



MUSLIM WOMEN

A MANIFESTO FOR CHANGE

Muhammad Maroof Shah

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By:
Muhammad Maroof Shah

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Forward

Muslim Women issues warrant our immediate attention. They require some serious deliberations to arrive at workable and practical solutions to pull them out of the quagmire of illiteracy, exploitation, domestic violence, sexual harassment, injustice and what not. The argument seems equally divided in favour and against Muslim women empowerment. The educated Muslims liberal elites champion the cause of Muslim education and financial independence. On the contrary most of the Ulema (Islamic clergy) emphasize more conservative interpretation of Islamic scriptures with respect to women. To them a Muslim woman who unnecessarily ventures out of the confines of her home commits a major sin. This leaves a Muslim woman at cross-roads. She is confused which further compounds the situation. This book *Muslim Women: A Manifesto for Change* is an excellent attempt to find meaningful solutions to these perennial issues. Within the Habermasian framework the book proposes certain viable solutions for women empowerment. The fundamental tool upon which the book operates is the instrument of “Dialogue”. The Author of the book Dr. Muhammed Maroof Shah contends that dialogue is the only sure shot formula to arrive at a broader consensus on Muslim issues. The author not only succinctly highlights the sorry state of affairs of Muslim women but also spells out ways to overcome the hermeneutic impasse and practical deadlock amongst various women factions. The book raises a very relevant and pertinent question – what is a priority – rights or duties. It also touches upon the delicate issue of Muslim women’s modesty. The author elaborates a community centric framework for a Muslim women to

operate. A balanced approach that offers Muslim women's personality to thrive, but at the same time, never to lose sight of her responsibilities. In fact, to my mind this appears to be the best way to be successful in both the worlds. If Muslim woman follows this approach in her daily life than she is bound to receive boundless love from her immediate family members that is source of Allah's pleasure and ultimately leads her to paradise.

Khusro Foundation is a household name in India and abroad. In a short span of time the Foundation has carved out a niche for itself. One of the Foundation's core objectives is to produce quality literature in Urdu, Hindi, English and other languages primarily aimed at in the promoting peace, harmony, unity and correct information about Islam. In this series the Foundation takes pride in presenting the book Muslim Women: A Manifesto for Change which is path breaking effort in the direction of Muslim women empowerment. The book would definitely prove handy for the feminist scholars and women's rights activists, Islamic clergy, academicians and researchers alike. Despite its inherent shortcomings the book would prove to be watershed in the Islamic feminist literature.

Dr. Hafeezur Rahman

Convenor,
Khusro Foundation

Preface

Why another book on women's issues? Why revisit women's issues? Because they keep compelling our attention as they haven't been resolved and despite so much debate there is so little clarity for so many on even the basics. There is much polarized thinking on several issues concerning Muslim women and we find accusations and counter-accusations of in-authenticity/betrayal of Islam or imitation of colonial Master from opposite camps. And so many books describe things, invoke historical and theological references or mourn the state of affairs while fail to articulate or execute action plan for change.

Philosophers in this part of the world haven't written much on how to change the world of Muslim women for a brighter future – a world where women would be truly educated and doing fulfilling productive and creative work of their choice and where there is justice, no domestic violence and no conflict on separate space or who will do domestic chores. This book is an attempt to redress women's issues in light of the canon and critical rationality. It is aimed at evolving consensus on action for transforming their world through dialogue with them. Our interlocutors are primarily select writers, scholars and activists on women's issues. Our primary tool is examining opinions through the old method of dialogue and we don't propose cut and dry judgments or try to impose special solutions from without. We put women in dialogue who explore possibility of evolving a consensus, like characters in the film *Twelve Angry Men*. As such this work is a call for dialogue for action on certain issues that affect each one of us and every woman in some way. We suggest that collaboration, joining hands and communicative dialogue that Habermas has proposed would together help us avoid deadlock of conflicting interpretations and divergent action plans of Islamists, Muslim feminists and secularist who are all, however, motivated by the desire to see injustice and

oppressions on women removed. Fruits in terms of various suggestions from extensive dialogue with women across disciplines and walks of life have incorporated in this work. In order to assess the responses of influential scholars in the field whose work has been widely received and appraised, this work examines select arguments/ texts by women writers and male advocates of women's causes. I have sought to avoid taking an ideological position and only put for consideration certain proposals that may be given attention and tweaked for moving forward. We have selected only a few issues amongst dozens that call for attention for want of space and in view of the fact that we can better focus on concrete actions on certain issues, to begin with.

Women are beaten into obedient objects or traumatized to insanity. Some rebel and then fight lifelong alienation. Some internalize oppressive structures and in turn become strange objects. Others take opposite course and become champions of alien order. There is no consensus on what to do in the face of consensus on injustice and oppression on women. Agents of oppression aren't clearly recognized and there is no consensus on how to create spaces of resistance. It is to briefly discuss problematic existing state of affairs to set the context and propose number of solutions that each woman can contribute to. Women have to fight for their rights themselves and this fight isn't as hard as might appear. A few years of focused action and small actions that can be done by each one of us and every woman would make the needed difference. This book is a call for action for the Muslim women of the world in general and Indian Muslim women in particular. Muslim women need to be torch bearers and help liberate the oppressed in other communities as well.

This book revisits certain significant debates with a view to arrive at consensus so that we agree to take action on concrete issues and make some difference. It is Manifesto for restoring justice for the Muslim women of the world in general and Indian women in particular. It is an effort to build a consensus for the charter of Universal Rights of Muslim Women preceded by Universal Duties

of Muslim Women as ‘from a well done duty follow all rights.’ Rights are most effectively won not by imposition by a legislation from above but won by placing the other or love at the center. It is not women’s agency but her self-giving, her transcendence of the self that is ultimately fulfilling or redeeming. Women’s issues can’t be resolved by violently imposing a matriarchal order or enacting legislations at their bidding but a *metanoia*, a conversion of problematic idea of self or woman-centricism into God/Reality/Spirit-centric Unitarian understanding of the self and other. Unless the project of individuation through integration of our male and female principles (*animus* and *anima*) and proper understanding of self-other relationship is actualized, women’s issues would remain a problem. No simple mechanical solution or legislation but deep understanding of who one is or the other is and then cooperation can create lasting solution. This requires teaching and inculcating certain values for which we need to reorient our educational institutions. Living with an understanding that to say ‘I’ is a lie, as Simone Weil noted (Weil, 1970:132), and that basic pathology is one of being somebody, one needs being nobody. Iqbal said, “Strive hard in the ways of selflessness to discover and realize yourself.” It is a fact that “man cannot find happiness within his own limits; his very nature condemns him to surpass himself, and in surpassing himself to free himself.” Marcel says, “We do not belong to ourselves: this is certainly the sum and substance, if not wisdom, of any spirituality worthy of the name” (Marcel, 1962:pxiv). All traditions from Far Eastern to Indian, Judeo-Christian, Islamic, African and Native American unanimously privilege the other in relation to the self. In fact, all traditional philosophers – including representative figures such as Lao Tzu, Nagarjuna, Plotinus, Shankara, Ibn Arabi, Meister Eckhart from six traditions – are unanimous in putting non-self at the centre stage. The self is our dearest possession and to lose it the only commandment of scriptures or the deeper meaning of all commandments. There seems to be no exception to the rule that joy lies in renouncing the empire of ego and love without condition all that is non-self. Panniker has observed, “The more we are the other, the more we are ourselves . . . to be our true self we must

transcend our ego and become also lily.” (Panniker,1992:207). We read in Weil’s essay on Personality “Everything which is impersonal in man is sacred, and nothing else.” “Perfection is impersonal. Our personality is the part of us which belongs to error and sin. The whole effort of the mystic has always been to become such that there is no part left in his soul to say “I.” Krishnamurti would note that education consists in crossing letter I in live to make it love. Writing off the self is the odyssey of soul making for which we are here. For this we need to realize that opposite gender is not another but one’s own dimension and vice versa. Until we understand this, there can’t be lasting solution to what has been framed as gender trouble or dominance of one gender. One has to lose the self we ordinarily identify with and to subsist in the Real one has first to be annihilated. Dean Inge and many other philosophers including Maritain and Iqbal (and mystics as well) have made it clear that we needn’t fear loss of personality though we must distinguish persona that is imposed from distinct individuality we inherit as a robe from the Divine Personality that is our deepest ground. The paradox is that, as has been noted, one finds that the dissolution of “I”, its disappearance, is not the extinction of “I” but the “I’s” only true life.” There is not involved any such thing as loss of personality. Ternyysen once remarked that the loss of personality (if so,it was) is “the only true life.” This book calls for grounding understanding of women’s rights in her and men’s duties towards the Real or our deepest Ground/Spirit in us. From this would follow aspiration to be a martyr in the path of love – that is the real meaning of Islam (*yeh shahdat gah-i ulfat mei qadam rekhna hae* as Iqbal put it) and that is the real fulfillment of being human and being woman. It has been rightly noted that for a woman love is her whole life. If we could truly honour this dimension of her personality, we could find a true home that all men and women long for and where we are able to nurture great families and live in the image of heaven.

Introduction

There are very few happy homes. Women especially aren't happy. Their life is hard and not enviable. Muslim women are perceived to be especially unhappy. Daughters are still unwelcome in most Muslim families and marriage a significant burden and threat of divorce or second wife a hanging sword. It is hard to be a daughter in law and there are hardly any great examples of virtuous mothers in law. Given a choice many girls would choose not to be born and if born an early exit from life. She is mistreated as a daughter, as a wife and now even as a mother. It is generally the case that there are for her restrictions in travel, in choosing a career or mate or house. We don't, however, need to waste more ink or time lamenting this state of affairs. It is given. We need to move forward and retrieve the lost or occupied space. In this work, we shall be pursuing this task of briefly reviewing select key debates in order to evolve a consensus on common minimum program that could unite all Muslim women on action.

We are living in a complex world where despite better means of communication we are increasingly divided against fellows on ideological grounds. Women's cause suffers from many challenges in which I include the crisis of hermeneutics and class divisions disguised as faith-based divisions. This difference amongst Muslims often implies political division and this dilution of struggle for fight against common enemy – social injustice. Then I discuss if we can agree on certain principles of acting and also form a body or united front to fight our cause.

Rights of Women in Islam: Aspiration and Reality

Countless works applauding Islam's services for women fail to be matched by actual record of Muslim women currently. We needn't repeat verses and traditions and references for safeguarding women's agency, moral and spiritual dignity, financial autonomy and other measures of empowerment. Polemical works on certain issues have been legion. Without reviewing them, we may briefly review actual record in India.

Most Muslim Women are not educated enough to ensure access to rights claimed to be theirs. Their agency is much limited and they suffer on all accounts. From domestic violence to discriminations of all sorts, gross ignorance about religious, financial, cultural, scientific and other dimensions of quality life, Muslim women suffer on all accounts. They are disorganized, uninformed, oppressed within pathological distortions of family structure and by burdensome customs. Guilt-ridden, negotiating tough terrains between oppressive structures and trying hard to balance the pulls and pressures of modernity and tradition, there is a sense of exhaustion and despair about extensive tentacles of injustice. The challenge is huge – organizing, educating and empowering through various interventions, almost fifty percent of Muslim population as not even one percent can be said to be relatively empowered. This work proposes a brief review of certain points encountered in debates on Islam and women. Every chapter will focus on one aspect that concerns faith and power structures of millions of Muslim women.

Infraq and Islamic Ontology of Care

We choose to review the select key debates on Muslim women's duties and rights. After discussing the plight of Muslim women and call for action, we shall discuss Women's Duties to

God/Reality, Herself, Her Family and Society followed by Women's Rights that can be safeguarded through joint cooperative action, access to resources and education and fighting the problematic practices and ignorance betrayed at the time of signing *nikah nama* or celebrating marriage and investing one's dower create gainful employment or at least silent income through various tie ups. Most well to do Muslim women suffer from financial illiteracy and squander away wealth in marriages and houses or clothes and fail to create wealth for larger community development. All kinds of conflicts in homes, between spouses or families are ultimately traceable to faulty education and desperation or want and failure to be appreciated and loved. Failure to access quality education and work environment and getting deprived of property and other rights are usual problems that call for massive awareness campaign followed by comprehensive action plan which are missing. The work proposes some small interventions we all should be able to do. We can create Women's Welfare Fund from our daily sadaqah contribution (as low as Rs 1 on behalf of oneself and Rs 10 on behalf of family) that would sponsor this campaign and action plan. What is doable for all of us, all Muslim women and readers who are serious about women's problems, is to join a micro community of say fifty people/women or see to it that part of women's obligatory and non-obligatory charities go to transforming lives of vulnerable poor and needy women and poor meritorious girl students and free tuition or schooling of deserving. We can disseminate awareness about so many schemes amount women in the government and mobilize resources of women that otherwise get siphoned off by professional beggars or unproductive consumerism to create a special Income Support for Unemployed Married Women, Legal Support for Married Women, Scholarships for Higher Education for Women, Pension for Old Women, Free Langars and Hostels for

Women and Marriage Assistance Fund and similar supports systems from professional collection and productive spending of just twenty percent of charities that women currently do. Besides *sadaqaal-fitr* in Ramadhan for almost every woman including children all woman are enjoined to pay daily sadaqah for every joint and this is usually expected to be in cash and great number of women have to pay zakat on jewelry or savings and there is zakat on agricultural produce required from almost all families besides *infaq* of time or whatever resource is in excess or can be spared for community use – pooling just one day of every skilled or unskilled woman for community initiatives would create free transport (through *infaq* of vehicle for one day), free labour availability for building houses for the poor, free accommodation, health consultancy/teaching services for the poor or anyone in the community who requires such services and host of other services. The key concept of *infaq* and an ethic of care for the other if instilled in women would create every important service for every woman in need and make work a joy and extended family life a veritable heaven. Spending community resources on extensive counseling – on *tarbiyat* as distinguished from education or literacy – is a long-term solution to key problems. This would help institutionalizing of dialogue or the virtue of attention or listening to the other which in turn would create a true community and fellowship of spirit. We including women need the *manna* of attention, appreciation and love to live soulfully or meaningful lives. These aren't provided by privileging the language of rights but of duties and sacrifices that is at the heart of Indo-Islamic traditions.

Disciplining the desiring self or self-will so that God's will is done and all things are done for the glory of God/Beloved/Other/non-self-constitutes the sum and substance of all religious/mystical ethical traditions. It is *the* commandment of religion. The author

of *The Cloud of Unknowing* noted: "There can be no greater sorrow than the truly wise man can feel, than to reflect that "he" is still "someone." He only can be free who is no longer anyone." With Simone Weil we need to understand the pathology of being somebody and invitation to martyrdom as an offering of "I." and should have no hesitation in smashing oneself as if "using a hammer to strike a nail with all the force one can muster, a nail whose tip rests on the self" (Weil, 1952: 82) – a process in which martyrs excel. Simone Weil has beautifully put forward the thesis how one creates the meaning in life by renouncing all personal meanings/interests, by complete acceptance of submission to the order of the world (Sufi stations of *sabr* and *raza*). "Where there is complete, authentic, and unconditioned consent to necessity, there is the fullness of love of God" (Weil, 1956: 267). One recalls Spinoza's view of love of God by renouncing every vestige of personal interest. To have erased the claim of autonomy and getting consumed or transfigured by love and thus witnessed the truth or rights of the Other is true life and as such we need to be thankful for those who resist our false ego claims, our so-called interests.

Underhill quotes Kabir as stating that "When the I, the Me, and the Mine are dead, the work of the Lord is done," and explains why the self must be put to sword:

The substance of that wrongness of act and relation which constitutes "sin" is the separation of the individual spirit from the whole; the ridiculous megalomania which makes each man the centre of his universe.

So it is disinterestedness, the saint's and poet's love of things for their own sakes, the vision of the charitable heart, which is the secret of union with Reality and the condition of all real knowledge (Underhill, 2004: 108-9).

In *The Meccan Revelations*, Ibn Arabi succinctly states:

Now you must know that if a human being (*al-insān*) renounces their (own personal) aims, takes a loathing to their animal self (*nafs*) and instead prefers their Sustainer/Teacher (*rabb*), then the Real will give (that human being) a form of divine guidance in exchange for the form of their carnal self... so that they walk in garments of Light. And (this form) is the *sharī'a* of their prophet and the Message of their messenger. Thus that (human being) receives from their Lord what contains their happiness – and some people see (this divine guidance) in the form of their prophet, while some see it in the form of their (spiritual) state (Qtd in Morris, n.d. 20).

Ibn 'Arabī's statement in *The Kernel of the Kernel*: "You will be all when you make nothing of yourself" reiterates and sums up this point. As Marcel would put it, "I belong to myself only as I do not belong to myself, as I give myself to otherness, and create myself, come into being, and so belong to what I am." "We study the self to forget the self," said Dogen. "When you forget the self, you become one with the ten thousand things." (Qtd in Oldmeadow, 2004: 281). To be a Muslim is to surrender the will or the illusory empire of the self to the Other/Tao/Cosmic Will – or to be open to the revelations of the Other/Universe, to take heed of signs. Belief in Revelation is, in the last analysis, translatable in terms of being available to the Other, to what reveals itself, to what is the case. It involves writing off the self that obstructs, frames or interprets the Word/the Other. Religion and Mysticism are methodologies of unburdening, of learning to travel light in the world, living as if death is so near or under the shade of eternity. With these lessons deeply inscribed it is hard to find a good reason for conflict or divorce. Conflicts are autoimmune diseases that we are to resolve through better understanding of ourselves and recognizing that our very identity is dependent on the other – as Levinas has also noted.

Engaging Divergent Interpretations of Islam

Different interpretative frameworks and divergent ideological appropriations of Islam become focus of debate amongst Muslim feminists and their critics. A contemporary author has noted in this connection:

Because Islam is used against women, it is essential to engage with the religion in order to clarify misunderstandings and misconceptions among those who use the religion to oppress women. As most Muslim women seek to behave in accordance with the teachings of Islam, understanding the religion is important and liberating for Muslim women. The popularization of these alternative interpretations as well as alternative religious education in the Middle East can provide Muslim men and women the tools to advocate gender equality in Islam and through Islam. Gender equality programs need to incorporate an Islamic feminist component and religious education into all their projects, and support Muslim women in their efforts to re-engage with the *Qur'anic*

In this context it has been remarked by Azza Karam in her *Women – Islamisms and the State* that what is consistent in the arguments made by both men and women Islamists is

the dichotomy in analysis and presentation; good/bad, Muslim/Western (or non Muslim) legitimate/non-legitimate, public/private men/women. By constantly maintaining these binarisms Islamists are using certain forms reflexivity which are part of their discursive strategies and disciplinary power. To be with them is to be good, Muslim and legitimate; whereas to be against them is to be bad, Western and illegitimate (Karam, 1998:244).

Muslim Modernists have tried to question Islamist ideological understanding of women on almost all points. However, Islamic revivalists have assumed a reading of modernists or feminist

position that itself may be questioned without needing to question legitimacy of interoperation of Islam.

How much disparity and disgruntling are between traditional Islamists and radical secular feminists and how differently they perceive the world is revealed by comparison between their respective works. Nawal El Saadawi, Egyptian feminist leader, aims at complete overthrow of the established social, cultural and moral order. To quote Maryam Jameelah in her review of *The Nawal El-Saadawi Reader*, Nawal Saadawai Reader critic:

The patriarchal extended family or tribe the *Shariah* laws pertaining to women, the conventional institution of marriage and any idea of division of labour are anathema to her; elements which she thinks have made women no better than the slaves of man. She detests housework and views it degrading and a waste of time and also stifling of female creativity.... She upholds abortion and even lesbianism as necessary for women's rights Islamic/Arab history is drastically reinterpreted by her in strict conformity with Marxist dialectical materialism ... She says that all great world religions have oppressed and enslaved women without exception particularly the monotheisms. (Jameelah, 1998)

She even praises with considerable enthusiasm several goddesses of Pharaonic Egypt and pre-Islamic Arab (a) including notorious Quraishi women like Hind, as proof of the higher status of women in ancient times in contrast to the fully developed Islamic civilization. Haideh Moghissi, Iranian feminist, strongly rejects post-Revolutionary Islamist programme for its anti-feminist stance. She advocates a revival of a pre-Islamic Sassani value system in which she assumes a liberated role for women existed. As Anis Ahmed examines her work:

She belongs to the elite who couldn't see a place for themselves in post-Revolutionary Iran and had to move to the

Western world to secure a better life style. She finds no justification for the use of scarf by women nor for sexual fidelity and of confining sexual relations within a legally established family ... she also regards the patriarchal system and traditional sex roles, in most known human cultures, as a deterrent to her utopian feminist kingdom on earth. (Ahmed, 1998)

Against feminists Islamist women find no problem with any hadith including that hadith stating that where women rules there can't be prosperity. Maryam Jameelah remarks about reasons why women haven't contributed in certain areas that "such Islamic studies as *Sira Tafsir* and *Fiqh* are no place for women. The question isn't female intellectual inferiority but rather strong emotions clouding correct judgment and clear thinking about Islam." Islamists see restriction to certain spaces and even veil as a sort of liberation. Violent protests on veil in Iran keep erupting as does crackdown on nonconformists. The Taliban's stance on women's segregation and veil and resistance against it is widely known. Islamists and their critics are sharply divided on the emphasis on the role of women outside family. With Moghissi, many feminists don't find any viability for a dialogue or communication with Islamists. Most secular feminists make little distinction between Islamists and lump them altogether under the rubric of political Islam. The latter is seen as misguided at best and knows only violence at worst. Al Shall, Egyptian secular feminist refers to them as the '*mutaslimin*' [sic] for those who put on Islam. This term is opposed to the Arabic *Muslimin* [sic] which means Muslims (Karam, 1998). The term is interesting because it indicates that Islamists are thus denied the legitimacy and validity of their claims to the religion. Thus, we see, as Azza Karam states:

Islamist discourses, however, aren't the only ones that carry out exclusionary policies of the other. In fact, feminist is also

exclusionary. By believing that the other suffers from a false consciousness, whether they are Islamist, Muslim or secular feminists, they are effectively delegitimizing the discourse of the other and excluding each other (Karam, 1998).

Secular feminists have marshaled impressive arguments against Islamists but latter have responded by still more impressive populist though not academically rigorous literature. However, practically speaking, the former have succeeded in dictating official policies of many states. Traditional Islamic consciousness is hardly sustainable in capitalist global market, it being strategically coerced and persecuted by very subtle disciplinary mechanisms. Eyebrows are raised against “reactionary” assertion of Islamic identity. Many Muslim women feel embarrassed/no need to cover the head, not to speak of wearing *niqab*. Some choose to wear Banazari dupatta (which half covers and half reveals hair) which has been ambivalently read as their loyalty to or betrayal of Islam and the West respectively. They appear as half committed to both conservatives and liberals or Islamist and Muslim/secular feminists.

What is missing from the major currents of both secular feminist and Islamist thought and criticism is serious attempt at dialogue and mystical understanding of the self that transcends gendered structure or framing of the discourse on the one hand and binary oppositional logic that undergrids much of feminist politics on the other hand. We see major theorists either taking antireligious secularist (humanist secularist) standpoint that questions received traditional/religious understanding of the gender and women on the basis of its supposed complicity in patriarchal and other exploitative modes or struggling to engage with emancipatory potential of received traditions/religions in a way that has not been well received by major influential religious or traditional voices. The question of female identity has been primarily framed in

political or socio-cultural terms. Myths, folklore, religious and literary texts have been accordingly read to support one's particular brand of politics or women centric politics. What is especially remarkable in this scenario is absence of major Muslim novelists who are also rights activists or feminists who find audience outside the feminist or gender centric critical lens of academics and have great fan following across the world and are heard on more general or wider issues. Such writers need to be explored for providing a more universal, pluralistic and authentic version of Muslim women's agency and they put in dialogue with Islamist and secularist especially as they inform rights activism in general and women's rights activism in particular. This work will state some propositions for consideration of various bodies or organizations that have a stake in women's issues. As such we revisit select issues and develop series of theses that lead to actionable deliverables to push forward the case for achieving justice for the oppressed. We will focus particularly on targeted action and theoretical clarity on a few issues that have immense bearing on the cause of Muslim women. We need to ask why Muslim feminists haven't been able to give due attention to the practical problem of organizing women into communities that could address their issues. We need to puncture strong judgmental attitudes of various interlocutors and emphasize need for more humility with respect to ideological other for communicative dialogue. In this work we don't buy existing paradigms focusing on what is wrong with the ideological other but try to develop what remains to be fought or won together despite theological or ideological differences. The best of Islamic heritage consists in co-existing of theologically, mystically, philosophically and juristically diverse schools and working arrangement with the other. Even the absolute other (except when perceived as political threat to the very existence of the State) who disregarded key

elements in Islamic doctrine has been engaged and we find heretics given their share of space in intellectual and administrative elite of the Islamic world. Abu Bakr Razi's case is an illustration.

Some issues of domestic violence and family conflicts and such issues as divorce, standardization of *nikah nama* and legal safeguards for gender justice need to be discussed as well for evolving a joint plan for action. Given certain things – theological, juristic and socio-political – and ideological currents of feminism and its Islamist critiques are already extensively discussed in numerous works on Islam and women, we primarily orient our discussion here to evolve a consensus on concrete action plan to address women's problems. Largely eschewing more academic or scholastic debates, the work is meant to address the deadlock of polarized thinking or impasse in divergent ideological currents invoking Islam and feminism in order to move forward for solving the problems that are recognized by all. Given women are at the receiving end in the current power structure and there are calls for resisting injustice deeply entrenched in different societal and familial structures, it becomes imperative for all of us to take a review and call for action and support every movement for greater justice and flourishing of women. This aspiration can't be debatable though the road to it is and that necessitates review or examination of key attitudes in this connection. This work is precisely an attempt for this end.

Chapter-1

The Plight of Muslim Women: A Possible Way Forward

Suffering, thy name is woman. The idea that a woman's lot is not enviable has been put forth across traditions in different ways. People talk about the pain of exile. But few note that it is a destiny for most women. Women are homeless. They have only houses. They have parental home that is not theirs really. Their new home is husband's or his parents' home and her house and not her home. And even this house may take many years to get procured. What a predicament it is to live in perpetual uncertainty. Her parents have thrown the burden away, in a way, the day they have married her off. Her new residence can never be her home in the sense that she can never be sure if someday it pleases her husband to tell her that she can't stay with him.

Without confounding any rights movement for feminism and without commenting on feminism as such I want to note the key statements of certain important texts that state the case of gender discrimination.

Engels in his *The Origins of Family, Private Property and the States* sought to uncover the connection between gender violence and class. As women are physically and psychologically weaker (made of a stuff that is designed to realize finer, more beautiful things and nuances of life) men found it easy to oppress them, to convert them into virtual slaves. As might is right, women had no

choice. This account has been deservedly criticized on many grounds but the fact remains that women suffer violence because men often care only for their self interest and have hardly any scruples to see them as objects of libido, as objects that appease their instinct for domination. But here the problem arises: to what court can women appeal to get justice? To answer this we need to turn to value centric paradigm. Muslim Feminists have found that in Islam. Secular feminists don't find invoking Islam helpful for women. However, it is possible to dig deeper and ask if the aspiration converges and one may well eschew certain theological or non-theological idiom for expressing our concern for justice and flourishing (that we find at the heart of the Biblical Prophetic mission and the Quran) here and now and try what Habermas calls communicative dialogue between rational agents that we would all like to be characterized as. It is hard to find denial of value dimension that theological idiom seeks to encapsulate in secular feminists – instead we find burning passion for justice and concern for flourishing in them. Keeping our insistence on invoking certain familiar language of theology or its counterpart or critique aside, we can still, in democratic setting that is mostly assumed to stay or perceived as unavoidable context of our living in a world of difference, stick to the basic contours of what Socrates called dialogue that requires the virtue of listening and moral magnanimity to suspend one's prior judgment and move forward with our collective action that is required to realize our aspiration.

Simone de Beauvoir in introduction to her classic *The Second Sex* observed:

In truth, to go for a walk with one's eyes open is enough to demonstrate that humanity is divided into two classes of individuals whose clothes, faces, bodies, smiles, gaits, interests, and occupations are manifestly different. Perhaps these differences are superficial, perhaps they are destined

to disappear. What is certain is that they do most obviously exist...humanity is male and man defines woman not in herself but as relative to him; she is not regarded as an autonomous being. ... And she is simply what man decrees; thus she is called 'the sex', by which is meant that she appears essentially to the male as a sexual being. For him she is sex – absolute sex, no less. She is defined and differentiated with reference to man and not he with reference to her; she is the incidental, the inessential as opposed to the essential. He is the Subject, he is the Absolute – she is the Other (de Beauvoir, 1949).

She further complains: "They live dispersed among the males, attached through residence, housework, economic condition, and social standing to certain men – fathers or husbands – more firmly than they are to other women." "Legislators, priests, philosophers, writers, and scientists have striven to show that the subordinate position of woman is willed in heaven and advantageous on earth." "Since ancient times satirists and moralists have delighted in showing up the weaknesses of women." And

In proving woman's inferiority, the anti-feminists then began to draw not only upon religion, philosophy, and theology, as before, but also upon science – biology, experimental psychology, etc. At most they were willing to grant 'equality in difference' to the other sex. That profitable formula is most significant; it is precisely like the 'equal but separate' formula of the Jim Crow laws aimed at the North American Negroes. (de Beauvoir, 1949:12)

There is no easily sought cure for women's problems, said Iqbal who had himself suffered in domestic life and had some complaints from women (and vice versa) he knew. Many talk about and fight for the dignity and rights of women but sadly very few women may be said to be happy. It is hard to find a woman who hasn't been mistreated and whose dignity hasn't been hurt.

Physical violence may have decreased but the soul and mind have been bruised, even hurt beyond repair in some cases.

Prophetic traditions are used to justify various attitudes that are derogatory of women even though the Prophet grounds the very idea of freedom and the religion he vehicled was defined by the slogan for equality. The Prophet (PBUH) whose last words were take care of women has been framed to justify injustice against women. Prophetic traditions are used to justify lesser rationality of women. The perspective of such Sufis as Ibn Arabi about pre-eminence of women at various planes including the spiritual has been little known or appreciated.

Hegel, the famous rationalist philosopher, claimed that women did not attain the intellectual level required for the practice of philosophy and science. He further stated that the difference between man and woman is like that between animal and plant, since women remain at the level of opinion. He claimed that a state ruled by a woman would be endangered. Moreover, women cannot attain to the universal ideal, but rather turn universal ends to private ends. It is Hegel and other patriarchal philosophies that find legitimation in most of works on Islam and women. Muslim feminists have deployed all the tools at their command to explain away what they consider problematic hadith demeaning women. This is in contrast to those traditional scholars who don't find anything problematic about such *ahadith*. It isn't possible to discuss in detail the Islamist response to feminist critics of hadith though one may note the point that it is hard to escape the conclusion that there is inconclusive evidence to consider these *ahadith* at face value as authentic statements that could be unproblematically used against women's larger role and abilities in a host of areas. Cultural and political factors have influenced evolution/reception and interpretation of *ahadith* deemed problematic by Muslim feminists. Fatima Merenessi, Amina

Wudud Muhsin, Asghar Ali Engineer, Khalid Abu al-Fadl, Javed Ahmed Ghamidi, Farhad Shafti and many others have discussed most of key *ahadith* in detail in this context and found traditional interpretation of what they deem as anti-women ideological framing of them indefensible. Although Maryam Jameelah has cast doubt on the very ability of women to engage with the science of hadith (a claim that is hard to defend in view of voluminous work by Nadwi on women hadith scholars), we find many men converging with feminist reading of these *ahadith* and redoubtable historical and anthropological evidences to substantiate alternative version than the one conservative schools bring on table. It is in the fitness of things to keep debate open and not use the authority of certain solitary narrations where justice and flourishing appear to be jeopardized. The force in feminist critique of Islamist framing of women related *ahadith* may be judged by the following remarks about Merenessi's approach and quotation from Engineer. First about Merenessi:

Fatima Mernissi decided to reexamine hadith in which the Prophet had allegedly declared that women were unfit to govern. She could not believe that a man who was so respectful and considerate of women during his life could have made such a negative remark. Using techniques of traditional Islamic scholarship on hadith, she found reasons to question the credibility of the chief transmitter of this report, who seems to have been biased against the Prophet's wife 'A'isha.

Engineer writes:

Now what is important to note is that anyone who even met the Prophet once is given the status of a companion and he becomes entitled to report or narrate what he heard from the Prophet. There were many who either had their own prejudices or limited memory or limited understanding. Many were illiterate Bedouins who perhaps were not even able to comprehend what the Prophet said. There were even instances of having heard partially, out of context, and reporting the *hadith*.... Even a companion like Abu Hurayra once narrated a

hadith, which he had heard partially from the Prophet. What he heard was highly derogatory of the status of women. Fortunately, Hadrat Aisha, wife of the holy Prophet, corrected him. In many instances, perhaps there was no one to correct and the *hadith* circulated (Engineer, 1999:6).

Very elaborate and sustained engagement with ideological framing of supposedly anti-women *hadith* is in Khalid Abu al-Fadl that is discussed in his work *Speaking in the Name of God* and has been treated in another chapter of this work.

Gender violence is logical implication of degenerate patriarchal system (and its anti-male secular feminist reaction) that has forgotten metaphysical meaning of symbolism of Adam and Eve and masculine pole of Logos and feminine pole, of women as soul, of individuation as proper integration of masculine and feminine principles that constitute every human being. Back home if we note it is painful record. Women are mostly denied property rights. Daughters-in-law are treated as objects. Seeking to live in a separate home that is her right recognized by Islam is covertly or overtly discouraged. She is not given the love – or somehow she doesn't feel receiving it – in her new house. I hardly know any women who can resist tears if one has sympathetic ears to listen to their story. One can write a short story on every women I encounter who has stories to tell of her pain, exile, discrimination, mechanical labour, denial of opportunities. There is so much toxicity in relationships and we see a sense of suffocation and pathological individualism struggling to assert and yet forced to feign it transcends it.

Regarding domestic chores one remark may suffice: Since we have failed to infuse love in domestic work and failed to be productive outside domestic space, women are condemned to do domestic chores and repeat it day in day out – a hellish routine that would kill a man if he were to do them. Hell is repetition, mechanical repeating of any activity without involvement of our soul in it.

How can soul be involved in domestic chores and work be one truly celebratory is a question that our scholars have to answer.

We are living in a complex world where despite better means of communication we are increasingly divided against fellows on ideological grounds. Women's cause suffers from many challenges in which I include the crisis of hermeneutics and class divisions disguised as faith based divisions. This difference amongst Muslims often implies political division and this dilution of struggle for fight against common enemy – social injustice. We can agree on certain principles of action and also form a body or united front to fight our cause.

Almost every second Muslim woman has something to be complain about – denial of agency, access to public space, legal and political rights, domestic violence, victimization in divorce and inheritance. We can hardly find a woman who hasn't been mistreated and whose dignity hasn't been hurt. Physical violence may have decreased but the soul and mind have been bruised, even hurt beyond repair in some cases.

From educational to political spheres, Muslim women aren't able to present a great record. Very few are quite productive from economic and social perspectives. We accuse women of being mean, exploitative and what not and all these are attributable to environment they have been nurtured in. God didn't make them so. At many places, out of desperation they go for seeking practitioners of black magic – plotting against their fellow family members, especially in family of in-laws. Sermons in mosques focus mostly on women, mostly on defying hijab but not on their lack of access to social justice or inclusion.

Isn't it universally acknowledged that the rights Islam gave to women have been in practice denied by Muslim communities? Is there any one Muslim woman who has no genuine complaints from

Muslim society with regard to her objectification, commoditization? How sparse are the names of Muslim women minds in the history of Islamic tradition in different fields compared to men? Isn't it the fact that in practice many women have been denied agency?

Social issues and cultural expectations have been at the heart of problems leading to family conflicts, violence, late marriages and stress on purse. Let us discuss certain issues that have been at the heart of the problem.

Let us note a few problems expressing the plight of women in Indian subcontinent.

Malevolence of Family Conflicts

Most families in Indian subcontinent seem to be at war within, a war between mother-in-law and daughter-in-law, between the daughter-in-law and groom's sisters and between the husband and his wife, as an aftereffect. There are tragic stories to narrate in almost every house. Only exceptionally will there be a mother-in-law blessing her daughter-in-law and vice versa. Divorces are increasing. Parents are often the worst victims of this conflict and there is pressure on limited resources for accommodating new houses. Individualism is the "cancer" of the soul that is eating the vitals of our society. There is universal mistrust about groom's family. Brides don't feel that new house belongs to them. They think only their husbands or children are really theirs.

Enormous popularity of Soap Opera culture and perception regarding black magic attributed to either party is seemingly becoming a norm. Explanations and counter-explanations from either side are such confusing and ineffective that it makes possible truth and reconciliation impossible. We talk of state level or national level or international level dialogues on various issues but

miserably fail in intra-family dialogue. Evil is within us. And everywhere we see reflections of this evil of mistrust. Fundamentally all conflicts, especially intra-family conflict may be traceable to ego tussles. However for contemplating any solution to seemingly irresolvable conflicts between perceptions of house vs. home, mine vs. others, we need to dig deeper. Let's try to get some facts right. Simon de Beouvaire in her influential book *Second Sex* discusses psychological change in mother-in-law immediately after she gets a bride. Mistrust is unconscious if not conscious as well. Even if we don't consider Freudian argument for jealousy between same sexes we can easily conceive strong psychological and other grounds that lead to certain distrust. There is no question that love does get divided after marriage. Previously parents were the sole object and now there is wife and then children and all kinds of pressures to settle in life. And the deep drive for separate individuality and family in the bride further complicates the problem.

We often curse the Western society for such institutions as old age homes. Fair enough! But what about the huge neglect that overtly or covertly our parents are subject to, generally speaking? The Western solution has been embracing total autonomy. Our dilemma is we are neither able to embrace values of extended family nor autonomy of nuclear family. It seems there is not going to be any easy going solution in given conditions. Perhaps we don't need simple social engineering or legalistic approach. How tricky and problematic can be mere legalistic view is evidenced by the following anecdote recently narrated by one of the most respected *muftis* of the Valley.

A woman with her husband came to *Mufti sahib* and asked where in the Qur'an it is mentioned that daughter-in-law should serve her mother-in-law. He replied nowhere. Then she said why her husband doesn't understand this point. The husband had nothing to

say. The *Mufti* requested the husband to have separate audience with his wife for few minutes to discuss a point. He was allowed and he told the woman that his husband is legally entitled for a second wife and he may do it for serving his mother that you are refusing to and it is nowhere in the Quran written that you can stop him. The woman was speechless and told him that she will continue to serve her mother-in-law as my husband requires but he should not marry another woman to serve his mother. And immediately the couple went reconciled.

It speaks volumes about fragility of purely legalistic paradigm and need to invoke principle of ethics, of *Ihsan* to run the family. Love and not law has to be at the centre for healthy relationships.

It has all been said that a mother's love prepares 2.5 billion breakfasts everyday for children. If there is love there is no need to ask for reward, for recompense. There is no blame. There is no strain. One can serve, as saints do, even strangers, not to speak of husband's mother. The question is how we teach people wisdom? Wisdom is love applied.

Most philosophers and saints locate in heedlessness or ignorance key to death and would appreciate with Socrates that no man or woman is willfully bad. If one really knows what is good for one's soul one will never harm it. So if we teach people philosophy and ethics and help them to know their own selves, it demands nothing but love and are sustained only by love we solve the problem of other in mother in law vs. daughter-in-law conflict and other similar conflicts.

The question is how do we propose to teach people what is really good for them as sermons don't prove to be effective these days? I propose making philosophy and mystical poetry that embodies profound philosophy essential at every level in education. That is time tested mechanism. Ordinary education is not helpful. Those

who read Plato or Lao Tzu or Confucius or Ibn Arabi or Nagarjuna can't ask for reward for virtue. They know virtue is its own reward. And one only serves oneself while serving others. Now the question is who will teach us this virtue? Let us examine in more detail the problem called women's life in our setting before we can muster courage to chip in for some resolution of the problem.

For most women living here, life is a veritable hell. To live as a daughter is hell, to leave one's home for the spouse's home is a bigger hell. To continue to live in alien house (that rarely becomes home) is like serving a life sentence. Most homes are a hell for daughters-in law. Mothers-in-law have their own hell to keep burning. But let us today focus on the hell of our daughters who suddenly get deprived of the status as daughters and become only legal subjects, who are no longer humans.

One daughter-in-law reaches her home by 6 pm where everyone including the mother-in-law and husband's brother are waiting for her to prepare tea and dinner for them. She is unable to take tea before 7.30 pm. Kitchen odour must not spread to irritate anyone in the house and she must be very careful in the kitchen. Another has to buy the milk she boils that curdles for no fault of her own. Another is caught between two dictators – mother-in-law and husband who make it a point that to not help her in any way in domestic chores as if it is her business only. Another can't keep her daughters in the house for the day and has to take them to her parent's home in the morning and then again take them back in evening. There are countless stories that constitute crimes against women. Crimes against human dignity, crimes against God, crimes against all civilized existence. It is too painful to contemplate countless stories of brazen human rights violations that are, in psycho-spiritual terms, more damaging than often publicized cases of rapes and acid attacks. There are cases that constitute, so to speak, acid on the soul that destroys one's whole personality.

There are tears, tears and tears. One can't resist tears while listening to conversations amongst women about what happens to them.

Isn't it the case that most of us consider domestic work to be a daughter-in-law's business? Isn't it a fact that less than 5 per cent of women are respectfully treated as persons by their in-laws? Isn't it the case that there are sometimes contradictory authorities of spouse's father, mother, sister and brother that she has to contend with? Isn't it the case that a woman has often none to share her heart's pain with the whole world? Prick any daughter-in-law and a flood of tears may burst forth.

Once it was a practice that bridegroom had to share all the expenses including those for clothes and chef's expenses as is required in Islam. Once it was a community and not an individual that felt a daughter is to be married. A girl's father hardly felt the crushing burden that marrying a daughter now has become.

I am not advocating sticking to legal definitions that may not require a daughter-in-law to work in husband's home, but pleading for considering them as humans first. Give them love and they will, most probably, serve husband's parents with love. Girls who are married are denied the right to have a separate home, right to enjoy life at the expense of husband's salary, right to be herself. Love cancels all demands, all duties.

Daily, we chose not to take notice of it. It is our sister's, our daughter's turn anytime. Can we do anything about it? I think if we don't, we will become like the Europeans who have dispensed away with the whole baggage of mother-in-law and daughter-in-law and their eternal conflicts and perverse behaviour. Elementary ethics is lacking in these cases. Who will teach us this?

One way is to teach in school and by example the edifying and sanctifying value of service. People should outcompete one

another in serving and resist to be served. The Prophet of Islam (SAW) set great example of serving the other and helping wives in family chores and taking a lead to do even so called menial tasks himself. To serve is saintly and expect to be served betrays ignorance of one's own self and the Other who is virtually God. One really serves God only. In serving do we truly find ourselves. To be lords of our selves, to teach them to worship through service, the yoga of work is what isn't taught in schools and other community settings. We aren't. Only God is. And royal road to one's Self is service.

Violence against Women

We have one of the most violent societies with respect to women. All of us know cases of violence against women. All of us are responsible in some measure. Have we participated in any movement that targets this issue? Aren't we violent in our own homes? Do we recognize her rights, her right to be herself, her right to choose modest way of dressing, her right to pursue education and travel to fulfill her dreams, and many more such rights? To put my case clearly let me state some of the lesser known points for consideration of the State, State's women commission, NGOs, social activists and religious authorities who can make the difference. Islamic law doesn't *oblige* (though *ihsan* is what it calls for from everyone and as such conflict of interest with other extended family members wouldn't arise) daughters-in-law to:

- Do domestic chores in husband's family.
- Accept any dictation regarding preparation of meals, washing of clothes from either husband or mother-in-law or any member of husband's family.
- Share her salary with husband or his family.

- Request permission for staying in her parent's home from mother-in-law.
- Stay in the house of husband he shares with his parents/brothers (though it is not intended to promote nuclear families but only to protect women from violence when she demands separate house.)

These aren't listed to further squeeze the already fragile shared space in larger extended family. The women are ideally enjoined to take her new home as her own and treat her mother-in-law as mother and all this could be realized if she didn't feel alienated, intimidated or otherwise harassed and dictated and were treated on the principles of love and mutual respect. The idea is not intended to further disrupt already fragile domestic harmony and privilege rights over duties but only to foreground innumerable cases of violation of fundamental right to life and freedom of women in our socio-economic set up which Constitution guarantees everyone. We need to recall that Gandhi emphasized that there are no rights but only duties, and from duties well done, issue all rights. The husband and his mother and father don't do their duties, assume their daughter-in-law is their servant expected to do domestic works etc. and how can rights for them follow. Any way it is not their legal right that their daughter-in-law serves them. They could win the heart of daughter-in-law so that she serves them with all her mind and heart. The daughter-in-law is not supposed to woo husband's family into confidence if she doesn't like this. She can. Although law may not require, *ihsan* warrants putting the other before the self. Domestic chores done with love constitute a joy. Mother-in-law treated as mother gives a joy that no nuclear family or individualism can give. Joint family, properly regulated, is not antithetical to the Islamic ideal of cooperative community centric living. The idea of a house of her own, nuclear family, has its

genesis in the West though it can be appropriated to carve a space where individual nuclear families and individual rooms of families. Keeping in view structural violence and disparity in our system of mores, it is suggested:

The lawmakers should pass a bill that legislates against demanding any gift in terms of jewellery or costly cloths from girls during marriage process. Since the people manage it so badly, let the State take special marriage tax from people from age 25 for late marriage and let it also give from State resources any gold item to all families and ban gold exchange in marriages. Extensive campaign for naming and shaming those who indulge in good exchange needs to be designed. There must be marriage insurance so that none suffers from want of financial resources for getting married. Under right to early marriage we can create a scheme for disincentivizing late and expensive marriage. We can think of such measures as thirty percent tax on all expenses on marriage beyond one lac. Any person (husband, his parents or any family member of husband's parent's family) demanding or accepting (which often supposes covert or overt pressure from other's side any gift in terms of jewelry, clothes, cash, car) should be strongly punishable by law in the form of very heavy fine that victimized girl should be entitled to. There are innumerable cases of suicide and delay in marriages because the would-be bride is unable to arrange heavy gifts for her new family.

If we are unable to press for such or similar legislations we would be complicit in the sorry state of affairs for women. It means vast majority of women shall continue to suffer for no sins of their own and women's commission is a mute spectator only. It is the society which is guilty for not taking notice or action against thousand and one forms of violation against women's rights from the day they born and especially from the moment she is engaged in wedlock.

Women, generally speaking, are prevented from inheriting property. Various excuses are given by her kith and kin to prevent it. It must be legislated that they give written consent in the court of law while adjudicating any inheritance/land transfer case from parents to children. There must be created some protection in *nikah nama* or other important document.

Some new document be introduced for checking abuses that should be binding on every couple. Or may be existing *nikah Nama* may include provisions like the following:

- All the parties viz., husband, wife, parents of both fill an affidavit which declares that no jewelry/cash/vehicle/costly cloths/gadget/refrigerator etc. will be or has been accepted either as a gift or in any other form from bride or her family. An oath statement to this effect should be signed.
- No feast has been served from bride's side for any kind of big *baraat* accompanying bridegroom. Except for modest feast for her own kith and ken that come on the day or night of marriage and for a few and, in extreme cases, dozen or so guests from groom's kith and ken that may visit bride's home from quite a distance and expect to be given guest's treatment, other visitors should be offered simple *qahwa* or tea or juice only and ideally for this community should keep some allocation of budget. It is not just parent's but community's responsibility that early marriages and needful facilitation for the same be arranged. Marriage celebrations should be community affair for best flourishing of relationships and succor of parents and making marriages easy. The great practice of keeping soft loan available to parents on marriage in Kashmir needs to be widely adopted and spread across regions. Islam wishes that bride's guardians or parents need not spend a penny on

any such function and these functions are to be financed by bridegroom's family. The parents of the girl can give her whatever they wish as dowry but then that is personal property of the bride and not of bridegroom or his family.

Impasse of Divergent Interpretations and Judgmental Attitude

Social problems and conflicts and gender injustice are attributable to divergent perceptions of people or divergent interpretations or value judgments of different stake holders. Given women are themselves divided on the question of faith and rights and have interiorized certain things that help perpetuate injustice against them, we need to examine the problem of divergent interpretations for which comprehensive engagement with theology and jurisprudence and contemporary approaches is required. We need to particularly see how far Muslim feminist scholarship can help in addressing the problems of women.

In addition to critiquing the theology that underpins anti-women readings of the Quran, women's and feminist scholarship also takes issue with their methodology, in particular, with the interpretive practices of the exegetes of the classical period whose work has acquired a canonical status. These exegetes, it is argued, adopted a 'linear-atomistic' approach in which they studied "one or a few verses . . . in isolation from the preceding and context and historical evolution of agency and subjectivity of modern subject and women." As such number of modern Muslim scholars have critically engaged with traditional corpus framed in limiting patriarchal and other ideological frameworks.

The key texts and arguments of Muslim revivalists are perceived by their critics as amounting to denying women's agency and, against this, there is an attempt to reclaim little appreciated Sufi

and Urdu literary views on the agency women. While noting and reviewing great heterogeneity in various responses – both traditional and modernist – one sees there is a need for respecting diversity of voices and not prevent meaning closure. To label a position Islamic or authentic is itself to take a position that one could question or deconstruct. Both ‘Islamic’ and ‘progressivist’/feminist labels are ideologically loaded and need to be put in perspective, not necessarily historical one only. With a particular focus on some influential modern Muslim feminist scholars who have endeavoured to undo patriarchal interpretations of Islam by rereading both the scriptures and significance of history of absence of women’s agency in the history of Islam, one needs to question predominantly theological approach deployed to delegitimize emerging women centric readings of Islamic history. Sufi and modernist readings of select social and familial issues need to be revisited for questioning the more popular and dominant view of women exclusion or denial of agency.

Despite much debate on rights of women little consensus has been achieved. The result is we have strong polarization regarding almost all important issues facing women vis-à-vis Islamic law and there is virtually a deadlock between religious authorities and modern educated women and it appears that we are facing strong reactions against religion itself in this backdrop. On the one hand we have much of religious scholarship wedded to medievalism defending archaic legalism and finds almost everything from opting for jobs and occupation of public spaces and pursuit of creative careers to abandoning veil very objectionable and imposes a lot of legal restrictions on expressing individuality or social self. Most modern educated women and even less educated or illiterate sections find all this simply impossible or extremely embarrassing to apply in their lives. On the other hand there are very aggressive secularist voices campaigning for complete overthrow of religious

law or framework and almost hysterically lash at traditional symbols like hijab as part of the sexual apartheid and reject *sha'ria* law as the scandal that needs absolute rejection for the sake of social justice. Between these two extremes of Islamists and secular feminists we have so-called moderates or reformists who are facing the brunt from both sides. So how do we adjudicate between these rival views and move out of hermeneutic impasse?

The battle over interpretations is inconclusive and the sad fact of oppression against women continues. A divided house of Ummah can't fight oppression that is both a product of interpretation of religion and unholy alliance between expressions of piety and power. So what to do in the face of this dilemma?

We can start work on legal models or concrete agenda for fighting oppression. I think here there is large area of agreement. It is agreed that Islam can't be imposed and has to be freely chosen. It is also agreed that laws are there to serve man rather than the converse. It is also agreed that there are freedoms to be won, violence to be rejected, divorces to be penalized or regulated, rights mostly ignored by Muslims throughout centuries. Can't we evolve, using insights from Socratic and Habermas's ideas of communicative dialogue, common minimum programme? Let us frame United Women's Front for Justice. Human rights though grounded in transcendence are nevertheless to be won on earth using earthly or secular means. As such we do need to evolve consensus on actionable proposals including efforts for awareness on key issues.

I see no possibility of evolving consensus over interpretation of religion or *shariah*. So how do Muslim women take the task of fighting for their rights? I suggest not using the idiom of juristic formulations but of values that are enshrined in all great constitutions of the world. I think all the rival factions can agree

that social justice is an ideal that should be pursued. Justice is a transcendental value with earthly applications. Secularists are emphasizing earthly application of the Idea of Justice while Islamists wish to be true to the transcendental idea of it while often fail to take critical view of supposedly authentic earthly reflections. Earthly reflections are nothing in absence of heavenly Sun or archetypal idea of Justice. We can agree that our faiths and perceptions can differ and have some subjective bias. All interpretations are human. None can claim or does claim finality. Those who claim finality do so or can do so really only for the Idea of Word or Scripture. We can agree that we need to be pretty sure if interpreters or authorities have truly intended the given meaning. It means certain space for doubt can never be dispensed with even die hard core Islamists. Secularists are admittedly more charitable on plurality of interpretations or approaches. Tamara Kharroub, building on al-Hibri, has pithily summed up the problem with interpretations and our failure to outwit in practice patriarchal framing or context:

Interpretations are, after all, interpretations. While some may agree with the alternative non-patriarchal interpretations of Islamic text, others may continue to believe in and use the misogynistic prejudiced readings of Islam. Moreover, as al-Hibri herself points out, interpretations are subject to the influence and control of powerful entities and their interests. While the call for alternative re-readings of the *Qur'an* is certainly imperative, empowering, and liberating for Muslim women, national legal systems are likely to remain welcoming of the patriarchal Islamic readings, for various (and rather obvious) reasons. In addition, secular women living in Muslim countries do not have alternative legal systems under such frameworks, and therefore must abide by religious interpretations they might not agree with. As such, while these non-patriarchal Islamic interpretations are necessary for those who choose to act in accordance with their faith, non-religious legal systems must be made

available for others (Way out proposed by her reflecting modernist feminist stratagem is presented below and one may ask if anyone can accept it from Islamist/Ulama camp.

Based on the above point, a separation of religion and state and a legal system that grants women full rights and freedoms can be incorporated into the commanded change to the dominant patriarchal social and religious systems. While most Muslim scholars reject what they call the external imposition of the universal models of gender equality on Muslim societies, this dichotomous framing of external vs. internal is rather inaccurate and even misleading. These universal models of women's rights are based on basic principles of freedom and equality and many women and organizations in Muslim countries are heavily involved in these international efforts. The most recent international legislation regarding gender equality is the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted in 1979 and ratified by 189 states, which is comparable to a bill of human rights for women. All Arab countries have signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) but with so many reservations that defeat the purpose of the convention. Meanwhile, Arab and Muslim countries continue to impose some the worst discriminatory daily practices against women in the world, with religious, social, and legal justifications. While religious reform and alternative interpretations are an essential part of the change process, international efforts and the progress they have achieved need not be overlooked.

As such, the gradual change to these multi-dimensional patriarchal systems must be a composite effort that incorporates feminist re-readings of the *Qur'an*, social and economic change, and legal reform based on the principles of CEDAW (Kharroub,2015).

Is it possible to have a dialogue between Islamists/Ulama and feminists of diverse persuasions pushing for gender equality and rights paradigm upheld by CEDAW? How far can we carry the consideration for equality oriented feminist approach and dovetail traditional male centric family leadership and divorce initiation or other clauses for evolving a consensus? It is rarely that stalwart Ulama and Muslim feminist scholars sit on a table and attempt to arrive at consensus. Or we must be content with current deadlock and mutually dismissive attitude of both camps? Perhaps, as this book would attempt to show, there is possibility of evolving at least common action programme for women of diverse persuasions to move forward. Despite disagreements on theological and other grounds and divergent framing or interpretation of key verses, work in practice on common minimum programme can continue.

The book examines key texts and arguments of Muslim revivalists and reclaims little appreciated Sufi and Urdu literary views on the agency of women. While noting and reviewing great heterogeneity in various responses – both traditional and modernist – it argues that there is a need for respecting diversity of voices and not prevent meaning closure. To label a position Islamic or authentic is itself to take a position that one could question or deconstruct. Both ‘traditional’ or ‘Islamic’ and ‘progressivist’ labels are ideologically loaded and need to be put in perspective, not necessarily historical one only. With a particular focus on some influential modern Muslim feminist scholars who have endeavoured to undo patriarchal interpretations of Islam by rereading both the scriptures and significance of history of absence of women’s agency in the history of Islam, the book seeks to question predominantly theological approach deployed to delegitimize emerging women centric readings of Islamic history. Sufi and modernist readings of select social and familial issues are elaborated to revisit the more popular and dominant view of

women exclusion or denial of agency. Give we are living in a complex world where despite better means of communication we are increasingly divided against fellows on ideological grounds. Women's cause suffers from many challenges in which I include the crisis of hermeneutics and class divisions disguised as faith based divisions. This difference amongst Muslims often implies political division and this dilution of struggle for fight against common enemies – wrong view of the self in men and women and social injustice. Then I discuss if we can agree on certain principles of acting and also form a body or united front to fight our cause. Value based legal codes will need to be formulated. In the following pages we propose to attempt to explore possibility of undertaking this task.

Chapter 2

Rights or Duties First?

Fulfilling the Duty towards the Real/God and Fellow Humans

Most of the problems in interpersonal relationships and conflicting claims about rights and court cases can be traced to problematic understanding of the self and its relationship to the Ground of being or God. God designated as Reality in Sufi parlance in light of the Quranic characterization of Him as *Al-Haqq* is the Centre and End of all creation and it is in being true to God that one can be true to oneself. For those who identify with Islam at cultural level only and eschew any faith in personal God we can propose a trans-theistic ethic and spirituality that doesn't need explicit theological commitment but is committed to justice – the ethic of duties and rights – that committed Muslim women uphold. It is evolving consensus on this ethic that both religious and secular factions and those classified as Islamists and feminists could agree upon. The duties or obligations towards God can be best formulated in terms of service to God's creation though personal relationship to God can't and needn't be debated. However one of the most certain indicators of one's piety is one's humility and effacing the self in relation to the other. The greatest joy is losing oneself in the other. Service for the other is the royal way of karma

yoga or path of service for attaining realization or proximity to God. Saadi has well formulated the definition of *tariqat* as service of people. Sufis have been running free food and accommodation service for all in shrines. Given the self owes very identity to the other and one achieves subsistence or baqa in the Real through dying to the self (*fana*). Saints – the friends of God – display exemplary character and become source of great good for the world. Women saints of Islam have created lasting legacy in social service sector. We need to elaborate the basic premise about the self and other to put women's obligations and rights in perspective.

Given most problems of women do have a connection with managing finances, financial security to vulnerable women would help solve most problems. However, before we discuss finances, we need to remark that proper relationship to God means no attachment to the world or its wealth and comforts. It gives greater joy to serve than to be served. And regarding the point who is responsible it is fitting to recall the point made in Dostoevsky's great work *The Brothers Karamazov* that "we are all responsible and I am most responsible" and the moment one understands this, the world turns into paradise. Women who are prone to complaining against husbands have deep down a problem in understanding who they are and who the other is and how it is God who is looking at oneself from the face of the Other or one who needs us. A sacred tradition often quoted by the Sufis implies God is addressing us or beseeching our attention through every needy person. We are here, according to religious traditions, not on holiday but winning souls. An odyssey of soul making is what this life is, as said by Keats. We owe to everyone who is somehow connected to us something that we need to graciously return. Gratitude and love for all is what Jesus taught and saints keep reminding us about. The Quran defines faith in terms of gratitude. Moral and spiritual life is one of being open or available to the

other. Simone Weil defines God, echoing Sufis, in terms of “attention without distraction.” We may even recall that major secular thinkers and non-theistic philosophers such as Heidegger have advocated meditative modes or sharpening of awareness for fulfilling human vocation. Atheistic mystics such as Bugbie and even New Age atheists such as Harris have propounded these modes of awareness for what may be called secular mode of salvation. These become possible when one can achieve certain degree of detachment from worldly desires and the calculus of gain and loss or pleasure and pain. Major reasons for marital or family conflicts include, ultimately, an attitude of having in place of being, laziness, addiction to comforts and loveless lustful attitude. Failure to respect and nurture a relationship is primarily a problem in education and character building. Those who are truly conscious of human dignity and understand how God’s best manifestation is in women’s face, as Ibn Arabi has argued, can’t imagine to inflict violence on women. It is the science of conflict resolution and anatomy of human aggression that need to be taught to couples. Once divorce was rare as lesser expectations from each other, better work ethic or sense of duty that cemented relationships. The idea that there must be a romance and compatibility of minds for successful marriage is very recent and contributes to both pre-marital and post-marital problems.

One can only help oneself by helping others. There is no other. It is all Self, God’s disguise according to profound meaning of *Tawhid*.

Do you consider yourself to be not better than anyone you meet during the day? If yes then you may be truly humble as a Sufi has observed. Recall what is the meaning or profound implication of God as only Reality, as One and unity of humankind. Belief in an autonomous self results from pride. One’s quest for better car, more grandiose party or house are all variations or disguises of this self love that has been cursed.

Shaykh Nizam-u'd-din Auliya used to recite the following verse of Shaykh Abu Sa'id Abul Khair as his motto in life: "Whoever causes grief to us, May his life get more and more happiness." (Riazul Islam, 2002). As Ibn Arabi noted the saints have dropped the possessive adjective (*ya*) three times, so they do not say 'for me', 'I have' or 'my possessions' (*lî*, '*indî*, *matâ'î*'). Sufi ethic maybe summed up in form of the following dicta of mystically oriented Dostoevsky and Levinas respectively: "We are all *responsible* for everyone else—but *I am more responsible* than all the others." "I owe the Other everything, the Other owes me nothing." And this "But cannot we live as though we always loved? It was this that the saints and heroes did; this and nothing more."

Jesus rejected attachment to private property as did his Russian disciple Tolstoy. The Prophet's companions shared almost everything with their brothers. Augustine identified charity as the essence of scripture. Buddhism prefers begging to hoarding.

In one sentence Sufi view of self and self-other relationship can be stated as: There is no autonomous individual self but only the Other and our salvation lies in surrendering delusionary will to the Cosmic will, the will of the Other. Who is the Other in Sufi view? As there is none but God in reality our identification with what is ordinarily called the self is mistaken. Our greatest joy in fact lies in dancing by dissolving in the Other, by transcending the narrow circuit of personality. What is the Sufi's beloved for whom he is prepared to die or renounce everything? The Other, the non-self.

The following is a brief formulation of important propositions, following elaborate discussion with various stakeholders and consideration of works written about these issues, that one may propose for anyone committed to justice and dignity of women.

- 1) After sorting the wrong view of the self that puts it at the centre and resists vulnerability or openness to the other or submission to the Other/Real and thus transcending the slavery of the empire of self, other things can proceed.
- 2) All women feel answerable for their moral commitments in the court of conscience and community (and in hereafter for believing women) and will try to lead a life of responsibility and care for the most disadvantaged and realize their highest potential as humans – *eudamonia*. The best of humans are those who serve best. They would take the side of the weak and oppressed and uphold justice. They would prefer to work for greater collective good in a spirit of cooperation with all those who have similar objectives. Faith is best demonstrated in wholesome actions for the good of humanity. Virtue is its own reward. One is here to win one's salvation or *falah* (flourishing) with diligence and not score a point against other/spouse. We enter into any relationship with the other to fulfill our larger destiny that involves relinquishing wrong views and wrong conduct.
- 3) Women would live lives informed by the principle of *infaq* or care for the other from their resources. Seeking to build personal empire, refusal to remember death or trying to flee death, competing for fatter salary or more perks or bank balance, bigger house, costlier clothes or cars is what needs to be addressed by a healthy community. Conflicts over these things in family life or between spouses need to be resolved at more fundamental psycho-spiritual level. Ninety percent of court cases would be withdrawn the moment these things are given due recognition. Spouses would compete for sacrificing for each other and not

claiming their pie as the very principle of self that is attached to its pie is transcended. Against this ego pathology, we can see how *infaq* (in the specific sense of spending what is in excess for community and volunteering for community) of women of at least one day of work or equivalent cash for community initiatives such as tuition, healthcare, housing and food services could resolve key issues marring family life. Women would join credit and other cooperatives for mutual support. Spare or excess personal resources would be spared for community, especially women. Charity, investments and voluntary efforts would be better pooled for community work and professionally managed. Law suits would be avoided as far as possible by recourse to local community resources for conflict resolution. Avoiding extravagance and consumption of resources in unproductive ventures would save what is truly needed for all in these groups.

- 4 The most controversial cases such as that of Shah Bano and such hotly contested issues as triple talaq, share in property, dower amount, marriage expenses, expenses on separate house for newly wed etc. could be best managed through efficient management of finances. There would be enough resources generated within a month only through such small interventions as daily collection, from every eligible family, of sadaqah (Rs1 to 10), *sadaqah al fitr*, *zakat/ushr*, will for one percent and investment of 1 percent property in women cooperatives and businesses. Investing some percentage of gold in lucrative businesses or creation of sustainable services or cooperative farms would create enough resources for maintenance and help further cement relationships between spouses. We can create a special scheme for every woman who joins special women self

help group of fifty that would consist of women with different professions to support one another through community services. This group of what may be called super-fifty women would give market to businesswomen and women associated with farming enterprises – vegetables, meat, milk, milk products, some grocery items, tuition services, health care services etc. within the group. The group would manage charities also within or with the consultation of group management which would be elected periodically and democratically with due consideration to inclusion of technocrats for professional management of group affairs. This group of fifty would have pooled on monthly basis five k from daily sadaqah, fifty k from zakat, Fifty k from one day *infaq* of time/skill besides 100k from soft loan and saved five k on account of routine expenses on food, education, healthcare services etc. that are made available through cooperative farms in which one has a share. Long term resource base of millions of rupees would be generated from will and investments in which group as a whole would be beneficiary. Around five jobs would be created within the group for management of community services. All members shall receive basic requirements of food (rice, oil, soap, tea, spices, salt, sugar etc.) and vegetables, meat, milk and milk products shall be available at 10 to 15 percent of prevailing market rate for five members from community resources if all members contribute ten k soft loan for a year and monthly 3k only.

- 5 A woman can volunteer for any work but isn't obligated for doing any work including home making work. Women in fact get a pension of a sort after marriage, at husband's and her own family's expense from dower and other gifts that can be invested for silent income, as finances is

responsibility of men. Pocket money can be secured through mutual negotiations and stipulated in *nikah nama*. Women can ask for payment for any work including domestic chores and rearing children in husband's family. The only obligation on her is not to refuse intimacy and companionship of husband. One can well say that a woman is given a new home, an access to/share in husband's resources for love. What is however often missed in this legalistic calculus of work and whose responsibility is the deeper ontology of work and its association with meaning of life and healthy relationships. Work is worship if it isn't alienated. One needs to find one's path to God through action or work that is also aspiration of karma yoga. With detachment and focus on duty and ability to pour love, work becomes joy and constitutes part of human dignity. Hannah Arendt's *The Human Condition* puts the case for work so succinctly. Islam requires us to rise to the level of *Ihsan* that dissolves the controversy on whose job it is to do domestic chores. Preparing food can be such a joy and partaking of food a sacrament. Women don't and shouldn't ask for payment for their work as they understand the joy of working and serving one's kids or even extended family. Love and its fulfillment are great wages for the work we all do including women. However, men should do domestic chores or better we evolve community kitchens where work is rotated and not felt a burden and shared space adds to the experience of preparing and eating. Instead of focusing on my rights or his duties why can't we share and create many jobs in the process? Shift to community kitchen – one for extended family or 5 to 10 or ideally seven neighbour's – would not only create millions of jobs and reduce cost of food but also cement relationships.

A few more concrete proposals for settling key issues in marriage and finances are in order.

- 1) *Nikah nama* would be finalized in presence of informed professional committee (which would also recommend a standard *nikah nama* for the best interests of couple) representing women's point of view. Women would be advised to consult such professional team before marriage.
- 2) Dower would be invested to create silent income for women (these points are elaborated in later chapter).
- 3) Maintenance of divorcees would be managed by *takaful* investments complemented by daily *sadaqah* from women pooled in favor of the poor and needy or those who suffer any exigency of debt and resource crunch.
- 4) All women would be encouraged to write a will in favour of community of women for at least one percent of property and invest one percent in women managed businesses and contribute their charities to professional trusts that have women presence in administration.
- 5) Women would be linked to interest free credit cooperatives to help small entrepreneurs with seed capital and access to interest free loan for members. Saving hefty amount paid by way of interest would generate enough resources to support many community initiatives.

Chapter 3

Duty to Modesty

Evolving a Consensus on the Issue of Women in Public Spaces

The thesis of this chapter is that all Muslim women who have commitment to faith can agree on duty to modesty though they mayn't agree which dress expresses this modesty. Verses and traditions on veil can be expressed in terms of modest covering and we could well let cultural diversity speak in choosing different forms of modest covering. The controversy is more on piece of cloth worn on face/head than on underlying symbolism on which we find ready agreement. The symbolism of veiling of mysteries can also be readily appreciated. Decency and modesty are universally acknowledged and appreciated attributes of good humans. If we reflect deeper on the meaning of veil, we would be able to identify common elements across Islamists and their Muslim critics or Muslim feminists. These include right to privacy or personal space, resistance to objectification or commoditization, avoiding dehumanizing gaze and maintaining dignity and decorum of human body. Traditionally looser cloths have been the norm and it is universally the case that all civilizations have made it a point

to cover private parts and avoid needless provocation for or gaze on the other sex. The discourse on veil is basically about these things. Covering or not covering hair or choosing a particular design to cover oneself aren't central to the spirit of the debate on veil. Covering face has been optional or its obligation linked to *fitna* which in turn isn't clearly stated in the canon. Reviewing arguments for and against face veil and examining arguments for excepting hair from obligatory covering one arrives at conclusion that it is hard to overcome inherent ambiguity or limit the spectrum of opinions amongst qualified modern scholars and as such consensus needn't be targeted. One may pertinently ask if, despite one's best effort to arrive at the meaning in the mind of God or intention of the canon, one may not be able to arrive at some definite view on commonly rehearsed opinions in this regard mayn't be a good reason to conclude that there is no clear or necessary link of such choices with one's salvation and *falah* here or hereafter and as such we can respect opinions of scholars as long as they are able to muster evidence and arguments in their favor. Sharp dismissive judgment about positions that have respectable scholarly defense should be avoided. If we note God isn't concerned about this or that form for its own sake but wishes radiation or actualization of good and beauty we may take a more lenient view of particular ways of choosing modest covering. From one extreme defended by Thanwi that burqas must be aesthetically repelling to avoid any remote chance of *fitna* to another extreme of choosing a dress that sends a problematic statement to the other and appears connected to assertion of ego or flaunting of the self we may see divergent opinions and practices currently in vogue amongst otherwise observant Muslim women. Let us review some key arguments often cited in this connection.

Arguments for Face Veil/Hijab

Although all the classical Sunni and Shia legal schools originally maintain that it is not necessary to cover the face and during Hajj it is not even allowed to cover it, prayers are not to be offered with face veil on and face veil is, largely, South Asian and Saudi practice that Muslims in many other countries don't seem to know about. Deoband, Bareli and some other important seminaries advocate it. Influential revivalist scholars Syed Moududi, Dr Israr and most Saudi Ulama argue for it. The position argued by major figures of major seminaries from Deoband to Bareili to Karachi is that women, especially her beauty (face/hair), is a *fitnah* that necessitates some sort of segregation of women and covering/veiling. Mawlana Thanwi has dramatically stated conservative position by saying that if face – the centre of attraction – is not to be covered what else needs to be covered and pleaded for a covering or burqa that must repulse as against an attractive abaya. In support of face veil are, besides the key argument that it avoids apprehension of *fitnah* (this argument is extended to hair covering as hair too is a source of *fitnah*), in the absence of silence/ambivalence of scripture, the following:

- The Prophet's wives wore face veil and they constitute the model and we have evidence that Muslim women in general seem to have understood injunction to veil as including face veil and we can explain away certain references to the contrary in hadith literature.
- Institution of veiling, seclusion and regard for privacy and sharp separation of private family/home and public sphere have been a feature of Muslim cultures and as such can't be wished away by any new ingenious ("disingenuous?") interpretation.

- It emphasizes God-centrism, saves time and energy invested in maintaining or worrying about good appearance/making oneself presentable, is best antidote to vanity that we find advertised in permissive culture.
- It is a protest against objectification of women. Capitalism invests in pulling women out of veils and homes to further its exploiting machinery.
- Women are special flowers that best bloom in shade. Women embody mystery that is best veiled.

Arguments for Hijab/Head Covering

There is consistent and comprehensive evidence for head covering, if not face veil, from Prophetic era and traditions. Hijab has been a feature of all Islamic cultures. The practice of community throughout ages is the best proof for its sacred foundations or legitimacy. None of the arguments cited by those who claim no hijab is implicated in the canon is convincing or conclusive, argues Ahmad Shafaat in a comprehensive review of key arguments for rejection of hijab on the basis of supposed lack of foundations in the canon. In her review of *The Muslim Veil in North America: Issues and Debates*, 2003 she seeks to show problems in explaining away references to hijab in the Quran and, regarding hadith, states more convincingly that “There are no ahadith that exempt the head from covering while there are traditions in the six books that clearly expect women to cover their heads” and “the truth is that there are no traditions that reject the covering of head while there are several that assume that head is to be covered. This shows almost conclusively that the Qur`anic commands must have been understood from the very beginning to include covering of head.” She notes that “If we duly take the Qur`an into account, then the scarcity of references to the covering of head” in the

canon actually becomes a strong argument in favor of the “conservative” position.

Arguments against Necessity of Face Veil

Some serious objections against it (more precisely, its absolutization or its supposed otherworldly implications) that have been raised by other groups who also have a claim to authentic Islam include:

- It was part of certain traditional cultures and as such prevalent in Arabia before Islam as well and Islam didn't invent it. In fact there is evidence that it gained wider acceptance as a fashion as some elite women in neighbouring non-Muslim cultures adopted it as a sign of higher status and had as such no necessary connection with religion.
- This position finds it embarrassing to acknowledge that all the classical Sunni and Shia legal schools originally maintain that it is not necessary to cover the face and during Hajj it is not even allowed to cover it. Prayers are not to be offered with face veil on. Face veil is, largely, South Asian and Saudi practice.
- It is against the most basic instinct for expressing one's individuality and identity. It writes off the person in women.
- During hot summer days it is, ordinarily, inviting lot of difficulty.
- Our age is in no way special. In every age women's face did constitute *fitna* and if that were enough warrant, exception to it wouldn't have been the default position of legal schools or implicit/explicit in the canon. Men's face

too can be *fitna* for women. Men too should cover according to this logic.

- Since women do now, for various reasons, opt for jobs outside homes it becomes harder, generally speaking, to observe face veil in work places. Since no such pressure to work outside home was previously for most women, questions regarding it were not raised.
- Nine tenths of joys of life that modern life offers from visiting tourist spots to visiting cafes to participating in public festivals to world tours to higher education in elite institutions to political offices to jobs in most sectors where personality of women could express in more creative roles are, at least to an extent, hampered thanks to *burqa*.
- Rural working women, even in traditional cultures including Kashmir, didn't observe face veil. Even in the fields and gardens of Prophet's (SAW) Medina, women workers couldn't observe it. Back home in Kashmir women working in fields had no choice but not to go for it.
- More than God's word and unchanging symbolism, it is feudal, patriarchal setting and other mundane factors that explain persistence/evolution of veil and seclusion in Muslim and other cultures.
- The Quran's concern to prevent harassment of women with lowering of gaze and modesty in demeanour (instead of explicitly stipulating face veil) and consequent *safeguard of identity* (rather than *erasing identity*) of free Muslim women (and no veil stipulation for slave women) and Islamic tradition's disregard for covering face in key public places (mosque/hajj space) show that face veil for all Muslim women everywhere supposed to prevent

transgression by weak willed men was not an issue as such. “If the criteria is whether there will be an attraction then basically we need to put the men and women in two different planets.”

- Since women do now, for various reasons, opt for jobs outside homes it becomes harder, generally speaking, to observe face veil in work places. Since no such pressure to work outside home was previously for most women, questions regarding it were not raised. Once it was a privilege and conferred other advantages and as such it is, in certain circumstances, resorted to by women who don't ordinarily don it. Modernity changed reception of it and it has lost symbolism it once had.
- It is impossible to attribute to canon any idea of punishment in hereafter for not donning burqa. This point may even be extended to headscarf as we don't find God or His Prophet ever linking one's prospects after death to observing/not observing burqa/hijab. How come one bring in God in defense of one's choice if it is God who grounds all the variety of choices that different traditional cultures rooted in transcendence adopt? Is it in the name of the Devil that other Muslim women – or women from other religions – claiming to remain modest dress in other ways? If God wishes ease instead of difficulty for servants as Islam says why you choose those modes of dressing or adorning/beautifying that you yourself admit involve difficulty? Who says piety is directly proportional to self imposed difficulties?
- Point by point critique of all arguments in defence of face veil is available in many scholarly and literary works though one may here sum up more important points. Face

veil may objectify women and justice demands lustful men be punished rather than women. Face veil now draws needless attention *to* and not *away* from women in Western countries and becomes reason for harassment. Primitive cultures fail to maintain decency in gender encounter and need violent means for it. Segregation comes at so many social costs and capitalism is a relatively recent development and women didn't always cover face in the Islamicate world before it either. Face veil makes attention to body and hygiene less urgent and contributes to suffocation and denial of natural rhythms of the body. Many a women complain of suffocating instead of blooming in shade. If it is a choice and not punishable offence for men/God, most women would not opt for it. Prophetic wives constitute a special case in a special situation and widespread adoption of veil was more an emergency response in a particular context of primitive behaviour of certain people.

The basic issue is does she note that time and history are to be factored in by interpretative community/agency or how one responds to the argument that one has to consider what would have Prophet desired if he lived/commented today. The following is a list of questions that women need to consider to defend their choices and if they fail to give clear answers, it means they don't care to think or use reason and reflect on scripture and its best commentaries that are written anew/updated in one's own age:

- Would you choose burqa if it you had not been told about its non-observance had no possible connection with hell? And what undisputed (by scholars past and present) warrant is there in Islamic tradition for such a link? Is it fear or love of God that dictates your actions in view of the fact that Islamic tradition has emphasized mercy over rigour? What

do you take otherworldly court to be like? Is *taqwa* best rendered as fear of God or awe of God? Do we have any *nass* for building theology of fear and dress code?

- How do you explain class connection of hijab choice from the earliest times in varied cultures? Veil is mostly an issue for middle class. For lower working classes the question of veil hardly arises (as they can't afford it) and for higher classes almost everywhere veil is either absent or occasionally adopted as a fashion. Exceptions in all classes only prove the rule.
- How do you explain the fact that as modern education increases burqas go and head coverings go gradually? (Certain reversal in some areas for some time doesn't change the general picture. The Muslims in the West arguably exposed to better education exceptionally don burqas and a big fraction never cares about dupatta.) Muslim women writers, activists, journalists, anchor persons, professors, professionals, bureaucrats and politicians are more likely to be seen without veil. The picture is true about some respected modern women scholars of Islam as well and one needs to read their close and academic and insider's engagement with Islam to appreciate the impact of education. If it is God who oversees history or expresses His will in history through newer things and changes sensibility of people at mass level, doesn't it seem that, as in matters spiritual, unveiling progresses with coming of the new age? Or we need to consider that no existing practice, however widespread, can be an argument for its legitimacy. Non-seriousness regarding veil/hijab amongst most of educated women can have political or cultural reasons as well. As such we must be doing our bit in educating Muslim women about their

forgotten style in duty to modesty. It appears hard to convince women across ideological spectrum to choose particular style and we may well leave their case to them and their God and don't require any State to impose any particular form.

- How come you hurriedly bring in God in defense of your choice if it is God who grounds all the variety of choices that different traditional cultures rooted in transcendence adopt?

There are dozens of other questions that sophisticated advocates and critics of veil ask us and one ultimately hardly ever knows complex motivations, subtle power games that families or societies impose besides deep insecurities and anxieties and most importantly depth of one's commitment to what one believes to be God's will to allow any black and white fatwa on propriety of one's choice of veiling/unveiling.

Fitnah Thesis

In view of diverse juristic positions and modern debates consequent let us examine the case argued by ultraorthodox or conservative Ulama for face veil or linking burqa-hijab question to the notion of *fitnah* in the court of reason as embodied in the work of brilliant modern scholar of Islamic jurisprudence Khalid Abou El-Fadl, well known for such works as *Speaking in the Name of God*. Fadl engages both traditional and modern scholarship on this issue and has something significant to say.

Khalid Abou El Fadl first notes lack of support for *fitnah* thesis in the canon:

Significantly, early Islamic reports do not tie the issue of what eventually becomes known as the *hijāb* to the problem of *fitnah*. In other words, the technical issue of the proper form of *hijābis*

not directly related to the possibilities of *fitnah*, but to social status and physical safety. Interestingly, what becomes known in modern discourses as the *ḥijābis* discussed in classical juristic sources in the chapter on prayer. In that chapter, among other things, the jurists discuss what needs to be covered by men and women in prayer, and from that, the issue of *ʿawrah* (private parts that ought to be covered by clothing) is discussed as well (Fadl, 2014:469).

He then raises certain issues problematizing argument from *fitnah*:

Assume that in order to put an end to all sources of *fitnah*, we lock up all women in society in fortified homes, has *fitnah* come to an end? There is also homosexual *fitnah* that presumably could result from the interaction of men with men and women with women. There is also the *fitnah* that comes through television stations, computer images, publications, poetry, and a vivid imagination. Do we prohibit these as well? But if we do, this assumes that eradicating the sources of *fitnah* is the only relevant interest under *Sharīʿah*. So, assume that human beings need to be exposed to some degree of *fitnah* in order to receive an education, medical attention, engage in trade and politics, and in order not to be painfully dull and boring. Why should *fitnah* take precedence over any other *Sharīʿah* value – what is the evidence that *fitnah* is the core value in Islam, and not knowledge, justice, utility or beauty? (Fadl, 2014:471).

Fitnah thesis brings with it the indefensible assumption that “beauty or justice or pursuit of knowledge are not to be privileged and may even be sacrificed at the altar of sexual ethic.” He notes that emphasizing maintenance of certain sexual order may mean legitimizing what Taliban did by closing co-ed schools – “other things can wait but women must go home.”

Fadl seeks to show that there are moral and conceptual difficulties as well with the idea of *fitna*. “The principle that no one can be called to answer for the sins of another is a core *Sharīʿah* value.”

(Fadl, 2014:471). The jurisprudence of *fitnah*, Fadl notes, runs the risk of violating this principle. He also reminds us of the distinction between *awrah* and *fitnah* and states that

a person covers the ‘*awrah* not because of *fitnah*, but because the covering of ‘*awrah* is a separate imperative based on a set of specific instructions. Whether revealing the ‘*awrah* leads or does not lead to *fitnah* is irrelevant. But from that perspective, the whole logic of *fitna* has seduction becomes quite suspect. Most *fitnah* determinations rely on the dubious logic that women should pay the price for the impious failures of men. Furthermore, in these determinations, as far as women are concerned, *fitnah* emerges as the core value of Islam. Therefore, women’s education, mobility, safety, and even religious liberty should be restricted in order to avoid *fitnah*. Hence, we observe that women can be banned from driving, working, serving in the military, or appearing in public life under the guise of *fitnah* (Fadl, 2014:472).

Fadl indicts the jurists who thus artificially construct womanhood into the embodiment of seductions, for promoting a norm of immodesty in the name of modesty. “In essence, these jurists objectify women into items for male consumption, and in that, is the height of immodesty” (Fadl, 2014:474).

Fadl also notes that uncritical ideology of *fitnah* for which certain prophetic traditions are also appropriated renders

a good part of the Islamic historical experience in Medina a corruption. It is difficult to reconcile the traditions of *fitnah* and exclusion with the numerous reports about the active participation of women in public life during the life of the Prophet and after his death as well the jurists often argued that what could be lawfully exposed in a woman’s body was what would ordinarily appear according to custom (‘*ādah*), nature (*jibillah*), and necessity (*ḍarūrah*). Relying on this, they argued that slave-girls do not have to cover their hair, face, or arms

because they live an active economic life that requires mobility, and because by nature and custom slave-girls do not ordinarily cover these parts of their bodies. This makes the focal point of the law custom and functionality. Arguably, however, women in the modern age live an economically active life that requires mobility and, arguably, custom varies with time and place. In other words, if the rules prescribing veiling were mandated to deal with a specific type of harm, and slave-girls were exempted because of the nature of their social role and function, arguably, this means that the rules of veiling are contingent and contextual in nature (Fadl, 2014:483).

The argument for veiling to prevent seduction runs into many difficulties including the following:

Seduction could be caused by slave-girls, or could be between woman and man, woman and woman, or man and man. A man could be seduced by a slave-girl, and a woman could be seduced by a good looking man, yet neither slave-girls nor men are required to cover their hair or faces. Does the fact that a particular man might be sexually enticing to women affect the obligations of concealment as to this man? (Fadl, 2014:484).

It is instructive to point out that Allama Anwar Shah Kashmiri despite granting that face is excluded from veiling himself used to partly cover his rather attractive face while travelling citing possibility of seduction of women seeing him. On the contrary, we find Murad Hoffman arguing against the need of covering hair for Western women as hair is not considered seductive. The same argument may be extended – and has been extended by some modern scholars – to Eastern lands now given hair is often exposed and has lost much of seductive power once supposed for it.

Another classic work is from Urdu literature *Laila kae Khutoot* that among other points makes a strong case against the argument commonly rehearsed that women need to be veiled because man

can't control desire. The Quran demanded modesty and lowering of gaze from both men and women. Veiling as done in the subcontinent can't be elevated as a norm. The point has been well made by many traditional Muslim scholars including Albani, not to mention modernists such as Amir Ali and Fazlur Rahman. Many writers/poets, rights activists, scholars of diverse backgrounds and many women besides Muslim (as distinguished from Islamist) feminists of criticize the *fitnah* thesis on various grounds. Given in the Muslim world itself, traditionally, there are large regions where face veil was not practiced and strict separation has not been maintained even in the Prophet's Medina, not to speak of major agricultural and trading spaces in the Muslim world. The argument of *fitnah* loses its cutting edge when we note that God ensures it doesn't count in such key spaces as mosques and Kaaba during hajj. It needn't be reminded that exceptions on large scales – and on almost routine basis – thanks to such contingencies as medical check-up, many professions in which women take part on priority including education, wars, are granted by traditional scholarship.

Against the *fitnah* thesis there is a counter thesis defended by various modern scholars including Merenessi on the negative framing of veil. Merenessi also highlights the essentially negative connotation of veil in the civilization of Islam especially in the context of Islamic mysticism. Discussing the different meaning spaces or contexts of term *hijab* in the Quran and Sufism, she concludes:

So it is strange indeed to observe the modern course of this concept, which from the beginning had such a strongly negative connotations in the Koran. The very sign of the person who is damned, excluded from the privileges and spiritual grace to which the Muslim has access, is claimed in our day as a symbol of Muslim identity, *manna* for the Muslim women (Merenessi, 1991:107).

She deplores the perverse evolution/appropriation of the idea of veil in the history of Islam. “The veil that descended from Heaven was going to cover up women, separate them from men, from the Prophet, and so from God” (Merenessi, 1991:111). She argues that the verse of *hijab* was revealed to demarcate space between men, between the Prophet and the vulgar public. She discusses in detail its *asbab-i-nuzul* and concludes:

The *hijab* – literally “curtain” – “descended”, not to put a barrier between a man and a woman, but between two men The verse of the *hijab* “descended” in the bedroom of the wedded pair to protect their intimacy and excluded third person—in this case, Anas Ibn Malik, one of the Prophet’s companions. Anas was excluded by the *hijab* as a witness and the symbol of a community that had become too invasive and it was this witness himself who reported the event.” She reads much subtler nuances of the *hijab*: “Protecting women from change by veiling them and shutting them out of the world has echoes of closing the community to protect it from the West. Only by keeping in mind this double perspective—women’s body as symbolic representation of community—can we understand what the *hijab* signified in year 5 of the *Hejira* (the year when *hijab* descended on Medina) what stakes it represented, and what stakes it brings into play in today’s explosive, passionate and sometimes violent debates (Merenessi, 1991:110).

The great significance of the concept or institution of *hijab* is recognized by feminists as well as traditional *ulama*, although it is being appropriated for very different ends by them. It isn’t just a scrap of cloth but signifies much more than that and permeates almost every aspect of Islamic civilization. Merenessi says:

So we see that the concept of the *hijab* is a key concept in Muslim civilization, just a sin is in the Christian context, or credit is in American capitalist society. Reducing or assimilating this concept to a scrap of cloth that men have imposed on women to veil them when they go into the street is truly to impoverish this term, not to say to drain it of its meaning, especially when one knows that the *hijab*, according to the Koranic verse and al-Tabari’s explanation,

“descended” from Heaven to separate the space between two men(Merenessi, 1991:105).

Having said all this, it needs to be noted that Islam does recognize the problem of seduction and accordingly requires lowering the gaze, respect for privacy and modesty which taken together may require for many in many situations resorting to face cover and in a particular situation it may be hard to judge regarding the best course of action. As such it is concluded that we refrain from judging various modes or practices informed by the idea of *fitnah* while conceding that obligation to observe face veil on account of it isn't proved from the canon. Muslim practice has been both observing and not observing face veil and cultural and other factors have evidently played their role. *Fitnah* or no *fitnah*, other factors such as association of veil symbolism with mysteries and ambivalent message of veiled beauty, make the issue more complex. For centuries a great culture has been nurtured around treasuring the women's right/privilege to veil herself. God has obligated observing modesty which is something universally recognized value across cultures and religions. Modesty is compatible with various traditional dress forms and can't be codified. What appears as *fitnah* (for instance, hair) in certain cultures or situations mayn't appear so in others. Murad Hoffman in *Islam in the Twenty First Century* has also explicated this point. We would be judged by God and are ordinarily judged by normal fellow humans not by the attire but by the values that attire embodies and the best of garments is piety or awe (to be distinguished from fear) of God.

More Reflections on Face Veil/Hijab

Muslim women negotiate between several lives or identities; they may have to adjust themselves to various familial, societal or personal pressures and often one can see her struggling, in conflict

with herself, her family, her friends, her employer. She can't, generally speaking, intelligently or coherently defend her choice either in religious or other terms. She doesn't know there are various possible understandings or equally legitimate interpretations. She chooses to veil or unveil against her deeper self and invents some explanations for either choice though they are mostly regurgitated from some sermons or books or feminists. And she is severely judged by some in every case – whatever her choice, she has her critics. And given her vulnerability to half baked, semi-critical ideas picked from here and there, she lives a divided life. She keeps adjusting a scarf that anyway doesn't cover all the hair properly or she accuses herself for the choice she makes whether a conformist one or a rebellious one.

For the Quran although the best of garments is piety (a subtle way of relativizing all dress codes) but clothes embody a metaphysic that jurists often miss resulting in heated debates. Dress descends from Heaven. All traditional cultures emphasize both modesty and dignity of dress and it is God's/non-self's glory that should be advertised through it. And of course beauty we seek through dress is also glorifying God. While burqa conceals physical beauty, it might for the wearer and some onlookers symbolize certain moral and spiritual beauty. One might choose a burqa, a hijab or a dupatta or as highest common factor loose airy flowing robes that we find in Christians, Muslims and Buddhist women, for instance. One might choose a traditional Kashmiri overcoat called *pharan* that Kashmiri women traditionally wear and only change thickness according to season, and for some, it outcompetes even Abaya in grace and modesty. Within traditions there are countless permutations and combinations that are equally legitimate from religious point of view. Anyone obsessed with violent defense or rejection of veil – having time to break one's head on it – has not appreciated the God who doesn't seem to be in any urgency to

clearly state His will on this issue. Anyone with a sense of humour or irony intact finds it ludicrous to link hell to a possible interpretation of verse or understanding of a symbol. A few important and urgent questions (FAQs) one has to face on the Last Day don't include FAQs on dress code (though, for some advocates, it remains a grey area as it may be asserted it is implied in commandment to follow the Prophet and it is our pious ancestors who best interpreted or lived the Prophetic wont). How come one can imagine God having an interest in punishing women who don't find any support for universalizing and eternalizing the face veil/hijab injunction in His revelation? How come God wouldn't punish vanity of those who love their own beauty outside God and put the sacred treasure in service of ignoble passions? God would mind if one is not ennobled and humbled by beauty and becomes heedless of the God whose splendour is beauty.

The argument from symbolism/esoterism linking veiling with veiling of mysteries appears problematic in an age when symbolism of burqa and even hijab to some extent has been forgotten and one is hardly reminded of God when seeing women in a burqa and, in many cases, even hijab. Diverse modes of dress can equally proclaim God and we all fall short of effacing ourselves for the sake of beauty that is objective and has to be sought/unveiled in everything – the way we comb, the way we dress, the way we smile, the way we adorn ourselves. There can be no *ijma* on cultural issues (as cultures are diverse) in absence of very specific directives in scripture. Need to dress is not a cultural issue but specific mode of dress is and let us recognize that all traditional cultures and even Western culture (in theory and mostly in practice as well) recognizes modesty as a value. In this context, we may surmise that problematic are attitudes and practices – with one or more of which I find most of vocal advocate for and against veil complicit – such as self-righteousness, vanity, show off,

narcissism, judging others on the basis of different choices for which God has kept room and reserved final judgment with him, assuming charge of gatekeeping in hell or heaven, succumbing to social conventions that aren't acceptable to our hearts and minds, giving sacred status to divergent legal opinions from past and present, absolutizing one's culture or interpretation of religion as the normative one for others in realms where tradition is open ended, letting others dictate our choices, imagining God to have appointed an official tailor who alone is entitled to design modest dress in every culture and assuming he/she should take dictation from this or that religious scholar as God's spokesperson.

Having said this, it needs to be emphasized that beyond a certain point, the cases of face veil and hijab need to be clearly distinguished and not confounded. Unlike face veil, hijab has been part of Islamicate culture and historically, culturally and juristically default position. Leaving subtle theological and juristic arguments aside, it can be stated that hijab retains symbolism to a significant extent and it is better if we respect what it signifies to others, to Muslim community at large. The politics of banning burqa can, in no case, be endorsed. Although Muslims mostly mind it and as such it can't be wished away or trivialized or disassociated from many symbolic and other associations that secure/secured for it influential position for the Muslim world, it is not evident if God who is the real Judge minds it. Muslim community identity also matters for generality of Muslims and religion is also a community affair, an identity issue and respecting it is respecting cultural and religious diversity. This respect should be distinguished from obsession with it and politicization of it or overinvestment of theology in it. The task is to consecrate every act, every gesture, every mode of presenting oneself. This is more often than not achieved through hijab, occasionally through burqa, generally through robes worn by traditional people across cultures

that honour body and glorify God. Deep down we know what dress honours the divine image in us and will continue to idealize it even if modernity/exigencies may dictate our actual practice otherwise. There is a dress code that better embodies human dignity or modesty or reverence for the divine image in which humans are created. To be human is to choose to be oriented towards the Sacred, to feel shame, to distinguish between the private and the public (bedroom dress and public space such as office space/mosque space dress), to cultivate beauty and decorum or to put the Other/non-self/God/community before the ego/self. Regardless of precise form the idea underlying the concept of hijab is collective human heritage known to almost every known culture. Despite acknowledging cultural framing of the idea of modesty and its relativism, the absolute imperative of choosing modesty can't be wished away. Modesty informs every gesture or mannerism and not just sense of dress. Hijab isn't to be identified with/reduced to a "scrap of cloth on the head" or necessarily associated with abaya but may include/transcend them. It is one of the abiding concrete forms of the idea of *haya* which in turn is our respectful cognizance of the Other which is the cornerstone of any idea of Ethics. There is a tight rope walk to stick to the middle path between the poles of hijablatry and rejection of hijab that Muslims have sought to/seek to be witness to and in this endeavour they find allies rather than adversaries in all faith traditions. A particular symbol may lose its function to embody or evoke the Sacred but the later itself is perennial and our task is to achieve right orientation to the later for which obsession with particular forms mayn't be of help or may be alienating for some. However in all cultures some abiding core or residue of changing forms is most likely to continue to function as a locus of the Sacred. The sage, considered the highest embodiment of the intellectual-spiritual aspirations of mankind, is especially known to be conscious of

requirements of human dignity or maintaining decorum in every gesture which in turn is a function of intelligence/spirit. He/She is the Measure and not the one whom industry frames for its own ends. Those who give intelligence/spirit due place shall continue to live and dress in a manner that is more worthy of our higher ends or destiny.

We may briefly review the point of view informing influential Urdu Writers on veil to further problematize the simplistic thesis and string judgments on either side of spectrum of opinion on veil.

Urdu writers and poets have explored the theme of the veil or hijab extensively in their works, reflecting on its social, cultural, and personal meanings for Muslim women. These perspectives go beyond religious or secular approaches and offer nuanced insights into the complexities of the veil's role in shaping women's identities and experiences. And not all Urdu poets and writers are secular and many are self avowedly devout practicing Muslims. Many don't view the veil as a symbol of oppression. Some see it as a tool for identity and cultural expression. Veil evokes divergent reactions and it is hard to find a nuanced response that would avoid simplistic judgments. Urdu writers are, generally speaking, both Muslim and unveiled and some have explicitly spoken against it. This is despite the traditional tenor of valorization or normalization of veil in Urdu poetry, gradual critical responses have dominated the scene. Recently across the Western world and in India veil has again become controversial. As such the need is to revisit how select Urdu writers have perceived it and how this perception has changed across generations and how this helps put in context current controversies. Now I suggest literary historical method for opening another vistas on such debates. Leaving religious and secular approaches aside, literary evidence may illuminate the debate on veil and help move dialogue forward.

Against the positive invoking of veil and mystique of it in much of traditional Urdu verse and defence of veil in Khawja Hassan Nizami, Rashidul Khairi, Deputy Nazir Ahmed and others, several writers began more critical approach to veil and other embodiments of patriarchal value system. Rokaya Shahkhawat Hossein, Attiya Faizi, Hijab Imtiyaz Ali, Sajad Nazar Huder, Zahida Khatoon Sharwaniya. Very critical view emerged with progressives such as Rashida Jehan and Makhdoom Muhideen. Kishwar Naheed is amongst the most vocal critics of veil though she has largely echoed old perceptions. Even religiously inclined writers such as Saliha Abid Hussain made critical remarks. Progressive and modernists and postmodernists all joined hands in problematizing association of veil with piety. With the reemergence of veil post 1970s across the Muslim world, writers haven't however much changed their critical angle. Lately however post 9 11 veil has symbolized peculiar freedom of choice and as such even some feminists and secularists have come to defend choice to wear veil. Veil also became associated with resistance against imposed colonial/postcolonial ideology. Literary response to divergent framings of veil needs to be articulated.

Umberto Eco in his volume *On Beauty* remarked that 'Speculations about concealed or half-concealed beauty is much more delectable than the fully exposed beauty. The latter leaves nothing to imagination,' Sumit Paul has reviewed reception of veil in Urdu poetry. He notes that there has always been an element of mystery when a lovely face is hidden behind a veil – it creates an irresistible mystique and fires imagination, whereas what's visible or exposed leaves no room for possibilities. Paul quotes such representative verses as those of Nuah Narvi, Nihaa(n) *Haihusn tera hijab mein/Kuchh aur shireen ho gaye shabaab mein* (Your beauty is concealed in veil/You've become sweeter in your

youthfulness) or Jameel Mazhari, *Beshumaar ummedein jag uthin/Use dekhke hijab mei* (Numerous hopes have woken up, seeing her veiled face) as representative of this idea. Raghupati Sahay 'Firaq' Gorakhpuri aptly noted *Bazahirhusn se behtarhai, husn jo tasavvur ko angdai de* (Beauty that causes speculations is better than the beauty that's for all to see). Famous Urdu scholar and critic, Kalidas Gupta 'Raza' articulated it well: '*Urdu shayari ka ufaq hijab aur sharaabkebaghairnaaqishota*' (The entire horizon of Urdu poetry would have been incomplete sans veil and wine).

Lata song *Haya hai aurat ka ek gahna* (modesty is an ornament to a woman) embodies widely shared perception of the masses. In Urdu poetry, veiled modesty is the essence of feminine beauty. *Parda-nasheen ko beparda nakar/Jamaal ko yoon hi rahne de, sab ke saamne muzahira nakar* (Don't take the veil off/Let beauty remain in its pristine form; don't demonstrate it in public).

Paul concludes these musings from Urdu poetry on the note that feminine beauty when half-concealed, at least in poetry, is more valuable for embodying magic and mystique for mankind (Paul, 2023).

However no consideration of mystique, symbolism, privacy signature etc. compels its acceptance in practice for most writers. Progressive writers in general and writers as diverse as Ismat, Fahmeeda Riaz and Quratul Ain Hyder have expressed problematique of veil. Muslim feminist scholars trained in both traditional and modern epistemes have helped question the theological legitimacy given to veil. Secular writers such as Taslima Nasreen remarked that Hijab is akin to chastity belt that turns women into sex objects. Secular feminists such as Maryam Namazie have been running a vociferous campaign against shariah law and veil. Hijab allergy is widespread amongst the Muslim elite

and academia. Industry's interest are usually further intensifying this allergy.

Such writings as Syed Maududi's *Purdah*, Farid Wajidi's *Miratul Muslima* (Muslim Woman) Wahidudin Khan's *Woman between the West and Islam* etc. are not capable of fully answering feminist challenges (though they do dent secular feminist narrative in important ways) because they are not written in contemporary philosophical or sociological idiom. Works catering to postmodern feminist challenge are almost non-existent. Much of the traditional scholarship is even ignorant of nature and style of debate/challenge at the highest intellectual level. Appropriation of postmodern challenges to religion in general is a demanding task and is yet to be properly taken up. A new episteme has been and is knocking at our doors and tensions and contradictions generated in response to it by Muslims are a serious concern. T.V and globalization thrust us into postmodernity. We can't write it off. Bypassing it willn't do; succumbing to it is equally counterproductive. What is needed is appropriating it. As Akbar S Ahmed and Hastings Donnan suggest:

the challenge of understanding Islam in an age of postmodernity will demand all our powers of analysis, old and new. Neither the Orientalism that Said so passionately denounced, nor indeed the anti-orientalism that Said himself has set in motion are of much help. We point to a much more complex and more diverse situation, one that requires looking ahead and the forging of more nuanced ways of thinking about Muslim society (Ahmed and Hastings, 1994:198).

This necessitates deep sensitivity towards newer developments and continuous evolution of nuanced response to them. There is no such thing as fixed ideology or system or predetermined ready

answers to all problems. At times it may well be the case that we don't have clear answers and are required to think through things very closely. No religious scholar or jurist can respond to complex questions by issuing fatwas without adding a qualifying clause 'God knows best' which implies veto to foreclosure and finality thinking.

In order to conclude these reflections on a complex debate it may be noted that there is no conclusive verdict on what lends itself to divergent readings by equally competent scholars of diverse backgrounds. Muslim intelligentsia is sharply divided on the meaning, significance and symbolism of veil/hijab. Keeping in view divergent framing of this idea it may be suggested that we don't need to expect one dominant narrative and practice regarding veiling and should agree to keep dialogue open and be ready to understand the logic of compulsion or choice for varying practices. We can agree on not imposing a particular dress code in a pluralistic setting and on not flaunting universal imperative of modesty. We can keep debating and educating to clarify and refine our own understanding. We need to emphasize the right to cultivate beauty while ever refining our understanding of beauty and its moral and spiritual dimensions that add depth and meaning to life. In the end it is all a matter of flourishing – *foaz o falah* – or eudemonia for which we need to provide enabling ambience.

Chapter 4

Towards a Model Community of Women

Many women don't have work. Many don't work and many work so inefficiently. If we are able to find a solution to this problem half of health and economic word of our country would go. Creative fulfilling productive work would make huge difference to psychological and spiritual health of community in general and women in particular. In any case we work little or mostly do unproductive work. Let us review some routine ways of the industry of idleness in our country.

Not only retirees and old people mostly sit idle and sometimes indulge in useless gossip, most shopkeepers are mostly sitting idle gazing at bystanders or streets. We have for so-called regular and busy employees huge problem of idleness. Imagine if only two hours are, on daily basis, spent guessing what to do or simply indulging in gossip or scrolling cellphone for want of any proper work, by millions of teachers and certain employees in offices, how much we lose daily if we count the currency of time and numerous creative and productive uses we could have made of it. It is painful to see idle gossiping teachers during vacations or vacant periods or exams days, most employees in many government offices from fire and emergency services to disaster management and libraries. Most of such employees as chowkidars and drivers and those whose only job is dusting the table or preparing tea or once in a while carrying files are largely sitting idle. Women when

the child is sleeping or home chores are done are often idle though some do find a way to create an excuse for some work – cleaning or brooming a room hardly used or needed time and again. Let us narrow it down to

Muslim Women aren't organized even though a few of them may rise to the highest public posts. Their awareness about their own problems is so little. They are divided against one another even in the space of extended families. Even in small families it is women against women that is the rule. Mothers against daughters-in-law and the later against sisters in law and similar tangles are running domestic peace. It is rare to find a happy daughter in law. Women in Mohalla or larger levels aren't united. Women aren't educated in the skills of life. Muslim women teachers who are better educated are most pathological consumers spending their resources on such things as clothes, marriages and houses. Muslim women haven't, in general, understood the wisdom of saving and investing or creating wealth. As such they can be classified as poor despite possessing money. Consuming time away in gossiping or plotting against one another, vast number of Muslim women don't seem to know what to do with time especially as various works done in homes for livelihood have disappeared. Muslim women pass-outs from women madrasahs haven't, in general, been able to be of great service to themselves or to community. The virtue of work hasn't been learnt at mass scale by any group of Muslim women. Work and industry haven't been the focus of Muslim women. As such they fail to be great productive force of economy. How do we address this problem is important and its redressal would do a great good do the lives to Muslim women.

Democracy or current political order is premised on the thesis that divergent ideological currents can coexist and work together for common ends and accept the fact of difference without letting it divide unity. Communicative dialogue and *ijma* of elected

representatives coupled with recognition of different legal positions as equally legitimate in certain areas where common stakes/interests aren't hurt as an instrument of consensus could be deployed to resolve certain nagging areas of conflict in the Muslim societies. Women representatives in Parliaments need to be proactive in creating consensus on number of issues for implementing justice to women. Universal access to gender justice through special family courts for which some reputed members of civil society could be co-opted as well could be one option. Democracy at grassroots or more radical approaches to democracy could be deployed for evolving consensus and mobilizing resources to achieve needful on concrete problems faced by women.

Let us begin at the beginning. Muslim women begin organizing. Every woman must be connected to a self help group, a credit cooperative, a cooperative society, a community network that would facilitate access to as many services as possible or marketing for the product she is making. Units of fifty to hundred women would help resolve key issues besides providing fellowship or companionship and sharing of certain spaces that give meaning or fulfillment in life. Huge number of psycho-somatic cases – health in general is largely in ruins for most women as we can see most are dependent on daily dose of number of medicines and once a month or two doctor needs to be seen – need to be addressed by comprehensive planning of lives gone awry.

There needs to be an agreement on the outlines of the Women's Manifesto for Duties and Rights and awareness about it needs to be disseminated.

Number of problems of women including their financial ones can be addressed very effectively if women will the change they wish to see and do necessary collaboration with other women – their

own friends, relatives, neighbours, colleagues. If nothing every woman can canvases to distribute fifty daily sadaqah boxes and make a unit of fifty and operate it for running certain programmes that would empower all. Annual income from fifty daily sadaqah boxes would be at least $50 \times 10 \times 365 = 182500$ which would be used to link all of them in zero interest based credit cooperatives which would in turn enable them to get interest free loans upto one lac and double this amount as seed capital for business units.

Let us – all organizations speaking in the name of women, Imams, writers, departments for women's welfare – target only 0.1 percent of around 9 crore Muslim women in India who would be able to save only Rs one to ten on daily basis and get hundred women in the loop for contributing as their daily charity similar amount, for the cause of women and we are able to get a sort of insurance for healthcare, free legal aid, free food for the needy, education support for the meritorious, platforms for awareness and activism for women's causes at local levels, interest free loans for women entrepreneurs and other numerous institutions of welfare for women. If we count thousands of crores from zakat/ushr and *sadaqat al fitr* and will of only 0.01 percent women who choose to spend it on poor and needy women or women travelers and students we have enough resources for the key problems faced by women. We can create jobs for thousands even lacs of maids or domestic help for women who have primarily this issue that makes lives hell. Let women organize women to manage food industry linked to organized kitchen space and micromanagement of extended family for most of small events and restaurants or State/community events. Let women operate hotels and restaurants and many other facilities for women and we will see no woman is underpaid or idle in home. We can organize the poor and needy and they will themselves able to solve their problems. Local mosque should have a professional kitchen space for certain

community needs and women in nearby houses can run it more efficiently. Local Imams and *bait al-amwal* could as well be held accountable for resources they extract from community for helping the poor and needy. It is not hard to collect 9 crore on daily basis for interest free loans or one time aid to the poor and needy from sadaqah of one day per day that Islam enjoins on all.

Resolving economic problems is easy – linking women to professional charity collection and spending platforms and to interest free credit cooperatives and tying them with small local investors who have savings for local businesses they can monitor. Panchayats and local NGOs could chip in here as could local *bait al-amwal*. Mosque or Mohalla management committees could help execute creation of linkages and associations for access to number of services.

Legal Interventions

PILs would help kick-start number of little addressed issues including domestic violence, harassment in public places, boss pathologies etc. Legal luminaries or advocates would, on infaq basis, keep institutions on toes for redressing women's problems. Necessary legal support for reimbursing necessary expenses on marriages, support for livelihood till one gets job, access to interest free loans for women entrepreneurs, access to separate basic housing of two rooms and a kitchen in in-laws, right to childcare facilities in offices, right to seat in public transport, guarantee for employment, minimum wages etc. needs to be created. The State and community need to generate awareness on legal rights and development of Apps for easy access to public services for women, home delivery for grocery, medicine and routine use items through women SHGs etc. Free legal support from infaq that may requires just one day free in a year for community would address numerous cases poor women face. The Quran has the idea of justice and God

the Just as refrain. The task of Muslim theology is to stand for justice and against oppression. As such every form of injustice and oppression is unIslamic. As such it is the task of Muslim scholarship to identify and resist every form of oppression and we need to recall that the last sermon of the Prophet emphasized about treating women well and kindness to them and his last words included a clause “Look after the women.” Muslim scholarship on women should eternally question every power structure that contravenes justice even though it masquerades as tradition or faith. The rationalist streak in Islamic theology of Mu’tazilites, also called *ahl i tawhid waladl*, had ample warrant to extol justice as the heart of Islamic idea of Divine. Dawood Rahber’s work on Quranic idea of Justice may be referred for seeing how justice is central to the God of Islam.

In order to counter perception of bias against women in male dominated religious or juristic scholarship, formulate separate chapter of women in Madaris board (there is a chain of women seminaries already) and women managed chapter in fiqh academies that shall cater to women’s issues. They shall co-opt women professionals and scholars from other backgrounds who have something important to contribute to the discourse of women’s issues. Series of national level seminars and publications of proceedings in a year can give key solid documents for most if not all women to adopt and abide by for resolving their issues. We can propose a community of fifty women to be part of what we have called Raham super-fifty group that has different professionals working in infaq basis and internal marketing linkages for several workers in the group and number of key services available to all hassle free on infaq basis or nominal charges. Women based self help group if given larger goal and vision and better integrated as a community with chains of interdependence amongst group members can help deliver most of

services to members. The aspiration is to wean women away from dependence on money or financial anxieties for running the business of living. Once upon a time we lived more happily without alienating labour or jobs and were prioritizing relationships and environment. We can reclaim that by reviving community spaces. Let all women make it a point to get membership of cooperatives and newer community groups for living more fulfilling lives. Women don't need full time jobs if they get properly knitted in communities and have around fifty subscribers for services or products they can make available. They can also choose to try newer or more creative alternatives to work within and outside community. Extended family networks or community links provide a solid rock to anchor lives, especially lives of more vulnerable women. This community can be banked upon when such issues as litigations, divorces or any exigencies prop up. Professional match making and marriage management and dower/property management and finance management can all be incorporated into this community structure of super-fifty women. Women can script new life through these support systems that provide awareness and access to credit, legal aid and other facilities in the various State agencies, NGOs and other agencies. Let us illustrate, in the next chapter, how the particular case of *nikah nama* can become an opportunity to script new destiny that would have enough safeguards against various exigencies including those that develop due to conflicting family interests and financial insecurity besides lack of prudence or rash thinking in spouses.

Chapter 5

Freedom to Flourish for Muslim Women: Diversity of Opinions and Rights Discourse

A Muslim woman has right to financial autonomy, mediated separation and work of her choice as long as it doesn't violate *Shariah* norms. What is required from her is support in raising and educating family and thus nurturing good citizens and leaders in all walks of life, making optimal use of her abilities in any field, readiness to work for any community building project, finding rights through well done duties and carrying herself with dignity that calls for dignified attire or modest dressing. These are universals of any great community and civilization building ethic. Much debate has been on women's rights and denunciation of many women as other on such grounds as veil, work and activism in public spaces and certain roles. Regarding religious restrictions upheld by Islamists often found problematic by Muslim feminists we may make a few remarks that could be adapted as preamble for evolving a basis for consensus on common minimum programme.

Principle of *Talfeeq*

Talfeeq or choosing between diverse opinions upheld by diverse qualified scholars of law is well known stratagem accepted and applied by major scholars in the Indian subcontinent and elsewhere. As such a Muslim woman is free to choose amongst

number of opinions she finds herself at ease with as God is well pleased with diverse opinions for which competent scholars have found evidence in the canon. Apart from classical views, some modern scholars basing their views on fresh reading of the canon considering newer contexts and nature of problems and challenges necessitating creative response from legal scholarship. As such a Muslim woman can choose a public career, don or not don veil. She may even choose not to cover her hair according to some scholars. She has choice of *talaq-i tafweez*. She can safeguard many key rights through *nikah namah*. She can go for hajj without close relatives with whom marriage is unlawful (*mahram*) in a situation where security issues don't ordinarily arise. She can secure her maintenance by wisely investing dower if her parents hadn't already educated her for eligibility for job or secured her finances through entrepreneurship or silent partnership. Rulings on such issues as care for groom's parents, personal upkeep issues, making of brows, haircut etc. keep propping up generating much debate and strong judgments from certain sections and guilt in masses who fail to conform to popular juristic views. What is clear is choice between divergent opinions on number of issues that keep dividing traditionally inclined and more liberally oriented Muslim women. Islamic law as interpreted by scholars from classical times onwards allows us range of opinions or prescribes limits within which much diversity is appreciated as a matter of principle. One scholar of history of jurisprudence notes:

Originally, individuals were free to select and follow the school of *ijtihad* they preferred. They could even combine it with preferred parts of the jurisprudence of other schools. As the State grew more powerful, such choices were increasingly taken out of the hands of individuals. Ultimately, the State took choice away from Muslim citizens altogether in many areas of the law by selecting the jurisprudence of one of the schools as the law of the land.

Many followers of the four most reputable schools allowed transfer (*tanaqqul*), even for the public, from one *madhhab* to another, and *takhayyur* (expert selection) or patching positions (*talfeeq*) from the different *madhâhib*; something that is frequently done in contemporary *fiqh* assemblies by scholars who are otherwise wholly committed to their own *madhâhib*. (al-Haj, 2019).

Diversity of equally legitimate opinions of diverse schools allows women to choose one they find closer to their conscience or work for more creative opinions of their own based on newer contexts or factors. Kecia Ali writes:

The Shafi' school allows a wife to obtain a divorce on grounds of non-support after as little as three days; the Hanafi school never does, even if the wife is indigent and her husband fails to support her for decades. The Maliki school allows a father to contract a marriage for his never-married daughter over her objections even if she is a 35 year old professional; conversely, the Hanbali school says that the father's power to force a girl into marriage ends when she turns nine. Virtually all Sunni jurists consider a triple repudiation given at once to be legally effective, if reprehensible; Shi'i law, however, counts such a pronouncement as only a single repudiation. These mutually contradictory positions cannot all be equally correct interpretations of an infallible Divine Will. All, however, are significantly shaped by the patriarchal constraints of their times of origin. Once Muslims recognize this, the need for qualified Muslims to create a renewed jurisprudence should be clear (Ali, 2002).

This point complements several other arguments for the idea of *talfeeq* – choosing amongst several opinions of legal scholars according to demands of reason and conscience or time and space. Much commented *hadith* – in the disagreement of Ummah is mercy – appropriated by proper application of *talfeeq* methodology – developed in Ibn Arabi who has

elaborated extensively ontology of mercy and defended the idea that choosing easier option is not yielding to lust but to primordial nature or fidelity to divine constitution of man oriented towards expansion of spirit provide ample basis for mercy centric *fiqh*. We may note that stalwarts scholars such as Mawlana Ashraf Ali Thanwi did make use of *talfeeq* to resolve some important issues including those associated with women's faith.

Overcoming Legalism and Piety Complex

Some legal opinions currently impacting large number of Muslim women – if not much in practice as they are conveniently ignored by millions of Muslim women but do succeed in causing guilt which has great psycho-spiritual consequences – are here listed.

- 1) Presenting papers with face visible though hair strictly covered in conferences or lecturing on Youtube or participating in talk shows on political and women's rights itself is, from a strictly orthodox viewpoint, forbidden – face should have been covered and it would have been better if even voice too were under purdah.
- 2) Women not choosing to cover hair or exposing them even occasionally or partially in public space – on social media sites or newspapers or television – are liable to be roasted in hell.
- 3) Some shaping of brows indulged in by most women in urban spaces/offices/brides invites the curse of the Prophet (PBUH) and obviously some action hereafter.
- 4) Wearing some make-up in public spaces may well be inviting trouble for oneself for eons in hell.

- 5) Women shouldn't choose number of careers involving public gaze such as news anchors, moderators of conferences or na't competitions and administrators.
- 6) Women can't marry without the consent of guardian.
- 7) Women can't cut hair too short as is fashionable.
- 8) Women better stay away from leadership.
- 9) Women can't keep conditions such as no second Nikah for husband without her consent.
- 10) Women can't travel alone to even sacred places like Mecca.
- 11) Women can't wear attractive abayas or burqas.
- 12) Women can't choose a career outside home without consent of husband.

The problem is of perceptions, interpretations and very strongly polarized views and somehow consensus seems that women better limit themselves to family and should not come in public spaces – their leadership, their intellect, suspect.

Let me present the problem as summarized by Riffat Hassan, a scholar who has engaged with Muslim theology and the question of gender. Riffat laments that “Muslims, in general, consider it a self-evident truth that women are not equal to men.” To illustrate just one example:

Massive efforts have been made by conservative Muslims to keep women segregated by insisting that a chaste Muslim woman ought to stay within the *charclavari*(four walls) of the home. They have also insisted that a woman's Muslim identity is determined, largely if not solely, by whether she covers her hair or not. The debate between veiled and unveiled women rages throughout the Muslim. communities of the world and has split Muslim women from Turkey to Indonesia as well as in the Western world into rival camps. Here, it is important to

mention that according to the Qur'an confinement to the home was not the norm for chaste Muslim women but, rather, the punishment for unchaste women (Hassan, n.d).

She elaborates the confounding of Westernization and Modernization elsewhere.

What is of importance to note here is that an emancipated Muslim woman is seen by many

Muslims as a symbol, not of modernization, but of Westernization. This is so because she appears to be in violation of what traditional societies consider to be a necessary barrier between "private space," where women belong, and "public space," which belongs to men. The presence of women in men's space is considered to be highly dangerous, for, as a popular *hadith* states, whenever a man and a woman are alone, *ash-Shaitan* ("the Satan") is bound to be there. In today's Muslim world, due to the pressure of political and socioeconomic realities, a significant number of women may be seen in public space. Caretakers of Muslim traditionalism feel gravely threatened by this phenomenon, which they consider to be an onslaught of Westernization under the guise of modernization. They believe that it is necessary to put women back in their "space" (which also designates their "place") if "the integrity of the Islamic way of life" is to be preserved (Hassan n.d).

Indeed there is a plethora of questions that trouble women anxious to preserve a certain image of authentic believer due to the presence of legalistic mindset that issues opinions on almost everything under the sun and failure to live upto the letter of those opinions creates truckload of guilt or gradual alienation from the wellsprings of faith that is perceived to be disassociated from reality. Let us note a few points that would help sort the issue of living as authentically *Muslimah* in a world full of compulsions and challenges to faith. The general question of how to respond to host of issues faced by women may be settled by the consideration

of the following points. We need to briefly explain the foundational principle that should end every anxiety about anything that contravenes justice and mercy in Islam.

The Principle of Freedom

Indeed, a large part of the Quran's concern is to free human beings from the chains that bind them—above all, authoritarianism and the blind following of tradition. "Let there be no compulsion in religion," says the Qur'an (2: 256). God tells the Prophet Muhammad, 'We made thee not one to watch over [others'] doings, nor art thou set over them to dispose of their affairs' (6: 107). The greatest guarantee of personal freedom lies in the Quranic decrees that no one but God can limit human freedom (42: 21) and that "Judgment is Allah's alone" (12: 40). Our right to freedom includes the freedom to tell the truth, as one sees. Let us not forget that there is no invisible being in heaven commanding and prohibiting. God is Freedom and what one may construe as shackles are summons of freedom; law is, as Iqbal said, ultimately, our own prerogative and one discovers it within. Some most often asked questions regarding permissibility concern issues regarding which the Quran/Sunnah is silent. There is a difference between legal status of the views based on the Quran and what Farahi school calls Sunnah and those based on solitary reports *akhbar-i ahad*. There may be differences in framing or understanding purport of solitary reports in different contexts and there remain significant questions on our access to the whole corpus of hadith or original setting in which those reports have been bequeathed to us. Earlier generations had serious debates on the authenticity of many reports and the debate continues. Scholars may give different opinions about the same report and if they agree about its authenticity there might be differences on what it meant or means today. Multiple opinions in fiqh schools are legion and they can continue to

proliferate as it is hard to fix evolving fluid situations and contexts in which reports come to be framed. We need to resist meaning closure and must be on guard against linking our salvation to particular debatable scholarly or juristic view that has been formed on the basis of certain reports that others contest on certain grounds. Mercy in any case has the last word and God isn't a cosmic policeman but ground of the very Ideas of Justice and Beauty that all of us aspire for. *Ihsan* is doing things with an eye on beauty or in style. Actions are judged on the basis of intentions and it is hard to imagine people intend to defy God/Truth/Beauty. As God Himself takes the account and as one Bedoin has expressed it, more *kareem* (generous, noble, honoured) one is, less demanding he is in taking account. God is Freedom and whatever gives one a sense of access to this Freedom is what is enjoined.

The Principle of Love

The greatest law is that of love and if we are in doubt regarding any ruling or have to choose between two different interpretations we have to decide on the basis of this old principle: That is to be followed which leads to increase of love of God and love of neighbour.

The Principle of Spiritual Flourishing/*Eudomonia*

The Prophet's words "By Him in Whose Hand is Muhammad's life, I have not left anything which may bring you nearer to Paradise and take you farther from Hell unprescribed to you, nor have I left anything which may bring you nearer to Hell and take you away from Paradise unforbidden to you" may be seen as an emblem for this idea. What is forbidden by Islam is in principle forbidden by every tradition and every rational moral creature: "Say, My Lord has forbidden *only* shameful deeds, be they open or secret, and sin, and unjustified greed, and the association with God

of that for which He has sent down no authority, and the saying against God of what you don't know" (Quran, 7.33).

In *Mukhtasar al-Quduri* we find key statements on foundations of the Islamic Shari`ah as consisting in:

1. "Consideration of the welfare of the servants, both in this world and the Hereafter.
2. Connection of regulations to their rationales, and persistence of the regulations in the presence and absence of the rationales.
3. Gradual, progressive legislation.
4. Preclusion of hardship.
5. Establishment of justice"

The five *fiqhi* schools generally agree that "Islamic laws (1) change with the passage of time and with the change of place or circumstance; (2) must avoid harm"(al-Hibri,1997). Jurists agree that Islamic laws "may be discarded if they are based on a cause (*'lilah*) which itself has disappeared," and "must serve the commonweal" ("public *maslaha*") Early jurists viewed disagreements among them as a sign of God's mercy, because they "injected Islamic laws with the degree of flexibility necessary for a religion which proclaimed itself suitable for all times, all people and all societies. Thus, hundreds of schools of Ijtihad developed, each best suited to its own community and that community's culture, with its attendant customs and traditions" (al-Hibri, 1997).

Our task is to fight perception of women as unequal implying disadvantaged or marginalized, to question the assumption that her life mission is exhausted by raising a family as this leaves out not only childless women but more than 80 percent of time from birth to death that a woman has besides duty of child raising for say few years for fulfilling her human potential or diverse creative and other dimensions. Ibn Rushd had long back asserted the need for involving women in diverse careers as child raising is only one of

her prerogatives. Most women who choose to stay at home have nothing to do in the age of gadgets and indulge in various evils or gossiping in their idle time. The classical Islamic period has great record of cases of active participation of women in economy and social life. The idea that women are to be segregated off into secret world devoted wholly to rearing children in neither justified nor warranted in Islamic tradition. Bukhari has over a dozen chapters on social life of women and we find women contributing in different walks of life throughout Islamic history. Jurists agree that Islamic laws “may be discarded if they are based on a cause (*lilah*) which itself has disappeared,” and “must serve the commonweal” (“public *maslaha*”). One needs to note Fazlur Rahman’s point that

the process of questioning and changing a tradition in the interests of preserving or restoring its normative quality in the case of its normative elements-can continue indefinitely and that there is no fixed or privileged point at which the predetermining effective history is immune from such questioning and then being consciously confirmed or consciously changed. This is what is required for an adequate hermeneutical method of the Qur'an (Rahman, 1982:11).

Women’s Rights

We may, as illustration, mention a few concrete points that are often raised in FAQs, to show how diverse are choices that women could exercise within the larger limits or range of wide highway of *Shariah*. Whenever any legal opinion appears constrictive of freedom or not in synch with deeper rhythms of spirit, women can scan diversity of opinions from classical to contemporary times, to choose in the light of all the accumulated experience and wisdom what best leads to their spiritual growth or fulfillment. It is always important to remember that letter killeth and spirit gives life and

we worship God who is Freedom. Limiting freedom in the name of blocking the means for less certain or imaginary harm has been compellingly criticized by several scholars including more recently Jasser Auda. Just a quotation will make it clear.

Harm is ‘probable’ some jurists claimed, ‘when a woman travels by herself,’ and ‘when people use legally-correct contracts with hidden tricks as means to usury.’ Again, Malikis and Hanbalis agreed to block these means, while others disagreed because the harm is not ‘certain’ or ‘most probable.’ For example, in the name of blocking the means, women are prohibited from ‘driving cars,’ ‘travelling alone,’ ‘working in radio or television stations,’ ‘serving as representatives,’ and even ‘walking in the middle of the road’ (Auda, 2008:41).

Mercy-Centrism, Choice and Open endedness

God obligates nothing that isn’t necessary for our true flourishing and disapproves nothing on the pain of hell that isn’t against the laws of moral, intellectual and spiritual flourishing. The true *faqīh* is defined by the Imam as “he who does not make people despair of the mercy of God, and does not make them lose hope in the gracious spirit of God.” It is in this sense that Ibn Arabi who thought his mission was to declare vastness of mercy of God may be read as true *faqih*. Jurists who end up sending people to hell for their imagined or real transgressions of this or that manual and who fail to link their formulations or opinions to overarching mercy here and hereafter are not to be trusted. Seek to show or demonstrate in every debatable case where other opinions/interpretations are forthcoming, as far as possible, to any inquirer/critic what Ibn al-Qayyim said:

The Islamic law is all about wisdom and achieving people’s welfare in this life and the afterlife. It is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces

justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Islamic law, even if it is claimed to be so according to some interpretation (Ibn Qayyim, 1973).

Istihsan, validated by majority of jurists, is “a method of exercising personal opinion (*ra-y*) in order to avoid any rigidity and unfairness that might result from literal application of law” (Kamali, 2004). A major jurist Al-Sarakhsi considers *Istihsan* as “a method of seeking facility and ease in legal injunctions” and is in accords with the Quran (2:183). The Companions in their judgments were not blindly literalists and sometimes (as in case of Umar and Aisha, for instance) seemed to have gone much beyond the imagination of even moderate reformists in subscribing to the spirit, keeping in view purpose and transcending the letter.

Given how little is specified in the Canon and how wide open the world of undetermined, we see mercy in operation. One is usually comfortable with the custom and Islam canonizes custom, so to speak. It is no wonder *fiqh*, especially Hanafi *fiqh*, could adapt to so many continents or cultures and traditionally Muslims hardly felt difficulty in living by it. The Quranic declaration “Take what is given freely, enjoin what is ‘*urf* (known to be good), and turn away from the ignorant (al-A‘râf 7:199)” is readily appreciable as universally applicable liberating praxis for every sane moral person. We are asked to enjoin what is known to be good – this encompasses universal ethic.

From various scholarly works on *Usul al Fiqh* and Maqasid we may note certain points that further strengthen the case for mercy centrism.

- “The majority hold that Ijtihad is liable to error. The minority hold that each of the several verdicts may be regarded as truth on their merit.” (Shawkani, Irshad).

- As for the practical rules of *Fiqh*, most of them are from texts which are speculative in meaning (*dhanni dalalah*)
- Law isn't absolute and changes with change in context, necessity, circumstances, even person. We know when one's life is threatened, *haram* can be taken to the extent that life is saved.
- The Prophet discouraged asking questions and companions asked him only 13 questions

We may further note the following points that expand our freedom to choose what impresses our aesthetic or affective or cognitive constitution or navigate amongst diverse options:

- Qiyas has been opposed by Zahiri and some other fuqaha implying freedom for us to choose a course of action.
- God takes a pragmatic view that we are imperfect creatures.
- In the end we are weaned away from taking our agency too literally or seriously. It is grace that finally decides.
- For any particular legal stipulation by jurists that one may appear problematic, remember that there have been equally competent jurists taking other views and besides *fuqaha* we have philosophers and Sufis and poets who have engaged with the problem of law in their own creative ways that offer more refreshing perspectives or alternatives.
- For those who use *Ijma* as an argument for closure of further discussion, it is to be noted that "Any agreement of majority can be a proof but cannot be a binding proof because to be binding, it must fulfill the conditions stated in the *Ahadith* quoted in support of *Ijma* (which

is nothing short of *Ijma* of all people, at least all scholars.) There is no good ground to exclude any scholar of any school of Islam, as long as the school or group itself is not considered outside Islam by the Muslims.” We need to note that the Ulama have on the whole maintained that the textual evidence in support of *Ijma* does not amount to conclusive proof. The verses quoted in support of *Ijma* (4:59, 4:83; 4:115, etc.) are not conclusive for *Ijma*. Imam Ghazzali says these verses are indications, not clear *nass* on *Ijma*. Suyuti's interpretation is the same. Al Amidi says, "these give rise to probability (*Zann*), not positive knowledge." Imam Kashmiri had to read the Quran several times to get some clue in his search for some Quranic basis for *Ijma*.

- Validated by Hanafi, Maliki and Hanbali jurists. *Istihsan* means to deem something preferable and is a method of “exercising personal opinion (*ra-y*) in order to avoid any rigidity and unfairness that might result from literal application of law. *Istihsan* as a concept is close to equity in western law.” Despite disagreement by Imam Shafi, Shii and Zahiri Ulama, majority have accepted *Istihsan*. We need to note, however, that *Istihsan* in the sense of setting aside an established analogy in favor of an alternative one that serves the ideals of justice and public interest in a better way, as originally considered by Imam Abu Ḥanifah and his main disciples, as Ibn Taymiyyah noted, is “not the form that was denounced by Imam ash-Shâfi‘i and Imam Aḥmad when they encountered some of the later Ḥanafī scholars practicing it. Al-Âmidi (Shâfi‘i jurist) stated that, notwithstanding his explicit denunciation

of *istihsân*, Imam al-Shâfi‘i himself resorted to *istihsân* on several occasions.”

- *Istihsan* and *Maslaha* are also important sources framed for the *fiqh* of mercy. The discipline of *maqasid* is also linked to *fiqh* of mercy. We may focus more on these in comparison to seeking to find a point of *Ijma* in our contemporary times. It has been noted that once scholars have differed upon an issue there can never be *Ijma* in the classical sense of agreement of all scholars by future generations since scholarship is eternal. Historically *Ijma* has been recorded on very few issues that are no longer object of debate and as such *Ijma* can't be invoked to stifle contemporary scholarship on new issues that are primarily object of debate between fuqaha or modern critics of medieval *fiqh*.

Certain *ahadith* including the following constitute basis for mercy and ease:

- "*La dararawa la dirara fil Islam*" [no harm shall be inflicted or tolerated in Islam]
- The Prophet only chose the easier of two alternatives so long as it did not amount to a sin.
- "Allah loves to see that His concessions (*rukksah*) are observed, just as He loves to see that His strict laws (*azaa-im*) are observed".

The above would confirm that no unnecessary rigour is recommended in the enforcement of commands and that the Muslims should avail of the flexibility and concessions of *Shariah*.

As Ghazzali expounded, Maslahah consists of considerations which secure a benefit or prevent a harm.

Another related point complementing the point on ease and open-endedness is attitude of humility advocated in the tradition. Instead of saying what does Islam say we should ask what do Muslim scholars say on this or that point say Caliphate/Islamic State, rights of religious/sexual minorities/women, freedom of belief/disbelief, triple talaq, qurbani, permissibility of music, compatibility of modern banking with Islam, dress code and grooming/hair code. To claim that Islam says this or that about issues that are often debated (we don't debate invariant value/ethical coordinates), is, generally speaking, problematic. We can only *strive* to know (to make best approximations) what Islam says/God really means/intends on questions usually asked – on other questions that are more foundational we usually don't need to ask and do not need to be told what Islam says as we know what our *fitrah* demands or what *aql-isaleem* requires or what conscience allows. And jurists differ in their conclusions on almost all these questions. They don't differ in matters of worship to significant extent and that explains why none including Muslim modernists/reformists asks for reconstructing them. In transactions (*muamalat*) they are bound to differ and long back they have agreed to disagree (thus, as has been remarked by a modern scholar, synthesizing two apparently opposite traditionally rehearsed teachings “My community will not agree on error” “Difference of opinion in my *ummah* is a mercy”). It means *Shariah* in practice becomes open ended and we can't close the debate that this or that is *the* Islamic view of it and hence uncontested. Before one can go for it or for any rigid polemics for and against the host of legal opinions that are hotly debated (our sermons and book shops are stuffed with this polemics on issues that God hardly minds and that require/invite divergent legitimate responses – and one wants to

laugh at the anxiety to suppress difference), one needs to consider the following qualifiers or filters that force us to recognize essentially tentative nature of our views and give benefit of doubt to other opinions.

In fact we find the earliest instances dialogue in classical age being close to this ideal – everyone, not just majority, often, agrees on the solution proposed after discussion. Isn't it sad to note that the issues of democracy, mixing of schools of *fiqh*, many modern economic and social institutions, travel without *mahram* relative, women drivers/heads of larger institutions including state, burqa/hijab imposition, views on philosophy and Sufism, supposed innovations in popular piety/devotion, divorce etc. violently divide us to this date?

Fiqh is the attempt to think and concretize *Shariah* and it differs not just from school to school but even from jurist to jurist. Since God wants to save all souls or make the world livable for everyone who agrees not to destroy it for others, and people differ from region to region, from time to time, from stage to stage of their lives, *fiqh* adapts accordingly. *Fiqh* is open ended – we are invited to exert ourselves in choosing their decisions so that God's intention is fulfilled – there are situations where no *fiqh* manual comes to our help and we stand naked before God/conscience. It is interesting to find all kinds of opinions within the prescribed limits entertained by Muslim jurists and we find upbringing, politics, theology, considerations of public good etc. impacting on them. Regarding the much debated *hudood* ordinances in Islamic law, it is noteworthy how Islam's theory of limits, as framed in Muhammad Sharur (whose reception has been much affected by some of his controversial views and simplistic reductionist view of mysticism) in contemporary times, makes man free to choose from one end of the spectrum to the other without incurring any sin. Applying mathematical notion of limit (to the Quranic notion of

hadd) developed by mathematicians, certain old controversies in hudood/inheritance laws get reframed and appear almost resolved. He has argued that “Allah set the limits for the law whose upper and lower boundaries encompass the scope of legislation that human societies are allowed to explore freely.”

Since it is very hard to ascertain the precise meaning/intention of the author of Sharia and one can't, ordinarily, vouch for one's interpretation as the final one, one can't delegitimize other possible interpretations. There is so much freedom to legislate and all we have been given is limits that must not be transgressed. The dialogue must go on while we keep striving for knowing the meaning intended by the Canon.

Liberal vs. Conservative Women Debate

Regarding number of questions that divide more conservative and liberal women – veil or particular mode of dressing or appearance in public or shaping of brows and one may add various questions one can see on various websites or modern *fiqh* works – the following general remarks may be kept in consideration.

- Many *fuqaha* have clarified that it remains to be determined if routine shaping of brows amounts to cursed mutilation or qualifies the act as *nams* and it appears in the opinion of many it isn't to be framed as *nams* that distinguished women of loose character in that specific context of Arabian culture. Divergence of options amongst equally qualified jurists amounts to room for any opinion that strikes one as more true to one's lived experience of faith or spirit of it or passes the court of our conscience that has been approved as the Court when one is in doubt. For any question one should first question the anxiety to

question. God and His Prophet didn't like the zeal to ask too many questions and have chosen silence or in principle given approval or *ibahi asli* to all things generally perceived as wholesome and that don't harm us. The Quran has given a list of four prohibited items and the prophetic *sunnah* has added to this list implied few items. Anything that contravenes moral and spiritual health stands disapproved and should be so and this is universal verdict of morally and spiritually alive people. Regarding burqa/hijab and how to appear in public, one may state that God is concerned with safeguarding human dignity. Whatever is compatible with modesty or decency and isn't flaunting of pathological ego – or is illusory deceitful expression – is what wouldn't invite God's/Reality's displeasure or hell. Against the picture of woman defended in modern neo-Salafi version as encapsulated in Rulings of Council of Religious Legal Opinions (C.R.L.O) listed in appendix to *Speaking in God's Name* of Khalid Abu al-Fadl we find version in Javed Ahmed Ghamidi, Asghar Ali Engineer and Farhad Shafti besides various Muslim feminist scholars including Merenessi, Rifat Hassan, Kecia Ali and Laila Bakhtiar. A few points from the later camp in Farhad Shafti are here presented to show the liberal-conservative divide and it will be followed by some reflections on possibility of bridging or recognizing divergent views and how is it possible to bypass their association with one's otherworldly prospects.

- Women have been told to abide by a number of rulings for which there is inconclusive evidence on the supposition that we have been directed to avoid the doubtful. Alluding to oft quoted *hadith* calling for avoiding the doubtful, Farhad argues for need to read it in conjunction with

another one from Ibn Majah, This is because *taklif* (*wujub*) only comes with certainty. This certainty is available regarding a handful of issues and thus vast corpus of *fiqh* rulings.

- Replying to the query regarding *hadith* stating that “the women with head like a camel hump will not enter paradise,” Farhad in his blogs on www.exploringislam.com notes that the *hadith* invoked here

has nothing to do with any kinds of innocently covering a long hair in any fashion. The *hadith* is clearly referring to women who have inappropriate behavior. 'Heads like humps of camel' is only one of their signs. The problem with these women therefore is not the style of hair, but their evil behaviour.

Second, 'heads like humps of camel' can have many meanings, as the scholars have explained. To interpret it to mean covering a long, ponytail like hair, is only an interpretation. The wording itself does not say that.

- On cutting hair Farhad has this to say:

Cutting hair per se cannot be called forbidden. We would need strong and explicit directive in the Qur'an or the Established Sunnah for such forbiddance and we don't have any. This is also the view of many traditional scholars of Islam.

The *hadiths* that appear to prohibit cutting hair are referring to a kind of cutting hair that gives a look that is against the nature of a woman, as created by the Almighty.

I also do not believe that looking like non-Muslim women per se is an issue. Within the limits of modesty,

as promoted in the Qur'an, looking similar to a non-Muslim is not forbidden.

There is a *hadith* in the book of Muslim, that is often used by the scholars who do not consider cutting hair for women to be forbidden:

Abu Salamah said: "The wives of the Prophet (pbuh) used to cut their hair until it came just below their ears." (Muslim, *al-Haydh*, 320)

In his commentary on this *hadith* Al-Nawawi quotes from Qadhi Iyad that it appears that the wives of the prophet (pbuh) would do this after the death of the prophet (pbuh) to avoid embellishment and to be able to manage their hair better. Al-Nawawi then writes: "in this (*hadith*) is evidence of allowing cutting hair for women and God knows best" (Sharh al-Nawawi, 4:5).

- Farhad is point blank in stating his views against segregation:

I can assure you that there are no strict restrictions on the working of the women outside, mixed with other men. This is a concept that has been developed among Muslims gradually, and only after the demise of the Prophet (p.b.u.h), for various reasons. When you read the history and note how some Muslim women were active outdoors at the time of the Prophet (p.b.u.h) you may agree with me that it seems like some Muslims at our time are more sensitive about gender interaction, compared to our beloved Prophet (p.b.u.h)!

Farhad enters into lengthy and sophisticated engagement with critics and alludes to such instances as Amra bint Nahik al-Asadiyah, a female companion of the Prophet (p.b.u.h) who used to act as an inspector for businesses at the time of the Prophet to question religious sanction of seclusion of women in Islam. Here one recalls extremely

vocal critic of seclusion and veil, Nazira Zayn Al-Din (d. 1976), who wrote *Al-Sufurwa Al-Hijab* in which she showed how problematic is the view regarding need of seclusion of women. In similar vein Abd al-Halim Abu Shiqqah (b. 1924) writes in *Tahrir al-mar'ah fi 'asr al-risalah* (*The Emancipation of Women during the Time of the Prophet*):

Through my study of the time of the Prophet I found texts and sayings of the Prophet which show women acting in all kinds of professions in total difference to what we see, understand and interpret today. This great discrepancy explained to me why so many women got away from (Islam) because it simply deprived them of the rights of life; that is why I felt it my duty to free the women from the habits and rules of *jahiliyya* which are mistakenly thought to be Islamic.

Farhad adds a damning comment: “if the criteria is whether there will be an attraction then basically we need to put the men and women in two different planets.” And gives his verdict on this point:

The Qur'an has never forbade women to be in the public, and only advises them (and men) to be modest in their behaviour. Do you think a woman cannot be attractive to men if she covers her whole body? There are *Hadiths* suggesting that the Prophet (p.b.u.h) allowed girls singing in his presence. Do you think that could not be attractive for those who wanted to be attracted?

Farhad further notes that

It is not changing the way that God has created a certain individual that is wrong, what is wrong is changing the way that God has created human beings. I can assure you that there are no strict restrictions on the working of the women outside, mixed with other men. This is a concept that has been developed among Muslims gradually, and only after the demise

of the Prophet (p.b.u.h), for various reasons. When you read the history and note how some Muslim women were active outdoors at the time of the Prophet (p.b.u.h) you may agree with me that it seems like some Muslims at our time are more sensitive about gender interaction, compared to our beloved Prophet (p.b.u.h)!

It is interesting to note the spectrum of opinions within the revivalist camp and internal debate within it on face veil and cutting of hair or public roles or wearing good looking abayas or wearing jeans under a loose long overcoat or brow shaping. Modernists or those classified as liberals seem to simply adopt one end of this spectrum or further open it up. It appears that we have gradually evolved responses that are less sharply defined or less judgmental of the other. It is hard to clench the argument for this or that position and we can agree to keep dialogue open and have the consolation that we shall face God on different terms or according to our divergent opinions of Him. What is clear is certain lack of clarity or intended ambiguity in matters that don't vitally or obviously affect our prospect for salvation. There is consensus on the following points anyway:

- That we shall be judged as per our sincere effort and understanding of God's will.
- That God's will as expressed in the canon is fraught with complexities and often sustains divergent readings
- That *hadith* corpus itself is open ended in a way and we can't foreclose the debate on authenticity and contextual considerations or diverse framing of several key traditions that are at the heart of the debate between rival Muslim camps and as such we can't afford too stringent views without granting some scope to the other opposite views.

It seems in any case God can't be interested in contingent cultural issues that get framed differently with religion. What is non-negotiable for a truly serious sincere piety is effort to be loyal to what it is convinced is God's will or stand at ease in the court of conscience. Guilt is something that has disastrous psychological and spiritual costs and should not be allowed until clear evidence. Mere doubt about certain things isn't enough to count as evidence of guilt. Let us note, with Shakespeare's hero, ripeness is all. In his book, *al-Radd al-Mufhim*, Albani who is no feminist, refers to active women at the time of the Prophet and then comments that "These are authentic incidents that firmly prove the state of the women of Salaf (i.e. era of the companions and their followers) in terms of their perfection and magnanimity and good upbringing to the extent that they were capable of doing what they had to do in contribution to good causes."

It appears that there is evolving a consensus on questioning limiting women to domestic chores and debunking various accusations regarding their capabilities in various domains and higher intellectual and spiritual pursuits. It was Ibn Arabi who recognized and extolled women's spiritual capabilities like none other. Women can't be objectified or reduced to this or that role.

One may here refer to other considerations that further question strong judgmental attitudes of certain fuqaha that however continue to be dominant in public imagination. These considerations include

- Theorizing the link between sin and salvation or otherworldly consequences, if any, of choosing different opinions. The concept of sin that may affect salvation involves intentionality and knowledge that it is forbidden and if we dispute the second condition by offering another possible interpretation that disputed claim of knowledge

while recognizing/respecting the horizons or coordinates of Tradition within which interpretation is offered, salvation can't be affected on the analogy of error in *ijtihad*.

- All the five main schools of thought in Islamic jurisprudence (*Hanafi, Maliki, Shafi'i, Hanbali, and Ja'fari*), “agree on four basic principles of Islamic law; it changes with time and place, must serve the public interest, should not cause harm, and may be discarded if its cause has faded” (Kharroub, 2015).
- A fundamental rule in Islamic law that “A need that is widespread should be treated as a necessity” and Ghazzali’s rule that the higher order necessity should have priority over a lower-order necessity if they generate opposite implications in practical cases.
- Differentiation between means and ends and, as Muhammad Ghazzali, that ends or principles don’t expire but means may.
- Shatibi’s distinction: “Literal compliance is the default methodology in the area of acts of worship (*ibadat*), while the consideration of purposes is the default methodology in the area of worldly dealings.”
- Mujahidul Islam Qasmi’s emphasis on the need for more open view with regard to *talfeeq* (picking and choosing, when need is felt, legal opinions from various schools/mujtahids) and Ibn Arabi’s explanation for the same that it is grounded in Islamic ontology of mercy and should not be construed as conceding ground to *nafs parasti*.
- What is considered good by Muslims is good in the eyes of God as well as Ibn Masud. Stating that *Isthisan* is adopting

“what is more conforming to common people after abandoning usual way of qiyas.”

- And that “it is the very example of the Prophet and his Companions not to imitate them, literally, in the various areas of ‘transactions’ (*muamalat*) and rather, to go by the principles and ‘*maqasid*.’”
- Ayatullah Shamsuddin’s suggestion that Muslims need to “open their minds to the possibility of ‘relative’ legislation for specific circumstances, and not to judge narrations with missing contexts as absolute in the dimensions of time, space, situations, and people.”
- The point noted in his *Maqasidi al-Shariah: A Beginner’s Guide* by Jasser Auda that in certain/many cases at least

Current applications (or rather, misapplications) of Islamic law are reductionist rather than holistic, literal rather than moral, one-dimensional rather than multidimensional, binary rather than multi-valued, deconstructionist rather than reconstructionist, and causal rather than teleological. There is lack of consideration and functionality of the overall purposes and underlying principles of the Islamic law as a whole. Moreover, exaggerated claims of ‘rational certainty’ (or else, ‘irrationality’) and ‘consensus of the infallible’ (or else, ‘historicity of the scripts’) add to lack of spirituality, intolerance, violent ideologies, suppressed freedoms, and authoritarian regimes (Auda, 2008: 53-54).

Now all these points haven’t been pressed into the service of securing gender justice and dialogue with Muslim feminists or their Islamist and secular feminist critics. We need trilateral dialogue between Ulama/Islamist women, Muslim feminists and secularists on key questions in order to evolve consensus on what

to do or how to secure the rights of the vulnerable women. Point scoring against one another wouldn't do. Women are suffering on various accounts and they need help for which concrete action and joint work is needed. We can't avoid engaging with religion and religion eschewing secularism and impose certain theological or ideological paradigm. For resolving multiple problems and disempowerment faced by women, all need to come forward and take membership of special groups or communities. These communities would debate and discuss everything that is imposed in the name of certain ideology or theology and evolve common strategies including financial support systems. If all employed or self employed or well settled women contribute daily sadaqah of Rs 10 or 10 percent zakat or 10k soft loan for mobilizing and financing such community strengthening initiatives that take care of women – their debt, their need for seed capital, their food needs, their healthcare exigencies, their legal aid, their counseling for rights and duties especially marriage associated issues – we would soon find new India, new Muslim women whose head is held high and who don't have to suffer from abuses in home and public spaces.

Chapter 6

Scripting New Life through *Nikah nama*

Amongst various tools for mitigating injustice against women, choosing proper *Niikah nama* and implementing it is most important and easiest. All it needs is awareness amongst women and stakeholders. Even the State can take various measures to register marriages where evidence of abiding by the standard *nikah nama* is there. Seeing some success in arriving at the standard format of the *nikah nama* elsewhere (such as in Pakistan) and incorporation of most points in the documents of Indian Fiqh Academy, it is encouraging environment to work with key stakeholders for evolving consensus on the same. The following pages discuss certain issues regarding standard *nikah nama* recognized by certain Muslim States that Ulama should have no difficulty in further refining to meet requirements of diverse contexts and exigencies that women encounter. And it may well be possible to agree on keeping open certain areas that need more discussions or debate between contracting parties. It appears that it is Community that has to play key role in helping the State and other individual in implementing many laws already formulated, monitor or review existing structures such as local Imams solemnizing *nikah* or delay in justice or difficulty of sustaining oneself after divorce – and community can mobilize its huge resources of infaq, zakat and sadaqah for vulnerable women – see

to it awareness increases especially for more vulnerable sections regarding their issues.

Very few Muslim women are conscious about safeguarding their rights through the instrument of *nikah nama* which lists the rights and obligations and legitimate reasonable conditions agreed upon by both parties (the bride and the groom) which confirms the consent of both the husband and the wife. The *nikah-nama* is the detailed legal marriage contract that legitimises a marriage. As such consciousness of *nikah nama* and choosing wisely and extensively discussing it before finalizing draft is what is needed.

Important points in the *nikah nama* that may be included or elaborated to provide framework for any progressive interpretation and intervention for achieving the objective of justice in marital relationship are listed below. Solemnization by religious figures and registration of marriages by the State or family courts should be linked to commitment to different proposals listed in following pages.

Before coming to concrete legal and other interventions we might propose more basic counseling and training in life's development skills so that people are able to take more rational and critical decisions with regard to their lived issues. Before counseling for marriages people need to have counseling for life and its key challenges. As such successful programme for women empowerment must precede by equipping them with key life skills and ability to take informed decisions. After giving intensive sessions on basic life skills and how to go for such important decisions as marriage, life partner, career and family, we can begin to discuss with prospective spouses such things as proposed in the following pages.

- It needs to be known by every prospective spouse that key conflicts that may arise later can be resolved through *nikah nama* and they can further fortify its legal standing by affidavits and involving number of trusted relatives and guardians in witnessing and pledging to uphold the solemn agreement. There must be created moral and legal pressure from family and extended network of friends and local Mohalla community to ensure that the agreement is upheld in letter and spirit. Heavy penalty should be agreed as well in case of any backtracking and necessary safeguards to implement the same obtained as well. One can add such clauses as “This agreement shall be published in newspapers and social media sites and a copy sent to everyone present in *nikah mehfil* and those who witnessed this agreement to name and shame the culprit in case of any breach or backtracking.” Given it is left to free choice or discretion of contracting parties to agree to marriage proposal and there is silence or no mention of conditions or subjective and objective criteria they take into consideration before choosing to give consent to marry, we may imagine number of conditions that spouses could list to decide if they enter into matrimony. They may share with each other their list of essential qualifications or documents before choosing to come for prenuptial talks and in these necessary safeguards can be kept and frankly discussed to avoid later conflicts. Conditions that mayn’t appear proper if attached to *nikah nama* can be brought to table before *nikah nama* can be brought to table. One may draft on following lines a few propositions to settle all possible future conflicts between spouses or their families or chart further course of action in case of dispute. Qualified jurists who have firm grasp of contemporary

realities should be part of advisory for formulating/reviewing *nikah nama*.

- We understand that it is always better to cooperate and resolve differences amicably and appoint the following people for dispute resolution in *mehr*/additional gifts treasure fixation, different arrangements fir marriage and post marriage. We choose to adopt the model document for easy marriage and stick in letter and spirit to models adopted by professional councils in the best interests of community. We shall not invite wrath of God by defying model code of conduct in the canon that has been designed to lead to blessings and ease burdens.

1) Two Marriage Counseling Professionals

2) Two Reputed Local Senior Teachers, one from each side

3) Two Qualified Religious Scholars/Spiritual Figures

4) One qualified lawyer and one professional with background in sociology and economics co-opted online or offline.

We may now proceed with listing certain points distilled from various sources for which there is in principle no objection from shariah experts or for which there is support from some qualified Ulama on whose opinion one can rely in absence of clear consensus to the contrary. In a situation where we have divergent opinions of equally qualified jurists we can choose on the basis of *tafleeq* and other principles of fiqh easier ones. Detailed discussion on choosing legal opinion has been done in the chapter on FAQs of Muslim Women. A very important problem is forcing girls into marriages with husbands they don't wish to marry. Family pressure or cultural expectations force her into silence and later many cases of extramarital affairs are

attributable to this denial of freedom to choose partner. This can be avoided by counseling of guardians and taking declaration from guardians and bride that she has not been overtly or covertly forced into marriage. We can phrase the oath declaration in a way that none could ordinarily afford to take lightly. One may choose the following formulation.

We declare, as Muslims who are to render account of every statement including the oath that will affect lives of others, that, to best of our knowledge, there has not been any coercion, overtly or covertly, for effecting the present union of spouses. We invoke curse of God and all the prophets and saints and our elders against ourselves if we utter any lie. We pray all may witness very soon God's wrath and our destruction if we fail to stand by truth today and in future. We understand there will be no barakah in the union for us if we have, in any way, created obstruction in exercising their freedom of choice or conscience.

Affidavit and oath to be taken by families especially husband before the assembly of worshippers preferably in the Friday congregation that they shall not indulge in any extravagant spending or any activity in event management that is hazardous to environment or snatch God given rights of spouse and this shall be mandatory before *nikah* can be solemnized. To put moral and religious pressure on all stakeholders both oath and affidavit duly signed by his four relatives/neighbours above age of sixty may be taken in which he affirms commitment to community ethic for affordable eco-friendly marriage. We may now list some points that have been proposed /could be proposed as

safeguards with *nikah nama* document, objections of some jurists on some of them, addressed by other jurists.

- The *nikah-nama* allows

various clauses to be added to it with specifics like rights to custody if the couple separates, monetary decisions ranging from the right to have a career, to having kids and raising them a particular way as well as to where the couple chooses to reside, among other things. Women are often kept under the dark about these clauses and the rights the *nikah nama* allows them, even by their own families (Mansoor, 2017).

Any opinion to the contrary regarding illegitimacy of this that clause can be reviewed on case to case basis.

- Section 18 of the *nikah nama* currently implementable in the Pakistani law allows the wife to divorce husband if she wishes through what is called *talaq itafweez*.
- The stipulated *mehr* should not be deferred but be prompt or paid within a clearly stipulated time and it should be paid in terms of gold or in a way that inflation wouldn't decrease its value and ideally as a share certificate in a venture that would help reasonably assured income. With some effort we could convert dower and additional gifts received at the time of marriage into a seed capital for life long sustenance of the bride and issues later in on maintenance before or after divorce would hardly arise. A silent income of say Rs three to five k in our conditions would ensure her pocket expenses or even personal basic needs of food, clothing etc. are met and this much income can be assured by investing only Rs 2.5lacs of *mehrand* additional gifts through angel investment or credit

cooperative portals. What is unfortunately the case is her newly acquired assets get either locked in nonproductive things such as small plot of land or gold is not made liquid and fails to grow through investment in business. Spending heavily on marriage function or clothes (which is the norm for most elite and middle class families) is suicidal for future securing of livelihood for the couple in general and bride in particular. Pre-nuptial meetings followed by *nikah nama* could be used for avoiding these expenses. Important set of conditions agreed before signing *nikah nama* in pre-nuptial meetings must include four Nos – no extravagant spending, no plastics, nothing hazardous to environment, no credit taken on burdensome condition on either side. There must be set certain standards or sticking to certain minimum standards set by the community and its marriage bureau. Besides strictly implementing ban on expenses exceeding the allocated budget fixed by local community to discourage display of anything that is offensive to average taste, all expenses on marriage beyond certain minimum that is affordable for even the poor should be taxable in double digits to compel people to avoid extravaganza. The State can enforce model code of conduct on its employees and registered business people and private institutions so that extravagant spending is avoided. Reducing only Rs fifty k on one million marriages in a year in India would be saving Rs 50000000000 that is enough to sponsor thousands of marriages of the poor along with seed capital for carving permanent basis for livelihoods of significant percentage.

- The husband shall provide the wife and her children residence – not necessarily costly house but modest or rented room or two only would also fulfill obligation on his

part – during the subsistence of marriage according to his standard of living. Number of Shia clerics and Iraq's supreme spiritual leader Ayatollah Ali al-Sistani approved the provision that if a husband divorces his wife he must maintain her till she re-marries or finds a source of livelihood. Although some other Shia and Sunni authorities have not accepted this extension, the underlying issue and aspiration to help the vulnerable women is shared. Until universal income for all including adult women proposal get ratified by respective countries as would be in the spirit of Islamic doctrine of the Duties of the State/Community, Community is obligated to provide for basic necessities of every citizen. Combined with some special scheme crafted on the pattern of MNREGA for women which would give them employment for at least 150 days in a year or three days in a week, the problem of maintenance of divorcees or other more vulnerable women would be better addressed.

- The husband has no right to prevent the wife from taking up gainful employment or any personal creative/academic pursuit if she so desires
- According to some scholars one can get fixed one's pocket money or reasonable maintenance charges or some mutually agreed percentage of husband's income or resources. Disagreement of scholars on conditions on *nikah nama* notwithstanding, it can be safely stated that any condition that doesn't contravene the Canon or rationality and helps avoid future conflicts or injustice should be brought to table for mutual discussion. Qualified religious scholars could be taken on board to give opinion on any clause. It needs to be reiterated that love makes all things possible and if we could focus on establishing strong foundation of love and ethic of care between couples, there

would be no need of so many clauses to be added to *nikah nama*.

- In case of a dispute, “the spouses will go through a process of counseling/mediation/ arbitration to resolve their differences with the help of two counselors or arbitrators — one from each side, appointed for this purpose.”
- Given there are ample protections under law and shariah law that fail to be implemented in given cases in concrete situations, massive awareness drive by religious and women centric organizations needs to be sponsored from sadaqah of women or other funding sources.
- There should be comprehensive review (online/offline) through agencies offering nikah related services, of *nikah nama*. Trusts and even companies offering such products as Nikah Services for Healthy Relationships should come up to help new marriages get all necessary safeguards. Or we could have this review through a tribunal appointed at town level by Conglomeration of Women and Imams whose review should be considered important for cognizance by Courts. Let no *nikah nama* be accepted unless vetted by this tribunal. Let *nikah* be done on specified days only before this tribunal as the current practice of doing it at homes or mosques before local Imam miserably fails to realize the objective of justice and bring to consciousness of contracting parties important associated points in the contract.
- Make *khula* time bound process and penalize harassment and delay on its account. Every day beyond the period reasonably fixed for executing *khula* should be counted in determining. Such anxieties as “the clause that delegates power of divorce to brides will increase the number of

divorce cases in Muslim society” can’t be taken seriously in view of ignored costs of existing arrangements that have made life a hell for so many women and no easy solution to get rid from husbands who intend to torture women by neither keeping nor divorcing them. *Khula* should have been time bound process but given discretion of husbands it fails to be granted without excruciating emotional trauma that destroys lives. If *khula* would have been actualized in decent way, there would be no need for delegated talaq.

- As in AISPLB’s version of *nikah nama*, one should make it binding on the groom to declare his financial status or state if he is already married and provides for separate living arrangements for the wife if she is harassed by her in-laws.
- The clause discussing whether the bride has been given any property as dowry and if so, the value of the property and the specification that both parties have mutually agreed on, needs to be taken very seriously and it must be made a point that the girl receives her share of property or better her whole or part of share in joint property to be managed professionally by her or her attorney at the time of marriage from her parents/family so that later disputes are avoided and the cases of depriving her from her share of property don’t occur.
- The right to divorce is one of the most important clauses in the *nikah nama*, which guarantees the bride a right to divorce. Unfortunately, in many cases in Pakistan these sections are cut off at the time of the *nikah* without consultation from the bride. In India this isn’t usually mentioned at all. Clause 18 in *nikah nama* in Pakistan asks “whether the husband has granted his wife the right to

divorce and if so, what are the terms decided for it? While clause 19 asks if the husband's right to divorce has been curtailed in any way."

- The Clause 20 of *nikah nama* in Pakistan asks the parties if there is "any agreement among them related to the monthly allowance and guarantees while they are together as a married couple. If they do, they can state the particularities of it." Though it is generally interpreted to be about the wife's monthly allowance from her husband, but experts say that this section can include the division of responsibilities and chores among the couple, guarantee the wife the right to pursue her professional career or education. This section is important in the sense that it can help set tone for the marriage and can be helpful in avoiding any conflict that arises later in context of roles and responsibilities of the husband and wife.
- Although it holds contractual weight, there is felt call for more robust legal provisions as the efficacy of the "*nikah nama*" in a court of law remains nuanced. For this it is suggested that the State can facilitate through various legislations speedy cognizance of their issues.
- For the children the proposal mooted by Uzma Naheed that they "should be kept under the care of their mother though the responsibility for meeting their expenses should be of their father" may be implemented and provision for this should be kept in *niikah nama*. Another proposal for the second marriage that it should be made compulsory for a man in this *niikah nama* "to obtain the permission of his first wife or at least to inform her so that the first wife could rightfully demand suitable maintenance allowance, accommodation etc for her as well as expenses for bringing

up children, their education etc because justice and fair play demands this” (Naheed, 2005).

- Clause 21 and 22 of Pakistani *Nikah nama* ask “whether the groom is already married or has another wife. If so, has he taken the permission of his first wife to enter another marriage and submitted the proofs of permission for second marriage.” It needs to be noted that though “second marriage is not annulled if husband has not obtained his first wife’s permission for the marriage but under the law it is a criminal offense.”
- Facilitating *khula* Without implying any laxity in maintaining relationship where there is a scope for it, we need to consider needless hassles and intended torture by husband’s who keep women hung, Uzma Naheed has summed up well the case for women requesting separation on well established:

If a man treats his wife very cruelly, beats her or is a drunkard and does not pay attention to her daily and essential requirements and if all attempts at improving the man through others’ intervention fail, she may be given the right to pronounce divorce on herself. Alternatively, the Muslim Personal Law Board can assign the Imams of big mosques belonging to different sects in the country to settle *Khula* cases with the help of prominent women of the locality every week so that women whose request for *Khula* is justified should be helped by nullifying their marriage (Naheed, 2005).

In her submission on model *nikah nama* to the Hon’ble Supreme Court of India Agnes had included rights of the women under Protection of Women from Domestic Violence Act, 2005; the Dowry Prohibition Act; the Dissolution of Muslim Marriages Act, 1939; the Muslim Women (Protection of Rights upon Divorce) Act, 1986 as well as rights under other statutes are not

extinguished through this *nikah nama*. Agnes rightly maintains that “the issue is not if talaq is pronounced in one sitting or over a period of 90 days, but whether there are effective mechanisms for helping poor, marginalised and vulnerable women to access courts for protection of their rights” (Ashlin, 2017). One would add that access to other spaces such as local Mohalla committees is also so limited or they fail to help them.

A Suneetha has aptly summed up significance of socio-legal instrument of *nikah nama* for bridging the divide between secular and religious factions in Muslims. To quote her:

It has helped in the consolidation of conservative Muslim opinion against the state, resumed the (contested) conversation among “religious” and “secular” domains on marriage practices, and even enabled a continuation of a discussion on “secular” feminists’ concerns such as dowry and destitution of married women due to desertion. Islamic and secular idioms got inextricably mixed up, whereby dowry got re-framed as un-Islamic (rather than illegal) and *mehr* as the “right” of Muslim women!

The real significance of the *nikahnama* debate, as such, lies elsewhere: in the space that Muslim women have carved for themselves through this initiative and its role in resuming the traffic between “religious” and “secular” spaces on issues of gender after Shah Bano. By initiating the *nikah nama* debate on the grounds of sharia, Muslim women have been able to enter the male-dominant terrain of the “religious community” and disrupt the stereotype of Muslim women as victims of community patriarchy. In pushing the “Islamic” tradition for reform and succeeding to an extent, they have disrupted the prevailing secular narrative of the unchanging and regressive Islamic tradition. *Nikahnama* has the possibility for extensive reach not only to popularise correct practices and strictures against bad practices but also to draw the community

(especially elders in the form of arbitrators, the *darulqaza*) into such an exercise (Suneetha, 2012).

Chapter 7

Making Marriage Easy: Evolving a Joint Action Plan

Life is easy. Our basic requirements are very few. We don't need much money to live soulfully or meaningfully. We don't need to own house but can get one on rent. We are encouraged to live simple lives and not covet luxuries. We don't need government employment to sustain ourselves. Food is damn cheap. Clothes don't cost much and we can use second hand ones as well. We need to teach children to live lives gracefully, with dignity and not coveting comforts or riches which often go against higher aspirations of intellectual and spiritual life. Most of great men have lived simple lives. Even some of the richest like Warren Buffet and Ratan Tata have lived simple lives. Saints, in general, have lived lives of exemplary simplicity. Tolstoy and spiritual writers have shown deeper meaning of the Gospel to lie in choosing poverty over riches. All great traditional cultures have valorized lives that don't cost much for the environment or limited resource base. Wherefrom is interiorized the notion of riches are linked to happiness. Happy people live simply living off the inner riches. Travelling light on earth is what has been propounded by great minds. In a prophetic tradition we find markets as worst places. We haven't been told by great teachers to opt for consumerist life style. Simplicity is ultimate sophistication. A minimalist life style is what leads to greater joy or fulfillment in life. Budget for make-

up of certain brides is enough for funding food for years. Budget on clothes and jewelry of one bride may cover life's expenses for another. More money is spent and destroyed by the rich on marriage than is needed for the food and education of the poor for whole life. These deserve to be named and shamed. We need to teach children the beauty of simplicity and obscenity of extravagance. The community must protest against or boycott the obscenity of extravagant marriages. The rich will die their own death if 90 percent community understood the power of resistance against the imposed life style of rich – irresponsible consumerism, show off, waste, environmental destruction. Education and community leaders including Imams can lead this resistance movement. Capitalism is not invincible – the community of aware people is.

Community kitchens would help to resolve the problem of domestic chores. The State, NGOs and local Mohalla committees or self help groups can coordinate community kitchen for five to ten families which would also generate employment for one person for two to three kitchens. Food can come prepared and cleanliness ordered for houses from community kitchens. Although ideal solution would have been families sharing meals on weekends and choosing to do chores of other families once a week, second best solution is community kitchen that feeds adjacent families. We can create near mosques/shrines such langar spaces that would feed anyone who asks and necessary resources can come from daily sadaqah/ other contributions of local community. There are steps being taken for institutionalizing the idea in different places in Kashmir and initial reports are promising.

If we could focus on teaching generations or students virtues of simple life – and simple marriage, community spirit or sharing of resources and *infaq* of time and skills – there would hardly be such problems as late and expensive marriages. Those who demand

huge resources for marriage, for houses, for starting business generally are failures in the examination of life. It is the responsibility of guardians – here lies the real significance of this institution whose role is often perceived to be an obstruction in healthy marriage arrangement – extended family and community to marry girls at proper age (early 20s) to avoid problems on account of late marriage. Now there is no institutional or implementable moral framework to ensure this. Livelihood and marriage expenses for the bride could be planned after the birth of a daughter or after secondary education by tying up her in silent partnership agreements with local businesses or buying share certificates or helping her work on part time basis. Interest free credit cooperatives could be strengthened and accounts created for daughters by parents/guardians. Investing properly Rs 100 every month in her name for 20 years in various profitable ventures could give us some multiples of principal amount $100 \times 12 \times 20 = 24000$ for basic marriage expenses and investing Rs10 daily for 20 years (73000 is principal amount only) could create good capital and profit share for livelihood support to cater for anxiety over resources that often delays marriages.

Inheritance Share obtainable at Marriage

Given very few Muslim women receive inheritance share due to them and it is often in the name of dower that is adjusted or written off in favour of women, it is proposed to transfer her inheritance shares or consent to transfer such shares when demanded or in case of divorce. Given there has been huge failure of Muslim community to ensure Islamic inheritance law pertaining to women, massive awareness campaign regarding it that shall target every would be bride and institutions from mosque to women based groups besides courts and concerned families/relatives of the deceased at the time of distribution of shares. All shall be required

to write wills for community causes in general, paying missed zakat and due shares as per guidance of Islam. Name and shame campaign against usurpers of women's rights would be part of the campaign. It should be part of marriage contract to execute due inheritance share transfer as part of payable dower. Let *mehr* be on lower side (in thousands or under two lacs) but associated treasure of gifts should be transferable to women from inheritance. Parents can choose to transfer share due to women as part of will before death or choose to gift this share at the time of marriage. Imams who solemnize *nikah* can make extracting commitment for share transfer as part of their speech at the occasion. Let every Muslim woman insist on livelihood support or post-marriage pension from investment of her share from property. Let *mehr* be treated as investment capital for future income support even if it is a few hundred/month.

***Mehr* Investment Fund**

Mehr is often ample seed capital for investment to carve recurring income support from profits. If complemented by investing inheritance share in form of kind or cash gold (obtained as part of *mehr*-dower) through interest free loan against gold or converting gold into cash would ensure basic needful post-marriage pension. In cases where parents can't afford this much local charitable institutions/*bait al-amwal* could deposit this safekeeping fund. Besides marriage cheques and other things in kind, sufficient for one needy bride, can be collected from *infaq* by local *bait al-mal* sufficient for one marriage every year could be distributed in Ramadhan for one case from part of *sadaqat al fitr*.

Easy *Nikah* Document to be prepared and sent to all friday mosque Imams who shall get it widely disseminated and explained to audience and make it a point to teach bride and groom at the time of solemnizing *nikah*. It should be taught in special marriage

training sessions conducted for every prospective bride and groom at local levels. There should be special classes in colleges as well on model *nikah nama*.

It shall consist of largely ignored or forgotten ethic of marriage and shall be disseminated far and wide, in every home where marriage is expected. Model document shall summarize Islamic teachings on simplicity and avoiding extravagance and various forms of injustice that are making marriage difficult. The following is proposed as rough draft for the same.

- Muslims are commanded to avoid *tabzir* (spending on sinful things) and *israf* (extravagant spending). Muslims should avoid attending any gathering where these sins are shamelessly or publicly practiced.
- Imams shall boycott any marriage where anything against the value system of simplicity and no to extravagance and injustice is being done. They shall not solemnize such *nikah* ceremonies.
- I suggest opening up all women seminary that sees the issue of fatwas coming from recognized but male dominated institutions like Deoband and Azhar. In this seminary should be world body of scholars trained in traditional Islamic jurisprudence and modern disciplines who frame opinions for women or at least scrutinize fatwas of men. It mayn't be difficult for Muslim women of diverse persuasions to identify with the burning passion for justice of certain die hard atheistic and we can come on common terms for securing cooperation and voluntary associations to resolve most of problems – we can frame strategic alliances with women of other faiths and even atheists to seek support for common minimum programme which would include gender equity/justice. I suggest conducting

seminars not on such clichés or vague general ideas like rights of women in Islam but concrete agendas like framing model *nikah nama*, creating NGOs that provide legal advice or even free legal care to women suffocating under oppressive notions, both “religious” and “secular.”

Making Marriages Last by Investing in Love and Making Divorce the Last Option

Love makes possible all things. If we could truly love, unconditionally love we would secure our redemption and domestic peace. Why can't we put love of God and neighbor at the center and find this world transform into a paradise? That is the insight of saintly character Father Zossima in arguably the greatest novel ever written *The Brothers Karamazov*. If our society and education system could teach us investing whole life in love – and we could understand how God is love and attention and humility concealed forms of love and our deepest need one of love and with such writers as Doris Lessing that all problems are ultimately traceable to deficiency of love and with saints such as Rumi how love is the royal road to God – we could make divorce, ordinarily, unimaginable. If we understand that it is not assertion of ego of revenge but unconditional forgiveness that makes us truly happy and the world a joy, we would invest in suing ourselves for all kinds of ego pathologies or cure our inflated sense of ego or agency or power seeking complex.

Comprehensive counseling before and after marriage may prevent need for divorce or *khula*. There is such a failure in relations due to absence of *tarbiyet* at different stages. Education fails to address this problem. Other institutions have also failed to cultivate an ethic of relationships in community. As such we must create extensive counseling network and trained human resource for

reaching out to future couples. Arbitration councils need to be institutionalized and create spaces for moral pressure to prevent divorce on flimsy grounds. There needs to be created a long term mechanism for choosing, solemnizing and maintaining marriages, following model ethic or advisory for the same. We need accountability of local community institutions such as Mohalla committees and engagement with Panchayats and incentivizing adherence to rights paradigm and providing assistance to those who subscribe to model *Nikah namah*. Wouldn't it be wise to discourage and penalize divorce by imposing some tax on initiating agent and this tax would support those who get affected, especially children and compensate for the loss of resources of community that were invested in creating a relationship.

Chapter 8

Muslim Women: Evolving a New Manifesto for Change

Muslim Women aren't organized even though a few of them may rise to the highest public posts. Their awareness about their own problems is so little. They are divided against one another even in the space of extended families. Even in small families it is women against women that is the rule. Mothers against daughters-in-law and the later against sisters in law and similar tangles are running domestic peace. It is rare to find a happy daughter in law. Women in Mohalla or larger levels aren't united. Women aren't educated in the skills of life. Muslim women teachers who are better educated are most pathological consumers spending their resources on such things as clothes, marriages and houses. Muslim women haven't, in general, understood the wisdom of saving and investing or creating wealth. As such they can be classified as poor despite possessing money. Consuming time away in gossiping or plotting against one another, vast number of Muslim women don't seem to know what to do with time especially as various works done in homes for livelihood have disappeared. Muslim women pass-outs from women madrasahs haven't, in general, been able to be of great service to themselves or to community. The virtue of work hasn't been learnt at mass scale by any group of Muslim women. Work and industry haven't been the focus of most of Muslim women. As such they fail to be great productive force of

economy. How do we address this problem is important and its redressal would do a great good do the lives to Muslim women.

Democracy or current political order is premised on the thesis that divergent ideological currents can coexist and work together for common ends and accept the fact of difference without letting it divide unity. Communicative dialogue and *ijma* of elected representatives coupled with recognition of different legal positions as equally legitimate in certain areas where common stakes/interests aren't hurt as an instrument of consensus could be deployed to resolve certain nagging areas of conflict in the Muslim societies. Women representatives in Parliaments need to be proactive in creating consensus on number of issues for implementing justice to women. Universal access to gender justice through special family courts for which some reputed members of civil society could be co-opted as well could be one option. Democracy at grassroots or more radical approaches to democracy could be deployed for evolving consensus and mobilizing resources to achieve needful on concrete problems faced by women.

Let us state seven key points that each Muslim woman could work upon to create the change desired. Let it be noted that it is an ethical and professional calling for every woman who understands the simple point that women's issues can be resolved by concentrated and collective effort and every woman and very small interventions can significantly matter.

- 1) Educate oneself about who one is and what one owes to the Other or one's duty to the Reality. Understand that you are nobody and life is a school to learn this lesson. By becoming nobody you remove the only obstruction in the way of your ticket to happiness on earth and Heaven that is a space for nobodies, for those who are consumed by love,

for those who become open to the other or whole universe and as such the whole world becomes theirs. If you have to test your score in the school of life, check if you become angry or you are better than anyone or you can be easily offended or you worry about your appearance or car or mind. Examine if you succeed to maintain smiling disposition.

- 2) Secure membership of a) interest free credit cooperatives and keep your savings available for community, b) community kitchen c) extended family/friends kitty for money and parties such as shared meals weekly if not daily d) SHG d) car pooling group and e) grocery from community store
- 3) Volunteer your services – one hour a day or a week – and create a pool of free services you get entitled to from similar volunteers. The goal is minus money from your routine life and get access to free education, free transport, free medical care, free accommodation, free food.
- 4) Pre-book your all requirements or better become shareholders of productive units from which your routine requirements of milk, meat, chicken, fruits, vegetables or consumable food products come.
- 5) Give daily sadaqah to credible organization that works on productive model of sadaqah spending, join the club of those who contribute at least 5 percent of profit made on daily basis from your business enterprises or assets to community, calculate your zakat and pre-pone its payment in installments to be in turn used as soft loan and reclaimable before due date, write your will for at besides one percent of property today only as the Prophet enjoined to do it within two days, give your *fitrana* as part of a larger

group that chooses to empower one individual only by way of paying off her debt or issue share certificate in food procurement unit for three years.

- 6) Script your or help others script *nikah nama* under professional guidance, boycott extravagant marriages and use of any item that harms environment or health, avoid any expenses on marriage beyond the absolutely essential get expenses on marriage reimbursed from the groom, invest in love for mother-in-law through weekly gifts and facilitation in home chores and hosting of monthly parties for her relatives of in-laws
- 7) Advocate for necessary legal support for reimbursing necessary expenses on marriages, support for livelihood till one gets job and marriage expenses, access to interest free loans for women entrepreneurs, access to separate basic housing of three rooms and a kitchen in in-laws, right to childcare facilities in offices, right to seat in public transport, guarantee for employment and minimum wages in the form of not cash but access to basic standard food, education, electricity, accommodation, takaful and transport.

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Khusro Foundation

A New Initiative

India is at the cusp of a historic transformation. As an economic, military and cultural superpower, India is making its presence felt in the world. Being a land of tremendous religious, linguistic, and cultural diversity India's distinction is that the civilizational tradition of unity in diversity continues to be celebrated despite gargantuan changes in the world around. As has been rightly said true Indian spirit is that the salvation of the inhabitants of the earth is in love.

However, it is equally true that India's multicultural tradition and the spirit of co-existence have always had its enemies and today is no different. Always efforts were made to sow division between people and communities and misuse religion to create disharmony. But at the same time, India's true strength has been that most of the people of this country have always seen through these conspiracies and maintained the unity and integrity of this diverse nation.

Given the challenges and threats to the fabric of social harmony and mutual understanding, there is a need to revive all the symbols that keep people connected with love and affection. The people of this country should be made to realize that their religion, language and region may be different but their relationship with this homeland that has been a special home of the Spirit as well needs to be deeply treasured. It is special blessing in a country that it is "most richly endowed with all the wealth, power, and beauty that

nature can bestow” where the human mind has “most full developed some of its choicest gifts, has most deeply pondered on the greatest problems of life” and which has produced a literature that would help make “our inner life more perfect, more comprehensive, more universal, in fact more truly human, a life, not for this life only, but a transfigured and eternal life.” The traditions, writings, ways of life, thoughts and actions that have held this nation together in the past are our most precious national heritage and we must keep reminding our younger generations about that. We must not lose our connection with the treasures of our past.

The "Khusro Foundation" has been founded for this noble cause. Amir Khusro was a versatile genius and universal figure of medieval India who has been and will always be remembered for centuries to come. He was a Sufi, a Soldier, a Musician, a Poet, and a Historian. It is because of his contribution to diverse streams of human endeavour that Amir Khusro continues to be celebrated to this day. Khusro's name and words have always been with us in terms of their attractiveness and universality in our moments of joy or hours of sorrow.

The patriotism of that “Turkish man” is not only exemplary but also enviable. For Khusro, this land of India was a paradise and the people were dear to him. To him, in comparison to the royal palaces of India, the palaces of Iran, Turan and Khorasan were insignificant. The people here were unique in every field of science, literature, arts and military training. Despite being an orthodox Muslim, the monotheistic cult of the people of India was dear to him. He once said that although the people of India have different religions, most of their beliefs are similar to his own. Khusro, whose mother was a native and father a Turk, was an Indian who not only sang the praises of India's greatness but also

wanted to be a part of this great land as it was everything to him. Altaf Hussain Hali expresses his love for this land in his words:

*“Teri ek musht-e-khakkebadle,
Loon nahargiz agar behishtmiley.”*

(I will never accept even a handful of its dust in exchange for heaven.)

True to the teachings of Khusro, the Khusro Foundation intends to spread patriotism, non-violence, humanity and harmony among the people of the world by creating literature that celebrates commonalities between all faiths, cultures and civilizations.

According to Sheikh Ibrahim Zauq:

*“Gulha-i- ranga rang se hai zeenat-e-chaman,
Ai-Zauq is jahan ko haizebikhtilaf se.”*

(This garden is adorned with blossoms of different colours.

O Zauq, the beauty of this world is in its diversity. And the beauty of it is due to differences).

Select terms and words

Adhh

Custom or societal norm recognized in Islamic Law as an authority upon which judgments can be based.

Ahadith. Prophetic traditions, plural of *hadith*.

Ahl al-adlwal tawhid

People of Justice and Unity. A term used by the Mu'tazilites to describe themselves.

Akhbar-i-ahad

The traditions narrated by a single narrator or more than one in any or all of the layers in its chain of narrations.

Awrah

Any part of the body that is not allowed to be exposed to those who should not see it.

Bait al-amwal

Houses of wealth, Public treasuries that functioned as the banks, state insurance companies and controlled domestic and foreign trade. Currently certain mosque committees run local community affairs from local donations and are called *bait al-amwal*.

Darurah

Necessity. Denotes recourse to concessions or what isn't ordinarily lawful due to significant necessity or inevitable adversity in circumstances where adherence to religious proscriptions would imperil fundamental entitlements.

Dhanni dalalah

Used as a legal term for the Speculative proofs in Quran and Sunnah.

Farahi school

A school of Quran exegesis that focuses on coherence of text (*nazm*) spearheaded by Mawlana Hamidudin Farahi.

Qiyas

Qiyas is “a method of analogical reasoning used in Islamic law to derive legal principles for new situations that aren't explicitly covered in the Quran or Sunnah.”

Fuqaha

Muslim jurists. Experts in Muslim law.

Ihsan

Ihsān, literally, "to do beautiful things", "beautification", "perfection", or "excellence" involves achieving excellence in all characteristics of the faith.

Ijma

Consensus. The unanimous scholarly opinion on legal issues that arise after the death of the Prophet Muhammad

Fitna

Temptation, test, trial, strife that is said to be most of woman's body by most scholars.

Fitra

Nature, Primordial constitution.

Hejira

Migration of the Prophet from Mecca to Medina Muslim calendar begins from this event.

Infaq

Spending in the way of God what is beyond one's need.

Ilah

Literally cause, In Islamic jurisprudence, “the basis for applying analogy is an illat, which is “an attribute of an event that always results in a particular divine ruling.”

Mutasalimeen

Those who put on Islam

Mehr

Dower. Kind or cash that a husband pays to his wife in a Muslim marriage as a token of respect for the wife Customary amount in cash or kind promised to be given to bride by husband as a gift for *Nikah*.

Metanoia

A fundamental transformative change in a person's personality, or the process of healing.

Nikah namah

A legal document in Islamic marriage outlining the rights and responsibilities of the couple and other parties involved in the marriage.

Sadaqah-al-fitr

Sadaqah al-Fitr, also known as *Zakat al-Fitr* or *Fitrah*, is an obligatory charity that Muslims pay at the end of Ramadan.

Sahaba

Companion of the Prophet Muhammad (peace be upon him)

Talaq itafweez

Delegated divorce, a form of divorce in Muslim law that allows a wife to divorce her husband after the husband delegates the power to her:

Tarbiyet

Education, training, upbringing, and the teaching of manners and civility.

Talfiq

Patching or mixing of various schools on a single issue. Legal term that describes the derivation of rules from material of various schools of Islamic law.

Taklif (Wujoob)

Islamic theological and legal term denoting the fact of an imposition on the part of God of obligations on his creatures, of subjecting them to a law.

Ulama

Muslim religious scholars who are recognized as having specialist knowledge of Islamic sacred law and theology.

Ushr

“*Ushr*” literally means one-tenth is zakat on the production of land. It is halved for irrigation dependent produce.

Usul al-fiqh

The study of the sources of Islamic law and how they relate to the law's rulings.

Isthisan

Juristic discretion or preferential reasoning. Muslim jurists may use it to express their preference for particular judgements in Islamic law over other possibilities. To deem something preferable.

Jibillah.

Instinct, nature, temperament, essence, original quality or property, natural constitution, natural disposition or temper.

Zann

In law, probability. In the hadith literature, lack of certainty concerning the authenticity and meaning of hadith supported by only a single reporter.

This book *Muslim Women: A Manifesto for Change* by Dr. Muhammad Maroof Shah addresses the pressing and multifaceted challenges faced by many Muslim women today—domestic violence, marital conflicts, restricted financial independence, and limited access to life-fulfilling opportunities and public spaces.

With clarity and conviction, he presents a transformative vision centered around the empowerment of women through collective action and the development of a Manifesto for Change through Community Building.

This book outlines a practical framework for addressing these issues, emphasizing the importance of self-awareness, financial literacy, and creative contribution to society beyond traditional roles.

Dr. Shah envisions a holistic approach where communities unite to foster education, environmental care, and volunteerism while embracing values of beauty (*ihsan*), self-realization and collaboration.

As an esteemed columnist and author of works like *The Problem of Evil in Muslim Philosophy*, *Enigma of Osho*, and *Revisiting Sufism*, Dr. Maroof Shah's profound insights bridge the realms of religion, philosophy, and mysticism. His reflections, grounded in the Islamic tradition yet open to dialogue with other perspectives, inspire readers to imagine new possibilities for women's empowerment and communal transformation.



KHUSRO FOUNDATION

D-319, Defence Colony, New Delhi 110024

khusrfoundation.del@gmail.com +91 9318431341

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