

**A New Hajar Paradigm by amina wadud
Columbia University, March 24, 1998**

MC [0:00:09]: [indistinct] The Center for Research in Gender and Women Studies, at Barnard College, the Muslim Students Association and Women In Islam have worked together to bring you an excellent and prominent speaker on a topic that is both interesting and popular.

We're honored to have Dr. amina wadud here to discuss Muslim women and Islamic Law. Dr. amina wadud received her PhD in Islamic Studies and Arabic in 1988 at the University of Michigan. Dr. wadud is currently a professor at the Department of Philosophy and Religious Studies at the Virginia Commonwealth University. In addition, Dr. wadud was also named one of five scholars for 1997-1998 visiting lecturer and research associate at Women's Studies and Religion Program at Harvard University's Divinity School. This summer she's also...this semester she's teaching Justice, Gender and Qur'anic Exegesis at Harvard University. As a Women's Studies research fellow at Harvard, Dr. wadud is studying alternative notions of the family that challenge current Muslim personal and family law through inequitable judgments made against women in Muslim courts. She is nationally and internationally known for her groundbreaking book Qur'an and Women. And I wholeheartedly recommend this book, I read it. It's an awesome book.

Dr. wadud's other publications include "Belonging as a Muslim Woman" in My Soul is a Witness in 1995. And "My Sisters in Islam: Effective Against All Odds" and Muslim Women in the 21st Century" and "Islam, Gender and Women's Rights: An Alternative View" in 1993. As a theologian and activist, she has traveled extensively throughout national and international academic and religious circles. Dr. wadud is also a mother of five children. Dr. wadud will speak for about 30 to 45 minutes and afterwards will entertain questions. So, I want to introduce Dr. amina wadud.

Audience [0:02:08]: Applause

amina wadud [0:02:13]: Audhu bilahi min ash-shaytan ar-rajim. Bismillahi Ar-Rahman Ar-Rahim Sallallahu ta'ala ala Muhammad wa ala aalihi was sahabihi wa man taba' huda ajmaaeen

amina wadud [0:02:24]: wa as salaamu alaikum and good evening.

Audience [0:02:24]: Good evening.

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***amina wadud* [0:02:26]:** I have sort of ventured away from my usual methodology. I'm gonna be doing somewhat of a case study. And I have more material here, probably, then we would have good time for. So, I'm going to sort of skim through several dates. I'll let you read all of the dates to make sure that there is ample time for question and answers, cause I look forward to having some kind of feedback. But my general work is on issues of gender, and it's in the area of Qur'anic Exegesis. I'm going to move away from that a little bit because Islam is a living system. And all the work I've ever done on gender and the Qur'an I hope to have applied especially in the context of policies with regard to issues of women and men. So this particular case study, although it seems rather specific, by the time I get there, I want you to use in a way to reflect on the whole and it's...I'm going to make some suggestions with regard to reform and Islamic family law, Muslim personal law. Which I will use interchangeably, those two names. I'm basing this story on what I call a new Hajar paradigm. I'm actually much indebted to Sister Aliyah Abdul-Karim for this idea, we talked about it earlier this year.

And this follows a trend in Women's Studies and religion. In the past decade or so, a little less than that actually upon, Islam, Christianity, and Judaism, where there's a structural framework that's set up so that we can have a discussion about shared issues and to sometimes use strategies from each other, to see ourselves as Daughters of Sarah and Hagar. I was at an interfaith ,gathering once with Christian, Jewish and Muslim women who were led to be in active relationship between the biblical Sarah, the wife of Abraham and the concubine Hagar. In addition to these methods of didactic encounter, there have been other attempts to build upon the shared relationship for the sake of academic for publication and academic conferences and workshops and other research projects. In the area of religious studies and gender the overall intent of such dialogue between women has been to bring about a focus on these overarching shared concerns. For the most part, I agree with this overall intent. However, this has not prevented me from mentioning a few flaws in using the particular Sarah Hagar paradigm for achieving equitable sharing.

Where the story of Sarah and Hagar is told using the pronunciation of Hajar's name taken from the Old Testament version in the Bible, we did not want to overlook that this version favors Christianity and Judaism, and also presumes a particular course in the sacred history, which privileges in the reading certain results with regard to the relationship between Abraham, Sarah, Hajar and the offspring Ishmael and Ishaq or Isaac. This privileged historical reading is just as political as many other unresolved issues between Christianity, Judaism, and Islam. So not to point this out because our focus is on gender, abuses our discourse by permitting us to ignore other hegemonies at the expense of more genuine

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stance against any intellectual or political forms of oppression. In other words, the discrepancies between the Judeo-Christian versions of the story and the Islamic versions create different conclusions with regard to the heirs of that story. The other aspect of the story, which I will acknowledge before I participate in it is an ethnic component. Although the paternal bloodline of Abraham is the same, the ethnic implications of the two maternal bloodlines with regard to our current historical and political circumstances should not go unnoticed.

Gender discourse does not render ethnic contentions mute, the creation of the State of Israel by due and decree and the attempt to annihilate the State of Palestine and the Palestinian people by this movement leaves significant players, real people and real families unacknowledged in such an oversimplified reading. The story cannot be reduced to a mere setting for the relationship between two women, Sarah and Hajar when the bloodline was used and the bloodline of the Arabs is traced to one or the other of these two. Nevertheless, I'm hoping that my continued reductionist reading of the Sarah-Hajar paradigm, in order to make a point regarding gender in the Abrahamic traditions, and particularly Islam is not read as careless or casual, and I don't wish therefore, to have these other concerns overlooked.

[0:06:50]: In the Bible, Sarah is the wife of Abraham by customary marriage. However, Sarah has reached an older age without producing an heir for Abraham. She consents to participate in another custom readily available at that time, whereby a slave woman, in this case Hagar is given in concubines to her husband. Whatever offspring results from this, from the sexual relationship between the men and the concubine will become the heir of the household. Although, this cultural practice is not recognized today, there are several competing assumptions with regard to it, which I will use in order to make a case regarding the issue of gender and family in Islam today. First of all, I want to deal a little bit with the reality of slavery as an established practice historically. And to note that slavery can be read through more than one lens. Slavery in the cruel form in which it was practiced in North America was not the only form of slavery. All slavery implies lack of freedom for the ones so enslaved. And all slavery participates in maintaining certain gross divisions among people. And maintains and is maintained by a certain form of human subjugation. However, however, there are nuances within the historical practice of slavery that are sometimes overlooked when we are discussing it.

For example, the racial configuration of North American slavery was not always as integral a part of slavery. Black Africans enslaved and continue to enslave other Black Africans. Fair skinned people of Persia, Turkey, Egypt, and other parts of Asia enslaved fair skinned people.

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Likewise, darker skinned people enslaved people with fairer skin. In other words, the racial implications of slavery as we understand in the United States is not always a consistent part of slavery. And there's another distinction with regard to the practice of slavery, which is different from in the context of United States, and that is that in the U.S., I mean, in that regards, that is with regard to the offspring that were born as a result of a sexual liaison between a slave woman and her master, whether that liaison was by force, or by mutual consent. In the North American context, the offspring would likewise become a slave. In most other forms and practices of slavery prior to the history of slavery in the U.S., the descendant of a slave master became a legitimate heir to the master. For example, in Islamic history, it was not unusual that the sons of concubines became rulers of the Empire. The reasons for this are not as noble or just as it sounds at first reading, however. Instead, the practice of marrying the daughters of neighboring empires in order to form alliances where political unrest may have been, meant that the sultan would never cohabit with his wives for fear that upon the death of a sultan, the offspring would take over the empire for the mother's people or her, you know, family or her Empire. So, the sultan would marry women sometimes up to the legal four of them in order to form these political alliances. Then after the marriages were officially consummated, he would never cohabit with his wives. Instead, he would cohabit with his concubines and therefore his heirs would be produced in this, from this kind of relationship. And that way, when the heir came to power, there were not any containing regional claims from the mother's people and the empire could stay united. People like Haroon Ar-Rashid was, you know, in the same kind of scenario. In addition to these contentions that I bring with regards to the story where the issue of slavery, there are some other competing points with regard to family.

[0:10:40]: First of all, here we see that the primary emphasis was placed on the "father seed" in determining lineage and heritage. The guides attributed to the paternal line have been variously constructed historically and currently. In the case of the Sarah and Hajar story, women were vessels who carried male progeny with little function or moral significance other than this utility. This implies that they had no other investiture in the matter. And the continuity of family line of the father was indispensable to other concerns that the women may have had at the time. For reasons that should be obvious from the resulting conflict between the offspring of Sarah and the offspring of Hajar, Judaism came to follow the lineage through the line of the mother after this, and is still is the case today that Judaism is inherited through the female line.

A third contending issue to be noted here of some significance is that the mother-child relationship was vastly different from the way that we understand it today. The heir of the

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house did not have to be in the bloodline of the mistress of the house for one thing. Women who gave birth to children did not necessarily nurse them as another thing. Tending to the needs of their offspring in as much as those needs were even considered significant was not the same as it is understood today. In Islamic Sira, for example, the stories of life of the Prophet when Halimah is introduced as the wet nurse for the Prophet during his infancy, this implies certain aspects of the story which we sometimes don't make much [of] or comment on today when citing these customary practices. These are the aspects that I bring to our attention now, in order to focus on some of the structural implications with regard to the concept of motherhood and concepts of family. If the biological mother was not the one who nursed the infant in notions of mother-child bonding, which is so emphasized in these contexts since the construction of the nuclear family is not an eternal idea. If such an idea is not eternal, then it cannot be presumed to be inherent or natural, as it is often thought to be in these times.

Another issue with regard to this is the matter of guardianship of children, which followed certain local customs of kinship groupings in accordance to the times and places in which these groupings occurred. The value of guardianship is constructed through circumstance. And as one of the underlying components in the matter of hadanah or custody in the context of Islamic law, we cannot presume that it follows any eternal or inherent construction. All of these contending issues taken together are meant to help us to acknowledge that notions of family and even of motherhood have been variously constructed over time. Family was not always the same as we perceive as natural or inherent today. By extension, we should also be able to understand that notions of family and motherhood today are not seen the same across diverse societies or even between members of a single society.

[0:13:42]: What factors come to bear on our notions of family today is the focus of my presentation. In particular, I'll be looking at notions of family in Islam, which does not suppose any single cultural context. But I will basically come to settle on our most immediate situation, which is Islam and family in America. Before I do this, I'm going to make a brief run through some Islamic history. And my purpose for going through it briefly, obviously, is the question of time, and these points are peripheral to the point at hand. But by placing these points of Islamic tradition within their own continuum, it helps to properly interpret some of the recommendations that I'm going to propose at the end of our presentation. First of all, the Qur'an, the apex and nexus of Islam was revealed at seventh century Arabia. It took the particular situation of seventh century Arabia into consideration, but at the same time had to address itself to it's universal goal of guidance.

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In the Qur'an the relationship between particulars and the universals was, has been variously understood throughout Islamic intellectual history. Suffice it to say that the Qur'an includes very generic universal statements like "la ilaha illa allah," as well as pronouncements like in Sura al-Ahzab where the wives of the prophets are not permitted to remarry after his death. Some of the pronouncements are very limited in application without, of course, undermining the universal aims of guidance within the text. And some of the pronouncements are very universal in terms of their utterance. With the development of the first living community of Islam in Madinah, family and kinship relations were specifically addressed within the Qur'an. In doing so, we are left to determine if the addresses are specific and limited in scope or if they are universal addresses meant for general application. [coughs] Excuse me. In addition, no matter how specific the utterances are, or were understood or how they were applied, presumably they cannot violate the universal goals of the Qur'an. Otherwise, the Qur'an would be seen to contain various points of irreconcilable contention.

Now, the issue of what seems like discrepancies in the Qur'an nation has been variously discussed within the history of Islamic intellectual discourse. And one of the solutions applied to this dilemma involves the understanding of the naskih and mansukh which is the abrogated and the abrogating verses in the Qur'an. This meant eventually that later verses, those that are considered abrogating, were given priority over earlier verses, those that were considered abrogated or this is not every verse later and every verse earlier, but there are verses that have been linked as being abrogated and abrogating. But the point is that later verses they were given a certain priority. However, there wasn't a consensus with regard to this throughout the Islamic legacy. And in recent Islamic scholarship, this issue has been revisited as part of that intellectual continuum.

Some objections have been posed against a theory which gives precedent to later verses over early ones. And some examples are in the book written by Sayyid Qutb called *Milestones*, which encourages Muslims to focus on the Qur'an's early emphasis during the 13-year Meccan period, on things like tawhid as a fundamental principle of personal integrity and social order. Also, in the works of Mahmoud Taha there is a more comprehensive articulation of the legal and moral implications of rethinking the nasikh-mansukh issue in modernity. He proposes that historically, the formation of shari'a was based on giving precedent to the Madinah migratory period over the Meccan one, and this choice for whatever logical reasons that it was made at the time has meant that shari'a was developed based on a more limited potential that might have been possible had shari'a been based on giving priority to the Meccan revelations. The ideas that he espoused have been developed

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in more detail and towards their pragmatic implications with regard to Islamic law, by his student Abdullahi An-Na'im in a book called *Towards an Islamic Reformation*, something that I recommend by the way. It's a very useful tool looking at how this works.

[0:18:21]: Going back to our historical context and analysis of the family, whenever we refer to the Prophet as son or husband or father, in addition to his model as a prophet, we sometimes need to be concerned with whether he was a reflection of the particular time in which he lived, or he was forming a universal. One example for...that I'd like to give is that when the Prophet was 53 years old, he married Aisha who at the time was seven. The marriage was consummated when she was eight. Although both the Prophet and Aisha are important role models for us to emulate even up to this time, there's not very many recommendations for marriages with a 45-year age discrepancy, and no one adheres to the practice of marrying seven-year-old girls today. So in other words, we don't do everything exactly like the Prophet with regard to matters of marriage and family. This merely requires us to be honest that he also participated in customary practices of the seventh century Arabian style.

The next area of historical focus is briefly during the formative period of Islamic law in the eighth and ninth century, where lively intellectual developments went on between Muslim scholars of exegesis and fiqh. The other were loomed together with ahl al-Hadith wa Sunna in coming to terms with how to live as Muslims. For our purposes, we need only to be reminded that out of hundreds of trends, Sunni Islam came to settle on the four different major schools of thought from the jurisprudence of Malik, Shafi'i, Ibn Hanbal, and Abu Hanifa. These four schools continue to exist today in various regions of the Muslim world and have historically had the mutual respect of their legitimacy. The obvious implication informing distinct schools is the understanding of these systems of khilaf or difference of opinion. This has been a healthy and natural part of Islamic intellectual and legal development. Hence, shari'a is an important reflection of Islam. Although, it is taken to be divinely ordained, in as much as it is based on the divine sources, the revelatory speech of the Qur'an and the divinely inspired behavior which exemplified that revelation or the Sunnah of the Prophet Muhammad *salla Allahu alaihi was salaam*.

Nevertheless, these two sources were the subjects of intense debate and intellectual but very human discourse. So, the process by which it came to create the four major schools is therefore a very human and very fallible process. Following the methods of application of what is considered to be correct reflections or practices premised upon the founding principles of these legal schools, is at the decision of the jurist who make the applications or

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who consider the particular cases that come before them, and who render the legal opinions or fatwas on the basis of their knowledge, their expertise, and their intellectual choice with regard to the case-by-case concerns. Such juridical interventions has always been a crucial part of the sustenance of Islamic law has always been again, a very human and hence limited portion of the system, intended to reflect its underlying belief in the sovereignty of Allah over all matters public and private.

[0:21:50]: Finally, in the early part of the 20th century, the end of the Ottoman Empire marked the end of the united Muslim ummah politically. Since that time, whenever we discuss “ummah,” we generally have shifted from the political realm to either a psychological or a spiritual realm. The end of the Ottoman Empire was about the same time as the rapid expansion of the Western system of colonialism. Almost all of the Muslim nation states that we have today came under some colonial rule of the Dutch, the French, the Italian, or the English, if not under direct military and political rule, then surely under the influence of the colonial West. The colonial process included in most instances, the wholesale borrowing between diverse legal systems for matters of tort, criminal procedure, family law, as well as the most important in political law and constitutional law. One post-colonial strategy in Muslim nation states was to reestablish Islamic law, and what this usually meant was family law and penal law or the hudud. How to implement Muslim law needless to say has not only been variously constructed, it has also been reconfigured in diverse ways depending upon a number of factors, which I will talk to you about closer to the end.

And finally, the global background to bring home with my more local point is the reality of the new global economy, that there's no concerted Islamic discourse with regard to this [indistinct] is interesting to me. Islamic economics represents one of the most advanced areas of Islam and modernity with regard to research. And this is of course necessary because we have to figure out how to benefit from the precious oil reserves that Allah has just happened to put under Muslim land. But it is one of the most fascinating moral ethical issues, which is not a part of the discussion. Both the politics and economics of this source of power has been variously addressed, but the moral implications go untouched. And I'm not going to actually say that much about them at this juncture, but I would like to mention that the issue of economic globalization, I think, is one of the straws that will eventually break the global camel's back. And if it's not addressed holistically from the Islamic perspective, instead of through this kind of apologetic combination of Islam and economics today. I think it will continue to be participated in by Muslims, who will continue to victimize through it large populations of people in the world; implications I hope we'll consider as a fundamental part of any sort of thoughts in the future.

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[0:24:40]: In my current concern over family, let me first make note that the globalization of the nuclear family has been one of the consequences of the global economy. The spread of the nuclear family was primarily led by the industrial revolution as the model family, which was most readily exploitable for maximum productivity. By definition, the extended family was a system of supportive networks, which allowed for a natural variety of family members to participate in the guardianship of the members in the family that were deemed to be most in need of support. This could sometimes be reduced to solely the needs of the offspring, especially of small children able to care for themselves, but the actual systems of support are quite extensive involving every aspect of family or family relations. In such a setting, the feelings of vulnerability that's with modern day nuclear families would not have been so readily able.

Although maintenance through wage earning is not less of a factor of survival in the extended family network today, there was not the sense that if an individual job would suffer, that an entire family would then be left without a source of livelihood. And again, if there's an emergency that comes up in context of this isolated nuclear family, the unit is at the mercy of very few resources to see to those types of emergencies like, you know, fires or accidents of any kind, serious illnesses, especially family members, hospitalization of any family members, let alone if the hospitalization is of the wage-earning family member. Anything like this that puts a strain on the limited resources. When the networks of support available through the extended family are gone, the responsibilities that were fulfilled in those networks are not relinquished. Someone becomes responsible for fulfilling them. Usually, it's the isolated couple. Now the tasks and burdens that were once shared by many are falling onto the shoulders of the two. The woman is seen as the primary caretaker. She's assigned the tasks of moral upbringing, education, and acculturation of young children, in addition to things like nutrition and health and clean environment, and clean personal effects. We consider this normal or natural. And maybe this is a fair arrangement for fulfilling the types of tasks that are necessary in order to guarantee that the nuclear family will survive.

In conjunction with this primary caretaking role, the nuclear family notion has led to the idea that the father's only role is to provide material provisions or "nafaqah" power with regard to Qur'anic Statement wa / amwalhim. Material provisions now are exclusively understood in terms that have resulted from the Industrial Revolution or wages earned. Wages are the result of work that for the most part no longer takes place in the home as was once the case. And within the isolated family, the social acknowledgments of the wage-earning member especially when that wage earner is the male member of the family, as so frequently is the

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case and even more frequently is *assumed* to be the case, then other needs are left to be fulfilled by the one most often presumed to be the non-wage earning member was just the woman or the primary caretaker.

Underlying this arrangement, first of all, is one ideal whereby the woman has only to biologically reproduce the offspring, and then be the primary caretaker of the young. And to those who assume that [skip in recording] the reality is that women's, that women's lives, even in the context of Muslim majority countries, is affected by this global economic picture in such a way that there has been a massive movement of urbanization. And there has been an increased formation of nuclear families globally. Yet, even as these families are created, the ideals that were associated with the extended family are not lost. And what this means, of course, is that you have a few people doing more things, but those things are still expected to get done. In addition to this transition towards nuclear family structures, the new global economy has increased the need for two wage earners in the family, where they used to be greater choices with regards to allowing the mother to focus attention primarily on tending to the young. So...I'm sorry, okay.

One of the possible responses to the whole nuclear family scenario, the mother would stay home. Of course, in poor families, which is the case for the majority of the Muslim families worldwide now as well as throughout history, there was never this presumption that women had the choice about whether or not they could devote most of their attention just to the family. But there is a way in which history has not demonstrated the reality of poor families whenever it has focused on what we consider to be our past.

[0:29:40.8]: One of my earlier concerns of the family is that women's work is unnoticed since it is not counted on a scale where wage earning work is considered the real work. But if you paid someone to fulfill each of the tasks that women are expected to fulfill as the primary caretaker and the housekeeper, which, by the way, was not seen as an extension of motherhood in the time of the Prophet, and therefore cannot be said to be a natural extension of motherhood, even though it is somehow ideologically attached to it in modern society. So, if someone was paid a minimum wage to fulfill the task that she does, let's say nurse a newborn, feeding infants, toddlers, and children, including preparing their food, as well as providing clean laundry for the child and overseeing that his or her every activity is safe, morally beneficial, as well as educational and valuable in the right environment, and we add all this up; and someone is also then responsible for doing house cleaning and the laundry and stuff, then you have quite a bill. It would cost quite a bit. But since this work is not on the wage-earning agenda in the context of modern and industrial societies and the nuclear

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family, it continued not only to need to be fulfilled, but to be fulfilled without acknowledgement.

However, if any of these tasks are left undone, someone is blamed. And if young people don't demonstrate a certain development of mores and etiquettes someone is held accountable. But when the father is attending to the narrow constraints of responsibility with regard to nafaqah as merely material provision, it is rarely fatherhood that comes under attack. The heightened responsibility for the role of the mother must become a cause for reflection. On the one hand, motherhood has had various different constructions, and now has come to be the basis of the moral upbringing of the future generation. On the other hand, more and more women are now charged with the additional burden of adding to the overall income of the family. But since wage earning is the male role, what does it mean that women do it? It doesn't mean anything. She is a primary caretaker, her wages are not a part of the formula at any real level. Therefore, she is held responsible for the home in no less of a fashion than if she were there all the time, even though she may have to participate in the wage-earning context as well. So again, we are at this place of not focusing on the reality of what it takes for women to be able to do the types of things that are expected of them. And in addition, if the extended family is gone and the nuclear family has taken over, what happens if for some reason in that nuclear family, the woman is left alone? And that's where I come to the Hajar paradigm.

[0:32:40.2]: Every year and next month in April millions of Muslims converge on Mecca to perform the rites of Hajj, included in one of these rites is running between Safa and Marwa seven times, symbolically representing the plight of Hajar when she was abandoned in the desert with her child. She was a single parent. All the needs of her child now fell upon her shoulders. Those needs were not just the nursing care for the child in some distilled repose of the Madonna, it meant making a way where there was no way for herself and her son. I doubt if many of the Muslims who run seven times between Safa and Marwa actually reflect on the realities of how a woman who had never had to worry about her own livelihood or about protection must have felt with so much unprecedented responsibility falling upon her shoulders. She was isolated from a network which had carried the promise of provision, protection, and care. In none of the exegetical works of Christianity, Judaism, or Islam is the reality that this woman faced juxtaposed to the norm of family, which is assumed to exist at that time, and therefore it is not commented upon. The silence over this discrepancy is part of my consideration today.

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[0:33:59]: Islamic personal law is built upon a notion with regard to family that no woman at any time will be thrown into the desert forced to fend for herself and her offspring or forced to construct a healthy and happy life for herself and her child with no infrastructure of support. The Islamic law for a family is constructed and maintained through the centuries is not only premised upon the extended family notion, implying that never, for no reason, does a couple let alone a woman become responsible for providing and protecting self and children. But the construction of Islamic family law also presumes that the woman has no other responsibility within the extended family network except for safely delivering future generations on the basis of her childbearing capacity. If she earns wages according to the law, her income is hers to keep. She has no responsibility towards nafaqah, the material maintenance of the family, the household or not even to herself. If her husband dies, she's supposed to be taken in by the extended family members. If she divorces her husband or is divorced by him, she returns to her extended family. Anything her children need is presumed to be available through an entire network. In such a nurturing and supportive environment, it would seem odd today for a woman not to focus her attention on the welfare of her children and on their moral and emotional needs.

Ironically, however, the system described was one with no such premise with regard to nurturance or guardianship of the young. Those needs were not presumed to fall upon the mother. In the reality that faces many women worldwide and here in America who embrace the ideals of family with no knowledge of the ways and means for achieving those ideas is the bind of the unexplored Hagar/Hajar paradigm. Women have entered into Muslim marriages, only to exit it in percentages that we dare not admit. Even in selecting the title for my presentation, where I wanted to emphasize my focus upon these women, for me to include something about single parenting was discouraged, because the Muslim community thinks it's something that is negative. In other words, we are in denial. We do not focus upon the realities of women's experiences, because to do so would be to admit that the lives of so many women are so far from the ideal perceived to be their right, or their due in Islam, that the discrepancy between those rights and the reality cannot be looked upon without either implicating Islam or ourselves. But our failure to admit this will not cause the reality to go away. Sort of like when little kids say: if you cover your eyes, they can't see you.

[0:36:50.0]: My concern is that the formation of Islamic family law was based upon certain notions of family that have ceased to exist almost all over the world, and furthermore, have never existed for most poor Muslim women worldwide, and in the community in the context of Muslim converts in America. If Islam is for all places, for all times, and for all people, the reality of this must be dealt with. Yet the ideals that family should produce in terms of well-

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being are presumed to remain unencumbered by global or regional realities. In the case of Islam in America, especially in the case of the convert community, we expect the best and offered least. We are offering no genuine consideration of the realities of the numbers of women who raise children single handedly, in predominantly non-Muslim and un-Islamic environments. Should any shortcoming befall such families, we do not address it as a matter of community responsibility, because we can hide behind the rhetoric that Islam gave women all their rights 14 centuries ago. [Umi “hums” in agreement]

The context in which those rights were given is totally ignored, as are the painful realities before us today. Furthermore, if we can blame the shortcomings on the parent who spends the most time and resources towards providing for these endangered children, then the community does not have to look at its role in failing such families. We're living on the basis of a very harsh and impractical expectation that the best that Islam has to offer will result no matter what circumstances people are actually living in. And that if individual people, families, and women, etcetera cannot fulfill the promise of Islam, then be certain that the fault lies only with themselves never with this Islam. This is a double burden we are leaving women to face. [Umi “hums” in agreement]

[0:38:47.6]: What is more, the new Hajar is not only expected to fulfill the nurturing mother role, the housekeeper, the cook, the laundry woman role, but also to provide the means of livelihood that is necessary to live a life of dignity in the United States. What this means is that she must compete in the wage-earning marketplace, the major characteristics of which are still based on the male experience within the public arena. It is never presumed that any intervention from the complete and excellent fulfillment of the job qualifications in the wage earning sector should ever occur because of competing claims on one's time. Tending to a sick child or attending a school play is not permitted in the characteristic 40 hour workweek. And while I contend that such expectations in the world are detrimental to men as well as women, within the context of families that include children, I'm especially concerned to make a few points with regard to women.

When women face the double bind to fulfill work as men do and to fill— and to fulfill the nurturing housekeeping tasks as if they have nothing else to do but stay at home, then what happens? Most importantly from our perspective here, the new Hajar paradigm is the reality of Muslim women head of households, but it is not a category of the law as it was developed traditionally. Women who did not produce children on their own are now on their own with little to no help from divorced husbands and fathers, and no help from the community of Muslims to which they belong, and from which they depend for spiritual inspiration. Even

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were we to enact full implementation of Islamic law as it was developed, such women would still be without status. It short it behooves us to take into greater consideration the workings of the law, and to become more responsible with regard to its holistic reformation. In the context of complex Muslim demographics of Islam in America competing paradigms of family and marriage, which sometimes overlap each other, and also overlap the restrictive and over...was also—I'm sorry, you made me nervous—was also overlapped with the restrictions and qualifications of the U.S. legal system, we have this mess, this quagmire that's going on. I'm gonna skip a little bit because I want to tell you something about my reforms, and also give you time to do questions and answers.

[0:41:17]: But one of the things that I did want to point out is, there's some things about Islamic law that we don't actually know about and we kind of ignore. When the Qur'an for example, says that a woman who is thrice divorced by talaq, is not allowed to remarry her husband unless she has been married to someone else, that marriage has been consummated, and subsequently, she has been divorced by talaq. You ever ask yourself, what does that mean? One of the things that it means is that even the notion of lifetime partners is a recent historical phenomenon. [woman's voice "hmms" in agreement] So, there's certain things that go on with regard to the family, and with regard to traditional Islamic law that we have to think about. The question of the custody of children, how it was decided, why it was decided. The difference between legal systems in America where the custody's presumed to go to the mother, and the traditional setting where the custody is, usually goes to father's people. These are kinds of issues that we have to deal with. I'm just gonna skip over to talk about Hajar once more.

First of all, Hajar is not in the Qu'ran, even though we claim her. And we do so because of the rites in the pilgrimage. Even though she's not a part Islamic law, and she is not a part of the Qur'an, she is still a living reality in the context of the lives of many Muslim women. And I would wager that because Muslims are still in situations ravaged by war and are facing refugee status, sometimes they say as many as a third of the world's population of refugees are Muslims, wherever Muslims are poor, wherever Muslim countries are poor, wherever Muslims supply the labor for wealthy Muslim countries, and therefore they leave their families and their families are split, that women are coming to assume a much larger social, and economic, and moral responsibility with regard to the family. She's not just a vessel for the safe delivery of the offspring, but she is not covered by this in Islamic law.

So what I am proposing is a reality check on shari'a in the area of Islamic family law. And how we will do this reform of the law involves a couple of easy steps actually. First of all, we

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have to remember that shari'a has always been the result of human interaction with the divinely revealed sources of the Qur'an and the sunnah. Secondly, that this human interaction has been impacted by considerable global changes with little genuine consideration of the Islamicity of the various impacts from things like the displacement of shari'a by European codes during the colonial rule, [Umi "hmms in agreement"] by social and economic developments in, and by social and economic difficulties since the time of colonial rule, and that the variances that have been based on culture and on demographics, and economics, and political stability have all yielded significant differences with regard to the theory of practice of Islamic family law.

Rather than jumping into a kind of ha— ad hoc reform. What I would like to recommend is that we work on a complete reform both locally and internationally. But in order for this reform to be complete, we must replace the gender imbalance of the past, qualified people trained in areas of fiqh and tafsir and other aspects of Islam must meet with qualified people trained in social services, family services, domestic violence programs, handicap and special needs services in order for a comprehensive law of family and personal status that can be developed, which will take us out of denial and into an Islamic future.

amina wadud [0:45:09]: Wa aquli qauli hatha wa astagfirullah alaik wa lakum. As salaamu alaikum. Thank you.

Audience [0:45:14.0]: [applause]

MC [0:45:31]: [indistinct] So any questions? If you want you can write them and send them up to the front or you can just raise your hand and I'll call on you. and Dr. wadud can speak.

Speaker 1 [0:45:43]: I have [indistinct]. Marriage for women and guardianship... but and also, I didn't understand when you said about the Islamic law when you were making reference to the verse. about if a woman is married and then divorced, she could go back that we're making the assumption of lifetime partnership.

amina wadud [0:46:05]: The Qur'anic discussion about a woman being divorced three times with talaq, men says it is not law for you to marry her again, unless she is married to someone else, and then then that marriage ends. Then you're permitted to remarry her. Now think about this. This is a woman and a man, they're together. They're together and they divorce. They're together, they divorce. They together and divorce divorced depending on how you understand the [indistinct] talaqat, but any case, that's three times divorced. She

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marries somebody else, they divorce. She goes back and marries the first guy, I mean other than Liz Taylor, we don't know stuff like that. But it was a reality, so much so that there was a great deal more fluidity with regard to entering into marriages. And if you look at the fiqh books, you will see this kind of fluidity exists. And that the idea of lifetime partnership is actually a very recent idea in the sociological development of peoples.

And if, even if you look at the law books prior to the colonial period, I just know some work that someone has done in Egyptian law, you will see that there was a great deal more flexibility with regard to entering and exiting marriages. Now we, we're at a...you know, it's a real funny kind of mixture between, you know, nuclear family notions and, you know, eternal bonds and you know, whatever existed at the time in Islam. I'm not saying which is preferable. I'm just saying that notions of family are not fixed. They are not divinely designed. They are things that occur within real context of people, and they change. Okay. And that's the only point that I want to make with regard to it. As far as the guardianship and marriage, I don't know what the question is. So.

Speaker 1 [0:47:42.2]: Is it permissible for a young lady to marry without a guardian?

amina wadud [0:47:45]: There're schools have different opinions with regard to that, and since law is not really my area, I could...I would have to go back and look at it in order to be able tell you how they differ, and on what basis. But there really are differences. Some schools say absolutely not. Some schools say once she enters into a marriage, she can then enter into a second marriage without having a wali you know. Some, some interpret the wali one way, some interpret the wali another way. So, there are some differences about that. I just don't know.

Aisha Al-Adawiya [0:48:23.1]: Just a point of clarification about talaq, once a bride is...once, um, three times, the idea of iddah does that imply that the marriage is...that neither party is actually in a state of separation or physical divorce? Or is what we're understanding to be divorced by going [indistinct] remarry, [indistinct] So, just some clarification.

amina wadud [0:48:52]: Right. The nature of the talaq in **the [indistinct] talaqat** also is one of the things that they differ in schools. And they...there's some details, especially I know in the Hanafi fiqh with regard to if you pronounce them all at one time. Sometimes a school will accept that. Sometimes schools will not accept that, they will take that as a single talaq. The talaq has been, the divorce itself and the pronouncement has been followed by the waiting period. And after that, then the couple separates, she's supposed to go back to her

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people, or the couple can choose to go back together. And if they choose to go back together, they don't have to have another marriage procedure taken in. And so, this is one of the differences that is discussed in detail in the law as to how long an observation of the iddah and whether or not they can willfully re-enter it without, you know going into the marriage. This is something that they, they did haggle over the details of it, as opposed to after the third time, then there's no way for them to re-consummate unless she marries someone else, and then that marriage ends in divorce, if she remarries the first person.

So, apparently what is, what is meant is that you don't have to go through the entire marriage procedure if the marriage—if the couple decides to, and particularly with law is articulated if the husband decides to reenter the marriage, he may do so at any point during the talaq, but that, during the iddah, I'm sorry, without having to go in and re-establish the marriage from the beginning. If it's after the talaq and she ostensibly has gone to her people, then the idea of re-initiating it, then it requires a certain type of arrangement that has to be worked out with the details of marriage. So that's what that, you know, that's one of the reasons why it's discussed in detail, what happens during the iddah, how long the iddah can go on, and what procedures are necessary in order to be able to re-enter into, you know, relationships in that marriage. So, they really did pick away at that, you know, in great detail.

Again, law is not my area. I'm only interested in law in so much as that's pragmatically where we go with Islam. But I think that looking at the law books in the language of the law, there are some implications with regard to the woman as an object, as opposed to a woman as a subject. And these issues are discussed by men with regard to each other and how they were gonna handle it. And that's one of the reasons why there's no such thing in the law with regard to things like marital rape. When men are sitting around talking about it there, there's no idea that, you know, first of all how are you gonna do this, this is your wife, but the idea that it does exist is a reality has contended with this discussion. So, we're going to have to open up the discussion in Islamic law to deal with realities. And that's, my point with regard to it cause there's a lot of things that the law did not deal with, because it just didn't come up in the way which they have now come up. But I think that it is possible to make Islamic solutions to those things, if we take responsibility to re-engage in discussion using the Islamic sources, but also borrowing from the experiences of people who are not simply trained in law, but have, are trained in medicine, you know family and children, and that kind of thing. But that's more of my point than [indistinct] talaqat.

MC [0:51:56.]: You have another question up there.

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Rasheedah Abdul Hakeem [0:51:57]: Yes. As-salamu alaykum. Two things. One is a comment, and then I have a question. The comment is just in adding on to the list of responsibilities that you are cited that the woman, as mother etcetera, has, we've left off the whole issue of the adult woman now also caring for elder parents, and exploring all those issues, as well as the issue of adult women having to often care for grandchildren. So that adds on additional work that certainly is another phenomenon. The other issue is... you didn't talk much about, and I'm sure you had reasons why, but you didn't talk much about the whole issue of addressing the men in this equation quote-unquote. You spoke about the single woman and what will happen to her if she's divorced, etcetera. Of course, it is, more often than not that the man remarries. And his issues and needs are met. And the community tends not to address the problems that men are having in this society, obviously Muslim men, in adjusting to maintaining our marriages. And I'm not saying, Allah knows best,, not necessarily lifetime, but maybe, but certainly, marriages of any significance and care and fathering and taking care of the children and nurturing of their own mother, that part is missed. Most of the conversations on this issue, talk about the problems and the burdens that are laid on the women. But very little is addressed in the community as to practical, detailed solutions, work that has to be done, if inshallah it's a five year plan or a 10 year plan, or what have you in addressing really the underlying problems of why so much divorce is happening, why so much remarriage is going on, why the woman is left to be single, and we're not looking at the side of the men, the problem with the men, their problems and how to address them. So that's the question and just adding on to your...

amina wadud [0:54:22.8]: Yeah, I think that the matter of family in the context of modernity is very poorly looked at, in the context of Muslim communities. So, I think that there are a number of competing factors, all of which need to be addressed separately and together. But we don't do it. We don't do a family counseling within most of the organized Muslim communities. We do it within the network of extended families, if extended families exist. But when extended families do not exist, then we just don't...we don't take the responsibility as a community. And that is one of the points that I'm that, I'm trying to raise. And that is, that in the absence of certain types of structures, the community is supposed to fulfill those types of needs. My focus and my research has always...my focus is on women. And the point is because what we're...what we're experiencing now is a mixture of certain ideas about motherhood and parenting, and family with a system that has assumed to satisfy certain needs. But it's not addressing the reality with regard to needs for women or for men, or it's not necessarily used in a comprehensive way to address the problems with the breakdowns in families or plans or strategies that we are employing that are not working like early marriages and things. There're just...there are a number of things that are not

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working that we're not addressing, and I think that they need to be addressed. They need to be addressed at multiple levels.

My concern with regard to this lecture was not all of those issues in the same proportion as they deserve to be focused on, but rather on understanding that the law that is used by over a billion Muslims worldwide, either because it's part of the legal institution of the Muslim nation state or because we are mostly attached to it in the case of Muslim minorities, but the family law, Muslim personal law that we are still using is not even meeting the realities of the lives of Muslims. And that's the only point that I wanted to raise. I think that all the points that you're raising with regard to the extended complexities, with regard to families need to be addressed: the elders. I have a special needs child; I didn't receive any efforts within the Muslim community to deal with special needs children. Anybody who has a special needs child addresses that need by the, you know, the single family alone. We just, we just, you know, it's like out of sight, out of mind. So all of these things. And I think that if the programs are going to be holistic, in my hope that they will be, they will reflect our adherence to the Qur'an and the sunnah, and they will be pragmatic.

They will deal with everything. They will deal with seniors and deal with situations where fathers are not trained to be fathers, they're just trained to work in the job market, or whatever it is. They will really deal with all of those things and take it as part of the community responsibility to deal with those issues, rather than to assume that if we don't look at it, and just cover our eyes, that it's gonna go away. It's, it's really there. So, I agree with you. And all of the other aspects that you mentioned, as well as other things are a general part of the needs that need to be addressed by Muslim communities. And even if we address it as a Muslim community, the façade that they were already addressed, because shari'a is complete, is the thing that I was trying most to dismantle. It did not deal with certain types of things, but it can, if we take the responsibility to make it accountable to those things. And the list can go you know, quite extensively in terms of what types of things need to be actually addressed. So thanks for the input.

MC [0:58:07.8]: So, can you condense? We have a few questions, so we can get as many as possible?

amina wadud [0:58:11.9]: I can condense my answers.

Speaker 3 [0:58:13.5]: As I'm sure you've read recently in a lot of the [indistinct] out that talk about American Islam... is the greatest contribution American Islam can give to the

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modern world is this modernization on, you know, community contribution that you mentioned that involves [indistinct] etcetera. What is your reaction to that?

amina wadud [0:58:34.4]: Actually, the news feed thing that came up, I wouldn't consider it necessarily as more press coverage. I think it was kind of disparaging. I think things get popular and they're pretending that everybody's doing it. At the same time that that was going on, The Movie Channel had a movie out this past week that was demonstrating the most detrimental things regarding to Islam and the Muslim culture. So, we're still in a mixed bag as far as the media goes. But I think your focus was really on what's the contribution of American Islam to global Islam in the future. And I've heard a lot of things. And obviously, as you know, an African American myself, I have a certain amount of vested interest in my context here. But I really see that the American Muslim context is short of many things that I've experienced both in living abroad and working with Muslim minorities in other situations, as well as living in Muslim majority countries, and that is that we have a really hodgepodge of Muslims with regard to the significance and the application of Islamic law. And I would like to see that be addressed a little bit more thoroughly and then if we are successful at addressing it, then perhaps we can say that we have something to offer.

What we have here is an opportunity to be able to apply ourselves to Islamic morals and ethical principles. But we're doing it in a haphazard way. So, what I would like to see is that we establish a notion of Islamic law that's much more comprehensive than exists, you know, anywhere in modernity by actually getting to the nuts and bolts, and trying to address it and institute it at some level. Whether or not we will actually do that, I don't know. I don't think it'll happen in my lifetime. So, I'm not so optimistic that the American Islam is so much of a global ideal. I think that there are advantages in the American situation, and that there are terrible disadvantages. I think that women, for example, they experience, say, the Muslim marriage possibilities in the U.S. where she can enter into a marriage, then that marriage can be terminated, you know, a year later, she has no legal status, she can't get anything from the law. You know, her children may not be recognized because they were not part of a registered marriage, although, you know, the family courts deal differently with regard to the matters of child support. So, she...it gets into a messy situation, because she's neither availed herself to Islamic law, or to the customary laws, you know, domestic laws in the U.S, so when she needs help she doesn't have anywhere to go. So, I think that it's a big step. And I think that there can be advantages, but I also see a lot of disadvantages to the scenario. So, I'm not so optimistic that, you know, America has an ideal. That's just me personally. But, you know, I may just be a pessimist, so.

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MC [1:01:13.7]: Question?

Speaker 4 [1:01:55.2]: Yeah, I wanted to go back to the issue of marital rape you raised. You said part of Islam [indistinct] the perception. At least I'm not as familiar with the American Muslim that the Middle East where I am more familiar but the perception that actually denies the possibility of that in principle because of the particular notion of the meaning of the marriage contract, and the definition of what goes into that exchange of contract, which you are familiar with, I don't have to spell it out. So where would you see the kind of cultural and ethical standards that would radically change that? That [indistinct] application of the marriage contract? Because I feel that is the challenged, this denial is not...is based on that assumption of what goes into the contract of marriage.

amina wadud [1:02:09]: Yeah. I think, for me, I mean, I'm entering into this newly because I'm interested in notions of family, and I'm hoping to have, you know, have some efficacy of the level of the law and to work with other people working on ideas of law reform. But I think that the articulation of the law made certain assumptions morally and socially, that are not consistent with the goals of the law with regard to providing a certain type of environment for the bringing up of Muslim persons. And I'm hoping to deconstruct it in that manner. In other words, irrespective of the ways in which it was understood historically, I think that we can bring in new understandings. For example, I think that the idea of marriage partners for life is not such a bad idea. But I have to admit that it is a more recent idea than the formation of Islamic law. In that, which ipso facto, by the way, is presumed in a lot of Muslim modern context anyway. If that is going to be an aspect of the law, then the point that the system is making with regard to, you know, why are there so many divorces, will also, have to work its way into **[tape ended]**

[new tape] 1:03:22 with a combination of certain ideas that have resulted from our knowledge and modernity, so that we will have more respect for the two persons that, you know, will actually end up coming together. Right now, this just is a terrible disparity, and the language supports that it and maintains that disparity. So, I think that the language can be used to, I mean, I think, we can address the issue of language as a place for reconstruction. And I mean, but I'm saying this in a very, you know, wishy washy kind of way, because my area is really more exegesis. But my concern is with the law. So, these are the kinds of things that I will address myself to, you know, in the future as well. This one year for me to do research has allowed me to look at a number of things that I'm hoping to be able to work in more pragmatic steps, but I'm not at all in a position to say how exactly we're going to do it. I think that if the law involves the expertise of people, other than just people who are trained

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in fiqh, we might have a chance. And that's why I advocate for having women who are involved with things to do with other women to be a part of that process. So, that even the very language of it can be, you know, contested as only one formula in order to discuss the coming together of Muslims for the sake of the future. So, I you know, that's just sort of vaguely where I'm hoping it'll work, but I'm not exactly sure.

Imam Talib Abdur-Rashid [1:04:40.3]: So, yes, I really pray Allah bless you for your excellent presentation. I wanted to just make a couple of quick observations on the Hajar paradigm; for instance mentioning that Hajar is not in the Qur'an. And I wanted to, you know, submit is that, the entire narrative of Hajar and baby Ishmael, is certainly in the Qur'an, doesn't mention her by name no more than it mentions Ishmael, and that a lot of Qur'anic personnel, here and there etcetera are not mentioned by name.

amina wadud [1:05:18.2]: Ishmael's name is actually in the Qur'an.

Imam Talib Abdur-Rashid [1:05:19.7]: I'm sorry.

amina wadud [1:05:20.3]: Ishmael's name is in the Qur'an.

Imam Talib Abdur-Rashid [1:05:21.8]: Yes. But I mean, but I mean not in that particular narrative.

amina wadud [1:05:24.8]: : I don't know which particular narrative.

Imam Talib Abdur-Rashid [1:05:25.8]: I'm referring to the narrative that's in the Qur'an where it describes Hajar in the desert with the baby running back and forth, you know, looking for the water. The point I'm just making is that, you know, when you go to tafsir, then when you go to the hadith and put that together with the Qur'anic text, at least as Muslims, we're all clear who that is that's being spoken about even though she's not mentioned by name. The other thing I wanted to say is that you make a very valuable point, when you mentioned the mass movement towards global urbanization, and the effect that that's having on Muslims globally. And I just wanted to submit that I don't know if this is a matter of reforming the law, as it is expanding the ijihad, which is what you seem to be talking about and applying that extended ijihad to this phenomenon that you mentioned.

And then the last thing I wanted to mention is that you make several references to our situation in America, and you kept using the word community, and, you know, the fact of the

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matter is that we don't have a Muslim community. I mean, there's a lot of rhetoric about the Muslim community, quote-unquote but really what we have is a lot of Muslims who are very loosely if at all organized in the community. And that's one of the major try...even if we start doing this massive work that you suggests, you still have to take that and apply it within the context of community, enforce the things that we come up with especially. So I just wanted to submit that.

MC [1:07:14.0]: One last question.

Speaker 6 [1:07:16.6]: I do agree that a new an interpretation of the law is needed, but [indistinct] around the Muslim community we are kind of seeing the four Sunni schools as like the golden standard of Islam [indistinct]. How do you make exceptions for [indistinct].

amina wadud [1:07:31.9]: Actually, I'm not the only person that's recommending reforms. So, reforms have being going on ever since, you know, the colonial period. And the question is whether or not there can be any concerted effort to study what kinds of reforms are made, and to make recommendations about the efficacy at regional and local levels. There's not going to ever, you know, be more than that. So, I'm not the only person who's talking about reforms. And this is not the only situation where reforms has ever gone into. We have always gone into, when Tunisia came up with a recommendation to end polygamy, they based it on making the analysis between you know, part of the Qur'an that says you can have four, and if you're just, and then part of the Qur'an that says, you can never be just between two women, they said ipso facto, that means, you know, monogamy. And so, they reformed the law to do that. That's been going on all along. I mean, there are rape laws in some Muslim context, but a lot of cases that are taken over from the colonial period. So, law reform is a happening reality. Even within the context of Muslim schools, these reforms have been going on, but they're just so ad hoc. They're just so haphazard. And I just wish that there was much more of a concerted effort to look at the issue of reforms, number one, and to include in any ideas about reform or family law, a sizable contribution by women who are involved in the experience of that law, and that is not you know, those components are not yet there. But reform is, you know, it's already happening. It's happening now. It's just not happening in a concerted effort, I think. It's more ad hoc.

MC [1:09:10.5]: I'm sorry, there can't be more questions, because Dr. wadud has to make her airplane at ten. Thank you all for coming. There's actually refreshments in the room next, room over. So you can go there and ask some more questions. Thank you all.

Audience [1:09:26.8]: Applause.

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