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Women's Rights in Marriage: Between Qur'ānic Provision and Malpractice

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ABSTRACT

Women's rights issues have marked its spot as one of the most debated issues throughout centuries. Marriage is regularly portrayed as an "oppressive sphere" for women, with their rights being oppressed the moment they enter a marriage contract, especially in Islam. However, further reflection on the issue has shown that Islamic matrimony liberates women, preserves their honour and place in society, and abolishes injustice, when guided in principle from the Qur'an and Sunnah of Prophet Muhammad (PBUH). Regrettably, Muslim's misunderstanding due to cultural interpretation and malpractice of original Islamic teachings has tainted the true Islamic ideal. In dealing with the data, the study utilised an inductive method and content analysis, and aimed to draw attention to the misunderstandings of marriage in Islam with regards to women's rights. Further discussion would serve to explore the outcome of women's rights in marriage as bestowed by Islam, and understand the importance of the marriage institution, whilst examining the compelling misunderstandings by detractors.

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INTRODUCTION

Issues of women's rights have been an ongoing debate irrespective of the achievements that have been made. Oppression, double standards and domestic violence against women, unfortunately, remain realities in many parts of the world. Marriage has taken centre stage in women's rights issues and is being portrayed as a patriarchal institution which has confiscated women's rights and retarded women's empowerment (Brake, 2012).

The fact that there are discrimination and oppression against women especially in marriage cannot be denied. Several facets need to be observed and discussed to grasp the issues and differentiate between causes. Historically, women of the Athenians were subjected to men. Without marriage consent being practised, Athenian women were forced into marriage, and had no say in the choice of a suitor (Qozi, 2015). Western Christianity offers another form of discrimination as they blame Eve, the wife of Adam, for his fall from heaven (Simmon, 1974). This forms a root cause for discrimination against women in the West.

Islam emerged as a new light to women offering liberation from the oppressive practices of the pagan Arabs. In Arabia's pagan era, women were treated as commodities and were often treated as less than animals. They were tools for sex, and a man could have as many wives as he pleased. A husband who has lost interest in his wife could divorce her simply by performing zihar (equating her with his mother). A son could inherit his father's wife except for his mother after the death of the father, and a husband who could not have children on his own could ask his wife to consolidate with another man for the sake of an heir (Abdelhak, 2016).

Islam freed women from such oppression and gave them clear rights as delineated in the Qur'an and Sunnah. It establishes equality between genders. However, with time and the rapid spread of Islam, many of its teachings have become distorted and misinterpreted. This has led many feminists to portray Islam as a religion that suppresses women on account of what is perceived as its many patriarchal practices and policies (Inhorn, 1996).

Islam delineated marriage policies with a vision to achieve women's right to marriage. Islam should be understood by its Islamic worldview from which its sense of equality and the importance it awards to the marriage institution.

Literature Review

Marriage in Islam has become a central focus when discussing the issue of women rights. This is evident due to the many arisen problems initiated by misuse of Islamic provision of marriage and misinterpretation of the original message as per Qur'anic revelation which later resulted in malpractice of Qur'anic teaching on particular issue. Ashrof argued on the fact that the acts of malpractice which could be sometime associated with abusive behaviour in justification of Islamic provision over the issue. Focus was entirely given to rituals with confidence on self-efficacy over Islamic ruling which was entirely misleading due incorrect usage of Qur'anic verses (Ashrof, 2005).

Cases of abuse and mistreatment of women rights were evident in the issue of divorce. ABC news reported the unfortunate event that happened to Muslim women in Australia where they could not find their right to divorce their husband as dictated by Islam. The mishap happened where the husband abused his wife physically and mentally by playing religious card. It became a torture when the wife could not find her right to divorce her husband after evidence presented to Imam's board and it had been prolonged for a year which forced her to withdraw the application due to stress (Gleeson et al., 2018).

On the issue related to polygamy, one study showed that majority of participants believed that polygamy itself was not abusive but misused of polygamy by husband had originated abuse. This happened when husband strayed from Islamic dictates in their pursuit of other wives (Hassouneh-Phillips, 2001).

A statistic number in research on wife beating and harassment due to liquor addiction in poor Muslim family indicates malpractices by Muslim men which deviant of Islamic true teaching. The number shows that in these types of family, wives have to work hard to sustenance the family, while husband took advantage of being a suppressor and enjoying his life; drinking and adultery (with non-Muslim women) (Sakhare, 1993). Hence the practices clearly contradict Islamic provision on personal and marital life.

Another news on Muslim men malpractices was reported by BBC where many of women being victims of "triple *talaq*" in India. The narration of cases reported alluded their husband abused *talaq* system which destroyed many women's life since most of them depend on the husband for life. The phenomenon of "triple *talaq*" in instant witnesses the husband applied it without any valid reason than to marry other women. The concern leads to women's fight for justice in court (Arya, 2017). Triple *talaq* is a mode of termination of marriage in which the husband may pronounce the three formulae at one time. It is considered as aggressive in nature of separation between married couple and mostly disapproved through Prophetic practice (Hussain, 2010).

METHODS

The study adopted a qualitative method by using document analysis of various academic literatures. Literatures discussing the issue of marriage in Islam were referred and studied. These literatures were mainly books and articles written by experts in the area of women rights in Islam among others such as Abdalati, Abdelhak and al-Munajjid. Analysis was further implied by scrutinising the content in which rights of women were presented in its most accurate manner as exhibited in the Qur'an. Further analysis was given on the views of scholars who presented the rights of women in the closest meaning to Qur'anic injunctions. Here, more sources were referred to such as books of tafsir (Qur'anic commentaries) and books of hadith (Prophetic tradition). The study was assisted by online library for Islamic sources such as Shamela.net for books of tafsir; and Dorar Sunniyyah for hadith. The whole discussion of issue was detailed out under three sub-points; pre-marriage, during marriage and dissolution of marriage.

RESULTS AND DISCUSSION

Marriage is a sacred contract in Islam that is protected by Islamic family law. At present, Islam's approaches and policies on marriage face enormous criticism and claims of being oppressive. Aggravating the issue, Islam's true teachings and approaches regarding women, especially in marriage, have been tainted with malpractices by Muslim, misinterpretations, lack of understanding, ignorance and cultural practices. The true teaching of Islam is that it preserves the marriage institution based on equality of human beings whereby both genders play complimentary roles in the worship of God and the creation of just societies where one is not superior to the other.

Pre-Marriage

Islam perceives marriage as a crucial institution that ensures the continuity of the human race through procreation (al-Nahl:72; al-Rum:21). It is the key to a healthy and stable society. A family is considered the nucleus of society (Singh, 2011) and the birth of a great civilisation as stressed by Pope John Paul II (Trigilio & Brighenti, 2006). Equality in Islam should be understood based on the complementary roles played by each gender. Allah says in the Qur'an of essence of equality clearly in the *Surah al-Hujurat* verse 13, Al-Qur'an says:

"O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted" (al-Hujurat: 13).

Islam has preserved the rights of each gender to ensure that the objectives of marriage are achieved. It granted women rights from the moment of their birth, and they have rights to choose their suitor for marriage and rights as a wife and mother.

A major issue in Islamic marriage is the forced marriage. Forced marriages are continually associated with Muslim practices due to the high number of forced marriage cases in Muslim countries. The Foreign and Commonwealth Office & Home Office (2016) reported the highest number of forced marriage cases was in Pakistan with 539 recorded cases (44%) in 2015 followed by Bangladesh with 89 cases (7%), India with 75 cases (6%), Somalia with 34 cases (3%) and Afghanistan with 21 cases (2%) (Foreign and Commonwealth Office & Home Office, 2016). The issue intensified when major Muslim countries who were CEDAW (Convention on the Elimination all form of Discrimination against Women) signatories refused to associate and therefore applied reservation to Article 16 1(b); "The same right freely to choose a spouse and to enter into marriage only with their free and full consent;" (Marshall Cavendish Corporation, 2011).

Nevertheless, numerous injunctions in the Qur'an and Sunnah establish the rights of women. It gives women a clear right of consent regarding marriage. The Qur'an reads:

"O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them, except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good" (al-Nisa': 19).

This is corroborated by several traditions of the Messenger of Allah (PBUH). Narrated Abu Huraira: The Prophet (PBUH) said:

"A matron should not be given in marriage except after consulting her; and a virgin should not be given in marriage except after her permission". The people asked, "O Allah's Messenger (PBUH)! How can we know her permission"? He said, "Her silence (indicates her permission)" (Al-Bukhari, 2001: Hadith 67).

The injunctions of the Qur'an and Sunnah clearly indicate that women have the rights to reject marriage proposals and cannot be forced by others even her parents. If a forced marriage were to occur, Islam gives the woman the option to nullify the marriage if she is not pleased (Al-Munajjid, 2011). It was narrated that Buraydah ibn al-Haseeb said:

"A girl came to the Prophet (PBUH) and said: My father married me to his brother's son so that he might raise his own status thereby. The Prophet (blessings and peace of Allah be upon him) gave her the choice, and she said: I approve of what my father did, but I wanted women to know that their fathers have no right to do that" (Ibn Majah, 2009: Hadith 1874).

In many cases, arranged marriages have been construed as forced marriage despite being consensual. This is supported by research done by Professor Paul Gwynne in his book 'World Religions in Practice: A Comparative Introduction' quoted by Karim (2013), which presented a compelling misunderstand between arranged marriage and forced marriage in Islam where he argued that arranged marriage was not forced marriage: "Marriage is considered to be of the utmost importance in Islam and there is extensive material in both the Qur'an and the hadith on the vital role it plays in the life of faith... On the horizontal plane, marriage is a legal contract between two individuals. In this sense, it requires the usual elements of any contract: mutual consent between the parties, specified conditions, and public witness...However, an arranged marriage is not a forced marriage and Islamic law stipulates that the free consent of both parties is necessary for its validity, even if the bride acts through her official guardian, or wali" (Karim, 2013).

The lack of awareness of Muslim parents plays a vital part in this mishap in the Muslim world. They need a wake-up call in this regard. Islam places a vital role on parents regarding their children's marriage but more as a guide not as decision makers. Although they play a major part, the final decision is up to their children. The Qur'an firmly asserts that marriage is a relation based on love, mutual care, consideration and respect. It is not solely sexual. Allah says:

"And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought" (al-Rum: 21).

During Marriage

In Islam's provision for women, to enter into a lawful marriage, the husband is obliged to pay a *mahr* (dowry) to his wife as requested by the wife. Islam encourages the dowry not to be exorbitant. The *mahr* is more of a symbolic gesture of love, respect, and willingness (Abdalati, 1975). In this regard, women have full authority of their *mahr*, and it cannot be used without her permission (Hussain, 2011). Clearly stated in verse 24 in *Surah al-Nisa*':

"...all others are lawful, provided ye seek (them in marriage) with gifts from your property,- desiring chastity, not lust, seeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, agree Mutually (to vary it), there is no blame on you, and Allah is All-knowing, All-wise" (al-Nisa': 24).

Islam stresses on the obligation of husband physically and mentally and his responsibility to ensure the maintenance of his wife. Allah says:

"Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth..." (al-Nisa': 24).

The Prophet (PBUH) emphasised regarding wife's maintenance when one of his companions asked on what is the right of a wife over her husband (Ara, 2009). He says:

"That you feed her when you eat when you eat and clothe her when you clothe yourself" (Abu Dawud, n.d.: Hadith 2137).

Furthermore, Allah has ordered husbands to treat their wife justly and with kindness; "keep them in good fellowship" and "treat them kindly" occurs repetitively in the Qur'ān (Ali, 2015). Thus, a wife has rights to kind and proper treatment, respect, privacy, not revealing her secret to others, justice between wives and defending her honour (Buyukcelebi, 2005). The Prophet (PBUH) was the model Muslim husband (Al-Kuotli, 2007). He (PBUH) says:

"The most excellent of you is he who is the best in his treatment of his wife" (Al-Tirmidhi, 1975: Hadith 17). Islam encourages couples to protect their marriage. When problems occur, Islam suggests many solutions before opting to separate (Osman, 1991). When divorce cannot be avoided, Islam delineates the best guide for both parties and encourages going about it equitably.

Alas, misunderstanding has arisen. There is the misconception that Islam granted man the sole authority of divorce. Conversely, Islam clearly granted ways and rights for a wife to divorce initiation known as *Khulu*[°] (Ali, 2004) as detailed in *al-Baqarah* verse 229.

Khulu 'refers to the separation initiated by the wife in return for payment when the husband receives the initiative and release his wife; the payment can be the mahr he gave, or more or less than that (Abdul-Rahman, 2004). In Islam, the wife is allowed to ask for release due to certain circumstances such as cruelty, abandonment, and when the husband failing to meet his obligation, in which case the wife can proceed with the application to the court (Marafi, 2012). Many traditional scholars interpret khulu need to gain husband consent. However, some new interpretations argue that women can obtain khulu ' through court verdicts without the consent of the husband (Marafi, 2012).

Dissolution of Marriage

Dissolution of marriage in Islam can be divided into divorce and the death of the husband. In each case, Islam never fails to preserve women's rights. Stated in the *Surah al-Baqarah* verse 229 when divorce happens; Islam obliges the husband to divorce equitably. Islam prohibits a husband who intends to divorce his wife to do so while his wife is in her menses or during consummation (Abdul-Rahman, 2004). When a divorce takes place, a husband needs to provide maintenance to his wife during the waiting period and must bear the maintenance of the child (Ara, 2009).

As for the death of a husband, a widow cannot be expelled from the house until her waiting period of four months and ten days has completed. The widow has the right to get full financial support during *'iddah* (waiting time), with some scholars saying that it is extended until a year (Ali, 1992). The inheritance of the deceased husband's property is also granted to the wife. The Islamic inheritance system allows the wife to inherit a fourth of what he leaves if there are no children. With children, she is entitled to one-eighth (Affi & Affi, 2014; al-Nisa': 11).

Another aspect of marriage in Islam that has received much criticism is polygamy. This is a sticking point in the argument that marriage in Islam is discriminatory. Heather Johnson quoted in her article: "The polygamous home is habitually nothing but hell of intrigues and violence. This behaviour in polygamy, which apparently normal in masculine ethics, becomes the source of perpetual torment; calumny and dispute constantly appear to recall that the sexual morality of the man does not fit the aspiration of the women, that Islam in particular..." (Johnson, 2005). However, there is little discussion detailing the ways in which polygamy is permissible and the rights of the wife therein. The basis of polygamy basis is permitted in the Qur'an says:

"And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice]" (al-Nisa':3).

The true Islamic practice of polygamy hinges upon great the responsibility and capability of men. It cannot be practised until all its requirements have been met. To practice polygamy, man needs to have the financial stability to suffice meeting the needs of all wives. The ability to satisfy them sexually and psychologically to living with more than one wife i.e. able to be just in terms of action and not showing bias should be observed by polygamous husband (Al-Zuhayli, 1985). Hence, Islam also provides women with the option to set the condition of prenuptial agreement detesting to futuristic polygamy practice of the to-bewed husband (Al-Khouli, 1990).

CONCLUSION

The marriage institution cannot be taken for granted. Islam regards it as a pillar of a healthy society and as such must be preserved. Alas, one may perceive marriage as a discriminatory institution which threatens the foundation of the family. Islam perceives the importance of marriage and family and has legislated many rights and responsibilities to ensure that it is preserved. These rights are grounded in the Qur'an and Sunnah to achieve the objective of marriage. Regrettably, many Islamic teachings are abused by Muslims due to a lack of knowledge, misinterpretation and malpractice leading to an understandable misunderstanding by non-Muslims as Muslims themselves have tainted the true teachings of Islam.

Islam granted women voice and rights. However, its rapid expansion has led to a corruption of its teachings particularly due to cultural influences. Islamic teachings have been mixed with patriarchal cultures which are often given priority over Islam teachings. It is important to be aware of the rights Islam has given women before, during and after marriage. Such awareness will help reduce the injustices perpetrated against women in the name of Islam.

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REFERENCES

- Abdalati, H. (1975). *Islam in focus*. Indianapolis, USA: American Trust Publication.
- Abdelhak, M. (2016). The Muslim society during the life of prophet Muhammad and after his death. In H. Tilouine & R. J. Estes (Eds.), *The*

state of social progress and Islamic societies: Social, economic, political, and ideological challenges (pp. 3-23). Retrieved October 30, 2019, from https://www.springer.com/gp/ book/9783319247724

- Abdul-Rahman, M. S. (2004). Islam: Questions and answers - Jurisprudence and Islamic rulings, Part 5. London, England: MSA publication Limited.
- Abu Dawud, S. A. A. S. (n.d.). *Sunan Abu Dawud* [The collection of Sunnah by Abu Dawud]. Beirut, Lebanon: Maktabah al-Asriyah.
- Affi, A., & Affi, H. (2014). Contemporary interpretation of Islamic law. Leicestershire, England: Matador.
- Al-Bukhari, M. I. (2001). Sahih al-Bukhari [The collection of authentic Hadith by al-Bukhari]. Beirut, Lebanon: Dar Tuq al-Najah.
- Ali, A. (1992). *The right of women in Islam*. London, England: C. Hurst & Co.
- Ali, A. (2004). *The rights of women in Islam*. New Delhi, India: Sterling Publisher Private Limited.
- Ali, M. M. (2015). A handbook of Islam: An abridged edition of 'the religion of Islam'. In Z. Aziz (Ed.). Wembley, England: Ahmadiya Anjuman Lahore Publications.
- Al-Khouli, M. (1990). *The light of Islam*. Amman, Jordan: Dar al-Falah.
- Al-Kuotli, C. (2007). *Islam*. New York, USA: Marshall Cavendish Corporation.
- Al-Munajjid, M. S. (2011). Islam question and answer. Retrieved September 1, 2016, from https://islamqa.info/en/163990.
- Al-Tirmidhi, M. I. (1975). Jami' al-Tirmidhi [The collection (of Hadith) by al-Tirmidhi]. Cairo, Egypt: Syirkah Maktabah wa Matba'ah Mustafa al-Babi al-Halabi.

- Al-Zuhayli, W. M. (1985). *Al-fiqh al-Islami wa adillatuhu* [Islamic jurisprudence and its evidences]. Damascus, Syria: Dar al-Fikr.
- Ara, R. (2009). Receding traditional controversies regarding women's rights in Islam. In M. A. Khan (Ed.), Women's rights in Islam religious cultural views about secular perspective. Dhaka, Bangladesh: The Nahar Light Foundation Publisher.
- Arya, D. (2017, August 22). Triple *talaq*: The women who fought instant divorce in India. *BBC*.
 Retrieved July 7, 2018, from https://www.bbc. com/news/world-asia-india-40897519
- Ashrof, V. A. M. (2005). *Islam and gender justice: Question at the interface*. Delhi, India: Kalpaz Publications.
- Brake, E. (2012). *Minimizing marriage: Marriage, morality, and the law.* New York, USA: Oxford University Press.
- Buyukcelebi, I. (2005). Living in the shade of Islam: A comprehensive reference of theory and practice (A. Unal, Trans.). New Jersey, USA: The Light, Inc. & Isik Yayinlari.
- Foreign and Commonwealth Office & Home Office. (2016). Forced Marriage Unit Statistic 2015. Retrieved May 30, 2017, from https://assets. publishing.service.gov.uk/government/uploads/ system/uploads/attachment_data/file/505827/ Forced Marriage Unit statistics 2015.pdf
- Gleeson, H., Baird, J., & Malik, S. (2018, April 17). I'm not his property: Abused Muslim women denied right to divorce. *Australia Broadcasting Company (ABC)*. Retrieved June 27, 2018, fromhttps://www.abc.net.au/news/2018-04-18/abused-muslim-women-denied-right-todivorce/9632772
- Hassouneh-Philliphs, D. (2001). Polygamy and wife abuse: A qualitative study of Muslim women in America. *Health Care for*

Woman International, 22(8), 735-748. doi:o rg/10.1080/073993301753339951

- Hussain, S. (2010). Triple talaq: A socio-legal analysis. ILI Law Review, 1(1), 130-150. Retrieved June 20, 2019, from https://papers. ssrn.com/sol3/papers.cfm?abstract_id=1597858
- Hussain, F. A. (2011). *Therapy from the Qur'an* and Ahadith. Lahore, Pakistan: Darussalam Publisher.
- Ibn Majah, M. Y. Q. (2009). Sunan Ibn Majah. In S. al-Arnaout, A. Murshid, M. K. Q. Balali, & A. L. Harazallah (Eds.). Beirut, Lebanon: Dar al-Risalah al-Alamiyyah.
- Inhorn, M. C. (1996). Infertility and patriarchy: The cultural politic of gender and family life in Egypt. Philadelphia, USA: University of Pennsylvania Press.
- Johnson, H. (2005). There are worse things than being alone: Polygamy in Islam, past, present, and future. William & Mary Journal of Women and the Law, 11(3), 563-596.
- Karim, K. (2013). Islam on forced marriage. Retrieved August 25, 2016, from https://discover-the-truth. com/2013/12/15/islam-on-forced-marriages/
- Marafi, N. (2012). *The interwined conflict: The difference between culture and religion*. Bloomington, USA: Xlibris Corp.

- Marshall Cavendish Corporation. (2011). *Modern Muslim societies*. New York, USA: Marshall Cavendish Reference.
- Osman, M. F. (1991). *Muslim women in the family* and the society. Amman, Jordan: Minaret Publications.
- Qozi, M. (2015). *Women in Islam: Exploring new paradigm*. Chennai, India: Notion Press.
- Sakhare, S. A. (1993). Critical study of the cases of atrocities committed against Muslim women in Vidharba region Maharashtra. In Z. A. Siddiqi, & A. J. Zuberi (Eds.), *Muslim women: Problems and prospect* (pp. 59-60). New Delhi, India: M. D. Publications Pvt Ltd.
- Simmon, M. (1974). Witchcraft in the Southwest: Spanish and Indian supernaturalism on the Rio Grande. Lincoln, USA: University of Nebraska Press.
- Singh, R. K. (2011). *Textbook on Muslim law*. New Delhi, India: Universal Law Publishing co. Pvt. Ltd.
- Trigilio, J., & Brighenti, K. (2006). John Paul II for dummies. Indianapolis, USA: Wiley Publishing, Inc.