

Traditional Institutions as Tools of Political Islam in Bangladesh

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ABSTRACT

Since 1991, salish (village arbitration) and fatwa (religious edict) have become common features of Bangladesh society, especially in rural areas. Women and non-governmental development organizations (NGOs) have been subjected to fatwas delivered through a traditional social institution called salish. This article examines this phenomenon and its relationship to the rise of Islam as political ideology and increasing strengths of Islamist parties in Bangladesh. This article challenges existing interpretations that persecution of women through salish and fatwa is a reaction of the rural community against the modernization process; that fatwas represent an important tool in the backlash of traditional elites against the impoverished rural women; and that the actions of the rural mullahs do not have any political links. The article shows, with several case studies, that use of salish and fatwa as tools of subjection of women and development organizations reflect an effort to utilize traditional local institutions to further particular interpretations of behavior and of the rights of individuals under Islam, and that this interpretation is intrinsically linked to the Islamists' agenda.

Keywords: Bangladesh; *fatwa*; political Islam

Introduction

Although the alarming rise of the militant Islamists in Bangladesh and their menacing acts in the rural areas have received international media attention in recent days (e.g. Griswold, 2005), the process began more than a decade ago. The policies of the authoritarian military regimes that ruled Bangladesh between 1975 and 1990, and the politics of expediency of the two major political parties – the Awami League (AL) and the Bangladesh Nationalist Party (BNP) – enabled the Islamists to emerge from the political wilderness to a legitimate political force in the national arena (Riaz, 2003). Thus in the early 1990s, when the new democratic era began, Islamists stepped up their efforts in rural Bangladesh to establish their influence over the rural society. In doing so, they began utilizing local traditional institutions to further particular interpretation of Islamic practices. The sudden increase of *salish* (village arbitration) and *fatwa* (religious edicts) beginning in 1991 and their unabated continuation throughout the following decade bears testimony to the fact.

Local press and human rights organizations in Bangladesh have documented at least 240 cases of *fatwas* issued against rural women between 1992 and 2002.¹ In various parts of the country, women had been subjected to the tyranny of *salish* for allegedly committing offences against the ‘moral code of conduct’, or *sharia*, as interpreted by an influential section of the rural power structure (Shammy, 2002). Over this period, despite changes in the government,² the incidence of *fatwa* against women remained more or less constant, with a slight rise in 2000. In 1993–4, for example, 48 women reportedly died as victims of *fatwa*-instigated violence (*Daily Janakantha*, 1994a; see also *Daily Sangbad*, 1994).³ While the victims were mainly poor rural women, the perpetrators were generally influential locals. What was also common was the key role of local mullahs in almost all of the incidents. The meetings which passed these verdicts were identified as ‘*salish*’ – akin to the inquisition of medieval Europe – and verdicts, which have no *locus standi* under Bangladeshi law, were identified as ‘*fatwa*’, a term which originated in Islamic jurisprudence. In almost all cases the perpetrators claimed to have been dispensing justice in accordance with the *sharia* and with a view to preserving the faith of Islam. The state’s response was also remarkably consistent: inaction.

In this article, I will examine this phenomenon and its relationship to the rise of Islamism in Bangladesh. Challenging existing interpretations that persecution of women through *salish* and *fatwa* is a reaction of the rural community against the modernization process (Hashmi, 2000 [especially Chapter 4]); that *fatwas* represent an important tool in the backlash of traditional elites against the impoverished rural women (Shehabuddin, 1999); and that the actions of the rural mullahs do not have any political links, I will show with several case studies that use of *salish* and *fatwa* as tools of subjection of women and development organizations reflects an effort to utilize traditional local institutions to further particular interpretations of behavior and of the rights of individuals under Islam and that this interpretation is intrinsically linked to the Islamists’ agenda. Before we proceed to the analysis it is necessary to acquaint ourselves with the rise of Islamist politics in Bangladesh prior to the emergence of this phenomenon, and clarify what these two terms, ‘*salish*’ and ‘*fatwa*’, refer to.

Islamist Politics in Bangladesh: 1972–93

The Bangladesh state emerged on the basis of secular–socialistic principles in 1971 and in its first constitution – framed in November 1972 – an embargo was imposed on the use of religion in politics. At independence, Bangladesh declared secularism to be one of its founding principles⁴ and banned all religious political parties.⁵ But, by the late 1990s Islamists had emerged as a formidable political force. ‘Islam’ had become a prominent political ideology and religious rhetoric occupied a central position in political discourse.

The party that played a pivotal role in the struggle for national independence and became the first ruling party of the country soon began to undercut the spirit of secularism. Sheikh Mujibur Rahman, the leader of the nation and the founder President of the country, for example, declared that he was proud to be a Muslim and that his nation was the second biggest Muslim state in the world (*Bangladesh Observer*, 1972a). He not only frequently made use of Islamic expressions in his speech, but repeatedly insisted that his vision of 'secularism does not mean the absence of religion' (*Bangladesh Observer*, 1974a: 1). Sheikh Mujibur Rahman also led the *Munajaat* (Islamic prayer) on 4 November 1972, during the session after the passage of the Constitution Bill 1972 (*Bangladesh Observer*, 1972b).

The state-controlled media, especially radio and television, began to undercut the spirit of secularism when they adopted a policy of equal opportunity for all religions. Instructed by the government, they read extracts from the holy books of Islam, Hinduism, Buddhism, and Christianity. Their policy of distributive justice in terms of allocating time to the different religions, according to one newspaper, slowly poisoned the concept of secularism and injected religious fanaticism into the minds of the people. The government not only extended indulgence to all religions, but also buckled to religious pressure when it increased funding for religious education in 1973. The annual budgetary allocation for *Madrassah* (Islamic educational institutions) was raised to Taka 7.2m in 1973, from Taka 2.5m in 1971. Furthermore, in March 1975 the government revived the Islamic Academy, which had been banned in 1972, and then elevated it to a Foundation to help propagate the ideals of Islam. The inherent self-contradiction of the ruling party, in terms of its policy of secularism, became more evident when Mujib joined the Islamic Summit held in Lahore in February 1974. Two months later Bangladesh took the lead at the Islamic Foreign Ministers' Conference held in Jeddah, in establishing the Islamic Development Bank.

A spiral of coup d'états was set in motion on 15 August 1975 with the brutal killings of Sheikh Mujib and his family members by a small group of Army officers. The *coup de main* was followed by 84 days of chaos and confusion, coups and counter-coups.⁶ These led to the advent of General Ziaur Rahman as the strong man and led to the establishment of a military-bureaucratic oligarchy. Since his rise to power, faced with the crisis of legitimacy, Zia embarked on an Islamization agenda. The regime created a new ideological terrain with religion, territoriality of the identity, and national security at the core of this new ideology. Zia's move gave a new lease of life to once-banned Islamist political parties. They were given the opportunity to participate in political activities under the Political Parties Regulations (PPR) Act promulgated in July 1976. A new party was formed under the leadership of Zia in 1978, which emphasized the role of religion in daily lives and as the guiding political ideology. Zia's brand of nationalism intertwined the ethnic and religious identities with a clear emphasis on the latter. The cabinet and the newly established

ruling party were composed of defectors from various political parties and people who collaborated with the Pakistani regime in 1971. But, more importantly, those who had close ties with religious organizations became more visible within the cabinet.

In April 1977, soon after his assumption of the office of President,⁷ Zia made some constitutional amendments through a proclamation (Second Proclamation Order No. 1, 23 April 1977). The amendment brought changes to Article 6 of the original constitution, which stipulated that the identity of the citizens of Bangladesh would be known as 'Bangalee'. Instead, the amendment proclaimed, the citizens would be known as 'Bangladeshi'. Thus, the identity of the nation was linked with the territorial limits in order to isolate it from the so-called 'Bangalee sub-culture' of India. The amendment also brought changes to the Preamble of the Constitution. The words, 'historic struggle for national liberation', were replaced by 'historic war for national independence'. The change, though it appears to be only semantic, reflected the regime's bias: it highlighted the war of 1971 in which the military played a role, rather than the political movements of the civilian population in the 1950s and 1960s that had contributed to the growth of Bengali nationalism. Minimizing the role of the civilian population in 'achieving the independence' also minimized their role in 'safeguarding independence'.

The word 'secularism' – appearing in the Preamble and Article 8 as one of the four fundamental principles – was substituted with 'absolute trust and faith in the Almighty Allah'; and a new clause (1A) was inserted to emphasize that 'absolute trust and faith in almighty Allah' should be 'the basis of all actions'. Article 12, which defined 'secularism', was omitted and above the Preamble the words '*Bismillah-ar-Rahman-ar-Rahim*' (in the name of Allah, the Beneficent, the Merciful) were inserted to give the Constitution an Islamic color. The principle of socialism was given a new meaning – 'economic and social justice' (Preamble and Article 8). A new ideological terrain was in this way created by the regime to legitimize their rule. Religion, territoriality of identity, and national security constituted the core of this new ideology. These steps, in conjunction with others, accorded religious rhetoric a pivotal role in the political discourse. Zia died in an abortive coup d'état in May 1980.

Within nine months of Zia's death, the then Army Chief General Hussain Mohammed Ershad seized power. It was *déjà vu* for the citizens of Bangladesh – 1975 all over again. Zia had faced an immediate crisis of constitutional legitimacy, and simmering discontent among students. Like his predecessor, General Ershad turned to Islamization to legitimize his rule. By late 1982, he declared in a religious gathering that Islam would be the basis of the new social system and would be given its due place in the constitution. On 15 January 1983 Ershad declared that making Bangladesh an Islamic country was the goal of his struggle (*Daily Ittefaq*, 1983). He also stated his intention to introduce 'Islamic principles' into the 'cultural life' of Bangladeshi Muslims (*Daily*

Ittefaq, 1983). Although his Islamic rhetoric and steps towards further Islamization of society failed to win support of Islamist political organizations, his opponents were trying to out-manoeuvre him by appropriating his agenda and keeping the Islamists in their fold. The Jaamat-i-Islami, for example, maintained close links with two opposition alliances led by the BNP and the AL respectively, and participated in street agitations. Embroiled in a political crisis that began in early 1983 and intensified in late 1987, Ershad attempted to woo the Jaamat away from agitators and to bring them in line with the government. To placate the Islamist forces, as well as to prove his Islamic credentials, Ershad secured a constitutional amendment in June 1988, which declared Islam the state religion.⁸

Between 1982 and 1990, the year the Ershad regime was toppled in a popular urban uprising, opposition political parties, including secularists, worked closely with the Islamists, thus providing the latter with political legitimacy while idioms and icons of religion became central to the political discourse of Bangladesh. For example, the AL, which once took pride in its secular identity, made a remarkable change in its approach towards religion and religion-based political parties. By the early 1990s, it preferred to be portrayed as a party that valued Islam as an integral part of the culture of Bangladesh. Beginning in 1991, the statements of party leaders and party publicity materials show that the AL is eager to present itself as a suitable custodian of Islam in Bangladesh. Symbolic expressions of this change are the carrying of prayer beads and wearing of scarves by AL chief Sheikh Hasina. In addition to making pilgrimages to Mecca, Hasina began using Islamic phrases, such as '*Bismillahir rahmanur rahim*' (In the name of Allah, the most gracious, most compassionate), '*Khoda Hafez*' (God bless you), '*Insallah*' (God willing), in her public speeches. Party political posters also carried these phrases to assuage the devout among the electorate. Prior to the elections of 1991, BNP leader Khaleda Zia alleged that if the AL was elected to office, they would remove '*Bismillahir rahmanur rahim*' from the constitution. Sheikh Hasina dismissed this as a smear campaign against the AL and declared that she had 'no quarrel with Bismillah' (*Daily Sangbad*, 1991). Posters and slogans of three political parties (BNP, AL, and Jaamat) during the 1991 general elections reflect the extent of influence of Islamist idioms on the political discourse. Slogans by the political parties attempted to demonstrate their indomitable faith in Islam.

After the downfall of the Ershad regime and the general election of 1991, the BNP sought the support of the Jaamat-i-Islami to form the government. The understanding between these two political forces was largely 'a marriage of convenience'. The BNP, with 140 seats in parliament, was short of 11 seats to claim a stake in power.⁹ They relied on the Jaamat for backing. The marriage was over within two and a half years. By late 1993, the Jaamat had become a vocal critic of the regime and some of their comments were harsher than the regime's archrival, AL. Then party chief, Abbas Ali Khan, commented that Islam, national sovereignty, and democracy were in danger under Khaleda

Zia's regime (*Daily Millat*, 1994a). The Secretary General, Matiur Rahman Nizami, alleged that the Zia regime had failed to maintain the dignity of Islam, despite using the name of Islam to be elected to office (*Daily Ittefaq*, 1995).

Thus, by 1993 it may be said Islam as a political ideology had become a part of the Bangladesh polity. Over these years, the Islamist forces in general, and the Jaamat-i-Islami in particular, have not only gained recognition as legitimate political actors, but have also emerged as kingmakers, both in the electoral equation and on the ideological terrain. In electoral politics the Islamists have succeeded in fortifying a small but loyal base and have been able to draw attention of the larger population, chiefly because two major claimants of power (i.e. the BNP and the AL) lacked a clear and convincing ideological perspective and largely relied on issue-based differentiation.

It is in this backdrop in 1993 that the Islamists wanted to extend their control over the traditional, rural social institutions to pursue a particular interpretation of Islam which would allow them to become the moral guardian of the society. Hence the eruption of *salish* and *fatwa* in Bangladesh.

***Salish* and *Fatwa*: Concepts and Background**

Salish is an age-old traditional mode of arbitration in rural areas in Bangladesh. Generally speaking, in rural areas *salish* used to represent a forum where various forms of conflicts (e.g. over land, cattle, small properties) between neighbors, and at times between couples and siblings, were resolved through mediation. It has no legal status and is a body usually composed of village elders, influential persons, and the village clergy (or mullah). 'There are no uniform terms of reference for the *salish* and no legislation governing it' (Rahman, 1995: 68), however, there had been a convention that criminal offences remain beyond the purview of *salish*. The three laws dealing with arbitration and mediation (The Village Courts Ordinance 1976; the Council of Disputes (Municipal Areas) Ordinance 1979; and the Village Council Act 1989) do not acknowledge the authority of any *salish* and give no legitimacy to this traditional form of arbitration. Furthermore, Clause 109 of the Bangladesh constitution clearly delineates the composition of courts and their jurisdictions, and *salish* is not among them. The Criminal Code of Procedure [1898] remains the principal legal instrument in dealing with criminal activities. The *salish*, therefore, is a traditional institution without any legal standing, and its resolutions are non-binding to any parties involved in the mediation process.

The origin of *fatwa* lies in Islamic jurisprudence. In Islamic legal parlance it refers to 'an opinion on a point of law rendered by a *mufti* (legal consultant) in response to a question submitted to him by a private individual or by a *quadi* (religious judge, magistrate)' (Esposito, 1982: 128). The *fatwa*, therefore, is not legally binding to the person, even to the person who sought it – a *quadi*, or another individual. Also significant to note, the *fatwa* in and of itself

is not a verdict or a decision, but within the meaning of the *sharia* it is intended as a clarification of a point of Islamic jurisprudence, which can be of some help in reaching a verdict. Obvious from the above explanation is that the *fatwa* is meant to deal with something of greater importance than an individual's behavior or act.

To appreciate the novelties of *salish* and *fatwa* in 1990s in Bangladesh we need to turn to some historical particularities of earlier times. In the Indian subcontinent the *fatwa* became a political tool of Muslims during British colonial rule to defy, as well as support, the colonial rulers. In the 19th century, for example, Maulana Shah Abdul Aziz of Delhi declared British India 'Dar-ul-Harb' ('abode of war'), hence it became a religious duty of the Muslims to fight against the colonial rulers. Conversely, Maulana Keramat Ali declared in 1870 that it was un-Islamic to engage in *Jihad* (holy war) against the British rulers (Huq, 1968: 148). During the Pakistan period, religious leaders and politicians have issued *fatwa* on several occasions and on various issues. But these so-called *fatwas* were nothing more than opinions of the persons concerned and were not targeted against any individual. Also noteworthy is that these pronouncements generally did not contain any threat of harm and hardly any evidence can be found that anyone attempted to implement these *fatwas*. As such, the *fatwa* never featured prominently in the public discourse. In post-independence Bangladesh, except for an isolated incident in 1984,¹⁰ *fatwa* remained non-existent in the political discourse. In the urban social sphere, *fatwa* seemed to have been an alien idea altogether. Within the rural community, one may find sporadic instances of *fatwa* being issued on local matters, but they did not merit national attention and definitely did not have any specific pattern.

The first *fatwa* issued in Bangladesh that drew national, as well as international attention was that issued against the author Taslima Nasreen in September 1993, although by then a number of rural women subjected to this emerging phenomenon had lost their lives and a number of secular intellectuals had been declared 'apostates' by Islamist groups. In September 1993, a previously unknown 'religious' group named Shahaba Sainik Parishad from Sylhet – a city northeast of Dhaka – issued a *fatwa* sentencing Nasreen to death and putting a reward of Taka 50,000 (approximately US\$1250) on her head.¹¹ Evidently, the *fatwas* issued against Taslima Nasreen, and against women in various parts of the country, demonstrate a clear departure from earlier instances, for they were issued against specific individuals, and were backed up by actions – either locally, through utilizing traditional social institutions like *salish*, or nationally, through organized mobilization. What is of further significance is that there was a gradual expansion of the jurisdiction of the *fatwas*: from local to national, and from victimizing individuals for 'offences' against the moral code of conduct, to persecuting individuals for 'objectionable opinions', to challenging organizations for their 'unacceptable programs'. When the High Court of the country declared the issuing of *fatwa* illegal in early 2001, the

political tie between the apparently autonomous local mullahs and the Islamists was laid bare and the Islamists took to the streets, forcing the state to retreat.

Case Studies: All Hell Let Loose

Noorjahan was a young and beautiful woman living in a remote village in the Maulvi Bazar district of northeastern Bangladesh. She was born in 1971 – the year Bangladesh came into being – into a large and poor family; she spent her childhood in hardship. Her family arranged her marriage when she was 16. But the marriage did not last for long. Noorjahan's husband divorced her and absconded. She started to work as a day laborer at the local forestry department. About one and a half years after the divorce Noorjahan's husband suddenly reappeared and asked her to live with him again. He claimed that he had not meant to divorce Noorjahan when he verbally pronounced '*talaq*' ('I divorce thee'). Since the divorce had not been recorded Noorjahan should stay with him, he insisted. But Noorjahan and her parents objected. He then returned to his home in a nearby village, Sherpur. A couple of days later, Noorjahan's parents decided that it was time she marry again. Noorjahan's father met her former husband and obtained a written document from him stating that he had divorced Noorjahan. Noorjahan's father showed it to the clergy of the local mosque, Abdul Mannan. Mullah Mannan took some money to validate the divorce decree. It was not too long before the family found a man – Motaleb – for Noorjahan, and they were married. The ceremony was modest, but attended by family and friends. It was late winter: December 1992, to be precise. After this Noorjahan's life story could have become a one like many millions in Bangladesh: '. . . and they lived together thereafter'. But that is not what the local mullah Abdul Mannan wanted. He had something different in mind. After the marriage, he, along with a number of other influential local people, began to spread rumours that the marriage was 'un-Islamic'. Noorjahan, they alleged, was cohabiting and should be punished. They convened a *salish* (village arbitration meeting) on the morning of 10 January 1993. The organizers met at the local mosque the night before and reached a 'verdict' – neither the defendant nor anyone on her behalf was present, as they knew nothing about the meeting. Motaleb, Noorjahan's parents, and those who attended the wedding were summoned to the *salish* – the next morning. After a brief deliberation, the mullah pronounced the *fatwa* (edict): Noorjahan's second marriage was not valid and hence she has committed adultery by living with Motaleb, and according to *sharia* (traditional Islamic law) she would have to be buried in the ground up to her waist and then stoned 101 times. Her husband was also given the same punishment. Noorjahan's parents were given 50 lashes each for their part in an un-Islamic act. Noorjahan was yet to know the 'verdict', as she was at her parent's house waiting anxiously. She was brought to the *salish* and told the verdict. She asked to talk to her father, but she was denied. The organizers

continued with the implementation of the *fatwa*: she was pushed into a waist-deep hole and pelted with stones 101 times. So was her husband. Noorjahan's parents faced their fates. Brutalized and humiliated, Noorjahan ran to her father's house and drank poison. She died immediately.¹²

The tragic death of Noorjahan had captured the attention of the whole country within a couple of days, and an initially reluctant local administration finally began pursuing the perpetrators. But soon it became clear that the incident was not an aberration; in rural Bangladesh it was not uncommon for poor women to be subjected to such arbitrary 'dispensation of justice'. Within six months of this shocking incident, on 5 May 1993, another woman – ironically, also named Noorjahan – in the district of Faridpur, some 80 km west of the capital Dhaka, was sentenced to death by a *salish*. The *salish* found her 'guilty' of adultery, and sentenced her to death by fire. The story of the second Noorjahan was not very different from that of the first. She was married at an early age, before her teens. The marriage ended in divorce. She was then married to Torab Ali. The couple had two sons and a daughter during eight years of conjugal life. Noorjahan, however, became attracted to a younger man named Farid. In late April, Noorjahan and Farid left the village for Dhaka. Three days later they returned home. Noorjahan was immediately detained in the house of one of Farid's uncles. Farid's family, as well as that of Torab Ali, wanted to bring an end to this embarrassing situation. On 5 May, some of the local influential people, along with Torab Ali and Farid's uncle, convened a *salish* at a house near the local market. The meeting ended inconclusively. But a few of those present, including Torab Ali and Jabbar Mondol, the father of Farid, met again on the same night at the house of Farid's uncle. At around midnight, Noorjahan was brought from the house and tied to a stake in the middle of the courtyard. Someone pushed a piece a cloth in her mouth so that she could not scream, kerosene¹³ was poured over her, and she was burned to death (*Daily Sangbad*, 1993).¹⁴

The events surrounding the death of Noorjahan of Maulvi Bazar district in January 1993 and Noorjahan of Faridpur district in May 1993 pointed to an emerging phenomenon in rural Bangladesh; over time the geographical spread of incidents and the ferocity in the implementation of these *fatwas* became obvious. The following case studies not only show how women became victims of *fatwa*-instigated violence, but also demonstrate how attempts were made to legitimize these practices.

On the night of 1 September 1993, a *salish* in Kalikapur village in northern Satkhira district found Feroza, a 16-year-old girl, guilty of fornication with a Hindu boy of a neighboring village and sentenced her to public flogging. Maulana Abdur Rahim, superintendent of local Madrassah, issued the *fatwa* in the *salish* that Feroza had committed an un-Islamic act and needed to be cleansed in order to be accepted back into society. After pronouncement of the verdict, Feroza was dragged from her parents' home. She was tied to a bamboo

pole and given 101 lashes with a broom. Soon after the flogging, Feroza drank poison and committed suicide (Banerjee, 1993).

Julekha, a 13-year-old girl, was chastised by a local *salish* on 5 October in Lalmonirhat district in northern Bangladesh for having a pre-marital relationship with a man. Public humiliation and threat of further actions in future pushed Julekha to commit suicide by hanging herself (Khan, 1996: 70).

In early January 1994, Roquaiya of Sultanpur village, in the southeastern district of Feni, experienced a humiliation that is difficult even to imagine. After the death of her husband, Roquaiya returned to her parents' home with her two children. She became intimately involved with Dulal, a neighbor, who promised to marry her. But after she became pregnant he refused to marry her. Roquaiya filed a case against Dulal in the local court. Hearing of this case local influential people put pressure on her to drop the case and she succumbed. Soon afterwards Dulal came to her house and raped her. The next day, Dulal came back and dragged her out of the house naked, beat her up in public, and locked her inside the house for several days. Instead of charging Dulal with criminal activities, on 9 January, the local *salish* charged Roquaiya with extra-marital sex, commonly described as '*zina*', and found her guilty. Subsequently, she was dragged half naked to an open field near the village school, her head was shaven, her face and breast smeared with soot, and she was tied to a tree for eight hours. The torture did not end there. She was then made to wear a garland of shoes and was paraded through the village streets (Khan, 1996: 71).

A few days later, on 18 January 1994, a *fatwa* was reportedly issued by the imam (cleric of mosque) in Balchura village, in the eastern district of Noakhali. According to the *fatwa*, a young unmarried woman named Dulali was to be caned 101 times in public for allegedly having had an extra-marital relationship with a local married man. A women's rights group reportedly intervened and prevailed upon the Assistant Superintendent of Police to prevent the sentence from being carried out and upon the man to provide compensation to her. No charges were brought against the imam, and Dulali was given shelter by women's organizations (Amnesty International, 1994a).

On 11 May 1994, a *salish* presided over by Maulana Fazlul Haq sentenced a 13-year-old girl, Sapnaha, to public whipping after she had been raped by a villager, Shafiqul Islam, in Dhamsa (a village of the southeastern Brahmanbaria district) in August or September 1993, and had become pregnant. The alleged rapist was acquitted by the *salish*, as the four adult male Muslim witnesses of good repute, required under Islamic law to establish rape, were not available. Sapnaha was questioned by the *salish* for two hours, pronounced guilty of illicit sexual intercourse for which her pregnancy was sufficient proof and sentenced to be publicly flogged 101 times. The cleric ruled that the punishment be carried out 40 days after delivery. Sapnaha gave birth at the beginning of June; consequently the day for her punishment was to be 12 July 1994 (Amnesty International, 1994a).¹⁵

The Coordinating Council of Human Rights (CCHRB) in Bangladesh reported that on 11 June 1994 Anjali Karmakar, an 18-year-old Hindu girl, was found guilty by a *salish* of violating the social norms of the village by 'chatting with a man' and as punishment was expelled from her village in Bagha Sadar thana, in Rajshahi district. Her father, a goldsmith, was sentenced to carry out humiliating push-ups in public, while holding his ears for having failed to control his 'shameless daughter'. Upon intervention by the school authorities, Anjali Karmakar was permitted to return home till the completion of her exams.

The *Banglabazar Patrika* on 4 August 1994 reported that Rezia Khatun, a 22-year-old woman in Bara Chaimati village in Kishoreganj district, was made to drink her own urine after being found guilty of adultery by a *salish* (Khan, 1996: 73).

On 16 September 1994, a girl, Shahida, was publicly caned 100 times after giving birth to a child following an extra-marital relationship in Jamgora village, in Savar near Dhaka. When the incident was reported in the newspapers Shahida was abducted by the people involved in the *salish*. More than two weeks later police recovered her from a nearby industrial area (Khan, 1996: 70).

On 3 October 1994, a 13-year-old girl, Julekha, was publicly flogged 101 times by the local cleric, Maulana Habibullah, in a village in Satkhira district after he found her guilty of an extra-marital relationship. She was taken unconscious to the hospital in Satkhira. Subsequently local influential people threatened her family not to pursue the case. Julekha, in her testimony to the police, insisted that the false allegation of adultery had been brought to pressurize her family to give up some properties (*Daily Ajker Kagoj*, 1994; *Daily Janakantha*, 1994b).

Badoi Begum of Sylhet was not as fortunate as Julekha. She did not survive to tell her story. In May 1999, she was found to have become pregnant. She told her family that she was having an affair with a local young man and was planning to get married. But in the eyes of the local mullahs she had committed adultery and was to be punished. Soon a *salish* was convened and she was given a punishment of 101 lashes. The lashes resulted in physical and mental trauma. Badoi Begum bled to death the next day (Islam, 2003). Three people arrested in connection with the *salish* went unpunished for want of evidence. Had she lived, perhaps she would have asked the same question that 24-year-old Nazma Akhtar asked a reporter in late 2002. In September, Nazma Akhtar was sentenced to 100 lashes in a village in Comilla district. The flogging was ordered by a group of religious leaders of her village after she eloped with her boyfriend and married him secretly. She was flogged in front of her neighbors, friends, relations, and other people of the village, yet few dared to intervene to save her. The young woman, haunted by the public humiliation, never really understood why she had been punished. 'Is it a crime to fall in love with the person you like and marry him? I did not protest against the flogging after the so-called prosecutors threatened to expel my family from the village',

said Nazma to a reporter, nursing both her physical and mental wounds (Shammy, 2002).

Salish and Fatwas: Trajectories and Novelities

The preceding cases, as well as other incidents of *fatwa*, show that two sorts of situations have generally been used for convening *salish*; first, cohabitation after 'divorce'; and second, adultery and other kinds of sexual transgression. The first situation arises when the husband utters the word '*talaq*' ('I divorce thee') three consecutive times, but later recants or denies the pronouncement and lives with the wife. In most cases, these pronouncements are not well-thought out decisions, often the result of frustration, and are not acceptable even under *sharia* law,¹⁶ not to mention the laws of the land.¹⁷ But local mullahs insist that once the pronouncement is made, the divorce comes into effect. Therefore, cohabitation with the same woman becomes a sinful act. Pronouncement of divorce by husbands in a moment of anger was neither new within the poor segment of the society, nor had it increased in the 1990s. It is also true for alleged adultery. Within the poor strata of the society, especially in rural areas, allegations of adultery against women are very common. People who have vested interests ranging from the woman, to properties, to maligning individuals or their families may lend fuel to such allegations. At times, local influential people use this as a tool to settle old scores. These have long been a part of rural life, and rural people had developed means to get around these kinds of situations. Yet, the country saw a phenomenal rise of *salish* and *fatwas* addressing these 'problems'.¹⁸ Having arrived here, two questions need to be raised and answered: first, why were women and non-governmental agencies (NGOs) singled out as the principal targets? And second, why did the incidence of *salish* and *fatwa* increase in the 1990s?

The women were chosen as one of the principal targets, for the Islamists were aware that they would find a strong ally, especially in rural areas, in the patriarchy. The patriarchal structures – family and the community – for ages have constructed an image of woman and determined her role in the society in Bangladesh. The docile, demure, weak, and submissive image of Bangladeshi women, their invisibility in the public sphere, their portrayal as symbols of purity and fertility, and their persecution, has more to do with the customs of the country than *sharia*-based Islamic laws. But, in rural areas these have been perpetuated, reproduced, and legitimized in the name of Islam as interpreted by the rural clergies. Islamists not only found it convenient, but also used this as tool to advance their version of Islam which domesticize women, exclude them from decision-making processes, and deny them all kinds of resources (e.g. land, money, education). The developmentalist agenda of the NGOs was diametrically opposite to this, requiring women to be participants; visible and involved in processes that would allow them to own resources. Hence came the conflict.

Rural mullahs, and by extension the Islamists, found this as a blow to their version of social control, especially to their narrowly defined *purdah* (seclusion). The hegemony of these forces was challenged both at discursive level and at practical level. At discursive level, the dictates of the mullahs were no longer the only knowledge available; at the practical level resources were made available to the women without any extra economic ties attached to it. Of particular significance is the role of the state. The state, either through benign neglect or through active support, helped the rural mullahs and their patrons, the Islamists. The laws of the land and fundamental rights accorded by the constitution were pushed aside, because the government insisted that they would not act against the Islamic traditions.

An answer to the second question requires closer examination of the trajectory of the *fatwas* over subsequent months and by identifying the salient features of *salish* and *fatwas*. Subjecting poor, rural women was the starting point of this new tyrannical practice and it soon went beyond addressing individual behavior, making it evident that addressing problems of cohabitation and adultery was only the staging ground. Beginning in late 1993, and increasingly in 1994, hundreds of *fatwas* were issued against NGOs and their beneficiaries with an objective of eliminating the NGOs from Bangladesh. Also notable were three unique features of the *salish* and *fatwas*: (1) that they accorded local mullahs a crucial role in the decision-making process; (2) that they intended to introduce a particular interpretation of Islam to the mainstream; and (3) that they had backing from certain political quarters.

The transformation of *fatwas* from a tool to control the ‘immoral’ behavior of an individual, to an apparatus to battle organizations and implement an ideology became noticeable in late 1993 when a number of local clerics in the northern districts of the country initiated a campaign against the NGOs for their ‘anti-Islamic, anti-people and anti-state’ activities and demanded that the NGOs be banned. It did not take too long to change the verbal assaults into violent attacks on the property of NGOs, their projects, and people employed by or receiving services from, or otherwise associated with, NGOs. The Bangladesh Rural Advancement Committee (BRAC) – an internationally acclaimed agency supported by foreign and private Bangladeshi donors – and the Grameen Bank had become the principal targets of attack, but smaller NGOs – including Friends in Village Development Bangladesh (FIVDB), Proshika, Gono Shahajjo Shongstha and Nijera Kori – have also been harassed and attacked in Bogra, Sirajganj, Rangpur, and Nilphamari districts in the north, Sylhet district in the east, and Cox’s Bazar district in the south. Between January and March 1994, over 110 BRAC schools, but also some educational institutions of other NGOs, were reportedly set on fire; some of their teachers were attacked and teaching material was destroyed. A Bangladeshi human rights organization reported that in January 1994, the parents of some 700,000 children attending schools run by BRAC (70 per cent of whom are girls) were asked by imams and

religious teachers throughout Bangladesh to withdraw their children from school, or to face a *fatwa* entailing social boycott (Amnesty International, 1994a). Mulberry plantations set up under a BRAC scheme to provide a source of income for women were cut down, mainly in Barisal district in the south and Chandpur district, in late 1993. In January 1994, over 6000 mulberry trees grown by women in food-for-work programs were cut down in Kishorganj district following a *fatwa* against the NGO (Amnesty International, 1994a; *Daily Bhorer Kagoj*, 1994).

Bangladeshi newspapers reported cases where *fatwas* issued by clerics against women associated with development NGOs have led to their being deserted by their husbands, being socially ostracized, or physically punished. In February and March 1994, three imams in Bogra district reportedly issued *fatwas* against 60 families who were to be socially isolated in the villages because of their contacts with BRAC, and 10 men were directed to divorce their wives who worked for NGOs (Huq, 1994). Later that year, newspapers reported that about 2000 families faced similar fates in 16 villages in Comilla district (Hossain, 1994). In March 1994, an imam issued a *fatwa* in a village in Bogra district that Farida Begum and her husband Jalaluddin were to be lashed 101 times because of Farida's work with BRAC. Following the death of Farida's father-in-law, the local imam refused to perform the *Janaza* (Islamic funeral) until Farida was cleansed and remarried to her husband. The *Janaza* was held only after she complied with the *fatwa*. The same imam imposed a similar punishment on Rasheda Begum for having taken a loan from the Grameen Bank (Huq, 1994). Around 100 pregnant women were prevented in February and March 1994 from continuing their treatment in a BRAC medical center, as they were allegedly being converted to Christianity, and at least six tuberculosis patients died as a result of being prevented from receiving treatment from NGO-operated clinics.

Around 1750 incidents of issuing *fatwas* against NGOs by August 1994 clearly suggest an organized and concerted campaign. Evidently, it was no longer at the level where it started in 1993 – challenging one individual (e.g. Taslima Nasreen), or making a statement about moral codes of conduct. Rather, it was elevated to a higher plane of ideology with a view to implement a particular interpretation of Islam. That is one of the salient features of this phenomenon. Indeed, the *fatwas* issued and the actions taken against the NGOs have had support from a section of local influential people who had their axe to grind. The NGOs posed challenges to local money lenders by providing credit to the poor women, threatened the deep-seated patriarchy by making women visible, and made the traditional religious schools passé by opening new schools; yet the *fatwas*, whether against individuals or organizations, were issued by the mullahs. They became central to this battle, because the sub-text of the actions was to provide a model of a society where mullahs reign supreme as the custodians of the moral order, and whose authority is thereby legitimated because it is derived from their 'knowledge' of 'Islamic tradition'. A *salish* in

Madla village in Kasba district is an example of this. On the night of 3 September 1993 Manik Mia attempted to rape a housewife, Parveen, but as she screamed neighbors came to her help and caught Manik Mia on the spot. A *salish* was convened by the neighbors on 10 September. The *salish*, attended by local influential persons, found Manik Mia guilty after hearing the testimonies of the accused and the witnesses. The *salish* sentenced him to 50 lashes and a fine of Taka 4000 (approximately US\$100). The *salish* also asked him to apologize in public and rub his nose on the floor. Manik Mia, after making apology and rubbing his nose on the floor, requested for time to pay his fine and asked to defer his lashes. The *salish* granted his request. Soon afterwards, he organized another *salish* with the blessing of the imam of the local mosque. Parveen was forced to attend the *salish* and was found guilty of an 'immoral act' by the local imam. He issued a *fatwa* sentencing Parveen to 20 lashes and requiring her to make *tawbah* (repentance; also spelled *tauba*). The punishments were immediately carried out.¹⁹ Evidently the absence of a cleric in the first *salish* made the second *salish* possible, and the insertion of *tawbah* gave the *salish* an 'Islamic' facade.

Whether original Islamic texts (e.g. the *Quran* and *Hadiths*) sanction these actions is largely a moot point because Islam, like any religion, is a 'socially constructed and constituted set of practices that embody changing and often contradictory interests' (Feldman, 2000: 231). What was being attempted through these *fatwas* was to create a set of practices and impose them on a large segment of the population. The mainstream interpretation of Islam in Bangladesh is definitely different from that provided by local mullahs and at times conflicted with the emerging construction of Islam. One case illustrates this disagreement vividly. In October 1993, Tofazzal Mollah, an imam of a local mosque in Bahipara village of Chapai Nawabganj district was sacked from his job after it became known to two other local mullahs (Maulvi Abdus Samad and Maulvi Muhammad Ismail) that Tofazzal's wife had had sterilization surgery 10 years before. It is interesting to note that Tofazzal had been performing the role of local cleric for 15 years and it never became an issue until 1993. Tofazzal, like many other imams around the country, insisted in a *salish* organized by these mullahs that there was no bar in the religion in adopting family planning methods. Yet, a *fatwa* was issued that he could no longer lead the prayers. A newspaper investigation revealed that this was not the first instance in that locality when a local cleric had been stripped of his job for espousing family planning methods; at least two other clerics were fired previously (*Daily Bhorer Kagoj*, 1993). The conflicting interpretations of Islamic practice about family planning is not a result of lack of information, for it is well-known in Bangladesh that the debate had been resolved in the 1960s and government programs on family planning had involved clerics in disseminating information about population control and family planning.²⁰ The attempt to undermine the dominant interpretation stems from the effort to create a space for offering an alternative

reading of the religious texts and hence assume an authoritative position. This effort can only be sustained with support from an organized force.

Until the beginning of 2001, many analysts failed to perceive the connections between the new interpretations of *salish* and *fatwa*, as well as a different reading of the sacred texts propounded by rural mullahs and the organized Islamist parties. Indeed, it would be inaccurate to say that all those who have been engaged in the *salish* and decreeing *fatwa* are members of organized Islamist parties. But what we must look for is the ideological affinity and a pattern of reciprocal support between the rural mullahs and the organized Islamists. The support extended by the Islamists during 1993–5 to these practices points to the fact that the objectives of the local mullahs and the Islamists were identical – a society where *sharia* supersedes civil law and civil administration is rendered ineffective in the name of tradition. Insofar as the moral justifications were concerned, their arguments were similar: preservation of moral order. In 1993–4, in the face of the sudden upsurge of *fatwa* and *salish*, women's rights groups and various secular organizations began protesting against these practices and called upon the government to act decisively in bringing an end to such incidents. While the government observed an ominous silence and deleterious inaction, the newspapers belonging to Islamists vilified the anti-*fatwa* protagonists, especially the women. Editorials and op-ed pieces published in the *Daily Inquilab*, the *Daily Sangram* and the *Daily Millat* took a lead in justifying the practices of *salish* and *fatwas* around the country. The *Daily Millat*, for example, wrote on 25 April 1994 that *fatwa* is an Islamic practice that will remain until the Day of Judgment and those who are challenging the practice have ulterior motives. The op-ed piece also alleged that those women who were protesting against the *fatwa* followed an unrestrained western lifestyle (*Daily Millat*, 1994b). Al Amin, wrote in the *Daily Inquilab* on 29 April 1994 that the NGOs have unleashed a string of attacks on Islamic ideology, and Islamic scholars are being denigrated as 'fatwabaz' (those who decree *fatwas*). 'Lies, innuendos, fabricated stories have become their weapons against the learned persons of Islam', the columnist contends (p. 7). A.K.M. Fazlur Rahman Munshi (1994) wrote in the *Daily Inquilab* that the incidence of *fatwa* proves that the gap between the colonial laws and the Muslims is growing, and that potency of *fatwa* would not diminish, despite resistance against it. The opinion was echoed by Maimul Ahsan Khan, a law professor sympathetic to the Islamists. He argued that

the present laws of the land were created by the foreign imperial masters. And from their successor Pakistani state, we have inherited some decrepit, westernized and inhuman laws and regulations which combine to form our inefficient and corrupt police and legal structure. That is why this is now a haven for *fatwas*. (Shehabuddin, 1999)

Sa'ad Ahmed (1994), a columnist of the *Daily Sangram*, branded the anti-*fatwa* activities a 'conspiracy of the apostates' (p. 7). Attempts to portray the

anti-*fatwa* movement as a conspiracy of the ‘progressives’ continued into 1995. Amir Khasru (1995) wrote in the *Daily Sangram*,

‘*fatwa*’ is a very important and integral part of sharia or Islamic law [...] yet recently, a familiar group hostile to Islam has been making up and spreading various tantalizing stories about ‘*fatwa*’. Their objective is to please and fill the pockets of the enemies of Islam, both here and abroad. They have taken a few isolated incidents in the rural areas and woven intricate tales around them. (pp. 1031–2)

Khasru further argued that the primary objective of these conspirators was ‘to oppose Islam in the name of opposing “fundamentalism”; to be constantly involved in opposing Muslim interests, to destroy religious and social values’ (pp. 1031–2; also quoted in Shehabuddin, 1999).

In early July 1994, the *Daily Sangram*, mouthpiece of the Jaamat-i-Islam, published several articles on the issue of NGOs and *fatwa*. In an op-ed piece on 6 July 1994, the newspaper insisted that those who were opposing the *fatwas* were trying to annihilate Muslims and Islam (*Daily Sangram*, 1994). On the following day, in a scathing criticism of the NGOs, the newspaper alleged that the latter were trying to ‘wipe out the Islamic society and culture’ from Bangladesh. ‘These NGOs are providing financial assistance to the apostates of this country’ (p. 7), the op-ed piece insisted. On 10 August 1994, the *Daily Sangram*, in another op-ed piece insisted that the measures of the ‘alim community’ (Islamic scholars) in the rural areas against the NGOs were spontaneous reactions against the ‘un-Islamic’ acts of the NGOs. The moral hubris of these articles was indistinguishable from those of the local mullahs. The Islamists’ only reservation was with the individuals who were issuing the *fatwas*. They insisted that in many instances those who were issuing the *fatwas* were not qualified to do so. This criticism was designed to serve two ends: first, that the *fatwa* itself should not be the suspect, and second, that a solution to the problem is to institutionalize the *fatwas* through the establishment of Islamic rule. The Khatib (main cleric) of the national mosque, Moulana Obaidul Huq, well-known for his affiliation with the Jaamat-i-Islami, summarized the arguments:

[F]rom the earliest days of Islam until the end of Muslim rule, the Islamic state would appoint the individual responsible for issuing *fatwas*. Today, because we don’t have this arrangement, it is possible for random, illiterate men to issue *fatwas* and deceive people. If the state appointed qualified people to issue *fatwas* throughout the country, there would be no opportunity for such deceptions and no-one would even dare speak ill of genuine *fatwas*. (*Daily Sangram*, 1995: 1)

As the Islamists assumed a preeminent position in the political arena, debate over the *salish* and *fatwa* subsided, although the number of incidents did not. In 1995, at least 28 incidents were reported in local press (*Daily*

Janakantha, 1996).²¹ Four human rights organizations – Ain O Salish Kendra (ASK), Bangladesh Legal Aid and Services Trust (BALLAST), Odhikar, and Madaripur Legal Aid Association (MLAA) – noted that in 1997,

local imams and powerful leaders have issued the mediation process to issue fatwas leading to violence against young women. Political leaders and the local bureaucracy have generally been apathetic and failed to intervene effectively, against abetment in violence. (ASK, 1998)

Their report also states that, ‘in 28 incidents, *fatwas* were issued sentencing women to whipping, stoning, social boycott etc. All these resulted in murder, suicide, physical assault, harassment, humiliation’. An in-depth study on violence against women in South Asia accounted 23 women as victims of *fatwas* in 1999 (Yasmin, 2000). The number increased to 43 in the following year (UNB, 2001) and the figure for 2001 stood at 34. Of these, nine were subjected to public flogging, and 15 faced social boycott. Demanding justice for rape caused more violence against six women (ASK, 2002). Between January and October of 2002, 39 women became victims of *fatwa*, according to the Bangladesh Women’s Council (Islam, 2003).

Court Declares *Fatwa* Illegal, yet . . .

The number of incidents in 2001 and 2002 deserve special mention, for these incidents demonstrate how the state is failing to protect its citizens from an extra-judicial system that has been declared ‘illegal’ by the highest court of the land on 1 January 2001. The events following the court verdict revealed the strengths of the Islamists, and laid bare the link between the local mullahs and the political forces, and the vulnerability of the state in the face of Islamist resistance.

On 1 January 2001 the Supreme Court, in a landmark verdict, declared *fatwa* illegal. The issue was brought before the court after publication of a news report. The *Banglabazar Patrika*, a national daily, reported on 2 December 2000 that Sahida, wife of Saiful of Atitha, of the district of Naogaon, was forced to marry²² her husband’s paternal cousin Samshul, on the order of a so-called *fatwa* by Hazi Azizul Huq that claimed her marriage had been dissolved consequent to an incident of about one year previously, when her husband out of anger uttered the word ‘*talaq*’, but thereafter continued their married life. Following the publication of the report ASK intervened and filed a writ petition to the court, insisting that the local administration had failed to perform their duties in protecting Shahida and the *hilla* was a violation of laws governing marriage and divorce. The court, citing both legal and religious positions concluded that ‘any *fatwa* including the instant one are all unauthorized and illegal’.²³ The central element of the verdict was that the ‘legal system of Bangladesh empowers only the Courts to decide all questions relating to legal opinion on the Muslim and other Laws as in force’. The judges further recommended that ‘giving a *fatwa* by

unauthorized person or persons must be made a punishable offence by the Parliament immediately, even if it is not executed'. The verdict sent a clear signal to all concerned that the civil court had finally decided to assert its authority. While women's rights groups and secularists in general were delighted, the Islamists declared the judges 'apostates' and asked the government to remove them from the court immediately. The Islamists launched violent demonstrations in the capital and elsewhere in the following month. The eruption of the wrath of the militant Islamists began on 2 February. During the general strike the next day a police constable was lynched. The Chairman and the Secretary General of a militant Islamist political party, the Islami Oikya Jote, were arrested in connection with this (BBC, 2001). One of the severest clashes between the police and demonstrators took place in a town named Brahmanbaria a few days later where seven people died. The student wing of the Islamist alliance 'Islamic Constitution Movement' (ICM) described the deceased as 'martyrs of Jihad' and vowed that, 'no power on earth can stop the Jihad for Islamic rule in this country' (Ahmed, 2001). For more than a month, street agitation gripped the country and scores of people died in the confrontations. The tension gradually died down when the Supreme Court stayed the verdict for an indefinite period. The victory of the secularists was, indeed, short-lived. But it revealed the tie between the Islamists and the apparently autonomous local mullahs.

Conclusion

Throughout the 1990s, concomitant to the rise of Islamists in the political sphere was the proliferation of *salish* and *fatwa* subjecting women and development organizations to extra-judicial persecution. While neither were introduced by the Islamists, the scope and nature of these traditional social institutions were transformed to suit the political agenda of the Islamists. Central to this transformation is the salience of the local cleric as the custodian of a moral order and the source of 'knowledge', an emphasis on the *sharia* as an alternative to the existing civil laws, and a challenge to the local authorities. These defining characteristics of the *salish* and *fatwa* in Bangladesh in the 1990s point to the similarities in ideological orientation of the apparently autonomous mullahs engaged in decreeing *fatwas* in rural areas and the urban-based Islamist political parties. The tyranny of *salish* and the terror of *fatwa* not only received the moral support of the Islamists, but were also backed up with effective political mobilization when the highest court attempted to confront these practices and made the *fatwa* illegal. Evidently, *salish* and *fatwa* has become the norm, and is tacitly accepted by the society at large. The number of incidents and a lack of consistent coverage by the media have given a semblance of normality to these horrifying incidents, paving the way for future institutionalization of these practices. This can be understood from two developments after the general elections of 2001. Delwar Hossain Sayedee, a member of parliament and an influential

leader of the Jaamat, which is a partner of the ruling center-right coalition in Bangladesh, announced on 4 January 2002, in the presence of three members of the cabinet and a number of parliament members at a religious gathering near Dhaka, that ‘courts won’t be allowed to control *fatwas*, instead *fatwas* would control the courts’ (*Daily Janakantha*, 2002: 16). In March 2003, two parliament members belonging to the ruling coalition called upon the government to enforce *fatwa* saying, ‘*fatwa* was in the past, exists now and will continue in future. Only *fatwa* will be the constitution’ (*Daily Star*, 2003: 1). The experiences of the victims of *fatwa* and *salish* indeed tell us how justice will be dispensed and who would preside over the trials, but understandably *fatwas* would not be limited to the dispensation of justice, rather they would shape the daily lives of everyone through imposition of a particular lifestyle, and the hallmark of the political system under the *fatwa*-guided social system would be the absence of pluralism, political or otherwise, and the rejection of democracy.

NOTES

1. The figure is a conservative estimate based on reported incidents. Understandably, a large number of incidents in remote parts of the country remained unreported.
2. Between 1991–6, the Bangladesh Nationalist Party (BNP) ruled the country with Khaleda Zia as the head of the government. In 1996, the Awami League (AL), under the leadership of Sheikh Hasina, came to power for five years. In the general elections of 2001, the BNP returned to power leading a coalition of four parties, including Jaamat-i-Islami.
3. In most cases women subjected to *salish* and *fatwa* ‘committed suicide’ to save themselves and their families from disgrace and social humiliation. In some instances victims, for example Rezia Aktar Rina of Feni who was flogged 101 times on 16 December 1994, left suicide notes. In Rezia’s case, it said that her suicide was a protest against the injustice.
4. Article 12 of the Bangladesh constitution reflected these secular aspirations when it stated that,
 - a) all kinds of communalism
 - b) patronization by the state of any particular religion
 - c) exploitation (misuse) of religion for political purposes
 - d) discrimination against, and persecution of, anyone following a particular religion will be ended (Government of Bangladesh [GOB], 1972: 4).

5. The Constitution further stipulated in Article 38, paragraph 2:

No persons shall have the right to form or be a member or otherwise take part in the activities of, any communal or other association or union which in the name of or on the basis of any religion has for its object, or pursues a political purpose. (GOB, 1972: 5)

6. Despite the successful *Putsch*, the small, young, and conservative faction of the Army failed to establish total control over the situation. Radical elements and status quoists within the army began to vie for power. On 3 November 1975, a section of so-called Mujibists and status-quoists engineered another coup. The coup was ill-planned, hastily organized, and limited in its objective. Its success was limited and no one was in overall control. This led to the third coup that was engineered by radicals on 7 November. The coup, described by its organizers as a revolution, was largely participated in by the privates and is commonly referred to as ‘Sepoy Mutiny’. Ziaur Rahman was used as their front-man. The original planners, however, lost control within hours of the coup and were finally defeated by another segment within seven days.
7. Between November 1975 and April 1977, although Zia held the real power, A.S.M. Sayem held the post of President. Sayem was asked to resign from the position in April 1977.
8. The State Religion Amendment Bill, commonly referred to as the ‘Eighth Amendment of the Constitution’, was introduced into parliament on 11 May and passed on 7 June 1988.
9. Out of 300 seats, the BNP won 140, the AL 88, Allies of the Awami League 11, the Jatiya Party of General Ershad 35, and the Jaamat-i-Islami 18. A total of 151 seats were required to take overall control.
10. In February 1984, Maulana Mohammad Ullah, popularly known as *Haffezi Huzzur*, issued a *fatwa* that General Ershad’s rule was un-Islamic as he did not follow the *Quran* and *Sunnah*, and also illegitimate because he did not come to power with the consent of the people.
11. The group retracted its statement after severe criticisms from various quarters of society. However, they continued to demand the banning of all her books and her trial on charges of ‘blasphemy’.
12. The narrative of these events has been gathered from reports published in various newspapers in Bangladesh. Noorjahan’s plight first came to light on 13 January 1993 after she was buried and the local police were reluctant to pursue

a case filed by her father. Soon afterwards, human rights groups, women's organizations, and Amnesty International campaigned vigorously to bring the mullah and his associates to trial. Mullah Mannan and eight of his associates were later charged for abetment to suicide and intentional insult. On 22 February 1994, each of them was sentenced to seven years imprisonment.

13. A highly flammable liquid used for household cooking and the lighting of lamps.
14. In late May local police arrested seven people, including the husband of Noor-jahan and filed a case against them. The local court threw out the case due to 'lack of evidence'. A national women's organization filed a suit at the High Court.
15. A women's organization, the Bangladesh Mahila Parishad, protested against the implementation of the *fatwa* against Sapanahar and gave her safe haven in one of its rehabilitation centers.
16. In a verdict issued on 1 January 2001, two judges of the Supreme Court of Bangladesh asserted that, the 'dissolution of marriage by uttering the word 'Talaq' once or thrice . . . is against the injunction of the Quran and the Hadith'. They noted, 'this type of talaq is rightly called *talaq-ul-bidat* or heretical divorce'. The judges quoted from *Muhammedan Law* by Syed Ameer Ali (Vol. II, 5th Edition, p. 474) to highlight the historical background of this kind of divorce:

The talak-ul-bidaat, as its name signifies, is the heretical or irregular mode of divorce, which was introduced in the second century of the Muhammedan era. It was then that the Omeyyade monarchs finding the checks imposed by the Prophet on the facility of repudiation interfered with the indulgence of their caprice, endeavored to find an escape from the strictness of the law and found in the pliability of the jurists a loophole to effect their purpose. As a matter of fact the capricious and irregular exercise of the power of divorce which was in the beginning left to the husbands was strongly disapproved of by the Prophet. It is reported that when once news was brought to him that one of his disciples had divorced his wife, pronouncing the three talaqs at one and the same time, the Prophet stood up in anger on his carpet and declared that the man was making a plaything of the words of God and made him take back his wife. (Verdict of writ petition 5897 of 2000 by the Bangladesh Supreme Court, 1 January 2001; the verdict was issued by Justice Mohammad Gholam Rabbani, and Justice Nazmun Ara Sultana. Available at: <http://mnet.fr/aiindex/ask/JUDGEM1.HTM>)

17. The issue of dissolution of marriage is dealt with in the Muslim Family Laws Ordinance. Section 7 of the ordinance has delineated the methods of divorce, especially the *modus operandi* of talaq. It states:

Talaq. (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife. (2) Whoever contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to ten thousand taka or with both. (3) Save as provided in sub-section (5), a talaq unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman. (4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration council for the purpose of bringing about a reconciliation between the parties, and the Arbitration council shall take all steps necessary to bring about such reconciliation. (5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in sub-section (3) or the pregnancy, whichever be later, ends. (6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective. (Verdict of writ petition 5897 of 2000 by the Bangladesh Supreme Court, 1 January 2001; the verdict was issued by Justice Mohammad Gholam Rabbani, and Justice Nazmun Ara Sultana. Available at: <http://mnet.fr/aiindex/ask/JUDGEM1.HTM>)

18. Also notable is that these *salishs* and *fatwas* had scarcely dealt with the men involved in these acts. More often than not men were exonerated. In one instance, in April 1992, Shefali, a 14-year-old girl and her mother were sentenced to 100 lashes each by a *salish* in Dohar, near Dhaka, after Shefali complained that she had been raped by an influential village elder. Shefali's punishment was deferred due to her pregnancy but her mother was caned immediately. The participating mullah decided that since there had been no witness to the intercourse, the elder could not be held responsible, as under sharia four adult male Muslim witnesses of good repute need to have witnessed illicit intercourse to permit conviction for rape or adultery. But, as Shefali had admitted to the intercourse when she complained about having been raped and her pregnancy was obvious evidence for intercourse having taken place, she was sentenced to 100 lashes to be administered in public. Shefali's mother was sentenced to the same punishment as she had accused the village elder of rape (Amnesty International, 1994b).

19. The humiliation must have been unbearable for Parveen. She became mentally unstable and committed suicide on 28 September (*Daily Bhorer Kagoj*, 1994).
20. The role of the clerics in spreading the family planning message is accepted so widely that the UN launched a scheme to institutionalize the practice through the Imam Training Academy (Lawson, 2002).
21. However, ASK reported 23 incidents of *fatwas* in 1995.
22. This is commonly called '*hilla*' or 'intervening marriage', wherein a divorced woman seeking to remarry the former husband is forced to take a temporary husband. The practice is that she would be eligible to remarry when her temporary husband divorces her.
23. Verdict by the High Court Division of the Bangladesh Supreme Court on 1 January 2001, in the matter of writ petition 5897 of 2000; delivered by Justice Mohammad Gholam Rabbani, and Justice Nazmun Ara Sultana; Available at: <http://mnet.fr/aiindex/ask/JUDGEM1.HTM>.

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