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MODERNIST MUSLIMS AND SOME CONTEMPORARY REFORMS IN MUSLIM LAW IN THE MIDDLE EAST: AN APPRAISAL

M. K. Kareem

Abstract

This paper examines the reforms introduced into marriage, divorce and inheritance in Islam by modernist Muslims. It traces the origin of the reforms and demonstrates that their reforms are nothing but deviations from the Sharī'ah. It submits that while Islam allows limited polygamy (polygyny) against the stand of modernist Muslims which considers polygamy impracticable, the religion however places some restrictions. We have also shown in this article that it is better to bring a marriage to a peaceful end rather than making the couple and the children live in "hell" indefinitely against the stand of modernist Muslims who made divorce extremely difficult and practically impossible because of the conditions attached to it. The paper argues that giving orphans and grandchildren obligatory bequest when the children are in existence as advocated by modernist Muslims is not Sharī'ah compliant.

Key words: Islamic marriage, divorce, inheritance, reforms, modernists, Muslims

Introduction

Sharī'ah is the Muslims' way of life in the sense that their total ways of life, whether relating to human dealings (mu'āmalāt) or spiritual aspects ('Ibādāt) are regulated by it. The roles which it plays in the life of every Muslim are more than the roles blood and water play in the body. In fact, the literal meaning of Sharī'ah corroborates this assertion. Literally, it means the path that leads to where water is fetched (Cowan, 1960: 466). If a Muslim intends to succeed in this terrestrial life and the celestial life, he must follow the path laid by Allah in the Qur'an and Hadith. The Sharī'ah is like a manual attached to an electronic gadget. The manual guides the users on how they can use it successfully. If there is a problem, the manual also gives guidance on how to rectify the problem. In the same vein, the Sharī'ah guides not only all aspects of a Muslim's life, but also the society at large. The Qur'ān which represents the will of Allah communicated to the Prophet through angel Jibril is the first primary source of Muslim Law (Sharī'ah). The Sunnah comes next only to the Qur'ān in relation to the Muslim law. Prophet Muhammad is the only authoritative representative of the political and legal sovereignty of Allah on earth because he was the one who received the revelation. Therefore, all Muslims must accept his decisions and follow his commands without any reservation.

After the death of the Prophet (SAW) problems of interpretations due to the different hermeneutic approaches as well as educational and cultural backgrounds of modernist Muslims led to misinterpretation of some aspects of Sharī'ah particularly marriage, divorce and inheritance. The wide prevalence

of colonial methodologies and philosophical theories led to intellectual confusion which modernist Muslims faced. They started to question the sacred truths as contained in the Quran and eventually ended up conceiving them as outmoded. They believed they are not in line with the prevailing modern approaches. This paper, therefore, examined and evaluated the opinions of the Modernist Muslims by analysing their interpretation and understanding regarding the injunctions of Allah as contained in the Quran on the three mentioned aspects of Shari'ah.

Modernist Muslims

The modernists consider some provisions contained in the Qur'ān and Hadith to be outdated and outmoded. They believe that they are not relevant to our time. The belief that the provisions of Islamic jurisprudence are permanent in nature and application is disregarded by them. The elites in the Muslim countries also imbibed this doctrine. Western pattern of life has influenced the teaching of Islam to the extent that anything that is not in line with it is tagged uncivilized, barbaric and the like. When the imperialists came to the Muslim countries, they tried to change, modify and remove so many Islamic practices (Hitti, 1984: 745).

Modernist Muslims who believed that polygamy and other aspects of Shariah need to be reformed include the great reformer and thinker, Jamal al-Din al-Afghani (1837-1897). He was the first to make an attempt in this regard. He stated that the verse on polygamy should not be used because of the impossibility of dealing fairly among wives if a man should have more than one. The Moroccan Professor, Fatima Mernissi, in her works such as "Beyond

the Veil" and "Islam and Democracy: Fear of the Modern World" did not support polygamy. Her belief was that patriarchal culture in Islam was created by men who manipulated sacred texts in the Quran to suit their selfish desire (Mernisssi, 1975:8-9;Mernissi,1993:158 ; Mernissi, 1988)).

Muhammad Abduh supported restrictions on polygamy. He believed it was allowed during the life of Prophet Muhammad to solve the problem of the time when many Muslim men were killed during the battle of Uhud, leaving behind many widows and orphans. In the historical context, it is a verse about compassion towards women and their children who were without husbands and fathers respectively. The verse was revealed after the battle of Uhud. Many Modernist Muslims in Syria, Turkey etc adopted the views of Muhammad Abduh (Esposito, 2001: 23). They used Q4:3 and Q4:129 as the bases for prohibiting polygamy. In Iraq, the Women's Rights Protection Committee of the Kurdistan Regional Government which includes Dohik, Erbil and Suleymania in the Northern Iraq submitted its draft for the amendment of the Iraqi Personal Status Law of 1959. Pakhshan Zangana, the leader of the committee said "We have come to a conclusion that polygamy is out of place considering the current situation in Iraq Kurdistan Region" (Haje 2010). Another modernist and a prominent reformer, Qasim Amin believed that prohibition of polygamy can be inferred from Q4:3 because the key issue (i.e justice to all wives) is not possible (Keddie and Baron, 1991:Qasim, 2000). Nawal al-Sadawi, the Egyptian writer also criticized and frowned at polygamy.

After World War 1, when the Turkish Republic was formed, Mustafa Kemal Ataturk, the founder and first President of the Turkish Republic got the National Assembly to enact secularism in 1924. The Assembly was able to abolish polygamy and the Caliphate through his effort. Equality of women became part of the official policy in his country. He abolished all Islamic influences in Turkey in favour of European influences (Fazlur Rahman, 1980: 455-457). Anwar al-Sadat, the late President of Egypt suggested additional restrictions on polygamy in 1979 with a view to abolishing it; they were passed into law. In the view of Leila Ahmed, polygamy is an institution of marriage which has given men the right to disempower women in their sexual relation. In her work titled "Reinterpret polygamy", Leila states that polygamy is not part of Sunnah but a culture (Leila, 1992). The views of the early feminist scholars such as Amina Wadud and Asma Brias were not different from the opinions of the above-mentioned scholars (Wadud, : 83-84).

Modernists' Reforms on Islamic Marriage and the Islamic Perspectives

One of the provisions believed to be outmoded is polygamy. Polygamy means having more than one spouse (husband or wife). Specifically, it is polygyny when a man has more than one wife while a wife with more than one husband is said to be practising polyandry (Encarta, 2009). Islamic law does not allow the latter. In this article, polygamy is used to mean polygyny. The modernist Muslims consider polygamy to be a barbarous provision which should not be utilised. To them, polygamy is impracticable in this modern age because it does not

conform to the so-called western pattern of life (Stilt and Gandhavad, 2011: 2). They introduced un-Islamic restrictions on polygamy. For instance, in Syria, The Syrian law on personal status Decree no 59 article 17 made the prior permission of the court a condition before a person can marry more than one wife. The court would determine the ability of the husband to do justice between the co-wives. If the court is satisfied, the man would be given the permission (The Syrian Law of Personal Status 1953, 1975: 36; Anderson: 542). However, the determination is neither feasible nor possible. They all know it would be difficult for any man to get court injunction in his favour because of the impossibility of determining the capability of the husband as regards justice. This is an indirect way of prohibiting polygamy that is allowed by Allah. The earliest reforms of Muslim family law in the Middle East can be considered to have started with the 1917 Ottoman Law of Family Rights (Stilt and Gandhavad, 2011: 3; Zulficar, 2008: 242). They relied on some strategies such as *takhayyur* (freedom to be guided by the law of any schools of Islamic jurisprudence) and *talfiq* (patching up through combination and fusion of juristic opinions of diverse nature) for the actualisation of their aims. Another report shows that the real law reform began in Syria in 1952 before it extended to other Muslim countries (Doi, 1984: 150). These countries have gone against the Qur'ān and the Sunnah in some aspects of the Muslim law.

Another condition is that there must be some lawful benefits in the polygamous marriage before it can be allowed (as in Iraqi law). This is also not possible to know because the marriage has not come into existence. This reason shows that the modernists wanted at all cost to

forbid polygamy. The same provision against polygamy is contained in the Iraqi Law of personal status of 1959, article 3 (IV); and the Malaysian Law, Section 23 of the Islamic Family Law (Federal Territories) Act 1984 and Section 123 of the Act.

Another argument of the modernist is that the Qur'ān (Q4: 129) states clearly that it is not possible for a person to do justice no matter how one desires to do so. They, therefore, concluded that it is an express injunction against polygamy. To put it simply, they believed that the verse prohibits it entirely because to them it is impossible to be just between wives.

In Turkey, polygamy is forbidden and the court is empowered to declare the polygamous marriage invalid and dissolved without an exception. One has to divorce the first wife before one takes the second wife according to the provision (The Turkish Family Law 1951 of Cyprus; Doi, 1984: 150). The same thing applies in the Tunisia code of personal status of 1956. In fact, in virtually all the mentioned countries, there are legal penalties for a person that marries more than one wife (Welchman, 2004: 4-5). In Tunisia, no one dare marry more than one wife. Polygamy was totally prohibited by the Tunisian code of personal status. It states: "Polygamy is forbidden". Any person who, having entered into a bond of marriage contracts another marriage before the dissolution of the preceding one is liable to one year's imprisonment and to a fine (Act 18) (El Alami and Hinchclife).

In Pakistan, the Arbitration council needs to permit the taking of the second wife on the basis of necessity and justification. The consent of the existing wife was a necessity except in cases of insanity, physical infirmity or sterility. If a person should take a second wife without fulfilling these conditions, he would be imprisoned for one year or be asked to pay a fine up to RS 5000 or both. If the mahr (bride gift/bride price) was deferred, he was required to pay it immediately before he could be allowed to take a second wife based on the approval of the council. The existing wife after receiving her deferred mahr had the right to get divorce (Vermin, 1978). The modernists do not consider Q4: 3 as a moral exhortation but it is regarded by them as a legal condition precedent to polygamy. Since impartial treatment is not possible, marrying more than one wife is prohibited.

If polygamy was not allowed, the Prophet and the companions would not have practised it during their lifetime. Cases from polygamous homes were brought to him and he found solutions to them. There was no Hadith that prohibited polygamy. Polygamy was not forbidden by the Umayyad and Abbasid dynasties. The founders and leaders of the four schools of Islamic jurisprudence did not forbid polygamy but found solutions to the problems arising out of polygamous union.

It is only the Qur'ān that allows both monogamy and polygamy (Polygyny). Scriptures such as the Vedas, the Ramayan, the Mahabharat, the Geeta, the Talmud and the Bible preach polygamy (Polygyny) (Al-Sheha, 2000: 79). There is no restriction to the number of wives a man can have in all these books i.e. one can marry as many as one wishes. For instance, in Judaism, polygyny is

permitted for it is stated in Talmudic law (the holy Book of Jews) that Abraham had three wives; Solomon had hundreds of wives etc. It was Rabbi Gershom ben Yehudan (960 CE to 1030CE) that issued edict against polygyny (Doi: 68). The early Christian men were permitted to marry as many wives as they could because there is no restriction on the number of wives a man can have in the Bible (Al-Sheha, 2000: 71). It was only a few centuries ago that Christian church, the Hindu and others restricted the number of wives a man can have to one.

Islam allows polygamy (polygamy) as contained in Q4:3. This is the chief reason for its permissibility because Allah Who created men knows them more than they know themselves. The Qur'ān, however, puts an upper limit for polygamy. The issues of having scores of wives or hundreds of wives are restricted to the maximum of four.

Furthermore, during the pediatric age, there are more deaths among males than the females because the latter has more immunity than the former. A female child can fight germs and diseases better than the male child. Virtually, in every country, there are more females than males. Even during wars, more men are killed as compared to women. The implication of this is that females would be in abundance. This implies that females are more than males. In many countries, women outnumber men because a large number of the male population are sodomites especially in the United States of America, the United Kingdom, Germany, Russia to mention but a few. If every man is then restricted compulsorily without the allowance of marrying more than one wife with certain reasons, the resultant effect of

this is that many women who are interested in getting married to men would not be able to get husbands.

The two options that such women can take are to marry a man who already has a wife or to remain unmarried. The latter is dangerous because the unmarried women would exercise their sex instinct which Allah implanted in every woman in a wrong way as a prostitute. Therefore, Islam answers the call of nature affirmatively, with its insistence on the family as the best safeguard of public virtue; and it is the only right and legitimate way. The Qur'ān says (Q16:72): "God has made mates for you of your own nature and made for you of them children and grandchildren and posterity, and provided for you sustenance of the best. Are they then going to believe in vain things and not be grateful for God's favour?"

Islam allows polygamy for men with certain conditions such as maximum of four (Q4: 3), biological nature of human beings, justice and problems such as barrenness, serious illness, mental illness and lower libido. The justice required of a husband having more than a wife is in respect of time, feeding, clothing, accommodation and other things that are within his capacity. None of the wives should be abandoned. A man can father a great number of offspring. It is not possible for a woman to carry more than one pregnancy at a time. We have also said justice should be done to all the wives in the areas of clothing, feeding, accommodation and companionship. What the husband needs to do is to provide his wives equal treatment according to his means. The Prophet and his companions did not condemn polygamy. They neither outlawed it nor discouraged any Muslim who had one reason or the other to marry more than one wife. They too married more than

one wife (Haykal, 2008: 802-813). They laid beautiful examples on how a person who wishes to practise polygamy should follow.

The misuse of polygamy can be corrected. It is not peculiar to polygamy. Other aspects of law are also being misused. If there is a misuse, we should find solutions to the problems. It is not the right solution to cancel what Allah allows. Imposing a fine or imprisoning a person intending to practise an aspect of the Qur'ān is a violation of the Sharī'ah. It is not likely that the consent of the existing wife would be gotten considering the very jealous nature of women. By asking a man intending to practise polygamy to seek a subsisting wife's consent is an indirect way of prohibiting what Allah allows.

The likely resultant effects of suppressing a man's desire to take a second wife are adultery, concubinage and prostitution. Despite the prohibition of polygamy by some churches, some staunch members are said to be polygamists; and they and their wives have not been ejected from the fold. Man is a natural polygamist. The effect of banning polygamy is seen in the Catholic Church losing some of its members who cannot endure monogamy. Many go to protestant churches, Africa churches and others that accommodate the issue of polygamy. This is because they are silent on the issue. Their silence means acceptance.

Throughout early history up to the time of the Prophet, there was no limit imposed on limitless polygamy (Al-Sheha, 2000: 191). The Prophet was the first person to limit it to four wives on the condition that there was equal justice to all of them. After the Qur'ānic limitation was

revealed restricting the system of limitless polygamy, it is a historical fact that the Prophet did not contract any other marriages.

In the west, monogamy is a blended mass of prostitution. The implication of this is that they pretended to be practising monogamy when in actual fact they are practising polygamy without responsibility. The account of Dr. Annie Besant gives the full picture.

In the words of Mrs. Annie Besant, a founder member of Theosophical Society, Madras, India in her book 'Life and Teachings of Mohammed' writes: "There is pretended monogamy in West, but it is really polygamy without responsibility; the mistress is cast off when the man is weary of her, and she sinks gradually as the 'woman of street', for the first lover has no responsibility for her future. She is hundred times worse off than the sheltered wife and mother in polygamous home. We see thousands of miserable women who crowd the streets of Western countries during the night. We must surely feel that it does not lie within the Western mouth to reproach Islam for polygamy. It is better for woman, happier for woman, more respectable for woman, to live in polygamy, united to one man only, with legitimate child in her arm, surrounded with respect than to be seduced and cast off in the street, perhaps with an illegitimate child outside the pale of Law" ((Annie 1932; Doi : 72).

This is hypocrisy and more degrading than a limited polygamy. The Sharī'ah is the most just law. Christian countries make a great show of monogamy, but actually they practise polygamy. The part which mistresses play in

western society is too obvious to be mentioned. In this respect, Islam is a fundamentally honest religion.

A person practising polygamy undertakes full support and full paternal responsibility in respect of the children of all his wives. Man is polygamous by instinct. No woman wants her husband to take a permanent rival to herself to share his bed, but the alternative of divorce or illicit sex is far worse evil. Most women here always wanted and still do want the security of a legal husband and family. It is easier to share a husband when it is an established publicly recognised practice than when it is carried on secretly along with attempts to deceive the first wife.

The modernists believe that if a man is allowed to marry more than one wife, a woman should also be allowed to have more than one husband so that she can also have a variety of sex. It should be borne in mind that men and women are equal in Islam but not identical. Allah gave them different capabilities and different responsibilities and created sex differences. It is possible to identify the father and the mother if a man has more than one wife. It is not easily possible to identify the father of a child whose mother has more than one husband. Before the father can be identified, the three would be made to pass through genetic test. The human error cannot be ruled out totally from using this method of identification. The children of this type of marriage undergo severe mental trauma and disturbances as a result of putting them through this type of test.

Apostasy

The reform of the modernists as regards apostasy was that it cannot bring to an end a valid Islamic marriage. To

put it simply, if either the wife or the husband should change to other religion other than Islam, the modernists believe that the marriage is still valid and should continue. Conversion of either of the couple to another religion is not enough ground to dissolve a valid Islamic marriage. An example of this is contained in the Indian Anglo-Mohammedan law of the Act 1939 and the Muslim Family Law Ordinance of 1961.

The Holy Qur'ān states categorically that a Muslim man should not marry a polytheist woman (Q2:221).

And do not marry Al-Mushrikāt (idolatresses, etc.) till they believe (worship Allāh Alone). And indeed a slave woman who believes is better than a (free) Mushrikah (idolatress, etc.), even though she pleases you. And give not (your daughters) in marriage to Al-Mushrikūn till they believe (in Allāh Alone) and verily, a believing slave is better than a (free) Mushrik (idolater, etc.), even though he pleases you. Those (Al-Mushrikūn) invite you to the Fire, but Allāh invites (you) to Paradise and Forgiveness by His Leave, and makes His Ayât (proofs, evidences, verses, lessons, signs, revelations, etc.) clear to mankind that they may remember.

This is against the stand of the modernists. The so-called reformers believed that marriage of Muslims with non-Muslims is valid and it can continue even after the latter renounces the Religion of Islam.

Marriage with non-Muslims

The modernist allows what is prohibited in Islamic marriage. They allow Muslim women to marry non-

their father's (names, call them) your brothers in faith and Mawâlîkum (your freed slaves). And there is no sin on you if you make a mistake therein, except in regard to what your hearts deliberately intend. And Allâh is Ever Oft-Forgiving, Most Merciful (Q33:5).

The Modernists' Reforms and the Islamic Perspective on Divorce

The modernists believe that divorce should be rendered practically impossible by severe sanctions because of its effect on family life which is supposed to immunise and protect children from moral ailments and psychic traumas.

It is better to bring a marriage to a peaceful end rather than making the couple and the children live in "hell" indefinitely. However, the modernists make divorce extremely difficult because of the conditions attached. This was an attempt to change the law of Allah and the Sunnah of the Prophet. The reform introduced into this aspect of the Shari'ah family law is that a husband should first of all apply to the court of law. A unilateral divorce which the Shari'ah allows is prohibited by the so called modernists. It is only the court that can dissolve a marriage. An example is contained in the Turkish Family Law.

Also, the Iraq Law of Personal status prohibits a unilateral divorce pronounced by a husband unless it is registered and granted by the court. This is applicable in Indonesia, Pakistan, Syria, Tunisia, Morocco etc. The husband who wishes to divorce his wife must pay the divorced wife an additional indemnity by way of compensation (El Alami and Hinchclife N.D.). If the two spouses agree to dissolve

the marriage, the court may dissolve it. If either the wife or the husband insists upon divorce and he or she insists, the court is empowered by the Tunisian Law to dissolve it.

Islam realistically faces the consequences of irreparable breakdown as a fact and provides a way-out after necessary steps laid down in the Qur'ān and the Sunnah have been taken, and yet the reconciliation is not possible. Their misery is only increased. The bankruptcy of the relationship is only worsened by forcing the partners to stick together. Islam makes it easier for people to enter the married state and start families, it also makes it more difficult to break up the home.

Everything possible is done to ensure happy sound home-life, for the sake of the family's members and of the society to which they belong. Therefore, it is written in surah 14:19, "O men, live with your wives in kindness and equity. If you dislike anything in them, that may be the very point which God will use to bring about much blessing". Islam encourages the man's conscience to live in kindness and equity with patience, and not to cast off a wife who is temporarily in disfavor, since it may be that goodness and blessing may come through those very wives; so that it would be stupid to end the relationship hastily. In the same chapter (Q4: 128), Allah says: "If a wife fears cruelty or desertion on her husband's part, there is no obstacle to their arranging an amicable settlement between them for which the wife must renounce some of her rights. But if they return through reconciliation and peace through such unselfishness, such a settlement is better than separation and divorce". The initiative to remove differences and restore understanding in family life is preached in the Qur'ān.

Well-meaning relatives should do everything possible to bring about reconciliation. They should study causes of differences and go deep into confidential matters without either of the couple feeling that their private secrets are being exposed while taking these steps. The members of the two families should exert all their powers of sincerity and affection to bring about reconciliation. Both should be exhorted to unselfishness, tolerance and understanding of each other's point of view.

The couple should respect the elders and have full confidence in their compassionate affection and allow affection and peace to reign in their family (Q65:2). Two just persons from amongst you shall bear witness to the evidence before God when a divorce is settled. Without these two witnesses, there is no legal divorce. An advantage of their appointment is that they can exert every pressure of affection and wisdom to avert divorce. No divorce is allowed save after the woman's period of purification after menstruation or childbirth completed.

The iddah period gives a breathing-space which can result in the man's change of heart and decision to continue the marriage bond with the wife he planned to divorce. The wife should remain in the iddah period provided she has not committed sins. But if she is involved in lewdness, she can be ejected. The Qur'ān says: "You may not expel women from their house, nor may they themselves quit, except if they have been proven guilty of some open lewdness (during the iddah period). These are limits set by God. Should any man transgress these limits, he does so at the peril of his own soul, and to his own harm; for you know not whether God may bring about some new situation later (than the

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decision to divorce)".

Modern Reforms Concerning Inheritance and the Islamic Perspective

Wasiyyah (Will)

The reform introduced to wasiyyah by the modernist is that an heir who is entitled to a fixed share of the inheritance can also be given a bequest. Such a bequest is valid and effective. In fact, they consider the consent of the other heirs irrelevant i.e. their consents are not needed before such a bequest can be effected.

This is not Shari'ah compliant because Allah has fixed for each heir his or her share. The moment a person's life comes to an end, he is not permitted to distribute his estate according to his wishes and desires. His ownership of the property ceases with his death. The real owner (i.e. Allah) takes control of the property. The heirs are given their divinely-fixed shares as stated in the Qur'an. It should be noted that anybody who deprives an heir his right by giving other heirs more than their dues would be denied al-Jannah. Such a person is destined for the chastisement of the Fire i.e. Hell (Khan, 2005: 12-150). It should also be noted that extension of one's transgression to even the period after death by giving an heir more than his or her due through wasiyyah in addition to his divinely-fixed shares is not a transgression of small measure. The sin is vile in the extreme. The person has destroyed his life of the hereafter by defrauding the divinely appointed heirs of their dues. It should be borne in mind if a person commits this type of sin, there is no opportunity of repenting or correcting the injustice done except if the person given such undue rights returns them to their rightful owners. Otherwise, hell-fire is the

destination of such a deceased person.

The reformers also introduced obligatory bequest in favour of the orphan and grandchildren who should not be given inheritance if a deceased has a son. An example of the so-called reforms is contained in the Egyptian Law of Bequest, 1946. In the Syrian Law of Personal status 1953 the grandchildren is not entitled to any obligatory bequest if they otherwise inherited from their father's ascendants nor if any of them should leave a legacy or a gift which is equal to an amount of that of the obligatory bequest. Where a man has less than the due obligatory bequest, the balance is made up. In the Tunisian code, only the first generation of grandchildren, male or female is considered. In Moroccan code (1958), a third of his estate is compulsorily earmarked for the grandchildren of the deceased whose first son had died before him. The share of the grandchildren should be equal to the share their father would have received if he died after the deceased provided it is within one third of the estate (Vermin, 1978; Doi, 1984: 151-153).

According to the Islamic law of inheritance, nearer relations exclude remote ones. Therefore, if a deceased has a son who is nearer to the deceased, his grandson who is a remote relation cannot inherit. Both the orphan and grandchildren could be taken care of from one-third of the estate of the deceased as stated in the Sunnah and the Qur'ān.

It should be noted carefully that if a child dies during the life-time of his or her parents he is considered to be non-existent in relation to the share which he would have

acquired in his parent's estate if he had been alive on the occasion of their death. The deceased child would not be considered at all. The other surviving children will inherit all the estate including the share that would have been given to the predeceased child if he were to be alive. Therefore, it is not right to transfer the share of a son who had died before the demise of his parents to his children.

The modernist in the Anglo-Mohammad law in India allowed widows who were owed the mahr to retain possession of their husband's estate. When a husband dies, his burial expenses must be taken first from the estate. Care must be taken to avoid waste and unnecessary expenses. Expenses such as the bricks to be used in the grave, the transport cost, the payment of the ghāsil (the washer) and the clothe are taken from the estate of the deceased. It is after the provision of these that the creditors including the wife who was owed mahr are paid their dues (Majlisul Ulama of South Africa, 23-25). After these two categories, the wasiyyah is discharged from one third the value of the remaining estate. After these three heads have been taken care of, the remaining estate is shared among the heirs based on the divinely fixed shares as stated in the Qur'ān (Q4:6-14,176; Q5: 105-108). It is seen that it is not right for a wife whose mahr was not paid to retain her husband's estate.

Tabanni (adoption) (Q33:4-5)

The modernists also allow what Islam prohibits and vice-versa. Adopted child does not have the status of a natural son or daughter i.e. he or she cannot inherit the person who adopted him and vice versa in Islam. As far as modernists are concerned, adopted child can inherit the

person who adopts him/her and vice-versa because they have elevated them to the status of a natural son or daughter. An example is contained in the Turkish code. The reformers twisted the Sharī'ah in order to accommodate their wishes and desires.

Conclusion

We have examined the agitations of the modernists as regards marriage, divorce and inheritance in Islam. No religion except Islam accords women the recognition that befits them. Islam has established for woman what suits her nature and protects her against disgraceful circumstances of life. In Islam, there is no difference between man and woman. Only excelling in virtue, piety, spiritual and ethical qualities can make people, males or females, stand out from one another.

The paper demonstrates that while Islam allows limited polygamy (polygyny) against the stand of modernist Müslims which considers polygamy impracticable, it places some restrictions. They also considered adopted child to be unlawful for a person to engage in marriage. Islam does not give adopted child the status of natural son or daughter. Therefore, it is allowed to engage adopted child in marriage. Apostasy renders an Islamic marriage invalid. The modernists believed the marriage is still valid. A Muslim should not marry a non-Muslim. This is against the stand of the reformers. Marriage with Sabian is lawful because they do all what a Muslim does and refrain from all what a Muslim avoids. A unilateral divorce pronounced by a husband is valid provided it is not done when he is angry. This is prohibited by the modernists. It is better to bring a marriage to a peaceful end rather than making the couple and the children live in "hell" indefinitely against the

stand of modernist Muslims who made divorce extremely difficult and practically impossible because of the conditions attached to it. The paper argues that giving orphans and grandchildren obligatory bequest when the children are in existence as advocated by modernist Muslims is not Sharī'ah compliant. In Islam, nearer relations exclude remote ones.

It is clear that the reforms are in line with the wishes and desires of the reformers. Their reforms are nothing but deviations from the Sharī'ah as contained in the Qur'ān and the sunnah of the Prophet. Muslims should stay clear of deviations so as not to be among the rebels (Q5: 50), the wrong-doers (Q5: 48) and the unbelievers (Q5: 47). The Sharī'ah as contained in the Qur'ān and the Sunnah suits every age and time. It does not have a limited application. It is applicable to all time. The lapse of time cannot affect the Sharī'ah. The Sharī'ah can never be obsolete. In fact, its principles and basic theories are valid till eternity. They do not need any changes before they match all eras. Unprecedented new cases are accommodated under the Sharī'ah. Therefore, Muslims must believe in all aspects of Sharī'ah without an exception.

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