

Tajdid Al-Fikr Al-Islami on Women's Issues - with a European Twist

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Abstract

The renewal of Islamic thought (*tajdid al-fikr al-islami*) represents a watershed in history. A number of Muslim personalities have contributed to develop this trend of thought. The result is that we have a set of concepts and methodologies that could serve as a framework for dealing with contemporary Islam related questions. The field of *usul al-fiqh* concepts is in continuously expanding new themes and topics being added at numerous conferences and seminars as well as a number of new publications. The *fiqh* tradition is of a transnational character, and this *usul al-fiqh* framework has also been introduced into Western Europe.

Women's question has been a part of the agenda of the *tajdid*-rooted movements, in one way or another. In Western Europe, women's questions are considered to be crucial regarding Muslim identity and existence as a minority.

A key question would be to whether the prevailing understanding of these concepts serves adequately when dealing with Muslim women's questions in Western Europe or, are there further possibilities of adding meaning and enriching these concepts, in order to respond to Muslims women's challenges? And, if yes, how?

Social and cultural reality (*al-waqi'a*) is considered to be an element to be taken into consideration when *ijtihad* is done within specific matters. In this small presentation I argue for the need of empirical data being a component of



the notion of *al-waqi'a* when dealing with women's issues, due to the fact that women's issues, to a great extent, are not dealt with adequately by Muslim scholar, perhaps because most of them are men, without first hand experience of the matters at hand.

The discussion in this paper is based upon findings in my research material from Western Europe.

Introduction

The nineteenth and twentieth century call for revival and renewal is represented by, among others, Muhammad Abduh (d. 1905), also called "the architect of Islamic modernism".

Recognizing that Muslim society was underdeveloped in comparison to Europe, [he] declared the necessity of a revival and rejuvenation of Islamic thought and practice in order to restore dignity and greatness to Muslims. ⁽¹⁾"Not by imitating Western ways, but by focusing on the compatibility of science and Islam.

Abduh made a distinction between *ibadat* (worship) and *mu'amalat* (social transactions), and argued for the use of *ijtihad*, as well as *maslaha amma* and *talfiq*, which opened possibilities for promotion and justification of new law reforms.

One main concern of Abduh was women's issues, brought to a central place of the *salafiyya* agenda by Qasim Amin in his book *Tahriir al-Mar'a*. There, the agenda was presented: Mandatory education of girls, ending the practice of face veil, the woman's self determination regarding marriage, prohibition of polygamy and delegation of the man's right to *talaq* to the judiciary. The arguments used were based upon Muhammad Abduh's project of *tajdid*.⁽²⁾

The ground was laid with regard to conceptual framework and a certain thematic regarding women's issues

Mohamed al-Ghazali

The modern *salafiyya* movement's principles for interpretation were brought further by later generations of activists and new movements in the 20th century. But the neo-*salafiyya* did not attempt to build on the intellectual venture, undertaken by the modern *salafiyya* on legal, political and educational reform. Instead, these movements focused on reforming the morality and beliefs of the Muslim individual.⁽³⁾ One of the leading figures of this trend was the late Mohamed al-Ghazali(d. 1996).

"Women" remained a main topic in al-Ghazali's books, and it is possible to

distinguish three periods in his authorship following the development of his methodology which changed as a result of the interplay between text and reality. It is interesting how he changed his opinion on women: Firstly, he used *hadith* in combination with a biology-based view on women to support the claim that women could not have public functions nor become a judge to support equality between man and woman (with ref. to Q. ٣:١٩٥ and ١٦:٩٧), equal *diya* (compensation) for men and women, accepting that women could become a judge, against face veil and the concept of Islamic dress.

Al-Ghazali described his framework of reference in the following manner: "The school that I consider myself a leader in and contributor to, is one based on the full use of all intellectual achievements as well as on all *fiqh* schools. It believes in using discoveries in the disciplines of psychology, sociology, politics, economics and history".^(٤)

The *salafiyya* initiative had been modified and developed, both with regard to the content of concepts, methodology and issues related to women.

Yusuf al-Qaradawi

The third person I shall mention is Yusuf al-Qaradawi, one of the leading *‘ulama’* in our modern world. An important part of his life and work has been the concern for Muslims in Europe, and a well-known slogan used by him is "to bring treatment for the Muslims from the Islamic pharmacy". Women have been a major issue, and his *Halal and Haram fil-Islam* made a new organisation of *furu’ al-fiqh* popular - women and family issues occupies nearly one third of the book. The methodology is presented: *Ijtihad* based upon the four *madhahib*, *tafsir* and *hadith*, as well as al-Qaradawi's "brand mark" - *wasatiyya*. With regard to opinion on specific issues it clearly defines itself within the trend of neo-salafiyya.

His focus on Muslims in Europe also led him to become the chair of the European Council for Fatwa and Research^(٥), which in its statutes mentions *fiqh al-aqalliyyat*, *maslaha* and *maqasid al-shari‘a*, and *‘urf* among others as principles for the work of the council.

It is interesting to note that *maqasid* has become fashionable concept these days. This one can understand, not least because it provides a possibility to combine *fiqh* with overall ethical perspectives. Not least would "justice" and "consequences" (*ma‘al*) become central concerns. It is interesting however, al-Qaradawi first and foremost is dealing with economical and political questions, letting a theoretical discourse on *maqasid* from a gender perspective be almost absent from the discourse. It could provide a framework for dialogue on Muslim women concerns in Europe.



It should also be mentioned that the format of a fatwa does not provide format for an overall discussion on ethics. *Fatwas* represent, as I see them, specific answers on specific questions. A hunch of where the shoe hurts one gets by looking at the topic of questions. An impression of the *mufti's* mentality and understanding of context one gets by looking into his *ijtihad*.

The question remains open, however, in what way and to what extent Muslim women's challenges in European context is adequately dealt with, in light of a "local understanding of "justice" as well as living with the consequences of application of certain norms, within the framework of the common morality of the majority as well as the mindset of young Muslims in Europe? The principles embedded in the so-called "Model Marriage Contract" that was launched in the UK could be a source of information.

The Model Muslim Marriage Contract

In the Press Release one can read:

In particular, the new contract provides women entering a Muslim marriage with written proof of their marriage and of the terms and conditions agreed between the spouses in the absence of such proof; women have faced particular difficulties in securing the financial rights guaranteed to them under the Shari'a upon divorce.

The contract emphasizes the Qur'anic vision of marriage as a relationship of mutual love, mercy and kindness (*mawaddah. rahmah, sukun*), as well as emphasis on mutual consultation, the financial independence of the husband and wife but their shared obligation to support the family, and the husband waiving his right to polygamy brings Muslim marriages in Britain into line with positive developments in Muslim family law across the Muslim world.

The contract does not require a marriage guardian (*wali*) for the bride, and also makes delegation of the right of divorce to the wife (*talaq-i-tafweed*) automatic. This right does not affect the husband's right of *talaq*, but enables the wife to initiate divorce and retain all her financial rights agreed in the marriage contract. These provisions reflect a recognition of changes in the Muslim world, including women's greater public roles, educational achievements and financial autonomy.

The contract also requires "two adult witnesses of good character". In today's multicultural Britain, women and non-Muslims must be recognized as just as capable of providing a reputable guarantee that the marriage took place and of the terms and conditions the couple agreed upon.

In the press release we distinguish a set of issues: the need for a written contract, mutual consultation, shared obligation to support the family, waive

the right to polygamy, the women's right to divorce, *wilaya* and witnesses. Each of these issues has been subject of questions presented to *muftis*. The *fatwas* have been more or less compatible with local common morality. The Model Marriage Contract could be read as a coherent response to the need of the Muslim community, providing legal solutions in accordance with local based ethics.

In the same press release, we can read that "the new standard contract reflects a consensus effort to protect the rights of both parties to a Muslim *nikah* and that are guaranteed under the Shari'a. The contract has been drafted after lengthy consultations with religious leaders, community organizations and women's groups across the country, and comes with guidelines to facilitate its use. As such it represents the norms, following a deductive process, combined with knowledge from social and Cultural reality. A cross fertilization has taken place. May be of benefit for Muslim men and women in the future?

Conclusion

Tajdid al-fikr al-islami tradition has provided us with a wide range of concept and principles that Muslims can face the challenges of our time. Muslims, as minorities, have not been forgotten: The concept of *fiqh al-aqaliyya* has been promoted to take Muslims concerns into consideration. The question remains however, how efficient the *ulama's* responses (*fatwas*) are? Do the *ulama'* understand the *waqi'a* they are living in, with regard to *urf* and local context? Is it possible to deal with women's issues purely on basis of texts and sophisticated concepts, in other words by way of a top-to-bottom approach? To a certain extent, it may be so. The limitations however are that the *muftis* are dealing with specific questions of a limited nature, not looking into Muslim women's challenges in general. In other words, deduction as a methodology has been a leading principle in the field of Islam and women. This approach does not, however, question the set of premises which are to serve as basis for conclusions regarding women's questions. I would argue for the addition of a bottom-Up approach in dealing with women's questions, or a more inductive approach. The dialogue between actors working with these two approaches could provide a fruitful ground for re-examination of concepts and principles used when dealing with women's issues, and provide normative basis which includes Muslim women's experience and *weltanschauung*. As such Muslim women would become a part of the great Muslim "we", not remaining the "other" without aspirations for the future.



(١) The Oxford Dictionary of Islam: ٢٦٥f.

(٢) The Egyptian intellectual Muhammad Ammara claims that this book is the result of a co-authorship: While Amin authored the general parts of the book, Abduh was the responsible for the fiqh arguments (conversation with Ammara, March ٢٠٠٨).

(٣) Oxford Encyclopedia of the Modern Islamic World (٣:٤٦٧).

(٤) Abdallah al-Masri referred in Khalafallah: Rethinking Islamic Law Genesis and Evolution in the Islamic Legal method and Structures, The case of a ٢٠th Century Alim's Journey into his legal Traditions. Muhammad Al-Ghazali (١٩١٧ -١٩٩٦). Ph.D thesis. Georgetown University ١٩٩٩:١٠٤.

(٥) Established in ١٩٩٧.

تجديد الفكر الإسلامى بشأن قضايا المرأة بنظرة غربية

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إن تجديد الفكر الإسلامى من الأهمية بمكان، وقد شارك فى تنميته العديد من الشخصيات المسلمة. هذا وتعتبر مفاهيم "أصول الفقه" ذات أهمية خاصة. وتمثل "قضايا المرأة جزء هام من جدول أعمال حركات التجديد، وخاصة فيما يتعلق بالهوية الإسلامية ووجودها كأقلية فى أوروبا الغربية. والسؤال الرئيسى هو: هل الفهم السائد لتلك المفاهيم يخدم قضايا المرأة المسلمة فى أوروبا الغربية بطريقة ملائمة؟ أو هل هناك إمكانية إثراء تلك المفاهيم لتناسب مع تحديات المرأة المسلمة؟ وإذا كان كذلك، فكيف يكون السبيل لذلك؟

ويمثل الواقع الاجتماعى والثقافى أحد العناصر التى ينبغى أن تؤخذ فى الاعتبار عند الاجتهاد فى بعض المسائل.

ولقد كان "محمد عبده" أحد قادة الدعوة إلى التجديد فى القرنين التاسع عشر والعشرين. فعندما أدرك تخلف المجتمع المسلم بالمقارنة مع أوروبا، أعلن أهمية تجديد الفكر الإسلامى لاستعادة كرامة ومجد المسلمين، وهذا لا يتأتى بمحاكاة الغرب، ولكن بالتركيز على التوافق بين العلم والإسلام. ولقد ميز بين العبادات والمعاملات، ودعا إلى استخدام الاجتهاد والمصلحة العامة. وكانت قضايا المرأة أحد اهتماماته الرئيسية.

□ محمد الغزالي: كان أحد قادة حركات السلفية الجديدة فى القرن العشرين، والتى ركزت على إصلاح أخلاقيات ومعتقدات الفرد المسلم. وكانت المرأة أحد الموضوعات الأساسية فى كتب الغزالي. ومنهج قائم على الاستغلال الكامل لكافة الانجازات الثقافية وكذلك المذاهب الفقهية، واستخدام الاكتشافات فى مجالات علم النفس والاجتماع، والسياسة والاقتصاد والتاريخ.

□ يوسف القرضاوى: هو أحد العلماء الرواد فى عالمنا الحديث، وجزء مهم من حياته وعمله يدور حول المسلمين فى أوروبا، وتعتبر المرأة أحد قضاياها الهامة. ومنهج قائم على "الاجتهاد معتمدا على المذاهب الأربعة، والتفسير، والحديث، بالإضافة إلى علامة القرضاوى المميزة "الوسطية".

ويظل السؤال مطروحا: بأية كيفية وإلى أى حد يتم التعامل مع تحديات المرأة فى أوروبا بصورة ملائمة فى ضوء "الفهم المحلى للعدل؟ وقد تعتبر المبادئ التى تضمنها ما يعرف بـ "نموذج عقد الزواج" المنطلق فى المملكة المتحدة مصدرا للمعلومات فى هذا الصدد.



عقد الزواج الجديد قائم على التشاور المتبادل بين الزوجين، والاستقلال المادى لكل منهما ، وتنازل الزوج عن حقه فى تعدد الزوجات، كما لا يتطلب "ولى" للمرأة، ويعطيها الحق فى الطلاق "طلاق التفويض"، مع عدم تأثير هذا الأخير على حق الرجل فى الطلاق. كما يشترط وجود اثنين من الشهود الكبار المشهود لهم بحسن السمعة، سواء أكانوا رجالاً أو نساء، أو مسلمين وغير مسلمين؛ لضمان تنفيذ الشروط المتفق عليها فى عقد الزواج. وهذا العقد يعتبر استجابة لاحتياجات المجتمع المسلم، وقد صيغ بعد مشاورات مطولة بين القادة الدينيين والمنظمات المجتمعية والنسائية.

ويبقى السؤال فى النهاية عن مدى كفاءة فتاوى العلماء؟ وهل يفهم العلماء الواقع الذى يعيشون فيه بالنظر إلى العرف والبيئة المحلية؟ وهل من الممكن التعامل مع قضايا المرأة بنقاء على أساس النصوص والمفاهيم المتطورة؟ اعتقد أنه يمكن أن يحدث ذلك إلى حد ما. إن الاستنتاج كمنهجية يعتبر مبدأ قائداً فى مجال الإسلام والمرأة، ولكنه مع ذلك لا يناقش مجموعة القياسات التى تعتبر أساساً للاستنتاجات فى قضايا المرأة. وإنى أدعو إلى منهج استقرائى، وبهذا يمكن للمرأة أن تصبح جزءاً من المجتمع المسلم الكبير بدلا من كونها تمثل "الآخر".