

Reforming Muslim Women's Rights: Transforming Modernism, Identifying Secularism and Re-Defining Islam

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Abstract

This research is based on discussing women rights with a focus on modernism and conventional approach in Islamic context. Though Islamic Law has provided legal, economic, social and political rights to women, yet they are deprived to claim such rights due to social, economic and cultural pressures. Modernism has led to formation of many feminist and Islamist movements to bridge the gap between religious and secularist approaches. Muslim women role needs to be reviewed in the complex cross hairs of culture; as they can bring significant changes in the light of Shari'ah standards within framework of their families and society.

Keywords: Women rights, Modernism, Women Education, Islam redefined, Approaches to Women Rights.

Introduction:

Women's rights in Islam have always been a controversial and most debated issue in the context of Islamic law. While women rights are being criticized as patriarchal religious defined laws by the secular feminists, Muslim women have defended Islam as the guarantor *par excellence* of women's rights. This wide gap in perception of both views can be termed as the result of a faulty derivation or even a misunderstanding of the proper scope or significance of the premise or as the result of miscommunication.¹

Women rights can be advanced by emphasizing the legal, social and economic roles in the society through facing the challenges to make use of Islamic law in socio-economic representations, and cultural realities of women in civil society. A number of strategic measures have been formulated that review various approached in the context of their pros and cons. These variant approaches take account of reinterpretation of Quran and Sunnah, take advantage of legal implications, *ijtihad* (personal reflections) and contesting the development of Shari'ah. In order to develop a potential stratagem for progression of women rights, an effective reform strategy must be designed that signify that provided the most suitable conditions in socio-political context, Shariah and women rights are most congruent with each other.²

Liberal Approach to Muslim Women Rights

Muslim women are mostly adhered to their religion and not majorly impressed by the idea of liberation though undemocratic governments or by use of a secular approach or international organizations. The only way that women can reach an agreement to pursue to a liberal approach is to develop a strong jurisprudential ground on the basis of which they would be convinced that Islam stands for provision of rights to women and does not deprive them of their rights.

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Western culture has been an ardent supporter of liberating Muslim women in order to improve their status by objecting on veil and exhorting on their 'plight'. But this feminist western concern created the women into a commodity and a statue of sexuality in the name of liberation. It was not difficult to construe that this wave is destabilizing family structures and Muslim societies. Some factors that added to the resentment in Muslim societies are that human rights violations are ignored in some countries while they protect such acts in other parts of the world in order to protect Western economic and geopolitical interests.³

Modernist Approach to Muslim Women Rights:

Muslim modernists have urged that to face the challenges of modernity, the principles and standards must be reinterpreted and re-employed in the new context. Islamic traditions being the key organizing principle, Muslims universally look for guidance and inspiration to the Holy Qur'an, traditions and the principles of Muslim law that serve as an impetus to the challenges of modernism. Muslim modernist reformers responded to the challenges by embracing the ideas of *islah* (reform), *tajdid* (renewal/revival) and *ijtihad* (independent judgment and interpretation). The modernists promoted Muslim unity and resistance to western cultural dominance by espousing to the benefits of science and technology while overwhelming Muslim educational, legal and political institutions.

The position of Muslim modernists is two-fold: first, "to emphasize on the fundamental Islamic values in a rational and liberal manner" and secondly, "to portray the dynamism of Islam by interpreting Islamic teachings on intellectual and scientific scale". In other words, Muslim modernists-in contradistinction to traditionalists and fundamentalists/revivalists-proposed to rescue Islam from showing a cultural and political implosion by means of "adaptation and accommodation".⁴

Islam and Feminism:

Feminism and Islam are taken as oxymoron both in Islamic world and the West for their own reasons. Feminism is taken as superfluous, redundant, and extraneous in the Islamic world as Islam acknowledges the rights of women for which it strives for. Feminism is a collection of movements and ideologies aimed at defining, establishing, and defending equal political, economic, and social rights for women. While Islamic feminism believe in gender equality but also tend to use argument outside Islam such as an international human rights agreement to counter social injustice in an Islamic framework.

An in-depth analysis of Islamic feminism shows that it seeks complete gender equality in public and private sphere. This notion of equality is powerfully recognized in Quran stating principles of equality and justice can only be achieved through *taqwa* or piety. A universalism in provision of equal rights to women can be achieved by explicating the Quranic expression for gender equality and social justice.⁵ Thus Islamic feminism can be a practical approach to strive for equal rights

of women from within an Islamic paradigm which is compatible with indigenous socio-cultural and religious locations.⁶

Jurisprudential Basis for Women Rights in Islam:

Many aspects of the life of Muslims in Muslim countries, including their views on the education of women and their family laws, rest in substantial part on medieval Islamic jurisprudence. Scholars based this jurisprudence on two components: religious and cultural. The cultural component gave rise to certain fundamental social and political assumptions. These assumptions have now become a part of Islamic jurisprudence and inseparable. These assumptions have now become a part of Islamic jurisprudence and inseparable giving rise to family and state relationship that are termed as authoritarian/ patriarchal model.

As patriarchal forces tightened their grip on Muslim countries, they attempted to reduce the status of women in society to that of inactive immature dependants who are incapable to control their destiny. When this status is compared to the Muslim women at the time of Holy Prophet (S.A.W), it is a shocking contrast that women had been actively participating in all areas of life from business to poets, judges, warriors etc. Yet, it is futile to attempt to establish the liberating influence of Islam on women by pointing to these ancient historical examples alone.⁷

There is a general acceptance of major schools of thought on these principles about Islamic Law;

- (1) It changes with the passage of time and with the change of place or circumstance;
- (2) It must avoid harm;
- (3) It may be discarded if they are based on a cause (*'illah*) which itself has disappeared,
- (4) It must serve the commonweal (public *maslaha*)

All the above principles are employed to make a room for advancement in the women rights resting its fundamentals on jurisprudence.

Contesting Women Rights through Islamic Law

There are many challenges to contest for advancement of rights of women through Islamic law including the social roles, cultural representations, and socioeconomic realities through their participation in civil society.

Women's rights have always been a debated issue because of variant legal systems in different Muslim countries who opted for rules of conduct and operation on the basis of their specific geo-socio-political scenario. Moreover, many studies and researches have been conducted to clarify the misconceptions and misapprehensions shown by international media targeting women rights violations by giving logical arguments as well as in Islamic perspective. Thus women role and rights are inspected on a wide scale to eliminate the false impression about Islam in the West. Like so, the emancipation of women from dogmatic demarcations is the fundamental objective for this study. Hence women roles in socio-political arenas, their participation and sufferings, specifically in countries where Islam is the state religion, are assessed through various perspectives. As per liberation and modernity,

women's perspectives vary; as there is no uniform standard *modus operandi* that may recapitulate women's choices and preferences.⁸

Muslim men have been showing different perspectives on status and role of women in Muslim countries ranging their liberties regulated by men in term of dress styles to veil. This has been more in practice in theocratic states. As religious theocracy and rigid fundamentalism are fostered by states' regulations, restraints on women's liberties have been usually introduced and fortified by men.

Common Misconceptions:

While the Qur'an is immutable and strong hadith have nearly fixed meanings, Shari'a is situational and may be amended to local custom (*urf*). Thus, contesting the development of Shari'a offers a mode of legal reform. By reinterpreting Shari'a, women's rights supporters have won numerous rights in several Islamic states. By interpreting original sources and orthodox provisions, women have claimed that Islamic law allows them to serve as judges, serve as chief executives of Islamic states, and have the same right as men to initiate divorce, and strictly control or prohibit polygamy.⁹ A wide range of rights have been endowed to women in Islam in all fields of life including marriage, divorce, inheritance, education etc. the misconceptions and social injustice is eliminated by Quranic reforms to improve status of women as well as modifying existing customary practices.¹⁰

a- The Right of a Woman to Contract Her Own Marriage:

A Muslim woman needs a *wali* (guardian) to contract the marriage on her behalf. The *wali* is usually the father. This requirement is somewhat similar to the Western traditional approach under which the father "gives away" the bride, but in this case it is a legal requirement. There are several examples in different countries that show an exemption of this rule. Like in Morocco, the women are exempted from this rule if she is adult and fatherless. The Code/Law removes the odious guardianship requirements and makes matrimonial guardianship exclusively the woman's decision. Syrian Code permits a pubescent woman who is over 17 years old to request a judge to perform the marriage. The Jordanian Code permits a previously married woman who is rational and over 18 years old to contract her own marriage. The Kuwaiti Code permits a previously married woman or one who has reached. The Algerian Code goes furthest in underlining the importance of this requirement. In that jurisdiction, the *wali* can prohibit his *bikr* daughter from entering into a marriage, if he deems the prohibition in her interest. The age of 25 is specified to make her own decision about marriage, without reference to the views of her *wali*. In Pakistan, the woman has the right to enter into marriage contract without a *wali* as stated in the law "consent of *wali* is not required and a sui juris Muslim female can enter a valid Nikah/Marriage by her own free will."¹¹

The basic requirement which affects all jurisprudence on this matter is that of the *wali*. Traditional Muslim jurisprudence and the above-mentioned Codes generally concur in requiring a *wali* for a *bikr* if she had not reached maturity.¹² The

requirement that a *wali* contract the marriage was historically defended as a protective measure for women who may be swept by their emotions. It also protects the family's honor, in cases where women may elect to marry ineligible males. Muslim jurists viewed the *wali* requirement as an expression of their protectiveness of innocent and naive Muslim women who may be victimized by designing men. This concern appears reasonable, but it makes sense legally only if we adopt a patriarchal view of women. A rational independent woman of sound judgment requires no protection (although she may seek advice); an emotional, dependent and impulsive woman does. This fact was pointed out by Abu Hanifah who recognized the mature woman's right to contract her own marriage. Hanafis and others holding this point of view noted that since Islam gave women the right to contract in financial matters without interference or guardianship from any one, women should be equally able to contract their own marriage without the need of a *wali*.¹³

b- The Right of the Wife to Initiate Divorce:

Another misconception was that Muslim women cannot get divorce through the courts. As a remedy to this situation, in Pakistani law (Dissolution of Muslim Marriages Act 1939) specified a number of grounds on which a woman can sue for divorce under Muslim Law.¹⁴

The general rule is that the primary right of divorce resides in the husband, unless that right is delegated to the wife in one form or another, the wife must seek either *khul'* (a form of divorce or annulment) or judicial annulment, separation or divorce. Certain defects may be shown to justify going for judicial divorce like sexual abandonment, impotency, insanity, abuse or non provision of maintenance etc

Muslim Women Right to Education:

Quran encourages the pursuit of knowledge by all Muslims regardless of their sex. It repeatedly commands all believers to read, to recite, to contemplate. Prophet Muhammad (S.A.W) not only enunciated this general doctrine of sex equality involving equal educational opportunities but also practiced it. Several traditions record that women used to come to the Holy Prophet to inquire about different matters and he used to enlighten them on all issues. Islam does not put any limit to the kind and field of education a woman may choose.

So the Islamic view to female education can be easily perceived from the remarks and permission granted by the Holy Prophet to approach him freely on matters of religious, economic and social importance. There are numerous learned Muslim women in ancient history as well who have been teachers, writers and poets and were accorded the highest respect by Muslim society.¹⁵

c- Dress Code for Muslim Women and the Issue of Veil (Hijab):

Many verses in the Holy Quran explicitly state the dress code for the Muslims. Veil (Hijab) is a traditional head cover that dates back to ancient civilizations and it is not just supported or advocated by Quran. Islam is concerned with the integrity and safety of women, their morals and their character and personality (Quran 24:30-

31). The descent of hijab took place in 5 AH (627 AD)¹⁶ Verse 53 of Surah 33 is regarded as the basis of foundation of hijab. This verse led to a splitting of Muslim space. A careful reading of this verse means it is mainly concerned about the tact i.e. HE wanted companions to intimate certain niceties like not entering into someone's house without permission. In general hijab in Quran is a separation: it is a veil or curtain behind which Mary isolated herself from her people (xix; 17). On the day of Judgment, the saved will be separated from the damned by a hijab (vii:46) which is given in Quran as "*it belongs not to any mortal that Allah should speak to him, except by revelation or from behind a veil*" (42:51). Thus a veil apparently means to protect the elect from the brilliance of Divine countenance.¹⁷

A basic rule for Dress code is given in the Holy Quran as

*"O children of Adam, we have provided you with the garments to cover your bodies, as well as for luxury. But the best garment is the garment of righteousness. These are some of the God's signs, that they may take heed".*¹⁸

Second rule is given in 24:31 where women are obliged to cover their bosoms. Hijab is used as a term meaning head cover that may or may not include their face. Hijab is translated as veil, screen, curtain, drapes, division or divider. This word came 7 times in the Holy Quran as Hijab, 2 times as *hijaban* in 7:46, 33:53, 38:32, 41:5, 42: 51, 17:45 and 19:17. When hijab is associated to be a Muslim dress code, they overlook the fact that it has been found in Roman and Greek civilizations as seen in their archeological discoveries. Wearing of veil by women and head cover by men was then adopted by Jews as it comes in Talmud.¹⁹ Christian women also cover their heads in many religious occasions while nuns cover their head all the time and observant Jewish women still cover their head most of the time especially in synagogues and religious festivities. So this is a part of tradition not just because of Islam. In Saudi Arabia, men cover their head as part of tradition/ custom. So connecting it to Muslim women would be wrong as Mother Teresa is one of the significant examples to counter this effect. Hence veil or *pardah* is essentially a social problem and is bound to be decided by social needs and necessities.²⁰

Obstacles to change:

In Muslim countries, personal status codes reflect religious law. Religious law, however, is intricately interwoven with deep cultural interpretations and influences. Colonialist rule, which intensified Western legal influence in colonized countries, understood that tampering with the existing configuration would present quite a challenge to occupying authorities. For this reason, it excepted from its ambit family law, naming it in the process "personal status law." Even today, changes in family law continue to evoke a great deal of resistance if society views them as attacks on religion, culture, or family. Struggling to preserve their freedom of conscience, they often opted to cling to tradition rather than venture into new areas of change that may inadvertently be inconsistent with their religious beliefs.²¹

Conclusion:

This article discussed the position of women in various contexts and their strategies for survival and change, with particular focus on conceptions regarding modernism and women rights, secularism with feminism and Islamic approach to deal with it in a realistic approach. The religious texts of Islam (the Quran and the Sunnah) and Islamic (Shari'ah) law, and their implications for women show the great deal of rights provided to them under Islamic umbrella. There had been different interpretations of these texts especially in context of women role. Shari'ah laws are implemented specially through the discourse of personal status laws that are based on Islamic principles to award various social roles that a woman can pursue in social life.²²

Islam itself contains a well-defined political philosophy and system of governance. The best strategy for advancing women's rights in Islamic states is to reform existing Islamic law. Grounding expanded women's rights in Islamic law offers the best possibility for sustaining challenges to these rights, as these reforms have a legitimate legal basis and appeal to common social and cultural values. Accordingly, Islamic society is more likely to accept these expanded rights as legitimate. Judicial enforcement is as important as formal legal change, and grounding expanded women's rights in Islamic law provides legitimacy that will aid the judiciary's acceptance and enforcement of these rights. Thus, Muslim women can be a part of modern world enjoying all political and social rights with full participation, with a satisfaction that these rights are not won through importing western values, rather Islam has provided them all these rights to walk into the modern world with pride.

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