

Modern States, Legal Reforms and Feminism(s) in Muslim countries

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Abstract *The translation of the Qur'anic precepts into concrete laws, meant to answer certain social necessities, was a complex and fallible process. During the past century, the general wave of reconceptualising the equality between women and men was countered in the Islamic space through the diverse reinterpretations of the sacred texts in order to propose alternative Islamic solutions to the traditional patriarchy. At the same time, the Family Code reform was marked by some specific tendencies, common to many Muslim-majority countries: the transition towards the nuclear family, an accent on the rights and the identity of the individual, the development of formal methods for solving conflicts, the codification of law, the advancement of written documentation and the protection of social justice and of women's legal rights in marriage and in divorce. The first part of this article will be dedicated to a succinct presentation of the family code reformation that was generated by the formation of the modern states in the Middle East.*

Recently, jurisprudential reforms based on Islamic feminist criticisms are in the centre of Islamic feminist debates, but practically improving the laws that regulate and/or affect Muslim women's life is a strenuous, long-term process as it involves changing some deeply rooted patriarchal mentalities and challenging the „private”, unequal construction of the marital relations. The negotiation between these feminist groups and the local authorities responsible for the policy and law-making process is rarely a successful one. The new Iranian Civil Code proposed some of the most advanced family laws in the Middle East, classical legal prescriptions being reinterpreted from the current modern conditions perspective. The complex dynamic that generated some specific legal reforms that are beneficial to Muslim women were the result of the theoretical negotiations that involved not only the classical interpretations of Islamic law, the Islamic reformist contemporary theses, but also the recourse to knowledge based on modern sciences, especially on medicine. Iranian Muslim feminists had a significant role in the process of reformation and

this will be shortly analysed in the last part of the present article, beside some brief comparisons with the situations specific to other Arab countries.

Key words: modern state • reform • Islamic jurisprudence • Islamic feminism • Iran

The Modern State and the Reform of the Family Code

Muslim women live in different socio-political contexts and adopt various beliefs and practices; the still popular orientalist paradigm of the oppressed, ignorant, passive Muslim „woman” is nowadays being contested for its unjustified homogenisation and generalization. Treating Muslim women as a unitary class that it is marked by certain negative characteristics was a rhetoric that functioned as an imperialist instrument of justifying the colonialist domination and politics, being often supported even by the missionary feminists. The generalization involved in the expression „the status of women” in Islam is meaningless as the status of Muslim women varies according to their class, ethnicity, age, geographical area, marital status, education, etc.¹ There is a complexity of various textual Islamic interpretations that were invoked in the regulation of women’s social and political roles and we cannot understand all the types of injustice that afflict Muslim women’s life if we do not take into consideration a series of socio-economic and political factors that defined – historically and culturally – different manifestations of gender inequity.²

During the last century, Muslim women themselves started to form organizations and groups pleading for extending Muslim women rights: their right to education, to vote, to be elected, to be equally involved in the social and political life, to work, to have fully legal recognition of their autonomy as human beings, etc. Some Muslim women imported the secular feminism instruments in order to achieve their goal, others tried to explore the classical Islamic tradition and rediscover principles and laws favourable to enhancing Muslim women rights, but remained tributary to the general androcentric suppositions that fundamented the dominant Islamic jurisprudence. Other Muslim feminists were more courageous and started to construct new hermeneutical instruments that could create a more feminine reading of the Qur’an. Recently, even

¹ Ali, Kecia, *Sexual Ethics and Islam*, Oneworld Publications, Oxford, 2006, pp.12-13 intro.

² Abu-Lughod, Lila, „Zones of Theory in the Anthropology of the Arab World”, in *Annual Review of Anthropology*, Annual Reviews, vol.18, 1989, pp. 267-306.

jurisprudential reforms based on Islamic feminist criticisms are in the centre of Islamic feminist debates, but practically improving the laws that regulate and/or affect Muslim women's life is a strenuous, long-term process as it involves changing some deeply rooted patriarchal mentalities and challenging the „private“, unequal construction of the marital relations. In general, these different feminist approaches are nevertheless received with suspicion and hostility in the predominantly Muslim societies, being homogeneously treated as a deceitful Western ideology meant to erode and destroy the local religious and social culture. The negotiation between these feminist groups and the local authorities responsible for the policy and law-making process is rarely a successful one.

The translation of Qur'anic precepts into concrete laws, meant to answer certain social needs, was a complex and fallible process¹. Generally speaking, Muslim modernists considered that interpretations and classic juridical books have reflected the social system of Muslims from the Islamic jurisprudence formation period, but are completely inadequate and incapable to answer to current social needs.² Responsibilities, rights and legal privileges attributed to men in the juridical field, as well as the domestic role, of a caretaker, and the dependence of women to men have reflected men's superior social standing during the epoch, as well as the social roles attributed to women by tradition or by customs. During the past century, the general wave of reconceptualization of women's equality to men was countered in the Islamic space through the diverse re-interpretations of the Islamic sacred text in order to suggest an alternative solution to the traditional patriarchy. Progressive authors therefore suggest that there are a series of discourses which (1) either obsessively draw on occidental values in an apologetic, polemical or offensive way (during the seventh decade of the past century, the emergence of Islamic fundamentalism is associated with the tendency to blame the process of westernisation and secularisation for the moral decay and the social decline of Muslims), (2) are built based on theses which are presumed to be exclusively Islamic (initially, some Muslim reformers from the past century have tried to establish in Islam certain modern concepts such as equality, human rights, democracy; and during the contemporary period, the ideal of some

¹ Regarding the contemporary problems that mark Islamic jurisprudence also read: Ansari, Abdul Haseeb, *Contemporary Issues in Islamic Law*, Serials Publications, New Delhi, 2011 and Duderija, Adis, *Maqasid al-Shari'a and Contemporary Reformist Muslim Thought*, Palgrave Macmillan, 2014.

² Ali, Chiragh, „*The Proposed Political, Legal, and Social Reforms*“, in Kurzman, Charles, *Modernist Islam, 1840-1940: A Sourcebook*, Oxford University Press, Oxford, 2002, pp. 277-290.

Muslims is a modernisation justified and based on the Islamic history, beliefs and values), (3) or aim towards a reconciliation of Islamic with Western principles.

Islamic juridical reform was initiated in the middle of the 19th century in the Ottoman Empire, *majallah* representing an attempted systematic codification of Islamic law according to the structure of the French Civil Code¹. The reform inherently spread into Egypt, an Ottoman province at the time, through the enactment of the new Penal and Commercial Codes; the Family Code, based on the old Islamic interpretations, remained unchanged in any significant way until 1920. During the first part of the 20th century, countries with Muslim populations are marked by the expansion of secular education and the separation of religion from politics; furthermore, the law becomes secularised, with a few exceptions, such as the Family Code – the most conservative juridical space, hostile to change, representing a hybrid of procedural reforms which did not affect the substance of classical law, but that had to reflect, in a certain way, new changes of the social dynamic. I refer here to the women’s massive entering the job market in some Muslim majority countries (Iraq, Syria, Egypt, etc) during the years 1950-1960. By this new social change the domestic partners’ responsibilities were equally shared, generating new problematizations of some patriarchal Islamic prescriptions.

The Family Code reform was marked by some specific trends, common to more countries with a Muslim population: the transition towards the nuclear family, an accent on the rights and the identity of the individual, the development of formal methods (through judges and official courts of law) for solving conflicts, the codification of law, the advancement of written documentation and the protection of social justice and of women’s legal rights in marriage and in divorce. Some of the results generated by the legal reshuffling developed in the past century and beneficial to women are: the raise of the accepted minimum legal age for marriage, the official recording of marriages, the extension of accepted reasons for women to request divorce, the restriction of men’s right to unilaterally divorce. The methodology used in reforming the Family Code from Egypt and Pakistan is however poor and unorganised (based on *talfiq* / pasting, *takhayyur* / selections etc), some legal corrections generating problems when reported to other laws².

¹ See Onar, S.S., „*The Majallah*,” in *Law in the Middle East*, vol. I, *Origin and Development of Islamic Law*, Khaddury, Majid – Liebesny, Herbert (eds.), The Lawbook Exchange, New Jersey, 2008, pp. 292-308.

² Esposito, John, *Women in Muslim Family Law*, Syracuse University Press, Syracuse, 2001, pp. 61-62; 93-126.

Given the limits of this article, I will briefly mention the ways in which the more and more visible and significant presence of Muslim women in Muslim majority countries' societies is generally perceived and analysed and the strategies they used in the struggle of obtaining more political and social rights. From a sociological perspective, Fatima Mernissi¹ argued that Muslim men perceive the extended participation and implication of women in the public sphere (education, work, health), corollary with the modernisation process, as a threat² (insecurity, competition on the labour market) and as an aggression to which they can only react by retreating to the presumed patriarchal Islamic values, trying to exclude or to punish women for their intrusion through an intensified implementation of patriarchal norms in the private sphere³. All things considered, from a methodological perspective, splitting ideological analysis from material transformations and the analysis of social factors which affect women from social elements impacting men's life is unjustified.

Saba Mahmood suggests a much more complex and encompassing analysis of the reactions generated by the effects of the modernisation of Muslim majority countries. The assumption that masculine identity emerges in relation to patriarchal values (considered to be legitimated by Islam), and that female identity is built depending on socio-economic transformations (the changes of traditional roles) was deconstructed in detail by the author. The tendency to naturalise women's desire for liberty, ignoring the discursive forces that have modelled their value systems and their own social integration has determined the hegemonic imposition of a vision tributary to their own cultural evolution (in which deliverance from the structures of masculine domination cannot be told apart from the benefits of adopting the secular principles of modernity), excluding those desires and aspirations indifferent to the ideal of deliverance – or simply not impressed by it⁴. The hypothesis of women's institutional predisposition to oppose an unfair system (from a gender perspective) seems to actually conceal a solution put forward for a political project⁵. Mahmood emphasizes the need for

¹ Even if Fatima Mernissi is of Moroccan origin, her critique is based on the Western secularism suppositions.

² Erotic and social.

³ Mernissi, Fatima, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society*, Indiana University Press, Bloomington, 1987, pp. 142-164.

⁴ Mahmood, Saba, *Feminist theory, embodiment and the docile agent: Some reflections on the Egyptian Islamic Revival*, in *Cultural Anthropology*, vol.16, no. 2, May 2001, pp. 202-236.

⁵ See also other analyses contesting the victim status and the passivity of the Muslim women: Chandra Talpade Mohanty, *Under Western Eyes: Feminist Scholarship and colonial discourses*, in *Third world women and the politics of feminism*, Indiana University Press, Bloomington, 1991, pp. 51-80. Regarding the active, voluntary process of Muslim

developing a fitting analytical language, capable to integrate different types of values and personal and social adhesions that are not necessarily attached to a culture, but that depend on multiple types of discursive and political structures which are simultaneously present in a single cultural space.¹ This project would annihilate the tendencies to make culture essential, promoting the capture of the abundance of ideals, purposes, visions which coexist in Islamic (as well as Western) cultures², which cannot become comprehensible if they are reduced to a unique frame of analysis.³

From another perspective, jurists were isolated and lost contact with changing political realities, a fact that had a negative effect on women that could no longer negotiate access to legal justice, *fiqh* rules being directly applied through the apparatus of the modern nation-state. Therefore, *fiqh* – Islamic jurisprudence – became a closed system that could not be under critical examination and public debate. Later on, Muslim jurists were educated according to the civil legal system and often tried to search the Islamic legal tradition for systematic conceptual frameworks, “to re-construct and distill the amorphous Islamic legal tradition into a set of clear and precise rules quite similar to a civil law code”.⁴

On the other hand, Hashim Kamali argues that using certain rules and principles of traditional jurisprudence could be very efficient in the process of contemporary reform. Through an adequate judicial methodology which can enforce the *takhayyur* principle, choosing the ideas (from the Islamic juridical schools) which are most favourable to women, that of judicial preference, *istihsan*, as well as those specific to the *maqasid al shari’ah* vision, it is possible for a beneficial reform of the Islamic Family Code to take place, according to the Qur’anic ethical values of justice, moral excellence, equity, pity, moderation.⁵

women’s choices see also: Al Guindi, Fadwa, in *Veiling Infitah with Muslim Ethic. Egypt’s contemporary Islamic movement in Social Problems*, vol. 28, no. 4, April 1981, pp. 465-485.

¹ Mahmood, Saba, *Anthropology*, in *Encyclopedia of Women and Islamic Cultures*, vol.1, Brill Leiden – Boston, 2003, p. 312.

² See the collection of articles regarding the actual status of Muslim women as it is configured in different socio-political contexts: Bodman, Herbert I. – Tohidi, Nayereh (eds.), *Women in Muslim Societies. Diversity within Unity*, Lynne Rienner Publishers, London, 1998.

³ Be it religious, economical, etc.

⁴ Abou El Fadl, Khaled, *Speaking in God’s Name. Islamic Law, Authority and Women*, Oneworld, Oxford, 2001, p. 5.

⁵ Kamali, Mohammad Hashim, „Islamic Family Law Reform: Problems and Prospects”, in *Islam and Civilisational Renewal* 3/1, 2011, pp. 38-50.

Example: Legal Reforms in Iran

Nowadays, in areas with a predominantly Muslim population, laws regarding abortion, rape, domestic violence, adultery, incest, etc have in common the fact that they result from systems which support male authority and their group identity, women's body ownership and sexual rights being cancelled through the reification strongly connected to their vulnerability in the pre-Islamic system of honour. In the personal statute law, women are placed under man's authority, and in the penal code, their bodies are governed by precepts that give priority to men's interests, ensuring their lineage, laws being influenced by customs, tribal traditions and cultural practices. Unfortunately, penal codes that heavily discriminate women by specific practices such as lapidation, whipping, death penalty, despite the fact of having constitutionally declared – in most of the Middle East countries' constitutions – the general equality of all human beings, are still present and have a major negative impact on Muslim women's life.¹

Iran is an eloquent and interesting example regarding the complex dynamic that generated some legal reforms by the negotiations that involved not only the classical interpretations of Islamic law, the Islamic reformist contemporary thesis, but also the recourse to knowledge based on modern sciences, especially on medicine. During the secular reign of the Shah, according to the 1967 Family Protection Law, one of the most radical juridical reforms – that took place in the Muslim space – appeared, under the pretext of the Islamic introduction of the clause system in the marriage contract (without allowing to actually negotiate them: the clauses were automatically imposed on the husband), polygyny and temporary marriage were abolished, and also the divorce declared outside the court of law. Men and women were granted an equal right to divorce. The minimum age required for marriage was established to fifteen for girls and eighteen for boys, later being raised in 1975 to eighteen for girls and twenty for boys.

Seven months after the revolution, Khomeini returned to some stipulations from the old jurisprudence treaties through which girls' puberty was defined – and implicitly became the acceptable minimum age for a marriage –, at nine years old, and respectively fifteen years old for boys, re-enforcing temporary marriage, the right to polygyny and unilateral divorce. However, following scientific and medical proof regarding the deleterious or even fatal dangers of intimate contact and pregnancy at such a young age,

¹ For a detailed analysis of these laws, see also Zuhur, Sherifa, *Gender, Sexuality and the Criminal Laws in the Middle East and North Africa: A Comparative Study*, WWHR – New WAYS, Istanbul, Turkey, 2005, pp. 14-64.

enumerated and insistently presented by women (Iranian feminists, but also feminists belonging to other categories), the law was rectified, the minimum age being established to fifteen years old for girls, as long as the girl had her first menstrual cycle before the marriage and, unlike other countries, no exceptions to the law being possible – these being subject to penal punishment.¹ The law later met amendments, in 1982 the minimum age being changed to nine years old for girls; in 2002, again under pressure from feminists and human rights activists, the minimum age for marriage is established at thirteen years old for girls and fifteen years old for boys, although marriages under this age limit can be officiated with the agreement of the tutor and the approval of the court of justice².

The new Iranian Civil Code has been one of the most advanced family laws in the Middle East, classical juridical precepts being reinterpreted from the current modern conditions perspective. All the marriage certificates issued after 1982 include a list of twelve negotiable clauses (for example, the spouse's right to initiate divorce in certain conditions, the right to ban other marriages of the husband, the right to equally divide between the husband and spouse the wealth gained during marriage, in case of divorce) that must be individually signed by the both partners for them to be valid, these conditions being read to the couple in order to accept or to reject them. The wife's right to insert new conditions along the standard ones is not excluded. Important and unique for the countries with a predominantly Muslim population, these clauses are officially included in the marriage certificate, this acting as a means to educate women in regard to their own rights and to provide them the adequate legal frame to implement these rights.

I will now shortly detail by giving a few examples of extending the reasons that can be conjured by the spouse to obtain the divorce, examples that represent legal successes gained due to local feminist analysis. Divorce can be obtained by the wife: if the husband does not provide for her or does not fulfil other mandatory duties for at least six months; if the husband is treating his spouse poorly, living with him thus becoming intolerable for her; if the husband suffers from an incurable disease which can endanger her health as well, or if he is insane; if the husband is unable to respect a legal order to abstain from

¹ Esposito, John, *op.cit.*, p. 99.

² Moghadam, Valentine M., „*Feminism and Family Law in Iran: the Struggle for Women's Economic Citizenship in the Islamic Republic*”, in Sadiqi, Fatima – Ennaji, Moha (eds.), *Women in the Middle East and North Africa. Agents of Change*, Routledge, USA, 2011, p. 119.

engaging in an activity which is repugnant to the spouse or that is unfitting with her social status; if the husband is sent to jail for minimum five years; if the husband is dependent on something that hurts his marriage and marital life; if the husband abandons his wife for more than six months without a just cause; if the husband is sentenced to prison or receives a sentence which is repugnant to the family and compromises the spouse's status; if the husband fails to impregnate his wife after five years of marriage; if the husband disappears and is not found for six months after the spouse notified the authorities; if the husband enters a polygamous marriage without the approval of the first spouse, or if he is not treating his spouses equally, or if the husband breaks any of the specific claims introduced by the wife in the marriage certificate. Another example of introducing a law favourable to women: according to a law from December 1992, in case of divorce, the husband has to pay his spouse a compensation for the house work done by her during the marriage. Due to activism, constant social involvement, theological and legal analysis proposed by Iranian feminists who have insistently and creatively participated in the process of reinterpreting the Islamic law and of the building of the religious and civil society, several laws benefitting women were enforced; also, certain relevant institutions or official positions for women's representation were established.¹

Even if Iranian feminists had to resort to some compromises – for example, the wearing of the Islamic veil that was imposed on them, veil whose functionality was eventually reinterpreted through the feminist lens –, by using the religious argumentation they succeeded in extending the education and job opportunities for women. After presenting thorough Islamic researches on different sensitive topics related to the distribution of gender roles and women's rights and capabilities, due to tactful negotiation with the governmental authorities, Iranian women started to be elected in the Majlis or even be given high office position by the revolutionary government. Their rare political representation generated a limited but salutary change in the law reformation process.² However, Ziba Mir-Hosseini, in a comparative study on the juridical reforms from Iran and Morocco in 2007, appreciated the increased efficiency noticed in the Moroccan space. In Morocco, reforms were not mainly obtained due to legal arguments, but through the enforced authority of King Muhammad the Sixth,

¹ Esposito, John, *op.cit.*, pp. 103-108.

² Afshar, Haleh, *Islam and Feminism: An Analysis of Political Strategies*, in Yamani, Mai. (ed.), „*Feminism and Islam. Legal and Literary Perspectives*“, Ithaca Press, 2006, pp. 197-205.

who has legitimised an egalitarian reading of Islamic law. In Iran, despite the sophisticated arguments put forward by progressive jurists and the activity of the Parliament's reformist research centre, changes were less striking.¹

In Lebanon, even if in the Constitution it is clearly stated the basic equality between women and men, patriarchal concepts, customs, laws regarding commerce, nationality, criminality – especially adultery and crimes of honour –, abolish the actual implementation of the constitutional principle of gender equality.² Lebanese women are economically very active and visible in the society; however, they did not really support the political representation of women, only a few of them being elected in the parliament.³ Lebanese women's movements also proved to have a preference for the women's rights discourses that were based on Islamic justifications or, in general, religious argumentation, avoiding the Western, secular types of feminism.

In Saudi Arabia, women were left with no other solution to pursue their social, economic, political rights except by invoking traditional Islamic values as Islam – especially, Islam filtered by the neotraditionalist Salafi interpretations – remains the only valid source of legitimising all social movements; they registered some notable achievements only in educational and health domains of activity. Till very recently – December 2015, when Saudi women finally gained few political rights (especially the right to vote and to participate in the municipal elections) –, even after a major wave of political reforms in 1992, Saudi women did not hold significant public or political positions and their role was confined at the private sphere despite the fact that large numbers of Saudi women are highly educated. A slight increase in employment was noticed, but Saudi women are still underrepresented and marginalized in the economy.⁴ Many Islamic feminist Saudi women share their opinions in the social media, but they are harshly criticised by the local scholars or governmental representatives; despite their very strict Islamic argumentation, many of them are accused of being contaminated by the Western feminist ideology that contradicts and undermines Islam. Liberal Saudi

¹ Mir-Hosseini, Ziba, „How the Door of Ijtihad Was Opened and Closed: A Comparative Analysis of Recent Family Law Reforms in Iran and Morocco”, Washington and Lee Law Review, vol. 64, Issue 4, 9-1-2007, pp. 1499-1511.

² Shehadeh, Lamia Rustum, „The Legal Status of Married Women in Lebanon”, in *International Journal of Middle East Studies*, 30, 1998, pp 501-519. See also Zuhur, Sherifa, „Empowering Women or Dislodging Sectarianism?: Civil Marriage in Lebanon”, *Yale Journal of Law and Feminism*, 177/2002.

³ Gehan, Abu Zayd, *In Search of Political Power – Women in Parliament in Egypt*, Jordan and Lebanon, International IDEA, Stockholm, 2002.

⁴ Al Rasheed, Madawi, *A Most Masculine State: Gender, Politics and Religion in Saudi Arabia*, Cambridge University Press, 2013.

feminists risk even tougher suppression by the state and many have left the country to avoid persecutions.

The Islamic jurisprudence reformation is essential in order to correct some grave gender inequities that are perpetuated in the Middle East based on unchanged traditional, medieval theological suppositions and perspectives on women. Many Muslim feminists had to adopt a pragmatic attitude and to plead for the improvement of the Muslim women's socio-political status by resorting to an Islamic idiom, revisiting the traditional Islamic jurisprudence and exegesis in order to rediscover principles, laws and interpretations favourable for women. In some countries, as Iran, Muslim feminists were more successful in implementing new laws that have a positive impact on Muslim women's life. In other Muslim-majority countries, the feminist struggle is intense and requires more diplomatic negotiations with the Islamic scholars and state authorities. Nevertheless, the representation and involvement of Muslim women in the process of reforming the local understanding of Islamic law and the promotion of some public policies that empower women became more efficient and visible.

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