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WOMEN IN ISLAM:

(Rethinking the Shari'a Rule on the Rights of Women)

Paper presented at
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By:

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The Rights of Women

"Women's rights are human rights," said the former American first lady Hillary Clinton in the *fourth World Conference on Women* in Beijing International Convention Center. It can be inferred from the statement above that talking about women basically is talking about human itself and in order that liberation of women is also liberation of all humankind.

The problem of women has been obtained a special interest all over the world and along the history of the world. The reason is really obvious as for some very long time women were in a full submission to men especially in the patriarchal society, and almost all the societies are patriarchal. Thus, for centuries, it seems consider being a natural law, that women are considered subordinate to men and most of them are surrenders in the men's authority. The scriptures are not the exception of that attitude. The societies dominated by men often exploited, even the justice and egalitarian norms in the scriptures are used to use for eternalizing this male domination.

Shari'a was constructed by Muslim jurists over the first three centuries of Islam. Although it is also derived from the fundamental divine sources of Islam, the Qur'an and the Sunna, yet it is not divine as it is the product of human interpretation of those sources. Besides, as An Na'im said, "this process of construction through human interpretation

took place within a specific historical context which drastically different from our own."

Thus, in a current moment, it is possible for us to attempt to undertake a similar process of interpretation and application of the Qur'an and Sunna to develop an alternative of public law of Islam, which is appropriate for implementation to day. It is an ongoing process of the development of Islamic life, practice, and doctrine.

The principle of *tadrij*, whereby injunctions are understood to have been revealed gradually, best reflect the creative interaction between the will of God, realities on the ground and need of the community being spoken to.²

God would not speak into a vacuum nor would God convey a message formed in a vacuum. According to Shah Wali Allah Dehlawi (d. 1762) the ideal form of din^3 , which he interprets to means primordial ideal religion, corresponds to the ideal form of nature. 'Actual manifestations of the ideal form descend in successive revelations depending on the particular material and historical circumstances' of recipient community. Every succeeding revelation reshapes the elements 'previously found into a new gestalt which embodies din, in an altered form suitable to the recipient community'. It thus follows that, according to Dehlawi, with every succeeding context, din has adapted 'its form, beliefs, spiritual practices to the customs, previous faiths and temperaments of the nations

¹Abdullahi Ahmed An-Nai'm,, Toward an Islamic Reformation, Civil Liberties, Human Rights, and International Law, The American University in Cairo Press, 1990, 186

²Faried Esack, Our'an, Liberation and Pluralism, Oxford: One World, 1997, 81

³In general it means Religion

⁴Cited by Farid Essack, *Qur'an, Liberation and Pluralism*, Oxford: One World, 1997, 55

to which it has been revealed'. This situational character of the Qur'an' is well described by Fazlurrahman⁶

To understand the Qur'an in its historical contexts is not to confine its message to that context; rather, it is to understand its revealed meaning in a specific past context and then to be able to contextualize it in terms of contemporary reality.⁷

It is historically significant that when the Declaration of Human Rights was declared, reaction and objection were raised to the Article 16, which provides for equal rights for men and women in matters of marriage and divorce and guarantees the right to marry without any limitations due to race, nationality, and religion. It was Sultanhussein Tabandeh who candid his reaction to the Article in his document *A Muslim Commentary on the Universal Declaration of Human Rights*. Tabandeh was born in northeastern Iran in 1914. He took a position of his leadership by inheritance of the Ni'matullahi Sufi order, a mystical brotherhood closely associated with Twelves Shi'i Islam. Having an education from Teheran University and Tehran Teacher's Training College and traveled widely in the Muslim world and also in Europe. He presented his commentary on human rights to the representatives of Muslim countries who attended the 1968 Tehran International Conference on Human Rights. "His purpose was to advise them of the positions they should adopt vis a vis various provisions in UDHR, which he had analyzed

⁵Shah Wali Allah Dehlawi, *Hujjat Allah al-Balighah*, Cairo: Dar al-Kutub, 1952, 187, cited by Essack, *Qur'an, Liberation and Pluralism* 55

⁶Fazlurrahman, *Islam*, Chicago: The University of Chicago Press, 1966, 10

⁷Essack, Qur'an, Liberation and Pluralism 61

in terms of the requirement of Islamic law."8

According to Tabandeh the Declaration of Human Rights contained several points that are contrary to Islam. The Islamic rules that are violated by Article 16 also include the *shari'a* ban on Muslim women marrying non– Muslims and the right to initiate a divorce being reserved to men. Thus, there seems any discrimination on grounds of gender here. The following examples are about the discrimination on grounds of gender:

- (1) A Muslim man can be married to up to four wives at the same time but a Muslim women can only be married to one man at a time (sura 4: 2)
- (2) A Muslim man may divorce his wife, or any of his wives, by unilateral repudiation, talaq, without having to give any reason or justify his action to any person or authority. In contrast, a Muslim women can obtain divorce by consent of the husband or by judicial decree for limited specific grounds such as the husband's inability or unwillingness to provide for his wife(2: 226-32)
- (3)In inheritance, a Muslim woman receives less than the share of a Muslim man when both have equal degree of relationship to the deceased person (4: 11 and 4: 176)

Those examples are characteristic of the ideas that are set forth by Muslims conservatives generally. Tabandeh, who seems also in the conservative lines, said that "Islam forbids women from "interference in politics," and that a wife must obey her husband, consults his wishes, not go out of the house without his permission. Even she must maintain her husband's good standing whether he is present or absent. Thus, the primary determinant of women's life will be her relationship with her husband. She is required to submit to her husband's authority and follow his wishes.⁹

⁸Ann Elizabeth Mayer, *Islam and Human Rights, Tradition and Politics,* Third Edition, Colorado: Westview Press, 1999, 20

⁹Sultanhussein Tabandeh, A Muslim Commentary on the Universal Declaration of Human Rights, trans. F. J. Goulding, Guildford, England: F. J. Goulding, 1970 A Commentary, 51

Discrimination on ground of gender under shari'a as cited above obviously violates established human rights and it is "morally repugnant and untenable today." In those codes

There is no concern for protecting women's rights to develop as individual persons with distinct identities and abilities, to become educated in ways that fit their specific talents and interest or that enables them to become productive members of society, . . . Women are seen not as an actor but as passive, dependent beings—all of whom are basically fungible, not diverging in personality and capacity as males do. Furthermore, women are assigned the burden of preserving morality: it is their responsibility to stay secluded and enshrouded so that they do not provoke sexual excitement in men.¹¹

Women in the Qur'an

In the coming session I will analyze how actually the Qur'an as divine revelation, which is obviously a central source of guidance, says about women.

1. The Qur'an on women:

Islamic scholars in the past had insisted that women have their distinct roles, primarily as wives and mothers. Their responsibilities were there, not outside. While the modernist prefers to say that the scripture gives the same status for both, men and women. They based their argument on the selected verses from the Qur'an. Indeed there are different verses in the Qur'an about the status and the roles of men and women. Both affirm the equality and inequality. There are also verses showing the equality of both

¹⁰An-Nai'm, Toward an Islamic, 177

¹¹Mayer, Islam and Human Rights, 103

¹²The Qur'an: 4: 34., the translation: Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. ...

but in the same time the superiority of men over the women in some matters.¹³ It is not easy to give an answer for those problems.

First of all, the Qur'an points to it in both a normative and contextual meaning. Normatively, the Qur'an seems to give the same status for both men and women. Contextually, it gives little affirmation to the men over the women. Nevertheless, by ignoring context, the scholars (fakih) tried to give a superior status to the men in the normative meaning. It should be noted that there are in the Qur'an normative statements and contextual statements. What God will is revealed in the Qur'an, what is in the society also mentioned. There is a dialogue between them. So that humankind accepted the guidance of the scripture in the real conditions. In the same time the transcendental norms also indicated. Thus, in the future when there is a conducive condition to accept those norms, the same norms can be applied or at least the nearest of it.

Secondly, Qur'anic interpretation, as in other religious tradition, is very dependent upon a personal point of views. Different people will understand the same verses differently, based on their inclination. A person chooses the verse according to his inclination and tries to support his opinion. It should be indicated here about the psychological fact that the interpretation of the empirical fact or the scripture is depending on the person position apriori. In other words, a person is depending on his intellectual realm and makes a decision in accordance with it. Thus, our selective

¹³The Qur'an 2: 228, the translation: Divorced women shall wait concerning themselves fro three monthly periods. And it is not lawful for them to hide what Allah Hath created in their wombs, if they have faith in Allah and the last day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree over them. And Allah is Exalted in Power.

approach is depending on our intellectual approach.

Third, the meaning of the verses in the Qur'an is contextual. What it means by an Islamic scholar in the medieval period might be different with what it means by the scholars who live in a modern era. The scriptures are very often to use symbolic languages, which make them contain huge number of meanings, and all are contextual. In order that, it is necessary to interpret those symbolic languages creatively to make it fit to our own experiences. Time and experiences always change, so do our understanding.

The problem now is what are the meanings included in the same status of men and women?

First of all, in a general meaning, it means the acceptance of the status of men and women in the same criterion. Secondly, people should see that men and women enjoy the same rights socially, economically and politically. Both have the same rights in the wedding and divorce contract; both have the same rights in earning the money without intervention each other; both have freedom to choose their professions or their way of live; both have the same rights in their responsibilities. Now we see what the Qur'an said on the equality of men and women.

2. The origin and creation of women

The problem of creation of humankind is a basic issue in the context of the equality between men and women, especially for feminist theologians. Thus, before discussing the status of men and women, I will discuss the origin and creation of women.

According to the Qur'an men and women are created from *nafs wahidah*, a single lifecell or spirit (Sura 4: 1; 7:189; 16: 72; 30: 21). It is obvious that the Qur'an says that

all man and women are created from *nafs wahidah*, so that no one has superiority above the other.¹⁴

Maulana Asad also has interpreted the verse in the same meaning. He said that it is the God's wisdom to create men and women from *nafs wahidah*. But he interpreted *nafs wahidah* as a father. The Qur'an has no idea about creating Eva from Adam's rib, which causes an inferior status. The Qur'an also said that "We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of Our creation."(Q 17: 70). It is also the teaching of the Qur'an that men and women are equal in the sight of God (sura 3: 195; 4: 124; 9: 71-72; 16: 97; 33: 35; 40: 40). "Being equal before God who is the ultimate source of life and the ultimate standard of value, man and women cannot become unequal to each other in essence."

The Qur'an sura 4: 1 also obviously rejects the opinion, which differentiates between men and women by affirming that both are created from the same life-cell and both together, God propagates their generation, men and women. Thus, the Qur'an is not biased against women and does not discriminate against them. Although the Qur'an uses masculine terms, but it addresses to Muslims in general and text study indicated that frequently they do not refer to men exclusively.¹⁶

¹⁴For further discussion on the verse see Asghar Ali Engineer, *The Right of Women in Islam*, London: C. Hurst & Company, 1992, 41

¹⁵Riffat Hassan, "On Human Rights and the Qur'anic Perspective," *Journal of Ecumenical Studies* 19, 1982, 63

¹⁶See sura 2: 21; 4: 1; 49: 13

Nevertheless, patriarchal structures and modes of thought have dominated traditional Muslim society. "The interpretation of the Qur'an by men has distorted the truth almost beyond recognition and have made the Qur'an a means of keeping women in bondage, physically and spiritually." Even though there is plentiful Qur'anic legislation, which is aimed at protecting the rights of women (especially in the context of marriage), but women can never claim their equality with their husbands.

Thus, although the Qur'an is a very liberating document on human rights, but, under the pressure of mounting fanaticism and traditionalism in many areas in the Muslim world, more and more human rights disappear. The Muslims' task now is how to reconcile or bridge the gulf between the Qur'anic ideals and the realities of Muslim living?

3. The Role, status and rights of women

Beside what has been discussed above, the role of women will explicitly discuss here.

Islam is a revolutionary religion in its context, especially on the three matters: (a). Mastery of science as the rights of all the peoples (male and female); (b). Equality between men and women and (c). The demand for equitable justice. Muhammad Amara, from Nazareth who has been considered as a liberal Muslim with the socialist background said that Islam is a revolution to liberate women and promote them to be

¹⁷Hassan, "On Human Rights", 63

wives (sura 4: 2-3). Here although "polygamy was intended by the Qur'an to be for the protection of the orphans and widows, but in practice Muslims have made it a dreadful and dehumanizing instrument for the brutalizing of women's sensibilities." Furthermore, if we look at the context, understand carefully to the verse and paying attention to the interrelationship of the verses in the Qur'an (Munasabah al-Qur'an), we will see that beside intended to protect the orphans and widows, there is a very strict requirement which is hardly be fulfilled by human being, i.e., justice both in the material and spiritual means. It can be concluded then, that basically in the normal condition, the Qur'an has banned the polygamy. Thus it is clear that the verse was closely connected with certain event, so it does not seem to have been meant to establish a general rule. Unfortunately, "that is what it has become and how the words have been interpreted— as permission for men to take up to four wives at any one time". 21

- b. A Muslim man may divorce his wife, but Muslim women may not. The Qur'an presents the idea which is called 'no-fault divorce', and does not make any adverse judgment concerning divorce, yet Muslim societies have made divorce for women "extremely difficult, both legally and through social penalties." 22
- c. In inheritance, a Muslim woman receives less than the share of a Muslim man

²⁰Hassan, 'On Human Rights,' 64

²¹Amira El-Azhary Sonbol, "Rethinking Women and Islam" in Yvonne Yazbeck Haddad and John L. Esposito, *Daughters of Abraham, Feminist Thought in Judaism, Christianity, and Islam*, University Press of Florida, 2001, 138

²²Hassan, 'On Human Rights,' 64

when both have equal degree of relationship to the deceased person (4: 11 and 4: 176)

Again, if we look at the context when the verses were revealed, the message of the Qur'an in that time was to give the women their rights, which have never, been given before in the pre Islamic era. In the pre Islamic era, women were considered to be something that can be inherited when their husbands were died. Islam gives the women their rights that they are a human being and can also receive inheritance as men. Thus, the Qur'anic innovation tend to enhance women's rights and elevate their status and dignity,

In an environment where women were so devalued that female infanticide was a common and tolerated practice, the Qur'an introduce reforms that prohibited female infanticide, permitted women to inherit, restricted the practice of polygamy, curbed abuses of divorce by husband, and gave women the ownership of the dower, which had previously been paid to the bride's father.²³

One of the important debated issues in the society is on the role of women in the variety of social life.

To study a Muslim woman, the role theoretical framework perspective will be valuable. There are two roles, ideal role and contextual reality.

The ideal role is formed by Islamic norms, and it is a normative source which she should undertake her role in her society. The contextual reality is related to the apparent role of women constructed by culture and the structure of Muslim society. History and tradition especially influence the role determined for women. This conflict pattern will create a contradiction between ideal and contextual reality. The problem is how to

²³Mayer, Islam and Human Rights, 98

on the Islamic history and not the Muslim history. Islamic history points to the period of the Qur'anic revelation and the Prophet's era. Muslim women in the Prophet's era have been a group for references for all the roles in society. The role of women like Fatima (the Prophet's daughter and the wife of the fourth khalifah), Khadijah (the first wife of the Prophet who was a business woman), or Aisha (the last Prophet's wife), were important models about the role of women in ideal meaning. The ideal, in the Prophet's era was interpreted into the reality, because the Prophet always is the corrector for the incorrect interpretation. After the death of the prophet, however, all the distortion entered into the Islamic interpretations through personal or vested interest and ultimately through the decadency occurred and eventually brought to the destruction of Islamic power.

The "ideal type" that raised in this era is the work of religious functionaries who worked very close to the power along the Muslims history. They protected by Muslim rules in every period of Muslim history and ended by legitimating codes or dictums from the rulers through Islam. Islamic scholars' vested interest is available to defend their class and it was done by creating alliance with the rulers class. And, Islam which was spread by the scholars (ulama) permitted of *harem*.²⁴ Thus, along the history, the rights of women are violated and their voices have been disappeared behind harem's wall closely guarded by the slaves. The '*ideal type*' created by scholars (ulama') is in accordance with the feudalistic rulers and is still valid for centuries in the male dominated society.

²⁴Harem is a forbidden area which no body can enter except rulers or kings, see Asghar, 'The Rights,' 185

Indeed there was the problem that seems to point to the inferior status of women, of them is the concept of *purdah* (veil) which is still valid in several Muslim countries, that causes for not permitting them to go out side their home and the concept of *harem*.

The *purdah* (veil) is a pra-Islamic tradition in the near east. There are Byzantium icons indicated that in the seventh century before hijrah the virgin Mary wore *purdah*, which is still used until recently in that area. The Qur'an ratifies this tradition, but the fundamental message beyond is that women should not use their physical attributes, be it her face, body, breast or foot to seduce men, so shifted the attention from fulfilling his responsibilities. It means not a special "fashion" for special state, but the moral norms for behave and does not relate to the special model of the fashion. Even the words in the Qur'an 'hijab' (veil) came from the word, which means "to conceal," be it to conceal the thought or the power of attraction or enchantment. Thus, it is not the style or model of fashion. All the forms (even symbols like *purdah/hijab*) of segregation or subordination of women came from the tradition if not from the Near East folklore and not from the messages of the Qur'an.²⁵

What is the Qur'an demanded concerning the women is that they should not show off their sexual attraction and they should wear clothes humbly. Here *shari'a* should be seen from the social context and from its normative or transcendental spirit. Unfortunately, to day *shari'a* has been seen more in the cultural context than its

²⁵Roger Garaudy, 'Human Right and Islam: Foundation, Tradition and Violation,' Concillium, no.2, 1990, 57

²⁶The Qur'an 24: 31

normative spirit. A careful study to the Qur'an, Sunna and the works of Tafsir (interpretation) is needed to reconstruct an Islamic law in its liberal, humanistic and progressive spirit. We should not limit our action to what have been decided and done by our ancestors. The Qur'an did not do that in approaching the truth. Even the Qur'an often criticized people who rejected God messages with the reason that their ancestor did not do that.²⁷ We should 'think afresh' according to our context and experience in the spirit of the Qur'an. The law will be meaningful only if serving the need of the societies the law applied. If the law is merely normative and non contextual, it might be as some thing excitement and intelligence but not useful for the societies.

Besides that, moral and ethics are not an exclusive concept, which is not influenced by the developments of the society.²⁸ Morality is contextual and normative. The normative can be transcendental, but can be implemented only in a special context. When the context changes, performing morality in its original form might be not possible.

When the discrimination put into effect in the last time, the normative concept is to protect their chastity. Further, the concept of chastity becomes similar to the purdah itself. Thus, the women wearing purdah strictly have been considered as protecting their chastity and the women who reject to wear it have been condemned as 'immoral'. Thus, the specific form of morality has developed in a certain condition. It is obvious that

²⁷See the-Our'an 11: 62, 63, 87; 21: 54; 13: 40; 23: 68

²⁸Asghar Ali, 'Islam, status of Women and Social change,' Islam and the modern age, 1990, 184

purdah is a product of feudalist rulers on 'izzat' (here it is used in the meaning of women chastity which is cannot be disturbed). The concept 'izzat' here and the protection by men has within it the meaning of male superiority. The core message is only that the women should be protected, and the men were the guardians. Including in this case, is the case of 'harem'. It is obvious here that men (his age) and his sense of superiority is expressed through the concept of "weaker sex" that should be protected. It will lead to the concept of isolation of women by purdah so that he can be protected and this becomes parts of women morality.

Thus, if women in the past had been considered as a week entity, it was due to the immediate result of the concept of male superiority, which is a sociological concept, and not a theological concept. The problem is that it is very often a sociological concept has become a theological concept and has been maintained as such although a sociological condition has been changed.

To day woman are not considered as a week entity and she has been treated as the same as their fellow men. They do not only possible to go safely, but they also can earn money to fulfill their needs by working out side their home. They do not depend anymore on men protection, thus, *purdah* (veil) in a conventional meaning is not needed. Nevertheless, saying that *purdah* is not needed does not mean that they take off their chastity. Chastity is a norm, while *purdah* is a contextual mean or tool to attain chastity. Women can protect themselves without wearing *purdah*. Thus, if the concept of morality is quite a dynamic and creative concept, we will not refuse every exertion to make it in a new form, if demanded, without abrogating its essential norm. In other words,

sociological and empirical considerations are as important as theological consideration.

This balance could not be annihilated.

The Qur'an should be read in its historical context, which describes its formulation according to the level of understanding of the receiver (society). In every case the Qur'an reminds that God does not differentiate between man and women, except who does right and who does wrong. There is no justification in the Qur'an on discrimination. In the Islamic history (in the Prophet and khalifah era), although there was a division of labor and responsibilities, women were not excluded from social activities. On the contrary, they managed business. Umar, the second khalifah, for example, pointed a woman to be a leader in the market in Madina. Aisha, the Prophet's wife also taught theology. Umar did not feel offended when his speech was interrupted by a woman but gratefully by saying 'Umar was wrong and the woman was right.'²⁹

Conclusion

Given the various ways in which shari'a discriminate on grounds gender and the powerful influence of shari'a in private as well as official Muslims behavior throughout the world and ages, however, it is reasonable to conclude that the drastic reform of shari'a is needed in order to reconcile shari'a with the universal standards of human rights and for the relevance of shari'a to a contemporary era.

The approach proposed for achieving the above goal is the application of the evolutionary principle of interpretation to specific instances of discrimination ground on

gender. Education and other effort are also needed to repudiate this sociological phenomenon in all its manifestations.

Even though the Qur'an is not biased against women and does not discriminate against them, yet the interpretation of the Qur'an by men have distorted the truth almost beyond recognition.

With the need of drastic reform of Islamic law it could enable Muslims to seek to achieve their rights to self-determination in terms of an Islamic identity, including the application of Islamic law, without violating the rights of others to self-determination. It also enables them to develop and implement the appropriate public law of Islam today.

Life cannot exist without the polarity of men and women. And the Qur'an said "Women are a raiment for you and you are raiment for them" (2: 187). Annemarie Schimmel said in her book *My Soul is a Women*, "when the iron and flint (batu api) unite, for example, out of the union of these two components arises something higher, namely fire. It is only when the masculine and the feminine elements collaborate and work together that life can ascend to higher stage." "A Yang element and a Yin element are inseparably linked, like analysis and synthesis or like science and love"

Syafa'atun Elmirzana

²⁹Bukhori, II, 40

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Jan 24, 2004

Dear Syafa'atun Almirzanah

This is to inform you that the World Conference on Motahari's Thoughts with the main theme of "Religion, Freedom of Thinking and Revival of Religious Thought" will be held in Tehran on 25-28 April-2004.

Considering the importance of this gathering, we invite you with pleasure to attend the conference and contribute to its success by your presence and speech.

I am Pleased to inform you that your registration fee and accommodation will be paid by the conference secretariat.

Sincerely,

Dr.Seyyed Hassan Hosseini Conference Director

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"Religion, Freedom of Thinking and Revival of

Religious Thought"

The second of th

World Conference on Motahari's Thoughts

25-28 April, 2004, Tehran, Iran

Dear Ms. Syafa'atun Almirzanah,

I am pleased to inform you that as the abstract of your paper has been accepted by the Scientific Committee of the Conference, your registration fee and accommodation will be paid by the Conference Secretariat. It has to be mentioned that accommodation from 23rd to 30th April 2004 in Persian Grand Hotel (Hilton 5 Stars) has been arranged for you. Any expenses before and after the stated period should be paid by participants.

Meanwhile, the information needed for visa is attached and the deadline for submission of the information is Feb.1, 2004.

The one-day tour of Isfahan from 29th to 30th April 2004 would be arranged for the interested guests. Those who wish to take part in this tour should inform the Secretariat no later than Feb. 20, 2004. The cost of tour is USD 120.00 per person and should be paid to the Conference registration desk in the Hotel.

The Conference Secretariat intends to produce the Conference proceeding introducing the abstract of papers and the speakers. Please provide us with your CV as soon as possible.

I look forward to the pleasure of welcoming you in Tehran.

Sincerely

Conference Director

Dr. S.H.Hosseini