

# Pathology of Imitation



Muslim personal law may need changing, but not on the Western model. All contemporary notions of 'family' have their roots in Biological Determinism - a particularly extremist reaction to this is presented by radical feminism. We need to develop more authentic models of what constitutes a family, argues **Munawar Ahmed Anees**.

IN the post-colonial Muslim world, many a clamorous voice has been raised to institute changes in the *Shari'a*. The imperative need of a Muslim society to be governed by the rule of the *Shari'a* notwithstanding, the political exigencies have played havoc with its application. For instance, the 'Uthmaniyyah' rulers, under the sway of the European legal system, introduced the so-called reforms (*Tanzimat*) during the period 1839-1876. In the process, the French penal code replaced the *Hadd* punishments prescribed in the *Shari'a*. Egypt follows suite in 1875. In India the order of the *Shari'a* as practised by the Mughal rulers, was dismissed when the Indian Penal Code was introduced in 1862. And, as late as 1912, Lord Lugard dared to declare the *Shari'a* to be 'repugnant to natural justice and humanity' (q.v. Coulson, N.J. *A History of Islamic Law*, Edinburgh University Press, 1971, p.157) to justify its replacement by the allegedly humane laws of Europe.

Having substituted the *Shari'a* in many Muslim lands by an odd combination of English, French, German,

or Italian commercial and penal laws, the demand for vicissitudes in the *Shari'a* now focuses upon the Muslim family or personal law. Already, these laws, (if the *Shari'a* could be justifiably perceived in the dichotomy of personal and social) having been changed, or are in the process of being changed. To illustrate, the case of polygamous marriages has been under the constant scrutiny of the 'modernistic' law. Thus, the Muslim Family Law Ordinance promulgated in Pakistan in 1961 required permission of an Arbitration Council for the purpose of contracting a second marriage. The Syrian Personal Law demanded a similar approbation. Much the same was the case with Malaysian and Iraqi laws. Like the Tunisian law of 1956, a second marriage is completely denied under the Turkish Civil Code. Many other related matters, such as, divorce, marriage with non-Muslims, adoption, inheritance, and apostasy of one of the spouses, have been subjected to a great folly in the process of legal reforms.

It is interesting to note that, as a corollary of colonization, Muslims

were barred from practising the *Shari'a* in any aspect of their daily life, save the family law. On the contrary, much of the impetus for changing the Muslim family law has surfaced during the post-colonial period. For instance, the laws relating to marriage, divorce, inheritance underwent changes in Tunisia in 1956 - the very year of her independence from France. Earlier, in 1953, Syria had taken a similar initiative. In the Federation of Malaysia, the change in family law have been pursued both during the colonial and post-colonial period. The case of Pakistan is another example where arbitrary desisims were made in order to change family law. Many other countries continue to debate the issue, especially in the context of the growing influence of the feminist movement.

In an attempt to answer the question of changes in Muslim personal law, Seyyed Hossein Nasr has observed that:

'In traditional Muslim sources, there is no term to denote personal law, because theoretically the *Shari'a* covers all human life, both personal and social... What has remained intact through the ages has been that aspect of the *Shari'a* which concerns directly the human person, such as marriage, divorce and inheritance. These are thus labelled as personal law. This domain has been the refuge and stronghold that has enabled Islamic society to remain Islamic inspite of the various forms of political institution that have ruled over it in past centuries. Therefore what is under discussion is that the last refuge of the legal aspect of the *Shari'a* in Islamic society as a whole.'

(see: 'The *Shrai'ah* and Changing Historical Condition' In: *Islamic Life and Thought*, Albany: State University of New York Press, 1981, p27).

While we concur with Nasr that the integrity of Muslim family structure has assured the perpetuation of certain cogent values in Muslim society, we take exception to the attitude of viewing either immutability or change of Muslim personal law as an entity separate from the rest of Muslim existence. Nasr has commented upon the lack of a term for Muslim personal law, denoting the *Shari'a* as a unified whole. However, he appears to be silent on the proposed or enacted change in many other domains of the *Shari'a*. Furthermore, Nasr has argued that 'applying the *Shari'a* in detail to newly created situations is a question of *fiqh* that should be dealt with solely by the *fuqaha*' (op. cit p29), - a prop-

osition contested by Ziauddin Sardar in the following words:

'Many of the problems of the contemporary Muslim Societies arise from the fact that the *Shari'a* has been limited to the domains of 'law'. Thus it has been the exclusive concern either of traditional scholars who have been too preoccupied with legal rulings passed hundreds of years ago by classical *ulama* or of modern lawyers who have tried to understand the *Shari'a* as a Problem-solving Methodology'.

In: *Islamic Futures - The Shape of Ideas to Come* London: Mansell, 1985, p.108).

There is truth in the observation that the demand for change in the *Shari'a* is a manifestation of the colonial mind-set harboured by the educated elite in the contemporary Muslim world. Therefore, the winds of change appear to have blown from at least two directions: the colonial period during which the rule of the *Shari'a* was subjected to all kinds of atrocities and demagogic changes were introduced to suit the imperialist interests; second, the apologetic concerns that project 'change' as an essential phenomenon of progress. On the other hand, as Sardar has pointed out, the *Shari'a* has come to be interpreted within rather restricted confines of law.

It is obvious that the current status of the *Shari'a* in Muslim countries is far from being satisfactory. For example, the Muslim penal law is not practised anywhere except in the Kingdom of Saudi Arabia. The limited introduction of *Hadd* and *Ta'zir* punishments in Pakistan and Sudan, or for that matter, assorted measures for the development of an Islamic system of economics do not reflect any con-

certed efforts toward the inception of the *Shari'a*. However, the indigenous movements to change Muslim family law command our attention at this time for they tend to strike at the very root of Muslim social matrix. Our scrutiny of these 'modernistic' inclinations does not belittle the cause of implementation of the *Shari'a* as a total system for the affairs of Muslim societies. We defer our discussion on these vital issues for no reasons other than space.

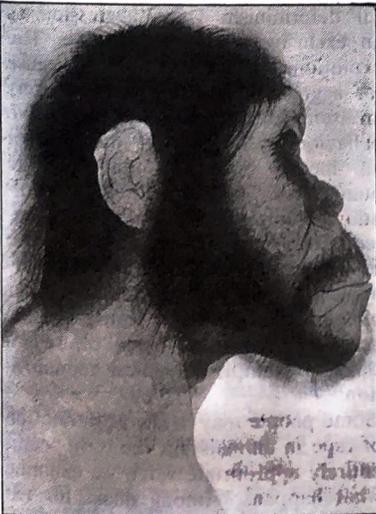
The call for change in Muslim family law harbours a number of presumptions about the *Shari'a* vis-a-vis the western models of the sociology of human family. Those who have already taken a position that the *Shari'a* is not fit for modern times, imply that continued practice of family laws as prescribed by the *Shari'a* is a gross injustice. Therefore, an argument on the contrary will neither suffice for their satisfaction nor is desirable on our part. We need not tender an apology for the *Shari'a*. What we want is brief critical examination of the ideational pier upon which the edifice of the modern western concept of human family is erected. Within this broad sphere, we shall limit our discourse to the subject of biological determinism as it impinges upon the relations between the sexes. The question as to how these precepts get translated into social, political and economic strategies forms the core of a separate debate.

No concept has influenced biological thinking more than that of organic evolution. The continued debate between evolutionary scientists and the creationists besides, Muslim intellectual history is not devoid of original thought on the pattern of evolution. For instance, the great Muslim zoolo-

gist Abu Uthman Amr Ibn Bahr, commonly known as al-Jahiz (160-256/776/869), was the originator of the idea through his famous work *Kitab al-Hayawan* (The Book of Animals). A Mu'tazili in his beliefs, al-Jahiz described his ideas about evolutionary mechanism and transformation of species that permeated into the works of such Muslim authors as ad-Damiri, al-Biruni, Ibn Tufail and Ibn Khaldun. Even Mawlana Jalal ad-Din Rumi was called a 'Darwinian before Darwin' - an apparent reference to the influence of al-Jahiz.

For al-Jahiz, the Will of God was the antecedent for any mutations or transformations. In this sense, the modern mystic critique of evolution (q.v. Seyyed Hossein Nasr. *Knowledge and the Sacred*, Edinburgh University Press. 1981, pp 221-252) appears to be ill-placed for no Muslim author ever argued for a non-creative, linear, unidirectional evolution in its modern connotation. At least this historical note settles the score that the concept of evolution (and the attendant ideas of change and progress) is not a western caprice generously bestowed upon the rest of the world.

Granted that a Muslim intellectual was the progenitor of the concept of biological evolution, there is no evidence that Muslim philosophical thinking was completely inundated by the idea. On the other hand, the advent of Darwinian theory of organic evolution had a revolutionary impact on the western intellect. Thus in the neo-Darwinian tradition, every academic discipline - from existentialism to stellar astrophysics - stood transformed in the light of 'evolution'. An entirely new worldview was born. And the most recent transformation of this worldview is the idea of biological



"Brother, listen to me! Evolve your consciousness and give up all that macho nuclear stuff": noted feminists, actresses and personalities address National Women's Conference to Prevent Nuclear War.



determinism that exploits the precepts of evolution itself.

In one sentence: Biological determinism is radical animalization. It not only seeks functional and structural parallels between the *Homo sapiens* and other biological Species (one of the modern evolutionary paradigms, or course), it attempts to evolve an ethical code based solely on the configuration of the genetic code. Thus, human ethical or moral behaviour is what endowment they carry within their genes. This is a precipitous example of reductionism where the moral and ethical norms are diminished to the mere chance working of the human hereditary molecules. Moreover, the degree of animalization is approximated by the degree of biochemical proximity that in turn serves the basis for social behaviour! In strictly behavioural terms, this should be labelled as retrogression instead of calling it evolution.

The question of racial intolerance and social bigotry aside, biological determinism is highly dexterous in distorting the biology of sexes. Leaning on the dictates of Darwinian evolution, and combining the little knowledge gained from biochemistry, the work ethics of biological determinism is that of hasty conclusion, over-generalizations, and un-supported speculations - all in the name of big science. We shall have the occasion to look at some of their cherished theories on the question of sex differences and their biological origins.

We know not much about hormonal influences *in utero* and their possible

deterministic effects on gender-specific human behaviour. The biological determinism presumes the existence of a social (?) precursor chemical that massages the brain of male fetus (?) to excel in its own gender-related behaviour. It can be argued that even the complexities of fetal sex differentiation are not yet fully understood. For example, the common belief is that sexual differentiation is brought about via X or Y chromosomes at the time of fertilization. However, we know that sex-specific anatomical differentiation does not occur until the sixth week of conception. Moreover, the hormonal potential for sexual development, as underscored by the action over a dozen gene loci, indicated that sexual differentiation itself is not a one-to-one play but the end product of a highly complex chain of anatomical and physiological interactions.

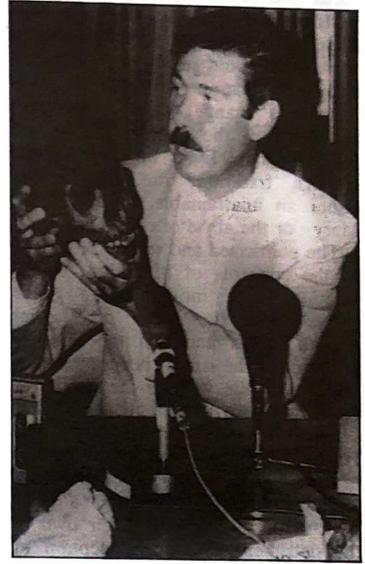
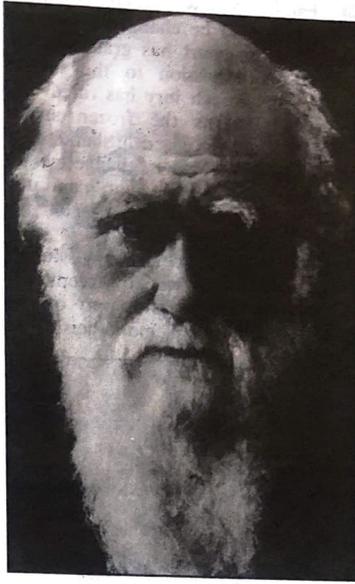
The proponents of biological determinism (beware, there are no known species of greater male chauvinists) argue that men and women differ in their cognitive abilities. That difference is neither environmental nor social. It is biological. Even if we forget the political agenda behind these assertions, it is *wrong* biology. For example, the recent studies in the area of split-brain phenomenon by the Nobel laureate Roger W. Sperry and his associates at the California Institute of Technology have provided the evidence that our neurophysiological individuality may be much more than we assume about. (Perhaps, one of the most recent monitoring techniques - magnetoencephalography - that maps

out the magnetic fields generated by human brain during cognitive functions may help us understand better our neurological personalities). This is the classical example of over-generalization where a certain biological manifestation (without regard to its genetic, social and environmental antecedents) is extrapolated to an entire human group. Of course, an interplay of genetic and environmental factors would (and should!) create cognitive differences in sexes. However, to call it an innate biological activity is reminiscent of the theological fanaticism so characteristic of the Judaic and Christian tradition and its infamy for the human female.

One of the maxims of biological evolution is the 'survival of the fittest'. This is a blueprint for terror and violence. No wonder then that biological determinism views aggression as an exclusively male prerogative. The evolutionary theory grants a license for aggression and the genetics offers an arena for practice. Since aggressive behaviour is elevated to the level of an innate biological trait for the human male, and is justifiable in evolutionary terms, it should be perpetuated. Consider, in this context, the case of heterosexual rape. Biological determinism perceives it just like any other biological activity - or rather a male necessity! Why? Here is offered a classical example of radical animalization:

'Some people may bridle at the notion of rape in animals but the term seems entirely appropriate when we examine what happens. Among ducks for ex-

Al-Jahis, al-Biruni and Ibn Khaldun (left, respectively) - all believed in one or other notion of evolution. Darwin (right) perverted their ideas and introduced the notion of the survival of the fittest. British paleontologist Alan Walker, (right) with a 2.5 million old fossil in his hand, says that his findings will shake the modern theories of evolution and will lead to revisions in biology textbooks.



ample, pairs typically form early in the breeding season, and the two mates engage in elaborate and predictable exchange of behaviour. When this rite finally culminates in mounting both male and female are clearly in agreement. But sometimes strange males surprise a mated female and attempt to force an immediate copulation, without engaging in any of the normal courtship ritual and despite her obvious and vigorous protest. If that's not rape it is certainly very much like it.'

(See: Barash, David. *The Whispering Within - Evolution and the Origin of Human Nature*, New York: Harper and Row, 1979, p54).

The 'fittest' in this case is the male and the secret of his survival clearly lies in his reproductive success. In order that the innately aggressive male can attain the evolutionary fitness, the animal model offers the best scenario.

The culmination of biological determinism is reached when the innate biological traits are accorded the status of adaptations and then touted as the vehicles of evolutionary change. The male-specific behaviour is, therefore, described in the Darwin terminology of sexual selection - a sub-set of the theory of natural selection. This again is a fallacy even at its own terms. Whereas the Darwinian natural selection concerns itself with the evolution of the physical forms, as a consequence of mutations and adaptations, biological determinism regards the evolution of behaviour in a similar manner, equating behaviour with a physical entity. Thus, the deterministic argument goes that the adaptive behaviour is genetically transmitted - a position that is not tenable even by the parochial standards of western science.

By our allusions to the contemporary ideational background of the perceived relation between the sexes, we have attempted to argue that the evolutionary model of the west is no panacea for the allegedly fossilized family laws of Muslim socie-

ties. In the domain of biological determinism, this relationship is vividly animalistic decorated with the false colours or 'evolution'. Indeed, there are issues within the sphere of Muslim family law that need to be addressed from a contemporary perspective. However, we have shown that the western historical evolutionism with strong elements of biological determinism is the wrong premise even to initiate our thinking on these matters.

The call for change in Muslim family law could be attributed to yet another western influence: the feminist movement. We will argue that the feminist movement in the west grew as a reaction to the peculiar social conditions operative in that society for hundreds of years. It was a reaction against the oppressive church policies, the denial of personhood to women within that society, or, in brief, against the very curse of being female. It was only in the post-war period that feminism could attain some degree of political radicalism - that even today leaves much to be desired even according to its own standards: One needs to remember that the Equal Rights Amendment (ERA) is yet to be ratified in the United States!

Besides raising the issues of patriarchal dominance and their ramifications in economic disadvantages, social mobility, sexual slavery, gender biases, sexism, and desperate attempts to gain a status on the evolutionary ladder, radical feminist movement, of necessity, degenerated into the utopia of a unisex universe. In its efforts to get rid of the dominant rapist male, it

has given way to self-inseminating lesbian groups dependent on sperm donations from male homosexuals. They projected the institutions of marriage and motherhood as the patriarchal tools for unpaid production; and declared heterosexuality as a political institution. Thus, within the extreme polarities of biological determinism and radical feminism lie the monuments of radical animalization and de-feminization - both of which cannot be accepted as the starting point for changing the Muslim family law. Even if one can detect the influences of feminist movement (in the like of many other cultural influences from the west) in the Muslim world, that influence alone does not establish the *raison d'etre* for changing these laws. The change in these laws does not beg the birth of either biological determinism or radical feminism.

For radical feminism, everything that symbolizes masculinity is an affront. Significantly enough, the notion of the divine Feminine is being restored. Now there is talk of the ancient goddess religions where the sacred Feminine is depicted as the hallmark of matriarchy. Radical feminism would very much like to replace the patriarchal religion with its own brand of the divine Feminine - as if to actually balance the books. The idea that male-dominated history (even the word *history* is regarded as a sexist word and replaced by *herstory*) has robbed the females of their divine heritage is fuelling a vigorous search to reconstruct the ancient ruins, the archaeological remains, the fossil re-

cords and cave paintings in order to buttress the consciousness about the sacred Feminine. What semblance is there that would justify the liberation and emancipation of Muslim women through a change in the family law according to the western notions of the feminine. Even in the classical western tradition, the feminine is either an unattainable ideal - Virgin Mary - or the abyss of evil - Eve.

The politicized and radicalized usage of the concepts of liberation, emancipation and modernization have helped little the cause of Muslim women. It has made her appear to be begging for the rise of her matriarchal "sisters" in the west to the citadel of equality who could become her saviours from the patriarchal bondage. Having failed to perceive the history of ideational changes behind the feminist movement, Muslim authors have made its paradigm their own to the detriment of their perception of the Shari'a:

"Although the need for the re-interpretation of certain matters in the Qur'an and the modification of some aspects of Islamic law might be justified, there is a clear danger as to the extent to which the interpretation and modification should be taken. A greater difficulty arises when an attempt is made to re-interpret those Qur'anic injunctions which clearly establish male superiority over women. For instance, in the matter of husband and wife when the former is regarded superior to the latter to the extent that he can even beat her if she is not obedient to him, or in the matter of giving witness or regarding inheritance. Thus it seems clear that if women's movements aim at achieving the aforementioned objects under the Islamic system, they are trying in vain, as Islam, being a patriarchal system, can never grant such concessions which may weaken the bases of its social structure. If, on the other hand, women's movements do achieve their aims in the long run, their victory would become a challenge to the social structure of Islam". (Masaud, Samar F. "The Development of Women's Movements in the Muslim World", Hamdard Islamicus, 8(1), p85, 1985).

Undoubtedly, Muslim societies are not archetypical societies. They do stand in need of change, perhaps, more than any other society. However, change is not an immutable entity. Change itself is subject to change. Thus, when addressing the issue of change in Muslim family law, we need to ponder over the needs and direction

of change. A law related to inheritance is not to be changed because a certain Swiss court has granted some piecemeal permission to the female lot; or the French jury has ruled that the wife inherits the frozen sperm sample of her deceased husband. It is ridiculous. There is a change within the permanency of the *Shari'a* and it is that change we need to seek for moulding our societies.

When it comes to changing Muslim family laws, are we to accept the premise that Islam is a part of the so-called patriarchal monotheism? Is



Male, female or porcupine?

the Islamic notion of patriarchy in the monotheistic context the same as that prevalent in the west? Or is such a notion valid at all? We would be sophisticated in assigning such notions simply on the basis of feminist-inspired perfunctory judgements on social systems. It may work well for the Christian west where religion is a matter of individual commitment and does not encompass social, economic and political life of the community of believers. If the feminist change means a revolt against the patriarchal value system then the whole logic of Muslim feminism is a travesty, for the values of Muslim societies are not those of the western.

The two major ideational forces, biological determinism and radical feminism are diametrically opposed. Within the western notion of patriarchal domination, biological determinism may be viewed as a tool to justify gender-specific atrocities through a process of radical animalization, while radical feminism is the product of a protest against this and a myriad of other social plagues in the west. Having failed to overcome the centuries old biases and pogroms against the feminine, it evolved itself into an aberration. On the other hand, biological determinism struck friendship with the parochial science in evolving newer implements of sociobiological control.

Nothing would be more erroneous than to ape the so-called modern, "evolutionary" west in our efforts to develop a familial and social milieu that is in consonance with contemporary needs. Our tendency to define the "contemporary" as a western paradigm makes us drift into the hooliganism that envelops sexual relations in the west. Therefore, the contemporary must be defined within the context of the *Shari'a* that would lead us to examine the need for a change. Moreover, unlike the west, the issues of Muslim family structure are not divorced from the overall integrated web of Muslim society. Thus, the question of abolition or retention of *hijab*, permissibility of polygamous marriages, participation of women in political affairs, unilateral divorce, sexual segregation, freedom for female education, and economic independence must be addressed from the paradigm of the *Shari'a*. If the traditional practices in the society are against the injunctions of the *Shari'a*, those must be changed. But change for the sake of change is not the Muslim norm. The door of *ijtihad* is wide open. ■