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### VIEW: Amendment: the radical option —*Feisal Naqvi*



*The essence of the fundamentalist argument is that Islamic law is a specialised science: only pious people having spent many years studying the subject are competent to offer an opinion. This makes the experience — and opinion — of ordinary people irrelevant*

The conventional pitch for the Women's Protection Bill (as proposed by the Select Committee) is that it gets you almost all of the things you get from repeal of the Hudood Ordinance and is — unlike repeal — a politically feasible option. Two weeks ago I too made that argument in this newspaper ('A good end to a bad law', September 10, 2006).

In some ways, however, I undersold the Women's Protection Bill. Amending the Hudood laws in the manner proposed by the Select Committee is actually a far more radical move than the repeal of the Hudood Ordinance. The real debate about the Hudood Ordinance after all, is not about women's rights, it is about the right to determine the right and wrong: to determine what is right and what is un-Islamic.

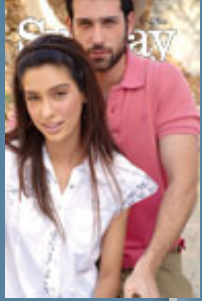
The essence of the fundamentalist argument is that Islamic law is a specialised science: only pious people having spent many years studying the subject are competent to offer an opinion. This makes the experience — and opinion — of ordinary people irrelevant.

There are two problems with this approach. First, piety, especially when it comes to women's issues, often turns out to be a blend of ignorance and prejudice hiding behind a fig leaf of morality. Second, it excludes everybody, who is not a certified Islamic scholar from having any say in what law should be.

To date, there have been two main modes of attack on the



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fundamentalist approach. The secular human rights organisations' approach is: We don't care about what is or is not Islamic. The Hudood Ordinance needs to go because it is barbaric and oppressive. The reformist Muslim approach, typified by Allama Javed Ahmed Ghamidi, is to take on the mullahs on their territory and challenging their interpretation of Islamic law.

To date, neither approach has worked particularly well. The activists' approach has kept the issue alive but also isolated them. The reformist approach appears to be making some headway but is limited by the short supply of liberal scholars of Islamic law compared to the literalist hordes produced by the seminaries. There is only one Ghamidi; there are a thousand Qazi Hussain Ahmeds.

The Women's Protection Bill represents a third approach. It accepts, like the activists, that the Hudood Ordinance has meant great suffering for women. Unlike the activists, however, it accepts that legislation in Pakistan must take into account Islamic traditions. And unlike the mullahs, it says that what is or is not Islamic is not up to 'specialists' to decide but a matter for the elected representatives of the people.

The civil society may have entirely overlooked this point but the bearded hordes have not. The conservative response to the Women's Protection Bill has therefore not been limited to trying to strip it of substantive effect. It has also sought to ensure that the final decision on its text is made not by an elected parliament but by the various self-appointed guardians of the Islamic way. This is the thinking behind Chaudhary Shujaat Hussain's proposal that amendments to the Hudood Ordinance should be decided not by the parliament but by a committee of ulema. Other responses have been more transparent, like Liaquat Baloch of the MMA going so far as to assert that "No government can dare touch these holy laws."

It needs to be understood that Islamic legal theory as understood by the MMA begins with the premise that the legislators' role is not to make laws, only to "discover" them. Thus the notion supported by people like Mr Baloch that all Islamic law is direct revelation from Allah Almighty Himself, unaffected by human interaction or mediation.

Of course, this is rubbish. General Zia did not discover the text of the Hudood Ordinance engraved on stone tablets while wandering on Mount Sinai. The law reflects the views of a few unenlightened men as to what the commandments of God 'ought' to be. However, ever since General Zia wandered on to the political scene, any law or political problem involving any 'Islamic' aspect has been treated as the exclusive preserve of Islamic scholars.

The Women's Protection Bill attacks this 'given'. The fundamental principle behind the Women's Protection Bill is that only laws explicitly laid down in the Quran are beyond question. Anything not explicit in the Holy Quran is to be treated as man-made law and is therefore — like any

other law — liable to amendment or repeal by parliament. Thus, the Women's Protection Bill preserves the Quranic punishment and the Quranic mode of evidence for the crime of zina. Furthermore, it treats the Quranic punishment of zina as exhaustive and denies that any other punishment can be provided for zina. Since the crime of rape (or zina bil jabr) is not defined in the Quran, it is to be defined under the Pakistan Penal Code, and to be tried in accordance with the Criminal Procedure Code.

What is at stake is no less than the entire concept of parliamentary democracy. Either the elected representatives of society have the right to make laws or they are merely ornamental. If they are ornamental, they might as well go home. If they have something to contribute, they need to start doing it. The people of Pakistan are watching.

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