

## RECLAIMING ISLAM: POLITICS OF INTERPRETATION

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**Abstract:** Islam as a religion has been just and egalitarian to both the genders. The history of Islam proves the same. Yet in the present times the progressive forces in the religion are often stifled calling them blasphemous. It is the role of the power structures which results in the patriarchal interpretation of the religion, and it needs to be challenged.

**Introduction:** The personal laws are seen as moral doctrines, and in some cases civilisational commandments that will help humans achieve their higher selves. The religious personal laws are followed in the hope that they uphold the right to equality for both the genders. Hence, it is assumed, if implemented in true spirit and intentions these laws will lead to a more egalitarian society. Various examples and interpretations have been put forward time and again by various national religious boards and religious authorities. A keen observation can be made of the following interpretations as put forward by Athar Husain, in All India Personal Law Board Publication: "The Quran has honoured women so much so that there is a whole chapter on her entitled "Woman" and her status and dignity are explicitly stated therein as also [it is] in so many other verses of the Quran. Some of her rights and indications of her status are stated below:

1. She is seen as an equal partner in procreation and survival of mankind.
2. She is acknowledged as an independent personality, possessing all human qualities and worthy of spiritual inspiration. Her human nature is neither inferior to nor deviates from men. She is equal to man in bearing personal and common responsibilities and in receiving rewards for her deeds". (Husain 1989) He quotes and takes from the quran the following verses to make his point: "Oh mankind! Verily, We have created you from a single (pair) -- male and female; and made you into nations and tribes that ye may know each other." (Q. 49:13) "Women and men mutually form complements of one another." (Q. 2:18) "He created for you helpmates from yourselves that ye may find rest in them and He ordained between you love and mercy." (Q. 30:21) j "Islam grants [a] woman [the] equal right to contract, enterprise, to earn and [to] possess independently. Her life, her property and her honour are [as] sacred as those of [a] man[']s. If she commits an offence, she is no less or more guilty than a man in a similar case. If she is harmed or wronged, she is entitled to the same compensation as a man in her position would get" (Q. 2:118; 4.45 R 92-93). "She is entitled to freedom of expression as much as [a] man is. Her sound opinions cannot be disregarded just because she belongs to the fair sex. The Qur'an

and history of Islam bear testimony that women not only expressed their opinion but also argued and participated in serious discussions with the Prophet himself and with other Muslim leaders." (Q. 58: 1-4; 60: 10-2). In spite of the various citations made from the holy books proving their unbiasedness, history has often told a different story. As law scholars, we need to look into the legal implications of the same. According to Ziba Mir Hosseini's observation through the revolution years a country like Iran where the so called libertarian regime prevailed, the women actively participated in the Islamic revolution of 1979, in the hope that Shari'ah law will provide them the justice. Women on the other hand, had to see the exact contradiction of the Shari'ah equality following the revolution. The developments in Afghanistan speak of the same. The western invasion in Afghanistan was justified in the name of the freeing Afghan women from oppression. Even after the overthrow of the Taliban, the women could not be rid of their Chadri or Burqa (Yaseen 2015). The reasons behind both the historical developments, against the rights of the women were not the Shari'ah law in itself, but the persistence of the traditional patriarchal values that the prevailing power structures were refusing to let go off. (Hosseini 2006) The Shari'ah in the hands of such patriarchal regimes then by the means of many-interpretations and mis-interpretations become the instrument of oppression against the weaker sex.

**Real Nature and contested objectives of Shari'ah:** Rarely will those who make tall claims in the name of Islam admit that theirs is just one opinion or interpretation of many that exist. A major blame for this can be assigned to monotheistic view of Islam that prevails in popular as well as academic discourses, worldwide. According to Mohammad Hashid Kamali's view shari'ah can be defined narrowly and expounded clearly been in positive legal terms, known as nusus. These will leave less scope of misinterpretations and misuse of Shari'ah. The laws of Shari'ah in the sphere of Mua malat seeks to regulate the relations between the individuals related to Salah (rituals), Zakah (legal alms), kaffarat (taking oaths and penances) etc. Another 70 Ayats are devoted to marriage, divorce, paternity, custody of children, maintenance, inheritance etc (Kamali 1989).

However Ulama's are not in agreement over the Ayats and their exact figures, as their understandings, approaches and interpretations to contents of Quran differ. These areas in Ayats and Mua malats which majorly effects the weaker gender and the interpretation of their rights as presented in Quran are majorly contested and open to many interpretations by the religious clerics. It is extremely hard to say that in the background of the patriarchal societies in which these clerics flourish, whether their interpretations and approaches remain biased towards any gender. Also the power elites of such societies are more inclined towards preventing the more egalitarian spillage of power in such societies. Mohammad Hashid Kamali has also brought to light, the other means of interpretations and contextualisation of Quran and Shari'ah. He has described these as Qiyas (analogical reasoning, juridical preference (Istihsan), presumption of continuity (Istishab). Clearly these instruments of correct interpretations have been greatly violated in different societies. The major example of violation of Istishab (presumption of continuity) from the current context can be the attempt of establishing the medieval Caliphate by the ISIS, in the regions of Iraq and Levant, as per their interpretation of Shari'ah, which is clearly not fit for the region in the modern times and definitely not in continuity with the development that the region had seen so far. As per these interpretations the women are not only being subjected to lower positions than men, but also brutalities, slavery and even flesh trades. Given the present context, can it be called the correct interpretation of Shari'ah? Sanity cannot allow anybody to agree with it. All the more the history has examples proving that there have been serious uprisings in the third Caliph after the death of Prophet, when he failed to govern by Shura (consultation) and Maslalah (guided by Public good) and tried to impose his own interpretation of Shari'ah. (Fadl 2001) Going by this logic, the regimes like Talibaan in Afghanistan, Boko Haram in Nigeria which would impose their diktat by use of force and terror were also not in sync with this law of Shari'ah interpretation. Thus, many of those who impose themselves on others in the name of Islam, are in their essence anti-Islamic.

**Examples from Islamic History:** The history of west Asia is replete with examples where women of high stature held positions of honour in society. Carla Power gives the account of two such women from the history of the region, to prove against the stereotypes surrounding the position and rights of women as offered by Islam. One of such legends is that of Aisha, The third of the Prophet's eleven wives, who was anybody, but a submissive wife and a mother. She was a top Islamic scholar, a fatwa issuing jurist, and

with intellectual capabilities much beyond her time and also ours. She was a military commander who would ride the back of a camel like her fellow men (Power 2015). Given this history of Islam, it is only unfair that countries ruled in the name of Shari'ah like the Saudi Arabia, deny the women the rights to drive their vehicles even in the case of emergency, leave alone in the day to day life (Burke 2011). Even today Aisha is referred to as 'beloved of beloved of Allah'. The second example that Carla Power presents is that of the Ummal-Darda, a seventh-century jurist and scholar who taught jurisprudence in the mosques of Damascus and Jerusalem. Her students included people from all genders and even the Caliph (Power 2015). Such was the status enjoyed by the women in those times as compared to the modern times, where Taliban had imposed ban on the education of the girls, and the likes of Malala were shot by the so called Islamists, for demanding education as their right. The Interpretations and the justness towards both the genders Divorce has been described by Prophet as "the most detestable of all lawful things in the sight of God".

**QURAN says:** "If you fear a breach between the couple, then appoint an arbiter from the man's family and an arbiter from the woman's family if the two (man and wife) desire to reach a settlement, God will effect a reconciliation between them." (Q. 4: 35) Conditions of Validity of Talaq

1 The husband should be in proper state of mind. If a person [is] given to epileptic fits [and] gives talaq in the state of fit, it will be invalid. If a person who is not used to intoxicants, takes some intoxicants not knowing its effect, or as a remedy for some illness, and loses his balance of mind, a divorce given by him will have no meaning.  
 2 The husband should be an adult. Divorce given by a minor husband is invalid.  
 3 Divorce given under compulsion has no validity.  
 4 The language used in giving [a] divorce is important. It should be either explicit or should imply the intention to give divorce. [The] mere act on the part of the husband will not constitute divorce by itself. If a person gives the Mehr to his wife, all her personal belongings and sends her to her parents home without uttering the words of talaq, it will not be a divorce" (Husain 1989)

**Dissolution of the marriage by the wife :** The wife has also been empowered in the matters of Divorce. The husband can confer on his wife the power of dissolving the marriage if she chooses to do so. This power once assigned is not retractable; He can do so in exchange of money or property, which is called as Khida.

In certain cases the marriage can also be dissolved, by decree of court. This separation in marriage is known as Furqat (Husain 1989). Separation -- Besides the

authority of the husband to divorce or the delegated authority of the wife to do so, a marriage can be dissolved, in certain cases, by a decree of a court. It is called *furqat* or separation. If the separation is ordered due to a cause imputable to wife, it has the effect of *fiskh* (annulment of the marriage). The difference [between] the two lies in liability to pay [the] *Mehr* (dower) or observance of *Iddat* (Husain 1989). In the event of divorce whatever has been given to the wife by her parents and whatever might have been given to her by her husband, all belongs to her and she can take them away with her. [In] verse 20 of Surah 4, God commands: "If you wish to dispense with a wife for the sake of another, and if you have given her a talent of gold, do not take back aught of it. Would you have it by slandering her or charging her with an open sin." It is most often argued that divorce is still a male centric affair, not

giving the right to divorce to woman. The clear reason behind such a law is that the wife lives with and is maintained by the husband. If she was allowed to pronounce divorce, it would be she who would have to leave the husband's house and forgo everything that the Shari'ah allows to a divorced woman. (Husain 1989).

**Conclusion:** Thus in no way can it be argued that it was Islam that was unfair to women. Rather the politics of gender came into play to misrepresent and misinterpret Islam in favour of the already existing power structure. Thus, it is no surprise the most patriarchal North –Indian heart land of Haryana and western U.P, notorious for its Khap Panchayats is also the land of regressive Fatwas. In such circumstances it becomes the duty of the progressive forces within the religion and part of the state apparatus to interfere in the matters of religion

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21. <sup>1</sup> The author Ziba Mir-Hosseini gives a firsthand account of her experience as a woman participant of the anti-Shah government revolution that Iran saw from 1978-1979. According to her account the society before and after the revolution was similarly patriarchal, and the women continued to be treated as second class citizens even after the revolution that they were so enthusiastically part of. See Ziba Mir Hosseini's *Muslim women's quest for equality: Between Islamic law and feminism*, *Critical Enquiry* (vol 4.) pg 629
22. <sup>1</sup> In 1992, Afghanistan underwent a civil war when Mujahedeen took over. Mujahedeen declared that women had to wear a veil or the *Chadri*. One of these sections became victorious and brutality, rape kidnap and torture or women continued See page 13, *Women in Afghanistan: A historical Study*, *International Asian Research Journal*, by Reehana Yaseen. Also see Ziba Mir Hosseini's *Muslim women's quest for equality: Between Islamic law and feminism*, *Critical Enquiry* (vol4) pg 630, para 2.
23. By *Nusus* the author Mohammad Hashid Kamali means the text in Quran which is absolutely clear, without any ambiguity or contestation. It is clear injunction of Quran and Sunnah. See page 217 of Hashim Kamali's *Sources, Nature and objectives of Shari'ah*, *Islamic quarterly*, 1989.
24. *Mua Malat* are rules, regulations and rights provided to define the relationship between the individuals, but these concern the government as these are justiciable in the court of law, and the individual can use these rights against government in case of violation. See page 219 of Hashim Kamali's *Sources, Nature and objectives of Shari'ah*, *Islamic quarterly*, 1989.
25. *Shura* has been described as the Shari'ah rule by consultation according to god's law instead of rule based on personal whims and fancies, See Khaled Abou El Fadl's book *Speaking God's name: Islamic law, authority and women*, page 33.
26. An act justified by pursuit of public welfare, this can be justified as a way of interpretation of Shari'ah, as was historically followed by some kings in the Islamic world. But the act should be impersonal and non-whimsical. See Khaled Abou El Fadl's book *Speaking God's name: Islamic law, authority and women*.
27. Carla Power was a Pulitzer Prize finalist, who engages in conversation with a friend in this book and unfolds the real and deeper meanings of Quran and Muslim world practices.

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