

Voices of Dissent

Hina Jilani on the value of the rights discourse in the context of political Islam

Excerpts from an interview with Ayesha Khan

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Hina Jilani is one of Pakistan's most influential human rights activists and a leader of Women's Action Forum, the group that began the modern women's movement in the country. She co-founded the first women's law firm and legal aid organisation, AGHS, and the Human Rights Commission of Pakistan. At the international level she has held numerous positions as well. She is a member of the Eminent Jurists Panel on Terrorism, Counterterrorism and Human Rights. In 2009, she was appointed to the United Nations Fact Finding Mission on the Gaza Conflict. She was also UN Special Representative on Human Rights Defenders (2000–2008); appointed to the UN International Fact-Finding Commission on Darfur (2006); and served as President of the World Organisation Against Torture (2016).

Jilani received the Amnesty International Genetta Sagan Award for Women's Rights (2000), and the Millennium Peace Prize for Women (2001). She is a member of The Elders, an independent group of global leaders working together for peace and human rights, founded by Nelson Mandela.



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Below are edited excerpts from an interview with Ayesha Khan held at Jilani's home in Lahore on 23 October 2015.

On what happened to women's mobilisation during and after the Pakistan movement led to Independence from British India in 1947:

Firstly the promises and the expectations women had were kind of set aside and amalgamated in the Pakistan movement. They separated the Muslim interests from the women's interests in the sub-continent, which was [originally] a joint struggle of women. So Muslim women then separated themselves from that struggle, [as a result] they lost consistency and force. And at the same time [they] came into a country where it was not a question of rights, it was a question of enforcement of Islamic injunctions. Those very people who had heard the Quaid [Pakistan's founder, Mohammed Ali Jinnah] express whatever he had expressed all throughout¹ - I mean, frankly, the Quaid had also used this Muslim interest to create constituency for himself.

But having said that, I don't think his conscience would reconcile to the fact that these kinds of retrograde policies and social messages should in any way constrain the progress of this country and the rights of people whether they are women or anybody else, [including the religious] minorities. He didn't mean it to be that way [...] but by that time the damage had already been done, because all these Muslim leaders were mediocre people, who had no leadership quality, absolutely none. And the only thing that their insecurity could hang onto was Islam.

So if the Jamaat-e-Islami² was an opponent [of the Pakistan movement], the state had to be [even] more Islamic to overcome them [after

Independence]. This was the extent of their imagination on how to politically keep themselves above the Jamaat-e-Islami and the retrograde Islamic forces that at that time the establishment thought of as opponents. [The state thought] if Jamaat-e-Islami is Islamic and they are insisting on Islam, then we either surrender or give them some points without any evidence. [Jamaat-e-Islami] are still in the past, they are still trying to tell the Muslims that they are different. [But] for God's sake, now you are in a country where 95 per cent of the population is Muslim. What are you saying? So this was the extent of their imagination and the quality of [the government's] leadership.

Nonetheless the state managed to withstand religious opposition to pass some progressive legislation in the early years, such as the Muslim Family Laws Ordinance of 1961, which gave women improved rights of divorce and controls on polygyny.

When [these] laws were promulgated, they were a step forward. The problems came really during Zia's time [military rule from 1977-88] because the actual, concrete and specific legislation that came in was anti-women.³ So I think in a way this time was the most painful and difficult time we had. At the same time in one sense it was good because it took away our complacencies - and this movement really became dynamic because it was a resistance movement.

So there were advantages and disadvantages to that. The advantage was that it gave importance to women to come together again and come out of their complacent modes. But at the same time the disadvantage was that the period we could have spent in going further than what we had in the 1950s and the early 1960s, we were now spending that time to at least save that and resist what was coming. So this was a long period of resistance, which is lasting till today.

On the genesis of Women's Action Forum and her position using Islamic arguments to advocate for women's rights:

Being human rights people we do believe in the freedom of religion. I am not advocating that everybody has to become an atheist. Religion is there but it should have nothing to do with the public domain and certainly laws and rights cannot emerge from religious edicts and injunctions. They should not be the basis of law making because there is inequality of rights in all religions, including Islam. Even though they say Islam has given women a lot of rights, well fine, if that is the spirit of the law in Islam then it should go up and always progress and not stop. There is no capping, there is no sealing on rights.

[But] there was a part of the WAF movement that [said] we will justify everything we are saying from Islamic injunctions. Soon this was stopped because within WAF thinking developed; and I am happy and proud to say that I am one of the leaders saying this is not on. Already in Pakistan there are 72 different sects of Islam, obviously these have come from different views on the same injunctions, a 73rd view is not going to help us.

Secondly this is not an Islamic issue, it's not a religious issue. It's a political issue because religion is being used for some kind of political control and power. So you fight it politically. Why do you want to fight on the mullahs' wicket and lose? You have scholars of Islam whose interpretations of Islam are as good as our ideas on our rights, [yet they] can't even live in their own country [they are being] driven away by these forces that were using Islam for their political ends. So we thought this was a useless fight, it was going to tire us out.

On the achievements of WAF in an Islamising state:

This is the biggest victory of the women's movement in Pakistan. We may not have been able to get rid of the Hudood Ordinances⁴ for 25 years, but we put women on the political agenda in Pakistan. When the 1988 elections [took] place [after Zia's death] every political party had a women's rights programme. Since then in every election, every political party including Jamaat-e-Islami, whatever their views may be, have to put women's rights as a part of their manifesto.

So how can anybody say that this is not a successful movement? This you must acknowledge, and we don't need to convince anyone.

So, this is WAF's contribution, bringing women into this whole question of democracy, Pakistan's politics, and Pakistan's foreign policies. Because from here a movement of women is generated. From here only [do] women stand up and consolidate civil society power in the whole of South Asia. Internationally today the only movement that sustains itself is the international women's movement, and South Asian women and women from Pakistan are very much a part of building that movement and sustaining it. And many of them are active members of WAF.

In an environment that has grown increasingly conservative, where liberal spaces are shrinking, is WAF's demand for a secular state realistic?

That doesn't matter, [although] it is the best thing if it does, as long as mindsets change and become more progressive and more secular in their analysis and everyday thinking. Look, I had this tea, even if I am very religious while having tea I won't think about how Islam has guided me to drink it. So I don't think that in our everyday life that [religious framework] counts, unless for some political purpose it is made into an issue. This is

something that [the religious lobby] have created artificially. [Therefore nowadays when you hear some women speak] they don't say, 'We went to such and such place at 4 o'clock', they say that 'I went there at Asr', because now this has become a value - that if I talk like this then I am very virtuous.

This can only be undone gradually. But if democracy stays for some time then with the political and state concentration on Islam, Islam will change. [So] many protests of different interest groups take place throughout the country, other than [those led by] the mullahs. Some protest on water, some against police, some about inflation. How many from the public really stand up for religion, unless [the protest is] started by a mullah who brings in all the kids from their *madrassa*.⁵ Where are these happening spontaneously? This is the reality of our country. And as democracy advances, as people-centred progress or development initiatives start, then the [public] debate will be focused on that.

Water, electricity, energy crisis, inflation, police issues, some one's child being killed, sexual abuse, these are the only issues of [spontaneous peoples'] protests. So when the problems are such that you don't want to solve or you cannot solve them, then you [as government] deflect and push the concentration [on religion]. Since 1947, we have always been pushed towards Islam by political elites because they had nothing in their pockets, nothing else.

Jilani insists on the importance of using the courts to push for women's rights even though the judiciary may not always understand progressive legislation. One indication that it is becoming more open-minded was the Supreme Court's 2012 recognition of transgender persons as a third

gender. New laws passed in Parliament, those on sexual harassment passed in 2010, may still need improvement but legal activists must make maximum use of them in court.

This is what I keep on saying to NGOs and human and women's rights defenders that just sit after the law has been made - use it, because we never get the perfect law! The law is never exactly like what your expectations are, unless you improve it by use. We have taken out good results from the worst of laws. This is legal activism. There are many bad laws, but we take relief for women. In my life, I have won 81 per cent of the cases that I have gone to court with, despite this very horrible framework we have.

The judges, too, get this in their consciousness that we cannot [just view a case] technically, we have to see the parties in front of us, what their circumstances are, and then apply the law to it.

Now in sexual harassment cases I am telling them to bring in more jurisprudence, by taking up more cases of this issue. The problem is that a very small number of women want to come in front [of court], because with sexual harassment in the workplace it has to be a professional woman taking the risk of losing her job. [Nonetheless, by taking up cases in court] hopefully we will bring out good jurisprudence - especially on the standard of proof. We claim that in sexual harassment cases what the women should have to prove is that there is an absence of malice, that's all - that we aren't prosecuting maliciously. If absence of malice is proven, [we argue that] then all the presumption must be in her favour. I am trying to find ways of doing that.

Notes

¹ Here Jilani is referring to Jinnah's statements during the independence struggle that the new country of Pakistan would separate religion from the affairs of the state and the contradiction this implied with creating a state for Muslims.

² This religio-political party was founded by Maulana Maududi in 1948 in Pakistan. Maududi himself was opposed to the Pakistan movement in the years preceding independence.

³ These included the Hudood Ordinances (1979), Law of Evidence (1984) which equated the evidence of two women to that of one man in financial matters, and numerous curbs on women's participation in public life.

⁴ Promulgated in 1979, these were among the first laws passed during Zia's regime to enforce his Islamisation programme. They brought Islamic punishments for theft, intoxication, rape and sex outside of marriage, and false accusation. The laws made a woman charging rape liable to be punished (by stoning to death) for illegal sex if she could not prove the rape.

⁵ Religious seminary.

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