

Islamic law

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An overview of the concerns of Muslim women

The NGO Forum, held in Houairou, China, in the fall of 1995, was a defining moment in the global dialogue among women on issues relating to Islam. Prior to that event, discussions of Islamic *shari'ah* law (law based on religious foundations), in particular, and Islam, in general, had been escalating both in the West and in Muslim countries. In the regional conferences held in preparation for the United Nations Fourth World Conference on Women, held concurrently with the NGO Forum, the intellectual fault-lines surrounding these issues became pronounced between two radically different schools of thought. The first school of thought argued that *shari'ah* law was outmoded and should be discarded in favor of a modern Western secular model. The second school of thought denied any problems under existing *shari'ah* laws. Each group felt very strongly about its point of view. The battle was joined in Houairou.

The resulting polarization was so disturbing that it prompted several Muslim women's organizations and individuals to write a letter to the NGO Forum publication, stating in part the following:

Two dominant and opposing views on Islam which have emerged in the NGO Forum have been challenged by a group of women activists ... The first view reflects an ultraconservative position, focusing on comparing the ideals of Islam with the reality and ills of the Western world. A second view rejects religion as a reaction against Islamic conservatism and abuses committed in the name of Islam. For many of us, both views are unrealistic and untenable. Islam recognizes equality between men and women ... Islam has been used to justify laws and practices which oppress women ... This group advocates a reconstruction of Islamic principles, procedures and practices in light of the basic Qur'anic principles of equality and justice. (Sisters in Islam et al. 1995, p. 3)

It is important to understand that the differences between the two opposing schools of thought are political as much as they are religious. The first school of thought wants to emulate the West in its recent legal and social transformations relating to gender issues. The second school rejects all things Western because it rejects Western political/cultural hegemony. The emerging third school of thought wants to discover its own authentic dialectic of transformation, based on its indigenous historical context and the world of the twenty-first century.

The differences among all three schools are rendered, in certain cases, quite severe by the after-effects of colonialist policies in the Muslim world. One major aspect of such policies was educational/cultural.

In Algeria, for example, in an attempt to permanently transform Algerian culture along Western lines, French language and culture were emphasized in the educational system to the detriment of local ones. Consequently, many Algerians belonging to the colonized generations were often more familiar with the French culture and language than with their own (Lazreg 1994, especially pp. 59–67). This state of affairs severely hampered them from the outset in developing a social and political critique rooted in the area's heritage.

Other factors appear to play an indirect role in shaping the line of thought some women ultimately adopt. They include the economic and social class of these women, their particular relation to the power structure, if any, and the general nature of the power structure and its relative degree of misogyny.

This article will focus exclusively on womanist Islamic thought. (For more on the use of the term "womanist," see the press release issued in Beijing in September 1996 by "Karamah: Muslim Women Lawyers for Human Rights" (Karamah), a Virginia-based organization which I co-founded.) The importance of such thought stems, in my opinion, from the nature of the population, both male and female, in Islamic societies. The population is predominantly committed to spirituality (whether Islamic or otherwise), which has often been unfortunately confused with patriarchal interpretations of religious heritage. Consequently, any profound changes in these societies will have a better chance of success if approached from within a spiritual framework. For this reason, the development of a womanist Islamic jurisprudence is of paramount importance.

We start with a quick overview of the Muslim world. There are over one billion Muslims, and they live all over the globe. It is therefore expected that the problems facing the Pakistani woman will turn out to be quite different from those facing her Egyptian, Lebanese, South African, Malaysian, or American Muslim sister. More interestingly, the personal status codes (family laws) in Muslim countries differ significantly, despite the claim of each country that its code is based at least partially on Islamic principles (al-Hibri 1992, *passim*). As a result, women in different countries have different agendas.

Also, the cultures in these countries vary dramatically. For example, genital mutilation is a concern for Egyptian, Sudanese, Somali, and Nigerian women, but not for Syrian, Jordanian, Kuwaiti, Tunisian, Moroccan, or Lebanese women, whose cultures do not have that custom (Tubia 1995, p. 54). Because countries where genital mutilation is practiced have used religious arguments to justify it, it became necessary to refute these religious claims on their own grounds. In Nigeria, for example, which has a Christian majority with a sizeable Muslim minority, patriarchal authorities have attempted to legitimize the cultural practice of genital mutilation by utilizing arguments supposedly based on Christian and Islamic foundations. For this reason, Christian as well as Muslim women have had to refute these arguments from within their own religious tradition (Ras-Work 1992, vol. 2, pp. 62–3). This approach is quite important to allay the

fears of religious women who are averse to the custom, yet fear divine retribution if they were to reject it.

Women activists in Egypt have been concerned about the Egyptian personal status code and its limitations on women's freedoms. Recently, some of them developed a model marriage contract that better protects the rights of the woman within the marriage (National Committee of NGOs, 1995, pp. 53-9). This model was based upon straightforward traditional Islamic jurisprudence which recognizes the contractual nature of marriage. Many Muslims, Egyptian as well as non-Egyptian, responded negatively to the model marriage contract branding it immediately as Western and contrary to Islam. These attacks continued even after the *Mufti* of Egypt, one of its two highest religious authorities, found the proposed model religiously acceptable.

Pakistani women suffer from a different kind of oppression, deriving in part from the historical attitudes toward women in the Indian subcontinent, compounded by lack of direct knowledge of traditional Islamic jurisprudence. A major concern of these women is the handling of rape cases under present law. In some cases, this law punishes the raped woman for adultery while leaving the rapist free. This result is produced by a fundamental misconstrual of Islamic laws on adultery and by analogizing rape to adultery. This is done despite clear traditional Islamic jurisprudence that classifies rape either as a crime or a tort. Under the former classification, rape is viewed as a violent taking or forced assault, similar to armed robbery, and may even be punishable by the death of the rapist. Under the latter classification rape is viewed as a type of compensable bodily harm. Womanist Islamic thought is being developed to reveal fundamental flaws in the religious arguments on which the present law and its application rest (see, e.g., Quraishi, forthcoming).

In Malaysia, *hudud* laws, which were adopted by the Kelantan State in 1993, appear to be a major issue for Muslim women. *Hudud* laws involve severe bodily punishments or death for the commission of certain crimes. The crimes include rape, adultery, and theft. Sisters In Islam ("SIS"), a Malaysian womanist organization, published a collection of articles critiquing Malaysian *hudud* laws (Ismail 1995). One contributor, Salbiah Ahmad, argues that the law of adultery and rape was based on an opinion in the Maliki school of thought which "lacks authenticity as it is not the view arrived at by consensus ... nor held by the majority ... of jurists" (Ismail 1995, p. 19). In another article, Nourani Othman argues that such laws have become outdated and must no longer be practiced. She notes that "There is no doubt that the *shari'ah* principles which are explicitly contained in the Qur'an are divinely-sanctioned but it is another thing to claim that the interpretation of those *shari'ah* principles by the Committee which was appointed by the state government ... is divine" (Ismail 1995, p. 35).

North African countries also have their distinctive set of problems. For example, Moroccan women are very concerned about the right of a woman to work outside the home without her husband's permission. The Moroccan personal status law contains a provision, borrowed from French law and supported by

some traditional Islamic jurisprudence, which prohibits the woman from working outside the home without the consent of her husband (Bennani 1992, p. 149). This issue will be addressed below in greater detail.

"Collectif 95 Maghreb Egalité" (Algeria, Morocco, and Tunisia), which was very active in Beijing, published a proposed personal status code which provides for gender equality, including specifically women's right to work, free travel and equal inheritance by siblings (Collectif 95 Maghreb Egalité 1995, pp. 17, 25-6). Some Muslim women have regarded this and other similar organizations as primarily secular in their approach. They regard the organization's occasional use of religious arguments as an attempt to make their proposals more palatable to a Muslim population.

This quick geographical overview is selective and thus, by necessity, incomplete. Therefore, the reader should not conclude that there are no additional areas of interest for Muslim women in these countries or around the world. This geographical survey highlights only those issues that tend to illustrate the rich diversity of concerns in various parts of the Muslim world. A case in point is Sisters in Islam, which has not only addressed *hudud* laws, but also such other fundamental topics as gender equality, the Islamic position on violence against women, and the relationship of *shari'ah* law and the modern nation-state (Othman 1994, Sisters in Islam 1991a, 1991b).

Despite the diversity of issues and problems facing Muslim women around the world, it is possible to discern some emerging general outlines of womanist Muslim thought. Broadly speaking, three major approaches are utilized and sometimes combined. The first argues that existing problems are not the result of Islam itself, but of patriarchal interpretations of the religion and use of fabricated or questionable *hadith*, i.e. statements attributed to the Prophet. This line of thought leads to a critical reexamination of existing religion-based laws which exposes their patriarchal underpinnings. The second line of thought argues that certain Islamic laws have become obsolete and that we need simply to suspend or discard them, while adhering to basic Qur'anic and jurisprudential principles. The third sees no problem with the laws themselves, but only with their modern formulation and application.

Arguments against genital mutilation and Pakistani rape laws usually fall into the first category. Arguments by Sisters in Islam on *hudud* laws appear to fall in the second category. I believe, however, that more compelling arguments could be developed by simply relying on straightforward early traditional jurisprudence which has often been distorted and misapplied. These proposed arguments would then fall into the third category, as does the attempt at formulating a model marriage contract.

We have already seen examples of these three lines of thought, but will now focus on them in a more thorough fashion by singling out two major issues of general concern to Muslim women. They are: (1) gender equality; and (2) women's right to work.

Gender equality

Muslim women agree that Islam gave women their full rights. They disagree, however, over the definition of these rights. In particular, Muslim women are in the midst of a debate as to whether Islam provides them with "gender equality" or "gender equity". The former concept is viewed by its detractors as coming dangerously close to the Western concept of mechanical equality, based on an individualistic view of society. The latter concept is viewed by its detractors as leaving the door wide open for misuse by patriarchal adversaries. The debate became very intense in Houairou and was resolved by adopting the compromise slogan "Equality with Equity."

To frame the debate, we turn to selections from a forthcoming booklet by Karamah, a forthcoming grassroots book by the Muslim Women's League (the "League"), a California-based organization, works of other authors, and a position statement issued by the Muslim Women's Georgetown Project (the "Project"), a Washington DC-based organization, in connection with the Beijing meetings.

Karamah and the League both adopt the "equality" point of view. In its forthcoming booklet on Islam and women's rights, which relies heavily on traditional Islamic sources, Karamah states:

Tawhid [the belief in a single God] is the core principle of Islamic jurisprudence. From it flow many secondary principles, including the one that asserts that God is the supreme being, and that all human beings are only creatures of God. This latter principle in turn leads to the conclusion that all human beings, regardless of gender, class or race, are equal in the eyes of God. Consequently, no man is superior to a woman, by virtue of his gender alone.

In a recent paper, I have further bolstered the above position by arguing that the Qur'an articulates a clear and basic principle of gender equality (al-Hibri 1996). The argument is based on such well-known verses as "O people! reverence God who created you from a single *nafs* (soul) and created from her (the *nafs*) her mate and spread from them many men and women" (Qur'an 4:1).

The Muslim Women's League book states that "[s]piritual equality and accountability for both men and women is a well-developed theme in the Qur'an ... [and] is the basis for equality in all temporal aspects of human endeavor" (Muslim Women's League, n.d.). The book continues:

The concept of gender equality is best exemplified in the Qur'anic rendition of Adam and Eve ... [T]he Qur'an states that both sexes were deliberate and independent and there is no mention of Eve being created out of Adam's rib ... Even the issue of which sex was created first is not specified, implying that for our purposes it may not matter. (Muslim Women's League, n.d.)

The book then launches into a discussion of the various roles Muslim women have played throughout history, from rulers to religious leaders and even

warriors. The arguments of Karamah and the League in support of their positions tend to fall in the first and third categories discussed earlier.

The title of the paper by the Muslim Women's Georgetown Project, "Islam: a system of reciprocal partnership" (1995), signals its "equity" approach to social relations and to the rights issue. It argues in the introduction that "[t]he Islamic social system integrates family, community, society, politics and economics in a mutually dependent system which becomes *self-preserving*" (1995, p. 1). By placing its emphasis on the responsibilities of the parents toward the child, the paper cites approvingly the traditional Islamic law requiring the nearest male to provide sustenance for the woman. It argues that:

[t]he reason for such discrimination is that at some point in her life, the woman might find herself pregnant and in the process of caring for another life. She should never in this condition shoulder alone that responsibility for her partner has a duty to share in this task. Society as well has a vested interest in the new generation and should provide help if the family of the woman is incapable or not available. (1995, p. 1)

It is important to note that the Project's views reflect the preferences of a significant group of Muslim American women who are tired of working outside the home, while raising their children in a single-parent household. This position is also supported by other Muslim women, such as a leading Saudi women's rights advocate, Fatima Nasif (Nasif 1992, especially pp. 239-40), and tends to rely on arguments that fall in the third category mentioned earlier.

The Project's position, however, is still being developed and may turn out to be more complex than the above quote suggests. In fact, as the first draft of this paper was being written, the Project came under attack by a conservative American Muslim woman for subscribing to the "equality" position (*AMC Report* 1996, p. 11).

In stating the Islamic position on gender equality, Amina Wadud-Muhsin, an American Muslim scholar who spent some time working with Sisters in Islam in Malaysia, exhibits sensitivity to the concerns of various Muslim women groups. She notes that:

[t]he Qur'an does not attempt to annihilate the differences between men and women or to erase the significance of functional gender distinctions In fact, compatible mutually supportive functional relationships between men and women can be seen as part of the Qur'an with respect to society. However, the Qur'an does not propose or support a singular role or single definition of a set of roles, exclusively, for each gender across every culture. (Wadud-Muhsin 1992, p. 8)

Patriarchal men have rejected such statements by pointing to a particular verse in the Qur'an which they interpret as saying that men are superior to women (Qur'an, 4: 34). From this one verse a host of consequences flow, affecting the legal rights of the Muslim woman in the family and society. Therefore, no discussion of gender equality is complete without attention to this verse.

The first part of the verse states that “men are *qawwamun* over women.” The controversial word is “*qawwamun*,” which has been interpreted to mean “superior.” In an earlier work, I have contested the validity of this interpretation on linguistic, grammatical, and other grounds (al-Hibri 1982, pp. 217–18). In a later work, I rejected it altogether as contradictory to the fundamental principle of equality clearly and repeatedly expressed in the Qur’an (al-Hibri 1996, *passim*). More importantly, all previous discussion has centered on the meaning of this one word, ignoring the structure of the Qur’anic verse itself. I have argued that, properly read, the verse places restrictions on men, rather than endowing them with privileges (al-Hibri 1996).

Put simply, the verse carefully circumscribes the conditions under which a man may provide advice or guidance to a woman (which, incidentally, she is free to ignore). There are two clearly articulated conditions. First, the man may offer such advice or guidance only to women who are financially dependent on him. Second, he may do so only with respect to matters about which this particular man is more informed or experienced than the particular woman he is advising. In other words, the verse limits the ability of a man to interfere in the affairs of a woman simply because she is a woman or is at a stage in her life where she is financially dependent on him. It also reduces that interference to an advisory function.

This interpretation falls squarely within the first category of approaches mentioned earlier. Significantly, it is not only consistent with the primary principle of gender equality in the Qur’an, but also with the clear Islamic position, undisputed by a majority of traditional scholars, that a woman is entitled to full financial independence, even within a marriage (Abu Zahrah 1957, p. 128, al-Jaziri 1969, vol. 4, p. 46). Her spouse may not touch her money, and she may engage in business on her own account (Abu Zahrah 1957, p. 128; al-Jaziri 1969, vol. 4, p. 46). Traditional jurists, without denying that right, rendered it moot by relying on the superiority interpretation of the above-mentioned verse to require wives to “obey” their husbands. This obedience condition is included (directly or indirectly) even today in many personal status codes in Muslim countries. Consequences of this view, many of which have been codified, range from the claim that women are required to secure the consent of their husbands to work outside the home, to the claim that men are heads of the household and that women may never hold a position of authority over men.

The right to work

In a book entitled *Spousal Division of Labor* (Arabic), Farida Bennani (Morocco) contests the views of traditional jurists who focused on gender differences to justify a traditional division of labor within the family (Bennani 1992, *passim*). She flatly states that Islam is innocent of such views and of related views, such as those declaring the husband as head of the household (Bennani 1992, p. 40). She also notes that the stereotypes of husband and wife necessitated by such views do not exist in her society (Bennani 1992, p. 78). Consequently, her

approach falls within the first and third categories of the approaches discussed earlier.

Bennani notes that the Maliki school of thought, followed in Morocco, recognizes that in Islam the wife is not required to perform any housework (Bennani 1992, p. 147). Therefore, scholars of that school formulated their views by reference to custom instead. They stated that women are not obligated to perform such household duties, "unless required by local custom" (Bennani 1992, p. 147). Since local custom is patriarchal, the end result required the woman not only to do housework, but even help the husband in the field. This led to an even more patriarchal conclusion, prohibiting the wife from selling outside the home her residual capacity for work, if any, without her husband's consent (Bennani 1992, p. 147).

Some personal status codes, however, do permit women to work outside the home without their husband's permission, *so long as the job (or hours, in some statutes) is morally acceptable and does not contradict the interest of the family* (Egyptian Code, Law No. 25 (1920), as amended, Bk 1, Ch. 1, Art. 1; Kuwaiti Code, Part 1, Bk 1, Title 3, Art. 89). These types of laws reflect different patriarchal customs and, in many cases, economic necessity.

It is important to note that the general Islamic principle of equality, referred to earlier, which establishes equality regardless of gender or race, together with a Qur'anic verse which celebrates diversity (Qur'an, 49:13), led jurists to permit the inclusion of local custom in the law of the land, *so long as that custom did not contradict Qur'anic principles*. But the application of this juristic rule fell short of the ideal when patriarchal customs were codified along with religious laws.

It is also important to note that, in an attempt to shift the burden of housework from the husband, some male jurists stated that since the wife is not obligated to perform any housework, she is entitled to a servant. In fact, the Prophet Muhammad himself, the ideal role-model for Muslim men, participated in housework. Historians have even reported the nature of some household chores he performed. These included cutting meat, sewing, and helping with the children (al-Ghazali 1939, vol. 2, p. 354, al-Nadawi 1977, p. 370). However, the farthest distance Muslim jurists have travelled down this road is to observe that fairness required that men help their wives in performing housework, *when the wives are working outside the home*.

Clearly then, *ijtihad* (jurisprudential interpretation) in this area is in flux. Missing in our discussion is a report on the contributions of Iranian women on the subject, since most of these contributions are in Persian, a language I unfortunately cannot read. However, reports abound that new womanist jurisprudence is being accepted and codified in Iran in such areas as housework and divorce. The two subjects are not unconnected, since recognition of the fact that the woman is not required to perform housework and that housework has economic value, lead to the conclusion that upon divorce this contributed value must be taken into consideration in settling marital property or alimony.

Conclusion

This article focuses on two basic issues relating to Muslim womanist thought. It is my belief that other issues can also be properly addressed from within such a line of thought. The fundamentals for the liberation of Muslim women are all contained in the Qur'an, the example of the Prophet and the women leaders surrounding him, and often even in early traditional *ijtihad*. The Muslim women's interest today in developing a womanist jurisprudence will drastically accelerate the process of their liberation. But as Nourani Othman, of Sisters in Islam, observes, "[t]he modernization of Islam must take place from the inside and be carried out by Muslims themselves" (Ismail 1995, p. 39). Consequently, Muslim womanist thought offers the only real hope for the transformation of Muslim societies.