

MUSLIM FEMINISTS' READING OF THE QURAN: A Juristic Analysis on Family Law Issues

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Abstract

Muslim feminist movement represents an indigenous voice among the contemporary literature on women and family. Its main contention is that women in Muslim society are accorded less favourable treatment especially in terms of legal rights. To remedy the situation, feminist scholarship's main argument is that there is a need for feminist-reading of the sacred texts so as to purge the juristic legacy of male-biased views and achieve justice and equality for Muslim women in contemporary families. One principal methodological framework for this idea to materialise is to embark on the re-reading of the Quran from the women's perspective. In this context, this paper presents issue-based analysis of Amina Wadud's reading of the relevant Quranic passages on family law matters and finds that in spite of its merits, its main handicap lies on its methodological flaws, both in terms of approach and outcome. Methodologically, it is regarded as selective and ultra-vires of Islamic methodology of legal reform. In terms of impact, it is suspected as being tainted with Western inspired assumptions of rights in terms of justice and equality between the genders. To overcome this impasse, the paper argues for a mediated holistic approach to harmonise relations between men and women in the family.

Keywords: *Family law, gender equality, justice, Muslim feminist.*

Abstrak:

Gerakan Feminis Muslim merepresentasikan sebuah suara asli di antara literature kontemporer tentang perempuan dan keluarga. Perdebatan yang mengemuka dari gerakan feminis Muslim tersebut adalah bahwa perempuan dalam masyarakat Muslim dianggap kurang diperlakukan secara baik, khususnya dalam persoalan hak-hak hukum. Demi memperbaiki situasi tersebut, argument utama kaum feminist mengarah kepada sebuah pembacaan feminis atas teks-teks suci sebagaimana usaha untuk menyingkirkan hukum waris yang bias gender demi meraih keadilan dan kesetaraan perempuan pada keluarga kontemporer. Salah satu kerangka metodologis utama untuk ide ini terwujud adalah dengan memulai membaca kembali Al-Quran dari perspektif perempuan. Dalam konteks ini, artikel ini menyajikan analisis berbasis-isu dari pembacaan Amina Wadud tentang bagian-bagian Al-Qur'an yang relevan mengenai masalah-masalah hukum keluarga dan menemukan bahwa –terlepas dari manfaatnya– cacat utamanya terletak pada kekurangan metodologisnya, baik dalam hal pendekatan dan hasil. Secara metodologis, ia dianggap selektif dan ultra-vires metodologi Islam atas reformasi hukum. Dari segi dampaknya, ia dicurigai telah tercemar oleh asumsi-asumsi yang diilhami oleh Barat tentang hak-hak dalam hal keadilan dan kesetaraan gender. Untuk mengatasi kebuntuan ini, artikel ini mengusulkan pendekatan holistik yang dimediasi untuk menyelaraskan hubungan antara pria dan wanita dalam keluarga.

Kata kunci: *Hukum keluarga, kesetaraan gender, keadilan, feminis Muslim*

A. Introduction

Current development of thought in the field of social sciences continues to unfold new theories and outlooks which pose serious challenges to some of commonly held views, traditions and conventions. Traditional systems and laws, thus have to struggle to provide responses for such changing thoughts and ideologies in order to be relevant to contemporary life.

In this context, traditional Muslim family law has to sustain itself in the midst of turbulent waves of criticism not only from outside the Islamic faith but also from within the community of Islamic faith itself. One of the most vocal critics among them is indigenous Muslim feminist movement which emerged during the

1990s. They, among others, reveal Islamic law as: "...a male juristic construct emanating from dominant patriarchal cultural norms and assumption -about woman and her space in society, through juridical interpretation."¹ Accordingly, Muslim Feminism, unlike its Western Feminism counterpart, uses Islamic discourses as a framework to struggle for gender equality and justice for Muslim women. Within this movement, its various pioneering advocates have identified various agendas to bring about changes in favour of Muslim women. For instance, Amina Wadud, Fatima Naseef, Rifaat Hassan,² Aziza al-Hibri,³ and Shahhen Sardar Ali call for law reform through feminist reading of the Quran, while Fatima Mernissi and Hidayet Tuksal locate the re-examination of the *hadits* as the launching path for feminist reform.⁴ The common understanding among them is that traditional Islamic jurisprudence contains misogynist views regarding legal status of the female gender which by origin are the projection of patriarchal norms and cultural ethos of the pre-Islamic and medieval eras into textual evidences of Islamic law. They argue that such portrayal of women's legal rights cannot be sustained in view of egalitarian principles of justice and equality as ordained by the Quran. Accordingly, to overcome the problem of disparity between men and women the whole classical Islamic law needs to be deconstructed and an alternative egalitarian narrative be produced. As anticipated, however, Muslim feminists' new interpretations are deemed to be flawed methodologically and doubted their potential to deliver gender equality for Muslim women.⁵

¹ Mohsen Kadivar, "Revisiting Women's Rights in Islam," in *Gender and Equality in Muslim Family Law*, Ziba Hossieni, Kari Vogt (Ed) (New York: I.B. Tauris and Co Ltd, 2013).

² Riffat Hassan, "Equal Before Allah? Woman-Man Equality in the Islamic Tradition | Women Reclaiming and Redefining Cultures," accessed July 10, 2018, <http://www.wluml.org/node/253>.

³ See Azizah al-Hibri, "An Islamic Perspective on Domestic Violence," *Fordham International Law Journal* 27, no. 1 (January 1, 2003): 195.

⁴ Md. Jamal Mustafa, *Islamic Law and Society* (London: Koros Press Limited, 2012).

⁵ Qudsia Mirza, "Islamic Feminism and Gender Equality," 30-31, accessed July 10, 2018, https://www.academia.edu/35703510/Islamic_Feminism_and_Gender_Equality

This article will analyse the viability of Muslim feminists re-reading of the Quran by focusing on Amina Wadud's reading of the relevant Quranic passages on family law matters given her extensive trainings in Islamic science tradition compared to that of her Muslim feminist compatriots. This study, thus, is a continuation of previous scholarship assessing the limitation of new interpretation of Quran using women's perspective with special reference to the Malaysian context.⁶ The finding finds that in spite of its merits, the main handicap of Wadud's reading of the Quran lies on its methodological flaws, both in terms of approach and outcome. To overcome this impasse, the paper argues for a mediated holistic approach to harmonise relations between men and women in the family.

B. Feminist Reform through the Quran

Feminist advocacy of family law reform through feminist reading, at epistemological level, argues that since the Quran contains sufficient framework for equality between the sexes (gender) which is considered integral to the concept of justice, is anchored in the Quran itself. On this premise, Kadivar contends that the Quranic sanctioned justice as a framework can be used to overcome chauvinistic interpretation of issues in Muslim family law. Nevertheless, this requires a new understanding of the concept of justice as opposed to the concept of "desert justice" which was conceptualized by jurists of pre-modern times. He calls this as "egalitarian justice" which necessitates a transformation in the understanding of justice in terms of proportional equality based on ability, status and potential, to that of egalitarian based on equality of all human beings irrespective of their gender, etc. To him, the notion of justice is a changing concept, unlike the claim by orthodoxy of its permanency. What was just in the old times cannot be held to be just today. For example, slavery and gender

⁶ For the Indonesian context, see Alfitri Alfitri, "Women's Rights and Gender Equality Issues In Islamic Law In Indonesia: The Need To Re-Read Women's Status In The Islamic Religious Texts," *Mazahib: Jurnal Pemikiran Hukum Islam* 13, no. 1 (2014), <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/349>.

inequality which were just according to Aristotelian notion of distributive justice cannot hold true in our time.⁷

To Kadivar, the Islamic framework women centred reform can draw on egalitarian principles of the Quran by which all misogynist juristic views can be deconstructed and overthrown. They are: human equality based on creation and piety (al-Hujurāt: 13), equality in reward and punishment in the hereafter (al-Nisa:1); equality in rights and duties (al-Mā'idah:38), equality in spousal rights (al-Rūm:21); equal treatment before God (al-Nahl:97), to mention a few. To top it all, to him, human rationality dictates that justice is good and injustice is bad, hence if we go by Mu`tazilah and Shi`ah sources of law, if reason regards discriminatory laws to women as bad, they need to be discarded.⁸

Concurring with Kadivar on his call for changing notion of justice, Ziba Mir-Hosseini maintains that it is true that classical jurists endeavoured to realize justice through their own extrapolation of textual sources when assigning ethico-legal rulings (*ahkām*) to women issues. The problem, however, is that their conception of justice echoes pre-modern notion about gender and rights which cannot reflect what justice means for women in our time. Hence, right groups regard such rulings as unjust and discriminatory, and the textual sources on which they were justified as hypocritical, or at best contradictory".⁹ The cogent proof of the presence of such patriarchal ethos on the thinking of the medieval jurists is the most quoted statement made by Ibn Qayyim who on the one hand, describes the whole idea of the *syariah* to be the realization of justice and regards *syariah* and oppression as anathema but at the same time describes marriage and gender relation as "a slave and master relationship" by stating: "the wife is her husband's prisoner, a prisoner being akin to a slave. The basis of this that the Prophet directed men to support their wives by feeding them with their own food and clothing them with their own clothes; he said the same about maintaining a

⁷ Mustafa, *Islamic Law and Society*.

⁸ Ibid, pp.215-217.

⁹ Ziba Mir-Hosseini, "Feminist Voices in Islam: Promise and Potential," openDemocracy, accessed July 10, 2018, <http://www.opendemocracy.net/5050/ziba-mir-hosseini/feminist-voices-in-islam-promise-and-potential>.

slave".¹⁰ Accordingly, to synchronize the contemporary notion of justice with the *syariah* ideal of justice, there is a need for "a new framework for rethinking the old formulations so as to reflect contemporary realities and understandings of marriage, justice, ethics and gender rights."¹¹

Expounding on this approach more methodologically, Amina Wadud (1992) dubs the feminist-reading of the Quran as hermeneutics, and argues that this kind of reading the text involves dealing with text from three aspects, namely, the context of its revelation; its grammatical meaning; and the whole text- its world view/*Weltanschauung*.¹² Failure to approach the Quran as such by the classical scholars has given rise to certain popular misconceptions about women, glaring among which are: 1) women's *primary function* is child-bearing, hence, her entire upbringing must be geared to actualise this. 2) Since all prophets were males, they are inherently superior over females (*darajah and faddalah*).

According to Wadud, however, the mothering role of the woman though revered in Islam is not her primary task but ordinary/normal because of her biological makeup. This does not bar her from performing tasks which are normally for the other gender. For instance, two women of Madyan (Syu'aib's daughters) whom Prophet Musa met were shepherding animals. Similarly, the question of man's superiority- a *darajah* (degree/rank) over woman which signifies man's right of divorce (al-Baqarah:228) without arbitration or assistance cannot sustain the "equity established through the Quran with regard to individuals" irrespective of their genders.¹³ Likewise, *faddala* (preference) in al-Nisā:34 as opposed to its popular construction as superiority of male over female, means God's preference of men for the position of *qiwwāmah* (*maintainer/protector*) in order to understand women and treat them fairly in order to fulfil their trusteeship of earth (*khilāfah*).¹⁴

¹⁰ Ibid.

¹¹ Ibid.

¹² Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (Oxford University Press, 1999).

¹³ Ibid, p.68.

¹⁴ Ibid, 72-74.

What follows this prelude, according to Wadud, is that in order to understand the true position of women from the Quranic outlook, the epistemological premise should be that the ultimate Quranic ideal/intent was the establishment of 'harmonious and equitable relationships in society'. But to realise this in the first community which Islam intended to reform requires understanding its primary sociological characteristic. It was a patriarchal society, the hallmark of which was organising social relationships on the basis of a hierarchy, namely 'domination and subordination.' In this culture (androcentric) 'females were seen in terms of their utility to men'. To remedy the situation, the Quran adopted two-pronged approaches: abolished some unfavourable practices to women and advocated gradual reformation of others. Hence, the search to ameliorate the condition of women requires relating the spirit and greater ideas of the Quran to other social context in tandem with global perspective to the effect today.¹⁵ It is in this context that Wadud parts way with dominant mainstream juristic understanding of some of the most debated issues affecting women in the domain of Muslim family law.

To begin with, to counter the juristic exposition of the law of *nusyūz* on the part of a wife as referring to the husband's disobedience, Wadud surmises: firstly, *nusyūz* does not mean a wife's disobedience but '*disruption of marital harmony*'. This is evident from the preceding part of the verse on *nusyūz*, "therefore, the righteous women are *qānitāt*" which means good women and not 'obedient' and particularly 'obedient to the husband.' The reason is due to the Quranic choice of word *qānitāt* rather than '*tā'ī'at*' which according to Sayyid Qutb, designates 'a personal emotional response' contrary to the word *tā'ah* which implies external 'following of orders'.¹⁶ According to her, juristic understanding of *qānitāt* as obedient is the epistemic influence of normative form of marriage which prevailed during the time of revelation during the seventh Century, i.e. "marriages of subjugation" which mandated wife's obedience to the husband. The Quran nowhere mandates a wife to be obedient to her husband.¹⁷

¹⁵Ibid, 81-82.

¹⁶Ibid, 74.

¹⁷Ibid, 77.

Accordingly, *nusyūz* on the part of a wife is symptomatic of the disruption of marital harmony which the Quran endeavours to remedy in three ways: The first is *Wa`z*, which means spousal self-initiating open discussion about the difficulties in their marital relationship as the first step which is the ‘best solution’ and consistent with the principle of mutual consultation and Quranic command of making peace among themselves, and “peace is better” (al-Nisā: 128).¹⁸ Second, *Hajr*, which means ‘banishing them in beds apart’ as a measure of “cooling off period” which can be effective in the case if “a couple continually sharing a bed”, hence, ineffective in polygamous marriages. The *modus operandi* of this step will involve spending “one night apart which may lead to many nights apart until a resolution is reached. If taken to its logical intent (to reach a resolution), this state of being in beds apart can go on indefinitely or culminate in a continued separation-divorce”, even without any need for the final solution i.e. *dharb*/physical abuse.”¹⁹ The third is *Dharb*, unlike popular interpretation, also does not mean beating. It “does not necessarily indicate force or violence.” It is used in the Quran in the sense of leaving or ‘striking out’ on a journey. By looking at the excessive use of violence against women during the time of revelation, “this verse should be taken as prohibiting unchecked violence against females” (Perhaps due to its regulated application not to be grievous (*ghair mubarrih*) which Wadud does not dwell into. However, Wadud refutes Western feminist`s charge against the Quran on the issue of *dharb* as if it *a fortiori* sanctions domestic violence by maintaining that: “The problem of domestic violence among Muslims today is not rooted in this Quranic passage. A few men strike their wives after completely following the Quranic suggestions for regaining marital harmony. The goal of such men is harm, not harmony- *and they cannot invoke the verse on nusyūz to justify their actions.*”²⁰

Next, Wadud dwells upon the unbridled power of men to divorce his wife as and when he pleases- which entails abandonment and misuse of women. To her, this is again symptomatic of pre-Islamic conception of marriage, namely

¹⁸Ibid, 75.

¹⁹Ibid, 75-76.

²⁰Ibid, 76.

“marriage of subjugation” where women were regarded as ‘subjects of the marriage and not full willing partners.’ It does not only contravene the Quranic conditions of equitable separation (al-Baqarah:231) and mutual reconciliation (al-Nisā:128) but also deprives women of the same unilateral power to repudiate their husbands which they enjoyed during the pre-Islamic time, i.e. *turn the entrance of her tent to face another direction as indication of her repudiating the conjugal relation with a man.*²¹

On polygamy, Wadud is of the view that it is a replica of the “marriage of subjugation” which the Quran has regulated: firstly, by offering it as a solution to the unjust treatment of the orphans by their male care providers who mismanaged their wealth (al-Nisā: 3). Once they marry them, their obligation to provide for them ‘would counterbalance their access to their wealth. ‘Secondly, by subjecting it to the principle of maintaining equality between co-wives in a comprehensive sense and not only just material justice as perceived by classical jurists, which is humanly impossible to achieve, “you are never able to be just and fair as between them... (al-Nisā:129)- implying “fairness in terms of quality of time, equality in terms of affection, or on spiritual, moral and intellectual support.”²² Nevertheless, it is the juristic extrapolation which distorts its regulation by confining it to material equality and justice. Moreover, Wadud also disputes the continued insistence on the necessity of polygamy as social measure. In doing so, she retorts that some of the juristic rationales for practicing polygamy cannot be supported by the Quran itself. For instance, economic reason in terms of providing for the unemployed women is not only extra-Quranic but untenable at present time as women are equally productive work force as men. Additionally, the argument that it helps to fulfil a husband’s desire for children if his wife is sterile not only does not find support in the Quran but is also unnecessary as such a couple can mutually agree to adopt orphans who are plenty nowadays. Finally, the argument that monogamy may not satiate some men’s sexual needs cannot only be supported by the Quran ‘but is also clearly un-Quranic as it contravenes its principles of self-restraint, fidelity and modesty’, required of a man and woman. The reason is that if self-restraint

²¹Ibid, 79-80.

²²Ibid, 83.

is virtuous for a sexually unsatisfied wife with her husband (one) *ab initio*, such should be the principle for a man whose libido cannot be gratified even after his polygamous marriage with the multiple wives.²³

Furthermore, the evidentiary weight of women`s testimony is another example of ‘androcentric interpretation.’ This is represented by the formula, ‘One male witness equal to two female witnesses’ which is arrived at by analogical deduction of such equation for documentation of loan agreement as mentioned in al-Baqarah, 282. Wadud contends that this kind of juridical deduction is tainted with several problems including: firstly, it generalizes a rule which was contextual, namely, it was ordained to guard against weakness of women`s testimony either on account of their inexperience in financial matters at the time of revelation or protecting one female witness against coercion by men by requiring another female to be there to support her. Secondly, even if we discount these possibilities, the ‘equation of one-to-two’ does not apply as the proof of debt record when disputed before the court as it can actually be established by the testimony of one of the two female witnesses, another woman`s testimony is just corroborative as the Quran stipulates: “so that if the one errs (*tadhilla*), the other can remind her...” (al-Baqarah: 282). Finally, it has become a basis for the rejection of women`s testimony in instances where the Quran ‘does not specify gender in terms of a witnesses’. Accordingly, today capability and not gender should be the quality on the basis of which testimony be weighed- she seems to propose.²⁴

On the issue of female share of inheritance, to be one-half of the proportion for a male heir, Wadud criticises its generalization as oversimplification of the Quranic discussion of inheritance. It is true that one of ‘the proportional divisions’ of the Quran is ‘making the share of the male ...equivalent to the portion of two female (siblings)’ but if we examine the entire discussion of the Quran on the theme of inheritance, we find that it ‘enumerates variety of proportional divisions between male and females. Even in the case of disproportional shares between sons and daughters, in certain

²³Ibid, 84.

²⁴Ibid, 85-86.

situation the disparity should not be upheld. For instance, “if in a family of a son and two daughters, a widowed mother is cared for and supported by one of the daughters, why should the son receive a larger share?”²⁵

Deliberating on the question of household leadership (*qiwāmah*), Wadud submits that while acknowledging that the general principle of the Quran is that leadership should be assigned to the one ‘best suited’ for it, the *qiwāmah* of men over women has to be understood in the context of patriarchal society of the ancient Arabia. In that social setting, males enjoyed certain ‘public privileges, experience and other advantages’ which made them more suited for leadership especially in political and financial domains. Nevertheless, there is nothing implicit or explicit in the Quran to state the ‘male are natural leaders’ because the Quran itself tells about Bilqis (the Queen of Saba) as an insightful female political leader. Accordingly, the Quranic criterion of leadership, namely ‘best suited for the task,’ if *taking as paradigmatic*, is ‘a dynamic process’ which purports to require qualification rather gender as the main criterion for the position of leadership. For instance, “A more independent and insightful woman might better lead a people into their future endeavours.”²⁶ In the family domain, in spite of the popular opinion that *qiwāmah* is a male privilege; such a proposition cannot be absolute. We concede the fact that under normal circumstances, it serves as a measure for the balancing of responsibilities between a husband and a wife. The husband is charged with responsibility to provide material and physical protection while the wife is to fulfil the human requirement of child-bearing, whereby burdening her with the responsibility of *qiwāmah* will be oppressive. But situations arise (today) where the responsibility to provide for the family shifts to the wife in the case of single mothers or (house husbands) or when a single income is no longer sufficient to meet the requirements of livelihood or when a wife is barren. Accordingly, this division of responsibility cannot be maintained unless the Quran is constantly reviewed with regard to human mutual responsibility between males and females.²⁷

²⁵Ibid, 87.

²⁶ Ibid, 88-89.

²⁷ Ibid, 73 and 90.

C. Critical Appraisal

Muslims feminists` re-reading of the women related texts of the Quran, using modern notion of justice and equality has not only irked wild condemnation from the mainstream Muslim legal scholars but has become subject of serious inquiry on methodological and rational level by non-partisan researchers as well. The main reason is that if the feminist discourse of criticising classical Islamic family law is premised on the assumption that its extrapolation was influenced by patriarchal understanding of mostly male jurists and exegetes, which they describe as extra-Quranic, their insistence on reinterpreting the Quran based on equality and justice as construed today can be more problematic in Islam. The argument is because of uniqueness of Islamic methodology for deducting rules from the Quran. This is on this account that Qudsia Mirza (2008) refutes their central thesis on two grounds: first, the feminist conclusion that the Quran basically was/is egalitarian and it is patriarchy which has marginalized and debunked them into discriminatory laws against women is unrealistic due to two reasons: (1) The Quranic passages imbuing equality can hardly provide a sure framework for gender equality when viewed against those Quranic provisions which legislate limiting rulings to the effect; (2) the social settings which the Quran was aiming to reform was patriarchal. Second, the feminists` singular insistence that the re-reading of scriptural text constitutes the bastion of women-affirming Islamic legal reform is un-sociological as it discounts the significant place of secular factors, such as socio-political and cultural variables in the formulation of women`s Islamic legal rights in the classical works of the jurists.²⁸ What this implies is that not only drawing a line between what is sanctioned by God and what is patriarchal is cumbersome but also using modern secular notion to re-interpret the Quran is equally un-Quranic.

Similarly, their deconstructionist approach to justice cannot be sustained as the Islamic concept of justice is neither a replica of Aristotelian concept nor of liberal post-modernist construction but a divinely ordained command which juridical stipulation may or

²⁸ Mirza, "Islamic Feminism and Gender Equality," 30–31.

may not capture accurately. Justice in Islam means striking a balance between spousal rights and duties by which the family structure can be enhanced, its moral and legal rules lead to the establishment of harmonious working of marriage and the realization of its social goal of serving as a building block for introducing righteous members to the community. It is free from tension-fighting of struggle for supremacy among genders and immune against arbitrary right assignment as was the case with Aristotelian justice. To say otherwise, is to cast doubt on the revealed nature of Islamic family law and negating the divine wisdom in balancing male and female rights in the family²⁹ thus pitting women against men even in the family from which even the current post-feminism trends³⁰ to dissuade.

In the same vein, Wadud's issue-based proposal of family law reform, though constructive as far as its refutation of cynical approach adopted by Western Feminist is concerned, can be criticised on the following grounds: first, at the methodological level, her methodology of seeking reform through the segmented reading of the Quranic passages in isolation from the Sunnah, as the mandatory explanatory notes to the Quranic passages/messages, cannot withstand the vehement refutation by mainstream Muslim scholars as being dismissed as alien and anathema to Islamic methodology of family reform. This, among others, is due to the fact the most distinctive of Islamic methodology of reform is the one in which the organic, integrative

²⁹ For more details, see Mansur Isa Yelwa, "Inter-Gender Balance of Right in Islam," in *Issues on Harmonization of Human Rights in Islam*, Sayed Sikandar Shah Haneef et.al (Ed) (Kuala Lumpur: IIUM Press, 2015), 62–83, <http://iiumpress.iium.edu.my/bookshop/issues-on-harmonization-of-human-rights-in-islam-2> The balanced roles of the sexes are a universal value which cuts across the boundaries of religious faith and ideology. For instance, Dridget Menezes maintains: "By nature, men and women are different. Men are traditionally seen as tougher role models while women are gifted with tender feeling, such as kindness and compassion". She went on by saying that because of this the women historically used to play outstanding roles in jobs befitting their nature even in times of war by caring for and nursing the wounded. Hence, women of today instead of imitating men in things, "should enhance and develop their feminine strength. "see Dridget Menezes, Strength lies in being a woman, *The Star*, Saturday, 10 March 2018.

³⁰ Post-feminism though complex is basically an internal critic of feminism by seeing it as male-haters and sexist. See *CanLit Guides, 2016, Postfeminism*, at anlitguides.ca/canlit-guides-editorial-team/postfeminism-and-conservative-feminism/postfeminism/ (accessed, 7 April 2018).

but hierarchical order of authority is meticulously observed. In this approach, the Quran irrefutably stands at the apex of any discourse on reform and renewal. Then comes the legislative place of the Prophetic edicts and practices which are nothing but commentaries and annotations to what has been revealed by God. Human rationale argumentations, both classical and modern, to contextualize what is enacted by God and His messenger in human situations is another essential tool for integration between revelation and reason though the latter is bound by the parameters set by the former. Accordingly, bringing rationality directly to interpret divine message is *ultra vires* of the genuine methodology of fresh thinking and reform in the Islamic outlook.

Second, Wadud`s reading of the law of *nusyūz* may trigger the following questions: 1) the suggestion that a wife does not have any duty to obey the husband is counterproductive of her thesis on maintaining marital harmony. As a matter of fact, no social unit will be orderly and stable if every of its members carry on with their day-to-day`s task in silo. 2) her procedure of *wa`z* in the sense of ‘let us talk’ may hold true from pragmatic point of view is academically unhelpful as the word *fa`izuhunna* (then advise them) semantically being an action verb (*fi`l fa`il*) requires the husband to initiate the dialogue, (3) her suggestion that spending nights apart can continue indefinitely, practically ending in divorce is problematic for two reasons: i.) why should keep a wife in limbo for so long; ii.) it practically means abdicating the need for the final step, light beating, instead of its purposive reading of the whole law of *nusyūz* which I have articulated in another study.³¹ Finally, although her refutation of Western allegation on Quranic law of *nusyūz* is noteworthy, interpreting *dharb* as “striking out on journey” or “leaving home” is unhelpful in the context of the verse in question. The context of this verse was that Sa`d Ibn Rabi` beat his wife and she (while being accompanied by her father) came and complained to the Prophet. The Prophet ordered them to go and revenge on him. But immediately revoked his order and said: “Do

³¹ For a detailed balanced and maqāshid readings of the issue, see Sayed Sikandar Haneef, “Treatment of Recalcitrant Wife in Islamic Law: The Need for a Purposive Juridical Construct,” *Global Jurist* 12, no. 2 (2012), <https://doi.org/10.1515/1934-2640.1399>.

not proceed with my order as I wanted such a verdict but Allah held otherwise- revealed the law of *nusyūz*.”³²

Third, although the classical *fiqh* allowed unilateral rights of divorce, modern Islamic law and application has made men's rights of divorce subject to two mandatory conditions: (1) its verification and repetition before the court; (2) its culpability if done unjustly or is excessive. But to accord the same unilateral right of divorce also to women does not only result in more marital disharmony, but also will be superfluous as modern Islamic law avails more avenues which women can use to petition for judicial dissolution to counter balance men's right to divorce. For example, section 47 of Islamic Family Law (Federal Territory) Act 1984, Malaysia, sufficiently restricts such liberal use of divorce right by the husband. But beyond legal restrictions, Islam primarily has laid down enough moral deterrent laws to nip the abuse of divorce in the bud: first, by making divorce morally an abhorrent act (*makrūh*) and secondly, by declaring its un-thoughtful and hasty use (divorcing one's wife triply) as morally depraved behavior because the Prophet first declared *talaq* as the most detestable of all the lawful things (*abghad al-halal*).³³ Similarly he condemned a woman who asks for the dissolution of her marriage by saying: “The fragrance of Jannah is haram for any woman who asks her husband for a divorce without a valid reason.”³⁴

Fourth, one will not dispute the fact that abstinence is a cardinal principle of sexual morality in Islam for both genders. Nevertheless, the principle of abstinence does not outlaw the satisfaction of human natural desires in accordance with the law. The Prophet made this abundantly clear when he urged youth to get married but if they cannot afford they maintain chastity and observe sexual abstinence: “O young men, whoever among you can afford it, let him get married, for it is more effective in lowering the gaze and guarding chastity, and whoever cannot then he should fast, for it will be a restraint (*wija'*) for him.”³⁵ Similarly Wadud's stretching the meaning of maintain justice among co-wives to include emotional and psychological equality, as a mandatory

³² Abu Abdillah ibn Ahmad al-Anshari Al-Qurthubi, *Al-Jāmi' Li Ahkāmī Al-Qur'ān*, vol. 6 (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2004).

³³ Sunan Ibn Majah, Book of Divorce, Number 2018.

³⁴ Sunan al-Tirmidhi, Book of Divorce, Number 1187.

³⁵ Sunan al-Nasa'i, Book of Marriage, Number 3211.

condition for polygamy, is unrealistic as the Quran being a realistic source of law does not demand the impossible from the believers. It only requires the husband in a polygamous marriage to maintain material justice among his co-wives which can be measurable and quantified in case of non-compliance. Emotional attachment to co-wives cannot be quantified hence is not accounted for as the Prophet, the role model of believers, himself bravely acknowledged: “O Allah, this is my distribution (among wives) that I am capable of; hence, do not censure me for that which I am not capable. (i.e. natural love).”³⁶

Fifth, the question of women`s testimony has to do with the quantum of proof in Islamic law of evidence. The position in classical Islamic law itself except in the case of loan transaction and serious crimes is subject to juristic disputations. Hence, raising it as a case for reform is unnecessary. For instance, Ibn Qayyim sums up the Islamic logic of proof and evidence by saying that: “Evidence/proof is the name given to whatever makes the truth (facts of the case) manifests and discovers it. And those who restricted it the testimony of two male witnesses of four of them or to that of one such a witness did not do justice to the true meaning of the term *al-Bayyinah*. The reason is that *al-bayyinah* never was used in the Quran to be restricted to the testimony by two male witnesses but was intended to be construed as proof, evidence and reason.”³⁷

Sixth, on the female portion of inheritance, Wadud has rightly argued that it is only in the case of siblings (brother and sister). Other than that more of the Quranic share recipients are females. But to reduce the share of brothers in case their sisters care for their elderly mother, can be achieved by virtue of other existing family security principles, such as a son`s obligation to care for and maintain his parents etc.

Lastly, Wadud partially contextualizes the concept of *qiwāmah* as a mechanism for balancing responsibility for husband and wife towards the household. Nevertheless, she is vague in identifying the kind of reform which she wants in this area.

³⁶ Sunan Abu Daud, Book of Marriage, Number 3214.

³⁷ Shams al-Dīn Abū `Abd Allāh Muḥammad ibn Abī Bakr ibn Ayyūb Ibn Qayyim, *Al-Turuq Al-Hukmiyyah* (Maktabat Dār al-Bayan, 2010).

All in all, viewed from a macro level, it can be argued that, in the Quranic outlook and Prophetic scheme, harmonious families and value based societies can only be established where male and female members of society share their resources and potentials by complementing each other in principled ways without being driven by rage for supremacy and mutual antagonism for power. Particularly bringing gender politics into personal arena and family would rock the very foundation of a harmonious family life which constitutes the bedrock of establishing stable individuals and societies. Accordingly, it is untenable to argue that “gender equality “can be used as overriding principle by which all classical Islamic laws, whether embedded in definitive textual sources or founded on the basis of analogical deduction from explicit texts of the Quran and Sunnah which assign somewhat reduced legal rights for women, based on Islam’s moral vision of equity and complementarity of male and female genders in society, should be dismantled.

D. Malaysia Scenario: Constructive Dialogue as a Way Forward

Muslim feminist hermeneutics by singularly emphasising on reading of the Quran in isolation from the Sunnah put them in frontal clash with the mainstream Muslim scholars. The reason is that this so called women alternative reading of fundamental sources of Islamic law by them repudiates the jealously guarded and settled principles of legal deduction and methods of legal interpretation from traditional Islamic point of view. Hence, working against such an intellectual landscape which I call, the *intellectual context* will not only hurl the charge of illegitimate adventure against them but also is futile to bear any measurable fruit. Zainah Anwar (n.d), the chief advocate of gender equality and the founder of local women rights advocacy group known as Sisters in Islam (SIS) 1988, acknowledges the magnitude of such a hurdle:

...there are many other Muslim women activists who have decided it is futile to work within the religious framework because they believe that all religions, including Islam, are inherently patriarchal. To work with religion will only serve the interest of the male oppressors who use religion to control and maintain women's subjugation. To them, the choice that groups like Sisters in Islam has taken to work within the religious framework, is a losing battle because for every alternative interpretation that women can offer to justify equality and justice, the ulama will offer 100 others to

*challenge that interpretation. They have, therefore, chosen to struggle for women's rights within the framework of universal values and principles.*³⁸

To foment more confrontation with the mainstream scholars, they engage in the divisive polemics of "holier than thou" even if their argument is farfetched. Claiming more authenticity in deriving meaning from the Quran with which Zainah Anwar prides her movement, by calling it making new discovery of meaning which male scholars have neglected or downplayed thus far, further escalates the problem. For example, to her the verse on polygamy was only construed to sanction men's right of polygamy without stressing the mandatory stipulation of justice among co-wives which validates its exercise.³⁹ While doing this, Anwar admits that they do not possess the necessary qualifications as religious interpreters to refute the mainstream *Ulama* but rely on progressive scholars, who also she admits to constitute only marginal voices against the odds of orthodoxy's domineering *status quo*. To intensify the controversy, Anwar calls for liberal use of *ijtihad* where its process should involve democratic engagement with the *Ummah*, a suggestion, which further engulfs the antagonism between the two.

In view of the above, Muslim feminist's proposal for reform in spite of having the merit of some kind of lobbying for Muslim law reform, cannot secure any academic legitimacy in the eyes of the mainstream scholars which predominantly consist of conservative *Ulama* in Malaysia. As the latter, besides rhetorically painting them as outcast/deviant⁴⁰ or Muslim fraction of the infamous Western feminist movement, they reject their advocacy of reform on the basis of well-established methodologies for authentic Islamic legal reform. The reason is

³⁸ Zainah Anwar, "Malaysia: Advocacy for Women's Rights Within the Islamic Framework | Women Reclaiming and Redefining Cultures," accessed July 10, 2018, <http://www.wluml.org/node/1186>.

³⁹Ibid.

⁴⁰ Selangor Islamic Religious Council (Mais) declared Sisters in Islam as a liberal and deviant group in July 31, 2014. See Zurairi AR, "Muslim Women's Group to Challenge Fatwa against Liberalism, Pluralism | Malay Mail," accessed July 10, 2018, <https://www.malaymail.com/s/773695/muslim-womens-group-to-challenge-fatwa-against-liberalism-pluralism>.

that to the mainstream juridical thinking, any reform of Muslim law must be anchored within the principles of *usul al-Fiqh*, namely the Quran, the *sunnah*, *ijma'*, *qiyās*, *maslahah mursalah*, *Istihṣān*, *urf* and others as mastered and detailed by the specialist of the first rank in *syariah*. Singular reliance on segmental reading of the Quran, selective use of prophetic traditions not to mention the liberal use of other subsidiary source of Islamic law cannot claim authenticity neither in eyes of *Ulama* nor to the ordinary Muslim folks. If SIS claims to be working within the framework of Islam, aside from acquiring the necessary Islamic credential, it should negotiate their way by adopting a holistic approach to Islamic law. In this process, they will not only be saved from gross misconception about the male jurists and their rich *fiqh* legacy on women issues but also be able to find sufficient *fiqh* substance to identify the locus for reform and argue their case.

E. Conclusion

In light of the above, what we can suggest is that both mainstream Muslim jurists of our time and Muslim feminists should realise that Islamic family law is a composite of flexible and stable elements. To address women issues in the family, there is a need for women group to appreciate the rationale of the fixed parts of the law upon which uniqueness of Islamic family laws are positioned. Bringing any outside philosophy of marriage and divorce, such as *notion of gender equality*, does not only lack Islamic legitimacy, but also would fuel internal resistance by majority of Muslims and backfire. The end result of such an advocacy would be further radicalization of mainstream legal scholars and victimization of women. The good news, however, is that the richness of Islamic law lies on its flexibility embedded in the divergence of juristic views on women issues within the framework of which women-affirming views could be selected and further fine-tuned to cater for changing needs of women today. This has the advantage of promoting women's rights without disturbing the delicate nature of family law, which would otherwise be seen as Westernization of Islamic law, raising the same indictable charge of superimposition of alien philosophy and *prior text* understanding into Islamic programme of reform to liberate women, for which Muslim feminist accuse their adversary.

Bibliography

- Alfitri, Alfitri. "Women's Rights and Gender Equality Issues In Islamic Law In Indonesia: The Need To Re-Read Women's Status In The Islamic Religious Texts." *Mazahib: Jurnal Pemikiran Hukum Islam* 13, no. 1 (2014). <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/349>.
- Al-Qurthubi, Abu Abdillah ibn Ahmad al-Anshari. *Al-Jāmi' Li Ahkāmī Al-Qur'ān*. Vol. 6. Beirut: Dār al-Kutub al-ʿIlmiyyah, 2004.
- Anwar, Zainah. "Malaysia: Advocacy for Women's Rights Within the Islamic Framework | Women Reclaiming and Redefining Cultures." Accessed July 10, 2018. <http://www.wluml.org/node/1186>.
- AR, Zurairi. "Muslim Women's Group to Challenge Fatwa against Liberalism, Pluralism | Malay Mail." Accessed July 10, 2018. <https://www.malaymail.com/s/773695/muslim-womens-group-to-challenge-fatwa-against-liberalism-pluralism>.
- Haneef, Sayed Sikandar. "Treatment of Recalcitrant Wife in Islamic Law: The Need for a Purposive Juridical Construct." *Global Jurist* 12, no. 2 (2012). <https://doi.org/10.1515/1934-2640.1399>.
- Hassan, Riffat. "Equal Before Allah? Woman-Man Equality in the Islamic Tradition | Women Reclaiming and Redefining Cultures." Accessed July 10, 2018. <http://www.wluml.org/node/253>.
- Hibri, Azizah al-. "An Islamic Perspective on Domestic Violence." *Fordham International Law Journal* 27, no. 1 (January 1, 2003): 195.
- Ibn Qayyim, Shams al-Dīn Abū 'Abd Allāh Muḥammad ibn Abī Bakr ibn Ayyūb. *Al-Turuq Al-Hukmiyyah*. Maktabat Dār al-Bayan, 2010.
- Kadivar, Mohsen. "Revisiting Women's Rights in Islam." In *Gender and Equality in Muslim Family Law*. Ziba Hossieni, Kari Vogt (Ed). New York: I.B. Tauris and Co Ltd, 2013.
- Mir-Hosseini, Ziba. "Feminist Voices in Islam: Promise and Potential." openDemocracy. Accessed July 10, 2018. <http://www.opendemocracy.net/5050/ziba-mir-hosseini/feminist-voices-in-islam-promise-and-potential>.
- Mirza, Qudsia. "Islamic Feminism and Gender Equality." Accessed July 10, 2018. https://www.academia.edu/35703510/Islamic_Feminism_and_Gender_Equality.
- Mustafa, Md. Jamal. *Islamic Law and Society*. London: Koros Press

Limited, 2012.

Wadud, Amina. *Quran and Woman: Rereading the Sacred Text from a Woman's Perspective*. Oxford University Press, 1999.

Yelwa, Mansur Isa. "Inter-Gender Balance of Right in Islam." In *Issues on Harmonization of Human Rights in Islam*. Sayed Sikandar Shah Haneef et.Al (Ed). Kuala Lumpur: IIUM Press, 2015. <http://iiumpress.iium.edu.my/bookshop/issues-on-harmonization-of-human-rights-in-islam-2>.