
Misconceptions and the Reality of Family Law in Islam

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Introduction

Islam is one of the fastest growing religions in the world, and comprises well over 20 per cent of the world's population, but they are among those least understood by others. One of the most common misconceptions people have about Islam is that most Muslims are Arabs. Muslims are not only Arabs and all Arabs are not Muslims. Arabs are 20 per cent of the total Muslim population. 80 per cent of the Muslims are non-Arabs. There are large numbers of Arabs who are either Jews or Christians. In fact, less than 1 out of 8 American Muslims is an Arab. In the United States of America, Muslims diverse ethnically and geographically and the estimated number of American Muslims vary widely but most experts say it is 6 million to 8 million. By 2020, the total number is expected to surpass 13 million.¹ It is important to note that there is enormous plurality in the Muslim world and major differences in the traditions of African Muslims, Arab Muslims, Asian Muslims or European Muslims.

The world's most populous Muslim country Indonesia is a non-Arab country in Southeast Asia and has the world's largest Muslim population of 88%.² And millions of Africans living in Nigeria, Mali,

Sudan, Algeria and Morocco adhere to the religion of Islam. The two largest Muslim groups in the United States are African-Americans and immigrants from South Asia. The Muslim population in the world was 1.209 million in the year 2000, and it is estimated that it would be approximately 1.625 million by the year 2015.³ Islam is not an ancient Eastern religion, but a vibrant western religion too. A large majority are unaware of the fact that every sixth person on earth is a Muslim and more than 40 countries are predominantly Islamic. Its influence extends not only from the Middle East and North and East Africa, but beyond those to Europe, particularly France, Germany and the United States. In 20 years, between 30 and 40 percent of the population of about a dozen European cities will be Muslims. These changes have prompted fears among Europeans that their continent is becoming “a colony of Islam” as Italian journalist Oriana Fallaci puts it.⁴

This is also confirmed by Ambassador Herman Eills, in a testimony at the committee on Foreign Affairs of the House of Representatives of the United States Congress on June 24th 1985 in the following words:

“The Muslim community of the globe today is in the region of one billion. That is an impressive figure. But what to me is equally impressive is that Islam today is the fastest growing monotheistic religion. This is something we have to take into account. Something is right about Islam. It is attracting a good many people.” Islam has become part and parcel of the West. At the dawn of the 21st century, Islam is not only the second largest religion in the world, it has become the second or third largest religion in Europe and North America. The Muslim population of Western Europe is somewhat equal to the Muslim immigrant population in North America. If Islam is the

misogynist religion which media claims it is, then the conversion to Islam by women brought up in the West would not make any sense.

The western media, for some reason, latch on to a few examples of unjust behaviour in the Islamic world, brand Islam as a backward and fundamentalist religion especially in the treatment of women, and ignore that it was the first religion to accord women equal rights. Islam is often looked upon as an extremist, terrorist religion. Some common names heard or seen in the news about Muslims are "extremist" or "terrorist." These words are misleading and are mainly anti-Islamic. "It is a mistake to associate Islam with terrorism." said Abu Rabi who teaches Islamic Studies at Virginia Commonwealth University in the USA. But with or without the September 11,2001 attacks, Western society has been watching Islamic movements throughout the world with a very skeptical eye, ignoring the fact that the vast majority of Muslims world-wide advocate peaceful means to influence change.⁵

Although Islam is the fastest growing religion in the world, there are many stereotypes and misconceptions about this second largest religion. It is necessary that the distortions and confusion created by the Western media be rectified in a clear, sober, captivating and intellectual fashion. With this in view, this paper will highlight some of the important misconceptions about Islam pertaining to family law especially on women's status in Islam with a view to reveal the correct position of Islam and enlighten the readers on the actual situation.

Women's Legal Age of Marriage and Marital Rights

There is misinterpretation as to the legal age of marriage for girls. This is not Islamic law but local tribal or cultural tradition. In reality,

Islam expects marriage to be established on mutual understanding, acceptance and approval. Maturity - mentally and emotionally and physically are some of the requirements before a girl contracts a marriage. Islam does not imply that a woman is made entirely for the pleasure of her husband, but refers to spouses as equal partners. Islam clearly teaches that a woman is a full person under the law and is significantly equal to a male. It is a requirement in Islamic law, referred to as *Shari'ah* in Arabic, that the consent of the girl be obtained to contract a valid marriage. This is done through the father or male guardian (known as *wali* in Arabic) of the bride.

Islamic Law on Divorce

There is misconception that the Islamic ruling regarding divorce as many believe that in less than five seconds a woman is left with no husband and is left to care for herself. The truth of the matter is that Islam has the most humane and just system of divorce that exists. Firstly, many options are taken and tried before a divorce is granted. If the man and woman decide that they can no longer live together successfully as a husband and wife, the husband pronounces the divorce. At this point, the waiting period begins. The waiting period lasts for three menstrual cycles to assure the wife is not pregnant. This period allows the couple time to think about what they are doing and if this is what they really want to do. During the waiting period, whether the wife is pregnant or not, the husband has to provide food, clothing and shelter to the wife as he did before the divorce pronouncement. If the couple carries the divorce through the birth of the child and the wife suckles the baby, the husband has to look after both his ex-wife and the child for the time the wife suckles. After the

weaning eriod, the child will be provided for by the father until he/she is no longer in need of support.

There is strong misconception that Muslim women do not have the right to divorce their husbands. Divorce laws in the *Qur'an* apply to both men and women equally. Women have the right to divorce their husbands as long as they follow the laws laid down in the *Qur'an*. In fact, the *Qur'an* specifies a particular kind of divorce called *khul*, where a wife may initiate divorce proceedings against her husband, provided she is willing to pay adequate financial compensation to him. Thus, the wife will offer to pay a certain sum of money in return for the agreement of the husband to release her from the marriage tie.

Polygamy

There is also misconception regarding polygamy where men who profess the religion Islam are allowed to have up to four wives and not vice versa. It was practised at the time when many women were widowed or orphaned when their husbands or male relatives died in the battles and had no means of support. So they were forced to marry them and some of them had more than one wife. Most people fail to realise that polygamy is permitted only if the husband is able to maintain and treat all the wives equally and the permission of the first wife is obtained. Polygamy was never meant to be abused for sexual pleasure or prove superiority. An Islamic country like Tunisia has abolished polygamy while some others have insisted that the first wife's permission must be obtained before contracting the second marriage and this clause could be incorporated into the marriage contract.

Islamic Dress

The *Qur'an* enjoins modest dress for both men and women, and in a Muslim society, men as well as women typically dress conservatively. Some Muslim women interpret the *Qur'an* and *Hadiths* (sayings and traditions of Prophet Muhammed) as guiding them to dress modestly and cover their hair in public, while others insist that their whole body including hands and face to be covered. While some others understand the guidance to mean a more general attitude of modesty both in dress and attitude.

According to Rana Kabbani, author of *Imperial Fictions* the practice of wearing a *hijab* was adopted by Muslims during the Byzantine period when affluent women covered themselves to avoid hungry looks from the rabbis. Another theory is that the garment was made obligatory where wars had created many widows and rape was rampant. This is why women in rural Afghanistan refuse to shed their *chadors*.⁶

The decreasing morality and trials of the time makes *hijab* or the head scarf even more in need. Although the society tells that women can wear what they want, anytime rape occurs the woman is the one put on trial and one of the questions asked is "What were you wearing? "

But today, the wearing of *hijab* by Muslim women have been one of the distorted images ever fabricated by the media in Western society. Since the late 1970s, Muslim women from Arabia to Asia to the West have been voluntarily covering. It is similar to the dress code for Christian nuns and the media fails to recognise this, and deform the image of Muslim women wearing it. Western feminist have often seen the veil as oppressive and as a symbol of a Muslim women's

subservience to men But it often comes as a surprise to Western feminist that the veil has become increasingly common in the Muslim world, and is often worn proudly by college girls as a symbol of Islamic identity. Other manifestations of the veil include all encompassing outer garments like the ankle length *abaya* from the Persian Gulf states, the *chador* in Iran or the *burka* in Afghanistan and in Pakistan a *dupatta*.

Women's Inheritance Rights

In the case of inheritance, the Muslim woman is allotted a share equal to half of that given to her male counterpart. This is often cited as an example of Islam's unfairness to women, but the facts warrant closer examination. In many societies, including pre-Islamic Arabia, wealth that was to be inherited was distributed by means of a written will which in many cases deprived women and those in weak position of their shares; this is still the case in some parts of the world. Islam offers as it were a "ready made will" as the *Qur'an* spells out Islamic injunctions regarding inheritance and gives women the right to inherit from the husband, father and brothers.⁷ Thus, Islam sees a woman whether single or married as an individual in her own rights, with the right to own and dispose of her property and earnings without any guardianship over her. She has the right to buy and sell, give gifts and charity, and may spend her money as she pleases.

But there is a common misconception even among the traditional Muslims that a woman inherits only half what a man can inherit. The *Qur'an* gives the parents total freedom to give their children as much as they see fit even if this means giving the females double what the males would get. The *Qur'an* commands that if a will is not left, then

the estate is distributed in such a manner that the son gets double what the daughter gets. Generally, the son is responsible for a family, while the daughter is taken care of by her husband or her family.

Annie Besant, who was writing in the 1930's observed that "It is only in the last twenty years that Christian England has recognised the right of woman to own property, while Islam has allowed this right from all times. It is a slander to say that Islam preaches that women have no souls." ⁸ Women are seen as the spiritual and intellectual equals of men, though again this is not the image presented.

Women's Testimony

There is misrepresentation that a woman's testimony is equal only to half of the man's testimony. The woman's testimony is equal to the man's testimony except in case of financial transactions only. Financial transactions are the only situations where two women may substitute for one man as witness. This is to guard against the real possibility that one witness may marry the other witness, and thus cause her to be biased. Women's testimony in all other matters are equal to that of a man or even supersedes his testimony as in the case of a wife testifying against the accusation of adultery.

Women Cannot Hold Jobs Outside their Homes

Although the social structure of Islam in the East, where Islam prevails encourages a woman to make her home her first priority but there is no prohibition whatsoever on women having to work to earn their living. The Muslim woman has been given the privilege to earn money, the right to own property, to enter into legal contracts and to manage all of her assets in any way she pleases. She can hold a job or

run her own business and no one has any claim on her earnings including her husband. In fact, during the time of Prophet Muhammed, his first wife was a merchant who hired Muhammed to work for her. Muslim women even went along with their husbands, fathers and brothers during battles to take care of the wounded.

There is no restriction in Islamic law that says a woman cannot work or have a profession, that her only place is in the home. In fact, by definition in a truly Islamic society, there must be women physicians, nurses, teachers because they are preferable professions. And if a woman chooses to work, and is married, she could do so with the consent of her husband and she is entitled to equal pay, not for equal work, but for work of equal worth. Both in the past and the present day, women in Islamic societies have reached political heights unparalleled in the most advanced nations. In fact, Shirin Ebadi, a human rights lawyer is the first Muslim woman to be awarded a Nobel Peace Prize and the first Iranian to receive any Nobel award. In early October 2003, Iran's first women public officers joined the force. In Iran, despite the *chador*, women vote, and a woman is a deputy speaker of the Parliament. It should also be noted that Islamic countries like Bangladesh, Indonesia and Pakistan have already had Muslim women as head of states. Even in Saudi Arabia, the role of Saudi women is changing far more quickly than most in the West realise. At the Jiddah Economic Forum held in January 2004, where speeches were given by women, Lubna Olayan, the Saudi Chief Executive Officer of the multi billion dollar Olayan Financing Company gave the keynote speech.

Conclusion

It is worthwhile to note that much of the practices and laws in Islamic countries have deviated from or totally unrelated to the origins of Islam. Instead many of these practices are based on cultural or traditional customs which have been injected into these societies. For example, in Saudi Arabia, women are not allowed to drive by law. This rule is not an Islamic legislation but an invention of the Saudi monarchy. Another example, in some Islamic countries, many civil laws remain those that were imposed upon them during European colonisation. Personal and family matters in Egypt for example is directly based on French law and as a result an Egyptian man can divorce his wife much more easily than reverse where women have to suffer long and expensive court procedure to prove that they were mistreated by their husbands before being granted a divorce. It often happens in Middle Eastern countries, where legislation enforced by men take bits and pieces of Islamic law and combine them with the concocted rules based upon some cultural or foreign practice. Thus, one may say that in some Islamic countries, women remain second class citizens with many of their basic rights denied in the name of religion and traditions. For example, the right to vote, drive, work, walk in the street without a male or receive a meaningful education are denied or curtailed to different degrees. This is not true in every predominantly Islamic country. Situations may differ in some of the Arab nations, where men have a tight grip on power, but women do not always live in total subjugation,

The Western media's coverage of Islam is generally regarded as problematic by many Muslims today. The West has many stereotypes and misconceptions about Islam that are due to the media, prejudice

and ignorance. Westerners tend to think of Islamic societies as a backward and oppressed religion. But the measurement of cultural distance between the West and Islam is a complex undertaking and that distance is narrower than they assume. Muslim societies are far more human than portrayed in the West. Thus, it is necessary to look at everything within the context of time, culture and situation. The key to understanding the truth and reality of Islam is to resist stereotypes and examine each situation individually and as part of a whole.

Footnotes

1. The Islam Project "Muslim Americans, A Demographic Report" by Ilyas Ba Yunus and Kassim Kone published in "Muslims' Place in the American Public Square Graphic, Chicago Tribune, *The Daily Yomiuri*, January 15, 2005.
2. *Muslim Population Statistics by Country*
<http://www.factbook.net/muslim.pop.php>. June 11, 2005.
3. *World Muslim Population Projections*
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5. "Western perceptions of Islam on wrong track," *The Daily Yomiuri*, Friday, June 28, 2002.
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8. Anne Beasant, *The Life and Teachings of Mohammed*, Madras, 1932.