the synagogue services, a formal synagogue ceremony has not developed to mark the transition of girl to adulthood in Orthodox Judaism as there has for the boy. Thus, while a *bar mitzvah* celebration is an integral part of the usual synagogue service, this is not the situation with a *bat mitzvah*...Rabbi Moses Feinstein (1895-1986) points out that *Halachah* does not allow the use of a synagogue sanctuary for the purpose of a *bat mitzvah*...[s]ince the sanctuary may be used only for sacred functions associated with the synagogue...” This traditional view was quoted from Michael Kaufman’s, *The Woman in Jewish Law and Tradition*, (New Jersey: Jason Aronson Inc., 1993), 257.

men and women were taught as well as empowered in the public sacred confines of the mosque with the anticipation of bridging the widening gulf in knowledge between the sexes, even though, the knowledge was a representation of the tradition constructed by men and interpreted via the lenses of men.

With the leadership of Rabbi Israel Abrahams (1937-1968) there was a further change in the position of Jewish women in the sacred space of the synagogue where they began to assume greater responsibility than before in the affairs of the traditional synagogue. Previously in 1933, on the insistence of the Union of Jewish Women of South Africa at Johannesburg that was established in 1931, three women,⁴⁴ the first of their sex, were admitted with full rights of membership to the Committee of the Great Synagogue. This reconstruction of the tradition persisted and women continue to form part of the committee. With the influence of the Rabbi's wife, the representation of women on the committee and the women of the congregation, a special Women's Service was held in 1938 and subsequently on the occasion of the Women's World Day of Prayer. Moreover, the Great Synagogue Ladies' Guild was formed in 1939 with Mrs. Abrahams as chairperson. The ladies of the Guild fulfilled numerous self-imposed duties with regard to the maintenance and the good of the synagogue as well as the community [Herrman 1941: 140-42]. The institution of the Ladies Guilds was emblematic of the internal organization of all the early synagogues. Noticeably then, there was a shift in the traditional role of women, from one which was passive, to another that was active, in the synagogue in terms of management and activities that were women centered, despite their exclusion from the quorum necessary for congregational prayer or *minyan*, the main domain close to the "Holy of Holies" in the synagogue as well as the ordination as rabbis.

As presently observed in traditional Cape Town society⁴⁵ Muslim women are generally exposed to the public traditional mosque environment. Women normally attend the mosque on special evenings to commemorate particular events in the Islamic lunar calendar, like the Prophet's birthday or *mawlid*, the tenth day of the sacred month of *Muharram* ('*ashurah*), and the Prophet's night journey (*mi'raj*). Usually adult education, one of the few avenues for the empowerment of women, is conducted in the mosque, which both men and women attend. Often they observe the

⁴⁴ The three women were: Mrs H.J. Stodel, Mrs L. Raphaely, and Mrs M. Cohen.

⁴⁵ Participant observations conducted at the Gatesville Mosque (*Masjid al-Quds*), Gatesville during March 2002, e.g. for daily prayers and on *Yawm al-'Ashurah*.

recommended prayer (*salah al-tarawih*), after the compulsory evening prayer (*isha*) during the month of obligatory fast (*Ramadan*) and in some instances they even outnumber the men who attend the mosque. However, they seldom visit the mosque for the compulsory congregational (*jama'ah*) prayers, while they do go to the recommended congregational prayers like the two festival prayers or *'idayn* and the Friday congregation prayer or *jumu'ah*. During these frequent visits to the mosque the sexes are separated. If adult education programs are held women are either seated on the sides or the back of the main section of the mosque and during prayers they are located in a completely separate space. This space is either on the upper level overlooking the main section or an enclosed area situated separately at the back of the mosque.

As currently observed Jewish women in the Cape Jewish community ordinarily have access to traditional synagogue space.⁴⁶ They often visit this public sacred domain on festival celebrations or the High Holy Days, like Passover (*Pesach*), the New Year (*Rosh Hashanah*), the Day of Atonement (*Yom Kippur*) and Tabernacles (*Sukkot*), when the related services are held during the evenings. The High Holy Days are normally deemed as opportune occasions for the family as a whole to attend the synagogue, in so doing reinforcing their identity and obtaining knowledge. On the service for the Day of Rest or Sabbath (*Shabbat*), a forum for the dissemination of knowledge, however, fewer women attend the synagogue. Comparatively, they rarely (if not at all) attend the daily prayer (*tefillah*) services known as the morning sacrifice (*shaharit*), afternoon sacrifice (*minhah*) and evening prayer (*maariv*), the *mitzvot* that are performed in the synagogue. Avenues for the acquisition of knowledge have been created for both men and women in the form of lectures (*shiurim*)⁴⁷ in the sacred terrain, which they either jointly or separately attend. In the case of the former women and men are normally seated separately on the same level in the main domain as opposed to occasions of congregational prayer or services where women are seated in the Ladies Gallery, where they can be viewed by men from below in the main terrain and vice versa, or they are seated at the rear of the main level divided by a partial screen (*mechitzah*).

⁴⁶ Participant observations conducted at the Marais Road Synagogue, Sea Point during March 2002, e.g. during the daily prayers as well as the First Day of Passover. Also see Azila T. Reisenberger & Gwynne Schire's, "Balancing Tradition and Transition: South African Jewish Women's Search for Affiliation", in A.T. Reisenberger, ed., *Women's Spirituality in Transformation of South Africa*, (New York: Waxman Munster, 2001), 99-115.

⁴⁷ Discourses on the Bible (or Tanakh), Talmud and cognate subjects.

Most of the mosques are structured interchangeably where men and women enter their respective domains via a different entrance, while there are some of them where men and women enter the mosque through a single foyer or doorway. Despite the fact that, most mosques are designed with an upper level, a constructed tradition, few have an enclosed or a cordoned area at the rear of the mosque exclusively for women during congregational prayer. Women are still involved in folk Islam practices thereby acquiring power of the mosques during non-prayer times and continue to maintain their own congregational structures together with the popular prevalence of the *Motjie Imam* amongst elderly women in particular. As women are located on the periphery their role in the establishment and management of mosques is therefore minimal particularly in matters of leadership and administration, but they continue to be foremost in: fundraising for mosques; preparing for special evening commemorations or Big Nights; and relieving the plight of the indigent, women as well as children in the community via the numerous Ladies Councils attached to the various mosque committees. However, very few hold positions on the executive of mosque committees. In addition, they play a noticeable role in the education of the children either at independent traditional religious schools or *madaris* (pl. of *madrasah*) or those attached to the mosque⁴⁸ and even public schools.

Amidst the resurgence of orthodoxy in the Jewish community most, if not all, of the synagogues are structured with separate entrances for men and women, even in those sacred places where men and women are divided by a partial *mechitzah* in the main domain of the synagogue, while they are both in close proximity to the “Holy of Holies”. Of the 16 synagogues in the Cape only 4 of these have a *mechitzah*, which is frequently transparent,⁴⁹ in the prime area of the sacred domain where women feel somewhat integrated, although, separated. With the maintenance of the synagogue women are still assuming related responsibilities due to their activism in the still popular Ladies Guilds. Regardless of the trend set by the Mother Congregation very few women apparently serve on synagogue executive committees and in those cases where they are members they are often ineffective. The ladies of the Guilds, nevertheless, are actively involved in the education of children and welfare work in the

⁴⁸ Besides the involvement of Muslim women in the “Ladies Councils” in aiding the weaker segments of the community, many women also belong to a host of organizations that attend to social welfare issues in the public domain, like the South African National Zakah Fund (Sanzaf) branch in Cape Town, Islamic Social and Welfare Association (Iswa), Muslim Assembly, etc. In addition numerous Women’s Forums and Networks have been launched to empower, educate as well as uplift women.

⁴⁹ Current information obtained from the UOS, Cape Town branch.

broader public sphere. Women are generally also dynamically engaged in teaching at religious schools that are either independent or attached to a synagogue and public schools.⁵⁰

Evidently, Muslim women have labored earnestly in the broader public sphere, balancing their public and domestic responsibilities, and are continuing to do so,⁵¹ albeit, their limitation in the traditional mosque. On the one hand, one such woman is Maryam “Ma” Amod originally born in 1912 at Durban, who later settled in District Six, Cape Town, in 1947 where she embarked on conducting Islamic education for converts to Islam. Even though, she was passionate about teaching she was often smuggled into and out of Guguletu where she carried out Islamic propagation work with the assistance of Imam Abdullah Haron (d. 1969). In an era where men, particularly the religious scholars or *‘ulama* as well as *imams*, were the prime dispensers of knowledge, and when Islamic education was often unstructured and operated informally it became more formalized when she established the Islamic Women’s Society in 1976. Subsequently, under the banner of the Islamic Religious School of the Messenger (*Madrassah Tur Rassool*) that she instituted, *madrassah* education became structured along secular lines. She was also one of the first *madrassah* principles, who worked endlessly to provide her teachers with a regular income. Amidst her busy schedule she still found the time to run Islamic education classes at her home; organize the distribution of regular food parcels to the indigent; chair the Islamic Women’s Society; and attend to the wholesome needs of her family.⁵² On the other hand, another woman, Zainunisa “Cissie” Gool (1900-1963), daughter of the famous Cape Muslim City Councilor, Dr Abdullah Abduraghman (d. 1940), primarily exerted herself in the public terrain through educational and political activism. After completing her BA degree followed by an MA in psychology in 1932

⁵⁰ In addition to the participation of Jewish women in the ‘Ladies Guilds’ and education, they have also partaken in and made invaluable contributions via organizations like, the Federation of Synagogues Women’s Guild of South Africa; Union of Orthodox Synagogues; South African Jewish Board of Deputies; Jewish Women’s Benevolent; Jewish Family Council; Union of Jewish Women; etc. See Paula Slier’s report on the capability of Jewish women in the community in, “Jewish Women Still to Fulfil Potential in the Community”, in *South African Jewish Report*, Vol. 2 No. 35, February 4, 2000, 1-2.

⁵¹ For example Prof Najma Moosa, who was admitted as Advocate at the High Court of South Africa in 1989; appointed as member of the project committee of the South African Law Commission (SALC) investigating Islamic Marriages and Related Matters in 1999; selected as the first black female Dean of the Law Faculty at the University of Western Cape in December 2001; and also serves her family as well as mothers her children to the best of her ability. For details of her academic career, see Gulam Sawant’s, “First Black Female Dean for UWC Law Faculty”, in *Muslim Views*, Vol. 16 No. 2, January 2002, 3.

⁵² See the complete profile of Maryam “Ma” Amod in *Muslim Views*, Vol. 13 No. 5, March 1999, 23. Also see the profile of Amina “Minnie” Jappie (1913-2001) who spent her time relentlessly teaching in the public sphere and nurturing as well as mothering her family in the private domain, in *Muslim Views*, Vol. 16 No. 1, December 2001, 22

she consequently commenced with a law degree that she completed aged over sixty. During her studies of law she directed most of her attention towards political matters. She became the first black woman to be elected to the Cape City Council dominated by men and she held her seat in Ward 7, incorporating District Six, for 15 years. She also established a local political association named the Liberation League through which she confronted every issue germane to people of color with courage and vigor. Striving until before her death she was admitted to the Bar as an advocate on the 12th June 1963 and three weeks thereafter she suddenly died after having a stroke.⁵³ These were women who made a difference through their enduring dedication, and zealous will to bring about changes in the community and public domain at large. They were seldom detracted by any constructed traditional boundaries, and they are unquestionably women to be remembered and emulated, since they along with many other (or all) women maintain an intrinsic part of “history” where “her story” is equally important as “his story”.

With Jewish women having minimal involvement in the synagogue and its committee, they engendered a greater public role⁵⁴ as well as welfare contribution in the public domain, due to their participation in philanthropic work, e.g. in communal Zionist activities in spite of the previous dominance of men. One such woman, who had to contend with men who perceived women as inferior and incapable of accepting sole responsibility for their affairs was, Feodora Clouts, who became chairperson, in 1929, of the Women’s Zionist Organization or Daughters of Zion (*Bnoth Zion*) founded in 1901. During her leadership she became conscious of the restrictions enforced by the men of the Zionist organization or “Seekers of Zion” (*Dorshei Zion*), established in 1899, over the women’s organization with regard to the collection of funds and policy making. Evidently, when they requested to use funds for the newly instituted Hebrew Nursery School the men refused claiming that the funds of the *Dorshei Zion* were allocated for the maintenance of the Zionist Hall. It was only a few years later via her leadership and motivation that the women in the organization started

⁵³ See the profile of Zainunisa “Cissie” Gool in *Muslim Views*, Vol. 15 No. 9, August 2001, 14.

⁵⁴ For example Bertha Soloman (d. 1969), who spent her formative years in Cape Town before moving to Johannesburg, was one of the first practicing women advocates in South Africa; the first woman to argue an appeal before the Bloemfontein Appellate Division; nominated as councillor to the Transvaal Provincial Council in 1933 and 1936; won the parliament seat at Jeppe in 1943, 1948 as well as 1953 and held the seat until her retirement from politics in 1958 - during which period she spent endlessly attempting to remove the legal disabilities of married women through her activism in parliament for the enactment of various bills culminating in the Matrimonial Affairs Act (*Bertha se Wet*); and awarded an honorary Doctorate in Law at the University of Witwatersrand, Johannesburg, in 1967. See the entire profile of Bertha Solomon and her public service, in Elaine N. Katz’s, “Bertha Solomon: A Feminist For Her Time”, in *Jewish Affairs*, Vol. 48 No. 2, Winter 1993, 100-09.

resisting the discrimination of the men by engaging in modest protests. Their activism subsequently led to the initial deconstruction of men's dominance over women germane to the organization that further led to ushering women into the management of Zionist affairs.⁵⁵ Another woman bent on toiling to elicit change in the public arena especially through her more than 30 years participation in journalism, is Suzanne Belling, the first woman executive director of the South African Jewish Board of Deputies or SAJBD (Cape Council). Subsequent to joining the then South African Jewish Times in 1970 she became Cape regional editor and after moving to Johannesburg in 1984 she became the first woman editor of the newspaper. During her stay up north she occupied the position of executive director of the Union of Jewish Women for a period of three and a half years. She was also appointed as managing editor of the South African Jewish Report in 1999 and retained this position until she assumed her present post as executive director of the SAJBD at Cape Town in 2001, part of which entails articulating Jewish perspectives on issues like the situation in Israel-Palestine via the media, while concurrently attempting to maintain relationships with Muslims using interfaith discourse.⁵⁶ These women have not only displayed their leadership capability, but also the ability to be catalysts for change in an environment that is more gender sensitive and more protective of minority groups. By contributing more toward the upkeep of the broader public domain, as opposed to the constructed restrictive traditional sacred terrain, they have created a new chapter of "her story" as part of the sum of "history".

Women in the Cape Traditional Mosque and Synagogue

In the modern period...the status of women has been more strongly affected by external cultural models. Within all major movements the relationship between women and sacred space is transformed. In spite of relatively minor transformations within the Orthodox community to this point, it seems likely that women will

⁵⁵ See Gwynne Schrire's, "Women and Welfare: Early Twentieth-Century Cape Town", in *Jewish Affairs*, Vol. 48 No. 2, Winter 1993, 88. In sketching the current situation of women in welfare organizations, Gwynne Schrire declares: "The legacy of male domination of welfare activities is changing, however. Women are still the secretaries without whom no chairperson can survive; still the arrangers of meetings at which the speeches are delivered by men; nowadays, however, women are often those chairpersons and those speakers as well."

⁵⁶ See Moira Schneider's interview with Suzanne Belling, "The New Team at the Cape Council", in *Cape Jewish Chronicle*, Vol. 19 No. 2, March 2002, 7. With regard to the Board's credence in dialogue Suzanne Belling affirms: "[W]hile combating anti-Israel and anti-Semitic rhetoric at every turn, they (the Board) believe in dialogue and back every statement with the fervent wish for peace in the Middle East."

increasingly be able to gain access to sacred space
[Kunin 1998: 130].

Traditional Muslim women deem the traditional Cape community in the contemporary sense as attempting to be part of the wider South African community. However, their local sense of belonging is still with the Muslim community and they exhibit a strong sense of pride being Muslim and South African as long as their religion is protected. It is a community for men only, where worship is primarily for men. Women then, regard the traditional mosque in the public sphere as a sacred place where education classes in various Islamic disciplines are held. Youth forums, discussion groups, etc are also hosted at the mosque. It is used as an information center where certain issues of the Muslim world are often discussed, e.g. Palestine plight, Afghanistan war, etc. In this regard the Muslim radio broadcasting stations are recurrently used in the mosque in order to reach a wider audience. Although, mosques are active to a certain degree, the women's section is cramped and frequently dirty as well as restrictive for women who frequent the sacred domain. Relatively, traditional Muslim men consider the traditional Cape community as one that is close to traditional Islam, recognizes custom and culture, but distinguishes between Islam and culture, while the mindset of prevalence in a minority context enhances this distinction. Men furthermore, conceive the traditional mosque as a public sacred space where cultural events or celebrations take place, where women are allowed to regularly attend it, and where the traditional religious school or *madrrasah* is attached.

Traditional Jewish women believe that there is no difference between a classical or rabbinic community and contemporary Cape one, except that in the latter there is a reliance on tradition with less knowledge. In terms of the community understanding of sacred space, an individual is a sanctuary and different areas can become sacred, symptomatic of sense of priority in sacred space. Additionally, many good qualities have been played out in the community with regard to their interest, in welfare matters, as derived from Eastern Europe. They have a strong traditional and theological hope of the restoration of Israel as well as return to Jerusalem, an ethos, which originated out of their Litvak historic existence. The community that came from Lithuania was a very warm community, who never hated the other and hoped that conditions would improve. In the Cape a traditional community then refers to orthodox synagogue members where the house of learning or *shul* is a place of

meeting. It is a good place to frequent, a place of connection and a space where all the festivals and milestones are celebrated. It is a place of worship in the communal pattern where the daily prayers, festival services, learning and social events take place. It is also a public gathering place for events of rites of passage. Conversely, traditional Jewish men opine that wherever you find yourselves Jews should attempt to implement traditional values in belief and practice. However, Cape Jews are called a non-observant orthodox community comprising of a small orthodox community who are very observant. At present there is resurgence within Judaism through the realization of the limitations of worldly attractions, hence the increased interest in traditional religion. As they are selective in terms of observance they are a different religious community in relation to where they originate. Evidently, very few traditional synagogues have daily prayer services and communal activity. There is also an attempt to follow the same Halakhic rules as brought down from classical times in terms of adhering to tradition.

In describing traditional Muslim women, traditional women conceive that in the contextual sense Muslim women are generally working mothers with their children attending school. Muslim women are educated, maintain careers and do not confine themselves to the private domain of the home alone. Women also perform their prayers upstairs in the mosque or behind a divider like a curtain separating them from the men so that they cannot be seen or heard. In most instances for example they cannot see the prayer leader or *imam* conducting the sermon or *khutbah*, while they just hear his voice. Nevertheless, the status of women is blurred in the contemporary context despite the separation of sexes in the traditional mosque, since the public and private dichotomy is collapsed, i.e. women that were previously homemakers solely are now employed in the public sphere, due to economic constraints on the family, where they freely interact with the opposite sex. Women have thus adapted to the socio-economic and political realities confronting them, while men still have to adapt to these realities. Correspondingly, traditional men estimate that Cape traditions have somewhat evolved with regard to modesty, since the exposure of the hair of women, tied to the norms of fashion, is not frowned upon. It is also normative for a woman to work and attend diligently to the needs of the family. Here the traditional status of women are somewhat molded by society based on western cultural norms and values, as in the instance of fashion. Furthermore, in the Cape mosques there is frequent

interaction between women and men, indicative of the interaction in other public arenas that are governed by western norms.

Jewish traditional women uphold that they juggle their roles in terms of the environment, though, the home is their primary focus, e.g. many women are engaged in work, and have to fulfill their duties in the home and family. They have developed a greater sense of family in doing acts together, e.g. attending the synagogue on the High Holy Days. With women who realize that their role as well as strength is more inner and that the sacred area is where they should be most participatory, i.e. the home or private domain, they will not see the need to be vocal in the synagogue or public sphere. Women also have to integrate their duties considering the context as difficult as it might be. As much more people have become observant of the law in the Cape, it is the women, who normally set the tone. In Cape Town traditional women would span a wide or divergent stream, i.e. from women who maintain strict unswerving observance to a moderate interpretation in consideration of the general social milieu of the times. However, the Cape is depicted by orthodox and ultra-orthodox, and middle group, which attempts to set parameters against excesses. Thus the majority of women's energies have been dispersed. In contrast, traditional Jewish men construct suppositions of traditional women in terms of the ignorance of women (and men) as well as evil inclinations that influence and shape the perceptions of women (as well as men) thereby leading to non-adherence or little observance. For those women who visit the synagogue there are only a few in the Cape that are constructed along the lines where women cannot be seen in order to curtail the distractions of men engaged in worship. Ideally women should be located in the synagogue purely along a sexual separation.

Traditional Muslim women deem that most of the traditional women perform their daily prayers or *salawat* (pl. of *salah*) at home, while some attend recommended prayers during the month of fasting or *tarawih* and others even attend the *jumu'ah* prayers. Some women also attend the *'idayn* prayers, but this would probably be a small percentage, since most women are busy with the food preparations for the day. Additionally, there is an increase of females attending the *jumu'ah* prayers at some mosques that make provision for women to attend and *'id* has primarily become a family gathering. On the other hand, with the daily *salawat*, the working women are absent, while the elderly are present. For all women the platform for dispensing knowledge is absent and hence knowledge relating to women is seldom imparted from

the “Holy of Holies”, leading to the veiling of the minds of men. While men fear women not upholding the tradition, it is women who give men the space and time to practice tradition. Women are thus the backbone of tradition. Traditional men then again consider that initially women mainly attended lectures and Big Night festival celebrations at the mosque, but that this position has evolved to one where women attend the mosque in large numbers on most occasions.

Traditional Jewish women believe that women are playing a more prominent role in the synagogue, even though, women do not make up the quorum required for congregational prayer or *minyan*, especially in their preparation for as well as the attendance of congregational High Holy Days and Sabbath services. Alternatively, traditional men estimate that, although, women are not obliged to participate and have any religious role in the congregational prayers and services they do attend these in minimal numbers. These occasions are particularly useful for family bonding and forums for the empowerment of women.

In the view of traditional Muslim women the leadership of women or *imamah* would not be permissible, as nowhere in the Islamic world women are performing the Friday sermon (*khutbah*) or pre-*khutbah* talk.⁵⁷ They know for sure that this practice is frowned upon in the Cape and that the traditional ‘*ulama* do not accept the *imamah* of women for mixed prayers. Most mosques traditionally let the women enter through a separate door or entrance and hence women cannot address a mixed audience from the pulpit or *minbar* in the “Holy of Holies”. The majority or mainstream Muslim community only accepts the dominant male as the *imam*. However, there is a need for women to have a platform to share their experiences and understanding of Islam and the Qur’an to other women and men during congregational prayer services. In contrast, traditional Muslim men are adamant that the Prophetic traditional model should be maintained, i.e. where the man leads the prayer services and women are located at the rear of the sacred domain, though, there are extinct classical views that promote the unconditional leadership of women. This traditional model has persisted throughout Muslim “history” and has been implemented by the majority, if not all, Muslims globally.

⁵⁷ For the MJC’s traditional policy statement with regards to attending the Friday congregation prayer or *jumu’ah*, particularly conditions restricting women observing the *jumu’ah* proceedings, see MJC’s, “MJC Policy: Jumu’ah – The Friday Congregational Prayer”, in *ad-Da’wah*, Vol. 5 No. 10, March 1999, 8.

From the perspective of traditional Jewish women, the American, European or Israeli societies have accommodated traditional women, who may not be accurately described as orthodox by the establishment, to take full part in leading religious rituals in the synagogue during congregational services, albeit, absent from Cape community. Notably, some local traditional learned women and ordinary committed persons would feel totally comfortable with leading congregational services. The traditional men, in opposition, vindicate that there is no role for women in the leadership of congregational services even for ordained women, since there is no precedent from the tradition. Those movements like the reform one have broken down *halakhic* rules in order to establish their understanding of equity in the synagogue.

When considering the role women's dress, voice and menstruation or *hayd* in mixed gatherings, traditional Muslim women regard the mixing of men and women in the public sphere, e.g. at wedding receptions, family occasions, funerals and the farewell as well as arrival of the pilgrims as widespread in the Cape traditional Muslim community. Muslim women in the workplace mix freely with the opposite sex as they cannot avoid this in their working environments and often this leads to mixing at social functions outside of the work setting. *Hayd* for women is like an illness or physiological difference (viz. they do not engage in sexual relations) as interpreted by the Qur'an, while men deem it as being something impure and despicable, since they have never experienced *hayd*. For women *hayd* is a mercy from God as it is time for women to rest, i.e. from prayer and sexual relations. Unlike women who have to cover most of their body in the name of modesty men have the freedom of dress within the public sphere. Nevertheless, local women are more liberal in terms of dress (even in their interaction with the opposite sex) and traditional dress is primarily considered in terms of identity. Ultimately, like men, women should also experience the freedom in terms of the public practice of religion. Comparatively, traditional Muslim men contend that, although, some traditionalists would deem the voice of the woman as consisting of part of those sections of her body that are only exposed to her husband or *'awrah*, it should not be deemed as part thereof, since there is no authentic evidence there for and due to the impracticality thereof in our interactive society that we reside and work. Women, who have their *hayd*, should also be allowed to enter the sacred confines of the mosque as long as they do not soil the domain because there is evidence from our tradition to justify this permissibility. Furthermore, it should be noted that the modest dress of women has shifted towards modern fashion.

With traditional Jewish women in reflecting about the impact of dress, voice and menstruation *niddah* on prayer and mixed gatherings there is awareness prevalent, but will fluctuate from person to person. Mixed gatherings in general are unrestricted except in ultra-orthodox groups where there is a strict separation due to the sexual underpinning of dress and voice as well as the suggested impurity related to the *niddah*. Public as opposed to the home space, where roles are basically interchangeable, some patterns of ritual are usually carried out by elderly men or women. Congregational prayers, however, always demand separation spatially (some distance or barrier). Conversely, traditional Jewish men affirm that the specifics mentioned above have rabbinic and traditional motivation, since there should be a regard for the protection of women. The covering of modest parts of the body and the wearing of the wig or head covering is particularly practiced amongst elderly observant women of the community. The adherence of these and the special purification to mark the end of menstruation or *mikveh* as well as the separation of the sexes to prevent touching, even husband and wife, during the *niddah* of women could vary from individual to individual in terms of level of observance.

For traditional Muslim women most mosques only have men serving on the executive committees of the mosque. Numerous mosques nevertheless, have women's councils, which assist with fundraising events for the mosque. Despite the prevalence of women's or ladies' councils most decisions with regard to the mosque are dictated by men especially those concerns relating to building/extensions or admin duties. Notably, in the formative period of Islam, in the Cape, women played a significant role as in the example of Saartjie and the case of her inheritance as well as the mosque property vis-à-vis the establishment of the mosque. If women, on the other hand, were in charge of the management of mosques, they would be different places, e.g. they would contain areas allocated where children could play. Traditional Muslim men then advance that women rarely take leading positions in the establishment and management of mosques, since their involvement is minimal, although, they are mainly involved in the independent religious schools or *madaris* and those attached to the mosques.

In the establishment and management of synagogues traditional Jewish women assert that they assist in terms of organizational levels especially through the Ladies' Guilds that have always been a part of the synagogue. After all, women always want to be involved and make a concerted effort to contribute to the upkeep of the

synagogue. Furthermore, women are involved in administrative matters and in this regard the Great/Gardens Synagogue (Orthodox Mother Congregation of South Africa) now has a female executive director on their committee. Normally women have full voting rights and participate on committee level, but often in lesser numbers within synagogues. However, beyond the synagogue there are several very active women's organisations, which have various important communal roles in education and welfare. Traditional Jewish men similarly maintain that the roles of women in terms of establishment and management are limited as they feel intimidated due to the dominance of men serving on synagogue committees, but they are prominent in the areas of social welfare, and teaching children and women.

Traditional Muslim women in contemporary times conceive that they are allowed access because the environment surrounding the mosque is safe and that the mosque promotes goodness as well as empowerment through education particularly during congregational services and with religious schools. Knowledge for women of their religion is fundamental, since they are the first teachers of children. Conversely, traditional Muslim men allege that women are asserting themselves more often to obtain greater freedom in the mosque and access to the forum of knowledge the usual privilege of men alone.

With the traditional Jewish women, like the traditional men, they contend that depending on the general consensus of the community, in relation to the tradition as well as the legal guidance and interpretation of the rabbi, certain public practices could be more liberal or rigid, e.g. certain synagogues may hold gender separate learning groups whereas other synagogues would have all learning open to both sexes.

In analyzing those legal and extra legal aspects that impinge upon whether women are granted or restricted access to the mosque traditional women maintain that the Qur'an is not purely a law book, but focuses more on morals and ethics. They question, which dimension of Islam should we adhere or follow, i.e. universals, culture, tradition, Islam interpreted by male jurists, etc? Individuals hence understand Islam differently in terms of their development. The traditional men, correspondingly, pronounce that in the past, with the weaker socio-political and economic climate, men had more access to the mosque space, while women were mainly engaged in serving their families in the private sphere. Nevertheless, with women obtaining more economic viability and their increasing exposure in the public terrain, they are starting

to assert themselves and therefore the notion of sacred space for men only is being broken down.

Both Jewish traditional women and men claim that there is no restriction for women to attend synagogues or other mixed gatherings. In synagogues women in orthodox custom sit separately from men. Sometimes merely a waist high barrier, glass or curtain, exists dividing the women and men. Many synagogues still have a separate gallery for women, but the newer congregations would simply have seating set aside in the main domain of the sacred space, usually at the rear part. The reasons customarily given for the separation are: the influence of the seductive quality of women's presence in distracting the worship of men where congregational prayer is not an obligation endowed on women; and the principal need for women to focus on the children within the home or other related familial duties – at different times though the focus shifts probably according to the impact of societal as well as economic factors.

Women in the Traditional Muslim and Jewish Home

Women are not excluded from the home or from any of the rituals, which normally occur in the home. Thus women are excluded from one type of sacred space, represented by the [mosque or] synagogue, and included in the second, represented by the home. The significant difference between these two sacred spaces appears to be the domain of cultural action. The [former] represents public sacred space, while the [latter] represents the private [Kunin 1998: 125].

Once again folk Islam practices played an important role, but with this case in point, in the management of the sacred space of the Cape Muslim traditional home and in shaping the degree of the involvement of women during the early part of the twentieth century. The *Gadat*, comprising of recitations of praises of God, supplications and various prayers, gathering was held in a private home and was an opportune occasion at which family, friends and neighbors assembled. Due to the attendance of these different groups of people the men, who conducted the recitations, were located in a room separate from the women. Like in the instance of the sacred festival prayers women usually played an integral role in the preparation of the sacred gathering at the home. In the case of the *Gadat*, it was frequently convened at a different home every

Thursday evening, the eve of the sacred Friday congregational prayer [Davids 1980: 27]. In addition to the provisions made for certain sacred gatherings and the performance of the sacred *Gadat* women, more than men, regularly observed the sacred compulsory daily prayers in the private domain, which conferred upon the home its sacrality.

In the beginning of the twentieth century the disparity between wealthy and poorer Jewish immigrants in the Cape was particularly manifest with the food that they consumed at traditional meals on the eve of Sabbath or *Shabbat* in their private domains. Although the meals of the poorer Jews were substantial those of the wealthier were more expensive [Feldman 1984: 23]. Women usually discharged central duties in the preparation of the meals for the sacred *Shabbat* celebration, notwithstanding, the sacred duty of lighting of the candles and their preparations for the High Holy Days. These sacred celebrations were not only suitable for gathering the family, but also a means of reinforcing their Jewish identity from within the traditional home. Moreover, women were probably obliged to perform their sacred daily and other prayers in the private sphere of the home, since the nature of the traditional woman is private as opposed to the public nature of a man, who would engage in public or congregation prayer, which is time-dependent and limited to the man solely. Hence as sacred celebrations as well as preparations and prayers especially of women were conducted in the privacy of the home, it was accorded a high degree of sacrality.

Within the Muslim traditional home family life was essentially extended where the father acted as the powerful patriarch and the servile mother attended to the needs of the family. It was traditional for the children to reside with their parents for a few years after their marriage⁵⁸ and in this occurrence the married couple took up residence with either the husband or the wife's family. Thus marriage was not merely a union of the couple, but of the families where kinship ties became widely extended and included blood as well as marriage relations. The institution of marriage was predominantly monogamous and polygyny the exception to the status quo. Whilst Muslim marriages and everything emerging thereof were not legally recognized in terms of South African law due to its polygynous nature, i.e. they were considered to

⁵⁸ For a survey of Muslim Personal Law (MPL) during the Dutch interlude at the Cape Colony; Islam and MPL during the Batavian interlude; and judicial responses to the legal status of Muslim marriages during the 1800's as well as 1900's, see Shouket Alli's unpublished paper, "Historical Excurses of Muslim Personal Law in Colonial Cape", delivered at the Third Symposium of the Islamic Law in Africa Project, Cape Town, 11-14 March, 2002.

be contrary to accepted customs and usages that are deemed as morally binding upon all members of society (*contra bonos mores*),⁵⁹ even though, they could be *de facto* monogamous marriages, very few couples entered into secular or common law marriages after undergoing their religious nuptials. Granted that most marriages were fairly stable as well as monogamous women were still subordinate within marriage, since they could be exposed to the possibility of non support; making futile contributions to the household; and arbitrary divorce or *talaq* from their recalcitrant husbands. Amongst the children, who emanated from marriages in the mid 1900's secular education specifically started to assume a greater value in contrast to pre 1940's when it was regarded as detrimental to the religious identity of the community, since there was the apprehension that children would convert to Christianity if they had too much exposure to it. At that time the education limit was standard six after which the young man was apprenticed in the father's trade, while the young woman was chiefly trained in the private terrain to be a good housewife and occasionally she sought employment as a seamstress in a factory [Davids 1980: 27-9]. Even though the extended family was patriarchal it was also either patrilocal or matrilocal and in this way traditional gendered family values were perpetuated within the domestic sphere where women were oft exposed to subordination. Seemingly, the view that the place of women was limited to the home gradually shifted as women intermittently searched for work in the public domain.

Family life within the Jewish traditional home was characterized as extended, i.e. often the grandparents and other relatives shared a single private terrain. It could also be described as patriarchal and hierarchical, since in the case where the father of the family died the grandfather (or the father's father) assumed the role of the father, while the eldest daughter undertook the familial duties of the mother due to the mother falling ill. However, in some instances widows would solely have to attend to the needs of and support their families by engaging in both duties of the mother and father. The mother allegedly had few interests beyond the domestic terrain, her first duty being to produce and bring up children in a congenial setting for shaping their character.⁶⁰ In relation to the traditional family prospective marriage⁶¹ was often

⁵⁹ See *Ismail v Ismail* 1983 (1) SA 1006 (A).

⁶⁰ For a depiction of the creation of a Jewish identity and question of gender attitudes in the early Jewish community, see Edna Bradlow's, "Beyond the Ghetto: Lionel Goldsmid, The South African Jewish Chronicle and the Creation of a South African Jewish Identity in the Early Twentieth Century", in *Jewish Affairs*, Vol. 53 No. 1, Autumn 1998, 9-17.

regarded as unfeasible for the children without adequate financial stability and thus the marriages that were solemnized appear to have been stable in spite of the fact that divorce was not unusual. In 1910, for example, the Cape Provincial Court heard a case where divorce action by a woman was brought against her husband who deserted his wife (*agunah*) without giving her an *a priori* Jewish divorce decree or *get* [Feldman 1984: 50-2]. Often the husband could use the *get* requirement as a bargaining tool in order to acquire concessions regarding child custody, access and monetary support amongst other, after all, the man was normally in a better bargaining position when negotiating settlement agreements. In that scenario the woman was still traditionally married in terms of Jewish law or *halakhah* and hence any other marriage on her part was considered adulterous where the children borne thereof deemed illegitimate (*mamzerim*), albeit, divorced in terms of common law. Here Jewish marriages were legally recognized where spouses entered into a contract or *ketubah*, to the effect that they agree to marry and live according to the laws of Moses as well as Israel, occasionally together with a common law contract, in the event of non-compliance to *halakhah*, e.g. the husband's refusal to issue a *get* to the woman, while common law would not compel the husband to appear before a *bet din*.⁶² Many women also worked prior to marriage, but thereafter remained in the home and under situations of necessity they would supplement the family income by selling goods or rendering services from home [Ibid.: 29]. Nevertheless, the view that the women's only role was in the private sphere and not in the workplace was steadily shifting in lieu of the example when "after investigating a case of non-support, the women reported to the men that assistance to the family in question was not recommended because, although, it was a most deserving case the wife 'should get a job so that she can earn independently of her husband'" [Schrire 1993: 87]. Consequently, as secular education was regarded more as a means of attaining mobility as well as financial stability required for marriage it replaced religious education in priority of importance, since most young men forfeited the study of the Torah after their celebration marking the transition to adulthood or *bar mitzvah* at the age of thirteen. Frequently many

⁶¹ For details of the first marriage celebrated according to Jewish rites at the Cape, see Louis Herrmann's, *The Cape Town Hebrew Congregation 1841-1941: A Centenary History*, (Cape Town: Cape Town Hebrew Congregation, 1941), 14.

⁶² *Levy v Levy* 1991 3 SA 614 (A). Similarly, for a delineation of the problems associated with the issuance of a *prima facie* divorce decree by the noncompliant husband, who abuses the divorce negotiations to attain favourable property settlements in a South African context, see the short story of Sandra Braude's, "The Get", in *Jewish Affairs*, Vol. 48 No. 2, Winter 1993, 55-61.

young men and women continued their schooling with professional courses, e.g. insurance, bookkeeping, shorthand and typing in order to improve their position [Feldman 1984: 60-2]. Evidently then, although, the Jewish family structure as well as marriage in the domestic terrain was patriarchal and hierarchical, together with the discrimination exhibited against women via divorce, there was still a steady change in the outlook of gender roles, through the involvement of women in secular education and the workplace in the public domain, out of financial necessity.

Presently within the Muslim traditional home the mother is considered as the queen in her traditional sacred domain, even though, she and her husband work together to maintain the household. Rita Suliman, a Muslim working mother, affirms: "Islamic women were given a lot of equality within the family, where the women were the leaders and responsible for cohesion in the family unit" within the private sphere.⁶³ In terms traditional women the home is an environment where the family performs their daily prayers or *salawat* and other rituals like eating together thereby giving it a level of sacrality. Each member of the family also has their own sacred space within the private terrain. Mothers usually teach their children how to live as Muslims, e.g. upholding good relationships with family, elders, neighbors, poor and others. Parents also attempt to use the Muslim radio stations as a means to create an Islamic environment within the private confines of the home. The wife normally assumes the role of a teacher (*mudarrisah*), since she spends more time with the children in comparison to the father, albeit, the fact that the mother is also engaged in the job market. As she additionally has to perform household duties her teaching is often innovative particularly in view of a culture where children are rarely told why they should do things. Ideally the husband and wife are each other's company within the consciousness of faith, and they ought to maintain a relationship based on values and trust where both have unified as well as independent sacred space and time within the ambit of respecting the others' needs. However, there is a serious concern related to women who are non-Muslim where the sacrality of the home and marriage is supposedly reduced especially in view of an increasing divorce rate.⁶⁴ Here cognizance

⁶³ See Kim Robinson's, "Juggling Religion and Changing Society: Women are Having to Adapt their Roles to Suit Modern Society, Others are Returning to More Orthodox Traditions", in *Saturday Argus*, 13/14 November 1999, 25.

⁶⁴ As the largest provider of Islamic counseling in the form of marital counseling the MJC's Social Welfare Department receives about 100 cases a week. With issues relating to marriage the following statistics of divorce, i.e. repudiation of the wife by the husband or *talaq* and dissolution or annulment via judicial decree on the insistence of the wife or *faskh*, were made available: from July 1995 – June 1996 they recorded 367 in the case of the former and 220 in the latter with a total of 587 divorces. See the MJC's, "The Welfare Department's Methods

should be afforded to the fact that the woman is normally in charge of the home despite the absence of the observance of Islamic rituals on her part. Furthermore, due to economic constraints on the family where women cannot move into the public domain, home industries are established thereby breaking down the privacy of the home. With these shifts the man and woman should no longer be conceived of in the ideal Islamic sense even if Muslim marriages and divorces are not recognized. If the roles are reversed should women retain the same proprietary rights within the marriage as the tradition purports? Should maintenance continue post the divorce or *talaq*? Admittedly, traditional men advance that women still have to contend with the extended family in the patrilocal private sphere as well. Family members are growing up, from generation to generation, in families where men are deemed as superior and women inferior, which therefore inculcate an unjust relationship between men and women. Ideally there should be sharing of responsibilities. Nevertheless, when sketching the reality within the Muslim traditional home via marriage the woman is nonetheless viewed as the servile homemaker and man is deemed as the dominant breadwinner as well as the one who admonishes her.

Currently in the Jewish traditional home there is a greater awareness of what marriage is about in terms of the rights and obligations of women in addition to men respectively. Even though their roles have dimmed due to the confusion in relation to secular influences, significant emphasis is still placed on the woman's function as a mother, the center around which a large portion of *halakhah* is built. Sally Leibewitz, a Jewish working mother, asserts: "Orthodox Jewish youngsters are returning to the traditions and cultures of their religion from which their parents have moved away".⁶⁵ Consequently, traditional women claim that courses have recently been introduced where prospective marriage couples attend a marriage enrichment or preparation program. Some women, however, identify more with their work as opposed to the home. As patterns of decision-making vary from family to family decisions are usually shared in the household. Here many of the women who are educated are more vocal and not at all submissive in the private terrain, since this assertiveness would also be prevalent in the commercial public sphere. Apparently, divorce statistics have

of Counselling – And Current Divorce Statistics", in *ad-Da'wah*, Vol. 3 No. 1, December 1996, 5. Comparatively, for the year 2001 they recorded 367 and 248 with a total of 615.

⁶⁵ See Kim Robinson's, "Juggling Religion and Changing Society: Women are Having to Adapt their Roles to Suit Modern Society, Others are Returning to More Orthodox Traditions", in *Saturday Argus*, 13/14 November 1999, 25.

of late therefore become very high even in highly observant families.⁶⁶ Divorce is a gray area where men are seen to exert unequal dominance, not coming to a settlement, although, both parties should agree to the divorce before it is granted and hence the heightened concern about rights and obligations. Where most families decide individually on how they should share rights and obligations few women are normally financially dependent on their spouses, albeit, men are usually the main earners and generally able to fulfill their function of stable provider. Then again, traditional men advance that televisions and other things that distract the religious person from the remembrance of God are widespread within the sacred domain of the home. However, there is an attempt to maintain traditional rituals and values within the private domain. As a non-observant orthodox or traditional community, in terms of practice the Jewish home remains traditional in the Cape, but has a lesser influence on the lives of younger people. In terms of negotiating the sacred space of the home there is normally a collective share in rights, and duties within marriages and these are no different to other marriages. In addition, the rabbi would often play a role in ritual formalities related to marriage and divorce as well as social welfare issues especially in the instance where the congregant of the synagogue has a good relationship with the rabbi. Furthermore, the home as well as family plays a role in the community, but far less than previously due to higher levels of emigration and the diminishing influence of the authoritative extended family in decision making. The tradition also plays very little role in the family with regard to rights and obligations. Unmistakably, the international media has exerted a greater influence in homogenizing basic western values against traditional ones. Secular roles are increasingly adhered to in the community, i.e. roles that are totally westernized and do not retain legal traditional custom.

To overcome the pitfalls of the non-recognition of marriage Muslims have previously forwarded numerous representations toward the former apartheid government in order to secure the recognition of Muslim Personal Law (MPL), but to no avail. However, as the New Constitution of South Africa⁶⁷ includes a provision that does not preclude legislation by the state for the recognition of Muslim marriages

⁶⁶ Relatively, with statistics acquired from the UOS, Cape Town branch, there have been a constant number of divorces or *gittin* over the past three years averaging between 25-32 per year in the Cape Jewish community.

⁶⁷ Constitution Act 108 of 1996.

or any religious personal law,⁶⁸ and in order to enforce an equitable relationship between Muslim men as well as women in the private sphere the South African Law Commission (SALC) sought to investigate the recognition of MPL or particularly Islamic marriages and related matters.⁶⁹ While no legislation has been passed for the recognition of Muslim marriages as yet there have been preliminary landmark court decisions that have further induced the process of recognition.⁷⁰ Subsequently, the Commission has released a draft issue paper⁷¹ and discussion paper containing the draft Islamic Marriages Bill⁷² to facilitate wide public participation through discourse and debate, notwithstanding, the plethora of divergent views in addition to interpretations, mainly of men, as well as politicization of MPL,⁷³ which would somewhat dominate the experiences, and perspectives of women and gendered responses. How will civil legislation and religious law together curtail the prevailing inequities against women within personal status matters through the Islamic Marriages Bill where most of them are concentrated in areas with high illiteracy and economic strife?

⁶⁸ Constitution of the Republic of South Africa ss 9 (3) and (4) and s 15 respectively. For an exposition of the involvement of Muslim Personal Law or MPL in a democratic South Africa, see A. Mohamed & N. Moosa's, "Muslim Personal Law in the Context of Change – 1998", in the *Annual Review of Islam in South Africa (Arisa)*, Vol. 2, 1999.

⁶⁹ The South African Law Commission (SALC) project committee conducting the investigation are: Mr Justice M.S. Navsa (leader of the project committee and member of the Supreme Court of Appeal); Prof N. Moosa (Dean of the Law Faculty at the University of Western Cape); Ms Z. Seedat (member of the commission); Ms F. Mohamed (member of parliament); Dr R.A.M. Salojee (member of the Gauteng Legislature); Mr M.S. Omar (attorney of Durban); Mawlana A.A. Jeena (United 'Ulama Council of South Africa); and Shaykh M.F. Gamieldien (advocate and Islamic law consultant of Cape Town). For a survey of the calls for Muslim Personal Law, see Ebrahim E.I. Moosa's, "The Fate of Muslim Personal Law", in *Arisa*, Vol. 1, 1998; and Muhammad Navsa's unpublished paper, "Lessons Learnt from the Workings of the South African Law Commission's Project Committee on Islamic Marriages", delivered at the Third Symposium in the Islamic Law in Africa Project, Cape Town, 11-14 March 2002.

⁷⁰ Firstly, in *Ryland v Edros* 1996 (2) SA 690 (C), the court awarded Theorayah Edros, the defendant, the arrear maintenance or *nafaqah* for three years and the consolatory gift (*mata'*), since the husband, Moegamat F. Ryland, unjustifiably repudiated her, but the court denied her the equitable share from his estate. For brief details of the case compiled by Edros' legal representative and expert witness, see S. Bosch & Ebrahim E.I. Moosa's, "Muslim Marriage Contracts Enforceable in SA Courts", in *al-Qalam*, Vol. 23 No. 1, January 1997, 5. Additionally, in *Amod v Multilateral Motor Vehicle Accidents Fund* 1999 (4) SA 1319 (A), the court found that the Islamic marriage resulted in the legal duty of Mr Amod to support his wife, Hafiza Amod, and that their relationship, i.e. monogamous marriage, deserved recognition and protection at common law. For Muslim responses to and perspectives on the outcome of the Amod case, see M.F. Gamieldien & S. Alli's, "Amod Judgement a Letdown for Muslims", in *Muslim Views*, Vol. 13 No. 12, October 1999, 4; and MJC's, "Muslim Personal Law", in *ad-Da'wah*, Vol. 6 No. 6, October 1999, 1.

⁷¹ SALC, Committee Paper 15, Project 59, "Islamic Marriages and Related Matters", Draft Issue Paper, March 2000. For a gendered analysis of the Issue Paper, see Fatima Seedat's, "Determining the Application of a System of Muslim Personal Law in South Africa", in *Arisa*, Vol. 3, 2000.

⁷² SALC, Committee Paper 964, Project 59, "Islamic Marriages and Related Matters", Draft Discussion Paper, November 2001. For the primary features of the Islamic Marriages Bill, see Eshaam Palmer's, "Legislation of Islamic Marriages", *Boorhaanol Islam*, Vol. 37 No. 2, April 2002, 21-3.

⁷³ See Shouket Alli's, "Serious Muslim Personal Law Challenges for 'Ulama in SA", in *Muslim Views*, Vol. 16 No. 6, May 2002, 13.

Considering some of the earlier impediments with Jewish divorces in the dominant secular law setting where the *get* ensued the common law divorce,⁷⁴ numerous parties engaged in various activities and processes with the South African governments, which commenced in 1989 and culminated in 1996 to overcome the compounded difficulties.⁷⁵ The development was highlighted with the project committee investigation of Jewish divorces⁷⁶ under the guidance of the SALC that resulted in the production of a working paper containing the Draft Bill⁷⁷ and report including the Bill proposed by the commission.⁷⁸ Subsequently, the Divorce Amendment Act 95 of 1996 section 5A was inserted as part of the entire Divorce Act, and amongst other stipulated that any religious barrier to remarriage be removed⁷⁹ and therefore the absence of a *get* would be judged a “barrier to remarriage”.⁸⁰ Although civil legislation has considerably reduced the subordination of women in matters of divorce, particularly the *agunah*,⁸¹ women still remain inferior and open to continued discrimination. They and not men, who have children from an adulterous relationship, while the marriage subsists, their (or women’s) children alone “are designated *mamzerim* and are doomed to exclusion from the Community of Israel for ten generations, a specification that is accepted to mean ‘for ever’”.⁸² Even after the common law, and religious divorce these would remain a “barrier” for women and her children “for ever”, notwithstanding, that women are still intimidated to initiate a divorce where they have been deserted.

⁷⁴ Divorce Act 70 of 1979.

⁷⁵ For a delineation of the process from 1989 – 1996, see Cyril K. Harris’, “Getting the Get Bill”, in *Jewish Affairs*, Vol. 55 No. 2, Winter 2000, 38-9.

⁷⁶ The SALC Project Committee comprised of: Chief Rabbi C.K. Harris (UOS of South Africa); Rabbi M.A. Kurstag (Beth Din); Rabbi Dr D. Isaacs (Beth Din); Rabbi A.E. Assabi (formerly of the Union of Progressive Judaism); Rabbi M.D. Standfield (Chairman of the South African Association of Progressive Rabbis); Prof J. Sinclair (at that time deputy Vice-Chancellor of the University of Witwatersrand or Wits); Mr N. Segal (Advocate); Mr D. Shapiro (Attorney); and Mrs A. Harris (formerly at School of Law, Wits).

⁷⁷ SALC, Working Paper 45, Project 76, “Jewish Divorces”, 27 November 1992.

⁷⁸ SALC, Project 76, “Jewish Divorces”, Report, October 1994.

⁷⁹ Located in the debate of whether the court has the discretion to refuse a decree of divorce, see D.S.P. Cronje & J. Heaton’s, *South African Family Law*, (Cape Town: Butterworths, 1999), 146-48. Also see the first reported case on section 5A in *Amar v Amar* 1999 (2) All SA 376 (W).

⁸⁰ “[I]t is absolutely vital that they (i.e. the man and woman) sever the bonds not just civilly and legally, but also in terms of Jewish religious requirement.” See Dennis Isaacs’, “The Beth Din – Court of Law”, in *Jewish Affairs*, Vol. 55 No. 2, Winter 2000, 40-4.

⁸¹ See other issues relating to the public and personal status of women in diminishing their inferiority and discrimination, in Ann Harris’, “Women in Jewish Law – Changing the Image”, in *Jewish Affairs*, Vol. 55 No. 3, Spring 2000, 35-7; and Jocelyn Hellig’s, “The Feminist Challenge to Halachah”, in *Jewish Affairs*, Vol. 55 No. 3, Spring 2000, 38-44.

⁸² For possible gendered ramifications of women living in a post-apartheid South Africa, see Azila T. Reisenberger’s, “The Status of Jewish Women – A Brief Polemic”, in *Jewish Affairs*, Vol. 53 No. 4, Summer 1998, 50-1.

Women in the Cape Traditional Muslim and Jewish Home

[Traditional religion] regards the home as the unit of society. The sum total of human happiness under ordinary circumstances is determined by the happiness which prevails in the home and the stability in the home is the index of the stability in society...As the male and female together make a home, it is on RIGHT UNDERSTANDING OF THEIR POSITION AND RELATIONS that the happiness and stability that the home depends [Moerat 1997: 34].

In negotiating the relationship between men and women within the private sphere traditional Muslim women believe that mutual consent and agreement on issues in marriage are important. With regard to polygamy, for example, the husband must discuss with his wife about a second wife even if she has not stipulated it and drafted a proviso in the contract. Mutual consultation or *shura* as a basis for happiness and stability should be prevalent in all affairs,⁸³ while consent of both the man as well as women should be required in all private matters relating to marriage and divorce. Additionally, traditional men claim that the practice of *shura* differs from home to home, i.e. autocracy v *shura*. There is a notable difference between Malay and Indian Muslim families, since the latter often conduct their personal matters along the line of *shura*. Consequently, it is opined that the divorce rate is less within that community.

Traditional Jewish women contend that, although, mutual consultation is almost universal, it hinges on the personalities and competence of the man as well as woman residing together in the private domain in their quest to maintain happiness, and stability and where coercion towards the woman is always discouraged. Traditional men, in turn, maintain that the relationship between men and women is governed along the anti-nuptial contract (ANC) that should advance nothing except mutual consultation. Although no contract or *kinyan* in Jewish law is ideally bilateral where the man is the initiator, in reality there is seldom any unilateral decision in the areas of marriage and divorce, e.g. while the man could execute the divorce unilaterally both parties must still consent to its execution, since the divorce is governed by civil as well as religious requirements. The concept of arranged marriages is also rarely found.

⁸³ See [Q 42: 38].

As a protective mechanism incorporated into the process of *shura* traditional Muslim women advance that the drafting of a standard contract or '*aqd*' should be implemented, if one considers the Cape context where contracts are seldom drafted; where some men practice polygamy and unjustly support or *nafaqah* their first wife; where men in monogamous relationships neglect their responsibility of *nafaqah*; and where women are vulnerable to arbitrary divorce by recalcitrant men. The '*aqd*' should thus be used more widespread in the community via the promotion of the religious leader or *imam*, who usually officiates and contracts the marriage. Its contents would have to be explained to the women and in this respect the role of the *imam* as an educator would be important. Furthermore, traditional men add that a basic contract would automatically have to be signed by the respective parties, but they have the option of adding whatever tenable stipulations they desire for their own security and safety. The nature of such a contract should be based on equity as well as the total agreement of both parties as to its terms and conditions before it could be deemed as valid in terms of the *shari'ah* as well as by secular law where it could be enforced in the local courts.⁸⁴

For Jewish traditional women the contract specific to marriage or *ketubah* protects the women's rights during marriage and helps to maintain her in the case of divorce.⁸⁵ However, with women inserting stipulations like: to choose to work; to maintain their own earnings; and to stipulate further safeguards against arbitrary divorce as well as the *agunah* in the *ketubah*, these are rarely performed in the South African context. Conversely, traditional men declare that the ANC normally accompanies the *ketubah* and will primarily govern the proprietary rights during marriage as well as the termination thereof. The *ketubah* used in the South African context is standard and only refers to issues of divorce, but does not independently play a significant role at dissolution of the marriage, since the ANC should also be taken into account. There are thus no insertions in the *ketubah* and the contracting thereof is only ritualistic and symbolic.⁸⁶

⁸⁴ Also see Suraya Bosch & Ebrahim E.I. Moosa's, "Muslim Marriage Contracts Enforceable in SA Courts", in *al-Qalam*, Vol. 23 No. 1, January 1997, 5; Eshaam Palmer's, "The Contract of Marriage in Islam", in *Boorhaanol Islam*, Vol. 33 No. 1, January 1998, 18-20; and Suleman Dangor's, "The Marriage Contract", in *Muslim Views*, Vol. 14 No. 8, July 2000, 10.

⁸⁵ For an enumeration of the essential parts of the marriage ceremony, see Jocelyn Hellig's, "Images of the Bride in Judaism", in *Jewish Affairs*, Vol. 48 No. 2, Winter 1993, 13-9.

⁸⁶ Also see the section of "Marriages" of Dennis Isaacs', in "The Beth Din – Court of Law", in *Jewish Affairs*, Vol. 55 No. 2, Winter 2000, 43.

While the dowry/dower or *mahr* that the woman receives at the inception of the marriage becomes her sole property Muslim traditional women are saddened at the small amount, which a woman usually receives in the Cape context, since it is too insignificant to be added to her estate and does not help her at divorce, unless she included certain stipulations of security into the unpopular contract. Women should be encouraged to opt for *mahr* in the form of a postponement of the balance of dowry to be paid on divorce and not opt for prompt dowry. Greater credence should be given to the *mahr*, since it is one of the fundamentals for the contract of marriage and has an important role to play. It is noteworthy that the man should render the woman sole owner of the property or *mahr* so that she does not begin her marriage as an economically dependent person. It is also contended that an equitable amount of the *mahr* should be paid over an extended period especially when considering the value thereof, since it defeats its purpose when its value is negligible in economic terms. Similarly, traditional men claim that prompt dowry should become optional while deferred dowry should become normative. Hence, even though, the man has the duration of the marriage to pay the *mahr* or its balance where part of the payment should be agreed upon, the balance could be paid in installments during the course of the marriage. Significantly, men should be educated as well as encouraged to pay an amount that is reasonable and equitable, primarily in order to succeed in its objective, to render the woman economically stable as well as independent.⁸⁷

Where the dowry or *nedunyah* is not that significant as regards to the *kinyan* of marriage traditional Jewish women affirm that in most marriages it plays little part, although, a certain sum of money is pledged in the *ketubah* as a safeguard in the case of divorce. Hence the dowry does not receive that much concern in the South African context, even though, it upheld a visible position in Biblical and rabbinic times. Conversely, traditional men also maintain that there is no dowry at the inception of the marriage, during the marriage or at the termination thereof.

In fulfilling the fundamental obligation of maintenance or *nafaqah* traditional Muslim women bring notice to the increasing problem of the non-payment of *nafaqah* for women and children by Muslim men in the Cape. This is prevalent despite the leeway that Islamic law affords men in that *nafaqah* should comply with the social, and economic status of the partners and the customs of the community in which they

⁸⁷ Also see Eshaam Palmer's, "Role of the Mahr in a Contract", in *Boorhaanol Islam*, Vol. 32 No. 2, April 1997, 18-21.

reside. Often women find themselves in a position where men are unable to support the women, and children and they (or women) then maintain the household, although, they are not required to take up employment. In such a scenario men should be obligated to reimburse the women when they are by the means to do so, after all women could claim arrear *nafaqah* in the local secular courts, since contractual obligations relating to *de facto* monogamous marriages are enforceable.⁸⁸ Where a woman works solely as in the aforementioned case or supplements the income of the man, since it is too low to provide for a relatively acceptable standard of living, any income that she earns as a result of her employment, becomes her property that she inevitably would use to support the family. However, there are also many women that mainly uphold the sacred domain of the home where they rear the children as well as attend to non-obligatory household duties. These women consider their non-obligatory duties as being part of their endeavor to maintain stability and happiness within the private terrain, while they do not sought compensation for these and they do not deem the above as non-obligatory *per se*. In addition, traditional men vindicate that a woman, who is adequately supported by a man and he sufficiently provides for the family as well as upkeep of the domestic sphere, often reciprocates him by performing non-obligatory duties, albeit, not compelled to carry it out. Whilst the reality reflects the contrary the *shari'ah* places so much emphasis on the *nafaqah* of women that the same level of maintenance persists during the waiting period or *'iddah* and is continued in this way for a maximum period of two years if the children are suckled by them. Here arrear *nafaqah* could also be claimed if it was not paid. Even though the Qur'an is emphatic about the provisions for widows in [Q 2: 240], i.e. a year's *nafaqah* and residence, the debate on *nafaqah* post-divorce or after the period of pregnancy as well as suckling continues unabated with pending legislation of Islamic marriages and related matters.⁸⁹

For traditional Jewish women negotiation is essential in matters pertaining to maintenance particularly after separation when the man has to support the woman and children until she remarries. During the term of marriage the financial responsibility in terms of religious ideals lies squarely on the man. However, the provisions of the

⁸⁸ See *Ryland v Edros* 1996 (2) SA 690 (C).

⁸⁹ Also see Eshaam Palmer's, "What the Shariah Says About Nafaqah (Maintenance)", in *Boorhaanol Islam*, Vol. 32 No. 3, July 1997, 18-21. For an exposition on *nafaqah* post-divorce, a novel debate in South Africa, see Najma Moosa & Shaheena Karbanee's unpublished paper, "An Exploration of Mata'a Maintenance in Anticipation of the Recognition of Muslim Marriages in South Africa: (Re) Opening a Veritable Pandora's Box?", delivered at the Third Symposium of the Islamic Law in Africa Project, Cape Town, 11-14 March 2002.

legal secular courts set out most financial arrangements at divorce. While women do own personal property, few would live in a contracted marriage governed by community of property. Manifestly and publicly, women do not act dependently in social, academic or commercial spheres. Most women would thus exhibit the same independent aspirations in the business or professional components of life. Nevertheless, for those women in the Cape who chiefly or additionally uphold the sacred space of the home the Medieval Codes up to the present stress the need for the man to trust, cherish and honor the woman both emotionally and practically. As there are many women who maintain the private domain their wishes and sensitivities are always to be regarded with due respect. In communities outside of Israel, like in the Cape, these are difficult to enforce. Consequently, traditional men allege that in very observant communities in the Cape, social pressure or ostracism (of the errant spouse) may often affect a response from an irresponsible partner. With regard to enforcement mechanisms most religious marriages are followed by secular ones and similarly in divorce, the latter by the former, where full alimony would hence be paid after the separation until the divorced woman remarries. Secular courts via the ANC would usually determine the degree of maintenance and support within marriage, since sole adherence to the tradition seldom exists. Secular courts even determine the extent of financial responsibility towards the divorced woman and children. The secular system of property also dominates. Despite the fact that problems relating to the private domain, like those associated with marriage, divorce and personal property would normally be resolved in secular courts, these still subsist within the Jewish community.

As one of the reasons for the breakdown of marriages in the Cape Muslim community is the failure of men to *nafaqah* their wives and children it is in this regard that traditional Muslim women disclose the high rate of divorce. This is a usually concomitant problem with the primary cause of divorce at the MJC for example is cited as extramarital affairs. While men regularly initiate as well as pronounce the divorce or *talaq* few women would request it, after the marriage has broken down irretrievably, so that the men could pronounce it and not unreasonably hold them in unhappy relationships. However, amidst the high divorce rate there has been an increase in the number of divorces initiated by women via annulment of the marriage or *faskh*. Frequently the waiting period or *'iddah* that ensues the divorce is trivialized, though it should be deemed as a period during which the divorced couple could reconcile and have a chance to reflect on their decision to separate with the possibility

of resurrecting the marriage. Furthermore, traditional men mention that, even though, *talaq* is administratively easier than a secular divorce local practice is fraught with inequities as in the case of the recalcitrant man. Nevertheless, it has severe ramifications for both parties, but has an especially distressing effect on the children born out of the marriage. In this respect the *shari'ah* makes provision for a "cooling off" (or *'iddah*) period during which the parties can patiently review their actions, whilst many couples attempt to hasten the process. Some also undergo traumatic experiences during the transitional period from one status to another, i.e. from a status of being married to one of being single, which ideally should be a gradual process to allow the parties to adapt to their new status. In anticipation of the legislation of Muslim marriages an arbitration board dealing with such matters related to divorce amongst other should be established to counsel and advise parties who have the intention of separation before the divorce case goes to the secular courts as well as during the *'iddah* period, since such a board would save time in these matters and the process would be less expensive.⁹⁰

In matters relating to separation Jewish traditional women maintain that both the man and woman must agree on divorce with the man initiating the process. However, prior to the issuance of the divorce decree or *get*, efforts are usually made towards reconciliation (not post). These are sometimes suggested to the parties by the rabbi who presides over the synagogue that they frequent. The traditional men further affirm that divorce is either by mutual consent or a South African legal issue that is negotiated in the secular courts. Religious tribunals or arbitration boards play no role in divorce matters at the Cape. While no tribunals prevail, depending on the relationship that the congregant has with a particular rabbi at the family synagogue, the man and woman would sometimes approach the rabbi for counseling at the initiative of the man. Where there is the irretrievable breakdown of the marriage a divorce settlement would first be sought in the secular court followed by a religious divorce at the *bet din*.⁹¹ While legislation has considerably reduced the problems related to religious divorce some subordination still persists in the areas of the *agunah* and *mamzerim*.

⁹⁰ For the interrelated subjects of *talaq* and *'iddah*, see Eshaam Palmer's, "Talaq and the Shariah", in *Boorhaanol Islam*, Vol. 32 No. 4, November 1997, 18-23; and "Iddah: Its Significance Within the Shariah", in *Boorhaanol Islam*, Vol. 32 No. 1, February 1997, 17-19.

⁹¹ See Divorce Amendment Act 95 of 1996.

Traditional Muslim women admit that the *shari'ah* allows polygamy or polygyny neither proscribing nor enjoining it and is evident amongst the Cape Muslim community where it has become a major community problem, while the broader community deem it as an exception. An exception that has been taken for granted by some and out of context by the abusers, who attempt to justify the prejudiced demands of those who regard women as inferior to men. Although, permission to marry more than one wife was granted without being ordained it was aimed at fulfilling a social objective when required in the community, e.g. the context of the verse revealed for the permission of polygamy [Q 4: 4], where 10% of the Muslim fighters died in the Battle of Uhud during the Prophetic period, gave rise to a social concern for the protection of widows and orphans based on equity. Since such a social context is not in vogue at present and women are generally not even treated equitably within monogamous relationships, in a context with growing Aids victims and where individuals should be protected within monogamous relationships, monogamy should be ordained while polygyny temporarily suspended. Alternatively, traditional men contend that polygyny remains an accepted facet of the *shari'ah* where men could marry a maximum of 4 women concurrently under specific conditions, *inter alia*, that the social or humanitarian conditions prevail and that the women should be treated equitably in all aspects. Nevertheless, there should be stricter control on the man to marry more than one woman where the required conditions are met. Here consultation with and consent of the first woman to marry a subsequent one should become an added condition, since this would, to some extent, ensure that the first marriage not be disrupted or broken down. Once again an arbitration board would play an important role in counseling and advising the relevant persons.⁹²

Matters relating to divorce continue to plague the Jewish community and traditional women confirm that this is particularly evident in the case where a woman whose husband refuses to agree to a divorce and where the local secular courts and *bet din* have no force to counsel him to do so leaves her unable to remarry and hanging or *agunah*. As tradition allows the man alone to initiate contracts like divorce many women feel inhibited to approach the secular courts to commence the divorce process. In addition, where the man disappears without a trace, the woman is then unable to marry unless the *bet din* finds circumstances such that the husband is presumed to be

⁹² Also see Eshaam Palmer's, "Polygamy: An Islamic Perspective", in *Boorhaanol Islam*, Vol. 33 No. 3, July 1998, 14-20.

dead without absolute proof and thus the widow is able to remarry. After thorough investigation the *bet din* may occasionally resolve these problems. It is noteworthy that many religious counsels in Israel now have special female advocates, who advise the men. In most instances these men, who decide on problems germane to personal status constitute the majority within the *batel din* (pl. of *bet din*), with the assistance of the women, arrive at a just and fair resolution to these legal dilemmas. With the intervention of these women abused women are assisted to disclose the truth about their intimate relationships and so be aided to deal with them effectively. The *ketubah* should also serve as a protection to women and forms part of modern suggestions to somewhat alleviate the subordinate status of women. Thus they should include the addition of clauses to cover situations that may arise (e.g. recalcitrant husband in case of a pending divorce) in an attempt to bypass the traditional male prerogatives. Conversely, traditional men acknowledge that the *agunah* remains somewhat of a problem despite South African legislation, since the Divorce Act can only be effective if both parties fully comply and approach the courts. The role of the *bet din* is minimal, since the community relies mostly on the secular courts even in situations of non-compliance. The solution to the problem of the *agunah* could well be the enforcement by the secular courts of the *prima facie* contractual agreement that both parties entered into at the inception of the marriage. Here the Jewish husband committed himself in the *ketubah* at the time of the wedding to abide by the “Laws of Moses and Israel”. Not delivering a *get* when directed by the *bet din* to do so should be considered by the secular court as a breach of the man’s agreement to abide by the “Laws of Moses and Israel”. Consequently, the secular court could employ the legal means at their disposal to force the husband to abide by his contractual agreement.⁹³

While awaiting legislation on Islamic marriages and related matters Muslim traditional women affirm the central role of the *imam* who should be a registered marriage officer within the New Bill in order to streamline equitable standards. Furthermore, this would prevent many problems related to organization, i.e. marriages would be administered under a single legal body leading to a greater degree of uniformity. In addition, traditional men advance that compulsory marriage enrichment courses should prepare prospective spouses and educate them in the New Bill. As *imams* would probably communicate these courses they should be reasonably

⁹³ Also see the section on “The Get” in Dennis Isaacs’, “The Beth Din – Court of Law”, in *Jewish Affairs*, Vol. 55 No. 2, Winter 2000, 41-2.

compensated in order to allow proper education in MPL and the New Bill. The registered *imam* would continue to maintain central functions of education in MPL, contracting marriages and social welfare with regard to personal status matters.

Traditional Jewish women state that some rabbis are civil marriage officers. The rabbi does not really have a fixed role. In a marriage, he is not essential, since a commitment publicly proclaimed with 2 male witnesses required for a mandate of judicial action is a valid marriage. However, in a divorce process it is the rabbi or rabbis in the *bet din*, who collectively propel the divorce procedure to its conclusion. In cases where there are uncooperative parties, or multiple marriages or issues of interfaith marital relationships, and the status of children and non-Jewish spouses, tension would normally arise in terms *halakhah* and secular law. The child of a forbidden union, specifically of a woman legally married to a man, who is not her religiously sanctioned husband, has the status of a *mamzerim* and should not marry into the general community for a number of generations. On the contrary, men, who have children outside of marriage and are the cause for the irretrievable breakdown thereof, their children would not have the status of *mamzerim*. However, traditional men assert that where a divorce is not legally possible (i.e. either the spouse refuses, in this case the man, or the death of the man cannot be confirmed), a woman then has children either outside of the religious marriage or within a secular marriage and such is the dilemma of the children's status. The rabbi in such instances portrays the role of a religious functionary and depending on the relationship the congregant would attend to social-welfare as well as legal matters relating to marriage and divorce.

As many women are engaged in social welfare work related to personal status matters through community organizations traditional Muslim women as well as men maintain that these organizations would play a major role in the New Bill and a more significant role in the community in acting as a grassroots catalyst. Additionally, since many of the organizations provide the service of marriage counseling they would have to undergo arbitration training specifically shaped around the New Bill in order to train prospective arbitrators. —

With the continued involvement of women in social welfare work traditional Jewish women and men consider the input of social welfare agencies with regard to personal status matters as valuable. Where a problem case would arise Jewish welfare bodies in the Cape (or the Jewish Community Services) could investigate the matter and make recommendations to rabbis and/or members of the *bet din* particularly in

cases of complex divorce issues, custody of children, visitation rights, etc. These could well be taken into account together with medical, psychiatric or psychological reports, which would only add to resolving the case holistically.

Conclusion

By analyzing the points of commonality between Cape traditional Muslims and Jews in the public as well as private sacred spheres, which were strategically extrapolated from the past and in the present, these could form the foundation for local gendered discourse as well as a future relationship, between local Muslims and Jews, of common interest where the one honestly understands, appreciates and tolerates the other. Here the position of women vis-à-vis their relationship with men in the traditional mosque, synagogue and home was of paramount concern coupled with the quest for gender equity, even though these might be vindicated via diverse genderized perceptions.

Historically Cape Muslims in mosques by way of the participation of women in popular Islam practices gave women a sense of power over the main terrain of the public sacred space as opposed to the tradition that allotted the power to men alone. It is noticeable that, although, a great deal has been written about the activities in and around the *Awwal* Mosque not much has been recorded on the structural or architectural aspects of the first traditional mosque especially those designated for women. Unmistakably then, women were not only involved in and empowered with folk Islam, but partook in Islamic religious education, even though, it was independent of men. They were, furthermore, involved in social welfare obligations, from the public sacred domain, focusing on those weaker segments of the community neglected by men and the *imam*, hence widening their roles in the traditional mosque. Both men and women were also taught as well as empowered in the public sacred confines of the mosque with the anticipation of bridging the widening gulf in knowledge between the sexes, notwithstanding, that the knowledge was a representation of the tradition deconstructed or constructed by men and interpreted via the lenses of men.

For Cape Jews in the past there has been a constant concern about the accommodation of women within the public synagogue particularly in view of their

traditional maintenance of the interior of the sacred domain, albeit, their traditional exclusion from the main terrain and the “Holy of Holies” dominated by men, where knowledge as well as power presides, during congregational worship. Assuredly, though, the participation of women associated with the synagogue in the public sphere via community or philanthropic work was encouraging, since they, who best understand the plight of other women and children, could attend to the distresses of women, and children in the Jewish and broader community. Demonstrably, there was also an earnest attempt to somewhat bridge the gap in religious education between girls and boys: firstly through their joint attendance of the Sabbath afternoon service; secondly with their coeducation on Sundays under the instruction of women in traditional subjects; and finally in the confirmation services for girls and the related celebration like boys, all conducted in the synagogue. Additionally, girls were accommodated at the Jewish public schools that initially accepted boys alone. These were innovative introductions via the deconstruction of the tradition that gave preference to boys over girls given that the former are chiefly associated with the public sacred sanctuary. The institution of the Ladies Guilds was emblematic of the internal organization of all the early synagogues. Noticeably then, there was a shift in the traditional role of women, from one which was passive, to another that was active, in the synagogue in terms of management and activities that were women centered, despite their exclusion from the quorum necessary for congregational prayer or *minyan*; the main domain close to the “Holy of Holies” in the synagogue; and the ordination as rabbis.

Presently during Cape Muslim attendance in the sacred public domain of the mosque the sexes are separated. If adult education programs are held women are either seated on the sides or the back of the main section of the mosque and during congregational prayers they are located in a completely separate space. This space is either on the upper level overlooking the main section or an enclosed area situated separately at the back of the mosque. As women are located on the periphery their role in the establishment and management of mosques is also minimal particularly in matters of leadership and administration, but they continue to be foremost in: fundraising for mosques; preparing for special evening commemorations or Big Nights; and relieving the plight of the indigent, women and children in the community via the numerous Ladies Councils attached to the various mosque committees. However, very few hold positions on the executive committee of mosques. In

addition, they play a noticeable role in the education of the children either at independent traditional *madaris* or those attached to the mosque or public schools. There were also examples of women who made a difference through their enduring dedication as well as zealous will to bring about changes in the community and public domain at large. They were seldom detracted by any constructed traditional boundaries, and they are unquestionably women to be remembered and emulated, since they along with many other (or all) women maintain an intrinsic part of “history” where “her story” is equally important as “his story”.

Currently in Cape Jewish public sacred space, in the case of the *shiurim*, women and men are normally seated separately on the same level in the main domain as opposed to occasions of congregational prayer or services where women are seated in the Ladies Gallery, where they can still be viewed by men from below in the main terrain and vice versa, or they are seated at the rear of the main level divided by a partial *mechitzah*. Regardless of the trend set by the Mother Congregation very few women apparently serve on synagogue executive committees and in those cases where they are members they are often ineffective. The ladies of the Guilds, nevertheless, are actively involved in the education of children and welfare work in the broader public sphere. Women are generally also dynamically engaged in teaching at religious schools that are either independent or attached to a synagogue and public schools. Additionally, exemplary women have not only displayed their leadership capability, but also the ability to be catalysts for change in an environment that is more gender sensitive and more protective of minority groups. By contributing more toward the upkeep of the broader public domain, as opposed to the constructed restrictive traditional sacred terrain, they have created a new chapter of “her story” as part of the sum of “history”.

Historically in the Cape Muslim private domain the provisions made for certain sacred gatherings and the performance of the sacred *Gadat*, while women, more than men, regularly observed the sacred compulsory daily prayers in the private terrain conferred upon the home its sacrality. Even though the extended family in the private sphere was patriarchal it was also either patrilocal or matrilocal and in this way traditional gendered family values were perpetuated within the domestic sphere where women were oft exposed to subordination. The institution of marriage was predominantly monogamous and polygyny the exception to the status quo. Whilst Muslim marriages and everything emerging thereof were not legally recognized in

terms of South African law due to its polygynous nature, i.e. they were *contra bonos mores*, they could be *de facto* monogamous marriages as well. Very few couples, though, entered into secular or common law marriages after undergoing their religious nuptials. Granted that most marriages were fairly stable as well as monogamous women were still inferior within marriage, since they could be exposed to the possibility of non support; making futile contributions to the household; and arbitrary divorce or *talaq* from their recalcitrant husbands. Seemingly, the view that the place of women was limited to the home gradually shifted as women occasionally searched for work in the public domain.

In the past, within Cape Jewish private terrain, women were probably obliged to perform their sacred daily and other prayers in the private sphere of the home, since the nature of the traditional woman is private as opposed to the public nature of a man, who would engage in public or congregation prayer, which is time-dependent and limited to the man solely. Hence as sacred celebrations, and preparations and prayers especially of women were conducted in the privacy of the home, it was accorded a high degree of sacrality. Often in terms of personal status matters the husband could use the *get* requirement as a bargaining tool in order to acquire concessions regarding child custody, access and monetary support amongst other, after all, the man was normally in a better bargaining position when negotiating settlement agreements. In that scenario the woman was still traditionally married in terms of *halakhah* and hence any other marriage on her part was considered adulterous where the children borne thereof deemed *mamzerim*, albeit, divorced in terms of common law. Here Jewish marriages were legally recognized where spouses entered into a *ketubah* to the effect that they agree to marry, and live according to the Laws of Moses and Israel. Occasionally the marriage was contracted together with a common law contract in the event of non-compliance to *halakhah*, e.g. the husband's refusal to issue a *get* to the woman, while common law could not initially compel the husband to appear before a *bet din*. Evidently then, although, the Jewish family structure, and marriage in the domestic terrain was patriarchal and hierarchical, together with the discrimination exhibited against women via divorce, there was still a steady change in the outlook of gender roles through the involvement of women in secular education and the workplace in the public domain, out of financial necessity.

Presently in the Cape Muslim private domain family members are growing up, from generation to generation, in sacred homes where men are deemed as superior and

women inferior, which therefore inculcate, and reinforce an unjust relationship between men and women. Additionally, there is a serious concern related to women who are non-Muslim where the sacrality of the home and marriage is supposedly reduced especially in view of an increasing divorce rate. Here cognizance should be afforded to the fact that the woman is normally in charge of the home despite the absence of the observance of Islamic rituals on her part. Furthermore, due to economic constraints on the family, where women cannot move into the public domain, home industries are established thereby breaking down the privacy of the home. With these shifts the man and woman should no longer be conceived of in the ideal Islamic sense even if Muslim marriages and divorces are not recognized. If the roles are reversed: Should women retain the same proprietary rights within the marriage as the tradition purports? Should maintenance continue post the divorce or *talaq*? Nevertheless, when sketching the reality within the Muslim traditional home via marriage the woman is nonetheless viewed as the servile homemaker, and man is deemed as the dominant breadwinner and the one who admonishes her. In order to enforce an equitable relationship the SALC thereby undertook an investigation of Islamic marriages and related matters. Subsequently, the Commission has released a draft issue paper and discussion paper containing the draft Islamic Marriages Bill to facilitate wide public participation through discourse and debate, notwithstanding, the plethora of divergent views in addition to interpretations, mainly of men and politicization of MPL, which would somewhat dominate the experiences, and perspectives of women and gendered responses. How will civil legislation together with religious law curtail the prevailing inequities against women within personal status matters through the Islamic Marriages Bill when most of them (or women) are concentrated in areas with high illiteracy and economic strife?

Currently in Cape Jewish private terrain there is a greater awareness of what marriage is about in terms of the rights and obligations of women in addition to men respectively, especially, since marriages are religiously and secularly (via ANC) contracted. Even though their roles have dimmed due to the confusion in relation to secular influences, significant emphasis is still placed on the woman's function as a mother, the center around which a large portion of *halakhah* is built. Here many of the women who are educated are more vocal and not at all submissive in the sacred home, since this assertiveness would also be prevalent in the commercial public sphere. Apparently, divorce statistics have of late therefore become very high even in highly

observant families. Divorce is a gray area where men are seen to exert unequal dominance, not coming to a settlement, although, both parties should agree to the divorce before it is granted and hence the heightened concern about rights and obligations. Where most families decide individually on how they should share rights and obligations few women are normally financially dependent on their spouses, albeit, men are usually the main earners and generally able to fulfill their function of stable provider. Although civil legislation via the Divorce Amendment Act has considerably reduced the subordination of women in matters of divorce, particularly the *agunah*, women still remain inferior and open to continued discrimination, as they are reluctant to initiate a separation. They and not men, who have children from an adulterous relationship, while the marriage subsists, their children alone “are designated *mamzerim* and are doomed to exclusion from the Community of Israel for ten generations, a specification that is accepted to mean ‘for ever’”. Even after the common law, and religious divorce these specifications would remain a “barrier” for women and her children “for ever”.

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Conclusion

The recurring theme of others or binaries was located in and associated with that which prevails 'outside' as well as 'inside' the traditional religions of Islam and Judaism. By extrapolating and analyzing similarities of binaries the process was demonstrated by contrasting the sacred spaces of traditional Muslims as well as Jews in the general sense and by analyzing the status of women vis-à-vis their interaction with men in Cape traditional sacred domains. The category of gender was utilized as the common denominator within both pairs of binaries as evidenced 'outside' and 'inside' the traditions.

From 'outside' the traditional religions were examined separately in the public mosque and synagogue as well as private home from a general perspective. In the mosque and synagogue, on the one hand, the sacrality of the territories were germane to worship observed therein as well as the separation of sexes where men were included in the main domain, while women excluded. Here women were located on the periphery or rear, whereas men were situated at the center or front in close proximity to the "Holy of Holies" the arena of knowledge and power. Women were not only restricted from maintaining leadership positions within the sacred domain, but also seldom held positions for the official committees of mosques and synagogues. Occasionally, they were involved in the establishment of the sacred terrain and often implicated with the upkeep of the mosque and synagogue, since it was merely an extension of their domestic responsibilities. In the home, on the other hand, where women reigned supreme the sacrality, happiness and stability of the household were negotiated through the management of personal status matters. Even though the consent for marriage by the woman and mutual consultation were deemed requisites, women rarely, if not ever, initiate the contract and remained passive throughout the marriage. This submissiveness was also displayed within divorce where the man usually controlled the fate of the status of the woman, even though women had the option of initiating divorce via judicial intervention.

As of the 'inside' the traditional faiths were mutually interrogated from within the Cape context focusing on the status of women in the Cape mosque and synagogue as well as home. Firstly, with the mosque or synagogue its structure accentuates gendered sacred space in view of the concern for the separate accommodation of

women and their exclusion from the main arena. While women did not hold leadership positions within mosques or synagogues they advanced that the sacred domain would be a different terrain under their leadership, e.g. create a section for children to play. They did, however, from time to time contribute to the establishment as well as maintenance of the sacred terrain and with their abundant involvement in community work attend to the needs of the distressed through the Ladies Councils, and Guilds attached to mosque and synagogue committees. They further contributed to the empowerment, and development of girls and boys via religious education classes, which were either adjacent to the sacred domain or held at private or public schools.

Last of all, in the home the family structure was mostly patriarchal and hierarchical where traditional gendered family values espousing the subordination of women in personal status matters were replicated from generation to generation, while there was a concurrent shift in gender roles with the participation of women in secular education and the workplace. With the reality in the traditional home the woman was still regarded as the servile homemaker, even though she would frequently be employed, whereas the man was considered the dominant provider. As a means of curtailing the discrimination that women were exposed to within marriage and divorce various strategies that incorporated legislation were deployed to create an equitable relationship between women and men. The Jewish community was the first, particularly with their concern of the inequality in divorce and the *agunah*, to provide protection to women via legislation of the Divorce Amendment Act 95 of 1996. Although legislation has considerably reduced the subordination of women in matters of divorce women still remain inferior and open to continued discrimination, as they are often reluctant to initiate a separation and the plight of the *mamzerim* continues. Additionally, as a precursor to legislation in the Muslim community the draft Islamic Marriages Bill is currently undergoing broad public scrutiny bearing in mind that the contributions have predominantly come from men, who would only dominate the perspectives of women and gender sensitive responses. If gendered roles are reversed as is often evident in the Cape Muslim social milieu: Should women retain the same proprietary rights within the marriage as the Islamic tradition purports? Should maintenance continue post the divorce? How will civil legislation together with religious law restrain or preclude the prevailing inequities against women within

personal status matters through the Islamic Marriages Bill when most of the traditional women are clustered in areas with high illiteracy and economic strife?

An outside approach could be beneficial to scholars and those engaged in academic endeavors where the exposition of common agendas established in gendered sacred spaces would stimulate further discourse and critique across the traditional Muslim as well as Jewish divide. The examination of the negative attitudes toward women in both traditions from a general perspective should also engender an appreciation for each other based on common written and oral intellectual activity. Moreover, an inside approach should be helpful especially to ordinary members of the traditional faiths and those individuals participating in community organizations focusing on sacred public or private matters where gender issues similarly encountered could be mutually addressed through individual or organizational interaction. Such an interactive process would not only generate common activism within genderized sacred spaces, but should also motivate the acceptance of commonality amidst diversity, while inciting respect based on knowledge and understanding of each other.

Appendix I

CAPE TOWN TRADITIONAL MUSLIM COMMUNITY

INTERVIEW QUESTIONS POSED TO TRADITIONAL MUSLIM LEARNED PERSONS INVOLVED IN COMMUNITY WORK

A. MUSLIM WOMEN IN THE TRADITIONAL MOSQUE (PUBLIC SPHERE) IN THEORY & PRACTICE

1.) DEFINE:

- i. The traditional Muslim community in the general (i.e. classical) and contextual sense (i.e. contemporary Cape Town)?
- ii. The traditional mosque in the general and contextual sense?

2.) DESCRIBE:

- i. Traditional Muslim women in the general and contextual sense?
- ii. The status of traditional women vis-à-vis men in the general and contextual sense?
- iii. The position of traditional women in the mosque in the general and contextual sense?

3.) DELINEATE:

- i. The role of traditional women in congregational gatherings for the daily prayers (*salawat*), the Friday prayer (*jumu'ah*) and festival prayers (*'idayn*) in the general and contextual sense?

4.) ELUCIDATE:

- i. The permissibility of the leadership (*imamah*) of women for congregational and mixed prayers as well as performing the pre-*khutbah* address in the general and contextual sense?

5.) CLARIFY:

- i. The function of women's bodies, menstruation (*hayd*), dress and their voices for prayer and mixed gatherings in the general and contextual sense?

6.) EXPLAIN:

- i. The duties of women in the establishment and management of mosques in the general and contextual sense?

7.) EXPLICATE:

- i. The position of traditional Islam in allowing and/or restricting women's access to mosques space in the general and contextual sense?

8.) DISCLOSE:

- i. The influence of legal as well as socio-cultural norms in permitting and/or restricting women to attend mosques and mixed gatherings?

B. MUSLIM WOMEN IN THE TRADITIONAL HOME AND FAMILY (PRIVATE SPHERE) IN THEORY & PRACTICE

1.) DEFINE:

- i. The position of the traditional home and family in the Muslim community or society in the general (i.e. classical) and contextual sense (i.e. contemporary Cape Town)?
- ii. How the home or private space is negotiated in terms of marriage (*nikah*) and divorce (*talaq*) in the general and contextual sense?

- iii. How are rights and obligations discharged through *nikah* and *talaq* in the general and contextual sense?
- iv. The roles of the husband and wife vis-à-vis their rights and duties (i.e. equal responsibility) in the general and contextual sense?

2.) DESCRIBE:

- i. The notion of *shura* or mutual consultation as encouraged by the Qur'an in all affairs [Q 42:38], even where consent or mutual consultation should be required as a proviso prior to and during marriage or *zawaj* as well as prior to *talaq* and where the husband marries another wife in the general and contextual sense?

3.) DELINEATE:

- i. The functions of drafting the marriage contract (*'aqd*) in the general and contextual sense?
- ii. The insertion of stipulations within the *'aqd* (as espoused by the Hanbali School of law) that would act as a safeguard for women in the general and contextual sense?
- iii. The possibility of drafting a standard *'aqd* by which all women under the rubric of the New Bill would be protected against the vicissitudes of the future like arbitrary divorce or polygamy?

4.) ELUCIDATE:

- i. The purpose of dowry (*mahr*) as being solely the property of women [Q 4:24] and a form of security for women in the event their husband marries another woman in the general or contextual sense?

5.) CLARIFY:

- i. The *raison d'être* of maintenance (*nafaqah*) as a duty of the husband towards his wife and children in the general and contextual sense?

- ii. How far *nafaqah* should extend after the pronouncement of *talaq* in the general and contextual sense?
- iii. What constitutes the property of women where the husband is not the sole maintainer of the family (viz. where the wife is also employed) in lieu of the fact that there is no notion of community of property in Islamic law (*shari'ah*)?
- iv. Whether or not women should be compensated for their services as in [Q 65:6], i.e. for household duties, cooking, etc. and tangible/intangible support, i.e. comfort, companionship, etc. within *zawaj* in the general and contextual sense?
- v. The position of the disbursement of alimony, unpaid maintenance and compensation of property/services during *zawaj* and at *talaq* in the general and contextual sense?

6.) EXPLAIN:

- i. The rationale of *talaq* where reconciliation should be considered and not only the determination of pregnancy [Q 2:228] in the general and contextual sense?
- ii. How reconciliation and the waiting period (*'iddah*) could be incorporated into the New Bill under the Divorce Act?

7.) EXPLICATE:

- i. How the Divorce Act 70 of 1979, which stipulates that a divorce decree, is granted on the grounds of “the irretrievable break down of the marriage”?
- ii. What criteria are used to establish the aforementioned?
- iii. The role of arbitrators during the reconciliation period in consultation with lawyers, theologians, marriage counselors, psychologists, sociologists, etc?

8.) DISCLOSE:

- i. The notion of polygamy in terms of Qur'anic injunctions where monogamy is the ideal [Q 4:2-3 & 129] in the general and contextual sense?
- ii. The purpose of consultation or *shura* and consent prior to the husband marrying another wife in the general and contextual sense?
- iii. The reasoning behind the drafting of the *'aqd* in curtailing the abuses related to polygamy?

9.) EXPOUND:

- i. On the central role of the *imam* within the *nikah*, *talaq* and polygamy process in the general and contextual sense?
- ii. How the pivotal function of the *imam* would be altered under the New Bill?
- iii. How the local *'ulama* would respond to the New Bill (i.e. would they be receptive to radical changes)?

10.) GIVE AN EXPLANATION:

- i. Of the role of social welfare organizations dealing with issues related to *nikah* and *talaq* vis-à-vis the New Bill?

Appendix II

CAPE TOWN TRADITIONAL JEWISH COMMUNITY

INTERVIEW QUESTIONS POSED TO TRADITIONAL JEWISH LEARNED PERSONS INVOLVED IN COMMUNITY WORK

A. JEWISH WOMEN IN THE TRADITIONAL SYNAGOGUE (PUBLIC SPHERE) IN THEORY & PRACTICE

1.) DEFINE:

- i. The traditional Jewish community in the general (i.e. classical) and contextual sense (i.e. contemporary Cape Town)?
- ii. The traditional synagogue in the general and contextual sense?

2.) DESCRIBE:

- i. Traditional Jewish women in the general and contextual sense?
- ii. The status of traditional women vis-à-vis men and the positive commandments (*mitzvot*) of the Bible that form the basis of Jewish law (*halakhah*) in the general and contextual sense?
- iii. The position of traditional women in the synagogue in the general and contextual sense?

3.) DELINEATE:

- i. The role of traditional women in the quorum necessary for congregational/public worship (*minyan*) in the daily prayer (*tefillah*), the Sabbath and festival gatherings or High Holy Days in the general and contextual sense?

4.) ELUCIDATE:

- i. The permissibility of the leadership of women for congregational and mixed prayers as well as the ordination of women as rabbis in the general and contextual sense?

5.) CLARIFY:

- i. The function of women's bodies, menstruation (*niddah*), dress and their voices for prayer and mixed gatherings in the general and contextual sense?

6.) EXPLAIN:

- i. The duties of women in the establishment and management of synagogues in the general and contextual sense?

7.) EXPLICATE:

- i. The position of traditional Judaism in allowing and/or restricting women's access to synagogue space in the general and contextual sense?

8.) DISCLOSE:

- i. The influence of legal (*halakhic*) as well as socio-cultural norms in permitting and/or restricting women to attend synagogues and mixed gatherings?

B. JEWISH WOMEN IN THE TRADITIONAL HOME AND FAMILY (PRIVATE SPHERE) IN THEORY & PRACTICE

1.) DEFINE:

- i. The position of the traditional home and family in the Jewish community or society in the general (i.e. classical) and contextual sense (i.e. contemporary Cape Town)?
- ii. How the home or private space is negotiated in terms of marriage and divorce in the general and contextual sense?

- iii. How are rights and obligations discharged through marriage and divorce in the general and contextual sense?
- iv. The roles of the husband and wife vis-à-vis their rights and duties (i.e. equal responsibility), within the home domain, in the general and contextual sense?

2.) DESCRIBE:

- i. The notion of mutual consultation as encouraged in all affairs, even where consent or mutual consultation should be required as a proviso prior to and during marriage (*kiddushin*) as well as prior to divorce in the general and contextual sense?

3.) DELINEATE:

- i. The functions of drafting the marriage contract (*ketubah*) in the general and contextual sense?
- ii. The insertion of stipulations within the *ketubah* that would act as a safeguard for women in the general and contextual sense?
- iii. The possibility of drafting a standard *ketubah* by which all women under the rubric of traditional Judaism would be protected against the vicissitudes of the future like arbitrary divorce and the *agunah*?

4.) ELUCIDATE:

- i. The purpose of dowry (*nedunyah*) as being the property of women and a form of security for women in the general or contextual sense?

5.) CLARIFY:

- i. The *raison d'être* of financial responsibility as a duty of the husband towards his wife and children in the general and contextual sense?
- ii. How far does financial responsibility extend after the divorce decree (*get*) is pronounced in the general and contextual sense?

- iii. What constitutes the property of women where the husband is not the sole maintainer of the family (viz. where the wife is also employed) in lieu of the notion of community of property in the general and contextual sense?
- iv. Whether or not women who are primarily homemakers should be compensated for their services, i.e. for household duties, cooking, etc. and tangible/intangible support, i.e. comfort, companionship, etc. within marriage in the general and contextual sense?
- v. The position of the disbursement of alimony, unpaid financial responsibility and compensation of property/services during marriage and at divorce in the general and contextual sense?

6.) **EXPLAIN:**

- i. The grounds for as well as the process of divorce, which is usually the sole prerogative of the husband in the general and contextual sense?
- ii. Whether or not there are any formal/informal tribunals that are attended by the husband and wife prior to or after the *get* is pronounced focusing on reconciling the parties in the general and contextual sense?
- iii. The role of arbitrators during the reconciliation period in consultation with lawyers, theologians, marriage counselors, psychologists, sociologists, etc?

7.) **DISCLOSE:**

- i. The notion of the chained woman (*agunah*) in the general and contextual sense?
- ii. The role of the Jewish court (*bet din*) within marriage, divorce and the *agunah* in the general and contextual sense?
- iii. The reasoning behind the drafting of the *ketubah* in curtailing the abuses related to divorce and the *agunah*?

- iv. The practice and process of polygamy in the classical sense as well as whether or not it prevails within the Cape Town contemporary context?

8.) EXPOUND:

- i. On the central role of the Rabbi within the marriage and divorce process in the general and contextual sense?
- ii. On the conflict and tension of marriage as well as divorce as regards to *halakhah* and secular law in the general and contextual sense?
- iii. On the notion of offspring of forbidden unions (*mamzerim*) in relation to the implications that flow from 9(ii) in the general and contextual sense?

9.) GIVE AN EXPLANATION:

- i. Of the role of social welfare organizations dealing with issues related to marriage, divorce and the *agunah* in the contextual sense?

Bibliography

Books, Journals, Theses and Newspaper Articles

'Abd al-Rahman, A. (1972). *al-Qur'an wa Qadaya al-Insan*. Beirut.

Abrahams, I. (1955). *The birth of a Community: A History of Western Province Jewry From Earliest Times to the End of the South African War, 1902*. Cape Town: Cape Town Hebrew Congregation.

Ackelsberg, M. (1976). "Introduction", in *The Jewish Woman: New Perspectives*, edited by E. Koltun. New York: Schocken Books Inc.

Ali, S.S. (2000). *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* Boston: Kluwer Law International.

Alli, S. (2002). "Serious Muslim Personal Law Challenges for 'Ulama in SA", in *Muslim Views*, Vol. 16 No.6, May, 13.

Ardener, S. (1993). "Ground Rules and Social Maps for Women: An Introduction", in *Women in Space: Ground Rules and Social Maps*, edited by S. Ardener, 1-30. Oxford: Berg Publishers Ltd.

Bakhtiar, L. (1996). *Encyclopedia of Islamic Law: A Compendium of the Views of the Major Schools*. Chicago: Kazi Press.

Barnard, A.H.; Cronje, D.S.P. & Olivier, P.J.J. (1994). *The South African Law of Persons And Family Law*. Durban: Butterworths.

Belling, V. (1997). *Bibliography of South African Jewry*. Cape Town: Kaplan Centre for Jewish Studies and Research.

Bellis, A.O. (1994). *Helpmates, Harlots and Heroes: Women's Stories in the*

Hebrew Bible. Kentucky: Westminster/John Knox Press.

Bennett, T.W. (1995). *Human Rights and African Customary Law Under the South African Constitution*. Cape Town: Juta & Co.

Berger, A. (1998). "Wrapped Attention: May Women wear Tefillin?", in *Jewish Legal Writings by Women*, edited by M.D. Halpern & C. Safrai, 75-118. Jerusalem: Urim Publications.

Bernard, H.R. (1994). *Research Methods in Anthropology*. London: Sage Publications.

Biale, R. (1984). *Women and Jewish Law: An Exploration of Women's Issues in Halakhic Sources*. New York: Schocken Books.

Bosch, S. & Moosa, E.E.I. (1997). "Muslim Marriage Contracts Enforceable in SA Courts", in *al-Qalam*, Vol. 23 No. 1, January, 5.

Blumenthal, D.R. (1986). *An Bring Them Closer to Torah: The Life and Work of Rabbi Aaron H. Blumenthal*. New Jersey: KTAV Publishing House Inc.

Boberg, P.Q.R. & Van Heerden, B. (1999). *Boberg's Law of Persons and the Family*. Kenwyn: Juta & Co.

Bourdieu, P. (1990). *The Logic of Practice*. Stanford: Stanford University Press.

Boyarin, D. (1998). "Gender", in *Critical Terms for Religious Studies*, edited by M.C. Taylor, 117-35. Chicago: The University of Chicago Press.

Bradlow, E. (1998). "Beyond the Ghetto: Lionel Goldsmid, The South African Jewish Chronicle and the Creation of a South African Jewish Identity in the Early Twentieth Century", in *Jewish Affairs*, Vol. 53 No. 1, Autumn, 9-17.

Braude, S. (1993). "The Get", in *Jewish Affairs*, Vol. 48 No. 2, Winter, 55-61.

- Brockopp, J.E.; Neusner, J. & Sonn, T. (2000). *Judaism and Islam in Practice: A Sourcebook*. New York: Routledge.
- Bronner, L.L. (1994). *From Eve to Esther: Rabbinic Reconstructions of Biblical Women*. Kentucky: Westminster John Knox Press.
- Brooten, B.J. (1982). *Women Leaders in the Ancient Synagogue*. California: Scholars Press.
- Broyde, M.J. (1993). "Communal Prayer and Women", in *Judaism*, Vol. 42 No.4, Fall, 387-94.
- Broyde, M.J. & Witte, J.jr. (1998). *Human Rights in Judaism: Cultural, Religious and Political Perspectives*. New Jersey: Jason Aronson Inc.
- Bruk, S.; Goldberg, J.; Kosmin, B.A. & Shain, M. (1999). *Jews of the 'New South Africa': Highlights of the 1998 National Survey of South African Jews*. Cape Town: Kaplan Centre for Jewish Studies and Research.
- Burkhalter, S.L. (1985). "Completion in Continuity: Cosmogony and Ethics in Islam", in *Cosmogony and Ethical Order*, edited by R.W. Lovin & F.E. Reynolds, 225-50. Chicago: The University of Chicago Press.
- Caputo, J.D. (2000). *More Radical Hermeneutics: On Not Knowing Who We Are*. Bloomington: Indiana University Press.
- Caputo, J.D. (1999). *God, The Gift, and Postmodernism*. Bloomington: Indiana University Press.
- Caputo, J.D. (1997). *The Prayers of Jacques Derrida: Religion Without Religion*. Bloomington: Indiana University Press.
- Caputo, J.D. & Derrida, J. (1997). *Deconstruction in a Nutshell: A Conversation*

With Jacques Derrida. New York: Forham University Press.

Carr, A. & Van Leeuwen, M.S. (1996). *Religion, Feminism, and the Family.* Louisville: Westminster John Knox Press.

Chidester, D.; Tobler, J. & Wratten, D. (1997). *Islam, Hinduism and Judaism in South Africa: An Annotated Bibliography.* Connecticut: Greenwood Press.

Chidester, D. & Linenthal, E.T. (1996). "Introduction", in *American Sacred Space*, edited by D. Chidester and E.T. Linenthal, 1-42. Bloomington: Indiana University Press.

Chidester, D. (1991). "Primal Religions", in *A Southern African Guide to World Religions*, edited by J.W. de Gruchy & M. Prozesky, 13-32. Cape Town: David Philip Publishers.

Childs, B.S. (1960). *Myth and Reality in the Old Testament.* Chatham: W. & J. Mackay & Co. Ltd.

Cronje, D.S.P. & Heaton, J. (1999). *South African Law of Persons.* Durban: Butterworths.

Cronje, D.S.P. & Heaton, J. (1999). *South African Family Law.* Durban: Butterworths.

Dangor, S. (2000). "The Marriage Contract", in *Muslim Views*, Vol.14 No.8, July, 10.

Dauids, A. (1997). "Muslim Women in the History of Cape Town", in *Boorhaanol Islam*, Vol. 32 No. 2, April, 11-6.

Dauids, A. (1985). *The History of the Tana Baru.* Cape Town: The Committee for the Preservation of the Tana Baru.

Davids, A. (1980). *The Mosques of Bo-Kaap: A Social History of Islam at the Cape*. Cape Town: The South African Institute of Arabic and Islamic Research.

De Beauvoir, S. (1952). *The Second Sex*. Trans. H.M. Parshley. New York: Vintage Books.

Derrida, J. (1976). *Of Grammatology*. Trans. G. Spivak. Baltimore: The John Hopkins University Press.

Dorff, E.N. & Rosett, A. (1988). *A Living Tree: The Roots and Growth of Jewish Law*. New York: State University of New York Press.

Dosick, W. (1995). *Living Judaism: The Complete Guide to Jewish Belief, Tradition, and Practice*. San Francisco: Harper San Francisco.

Dubb, A.A. (1994). *The Jewish Population of South Africa - The 1991 Sociodemographic Survey*. Cape Town: Kaplan Centre for Jewish Studies and Research.

El Saadawi, N. (1982). "Women and Islam", in *Women and Islam*, edited by A. al-Hibri, 193-206. Oxford: Pergamon Press.

Elam, D. (1994). *Feminism and Deconstruction*. London: Routledge

Elon, M. (1994). *Jewish Law: History, Sources, Principles*. Philadelphia: Jewish Publication Society.

Elon, M. (1975). *The Principles of Jewish Law*. Jerusalem: Keter Publishing House Jerusalem Ltd.

Epstein, L.M. (1967). *Sex Laws and Customs in Judaism*. New York: KTAV Publishing House Inc.

Esposito, J.L. (1998). "Introduction: Women in Islam and Muslim Societies", in

Islam, Gender and Social Change, edited by Y.Y. Haddad & J.L. Esposito, ix-xxviii. New York: Oxford University Press.

al-Faruqi, M.J. (2000). "Women's Self-Identity in the Qur'an and Islamic Law", in *Windows of Faith: Muslim Women Scholar-Activist in North America*, edited by G. Webb, 72-101. New York: Syracuse University Press.

Feldman, B.I. (1984). "Social Life of Cape Town Jewry, 1904-1914, With Special Reference to The Eastern European Immigrant Community." Honours thesis, University of Cape Town.

Fishbane, M. (1987). *Judaism: Revelations and Tradition*. San Francisco: Harper and Row.

Frankental, S. (1998). "Constructing Identity in Diaspora: Jewish Israeli Migrants in Cape Town, South Africa." Ph.D. thesis, University of Cape Town.

Friedland, R. & Hecht, R. (1998). "The Bodies of Nations: A Comparative Study of Religious Violence in Jerusalem and Ayodhya", in *History of Religions*, Vol. 38 No. 2, 101-49.

Gamielien, M.F. & Alli, S. (1999). "Amod Judgement a Let Down for Muslims", in *Muslim Views*, Vol.13 No.12, October, 4.

al-Ghazali, M. (1990). *Qadaya al-Mar'ah bayna al-Taqalid al-Rakidah wa al-Wafidah*. Cairo: Dar al-Shuruq.

Gill, S. (1998). "Territory", in *Critical Terms for Religious Studies*, edited by M.C. Taylor, 298-313. Chicago: The University of Chicago Press.

Gordis, R. (1990). *The Dynamics of Judaism: A Study in Jewish Law*. Bloomington: Indiana University Press.

Gordon, H.; Grob, L. & Hassan, R. (1991). *Women's and Men's Liberation:*

Testimonies of Spirit. New York: Greenwood Press

Greenberg, B. (1981). *On Women & Judaism: A View from Tradition*. Philadelphia: Jewish Publication Society of America.

Grossman, S. & Haut, R. (1992). "Introduction: Women and the Synagogue", in *Daughters of the King: Women and the Synagogue*, edited by S. Grossman & R. Haut, 3-12. Philadelphia: The Jewish Publication Society.

Haddad, Y.Y. (1998). "Islam and Gender: Dilemmas in the Changing Arab World", in *Islam, Gender and Social Change*, edited by Y.Y. Haddad & J.L. Esposito, 3-29. New York: Oxford University Press.

Haron, M. (1997). *Muslims in South Africa: An Annotated Bibliography*. Cape Town: South African Library.

Harris, A. (2000). "Women in Jewish Law – Changing the Image", in *Jewish Affairs*, Vol. 55 No. 3, Spring, 35-7.

Harris, C.K. (2000). "Getting the Get Bill", in *Jewish Affairs*, Vol. 55 No. 2, Winter, 38-9.

Harvey, D. (1990). *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change*. Oxford: Basil Blackwell.

Hassan, R. (1993). "Muslim Women and Post-Patriarchal Islam", in *After Patriarchy: Feminist Transformations of the World Religions*, edited by P.M. Cooley, W.R. Eakin & J.B. McDaniel, 39-64. New York: Orbis Books.

Hauptman, J. (1993). "Some Thoughts on the Nature of Halakhic Adjudication: Women and Minyan", in *Judaism*, Vol. 42 No. 4, 386-413.

Hecht, N.S.; Jackson, B.S.; Passamaneck, S.M.; Piattelli, D. & Rabello, A.M. (1996). *An Introduction to the History and Sources of Jewish Law*. Oxford: Clarendon

Press.

- Heilman, S.C. (1998). *A Study in Symbolic Interaction: Synagogue Life*. New Brunswick: Transaction Publishers.
- Heilman, S.C. (1976). *Synagogue Life: A Study in Symbolic Interaction*. Chicago: The University of Chicago Press.
- Hekman, S.J. (1990). *Gender and Knowledge: Elements of a Postmodern Feminism*. Boston: Northeastern University Press.
- Hellig, J. (2000). "The Feminist Challenge to Halachah", in *Jewish Affairs*, Vol. 55 No. 3, Spring, 38-44.
- Hellig, J. (1999). "Muslim-Jewish Relations in South Africa: A Jewish Perspective", in *Jewish Affairs*, Vol. 54 No. 1, Autumn, 7-16.
- Hellig, J. (1999b). "The Role of Religion in the Transformation of Southern African Societies: A South African Jewish Perspective", in *Religion and Social Transformation in Southern Africa*, edited by T.G. Walsh & F. Kaufman, 175-89. Minnesota: Paragon House.
- Hellig, J. (1995). "The Jewish Community in South Africa", in *Living Faiths in South Africa*, edited by J.W. de Gruchy & M. Prozesky, 155-76. Cape Town: David Philip Publishers.
- Hellig, J. (1993). "Images of the Bride in Judaism", in *Jewish Affairs*, Winter, 13-19.
- Hellig, J. (1991). "Judaism", in *A Southern African Guide to World Religions*, edited by J.W. de Gruchy & M. Prozesky, 119-47. Cape Town: David Philip.
- Hellig, J. (1986). "South African Judaism: An Expression of Conservative Traditionalism", in *Judaism*, Vol. 35 No. 2, Spring, 233-42.

- Herrman, L. (1941). *The Cape Town Hebrew Congregation 1841-1941: A Centenary History*. Cape Town: Cape Town Hebrew Congregation.
- al-Hibri, A. (1982). "A Study of Islamic Herstory: Or How Did We Ever Get Into This Mess?", in *Women and Islam*, edited by A. al-Hibri, 207-19. Oxford: Pergamon Press.
- al-Hilali, M.T. & Khan, M.M. (1995). *Interpretation of the Meanings of the Qur'an*. Riyadh: Dar al-Salam Publications.
- Hodkinson, K. (1984). *Muslim Family Law A Sourcebook*. London: Croom Helm.
- Hyman, N.M. (1997). *Biblical Women in the Madrash: A Sourcebook*. New Jersey: Jason Aronson Inc.
- Ibn Kathir, 'U. (n.d.). *Stories of the Prophets (Qisas al-Anbiya')*. Trans. R.A. Azami. Riyadh: Dar al-Salam.
- Ibn Rushd, A. (1986). *Bidayah al-Mujtahid wa Nihayah al-Muqtasid*. 2 vols. Beirut: Dar al-Ma'rifah.
- Isaacs, D. (2000). "The Beth Din – Court of Law", in *Jewish Affairs*, Vol. 55 No. 2, Winter, 40-4.
- Joseph, N.B. (1998). "Hair Distractions: Women and Worship in the Responsa of Rabbi Moshe Feinstein", in *Jewish Legal Writings by Women*, edited by M.D. Halpern & C. Safrai, 10-22. Jerusalem: Urim Publications.
- Kahana, K. (1966). *The Theory of Marriage in Jewish Law*. Leiden: E.J. Brill.
- Katz, E.N. (1993). "Bertha Solomon: A Feminist for Her Time", in *Jewish Affairs*, Vol. 48 No. 2, Winter, 100-09.
- Kaufman, M. (1993). *The Women in Jewish Law and Tradition*. New Jersey:

Jason Aronson Inc.

- Kerr, M.H. (1966). *Islamic Reform – The Political and Legal Theories of Muhammad 'Abduh and Rashid Rida*. Los Angeles: University of California Press.
- Khan, M.M. (1994). *The Translation of the Meanings of Summarized Sahih al-Bukhari*. Riyadh: Maktabah Dar al-Salam.
- Knight, D.A. (1985). "Cosmogony and Order in the Hebrew Tradition", in *Cosmogony and Ethical Order*, edited by R.W. Lovin & F.E. Reynolds, 133-57. Chicago: The University of Chicago Press.
- Kozlowski, G.C. (1999). "Private Lives and Public Piety: Women and the Practices of Islam in Mughal India", in *Women in the Medieval Islamic World*, edited by G.R.G. Hambly, 469-88. New York: St Martin's Press.
- Kunin, S.D. (1998). *God's Place in the World: Sacred Space and Sacred Place in Judaism*. London: Cassell.
- Kvan, K.I.; Schearing, L.S. & Ziegler, V.H. (1998). *Eve and Adam: Jewish, Christian and Muslim Readings on Genesis and Gender*. Bloomington: Indiana University Press.
- Levy, I. (1963). *The Synagogue: Its History and Functions*. London.
- Lewittes, M. (1994). *Jewish Law: An Introduction*. New Jersey: Jason Aronson Inc.
- Lubbe, G.J.A. (1994). "The Muslim Judicial Council: Custodian or Catalyst", in *Journal of Islamic Studies*, No. 14, 34-62.
- Malinowski, B. (1954). "Myth in Primitive Psychology", in *Magic, Science and Religion*. New York.

- al-Maraghi, A.M. (1945). *Tafsir al-Maraghi*. 10 vols. Cairo: al-Halabi.
- Mariner, R. (1996). *The Torah*. Holt, Henry & Co.
- Mayer, A.E. (1999). *Islam and Human Rights: Tradition and Politics*. Colorado: Westview Press.
- Meiselman, M. (1978). *Jewish Woman in Jewish Law*. New York: KTAV Publishing House Inc.
- Mernissi, F. (1996). *Women's Rebellion and Islamic Memory*. New Jersey: Zed Books Ltd.
- Miller, A.W. (1965). *Understanding the Midrash: Interpretation of the Exodus for Modern Times*. New York: Jonathan David Publishers.
- Mir-Hosseini, Z. (1993). *Marriage on Trial: A Study of Islamic Family Law – Iran and Morocco Compared*. London: I.B. Taurus & Co Ltd. Publishers.
- Moerat, M. (1997). "Crisis Facing Women in Islam", in *Boorhaanol Islam*, Vol. 32 No. 2, April, 34-7.
- Mohammed, A & Moosa, N. (1999). "Muslim Personal Law in the Context of Change – 1998", in *Annual Review of Islam in South Africa*, Vol. 2.
- Moosa, E.E.I. (1998). "The Fate of Muslim Personal Law", in *Annual Review of Islam in South Africa*, Vol. 1.
- Moosa, E.E.I. (1995). "Islam in South Africa", in *Living Faiths in South Africa*, edited by J.W. de Gruchy & M. Prozesky, 129-54. Cape Town: David Philip Publishers.
- Moosa, E.E.I. (1995). "The Legal Philosophy of al-Ghazali: Law, Language and Theology in al-Mustasfa." Ph.D. thesis, University of Cape Town.

- Moosa, E.E.I. (1991). "Islam", in *A Southern African Guide to World Religions*, edited by J.W. de Gruchy & M. Prozesky, 203-37. Cape Town: David Philip.
- Moosa, N. (1996). "An Analysis of the Human Rights and Gender Consequences of the New South African Constitution and Bill of Rights with Regard to the Recognition and Implementation of Muslim Personal Law (MPL)." LL.D. thesis, University of Western Cape.
- al-Munif, 'A.H. (1990). *Ahkam al-Imamah wa al-I'timam fi al-Salah*. Riyadh: al-Mutabi' al-Ahliyah al-Awfsit.
- al-Mundhiri, 'A.'A. (n.d.). *al-Targhib wa al-Tarhib min al-Hadith al-Sharif*. 4 vols. Cairo: Dar al-Hadith.
- an-Na'im, A.A. (1996). *Toward Islamic Reformation: Civil Liberties, Human Rights, and International Law*. New York: Syracuse University Press.
- an-Na'im, A.A. (1994). *Human Rights and Religious Values: An Uneasy Relationship*. Netherlands: Kok Pharos.
- Nasr, S.H. (1987). *Traditional Islam in the Modern World*. London: KPI Limited.
- Neuman, W.L. (1997). *Social Research Methods*. Boston: Allyn and Bacon.
- Neusner, J. (2000). *Judaism Stories of Creation: Scripture, Halakhah, Aggadah*. Leiden: Brill
- Neusner, J. (1996). *Religion and Law: How Through Halakhah Judaism Sets Forth its Theology and Philosophy*. Georgia: Scholars Press.
- Neusner, J. (1990). *Christianity and the Bible of Judaism: The Judaic Encounter with Scripture*. Georgia: Scholars Press.

- Neusner, J. (1990b). *The Midrash: An Introduction*. New Jersey: Jason Aronson.
- Neusner, J. & Sonn, T. (1999). *Comparing Religions Through Law: Judaism and Islam*. New York: Routledge.
- Novak, D. (1985). *Halakhah in a Theological Dimension*. California: Scholars Press.
- Ortner, S.B. (1974). "Is Female Male as Nature Is to Culture", in *Women Culture and Society*, edited by M.Z. Rosaldo and L. Lamphere, 67-87. Stanford: Stanford University Press.
- Palmer, E. (2002). "Legislation of Islamic Marriages", in *Boorhaanol Islam*, Vol. 37 No. 2, April, 21-3.
- Palmer, E. (1998). "Polygamy: An Islamic Perspective", in *Boorhaanol Islam*, Vol.33 No. 3, July, 14-20.
- Palmer, E. (1998). "The Contract of Marriage in Islam", in *Boorhaanol Islam*, Vol. 33 No.1, January, 18-20.
- Palmer, E. (1997). "Talaaq and the Shariah", in *Boorhaanol Islam*, Vol. 32 No. 4, November, 18-23.
- Palmer, E. (1997). "What the Shariah Says About Nafaqah (Maintenance)", in *Boorhaanol Islam*, Vol.32 No.3, July, 18-21
- Palmer, E. (1997). "The Role of the Mahr in a Contract", in *Boorhaanol Islam*, Vol. 32 No. 2, April, 18-21.
- Palmer, E. (1997). "Iddah: Its Significance Within the Shariah", in *Boorhaanol Islam*, Vol. 32 No.1, February, 17-9.
- Pearl, D & Menski, W. (1998). *Muslim Family Law*. London: Sweet and Maxwell.

- Rackman, E. (1995). *Modern Halakhah for Our Time*. New Jersey: KTAV Publishing House Inc.
- al-Razi, M.‘U.F. (n.d.). *al-Tafsir al-Kabir*. 32 vols. Cairo: al-Matba‘ah al-Bahiyah al-Misriyah.
- Reinhart, A.K. (1986). “Before Revelation: Boundaries of Muslim Moral Knowledge.” Ph.D. thesis, Harvard University.
- Reinhart, A.K. (1983). “Islamic Law as Islamic Ethics”, in *Journal of Religious Ethics* 11, 186-203.
- Reisenberger, A.T. (1998). “The Status of Jewish Women – A Brief Polemic”, in *Jewish Affairs*, Vol. 53 No. 4, Summer, 50-1.
- Reisenberger, A.T. (1993). “The Creation of Adam as a Hermaphrodite – And Its Implications for Feminist Theology”, in *Judaism*, Vol. 42 No. 4, Fall, 447-52.
- Reisenberger, A.T. & Schrire, G. (2001). “Balancing Tradition and Transition: South African Jewish Women’s Search for Affiliation”, in *Women’s Spirituality in the Transformation of South Africa*, edited by A.T. Reisenberger, 99-115. New York: Waxmann Munster.
- Rippin, A. (1993). *Muslims: Their Religious Beliefs and Practices*. 2 vols. London: Routledge.
- Robinson, K. (1999). “Juggling Religion and Changing Society: Women Are Having To Adapt Their Roles To Suit Modern Society, Others Are Returning To More Orthodox Traditions”, in *Saturday Argus*, November 13/14, 25.
- Reynolds, F.E. (1985). “Multiple Cosmogonies and Ethics: The Case of Theravada Buddhism”, in *Cosmogony and Ethical Order*, edited by R.W. Lovin & F.E. Reynolds, 203-24. Chicago: The University of Chicago Press.

- Saks, D. (2002). "Antisemitism in South Africa: SAJBD Report for 2001", in *Jewish Affairs*, Vol. 57 No. 1, Autumn, 19-25.
- Saks, D. & Kopelowitz, S. (1999). "Antisemitism in South Africa, 1998: Report for the Institute of Contemporary Antisemitism and Racism, Tel Aviv University", in *Jewish Affairs*, Vol. 54 No. 1, Autumn, 61-8.
- Sawant, G. (2002). "First Black Female Dean for UWC Law Faculty", in *Muslim Views*, Vol. 16 No. 2, January, 3.
- Schacht, J. (1964). *An Introduction to Islamic Law*. Oxford: Clarendon Press.
- Schneider, M. (2002). "The New Team at the Cape Council", in *Cape Jewish Chronicle*, Vol. 19 No. 2, March, 7.
- Schrire, G. (1993). "Women and Welfare: Early Twentieth-Century Cape Town", in *Jewish Affairs*, Vol. 48 No. 2, Winter, 85-8.
- Seedat, F. (2000). "Determining the Application of a System of Muslim Personal Law in South Africa", in *Annual Review of Islam in South Africa*, Vol.3.
- Shaikh, S. (1996). "Battered Women in Muslim Communities in the Western Cape: Religious Constructions of Gender, Marriage, Sexuality and Violence." M.A. thesis, University of Cape Town.
- Shain, M. (1983). *Jewry and Cape Society: The Origins and Activities of the Board of Deputies for the Cape Colony*. Cape Town: Historical Publication Society.
- Shell, R.C. (1984). "Rites and Rebellion: Islamic Conversion at the Cape, 1806-1915", in *Studies in the History of Cape Town*, 6 vols., edited by C. Saunders, V: 1-46. Cape Town: University of Cape Town History Department.
- Slier, P. (2000). "Jewish Women Still to Fulfil Potential in the Community", in *South*

African Jewish Report, Vol. 2 No. 35, February 4, 1-2.

- Smith, J.I. & Haddad, Y.Y. (1982). "Eve: Islamic Image of Women", in *Women and Islam*, edited by A. al-Hibri, 135-44. Oxford: Pergamon Press.
- Smith, J.Z. (1987). *To Take Place: Toward Theory in Ritual*. Chicago: Chicago University Press.
- Soloveitchick, J.B. (1983). *Halakhic Man*. Trans. L. Kaplan. Philadelphia: The Jewish Publication Society of America.
- Stowasser, B.F. (1998). "Gender Issues and Contemporary Quran Interpretation", in *Islam, Gender and Social Change*, edited by Y.Y. Haddad & J.L. Esposito, 30-44. New York: Oxford University Press.
- Stowasser, B.F. (1994). *Women in the Qur'an, Traditions, and Interpretations*. Oxford: Oxford University Press.
- al-Tabari. J.M.J. (n.d.). *Jami' al-Bayan 'an Ta'wil ay al-Qur'an*. 16- vols. Ed's M.M. Shakir & A.M. Shakir. Cairo: Dar al-Ma'arif.
- Tayob, A.I. (1999). *Islam in South Africa - Mosques, Imams, and Sermons*. Gainesville: University Press of Florida.
- Tayob, A.I. (1995). *Islamic Resurgence in South Africa - The Muslim Youth Movement*. Cape Town: University of Cape Town Press.
- Tibi, B. (1990). *Islam and the Cultural Accommodation of Social Change*. San Francisco: West View Press.
- Weingren, J. (1964). *The Origin of the Synagogue*. London.
- Weiss, B & Green, A. (1987). *A Survey of Arab History*. Cairo: The American University in Cairo Press.

al-Zamakhshari, M.‘U. (1953). *al-Kashshaf ‘an Haqa’iq Ghawamid al-Tanzil*. 4 vols. Ed. M.H. Ahmad. Cairo: Matba‘ah al-Istiqamah.

Zaydan, ‘A.K. (1987). *al-Wajiz fi Usul al-Fiqh*. Beirut: Mu’assasah al-Risalah.

Zemer, M. (1998). *Evolving Halakhah: A Progressive Approach to Traditional Jewish Law*. Vermont: Jewish Lights Publishing.

Unpublished Papers

Alli, S. (2002). “Historical Excurses of Muslim Personal Law in Colonial Cape”, delivered at the Third Symposium of the Islamic Law in Africa Project, Cape Town, March 11-14.

Moosa, N. & Karbanee, S. (2002). “An Exploration of Mata’a Maintenance in Anticipation of the Recognition of Muslim Marriages in South Africa: (Re) Opening a Veritable Pandora’s Box?”, delivered at the Third Symposium of the Islamic Law in Africa Project, Cape Town, March 11-14.

Navsa, M. (2002). “Lessons Learnt from the Workings of the South African Law Commission’s Project Committee on Islamic Marriages”, delivered at the Third Symposium in the Islamic Law in Africa Project, Cape Town, March 11-14.

Additional Newspapers and Surveys

ad-Da’wah, Vol. 6 No. 6, October 1999.

ad-Da’wah, Vol. 6 No. 3, July 1999.

ad-Da’wah, Vol. 5 No. 10, March 1999.

ad-Da’wah, Vol. 3 No. 1, December 1996.

Muslim Views, Vol. 16 No. 1, December 2001.

Muslim Views, Vol. 15 No. 9, August 2001.

Taraweeg Survey 2001, Vol. 13, November.

Cases of Law

Amar v Amar 1999 (2) All SA 376 (W).

Amod v Multilateral Motor Vehicle Accidents Fund 1999 (4) SA 1319 (A).

Ismail v Ismail 1983 (1) SA 1006 (A).

Levy v Levy 1991 3 SA 614 (A).

Ryland v Edros 1996 (2) SA 690 (C).

Statutes of Law

Constitution Act 108 of 1996.

Constitution of the Republic of South Africa of 1996 ss 9 (3) and (4) and s 15.

Marriage Act 25 of 1961.

Divorce Act 70 of 1979.

Divorce Amendment Act 95 of 1996.

Other Legal Source Material

South African Law Commission (SALC), Committee Paper 964, Project 59, "Islamic Marriages and Related Matters", Draft Discussion Paper, November 2001.

SALC, Committee Paper 15, Project 59, "Islamic Marriages and Related Matters", Draft Issue Paper, March 2000.

SALC, Project 76, "Jewish Divorces", Report, October 1994.

SALC, Working Paper 45, Project 76, "Jewish Divorces", 27 November 1992.