Presently, a struggle for gender equation is emerging within the world of Islam. In the endeavor for gender justice, Muslim women scholars call into question the very legitimacy of the patriarchal leadership alienating women from political, social, and legal activities, confining their roles within a traditional framework.

BY ZEENAT SHAUKAT ALI

The Dynamic Nature of Islam's Legal System with Reference to Muslim Women

Some have criticized Muslim law as being oppressive of women. This article challenges that notion by encouraging the reconsideration of some of the interpretations of Muslim law. Specifically, the article examines some of the law's foundational tenets and philosophies, arguing that they have either been misapplied or should be reconsidered in light of their true meaning. Ultimately, the article concludes that, in changing the paradigm of gender-related issues, the understanding of the dynamic nature of *shari'ah*, with several legal mechanisms at its command, could play a major role in shaping and effecting reform and restoring the rights of women bestowed on them by the *Quran*.

As we ingress into the 21st century, it is observed that events, whether they be social, economic, or political, have been changing with extraordinary rapidity. In a world of disconcerting change, key features for the aspiration of universal standards of a good society such as human rights, democracy, freedom, justice, and gender-related issues, have been at the forefront from time to time.

Across the world, irrespective of nationality or religion, unequal gender empowerment has been seriously critiqued. The exclusion of women can no longer be trivialized. This, to a large extent, has been instrumental in generating legal, social, and political discussion, thus bringing an alteration to the stereotypical mind set and modification to gender-related issues in the modern world.

For instance, violence against women is a serious global problem. Even in the West, women suffer from various forms of violence, including physical, sexual, and psychological abuse, by partners and strangers, at alarming numbers. Research from individual countries shows that women are under significant but varying levels of risk worldwide. The increase in the global trafficking of women and young girls for prostitution and labor in recent decades has added to this risk. After decades of global feminist activism, violence against women is now recognized as an important human rights violation by international institutions,

and these institutions have taken on many initiatives to research and alleviate it. For example, in 1993, the United Nations started a major initiative targeting violence against women.[1]

Likewise gender-related issues in Islam have been subject to intense scrutiny. Numerous Muslim women initiatives have surfaced where scholars and activists the world over have addressed issues ranging from their social-political-legal empowerment, education, employment, exclusion, segregation, and other issues, including violence.

As this article is related to *shari'ah* (Islamic law), its dynamism, and the fluidity within its structure, the main focus of deliberations gravitate around family law and the concerns of Muslim women with view to open new dimensions and perspectives favorable to women. This article attempts to analyze the dynamism of Islam's legal system and the rights of Muslim women.

Muslim Women and Inherited Frameworks

With relation to Muslim women, nearly all Muslim countries and communities have a history of resistance to a uniform, identical, authoritarian vision of society. Scholars grounded in the study of Islam have consistently challenged the traditional patriarchal monopoly over the interpretation of the feminine in Islam. Both female and male scholars, over a stretch of time, have assiduously questioned why the rights granted to women by the *Quran,* which is the epitome of gender justice, have been diluted.

In a bid to recapture the spirit of *the Quran* and *sunnah,* several serious attempts have been made for a historical search and alternative interpretations with regard to determining the status of women in Islam. Arguments, logically, systematically, and cogently developed from the *Quran* and authentic *hadith* or *sunnah,*[2] have gradually created space for a shift from inherited frameworks.

For instance, inspired by the firm belief in the substance and magnitude of the concept of social justice articulated in the *Quran*, several female Muslim scholars such as Asma Barlas**,** Amina Muhsin Wudud, Fatima Mernissi, Amira Sonbo, Riffat Hasan, Shatifa Al-Khateeb, Hibba Abugideiri, as well as non-Muslim scholars, like the late Annemarie Schimmel, critiqued the generally accepted opinions and conclusions that presented women in a more restrictive or less favorable light in legal-sociological-political-spiritual terms.

They argued that God was not discriminatory toward the sexes. Additionally, one of the major concerns of the *Quran* was to liberate human beings from the dangers of autocracy, ethnicity, racism, chauvinism, or any phenomena that subjugates the human spirit from the practiced pre-Islamic symbols of slavery and repression of women. It was toward this end, these scholars said, that the *Quran* provided the key.

To do away with oppressive customary traditions that had resurfaced with time, an insistence on *ijtehad*[3] or exercise of reason at both the individual and collective level was advocated as the means to liberate Muslim thought from outmoded tribal shackles.

For this purpose, they suggested, it was absolutely necessary to carefully study the pure text of the *Quran* and to develop the hermeneutics of perceiving the distinction between the text of the *Quran* and *tafsir*[4] or its exegesis, interpretations, annotations, and jurisprudential structure.

Women scholars pointed out that this study was a necessity since the historical and cultural accretions of scholars were sometimes confused as part of the *Quran's* message. It is forgotten that of the several limitations on any scholar, however erudite and sincere, is his own distinctive thinking that restricts the overview of the research to the environment peculiar to him. Such a study would weed out the historical and cultural accretions of scholars that are sometimes confused as part of the *Quran's* message of bringing its broad vision in relation to gender issues to light.

Using a fresh approach, they said, sometimes discloses the historical inconsistencies in the patriarchal predeposition of past research of the *Quranic* text. This opened a new area of *Quranic* research and remains a catalyst for many more scholars and students who study Islamic law to ask the deeper questions about the role of women.

Further it was necessary to clear perceptions consistently alleging that the reticent position of Muslim women is principally due to Islamic scriptural instructions that are inherently misogynist and patriarchal. Both of these stances need examination in the broader context of the jurisprudential and historical approach.

Over the years, undoubtedly, traditional strongholds have asserted themselves from time to time. What is lesser known is the fact that central features, such as the aspiration of universal standards for a balanced society in Islam, have likewise made strong arguments. This article attempts to analyze the dynamism of Islam's legal system and the rights of Muslim women.

The approach of the *Quran* was vital in releasing Muslim women from the subjugation of fossilized customary patriarchal tribalism. It revealed the new post-patriarchal view. On the basis of *Quranic* thought, henceforth, new regulations dispelled older disabilities. Consequently, later assertions of customary patriarchal contentions were challenged not only by Muslim feminists, but by a number of male scholars as well, who all believed that categorical patriarchal claims cannot be supported by Islam.

Women scholars staunchly defending the rights of Muslim women have been mentioned earlier. There are also several men who safeguarded the rights of women as well. Some important names are Ahmed Faris al-Shidyaq (1855); Rifa'ah Rafi al-Tahtawi (1801 – 1871); Muhammad Abduh (1849 – 1905), a founder of the Salafiyah (Islamic reforms) movement; Qasim Amin (1899) who initiated much discussion; Lutfi al-Sayyid, publisher of Al-Jaridah; Namik Kernal and Ahmed Mithat, Maulana Mumtaz Ali, the late Asgharali Engineer. Contemporary male scholars, including Khalid Abou El Fadl, have also defended the rights of Muslim women.

Shari'ah

To overcome patriarchal approaches and impositions that have reduced or curtailed the rights and empowerment of Muslim women, it is necessary to draw attention to a few cardinal aspects regarding the dynamism of *shari'ah.*[5] In this context the meaning, historical development, nature, and legal implication of *shari'ah* are crucial in relation to women-centered issues.

The Arabic word *shari'ah* has origins in the concept of religious law. The scope of *shari'ah* deals with multiple topics addressed by secular law, including crime, politics, and economics, as well as personal matters such as hygiene, diet, and everyday etiquette.

The scope of the *shari'ah* casts a wide net since it regu-

lates an individual's relationship with the state or with one's neighbors or peers as well as with God and with one's own conscience. Ritual practices, such as the daily prayers, almsgiving, fasting, and pilgrimage, are an integral part of *shari'ah* law and usually occupy the first chapters in the legal manuals. The *shari'ah* is also concerned as much with ethical standards as with legal rule. *Fiqh,*[6] or jurisprudence, is the legal branch of *shari'ah* and is a human interpretation of law.

Shari'ah encompasses common, civil, and criminal law, family relations, crime and punishment, inheritance and disposal of property, and the economic system. It also signifies the way or road. In legal terminology, it is the Canon Law of Islam. In all its implications of meaning, the word symbolizes fluidity and movement, and nowhere does it reflect the concept of being fixed, static, or rigid.

It cannot be refuted that most Muslims regard *shari'ah* as a protective canopy over their lives, because it has played a principal and integral part in Islamic history, and as a means of bringing together heterogeneous groups of Muslims within a single socio-religious framework.

In response to the critics of the *shari'ah* commenting on the inflexibilities of the Islamic system as being rigid and antiquated, Maulana Abul 'Ala Maududi's observations are thought provoking.

> "I doubt very much whether people who take this stand are conversant even with the rudiments of the Islamic Law and possess even an elementary knowledge of it. Perhaps, they have heard from somewhere that the fundamentals of the Islamic Law were enunciated more than thirteen hundred years ago, and they have assumed that this Law has remained static since then and has failed to respond to the requirements of changing conditions of human life ... Those critics fail to realize, however, that the laws propounded thirteen and a half centuries ago, did not remain in a vacuum; they formed part and parcel of the life of Muslim society and brought into being a State which was run in the light of these laws. This naturally provided an opportunity of evolution of Islamic Law from the earlier days, as it had to be applied to day- to-day matters through the process of *Taweel*,[7] *Qiyas*,[8] *Ijtehad,*[9] and *Isthihsan.*[10]
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> "Very soon after its inception, Islam began to hold sway over nearly half the civilized world stretching from the Pacific to the Atlantic and, during the following twelve hundred years, the Islamic Law continued to be the law of the land in all Muslim states. This process of the evolution of Islamic Law, therefore, did not stop for a moment up to the beginning of the nineteenth century, because it had to meet the challenges of the ever-changing circumstances and face countless problems confronting different countries in different stages of history. Even in our Indo-Pakistan subcontinent, the Islamic Civil and Penal Codes were in vogue up to the beginning of the nineteenth century. Thus, it is only for the last one hundred years that the Islamic Law remained inoperative and suffered stagnation."[11]

Sayed Hossen Nasr, a well-known scholar of Islam, indicates that in the area of the juristic devices mentioned above, little interest has been generated in the codification and systemization of *shari'ah*. "The study of orientalists, which are usually historical, have directed attention to the gradual process by which the *shari'ah* came to be codified into the form in which the Islamic world has known it for the past millennium. It is, therefore, not without interest for us to consider how this process took place."[12]

With relation to Muslim women, nearly all Muslim countries and communities have a history of resistance to a uniform, identical, authoritarian vision of society. Scholars grounded in the study of Islam have consistently challenged the traditional patriarchal monopoly over the interpretation of the feminine in Islam.

This historical and sociological crystallization is described by him in his "Ideals and Realities of Islam" as follows:

> In essence all the Shari'ah is contained in the Quran. The Holy Book, however, contains only the principles of all the Law. It contains the Law potentially but not actually and explicitly, at least not all the different aspects of the Shari'ah. There was therefore a gradual process by which this Law becomes promulgated in its external form and made applicable to all domains of life. This process was completed in about three centuries during which the great books of law in both Sunni and Shi'ite.[13] Islam were written, although the exact process is somewhat different in the two cases.
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> The principles of law contained in the Quran were explained and amplified in the prophetic Hadith and Sunnah,14 which together constitute the second basic source of Law. These in turn were understood with the aid of the consensus of the Islamic community ("ijma").[14] Finally, these sources of Law were complemented by analogical reasoning ("qiyas") (ijtehad), creative interpretation or where necessary. According to the traditional Islamic view, therefore, the sources of the Shari'ah are the Quran, Hadith, ijma, and qiyas, of which the first two are the most important and are accepted by all schools of law while the other two are either considered of lesser importance or rejected by some of the schools.[15]

It is interesting to observe that, of the sources of the *shari'ah* specified in the above extract, only the *Quran* is divine in origin. The *hadith* or *sunnah,* traditions of Prophet Mohammed, constitute the second basic important source of law. But the other sources that contributed to the development of the law for more than three centuries, such as *qiyas* (analogical deduction), *ijma* (consensus), and others that consequently developed from these structures, are neither accepted by all Muslims alike nor claim to be immutable or have divine origin.

Further, Islam does not have a monolithic legal system. Over a period of time, it developed within its fold several schools and subschools of human thought. In the second century of the *hijra* (migration)[16]the great jurists arose who codified the Islamic law according to the needs of their time. However, among the Sunnis, four well-known schools—Hanafite, Malikite, Shafi'i, and Hanbalite, as pointed out earlier—are by no means, as is popularly believed, the only schools in the history of Islamic jurisprudence. As stated earlier according to Dr. Mohammad Iqbal: "From about the middle of the first century up to the beginning of the fourth, not less than 19 schools of law and legal opinions appeared in Islam. This fact alone is sufficient to show how incessantly our early doctors of law worked in order to meet the necessities of a growing civilization**."[17]**

As the law of Islam is dynamic not static, a wealth of opinions surfaced for the exigencies that new situations demanded. However, with the course of time the doctrine of *taqlid,*[18] or to follow the decisions of a religious expert without necessarily examining the scriptural basis or reasoning of that decision, was pursued. This was no means accepted by modern scholars, who wrote extensively on the importance of the use of reason in Islam. Scholars like Jamaluddin Afghani, Muhammad Abduh, and Dr. Muhammad Iqbal, hence, revived the doctrine of *ijtehad* and emphasized the use of reason-based understanding that is essential to Islam.

The Importance of the Use of Reason in Islam and Ijtehad (Creative Interpretation)

Although impartiality on the legal notions of obligations and entitlements of all sections of society is central to Islam, over a period of time, patriarchal authority appropriated and restricted its implementation and discourse in the case of women. However, as the juristic concepts including *ijtehad, takhayyur,*[19] *and talfiq*[20] highlighted the egalitarian nature of the Islamic legal tradition, engagement with these concepts as foundational instruments was employed to advance analytical critical thought within Muslim communities and set some ground rules for a tolerant, nondiscriminatory, democratic polity.

Hence, the modernist interpretation advocated by scholars was the use of reason, constantly and repeatedly upheld in the *Quran*, as a laudable human attribute in the quest of their welfare. Thus, it would be offensive to human reason to accept gender inequality when God enjoins equality of all Muslims. Finally, over the centuries, modernist jurists in Muslim countries the world over have judiciously applied a number of legal devices formulated by Islamic law that vindicate the use of reason for the welfare of Muslims. These include the mechanisms formulated by Muslim jurists, which are *ijtehad, maslahah mursalah* (public interest),[21] *al-darurattubihu al-mahzurat* ("necessities or make permissible what is forbidden"),[22] and the application of *istihsan* (discretion) and other legal devices in reaching a ruling.

Further *Siyasa-i-Shariya ,*[23] or a state's legal policy, has been employed in several countries to effect reform. While it requires that the government be based on *shari'ah*, it also leaves room for regulatory measures in the interest of public good.

Another method employed is the application of *takhayyur,* or selection. By its application, it is possible to choose principles of one school alone or a range from different schools. Evolution of new legal dictums can be arrived at by the doctrine of *tafliq,* or by combining two conflicting juristic views on the same problem**.** The exercise of such instruments yielded succor to women, particularly in the area of family law.

For instance, the doctrine of *takhayyur* has been of enormous significance in developing a number of women-friendly codes of family law in Muslim jurisdiction in the case of *khula.*[24] As an example, when a married Muslim woman seeks dissolution of her marriage, among the four Sunni schools of law,[25] the *Hanafi* school is restrictive whereas the *Maliki* school is flexible and allows a wife to seek dissolution on the grounds of cruelty of her husband. Through the means of the doctrine of *takhayyur,* the Moroccan code of personal status 1858, the Jordanian law of family rights 1951, Syrian law of personal rights 1953, and the Ottoman law of family rights 1917, women were able to seek divorce.

Likewise, the *Hanbali* doctrine of abiding by stipulations in a marriage contract (based on the *hadith* of the Prophet Muhammad) led this school of thought to declare that the marriage contract could stipulate monogamy of the husband; the wife could choose the place of residence and so on. Jordan, Morocco, Syria, and other countries adopted this law.

In India, the traditional Muslim law underwent a series of major reforms. The Child Marriage Restraint Act of 1929 prohibited the marriage of girls younger than 14 and boys younger than 16 under fear of imposition of penalties. By the application of the doctrine of *thakhayyur,* the rules of the *Maliki* and *Hanbali* schools were made applicable instead of the *Hanafi* school. Hence the Dissolution of Muslim Marriage Act 1939 enabled women to seek divorce on the several grounds, including cruelty, without the fear of losing a substantial part of their property. Earlier, before the enactment of this act, Muslim women could not file an application for divorce on the grounds of cruelty, but now they can. This act has proved to be a boon for all Muslim women.

With relation to laws concerning women, the flexibility of Muslim law is noticed in the invocation of the right of government to take *masalih al-mursala,* or good of public interest, into account to change an established rule. This is not new. It was practiced by the *Khulafa-i-Rashideen,* or the Righteous Caliphs.[26] Changes in *hudud* laws (limit of punishment)[27] were made from time to time, as part of public policy.

Also based on the policies mentioned above, there has been some reform affected in Muslim countries with relation to women in penal laws of evidence, obligation, property, inheritance, marriage, and divorce. There is, however, much room left for modification.

In Morocco, the *mudawwana*, short for *"mudawwanah al-aḥwāl al-shakhṣiyyah,"*[28] the personal status code, also known as the family code, concerning issues related to the family, including the regulation of marriage, polygamy, divorce, inheritance, and child custody, have undergone reform. Originally based on the *Maliki* school of Sunni Islamic jurisprudence, it was codified after the country gained independence from France in 1956. Its most recent revision, passed by the Moroccan parliament in 2004, has been praised by human rights activists for its measures to address women's rights and gender equality within an Islamic legal framework.

Major components of the reforms included raising the minimum legal age of marriage to 18 for men and women, establishing joint responsibility for the family among men and women, limiting the terms of polygamy and divorce, and granting women more rights in the negotiation of marriage contracts, among other provisions.

Supporters of the reforms point to broad support for them among Moroccan society, especially among women, and cite the new law as a successful example of a progressive reform framed in indigenous, Islamic principles. Critics point to the elitist roots of the movements that advocated for the reforms, the influence of Western secular principles, and the many barriers to the law's implementation within Moroccan society.

Prior to the early 20th century, the state left control over women and the family to patriarchal groups. In antithesis to its interventionist approach in Islamic civil, commercial, and penal law, it declined the enterprise of modifying personal status (i.e., marriage, divorce, and inheritance), or regulation of these laws. This hesitation was perhaps due to the realization that the patriarchal control of women and the family unit were central to the construction of male identity. Ultimately, however, the state's reluctance began to give way due to several reasons, one being the pressure brought to bear by women's groups under the leadership of prominent women in countries such as Egypt and throughout the Ottoman Empire.

Several states used autonomy in pursuing their own agendas in this area. Hence several states broadened their base of support of enfranchising women, in the process weaning them away from the patriarchal groups that traditionally held control over them. Though, in doing this, they risked the growing ire of the traditionalists, who generally view such developments with disapproval. Nonetheless, they pursued this course.

In balancing the conflicting demands, states generally followed a direct policy of reform. Through the means of *ijtehad,* reforms abolished polygamous marriages or made them more difficult, as in Turkey, Tunisia, and Syria; permitted wives to divorce by having recourse to *shari'ah* or religious courts, especially in cases pertaining to cruelty, desertion, or dangerous contagious disease; provided women with the right to contract themselves in marriage; required husbands to provide housing for a divorced wife during her custody over children; increased the minimum marital age of both spouses; placed limitations on guardians to contract women in marriage against their desire; enhanced the rights of women in regard to child custody; and allowed women to stipulate clauses into marriage contracts (e.g., a man may delegate to his wife the authority to divorce him).

In its initial stages, enhancement, reform, or modification of any law has always posed serious problems for any country. In India, for varying reasons, reform of Muslim family law, within its own sphere, has been difficult. Among Islamic scholars, there is a strong opinion that in order to keep with the march of time, the doors to *ijtehad* should be re-opened.

Fortunately opposition to *taqlid* and resort to *ijtehad* have been some of the chief motivating forces in implementing changes in various Muslim countries. Ibn Taimiyyah, as early as the 13th century, claimed the right to individual *ijtehad*. Jamaluddin Afghani and Muhammad Abduh, following in his footsteps, opposed *taqlid* and claimed to investigate the sources of law. In India Sayed Ameer Ali and Dr. Mohammed Iqbal opposed *taqlid* and resorted to the right of independent thought, such as laws relating to unilateral divorce regulation as affected by various countries.

Although attempts to codify Islamic law in several Muslim countries have been successful, such efforts faced initial resistance. Nonetheless, at a later stage after initial resistance, these laws were accepted and underwent reform.

For instance, in 1875, Kadri Pasha's draft code for Egypt dealing with the *Hanafi* law of family and inheritance was not accepted. Likewise in Tunisia, D. Santillana's draft code on family law was not turned into a law (though his code on the law of obligations was enacted). Today, however, these laws are enacted. Several Islamic countries, by and large, have since affected reforms on penal laws, laws of evidence, laws of obligation, and family laws.

It is interesting to note that not many of the provisions of the present *Shariat* laws practiced in India are truly and strictly Islamic. Dr. Tahir Mahmood in his *The Muslim Law of India*, states, "It is true that some of the original principles of Islam now which apply to Muslims in India are subject to local modifications. The present law of the Indian Muslim cannot therefore in its entity be called the 'Law of *Shariat*.'" Further, he states, "The British rulers did, in exercise of their legislative powers, curtail the Islamic law in this country. … As regards the role of the British judges, they not only interpreted the law of Islam, they misinterpreted it too." The observations of Justice Krishna Iyer "that marginal distortions are inevitable when the Judicial Community in Downing Street has to interpret the law Manu and Muhammad in India and Arabia."[29]

To affect reform in the area of family law, it would be useful to study recent notable rulings relating to different aspects of family law in Muslim countries that have been favorable to women. These rulings would assist and encourage reformulating laws that are women friendly.

In India, the traditional Muslim law underwent a series of major reforms. The Child Marriage Restraint Act of 1929 prohibited the marriage of girls younger than 14 and boys younger than 16 under fear of imposition of penalties.

The Dynamism of Islam's Legal System

It is crucial to dissect and appreciate the continuous attempts by Muslim jurists to apply the dynamic principles of Islamic law to ensure justice, equity, and good conscience. A brief examination of this historical process of the development of the jurisprudential Islamic legal system is therefore essential.

It began during the lifetime of Prophet Muhammad, but the need for legislation increased after his death with the expansion of the Islamic empire. With the conquests by Muslims and rapid growth of their political power, the development of Islamic jurisprudence was spectacular. Just as a state was founded upon overcoming the bifurcations created by the tribal system, similarly a sophisticated and highly complex legal system was developed within a short span of time, through the process of refining the tribal customs and leveling the imbalance created by such ways of life.

The approach and attitude of Prophet Muhammad toward the enhancement of knowledge and learning in general was responsible for the development of Islamic jurisprudence. It is not surprising, therefore, that there emerged, from the very outset, a team of Muslim scholars who diligently followed the principle set forth by the prophet. The well-known tradition, regarding Muad Ibn Jabal, clarifies the issue:

> The latter was appointed as a judge in Yemen. On the eve of his departure to assume his office there, the Prophet asked him: "According to what shalt thou judge?" He replied: "According to the Book of God." "And if Thou findest nought the rein?" "According to the Sunnah of the Prophet of God." "And if Thou findest nought the rein?" "Then I will exert myself to form my own judgement." Thereupon the Prophet said: "Praise be to God Who has guided the Messenger of God to that which pleases the God."[30]

It is mainly through this maxim of the prophet and his dynamic approach toward the operation of the power of interpretation that Muslim jurists in the past successfully developed principles of law into an intelligent and cohesive system. The abandonment of such a system, which initiates the spirit of inquiry, would amount to going against the precept set forth by the Prophet.

This was the cornerstone of Islam's vibrant juristic theory of *ijtehad* or creative interpretation. For instance, in Tunisia**,** the doctrine of *ijtehad* was applied in relation to polygamy. The main argument in favor of its removal was the government's claim that the *Quran's* ideal was indeed monogamy. The views of the reformist Muhammad Abdou were adopted and the two aforementioned *Quranic* verses, 4:3 and 4:129, dictated the ideal standard. Hence, in Tunisia in 1957, polygamy was prohibited by law.

This goes on to demonstrate that legislative inquiry is essential in every age, since the intense pressures of changing conditions of life require a new understanding for a vivid appreciation of the true spirit of the teachings of Islam. To continue to activate such a process is as necessary now as it was in the past. To limit juristic discussions, therefore, to a definition of terms and scholastic refinements, or to doctrinal differences and hair-splitting dialectics is not in consonance with the teachings of the *Quran* and the *sunnah***.**

It is, therefore, insufficient to live in the shadow of past thoughts, which undoubtedly belong to some of the greatest minds who, however, neither pretended to be infallible nor assumed responsibility to have their views endorsed as final. They, more than anyone, understood that the teachings of Islam could never be exhausted in their depth, that new discoveries, new meanings, and new interpretations in the word of God and the example of the prophet would bring new light and new dimension into this world.

This, undoubtedly, was their endeavor, and in keeping with the spirit that the door toward effort, legislative or otherwise, be always kept open. It is not surprising, therefore, that a wave of enthusiasm to explore the profundity and vigor of the *Quran's* and the prophet's dictum is being felt. No revival is possible without an intense inquiry into its original spirit and thereby to build further on the foundations erected by past generations. To appreciate the true spirit of the *Quran,* it is necessary to further animate inquiry and investigation, as was done in the past.

For Muslim lawyers to contend that the door to *ijtehad* and legislative effort has been closed is to concede that the exposition of the law by the application of private judgment has ceased to be effective since the 3rd century of the Islamic era. Such a notion would result in bringing the law to a state of immobility and to deprive the followers of Islam of the means of adapting its doctrines to changing circumstances, of course, in the light of the *Quran's* injunctions and prophetic traditions.

The power to reason or exercise intellectual faculties in theological as well as legal matters plays a key role in Islam, as the value of reason is greatly accentuated. The *Quran* time and again repeats the following: "Do you not understand?" ; "Do you not reflect?"; "Have you no sense?" Further the *Quran* states, "They have hearts wherewith they understand not, eyes wherewith they see not, and ears wherewith they hear not; they are like cattle, nay, they are in worse error."[31]

The duty of search for the truth and of thinking could never cease for Muslims. "It was a duty for Ibn Hazm as well as for Ibn Rushd; for Al Ghazzali as well as for Al Razi; for Ibn Taimiyah as well as for Ibn Khaldun or Shah Waliullah, and it is a duty for you and for me."[32]

Deliberations on the latest developments of family laws relating to marriage, divorce, inheritance, property, custody of children, and others issues in different Muslim countries demonstrates that the primary purpose, however significant, is not merely a restatement of laws. They illustrate the reactivation and revitalization of the process of juristic techniques such as *ijtehad* to reinterpret laws with changed social economic and political dynamics in different countries. For this, it is important to understand the dynamics of *shari'ah***.** For once the vibrant flexibility of *shari'ah* is explicitly and implicitly understood, the issue of gender equality would no longer be an issue.

Conclusion

Presently, a struggle for gender equation is emerging within the world of Islam. In the endeavor for gender justice, Muslim women scholars call into question the very legitimacy of the patriarchal leadership alienating women from political, social, and legal activities, confining their roles within a traditional framework. It seeks greater complimentarily between the sexes and is based on the *Quran and sunnah.*

In changing the paradigm of gender-related issues, the understanding of the dynamic nature of *shari'ah*, with several legal mechanisms at its command, could play a major role in shaping and affecting reform and restoring the rights of women bestowed on them by the *Quran.* Reforms in personal status law, as seen achieved through recourse to such instruments, have already moved in the direction of gender equality.

As pointed out, earlier modern exegetes and jurists in Muslim countries have endeavored consistently and earnestly toward the restoration and modernization of Islamic laws, both in letter and spirit. But the good news is that despite the process being strenuous and laborious—the struggle is continuous. ⊙

Dr. Zeenat Shaukat Ali is the Founder , Director General of The World Institute of Islamic Studies For Dialogue, Organization of Mediation and Gender Justice (Wisdom Foundation). Awarded with a Ph.d in Islamic Studies from the University of Mumbai, she has been teaching Islamic Studies at St. Xaviers College for several years.

Endnotes

[1]International Journal of Comparative Sociology51(6) 423–444© The Author(s) 2010Reprints and permission:sagepub.co.uk/journalsPermissions.navDOI: 10.1177/0020715210386155http://cos.sagepub.com. A cross-national analysis of physical/intimate partner violence against women by Yunus Kaya, ,University of North Carolina Wilmington and Kimberly J. Cook, University of North Carolina Wilmington.

[2]*Hadith* or *sunnah* refers to reports of statements or actions of Prophet Muhammed or of his tacit approval or criticism of something said or done in his presence.

[3]*Ijtehad* is an Arabic word meaning "effort." In Islamic law, it is the endeavor of a Muslim scholar to derive a rule of divine law from the *Quran* and *hadith* or *sunnah* without relying on the views of other scholars.

[4]*Tafsir* is the Arabic word meaning "to explain, to expound, to elucidate, to interpret a word or verse of the *Quran*." In other words, it is the exegesis of the *Quran*. The author of *tafsir* is a *mufassir.*

[5]*Shari'ah* comes from the root *"shara."* According to Ibn Ar'abi, the word *shara* comes from *zahara***,** which means "to open, to become clear and visible." E.W. Lane, in his lexicon on the authority, of well-established Arabic, points out that the term *shari'ah* applies to a watering place, such as is permanent and apparent to the eye, like the water of a river, not water that one draws from a well. E.W.Lane, William and Norgate, Arabic English Lexicon 1535 (1863). Allama Ghulam Ahmed Parvezin his Mafhum al Quran, (Exposition of the Quran; Publishers Tulu-I –Islam Trust, Lahore, 1990, Vol 1, p. 79) describes the word *shari'ah* as—"a place, quay, or pond where people or animals come to take water; but the condition is that the water at the place should be run from a constantly flowing spring, which should be open and flowing at the surface of the land and easily accessible. Accumulated rain water is not called *shari'ah* but *kara'un"*

[6]*Fiqh* is the Arabic word for Islamic jurisprudence. *Fiqh* deals with the observance of socio-legal-religious legislation in Islam.

[7]*Taweel* is a technique or method of interpretation or explanation of the *Quran*. In Arabic, the word means "to return, to revert," which implies going back to the original meaning of a word to see what its meanings and connotations are. In other words, it is to understand the word in light of one of its connotations, despite the fact that this connotation is not the primary intent of the word; to explain a word or phrase.

[8]*Qiyas* in Islamic law is equated to analogical deduction. It is a juristic device in Islamic law arrived at through the process of analogy or inference from the *Quran* and *hadith*. There is no unanimity among Muslim jurists on the application of this juristic device.

[9]*Ijtehad* in Islamic law is technically applicable to a lawyer's exerting the faculties of the mind to the utmost for the purpose of forming an opinion in a case of law regarding a doubtful or difficult point. In legal terminology, it conveys to exerting one's mind with a view to form an independent judgment on a legal question. Modern scholars have translated it as "creative interpretation."

[10]*Ihtishan* in the legal terminology of Islam means juristic preference. It literally means considering a thing to be good in reference to another. Technically it is the preference of the exercise of private judgement, not on the basis of analogy but on that of public good or the interest of justice.

[11]Abu A'la Maududi, *The Islamic Law and Constitution***,** 70 (KhurshidAhmedtrans. Islamic Pub.Ltd.)(1977).

[12]Seyyed Hossen Nasr, *Ideals and Realities of Islam 165*(Mandela Books, Unwin Paperbacks) 1979.

[13]*Sunni and Shiah Schools of Islamic Jurisprudence:* There are two broad categories of Schools of Islamic Law: The Sunnis and the Shiahs.

Both have their own particular tradition of interpreting jurisprudence or the law. As these schools represent clearly spelled out methodologies for interpreting Islamic law, there has been little change in the methodology with regard to each school. Each school has its evidences, and differences of opinion are generally respected.

The Sunni Schools of Jurisprudence are further subdivided in the following categories: the Hanafi school (699 — 767 CE) founded by Abu Hanifa an-Nu'man; the Maliki school (711 – 795 CE) founded by Malik ibn Anas; the Shafi'i school (767 — 820 CE) founded by Muhammad ibn Idris ash-Shafi'i; the Hanbali school (780–855 CE) founded by Ahmad ibn Hanbal; the ''hir' school (815–883/4 CE) founded by Dawud al-Zahiri. This is followed by minority. There are further subdivisions in the schools as well.

The Shias constitute many different groups, as there are various Shiah theological beliefs, schools of jurisprudence, philosophical beliefs, and spiritual movements. The Shiah identity emerged soon after the martyrdom of Hussain son of Ali (the grandson of the prophet Muhammad), and Shiah theology was formulated in the 2nd century. The first Shiah governments and societies were established by the end of the 9th century.

The Ithna Ashari Shools or Believers of the 12 Imams (CE 661-868 onwards). According to Twelver doctrine, he is the current Imam and the promised Mahdi, a Messianic figure who will return with Christ. He will reestablish the rightful governance of Islam and replete the earth with justice and peace.

There are several further subsects listed below:

A subsect of Imami Ismaili Shias are believers in the Agha Khan Imam Ali-Imam Ismail and Imam Ismail (755 CE to present day). Their adherents are also known as Seveners. They get their name from their acceptance of Ismail ibn Jafar as the appointed spiritual successor (Im'm) to Ja'far al-Sadiq, wherein they differ from the Twelvers, who accept Musa al-Kadhim, younger brother of Isma'il, as the true Imam.

Another subsect of Shiah Islam are Dawoodi Bohras. The Dawoodi Bohras trace their belief system back to the Fatimid Caliphate, where they were persecuted due to their differences from mainstream Sunni Islam and Zaydi Shia Islam. The term Dawoodi refers to their support for Dawood Bin Qutubshah in the 1592 leadership dispute, which divided the Tayyibi sect, creating the Dawoodi Bohra. The Dawoodi Bohras retain the Fatimid-era Tabular Islamic calendar.

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