

Research Paper

Women in Islamic Marriage

[Name Withheld]

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Islam is a religion rich in tradition and cultural context, one that draws upon its origins and foundations for guidance in every day life. It focuses not only on the teachings of the Qur'an, but also on those of the hadith, as well as subsequent teachings of *shari'ah* law. Muhammad, as the messenger of Allah, sets the foundation for marital practice and behaviors through the Qur'an and through his actions, later passed down in the form of hadith. Certain verses in the Qur'an have given rise to debate on marital issues, not only amongst those outside of the Muslim faith, but also those within it. Marital relations, especially as they pertain to Muslim women, vary cross-culturally. Although grounded in similar tradition and common faith, differences in interpretation of the Qur'an, and the implementation of *shari'ah* law, result in opposing degrees of gender stratification and equality, illustrated when comparing practices and perceptions in different regions, such as Yemen and the United States.

Husbands are responsible for controlling their wives, ensuring their obedience, even if it becomes necessary to beat them. According to the Qur'an, "Men are in charge of women" (4:34).¹ This passage has been taken by some as a sign of subjugation, as a demeaning of women, especially in marital context. It is accepted that in his own life, Muhammad did not beat his wives, and favored non-violence in relationships. In such a way, although not all are approved, multiple meanings or interpretations of verse can be put into practice. Because he shows conflicted response with regard to the beating of wives, Muhammad presents the idea of moral responsibility in the interpretation of the Qur'an, and places such responsibility on the followers of Islam. It is up to the people of the Book to

¹ 'Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an* (Beltsville, Maryland: Amana, 1996).

interpret the context in which such commands fit, and apply them in ethically acceptable ways. Muhammad demonstrates his humanity, setting an example for followers, when he abstains from beating his wives. He makes the ethical decision, affirming his humanity while at the same time, adhering to Allah's revelations.² Because there is room for varying interpretation and subsequent practice of teaching in the Qur'an, greatly contrasting views have developed and practiced.

As it concerns women in marriage, the Qur'an and hadith alike, are both meant to perpetuate a certain degree of tranquil behavior between married couples. Opposition to this idea has garnered attention concerning polygamy in the Qur'an and in hadith. Muhammad himself had multiple wives. Such said to be acceptable only if equality can be met amongst the individual wives and their husband. Laws concerning multiple marriages vary cross-culturally, and in certain areas, there are criteria to be filled before additional marriages can be entered into. There are also indications that in many cases, unless certain conditions or circumstances are presented, the Prophet did not support polygamy. Such is the case as seen through a hadith that tells of his daughter, Fatima, and her husband's desire to marry again.³ Muhammad acknowledges the difficulties that can come with multiple marriages, and through his reactions to such situations as they pertain to his own daughter, he demonstrates a fundamental issue with which many are at odds.

² Laury Silvers, "In the Book We Have Left Out Nothing": The Ethical Problem of the Existence of Verse 4:34 in the Qur'an," *Comparative Islamic Studies* 2:2 (2006) 175.

³ Monika Arnez, "Empowering Women Through Islam: Fatayat Nu Between Tradition and Change," *Journal of Islamic Studies* 21:1 (2010) 72.

Divorce from Muslim marriage is another such issue that has gone through a process of change in more recent times. Reform has included efforts to protect the wife, so that her husband cannot abuse the principal of *talaq*, or unilateral divorce. According to more traditional interpretation of *shari'ah* law, a husband can divorce his wife without specific reason and without legal action. Since the wife has no rights to do so under such *shari'ah* law, she can be left without the ability to challenge the grounds of a divorce, and without right to monetary support.⁴ It is restrictions such as these that separate men and women, and make them inherently unequal, thus creating potentially harmful situations for women. Such inequality has been at the forefront of debate amongst not only Muslim communities in the Middle East, but also those in the United States. Again, a key distinction in practice and treatment of women in Muslim marriages lies not in the Qur'an, or even interpretation of hadith, but rather the context in which *shari'ah* law arises and is enforced.

In Yemen, where traditionalism and stricter interpretation holds sway, it is important that a wife behave in such a way that suggests she is submissive to her husband. Such ideas go beyond the notion of submission, *islam*, as part of the *din*, to which all Muslims are called. It extends to her publicly showing she is lesser, subordinate.⁵ In Aden, during the 1990s, women began to feel pressures to adapt to certain customs on the grounds that they would be thought of as lesser by those within the community if they did not comply. Such was due to changing

⁴ Mohammad Hashim Kamali, "Divorce and Women's Rights : Some Muslim Interpretations of S 2:228," *Muslim World* 74:2 (1984) 94.

⁵ Susanne Dahlgren, *Contesting Realities: The Public Sphere and Morality in Southern Yemen* (New York: Syracuse University Press, 2010) 82-84.

economic spheres and an influx of new government ideals. Custom in Aden has thus been heavily influenced by the continuing social pressures to adhere to a more recent resurgence of tradition. Since the resurgence, segregation of the sexes has been a factor in Yemen society. Men and women are expected to adhere to new patterns of behavior, many of which influence marriage and family life.

The idea of *jabr*, which points to mandatory or involuntary marriage, and of whether or not a woman can set up her own marriage, played a factor in the case of a seventeen year old girl, brought before an Islamic court. One side of the case held that a woman cannot choose her partner without consent from a guardian. In contrast to such idea, it has been suggested that certain women be allowed to express opinion on the matter, so long as the woman is worthy of trust. Here, basic compatibility is the purpose; not bond or developed feeling between the couple. Rights of women concerning marriage in Yemen are also influenced by her social group or family affiliation. If she is a Hanafi Muslim, she cannot be married without her consent, however if she is *Shafi'i*, no such consent is needed.⁶ Due to the nature of the marriage, and the context in which many are derived, with the father making the arrangements, a daughter's opinions are not always taken into account. In Yemen, a woman's influence or speaking power is limited. She must seek representatives to act on her behalf, perhaps trusted family members. Such can be difficult, given the rights of a father over his family.

In such instances where marriage may not work, or where divorce is sought, primarily by the husband with *talaq*, the wife is often left in a subordinate or unequal position. A husband, for instance, claiming that his wife was not a

⁶ Dahlgren, *Contesting Realities*, 103-107.

virgin at the time of marriage, and that she was therefore of no use to him, was granted a divorce, and received compensation from the woman's family.⁷ Such payment was demanded due to the Aden custom of paying more to a bride's family if the girl is a virgin, as opposed to a *thayyiba*, or non-virgin. In accordance with Aden *shari'ah* law, courts hold that women are not entitled to compensation or other rights following a divorce unless they fulfill all wifely duties to their husbands. Due to these restrictions, it is a rarity for a wife to seek divorce in Aden. The idea of equality and partnership between marital partners, as presented in the Qur'an, here lies in contrast to some implications of *shari'ah* in Aden.

In the late 1930s, the Child Marriage Restraint Ordinance was issued by the British in Yemen, stating that in order to marry, females must be fourteen, and males, eighteen. The declaration also coincided with the Aden Penal Code, which stated that sexual relations with a girl under the age of fourteen were considered rape, despite marital status, and was thus concluded to be in accordance with *shari'ah* law. Despite such restrictions on marriage, girls are still married at earlier ages, especially in more rural areas of Yemen.⁸ While such is not the dominant form or context into which marriage is entered in Yemen, the occurrence of such instance draws upon the inequality women face when entering into marriage in the region. In some cases, where the daughter is a Hanafi Muslim, she may have more rights, as her consent is required in a marriage. Where injustice could occur here, is if she is unable to prove she is a Hanafi.

⁷ Dahlgren, *Contesting Realities*, 111-13.

⁸ Dahlgren, *Contesting Realities*, 97-99.

According to *shari'ah* law, she could be either Hanafi or Shafi'i, if for instance her mother is Hanafi, and her father, Shafi'i.⁹ If concluded a member of the Shafi'i school, she could be made to marry regardless. At the core, is the idea of a woman's limited influence when advocating for herself that creates such a predominant inequality for women entering into Muslim marriages.

Whether it be in a court setting, or in the daily practice of Islam, Muslim women in the U.S. in many cases have different options available to them. In general, they have more freedom than their counterparts in other areas of the world, according to Smith.¹⁰ Such freedoms allow for more variance in interpretation and subsequent practice. While some *imams*, or religious leaders, place certain restrictions on the way in which women practice, such is not always the case. Due to more freedoms, as well as cultural influences in the U.S., Muslim women in America have more exposure to other types of marriage practices. This exposure could bring other options to their attention, options pertaining to the way they choose a husband, and the way they live out their married lives. Some women enter into arranged marriages, while others choose to follow more western patterns, and seek to find a partner on their own. If such is the case, it is not as if the religious principles themselves have been abandoned, but rather that the traditions once in practice are circumvented, while principles are still maintained and followed.¹¹ Despite a relatively lower level of family involvement, marriage is still most often sought within the Muslim community. The concept of *mahr*, or

⁹ Dahlgren, *Contesting Realities*, 108.

¹⁰ Jane I. Smith, "Women's Issues in American Islam," *Union Seminary Quarterly Review* 57:3-4 (2003):197-198.

¹¹ Denise Al-Johar, "Muslim Marriages in America: Reflecting New Identities," *Muslim World* 95:4 (2005) 567.

dowry, is often still important, however the motive or purpose is more so that the marriage is established as fair and balanced from an economic standpoint, rather than as a means of achieving personal financial benefit.¹² While some *shari'ah* law interpretations are more relaxed in the U.S., only Muslim men are permitted to marry non-Muslims, according to Smith. Despite such rule, Muslim women in the U.S. at times circumvent this teaching. The more traditional the family, the less likely such marriages are to occur, or to be accepted. Distinction between marriage type is thus influenced by the public-sphere and attitudes presented by culture in the U.S.

The age at which women marry increases in range in less traditional circumstances. While women from more traditional families tend to marry younger, those seeking marriage independent from family arrangement tend to marry at an age more in accordance with non-Muslim Americans. Age variance is impacted by both cultural heritage and ethnicity, as well as by generation of immigration. In the U.S., where education is readily available, the completion of school is often a deterrent to early marriage. In some cases, however, more traditional families want daughters to marry younger. According to Johar, a traditional mother arranged *nikah*, or marriage contracts, for her fourteen and fifteen year old daughters who grew up in the U.S.¹³ Justification for such marriages was derived from *sunnah*, which is comparable with hadith. Such laws are subject to cultural variance, similarly to *shari'ah*. Here lies a distinctive counter-balance, between traditional norm or customary practice based on family

¹² Smith, "Women's Issues in American Islam," 205-207.

¹³ Al-Johar, "Muslim Marriages in America," 560.

standards, and an effort to assimilate and adopt certain aspects of American culture.

The practice of multiple marriages is not prevalent in the U.S. Given the illegality of polygamy, multiple marriages, even in a purely religious and non-civil context, are looked upon as wrong. From an American perspective, allowance for multiple marriages in the Qur'an does not give adequate grounds for such practice. Concerning divorce, and the dissolving of a marriage, Muslim men can more easily divorce a wife under Islamic marriage, considered common law marriage in the U.S. While a wife can initiate a divorce, her grounds must be much more specific. Even with the Prophet's distain for divorce, there is a growing divorce rate for Muslim marriages in the U.S. Intersection of common law marriage and civil marriage legality presents a problem for Muslims seeking divorce in the U.S, as there is not a clear overlap in common law marriage and marriage within the Islamic faith. Abuse within marriages is more likely to be tolerated in first or second generation Muslim families within the U.S., on the grounds of Qur'anic verse, however such practices are being abandoned, according to Smith.¹⁴ Factors such as child custody, which would most likely be granted to the father in a Muslim state, are more of an issue in the U.S., where custody is not necessarily granted to one parent, let alone only the father.

As time goes on, and Muslims practicing in the U.S. become more established within American culture, there seems to be a shift away from traditional societal practice. Identification with key elements of the Islamic faith remain, but cultural variance increases. While practice mandated by Qur'an and

¹⁴ Smith, "Women's Issues in American Islam," 208.

hadith continues to play a vital role, women's roles and place within society are expanding in U.S. Muslim communities. Despite such expansion, a broader range of choice pertaining to marriage and family life is often met with opposition by more traditional family members.

Ultimately, when taken from a traditional perspective and compared alongside a more liberal interpretation, practices in Muslim marriage are subject to cultural and societal variance. While there are often stark differences between Yemeni and American Muslim practices, overlaps do exist. With regard to adherence to tradition, and the way in which women and families arrange marriages, great variation intertwines with present day cultural aspects, while at the same time, drawing on core belief practices. *Shari'ah*, and laws of Muslim communities are also followed in different ways, effecting the choices made and actions taken not only by Muslim families concerning their daughters, but also by daughters concerning their own futures. In addition, Muslim women in the U.S. are moving more toward independence in the form of social exposure and cultural variance and away from traditional norms, where as Muslim women in Yemen seem to be more separated and secluded from worldly exposure as time goes on. Separation of men from women, as well as more controlled and enforced law code, be it by an Imam or family figurehead, plays a large role in the stratification of differences between Muslim marriage in Yemen and the U.S. Due to increased independence and a blending of culture with religious tradition, Muslim women in the U.S. are more aware of options available to them.

With changing social standards and cultural variances among Muslim marital practice in the U.S. comes a contrasting situation in Yemen, where tradition seems to be holding fast. Women's choice and influence is not prevalent in marital decisions, leading to greater inequalities. In the event of divorce, or marital conflict, options are limited for women in both the U.S. and Yemen, especially if the parties involved adhere to more traditional Muslim practices, as outlined in hadith and *shari'ah* law. Overall, inconsistencies are prevalent in the way women are perceived in Islamic marriages, as well as in the influence and degree of control they have over their own circumstances.

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