ASHGATE

From Transnational Relations to Transnational Laws

Northern European Laws at the Crossroads

Edited by
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and Anne Griffiths ■

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Chapter 4

Taking What Law Where and to Whom? Legal Literacy as Transcultural 'Law-Making' in Oslo

Anne Hellum and Farhat Taj[1]

Introduction

In its concluding comments on Norway's fifth and sixth periodic reports, the Committee on the Elimination of All Forms of Discrimination Against Women (the CEDAW Committee) urged the Norwegian state to take steps to increase awareness of the availability of social services and legal remedies for migrant women.[2] An area of increasing concern for the CEDAW Committee, who monitors state compliance with the Convention, is migrant women's vulnerability to intersecting forms of gender, race and class discrimination. To provide access to law and prevent these intersecting forms of discrimination, the Committee emphasizes that 'state parties should ensure that linguistically and culturally appropriate gender-sensitive services for women migrant workers are available'.[3]

Pointing out the need for a context-sensitive approach to legal literacy, advice and counselling, the CEDAW Committee's recommendation speaks to the complex relationship between protection against discrimination, cultural diversity, collective identity and individual rights. A top-down legalistic 'one size fits all' approach is, as observed by the Committee, not capable of delivering justice to immigrant women embedded in a multiplicity of social and legal ties. To situate legal literacy in the diverse and complex socio-cultural contexts in which law operates poses challenges for law and policy-makers, human rights activists and socio-legal scholars. Towards this end in this chapter we are taking as our starting

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1 We would like to thank Professor Shaheen Sardar Ali for her contribution to this chapter. Her delivery of information about Islam and Pakistani state-law to women in the Norwegian/Pakistani community in Oslo is an integrated part of the action research described in this chapter. We would also like to thank Abdul Paliwala for valuable comments.

2 CEDAW/C/2003/CRP.3/Add.2/Rev.1 para 25.

3 CEDAW Committee, General Recommendation No. 26, para 24 b.

point the lived experiences of women from the Pakistani community in Oslo and their search for dignity and justice through engagement with the law.[4]

In this chapter we describe how a pluralist legal literacy approach is evolving on the ground, in response to individual women's mixed identities, as Norwegian citizens and members of social and religious communities. Our point of departure is the work of a Pakistani women's organization in Oslo and its interaction with Norwegian organizations that provide legal information and legal advice. The overall focus of our chapter is their way of taking law to women, embedded in transnational relationships, where a multiplicity of norms and expectations deriving from relatives, religious networks and authorities in Norway and Pakistan are at work.

Migrant women's engagement with law thus serves as a window into the relationship between citizenship and religion in the increasingly multicultural Norway.[5] Focusing on the use of rights, we show how immigrant women exercise citizenship in the context of their multiple belonging – as Norwegian citizens, family members and Muslims. Through a perspective from below and within we uncover practices and discourses that constitute resistance to dominant Western and Islamic discourses that pit group rights against individual rights and gender equality against religion.[6] By highlighting the transnational 'law-making' that is taking place on the ground, we aim to provide law and policy makers with food for thought.

Our chapter is divided into seven parts. After this introduction, in the second part we situate legal literacy within the broader human rights framework, with reference to the state obligation to make law available, acceptable and accessible for all its citizens. A context-based framework for the analysis of migrant women's access to legal resources is presented in the third part. How the right to legal information is translated into Norwegian laws, policies and practices is addressed in the fourth part. The fifth part describes how law is made available and acceptable through engagement with the multiplicity of norms that are at work in the lives of women from the Pakistani community in Oslo. In the sixth part we discuss two individual case studies which draw attention to the options and limits of the evolving pluralist approach. The conclusion, in part seven, draws attention to the empowering aspect of a space where women are free to discuss and consider the multiple normative forces that shape their lives.

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4 We are standing on the shoulders of Tove Stang Dahl's feminist jurisprudence suggesting taking women as a starting point through a combination of doctrinal, ethical and empirical sources (Dahl 1986). The approach is further developed in Bentzon, Hellum, Stewart, Ncube and Agersnap who uses grounded theory (1998).

5 The relationship between citizenship, women's movements and religion in muliticultural Norway is dealt with by Beatrice Halsaa in the paper 'Religious citizenship? The Complex relations between women's movements and women's religious identities', which is as part of the FEMCIT project (Gendered Citizenship in Multicultural Europe: The Impact of the Contemporary Women's Movement).

6 The debate about feminism and multiculturalism was set off by Susan Moller Okin in the essay 'Is multiculturalism bad for women? (Okin 1999). A critique of this dichotomous approach is found in Anne Phillips *Multiculturalism without Culture* (Phillips 2007).

The Right to Equal Access in a Diverse and Unequal Context

Equal access to law and the right to legal information is a human right that, in principle, applies to all individuals regardless of time and place. In practice, the availability of legal information and subsequently the access to law is highly dependent on people's class, gender and race. Addressing mechanisms of legal exclusion, the United Nations Commission on Legal Empowerment of the Poor, in their report, 'Making the law work for everyone', estimates that at least four billion people are excluded from the rule of law. The Commission understands legal empowerment as 'a process of systemic change through which the poor and excluded become able to use the law, the legal system and legal services to protect and advance their rights and interests as citizens and economic actors' (Commission on Legal Empowerment of the Poor 2008:3).

The jurisprudence of international human rights treaty bodies constitutes a dynamic attempt to facilitate access to law for the poor and marginalized through increased attention on the right to legal information. The Human Rights Committee sees the duty to provide legal information as an inherent part of the state obligation embedded in Article 2 in the International Covenant on Civil and Political Rights. To fulfil this obligation, states parties, according to the Human Rights Committee, are required to adopt legislative, judicial, administrative, educative and other appropriate measures.[7] The Human Rights Committee believes it is important to raise awareness about the Covenant, not only among public officials and state agents but also among the population at large. Following suit, the Committee on Economic, Social and Cultural Rights has outlined a set of criteria that also apply to legal education: 'Fundamental education included the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels'.[8] Contributing to the contextualization of the right to legal information, the CEDAW Committee has, with a view to women migrant workers, emphasized the need for context-specific education programmes ensuring 'that linguistically and culturally appropriate gender-sensitive services for women migrant workers are available'.[9]

International human rights treaty bodies are, as these examples show, gradually leaning towards a pluralist and contextual approach. The shortcomings of the legal centralist approach, assuming that state law is the single regulatory force at work, have been addressed by the Special Rapporteur on Violence against Women. Discussing how to take legal action against honour killing she emphasizes women's wariness of the 'arrogant gaze of critical outsiders' who

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7 Human Rights Committee, General Comment No. 31. The nature of the general legal obligation imposed on state parties to the Covenant.

8 The Committee on Economic, Social and Cultural Rights General Recommendation No. 13. The Right to Education.

9 CEDAW Committee, General Recommendation No. 26 on Women Migrant Workers, para 24 b.

suggest simplistic legalistic solutions. Rights must, in her view, be asserted in a manner which takes cognisance of the social embeddedness of women's identity. According to the Special Rapporteur: 'Where international attention and leverage are rooted in culturally-sensitive strategies and locally supported, they can give strong underpinning to our situation-specific approaches and interventions on the ground' (Coomaraswamy 2005:xiii).

The Special Rapporteur's critique of legal centralism, which assumes that state law is the only regulatory force, resonates post-colonial feminist legal scholarship's engagement with legal pluralism. In a situation where inherited colonial systems of Western law, religious laws and customary laws are gradually replaced by formally unified and gender-neutral legal systems, in response to human rights standards, post-colonial women's law scholars are turning their attention to the complex interaction with people's living customs and practices (Bentzon *et al.* 1998, Griffiths 1997, Hellum 1999, Ali 2000, Hellum, Stewart, Ali and Tsanga 2007). Innovative legal education methods that respond to women's complex legal needs have been pioneered by action-oriented researchers in Asia and Africa (Shaheed 1997, Tsanga 2003, 2007). The Pakistani sociologist and activist, Fareda Shaheed, addressed the interface of human rights and local activism in the light of her experiences from a legal awareness programme run by Shirkat Gah in Lahore. She described how supporting the rights of individual women 'entails a constant shifting back and forth from strategies for intervening in legal arenas to those that address custom and religion' (Shaheed 1997:59).[10] According to Shaheed, interventions aiming to change women's lives and empower them to determine the choices available must 'first consciously work to free women from the preconceptions emanating from either custom or law and certainly the culture that permeates both' (Shaheed 1997:62).

Towards a Trans-cultural Legal Literacy Approach

A key question is how we can draw on these approaches to understand the experiences of Muslim women's engagement with law in a Western socio-liberal democracy like Norway. Assuming that legal pluralism is not a post-colonial phenomenon but a feature of all modern nation states, we turn to the grounded pluralist approach employed by socio-legal women's law studies in the South (Griffiths 1986, Moore 1978, Bentzon *et al.* 1998). Our starting point is the experiences of a Pakistan women's organization that, in an effort to make law available to women, collaborate with both Norwegian and Pakistani institutions in Oslo. The practices of the women in this organization serve as a window to the shifting back and forth from legal strategies aiming to change women's lives to engagement with religious and cultural constraints.

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10 Shirkat Gah is a branch of the global network, 'Women living under Muslim Law'.

Through the research project, 'From Formal to Real Rights', located at the Institute of Women's Law at the University of Oslo, we have been engaged in an action-oriented research project involving dissemination of legal information to women from the Norwegian/Pakistani community in Oslo.[11] The research has involved cooperation between Norwegian and Pakistani researchers at the Institute of Women's Law and the NGO Free Legal Advice for Women (JURK) who provides legal literacy and legal advice.[12] JURK is a charity based at the Faculty of Law at the University of Oslo and the research project has been able to study how it provides legal literacy for members of a Norwegian/Pakistani women's organization, PAKWOM. In response to the challenges that the coexisting and sometimes conflicting norms at work in Norwegian/Pakistani women's lives poses for legal literacy two of the researchers, Anne Hellum and Shaheen Sardar Ali, initiated a pilot programme that engaged with both Norwegian law and Islam. As researchers, our engagement with the non-governmental organizations JURK and PAKWOM, thus involved both observation and participation in the process of delivering law to women from the Norwegian/Pakistani community.[13]

Over the last two years Farhat Taj has been studying how PAKWOM, which has integrated a legal awareness component into its work, makes law available, acceptable and accessible to women in the Norwegian/Pakistani community.[14] She has observed how PAKWOM navigates the multiplicity of norms and expectations that derive from relatives, religious networks and Norwegian and Pakistani authorities in its work. Her study is based on participating in the day to day work of the organization, their meetings and social events. Information about individual counselling has been obtained through in-depth interviews with the organization's caseworkers, the women clients and, in one instance, with the lawyer who was involved in an ongoing court case.

At the theoretical level this chapter drew inspiration from the legal scholar Abdullahi An-Na'im's cross-cultural dialogue approach (An-Na'im 1994). To deal with a situation where conflicting international, national and religious norms are at work he emphasizes the need for both an internal and an external cross-

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11 An introduction to the research project From Formal to Real Rights, conducted at the Institute of Women's Law at the University of Oslo and led by professor Anne Hellum is available at: http://www.jus.uio.no/forskning/grupper/riks/prosjekter/IMER/Fra%20formelle%20til%20reelle%20rettigheter.html.

12 Tina Nordstrøm's Masters thesis *Minority Women's Right to Legal Information* describes and analyzes the offers that exist in the Oslo region in the light of Norwegian legislation and international human rights standards. It provides an in-depth study of the methods employed by JURK (Free Legal Advice for Women) (Nordstrøm 2009).

13 On legal advice as research method see 'Legal advice as research method' (Hellum 1990, 1999).

14 The fieldwork is a part of Farhat Taj's PhD project at the Centre for Interdisciplinary Gender Studies at the University of Oslo, titled 'Legal pluralism, gender and Islam in Norway'. An introduction to Farhat Taj's doctoral project is available at: http://www.stk.uio.no/English/researcher_farhat.html.

cultural dialogue. At the crux of An-Na'im's theory on law and social change is that human rights need to be transmitted through the lens of existing religious and customary concepts if they are to be accepted and adopted. He sees human rights lawyers providing the external discourse while members of the social or religious community provide the internal discourse and considers these two aspects as mutually interdependent and constitutive. As the cases presented below show, this approach is taking root through cooperation between Pakistani and Norwegian actionists, educationalists and researchers in Oslo.

While a cross-cultural approach may make information about women's equal rights acceptable, it may also, as demonstrated by the case studies below, repackage the principles of justice, dignity and choice to the extent that they resonate patriarchal versions of Islam.

Activist scholars within the global network, 'Women Living Under Muslim Laws' (WLUML), have emphasized the limits of an approach that redefines equality so that it fits difference, promotes cultural relativism and justifies practices that are not accepted for women from the majority, all in the name of respect for 'the other' (Helie-Lucas 2004:34). To distinguish between processes where human rights are adapted to local circumstances and situations where human rights are made resonant with dominant cultural or religious norms, the legal anthropologist, Sally Engle Merry, uses the terms 'vernacularization' and 'indigenization' (Merry 2006:216). This pair of concepts provides a valuable analytical tool, adding a normative dimension to John Griffiths' descriptive approach to legal pluralism as 'that state of affairs, for any social field, in which behaviour pursuant to more than one legal order occurs' (Griffiths 1986:2) and An-Na'im's division between external and internal discourse.

Access to Legal Information: Norwegian Laws, Policies and Practices

Immigrants account for 8 per cent of the Norwegian population and 25 per cent of the population in Oslo has a minority background. With the increased mobility of people and norms and the subsequent growth in social and normative communities that transcend territorial and legal boundaries, Norway, like other nation-states in Northern Europe, is in the throes of rapid and uneven change (Algashi, Eriksen and Gorashi 2009). The shift from a relatively homogenous to an increasingly diverse and culturally complex society has subsequently challenged the notion of law as a unified system of norms and state law as the single regulatory force (Hellum 2006).

To address the multiple discriminations associated with migrant women's complex social and legal situation, the CEDAW Committee has urged Norway to make these women more aware of the social services and legal remedies available.[15] Norway has incorporated the International Covenants on Civil and Political Rights and on Social, Economic and Cultural Rights and the

15 CEDAW/C/2003/CRP.3/Add.2/Rev.1 para 25.

Convention on the Elimination of All Forms of Discrimination Against Women into their Human Rights Act. This implies that the obligation to provide legal literacy in a manner that makes law available, accessible and acceptable through linguistically and culturally appropriate, gender-sensitive methods is part and parcel of national law.

Access to law is in Norway, as elsewhere in the world, highly dependent on people's class, gender, ethnicity, race or immigrant status (Mathiesen 2005). The few measures that the Norwegian government has taken so far to ensure equal access to legal information have been piecemeal and fragmented. They have lacked any systematic analysis of the complex relationship between gender, law, society and culture in the new Norway (Nordstrøm 2009). National information campaigns directed at migrant women and their families have focused exclusively on female genital mutilation, forced marriages and honour killings. So far, not a single campaign has been carried out to inform migrant women about the laws that protect them against discrimination on the basis of gender and ethnicity. So the inequalities between majorities and minorities in Norway appear to be ascribed to the migrant's own culture and not to any discrimination related to the majority's stereotypical perception of migrant women. Law and policy makers in this field use egalitarian ideas in ways that, in Marianne Gullestad's terms, '… marginalize specific groups by simultaneously creating dichotomies asking for sameness' (ibid. s.54).

Dissemination of legal information to immigrants has by and large been carried out on a voluntary basis. Committed legal scholars at the faculties of law at the universities of Oslo, Bergen and Tromsø have set up programmes for vulnerable groups, including women, prisoners and immigrants, with funding from national and local government. These university clinics, that provide information and advice in areas like refugee law, immigration law, housing law and women's rights, lean towards a legal centralist approach.[16] Since its formation in 1974, JURK (Free Legal Advice for Women) at the University of Oslo has given priority to disseminating legal information to women. Realizing that their service fell short of non-Western women's needs, JURK started an outreach programme for immigrant women in 1997. They offer this programme at language classes for newly-arrived women with different national, ethnic and religious backgrounds. Covering immigration law, family law, inheritance law and violence against women, it deals with Norwegian state law and, to a certain extent, international private law.

A number of non-governmental organizations in the Oslo region have integrated a socio-legal component in their practical work on family, health and education issues, in response to immigrant women's quest for legal information.[17] Many of these initiatives are premised on the assumption that information about

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16 In Oslo these programmes are two student schemes at the Faculty of Law at the University of Oslo, Juss Buss and JURK (Free Legal Advice for Women).

17 An example is *Primærmedisinsk Verksted* (Primary Medical Workshop) PMV (Thune 2007).

Norwegian society and law must be transmitted through a socio-cultural lens if it is to be seen as relevant and acceptable.[18] Emphasizing the importance of dialogue and cooperation, the Norwegian government is funding an increasing number of non-governmental organizations where immigrant women of the same national background assist each other.[19] 'Natural helpers' or 'cultural assistants' who have the confidence and trust of the communities lead the work in these organizations. Their task is to establish an enabling environment where people can speak out about practical problems related to health, sex, personal relations, marriage or childbirth that, in turn, give rise to human rights problems (Thune 2007:363). A characteristic feature of these organizations' engagement with law is that information about rights is not dealt with in isolation but in response to concrete problems.

Taking the Law to Women in the Pakistani Community in Oslo

Addressing challenges involved in making legal education available, accessible and acceptable we now turn to the experiences of a Pakistani women's organization and its interaction with JURK, a Norwegian non-governmental organization.[20]

Locating the Case Study

The complex socio-legal situation of first generation Pakistani women in Norway illustrates the need to contextualize Norwegian law in its gendered and multicultural context. Pakistanis are the second largest immigrant group in Norway with 29,000 people. The highly gendered migration patterns reflect strong trans-boundary family and marriage networks.[21] Most Pakistani male and female immigrants marry a spouse from the country of origin.[22] The majority of the male migrants are workers who migrate independently while most of the women join their spouses or other members of their families who have formal employment. These patterns

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18 An example is *Regnbueprosjektet*.

19 See 'Turning Point', the action plan against domestic violence (2008–2011), Ministry of Justice and Police. Government of Norway and Action Plan against force marriages (2008–2011), Ministry of Children and Equality, Government of Norway.

20 The sessions which took place in Oslo in April 2008 and April 2009 were attended by Anne Hellum and Farhat Taj. Both sessions were videotaped with the permission of the leader of the non-governmental organization and transcribed by Farhat Taj.

21 Available statistics show that immigrants from Sri Lanka, Somalia and Pakistan keep close economic ties through regular remittances to family members in the home country. *Samfunnsspeilet* nr. 6, 2004.

22 Of the 11,000 Pakistani immigrants who were married and living in Norway, only 200 married a Norwegian spouse. *Samfunnsspeilet* nr. 3, 2004.

are reflected in occupational gender segregation and unequal language skills, particularly for first generation immigrants.[23]

While in principle Norwegian law applies to all migrants, in practice it is often overruled by the formal or informal norms and practices of the country of origin. Most Norwegian-Pakistanis are followers of Hanafi Islam which contains personal and family law within its teaching that categorizes women as people in need of protective rights rather than equal rights with men (Ali 2000:138). This school of Islamic thought does not sit well with the gender equality principle embedded in CEDAW and in Norwegian family law.

PAKWOM, a non-governmental organization that receives state support, arranges social events, classes and discussion groups to support women from the Pakistani community in Oslo and to promote gender equality. External resource persons are invited to give talks on topics ranging from religion and literature to politics and law. PAKWOM is a membership organization with about 150 members who come from different parts of Punjab. Most of them belong to *Jatt* and *Butt biradries* (sub-clans or extended families). Their period of residence in Norway varies greatly – some members have been living in Norway for 25 years, others for 20 or 10 years while some only arrived in 2007.

PAKWOM, according to its leader, strives for women's rights at two levels.[24] On one level it seeks to protect women's rights and on the other, it strives to not be seen as violating religious and cultural limits. Towards this end the organization keeps close contact with the *imam* in one of the Oslo mosques. According to the caseworkers, this contact carries the symbolic message to the wider community that the organization's work is not violating Islam. Explaining the rationale behind this approach, the caseworker said:

> We have a perception problem within the local community. It is often assumed that we are out there to instigate divorces and break up marriages. Wanting to promote women's rights we are walking a tight rope. Some families do not allow women to contact us. We try to send out a message to the wider community that we accord due respect to our religion and culture. This makes it easier for the women to contact us and for us to promote women's rights in a less hostile environment. At least this is our aim.

There is no interaction with women's non-governmental organizations in Pakistan. The leader reports that most of her clients' problems are related to the legal system in Norway, not in Pakistan. Furthermore, Pakistani women in non-governmental organizations are regarded as 'bad women' both in Norway and in Pakistan.

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23 Gender differences regarding occupation and language are greatest among immigrants from Pakistan, Irak, Serbia and Montengero. *Statistisk sentralbyrå, Levekår blant innvandrere*, 2005/2006.

24 Interview conducted by Farhat Taj with the caseworker at her office in Oslo on 15 March 2007.

When issues pertaining to Pakistani law arise the leader accesses help through her personal contacts in Pakistan or through the friends and relatives of the women concerned.

Making Law Available

To make law available to their members, PAKWOM has included legal literacy awareness in its social programme. The Norwegian organization, JURK, has on a number of occasions been invited to disseminate information about women's rights under Norwegian law. By adding a legal awareness component to social events for women, information about what the law is and where it can be accessed is made available for women whose course of action is often restricted by husbands and in-laws.

In two of the sessions we observed, Norwegian state law relating to marriage, divorce, domestic violence and inheritance law was presented by two female Norwegian students from JURK. Their presentation was translated into Urdu by one of the leaders of the organization. The introduction was based on practical cases and actively engaged the women in a discussion about their legal rights in different situations.

The strength of this method of taking law to the women is that it situates legal information in an environment where women feel confident, in a language they understand and it gives concrete content to abstract principles, encouraging engagement and discussion about real life issues. In the course of the discussion the women in the audience talked about problems they themselves or women they knew were facing. Several of them reported that the Norwegian legal system had not rendered them justice in their encounters with it. Most queries related to the division of matrimonial property and matters relating to the children in connection with divorce. During the informal discussion over lunch several women complained that they had lost out due to lack of information about their rights. One woman complained that she did not know that she had the right to stay in the matrimonial home since she had custody of the children. She said her in-laws had demanded that the house be sold and she had had to move.

Making Law Acceptable

Rights awareness does not automatically translate into legal action. While women are becoming aware of their rights under Norwegian law they are often held back by moral and religious constraints. Responding to women's concerns about religious constraints related to how Islam is understood in the community, Anne Hellum suggested that Professor Shaheen Sardar Ali join JURK's legal literacy programme to add a comparative component. To reconcile the women's identities as Norwegian citizens with their identity as Muslims, Professor Ali set out to make

the information on women's rights under Norwegian law comparable with Islam and Pakistani law.[25]

Professor Ali addressed the ambiguities many of the women experienced in relation to their identity as Norwegian citizens and as Muslims. In the two presentations of women's rights under Muslim family law that we observed, she focused on issues related to the acceptability of women's rights under Norwegian law. Her presentations started out with the relationship between Norwegian civil law and religious norms from the perspective of Islamic international law:

> Islam believes in universality of humanity and is not tied down to a specific country or place. Yet Islam sees us as duty bound to obey the laws of the country that has offered us citizenship, this is what Islam demands of us. So long as the laws of our acquired countries do not contradict the main pillars of our faith, such as saying prayers, fasting during Ramadan, *haj*, *zakat* and so on.

Addressing forced marriages she emphasized the similarities between Islam and Norwegian law:

> Forced marriages as we all know are completely unIslamic and illegal in Pakistan as well as Norway. In Islam marriage is a civil contract and both parties must freely consent to it. So we have a rather sophisticated Islamic position on this issue. Forcing girls and boys into marriage against their will is to my mind a greedy, economic ploy because we feel that if we get someone over from Pakistan, we are fulfilling an economic promise made to some relative some years ago. There are other ways of helping relatives and loved ones than to make your own child a sacrificial lamb! So please let us take this message to the men in our families.

Addressing inheritance law, which is an area of conflict between the equality principle in Norwegian law and Islamic law, she sought ways of negotiating the two:

> While Norwegian law does not discriminate between girls and boys, Islamic law gives half of a share to the girl and a full one to a boy. How do we deal with that? While there are points of flexibility in Norwegian law there is nothing stopping you if you as a Muslim feel that you want your boy to get more. But with regard to equal opportunities, resources, access to education, health, food, shelter and so on, there is no discrimination in Islam. That Islamic principles of justice demand equality in all these to boys and girls and that if we did just that with our children, when they become adults, they would have substantive equality …

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25 Professor Shaheen Sardar Ali is professor II at the Institute of Women's Law. These classes have been observed by Anne Hellum as part of the research project 'From formal to real rights'.

Addressing marriage issues she underlined the importance of registering a marriage under Norwegian law. In response, women often brought up problems related to the situation of women who for various reasons had contracted a *Nikah* marriage without registering it in accordance with Norwegian law. According to one woman, 'some people do not register marriage because then they may lose social benefits or concessions in tax'. According to another woman the problem is that '… men say the paperwork on marriage is a new thing. When Islam came there was no paperwork and just two witnesses were enough for *Nikah*'. Underlining similarities between Norwegian law and Islam Professor Ali responded:

> Okay, fine, but where does Islam go in such a situation? We claim we are good Muslims. This abuse of the social system is clearly unethical in Islam. So we are showing this kind of Islam to the world. But most important is that if the marriage is not registered, how do you go to the government and claim social and legal assistance if the husband leaves you? Women must take it very seriously and secure their own and their children's future by registering the marriage with the authorities. They must put the condition to the man that she will not perform *Nikah* with him if the marriage is not registered with the authorities.

Many of the women are deeply concerned about the man's right to divorce his wife by pronouncing *talaq* three times. They refer to incidents where women have been sent back to Pakistan on the basis of a triple *talaq* divorce. Many women insist that: 'The point is that *talaq* must be said three times. The time does not matter. The effect is the same in both cases (over a long time or in one go): the marriage is dissolved'. This led to a long debate where different interpretations of Islam were employed. Disagreeing with this version of Islam Professor Ali stated:

> No again and again. Three pronouncements in three different sittings and then the marriage will be dissolved. What I want to say is that Islam is a logical religion. Islam is justice. Three instant verbal *talaq* is not justice to women. I want to tell you this method of *talaq* is nowhere in the *Qur'an*. I request all you sisters to please read the *Qur'an* carefully so that you know that this method of divorce is not in *Qur'an*. It came much later which is why it is called *Talaq-e-Bidda*. The law of scholars can change but the words of Allah cannot. What Allah told us in the *Qur'an* is justice. Tell me how is it justice that a woman is thrown out of a marriage in seconds? Where could she go? Who will feed her? What if she is pregnant? Is this Islam? Is this justice?

The women also brought up incidents where, for example, a woman had been granted a divorce in the state courts but her relatives, in-laws or neighbours maintained that she was still married to the man. Responding to such problems Professor Ali referred to basic principles of justice underlying Islam, Pakistani law and Norwegian law alike:

> Denying a woman that right is denial of justice, which is a violation of Islam. So in this case a woman takes her right – divorce – it does not matter at all whether the right came to her through the Norwegian authorities or some other authorities. It is her right to take it anyway. Five years ago I met a woman here in Norway. She cried to me and said she had a divorce certificate from the Norwegian court but the husband was saying she was not divorced because he had not said with his tongue 'I divorce you'. I want to tell you ladies that there is nothing in Islamic *fiqh* that demands that a man should utter the word divorce for a woman to be divorced. In the Islamic *fiqh* a judge has a right to pronounce divorce. A Norwegian judge pronouncing divorce is what a Muslim judge would do. If there is violence, it is right for the woman to get divorced. It does not matter whether the judge is Muslim or non-Muslim.

Emphasizing basic principles underlying Norwegian law, Pakistani law and different versions of Islam in terms of justice and integrity, a comparative approach helps to build a conceptual bridge. The following statement from one of the women who participated in the comparative legal literacy sessions speaks to the potential of this approach:

> As Muslims we believe we have to be accountable and answerable to God on the Day of Judgement about what we do in this world. We follow the Norwegian law to get social benefits or some relief, like divorce or having our human rights protected. But it would be psychologically very difficult to follow the law if we know that the law violates Islam. We think we get benefits from the Norwegian law, but at the same time make our life hereafter very difficult. We then think it is better to not follow the Norwegian law because Norwegian law is only for this worldly life which is short and rather make sure to protect ourselves from perpetual punishments on the Day of Judgement. Dr Shaheen's lectures and our discussions with her beautifully convince us that going by the Norwegian law is not a violation of Islam. This is such a relief in terms of concerns about the life hereafter.[26]

Considering both similarities and differences among the plurality of norms at work in women's lives, opens up a space for active and inclusive engagement with core issues related to the acceptability of law. The comparative approach constitutes a mixture of what Abdullahi An-Na'im has termed external and internal discourse. Through the discussion about equal right in marriage, human rights law was adapted to Islam and local circumstances and as such 'vernacularized', in Sally Engle Merry's terms.

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26 Reseach notes, Farhat Taj, 24 March 2009.

Making Law Accessible: Individual Counselling

Through individual counselling PAKWOM seeks to enable women to act on the knowledge they have gained through legal literacy.[27] To make law accessible, women are offered multiple forms of assistance ranging from referral to a lawyer or a social welfare officer to help finding a place to live or a job. Dealing with family problems, the non-governmental organization takes recourse to Norwegian lawyers, police and state courts on one hand and Muslim religious institutions on the other.[28]

The first step in a family dispute resolution process is for the woman and the non-governmental organization worker to discuss the problems. Depending on the circumstances of a case and subject to the consent of the woman concerned, the case may be referred to an *imam* for religious counselling or to a lawyer to be pleaded in a court of law or to both. The woman and the caseworker deliberate on the advice given by the *imam* and/or lawyer in order to take further appropriate action. At every stage the woman is free to turn down the advice of the caseworker, the *imam* or the lawyer.

The aim is to facilitate women's access to their rights under Norwegian state law. According to JURK's leader, they promote women's equal rights and, towards this end, they seek ways to overcome the constraints posed by different versions of Islamic law at work in the family network and in the different religious communities in Oslo.

Two cases follow that demonstrate the selective use of Norwegian and Islamic norms and institutions in Oslo. In the first, a polygamy case, Norwegian law was invoked without any engagement with the *imam*. In the second, a marital dispute case, the woman invoked Islamic norms against the wishes of her husband who maintained that Norwegian law applied.

Restoration of Dignity through Norwegian Law

Asma married her first cousin under Pakistani law before she came to Norway. Her husband, who had become interested in another woman, divorced her after a few years. After the divorce her parental family and the husband's family married her off to her husband's younger brother in Oslo. Some years later he married another woman in Pakistan. He had applied for a divorce under Norwegian law but it had not yet been granted. After a quarrel Asma was thrown out of their home in Oslo by her husband and her in-laws.

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27 This part of the chapter is based on Farhat Taj's fieldwork notes and her paper presented at two conferences: Transnational Law and Transnational relations in Oslo in June 2007 and American Anthropologists Association in Washington in December 2007.

28 In 2006 six women were assisted with problems related to domestic violence and three of these women wanted help to obtain a divorce. The organization was approached with ten instances on matters related to forced marriage.

One of Asma's acquaintances took her to the Pakistani women's organization and they accompanied her to the social welfare office which arranged for accommodation and financial help. Asma had been subjected to violence, sexual abuse and humiliation and wanted assistance from a lawyer to sue her husband for bigamy in a Norwegian court of law. She and her husband had contracted a marriage under Norwegian law which makes bigamy a criminal offence. On the advice of the lawyer, the organization collected video clips of her husband's marriage and marriage documents from Pakistan to substantiate her case in court. The Norwegian court heard the evidence, found the husband guilty of bigamy and handed down a penalty of 21 days in jail and a fine of 7,000 kroner. A mitigating circumstance was, according to the court, that the husband had not intended to be polygamous since he had already applied for divorce.

The interviews with Asma and the caseworker at the organization revealed Asma's strong desire to restore the self-respect she felt she had lost in the humiliation inflicted on her by her in-laws and former husband:

> They (the in-laws and the husband) battered me. They tortured me, physically and mentally. They used to say I was a good for nothing, useless, mindless creature. I descended into having an inferiority complex. I have lost my self-esteem. I feel everyone in the world is better than me. I am good for nothing. I have no children, not much formal schooling and I can't speak the Norwegian language. I live alone. The only thing that will restore my self-respect is to get him behind bars. This will re-establish confidence in myself. It will prove them wrong – with their repeated assertion that I am good for nothing. It will prove to them and to the extended family that I can set goals and achieve them single-handedly.[29]

One reason she sought the assistance of the organization and the Norwegian court to reassert her dignity was that there was no family who could assist her:

> My brother in Denmark has almost no time to care for me. The only person who cares is my ailing mother who lives alone thousands of miles away in Pakistan. I have no children to turn to. My husband married my cousin and this alienated me from the family of that cousin. So I had no relatives in Norway to turn to for help. I felt I stood humiliated in the eyes of my relatives both in Pakistan and in Norway. There was no one to avenge my humiliation. It befell on me to stand up and reassert myself.[30]

An important reason for turning to Norwegian state law was that both Asma and the caseworker who assisted her believed there was no point in asking the *imam* to reconcile the case. According to the caseworker, the *imam* that the organization

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29 Farhat Taj, interview with Asma in September 2006.
30 Farhat Taj, interview with Asma in September 2006.

regularly turns to in matters of dispute resolution did not consider polygamy illegal:

> We knew what the *imam* would say. He would say what the problem is. Polygamy is legal in Islam. There is no violation of God's law. There can be no punishment for polygamy. Keeping in view Asma's strong wish, I and she agreed to keep the *imams* out of the issue.[31]

Yet Asma's decision to pursue Norwegian law was also grounded in Islam:

> Islam may permit it. But the Norwegian law does not. He is a citizen of Norway and lives in Norway. He must not violate the law of Norway. But he did. Any citizen of this country who violates the law of this country must face the law and so must he. The religion of Islam that I understand does not obligate its followers to violate the law of a country that they have freely chosen to live in.[32]

Asma's argument that Islam does not require Muslims to violate the laws of their freely chosen host country goes to the heart of the debate initiated by contemporary Muslim legal scholars in Europe, like Professor Ali. She argues that for the Muslim immigrants Europe is *dar-al-sulh* (the land of peace) and implies that they are subject to all the laws of their respective states of domicile (Ali 2007). Asma had picked up this information through a Western website on issues of Muslim women's rights. By linking Islam with Norwegian state law and responsibilities of citizenship, Asma felt she could answer any criticism of her decision. When Asma and the caseworker decided to keep the *imam* out of the case, they knew that polygamy was a disputed issue and that there are different interpretations of the *Qur'anic* verses regarding polygamy. Notwithstanding the local Oslo *imam's* view on polygamy, women members of the organization continue to question polygamy in their group discussions and seminars. Some women members also surf the Internet to look for Islamic arguments against polygamy.

The *imams* are not the only 'experts' that the organization consults on family disputes. They also hold seminars with liberal Muslim legal scholars, like Professor Ali, who argue against polygamy from an Islamic perspective. Thus the organization provides a milieu where Muslim personal law, as upheld by the *imams,* is debated and questioned. This is in line with the inbuilt pluralism of the Muslim legal tradition and this milieu provides the conceptual potential within the framework of Islam to extend the limits of Muslim personal law, as shown by Asma's case. According to the leader of the organization, this case was '[their] contribution towards the elimination of gender discrimination in the Norwegian-Pakistani community'.

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31 Farhat Taj, interview with the non-governmental organization caseworker in November 2006.

32 Farhat Taj, interview with Asma in September 2006.

Restoration of Women's Honour through Islam?

Ayesha's case shows how archaic patriarchal interpretations of Islam may be mobilized to reinstate women's honour while simultaneously upholding the very understanding of Islam that is at the root of her oppression. This case shows how human rights through engagement with Islam can become 'indigenized' rather than 'vernacularized'.

Ayesha lived in a violent marriage. Angry and under the influence of alcohol her husband had divorced her through 'triple *talaq*' at least five times since 1998. Their youngest son was conceived and borne after his pronouncement of the third 'triple *talaq*'. According to Ayesha the in-laws argued that the child was a 'bastard' child. The consultations with the caseworker made it clear that Ayesha wanted to maintain her marriage but at the same time, she wanted her husband and her in-laws to respect her. Towards this end they agreed to seek religious advice from an *imam*. The *imam*, with reference to Hanafi Islam, upheld the husband's unilateral right to terminate the marriage through 'triple *talaq*'. In Pakistan this type of divorce is curtailed by the Muslim Family Law Ordinance which lays down a procedure for divorce involving the local marriage authorities. Yet in diasporic communities in Norway or the United Kingdom, marriages are often terminated unilaterally through 'triple *talaq*'. The Oslo *imam* who was contacted reaffirmed the validity of the triple *talaq* with reference to Verse 230 of Chapter 2 of the *Qur'an*:

> If a man divorces her again (a third time). She becomes unlawful for him (and cannot remarry her) until she has married another man.

The *imam* maintained that Ayesha could not legitimize her relationship through remarriage without *hilala* – a second marriage. The second marriage (*hilala*) is an intervening marriage which is contracted with the intention of dissolving it by divorce. However, according to the *imam*:

> It is unIslamic to perform *hilala* marriage as a formality to remarry the first husband. It is forbidden for a woman to marry a second man with the intention to be divorced by him and remarried by the first husband.[33]

The outcome of the consultations with the non-governmental organization and the *imam* was that Ayesha wanted her husband to concede to *hilala* but he opposed this solution. Her 'public' reason for the *hilala* was that it would legitimize her son in the eyes of her in-laws who called him a 'bastard'. Her personal reason was that she wanted to punish her husband through the humiliation of *hilala*. During an interview she stated:

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33 Interview with the *imam* in October 2006.

> I want to torture my husband through *hilala*. I want him to feel how much I suffered because of him, first due to his violence and now because I have to pass through the humiliation of *hilala*. He does not want *hilala* and I wish to make him accept what he is not ready to accept. It is only through the humiliation of *hilala* tha he will feel the equivalent torture he put me through.[34]

The caseworker explained how her client felt that this would make a difference in her life:

> She wants *hilala* to make her husband realize what he has done to her. That she had been with another man without his consent. She wants to make him realize that he always brought torture on her, including the torture of *hilala*. She wants to hurt his male honour for the miseries he had been inflicting on her in the past.[35]

In this case the standards of equality and freedom that PAKWOM sets out to promote were 'indigenized' to resonate a version of Islam that has been used to invoke female submission and inequality (Merry 2006:216). This case demonstrates the multiple outcomes of a pluralist approach. Considering the long-term provision of emotional and material support, the woman however, in the final analysis decided to opt for divorce.

Real change, these examples show, calls for sustained support and commitment at multiple levels of life and law, over a long period of time.

Legal Literacy as a Counter-hegemonic Discursive Practice

To reconfigure socio-legal relationships that constrain their courses of action, individual women and women's organizations in the Pakistani community in Oslo are, as we have seen, mobilizing a multiplicity of norms and institutions ranging from *imams* to legal aid schemes to Norwegian courts. The outcome of this process is an innovative and responsive legal literacy approach that invokes both Norwegian and Islamic law to make basic human rights available, acceptable and accessible. In response to women's quest for justice, dignity and choice, these practices and discourses transgress the boundaries between Norwegian law and Islam, to resonate the mixed identities and mixed norms on the ground.[36] It is a contextual and situated approach that mediates the contested relationship between individual and group rights.

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34 Interview with Ayesha in August 2006.

35 Interview with the caseworker in August 2006.

36 On the ambiguities underlying women's mixed identities and mixed norms in post-colonial Zimbabwe and diasporic muslim communities in the United Kingdom, see Hellum (1999) and Bano (2004).

The trans-cultural counter-hegemonic discourses that the women are developing reflect the coinciding and conflicting norms and expectations derived from the different relationships in which they are embedded. The law they are developing is, in Boaventura de Sousa Santos' terms, a porous legality constituted in a situation with 'multiple networks of legal orders forcing us to constant transitions or trespassing' (Boaventura de Sousa Santos 1987:208). It is characterized by inter-legality as defined by Sousa Santos as 'an intersection of different legal orders that is, by interlegality'.

Drawing on multiple sources and networks both within the local Pakistani community and the Norwegian legal community, PAKWOM provides an enabling environment that facilitates choice and empowerment. They have constructed a space where women are assisted by women in the spirit of free and informed choice so as to define a place for themselves in the context of the conflicting expectations and pressures deriving from husbands, in-laws, religious institutions and Norwegian authorities. Established customary and religious paradigms that restrict women's opportunities and choices are challenged by demonstrating the multiple normative avenues that are available.

The different outcomes of this process speak to the options and limits of an engagement with legal pluralism. When women, in response to Professor Ali, say they feel at ease because she enables them to claim their rights under Norwegian law and still be good Muslims, human rights are 'vernacularized'. Yet engagement with Islamic norms and institutions also poses a risk that human rights are 'indigenized' so as to reinforce the very structures that limit women's right to freedom and justice.

How to translate the steps that are taken by individual women into collective action is a question that calls for further consideration. To challenge dominant perceptions of Muslim womanhood and related customs is a delicate balancing act. The fear of being pushed beyond the collectivity of the Pakistani community in Oslo constrains the non-governmental organization's course of collective action. While the religious leaders in Oslo, through religious dialogue funded by the Norwegian state, maintain close ties with mosques in Pakistan, women are hesitant to form partnerships with women's rights organizations in Pakistan because they, according to PAKWOM's leader, are regarded as 'bad women'. Yet by sharing information about the strategies that women individually have pursued, they are expanding their space and inspiring each other by example and insight and are, as such, agents of legal change (Shaheed 2006:16).

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