

The Involvement of Women in Radicalism and Terrorism: Progressive Legal and Social Framework of Law Enforcement

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Abstract: Komnas Perempuan (National Women Commission) stated that women in Indonesia are still vulnerable to be being victims of violence. This condition is recorded from the 2017 Annual Report. Komnas Perempuan also notes that the number of violence against women since 2010 continues to increase from year to year. The sad event as mentioned above is worsened by the phenomenon that happened recently, namely the fact of the involvement of women in terrorism crime in Indonesia. According to Densus 88 Anti-Terror Polri (Indonesian National Police - Anti Terror Squad) there are at least 8 women at the present who are involved in terrorism. Some of them have been convicted and some of them are still undergoing investigations. Of the approximately 500 Indonesian citizens who had joined ISIS (Islamic State of Iraq and Syria), according to BNPT (Indonesian National Body on Terrorism) data, the number are dominated by majority of children and women. In this paper the author tries to use a critical approach research in viewing the involvement of women in terrorism in Indonesia. The focus of the problem is to analyze the involvement of women in radicalism and terrorism: progressive legal and social framework of law enforcement.

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I. Introduction

WOMAN always draw attention at least that is man's view of this. Almost all advertisements, printed or electronics, always portray woman as "instrument" to attract the interest of customer. Cigarettes, automotive products and even water pump use woman as their media of promotion.

The "magic" of woman is so powerful. Even said, Malin Kundang a rich 'Minang' merchant was transformed into stone because of a woman's curse, who is his mother because Malin was disobedient and deny her as his mother. In Islam, the prophet places a mother three times higher than a father.

However, those are in ads and myth. There are disturbing facts about how women are treated. The 2017 Annual records kept by Woman National Commission

stated that Indonesian women are still vulnerable to be victims of violence. There were 259.150 number of cases reported related to violence against woman where domestic violence still the highest number which is 245.548 cases that ended in divorce.

Woman National Commission also recorded that violence against woman since 2010 has increased from time to time. The peak was in 2011-2012 which reached 35% while in 2015, the case increased for 9% from the previous year. In fact, Indonesia is a member country of United Nations which ratified UN Convention on Elimination of Discrimination against Women- CEDAW in Law no 7 in 1984.

This disturbing incident in Indonesia is even worse due to the recent phenomena by the involvement of woman in terrorism. INP Special Detachment 88 suggests that at least 8 women have involved in terrorism in Indonesia.

Several of them had been convicted and the rest are still in ongoing investigation and trial.

Indonesian National CT Agency (BNPT) stated that up to the end of 2016, there had been 500 Indonesian citizens joining ISIS, dominated by women and children, which made Indonesia as the second largest number after Russia. The fact shows that women are vulnerable to gender discrimination and even more so now with the attribute of easily influenced to be terrorist.

The label marked to women as terrorist will impact on various issues: how terrorism act perceives woman as terrorism suspect, how to handle them, how to preserve their rights as a woman while not denying their involvement in this “serious crime”.

However, in this essay, the writer uses critical approach (critical et. all theory) in understanding the involvement of women in terrorism in Indonesia. Previous studies in the field of legal studies have highlighted the role of legal aspects in various fields (Dhiksawan et al., 2018; Farianto, 2018; Pardamean Sinaga et al., 2019; Simanjuntak et al., 2019; Kusumawardhani et al., 2020). However, previous studies have not focused on discussing the role of women in terrorism. For such studies, several studies (Purwanti & Wekke, 2018; Purwanti et al., 2018; Pratama et al., 2018; Purwanti et al, 2018) have highlighted social segregation and the role of gender-biased social constructs in encouraging the occurrence of violence based gender. This approach started with the if-questions; how if the terrorists use women just like companies use women to advertise their products?; Or, the terrorists behind all their terror acts also believe the power of “magic” possessed by women so that they use women to achieve their “holy” goal?; Or, the involvement of women is actually just “women victimisation” because of gender bias in perceiving women? In other way, the involvement of women in terrorism act is a manifestation of women experience as victim of gender injustice, so that their involvement is more because of their lack awareness of their belief in God or the meaning of being loyal to the husband.

II. PROBLEM FORMULATION

The problem formulated in this essay is how is proper perception to see women involved to terrorism offences, should they be perceived as offender or more correctly as victim.

III. DISCUSSION

Tens or even hundreds years ago, there had been numbers women who were involved in arm incidents. In categorized as rebellions or terrorism. In the story of Brata Yudha, Srikandi was a female warrior feared by her opponents. In the history of Indonesian struggle, there were several female heroine such as Cut Nyak Dien and Dewi Sartika, who were well known for her bravery to physically fight in battle against the Dutch Colonial.

In arm conflicts related to terrorism, there were several names such as Wanita Macan Tamil in Srilanka, Black Widow in Russia as well as Tashfeen Malik who were involved in mass shooting that killed 14 people in San Bernardino, California (Lindemann, 2015). In Indonesia, Dian Yulia Novita, “the bride” planned to be the the suicide bomber in Merdeka Palace. Fortunately, the plan could be interrupted because police could detect and dismantle it. These are several views about women from various perspectives;

1. Women and law from Critical Legal perspective

Sulistyowati Irianto stated the principle of neutrality and objectivity of law as something right or the law as ought to be. However, for enforcing the law, it requires sine qua non condition such as a clear, non-structured community where everyone receives equal access to welfare and justice and also judicial bureaucracy which is relatively clean from corruption (Irianto, 2006).

Indonesia has not had this prerequisite and even more considering the situation of Indonesia that though in general had shifted from parental-family system, but various factors that made women to be discriminated are still very strong influencing the mind set of some community. In this situation, neutral law makes “women” citizens harder to reach justice.

It also applies to women involved in terrorism. Public perception that sees terrorism as something harsh and dreadful is very identical to man attributes. Therefore, this perception makes officers who handle women in terrorism forgot the special needs of women. For example, the officers do not have to take special training on how to deal with women and children, and surely the officers do not have competence to deal with women and children so that the treatment tends to forget the

possibility of women as merely victims of their obedience to men, their husbands.

The group of Feminist Legal Theory believes that modern “legal justice” is positivistic and phallogocentric. The law is Phallogocentric because all the orders in security and justice are measured by male perception, what is just based on the law is what is just from the perception of man. That’s Karl Marx belief on this.

Engel, Marx’s best friend and partner supported him and stated that modern legal injustice toward woman is a form of global capitalism exploitation to maintain the surplus of cheap labor for the sustainability of production which prioritizing those who have capital (capitalist). Therefore, it is everlasting that modern law will never humanizing the human because of Developmentalism context, most human are labor class (proletariat) who are just one of the production factors that is not as important as the capital.

In the sketch of development theories and their relation to gender injustice, there are several theories that can be used as approaches;

First, the evolution theory which was brought forth in the Enlightenment Age and gave significant impacts to the idea of social changes. It is the most influencing theory toward modern insight about development, which the community moves from non-industry, primitive and poor community evolve to industry, complex and civilized community.

Second, the theory of Structural Functionalism which came to existence as a criticism to evolution theory. This theory is actually very simple because viewing community as inter-related system (religion, political structure to family). Each part keeps on looking for harmonious balance (equilibrium). Therefore, conflict must be avoided because it is considered as non-functional.

Third is the Modernisation theory which was raised in the 50s as a response made by intellectual group against the World War. The idea of Modernisation could be found in Mc Clelland’s book, *The Achieving Society* (1961) interpreted Max Weber’s thought that prioritising the need for achievement and then clarified further by Alex Inkeles based on the same review that developed an attitude called modernity scale to improve the modernity level of a community. Based on this review, socialisation in family, at school and public holds important role to the change of attitude so tradition should be directed to modern attitude of every individuals because individual role is very important for

economic development. Basically the desired picture of modern community is the Western Capitalism community in 1950s that was considered as achieving high mass consumption.

Fourth is the Human Resource Theory that emphasizes the productive capabilities of human resources (HR) as an investment for the development process. This theory was developed by Shultz (1961) with the theme known as “investment in human resources” so that based on this theory, the underdevelopment of society comes from the internal factors of the State or society itself. Therefore, investment in human resources must impact the economic growth.

Fifth is the Conflict Theory which explains that change is believed to be the result of a conflict such as; revolution, exploitation, colonialism, dependence, class and racial conflict. Although the idea of conflict has existed for a long time, Hegel was the first to stress the conflict as the core of the theory of change. According to Hegel, change is dialectics, which is the result of the thesis process, antithesis, and synthesis. This conception influences the basic theory of Karl Marx which later influenced many theories of change and developmentalism today.

In Marx’s explanation of the Conflict, society is divided into two conflicting classes, the exploiting class and the exploited class. He thinks society will continue to develop from primitive communist society then slavery, feudal, capitalist, socialist and ultimately towards communism. The change is through conflict between the bourgeoisie and the proletariat.

In the capitalist system, the appropriation of Surplus Value of the proletariat (product-producing labor) by the bourgeoisie (the employer who is not employed but the master of the means of production) and organized by the middle class. The results of this exploitation are then distributed to various parties in the form of taxes, bank interest, land rent, development research and others. In return, the institutions (superstructure) support the bourgeoisie by giving legitimacy to exploitation in the form of norms, emphases and oppression (Fakih, 2007). Marx’s concept also influenced many theories of development, one of which is the theory of dependency. The dependency theory emphasizes that the relationships in society are interrelated. The assumption is that underdevelopment and development are interrelated concepts. The underdevelopment of society in a region is due to the progress of society in other parts. This theoretical framework is also rooted from

Marx's idea of exploitation which is also in line with the Liberation Theory with the assumption that the society is underdeveloped because being suppressed by the holder of power in their own society, those who control economic resources such as land, industry and wealth. It is therefore necessary to empower the liberation which Paulo Freire calls Conscientisation because he thinks that development is more about justice than wealth.

Next is the Theory of Power and Discourse in Social Change, raised as the inspiration of Foucault's views on discourse, power and knowledge especially in the case of the discourse when the knowledge is capable to be the instrument of power. He stated that power and knowledge are two things that cannot be separated. Through "discipline" and "normalization" in the use of knowledge, power has been applied in various aspects (eg madness, sickness, crime and sexuality) (Bernstein, 2008). Therefore, the struggle is not only against the exploitation (in this case the economy) and the dominance (social, ethnic, sexual, religious) but also against subjection (i.e. the form of individual submission such as wife surrenders to her husband). In terms of the submission of a wife to a husband, religious interpretation and cultural influence of patriarchy plays an important role in perpetuating the submission of wives against husbands. Studies that discuss the relationship of religion especially Islam and women with an gender unbiased approach can be seen in Husein Muhammad (2006). In some areas that implement sharia-based regulations, the rape of women is the result of mistakes of women who do not cover their private parts or tend to show off their private parts, therefore, women are regarded as a "source of trouble" in relation to rape cases that are currently rampant.

What can be drawn from this theory is that this theory can be used as an analytical tool that can contribute wisdom and caution to anyone who thinks about the concept of development because what have been considered fair and normal, what have been considered true and taught to anyone, are truth in which they contain the elements of subjection i.e. submission or conquest that is insensitive to justice including gender injustice.

Finally, the Law in terms of regulation is not only less regulating the interests of women but also strongly in favor to men and marginalizing women. That is why the FLT group calls it Phallocentric law because the law is formulated and constructed in the logics of men so that the law's implications actually reinforce patriarchal

socio-juridical relationships. Although the opinion is debatable, in everyday life there are many obvious facts about legal injustice against women.

Many local regulations are made by the legislatures to regulate and restrict the movement of women. When the Law (in this case law enforcers) fails to exercise their role in protecting and ensuring a feeling of secured which is the fundamental right of every citizen including women, i.e. when there is a case of a woman raped in public transportation when returning from work at night, instead of issuing more security to women who work at night, the legislatures are issuing regulation that prohibits women to go out at night without the "escort" of men in her family. There is even a law that prohibits women sitting astride when being a passenger on a motorcycle with the reason that can stimulate male's lust and cause rape. In some areas that implement sharia-based regulations, the rape of women is the result of mistakes of women who do not cover their private parts or tend to show off their private parts, therefore, women are regarded as a "source of trouble" in relation to rape cases that are currently rampant.

The relationship of men and women is also inseparable to the nature of relations between people in general. Human tend to exploit other human beings and it happened from the very first time when human begins to realize their private rights or ownership. The domestication of pets makes people start to compete in getting surplus so that the control over access of resources becoming so important and this often leads to conflict (Fakih, 2007).

Unfortunately, due to the factors inherent in the biological nature of women, which made them inferior and without realising it, men take women in their domestication along with their animals and properties. Not only that, men who have successfully domesticated their belongings (including women under their control) then formed social norms to protect and maintain their control over their belongings from the interference of others.

At that stage, legal norms were issued in various forms and manifestations. As they were made by men so it is definitely for the benefit of men and of course it was patriarchal. The Laws made by men for the benefit of men had been socialized by men for a very long time from generation to generation so that the order, harmony and justice are those of the men's point of view.

2. Women, Human Rights and Progressive Law Enforcement

In the concept of human rights, women are vulnerable groups who should receive special attention. Women are considered 'vulnerable' because they are often used as "objects" to various forms of discrimination. As a signatory to the UN Convention on the Elimination of All Forms of Discrimination against Women, Indonesia has agreed to implement the Convention by the following:

"By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
 - to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
 - to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises."
- (<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>)

Thus it is very clear that by signing the convention, Indonesian Government has committed to apply the principles of equality between men and women, ensuring that the justice system and other public institutions undertake effective protection of women from all forms of discrimination and ensure that all discrimination against women should be abolished.

Indonesia has ratified CEDAW through Law no. 7 of 1984 which shows Indonesian Government political will. Although the convention is merely a non-binding moral appeal, but having the provision ratified, it becomes a stronger basis for synchronising and harmonizing Indonesian legislation. Since then, various laws providing protection to women are beginning to be issued, although there are also emergence of various regulations such as Shari'a regulations that are considered contrary to the spirit of women protection.

When the law in the form of various regulations are not gender-sensitive or not taking side toward women, the police can actually "coerce" the law so that the law takes sides toward women through their "special" authority or police discretion in law enforcement. Police discretion is actually a means to accelerate Justice

Process because appropriate police discretion will prevent the imposition of punishment by judges that is likely to be impartial to justice seekers, in this case women, or will prevent delays in the conviction imposed by the judges. Police treatment which is pro to women will make vulnerable groups of women who are involved in legal matters feel more secured even though they surely have to be accountable for what they did as suspect of criminal matters.

Police, with their discretion are able to do affirmative actions in their capacity. This affirmative action is actually a concrete form of responsive law which then manifests itself into the concept of Progressive Law of Satjipto Rahardjo. Progressive legal studies place human as an important component in upholding of the law. Even the law can be amended in order to realize the justice where humans are the main concern why the Law was issued.

It should even be remembered that human beings are the ones who make, enforce and even amend the law to achieve the purpose of law which is often called it "justice". In the face of transitional conditions in which the issue of mutual coincidence, emergency, and full of complications, law enforcement officers are required to have a breakthrough in law enforcement, not just applying the rules strictly as they are. Then is it not the discretion, in the context of legal alignments to gender differences that tend to initiate the injustice against women? So beside discretion, what else should the police do in order not to just like memorizing the articles of the Act?

The adagium of "Police is the Shadow of Community" which has various interpretations, shows that public relations and the police are like two sides of a coin that cannot be separated. The police are from the community and it is impossible to effectively enforce the law without understanding the community where they are from and who they should serve. Understand the Law from the perspective of human and keep them as the focus is the goal of the progressive law concept. And if this is the case, the police will be able to function as "police", "prosecutor" and "judge" all at once, so that cases that do not have to be brought to court should not be waiting. Police with his discretion can judge it based on justifiable considerations.

This kind of situation will allow the re-emergence of social norms which had existed in the society and passed the "selection" as social control and created new norms in which the law functions as social engineering. It is

possible only with the adoption of a justice-based police discretion, including gender based justice. The nature of social norms, including how the law came into existence took a long process and it is formed through repetitive habits in a very long time. Perceptions about women's differences as well as gender, are inseparable to this process.

3. Short Overview about Women in Islam

Although women's rights activists in Indonesia consider that the interpretation of Islam in Indonesia contributes to gender injustice practices, which occur in society, it is undeniable that the presence of Islam in the world actually has an impact on the promotion of women's rights and protection, at least compared to before the advent of Islam. It is purposely that Al Qur'anul Karim regulates specifically about women in Surah An Nisa, and other Surahs, such as At Taubah, An Nur, Al Azab, and so forth. The Surahs that specifically regulates women is Surah An-Nisa which consists of 176 verses and belongs to the Surah Madaniyyah. The Surah was named "An-Nisa" because it talked much about things related to women and it is the Surah which most frequently talks about women's issues.

Other Surahs in the Qur'an also talk a lot about women i.e At-Talaq Surah. Surah Annisa is referred to as Surah An-Nisa Al Kubra (means the Major Surah An-Nisa) while the Surah At-Talaq is called Surah An-Nisa As-Sughra (means the Minor Surah An-Nisa). In Islam men and women have equal rights and duties in performing the role of caliph and servant. In terms of social role and involvement, there is no Al-Qur'an verses or hadiths that prohibit women active participation. In the contrary, Al-Qur'an and hadith are supporting women who actively pursue various professions.

However, Qur'an is a generic revelation which interpreted and understood differently by people and subject to debate. In the context of equality between men and women, or commonly referred as gender equality, there are still different opinions and even concerns from the Muslim community. They are afraid that the equality will violate the "nature" as what Allah taught in the Qur'an or Prophet Muhammad Solallohu Alaihi Wassalam taught in the Sunnah.

Some of the reasons that cause these concerns are; first, the issue of gender equality will lead to the disturbance of the "status quo" as part of patriarchal cultural manifestations; Secondly, the textual understanding is

still strong because they assume that the text has no interpretive problem; Third, the rejection of western culture is considered a modern Jahiliyah that carries the issue of gender equality in the Muslim community (Mufidah, 2009).

Another factor that also affects the difficulties of information sharing regarding gender equality to the Islamic community are because gender issues are not (or yet?) get to the religious leaders such as kiai or ustadz. Another possibility is that the community may not be too concerned with the discourse which in some respects can be said to be "difficult" to be understood, because the discourse of vis-à-vis Islam is still discussed in limited circles, such as students, lecturers, contemporary, even these activities are still challenged by various parties.

The concept of Islamic marriage which recognise polygamous and dowry are considered by women activists are degrading the women. They consider that the dowry is often regarded as the "substitute or payment" material of the woman to be married. It is based on the fact that husbands who have married and paid a certain dowry when marrying a woman assume that by paying a number of dowries, the husband take his wife as his "possession" who has to be obedient to his every whim and do everything she has been told to. Though this view is not entirely true.

The concept of dowry in Islam serves as a form of respect and fulfilment of women's material rights. According to Ainiyah, as prescribed in the Imam Safi'i School, it is explained that the dowry is a gift given by the prospective groom to the prospective bride. This gift should not be interpreted as a payment for something purchased as a good but dowry is a way to honor the dignity and degree of women who, later in Jahiliyah age were traded like goods and could be inherited (inheritance).

In Islam, presenting dowries to women is intended to fulfil the rights to women similar to the right to earn a living, the right to manage their properties, and the right to inheritance. The understanding that considers women is the "property" of her husband as understood by some Muslim societies is probably due to the influence of remaining cultural inherited from Jahiliyah age. Although they were familiar with the concept of marriage, they practiced different types of marriage which was very different from the one in Islamic concepts. Several types of marriages that have been practiced by Arab society in Jahiliyah Age were:

- a. Istibdhah's marriage is a marriage between a man and a woman, and after marriage, the husband hands over his wife to sleep with another man, usually a man who is considered honorable or noble in the hope of getting a good offspring.
- b. Muhallil marriage, a man who married a woman who had been in the final stage of divorce and the intention is in order for the woman to remarry the previous husband (the one divorced her)
- c. Al-Rahtun marriage, the polyandry marriage, is the marriage of a woman to several men. After pregnancy and childbirth, the woman summoned all the men who had once married her to determine the father of her baby.
- d. Khadan marriage, the marriage between man and woman in secret or without a legal marriage.
- e. Badal marriage, the marriage of two couples who agreed to exchange wives without going through divorce.
- f. Sighor marriage, a marriage where a man marries his son or sister to another man without receiving a dowry, but in return the man gives also his child or sister.

Religious teaching is true. Any religion definitely wants to improve human's morale. The position of Islam is very clear, that is blessing for the universe, including men and women. Allah does not view men differently, except by his level of devotion. However, interpretation has led to different understanding of religion and it is often controversial.

However, it is undeniable that the presence of Islam has impacted on a better protection towards the dignity of women compared to before the advent of Islam. Nevertheless, the era has changed and so as the culture that affects the interpretation and understanding of religious teachings that also in line with God's will on changes. Therefore, the understanding regarding women and gender should also be contextualized by referring to non-gender-biased civilization.

4. Women in Terrorism Act

The Law on Combating Terrorism No.15/2003 does not distinguish between male and female terrorists. The law

which stipulated Government Regulation in Lieu of Law No.1/2002 is criminalising anyone who commits terrorism for both men and women. It is clearly stated in article 6 – 23 of Government Regulation No.1/2002 which was enacted as Law No. 15/2003.

There is no single article governing the crime committed by women. It means that there is no provision that requires the police to treat women differently if they become suspects of terrorism. In fact, the police who deal with terrorism are also not prohibited when giving special treatment to women if he believes that will fulfil a feeling of justice for women who are dealing with police either as witnesses, victims and alleged offenders of terrorism.

The revision of Counter Terrorism Act is currently being discussed at the House of Representatives, although it weights against the children as perpetrators of terrorism, but not so against female perpetrators. Counter Terrorism Act which will be enacted will be gender neutral. As discussed earlier, once again, women will still have not much different experience to how the Law treats them.

From the record of Special Detachment 88 to date, there have been at least 8 women who are involved in terrorism in Indonesia. Some of them have been convicted and some of them are still undergoing investigation or trial in court. From the interviews conducted by interrogators of Special Detachment 88, their motive is the same as the reason of the male suspects or terrorists that is to wage jihad and hoping to get the reward of heaven after they die.

It is very difficult to believe if they really understand the meaning of jihad. Moreover, they have lack of understanding about the religion (Islam). It is well-founded that it is likely that their involvement in terrorism simply because of what they hear from a certain ustadz or religious leader which for them is true and undeniable. One example is Dian Yulia Novi.

Dian had worked overseas. She was not a member of any terrorist network. However, after exposed to radical ideology, her mind set changed. In fact, based on the interview done by the interrogator, she admitted that what she did was wrong.

This modus operandi had been revealed several times in which usually the women were recruited through marriage. Terrorist groups often exploit women hoping that the authorities think that women are unlikely committing terrorism. This may be part of a strategy to

trick officers who they think will not put suspicion to women.

Out of approximately 500 Indonesian citizens had joined ISIS until the end of 2016, where the majority is dominated by children and women. From the interviews, almost all women who returned to Indonesia after either being deported or intentionally return were following their family or husbands.

IV. CONCLUSION AND SUGGESTION

1. Conclusion

- a. It is unfair to view women involved in terrorism only from legal perspective because the Law is Phallogocentric so that all orders or justice are measured from male perspective. What is fair in the law is what is considered fair from male perspective while what is considered fair to men may be an act of injustice to women. Therefore, viewing women who are involved in terrorism only from legal perspective will likely to reinforce women's position as double victim, victim of gender inequality and at the same time, victim of the impartiality of the Law.
- b. The understanding of discretion based on gender perspective is important for the police when handling cases of women involved in terrorism because no matter how good the Law or Regulation, it will not function properly to achieve the aims, i.e. humanizing human beings instead of forcing people including women to lose their rights of humanity in the name of law enforcement.

2. Suggestion

- a. To anticipate the never-ending recruitment of women by terrorists, the government and the Parliament currently discussing the revision of the Counter Terrorism Law which as an affirmative measure, should also consider in applying more severe punishment to the actors or perpetrators of terrorism who involving or recruiting women.
- b. Indonesian National Police needs to create a special unit within Special Detachment 88 that deals with the problems of children and women involved in terrorism. Alternatively, Officers of Special Detachment 88 should be trained on human rights, especially those related to the

special rights of vulnerable groups of children and women.

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