

Rethinking Women's Issues in Muslim Communities

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The issues facing the majority of Muslim women around the world today are those facing the majority of women everywhere: poverty, illiteracy, political repression, and patriarchy. At the same time, there are now and always have been elite Muslim women, with wealth and clout, who have exercised power and autonomy within social and economic networks. No one can argue that these women all share a "status." For this reason, stereotypes of Muslim women as uniquely oppressed bear little resemblance to reality. Yet the attempt to define "women's status in Islam" persists.

Some people take the question about women's status to be about an idealized Islam--mostly referring to Qur'an and prophetic tradition, sometimes including jurisprudence. As with Christian scripture, analyzing isolated passages from these sources is not likely to give an accurate portrayal of women's rights, nor do these sources necessarily reflect actual practice. A focus on the Qur'anic verses that specifically address women is, however, one common means of attempting to answer the question "What is women's status in Islam?" Indeed, Muslims have often encouraged this approach as a way of deflecting criticism about women's actual disadvantages in some Muslim societies. Faced with clear evidence of oppression, Muslim apologists state that such practices are contrary to "true Islam," which they claim liberated women from their disadvantaged position in pre-Islamic Arabia. An opposite reaction is heard from detractors of Islam. When women achieve social prominence and personal success in Muslim societies, these critics contend that it is despite Islam; such "progress" (such as several Muslim women becoming heads of state) is possible because of the declining importance of religion. Where legal and social discrimination against women do exist, however, these critics blame it on Islam.

In order to make any headway in understanding Muslim women's lives--and what is needed to make them better--one needs to move beyond these arguments. Islam is not the solution to all of Muslim women's problems, nor is it the cause of them. I would suggest, in fact, that Islam is not directly related to many facets of most Muslim women's lives. To take the most striking example, one can focus on the unequivocally terrible situation of women in Afghanistan under the Taliban. Even in this case, where the Taliban's interpretation of Islam was the explicit justification for oppressive restrictions on women's mobility and education, "Islam" does not by itself come close to explaining women's experience. In order to

comprehend women's situation in Afghanistan, one needs to understand not scriptural passages concerning women, but rather decades of devastating war, tribal rivalries, lack of agriculture, a high rate of infant mortality, and so on. While Islam must be analyzed as part of the larger picture, it is meaningless outside Afghanistan's specific historical and geopolitical context. The burka is less relevant to Afghan women's misery than sheer, crushing poverty.

That is not to say, however, that the burka is a non-issue. Without falling into the trap of assuming, as some Western commentators seem to, that women's dress is a barometer through which status can be measured (the less skin showing, the lower the status), I would suggest that it is related to a constellation of issues that are common to Muslim women: a focus on women's dress; some level of restriction of free mixing of the sexes; and the granting to husbands of significant legal and customary authority over their wives. Although there have never been universally agreed-upon rules on these subjects, nor have regulations been uniformly applied to all Muslim women across time and class boundaries, they are among the crucial issues that shape communities and families throughout the Muslim world--including among Muslims in the United States.

Islamic Dress

Some scholars have shown how debates over Islamic dress have turned it into a potent symbol for authentic Islam, at the same time it becomes a marker of idealized gender difference. Others have suggested that it represents a practical compromise strategy for women who wear it as a means of being taken seriously, not harassed, and allowed more personal freedom without being viewed as unchaste. In this model, women's adoption of the hijab is a demonstration of autonomy. Still others have suggested that any use of "the veil" is ultimately self-defeating because it carries such powerful connotations of women's subordination and the idea that women's proper place is in the home. A few have noted that the concept of hijab originally referred to a physical barrier of separation from unrelated men for a woman in her home; the idea of a portable "screen" that allows wide mobility and interaction with men outside the family is a very different concept. Of course, seclusion in the pre-modern era was an elite affair only, relying on the free movement of women from the lower classes to provide goods and services. In this sense, contemporary Islamic dress is an egalitarian phenomenon, available for the price of a scarf.

In any event, in the United States and other Western nations women's headcovering takes on a very different meaning. It is one thing to wear a scarf and abaya in Saudi Arabia where such dress is compulsory, quite another to do it in Egypt or Kuwait, where women's dress spans the range from fully covered -- including face veil and gloves -- to chic, and potentially revealing, skirts and jeans. It is still another thing entirely to adopt a headcovering in a nation where Muslims

are a small minority of the population and the hijab itself makes the wearer noticeable.

Three views on the scarf seem to have taken root among Muslims in the West. One calls for wearing the scarf as absolutely necessary, based on Qur'an and prophetic tradition; in this perspective, other considerations are irrelevant, and other views are summarily dismissed. A second position argues that women's modesty is critical and that the point of the covering is to make a woman's appearance less the focus of attention. Thus, in the United States, wearing a scarf accomplishes precisely the opposite of the Qur'an's original intention. A third view shares elements with the others. Its proponents recognize both the need to be modest and the specific issues associated with veiling in the United States. They suggest that there are social reasons to veil here, even though some do not consider it obligatory: it makes women less a sex symbol and more of a human being and it makes her recognizable as a Muslim.

Some considerations, generally left out of discussions of veiling, are important to my view that wearing hijab needs to be a personal decision made in good faith according to a woman's own understanding of God's commands. At one mosque I attended, I was told that some women's purses had been gone through, during prayers, in order for others to check whether they were properly covered in their driver's license photographs. First, therefore, Muslims need to stop putting so much emphasis on women's dress, and sex segregation, and far more on other aspects of men's and women's moral development (like respecting the privacy of others). Just as we ask non-Muslims not to judge by appearances and assume that a woman's headscarf implies oppression, Muslims need to realize that a woman who does not cover her head is not necessarily any less observant or faithful than one who does. Second, and related to the first, is the double standard. The Qur'an verse that is most cited in regard to women's dress (24:31) is preceded by an exhortation to men to "cast down their gazes" (24:30). If Muslim women are not allowed to wear swimsuits at the beach, but it is perfectly acceptable for Muslim men to look at, and interact with, non-Muslim women in bikinis, does this not violate the spirit as well as the letter of the Qur'anic injunction? Muslims need to think of modesty and modest behavior as both male and female duties. Finally, the Qur'anic and prophetic evidence regulating women's dress is far less precise than many assume. Nonetheless, rather than spending more time and attention focused on how exactly to interpret these texts and to best understand how women should dress, I would suggest that it should be a non-issue, at least until the other pressing problems facing Muslim communities are resolved. One of the most pressing issues is that of family law.

Family Law

One common view of "Shariah" rules on marriage and divorce deems them

particularly harsh and unfair to women. This view is held not only by non-Muslims but also by many Muslims, particularly in the numerous countries that impose some version of "Islamic Family Law" or "Personal Status Codes" purportedly based on classical Islamic law. A contrary view is gaining prominence, however. Its proponents argue that, in fact, women are guaranteed numerous rights by Islamic law; they simply need to learn how to protect themselves by invoking them. The most important way to do so, in this view, is to place conditions in a marriage contract; a wife can thus ensure that she is permitted to work, to visit her family, or to obtain a divorce if her husband takes a second wife. But these conditions are a matter of significant dispute in classical law. Several of the conditions that are routinely praised as a means for women to obtain rights are deemed by the majority of classical jurists, and today by many national court systems, to be void and unenforceable, thus making women's "right" to include them in their contracts meaningless.

For Muslim women in the United States, the situation is different. American Muslims are not subject to a particular interpretation of Islamic law by government decree but rather may choose, as a matter of conscience, to follow certain doctrines in their personal dealings. In these circumstances, the legal strategy of including conditions in a marriage contract can be an extremely useful way of making clear the spouses' expectations for the marriage and about their roles within it. And if they are written in a prenuptial contract in a way enforceable by the U.S. courts, these conditions can serve as legal requirements for the spouses to abide. This can be an effective approach for certain rights, particularly payment of dower, a wife's right to work (or not to work), and the rights of the spouses to maintain separate property.

In my view, these types of measures are useful as a means of gaining recognition for rights that are recognized by classical jurisprudence but ignored by contemporary Muslims in positions of authority, such as the local imams who draw up marriage contracts. Ultimately, however, these types of conditions do little to alter the traditional imbalance of spousal rights in classical law; as an example, there is no condition a wife can include to restrict her husband's right to repudiate her at any time, for any (or no) reason. This is his unalienable right according to the unanimous view of classical jurists. (Of course, in the United States the spouses would still have to go through civil divorce proceedings before the government would recognize the divorce.) Rather than simply picking and choosing from among the doctrines of established legal schools, what is needed is a more thorough-going legal analysis with an eye to developing a new, more egalitarian law.

There is resistance to this type of work on numerous fronts. I will address only what I believe to be the major obstacle: the assumption of many that Shariah, or revealed Law, is the same as "Islamic Law" as found in the regulations of the legal schools. The use of the term "Shariah" in descriptions of legal doctrines as well national

legal codes promotes this confusion; contrast this with the term "fiqh," literally meaning "understanding," that is the Arabic word for jurisprudence. The legal schools have historically demonstrated significant variability in method and doctrines; they differ substantially on numerous points of law.

These differences are not, as some have suggested, merely matters of detail. I will give a few examples of how real the consequences can be for women. The Shafi'i school allows a wife to obtain a divorce on grounds of non-support after as little as three days; the Hanafi school never does, even if the wife is indigent and her husband fails to support her for decades. The Maliki school allows a father to contract a marriage for his never-married daughter over her objections even if she is a 35 year old professional; conversely, the Hanbali school says that the father's power to force a girl into marriage ends when she turns nine. Virtually all Sunni jurists consider a triple repudiation given at once to be legally effective, if reprehensible; Shi'i law, however, counts such a pronouncement as only a single repudiation. These mutually contradictory positions cannot all be equally correct interpretations of an infallible Divine Will. All, however, are significantly shaped by the patriarchal constraints of their times of origin. Once Muslims recognize this, the need for qualified Muslims to create a renewed jurisprudence should be clear.

Community Considerations

The biggest question now is: how will American Muslims face these issues? There is an understandable desire not to add to the stereotypes non-Muslims have of Muslim women's oppression. As a result, in discussions with outsiders, Muslim women tend to minimize some very real experiences of being marginalized within communities. While Muslim women's experiences do not come close to being as oppressive as is popularly imagined, neither are they as rosy as some claim. While clearing up misconceptions is important, it should not come at the expense of women having a chance to really confront those issues that are of concern. Women cannot afford to let concerns be simply dismissed with the statement that "Islam liberated women" and therefore there is no cause for complaint.

There are progressive voices within American Muslim communities addressing these topics today, though unless one is listening for them, they tend to be drowned out by established conservative and apologetic discourses. Issues related to women and gender are becoming increasingly part of the agenda. Growing numbers of Muslim women are interpreting the Qur'an in non-patriarchal ways, and their writings and lectures are having an impact on the ideas in circulation. Muslim women's discussion groups associated with mosques as well as in academic and activist settings are a force for change. The single most important idea associated with all these efforts is that men and women are created equal as believers and that, ultimately, their equality as human beings in the sight of God matters more than any distinctions based on social hierarchy. I am optimistic that this idea, and

its natural consequence of more egalitarian families, communities, and laws, will shape the future of Muslims in the United States. I do not expect it will happen overnight, nor without significant conflict, but I do believe it is the only way for Muslims to truly live out the Divine command for men and women to be protectors of one another (Q. 9:187).