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GENDER JUSTICE AND ISLAMIC FAMILY LAW REFORM IN MALAYSIA

SABBATICAL REPORT

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ABSTRACT

The study discusses about the changing perceptions toward gender justice in socio-legal context of Malay society. The transmission of Egyptian reformists' ideas regarding gender justice to Malay society through the Azharites, increasing education provided to women as well as the interaction between Malay intellectuals with Western civilization are among the factors which contributed to this changes. To conform with the modern nation-state, the *fiqh* rules have been selectively codified and gradually drafted onto unified legal systems, inspired by Western model. The transformation of *fiqh* rules to statutory law in the realm of family law were justified on the principal of judicious policy which enabled the rules to be changed, so as to conform with the changing modern Muslim society. Such reforms however, were claimed insufficient to tackle the issue of patriarchal aspects of family which were regarded as highly disadvantageous to women, especially in the area of marriage, divorce and child custody.



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ulama (religious scholars) and the willingness of the *umara'* (authorities/legislators) to codify the accepted principles as a binding statute in one's country. Different intellectual knowledge and educational background lead to different statute regarding the gender relations in the family system, thus, it is of no surprise when Islamic family law in the Muslim countries, which were drawn from the same source could be interpreted differently in certain aspects.

There are at least two main factors that determined how the Muslim society in Malaysia perceives gender justice. The first, is the influences of Malay customs, and second is the influences of Islam teachings regarding marital relations as understood by religious scholars who had played a crucial role in disseminating Islamic teachings among the Muslims. This perception, however, evolves due to the contacts of Muslim society with Western civilization and the influence of reformist ideas of Muhammad Abduh as well as Qasim Amin in Egypt towards Malay intelligentsia, which in turn created the conflicting ideas between the conservatives and the reformists.

Contemporary perspectives towards gender justice and equality which emerged in the second half of the 20th century was in fact a response towards what was regarded as patriarchal gender notion inherent in Islamic family law. This new discourse supported by groups of women and men who had the same views regarding the needs of creating an egalitarian society. They struggled to bring about a "paradigm shift" in Islam family law by advocating the needs to reinterpret the Quran. They have been influential in lobbying for the reforms of Islamic family law, which was considered as a major area where gender discrimination still exists.

The awareness towards gender justice and the needs to conform with the declaration of human rights, and the increasing demands to conform Islamic family law with modern society, is said to be the impetus for the reformation of the Islamic family law in Malaysia. This development was, in fact a direct influence from other Muslim countries which had undergone the modernization of Islamic law within the framework of modern nation-state. This attempt was made possible, due to an active role played by academician-reformists, the lobbyist by Islamic movements within the government which supported modernization within Islamic framework, and also the role played by women organizations in promoting gender justice.

2.0 Islam, Malay and Gender Justice

Islam has always played a significant role in the life of the Malays since the thirteenth or fourteenth centuries replacing Hinduism and paganism which were common beliefs before the coming of Islam to Malaysia.¹ The dominant school of thought (*madhhab*) of the Malays from the very beginning of their conversion to Islam was Shafi'ie, thus, their interpretation and understanding of the jurisprudence was confined to the view points of Shafie school of thought. The deep influences of the Shafi'ie school of thought among the Malay society consequently was further established when it was accepted as the only version of jurisprudence by the authorities through various codes implemented in Peninsular Malaysia.²

The ideas of the Shafi'ie school of thought spread throughout the history of the Malay world until today due to the influences of the informal and formal education in which the jurisprudence from Shafi'ie school of thought were taught, and the books referred to mainly were of Shafi'ie's.³ It had held a special position and was strongly protected by conservative religious scholars who held high positions regarding religious matters in the states. Consequently, the Malays became the society that strictly adhered to the Shafi'e school of thought to the extent that any other opinion (including opinions from Hanafi, Maliki or Hanbali schools of thought) which contradicted the Shafi'e school of thought created an uproar within the society.⁴

Islam has been a symbol of religious-cultural identity for the Malays,⁵ thus arguments based on Islamic principles on matters related to the Malays could be convincing points to attract supports from the public, such as issues related to gender justice. The reformists' approaches –

¹ SQ Fatimi, *Islam Comes to Malaysia*, Malaysia Sociological Research Institute Ltd, Singapore, 1963 ; M. Naguib al-Attas, *Preliminary Statement on the General Theory of Islamization of the Malay Indonesia*, Kuala Lumpur, [n.p], 1967 who opined that the Arab were responsible for the conversion of the Malays.

² *Undang-undang Kanun Melaka* (Malacca Codes of Law) was drafted based on Islamic law according to the Shafi'ie school of thought with some elements of customary laws. Liaw Yock Fang, *Undang-undang Melaka*, The Hague, 1976 ; Other codified law in Malay States such as in Pahang, was also have been influenced by *Kanun Melaka* which based their law on Shafi'ie school of thought. Ahmad Mohamad Ibrahim et al, "Islamisation of the Malay Archipelago and the Impact of al-Shafi'is Madhhab on Islamic Teachings and Legislation in Malaysia," *International Islamic University Law Journal*, Vol. 2, No. 2, 1992, p 14 – 17.

³ Abdul Halim El-Muhammady, "Ikhtilaf and Its Development in Malaysia", *International Islamic University Law Journal*, Vol. 2, No. 2, 1992, p. 53.

⁴ It was reported that there was a public debate regarding the question of dog's saliva whether it was impure (najas) or not between conservatives and reformists group who supported Maliki opinion on that matter. William R. Roff, "Whence Cometh the Law ? Dog Saliva in Kelantan 1937," *Comparative Studies in Society and History*, Vol. 25, No. 2, April 1983, p. 323-338 ; Also had been discussed in *ibid.*, p. 55 – 57.

⁵ The importance of Islam among the Malays is to the effect that Islam and Malays are synonymous. The definition of "the Malay" in the Federal Constitution of Malaysia is a person who professes the religion of Islam..... " Article 160 (2), *Federal Constitution of Malaysia*.

using Islamic principles – had contributed greatly toward women’s education (both religious and secular education in English schools) and their views regarding women’s status and roles in the society from Islamic point of view became an impetus for changing perceptions towards women.

Traditionally, Malay society perceived gender role between men and women differently. The prevalent notion of the superiority of male over the female was regarded as the norm and had never been questioned until the early twentieth century by the reformist scholars. The primary role of men within the context of the family is that of providers, whereas the role of women in normal circumstances is the management of domestic affairs and upbringing of the children. In spite of the notion of male superiority among the Malays, Malay women have been known to be an active partner in traditional economy and helping their spouses contributing to the expenditure of the household. The society regarded working women or full-time housewives as normal. It was common for women working in paddy fields, growing vegetables as well as doing business along side with their male counterparts, and they even outnumbered the male businessmen, such as in the state of Kelantan.⁶ Women also held an important position in the matrilineal culture of Malay community of Minangkabau descent in Negeri Sembilan and certain parts of Malacca.⁷

However, it is important to note that, in spite of their activities during the day time, they were expected to fulfill their traditional role as wives and mothers, doing house chores and upbringing of the children. The husbands were regarded as the leaders and the main providers of the household. They were responsible for the maintenance, security and welfare of the families. The husbands usually made decisions on important matters relating to the family. Marital relations among Malay couples were best described through the saying among the Malay tradition that: "The raja rules the country, the chief rules the shire, the headman rules the clan, the leader rules his followers, the husband rules the wife."⁸

During that period, the gender role in the family was nurtured from young. The girls were responsible for the house chores, whereas the boys were for outdoor activities. Education was not

⁶ Firth in his study of Malay peasant life in Kelantan wrote about Malay women: " ... *not only do they exercise an important influence on the control of the family finances, commonly acting as bankers for their husbands, but they also engage in independent enterprises which increase the family supply of cash*" R.Firth, *Malay Fisherman: Their Peasant Economy*, Morton & Co, New York, p. 17 quoted in Raja Rohana Raja Mamat, *The Role and Status of Malay Women in Malaysia: Social and Legal Perspectives*, Dewan Bahasa dan Pustaka, Kuala Lumpur, 1991, p. 14-15.

⁷ Haji Mohamed Din bin Ali, "Malay Customary Law and the Family, In David Bauxbaum (ed), *Family Law and Customary Law in Asia: A Contemporary Legal Perspectives*, Nijhoff, The Hague, 1968, p. 181.

⁸ *Ibid.*, p. 189.

prevalent among the Malays in the early days, however compared to the girls, boys fare much better. They could attend schools, while the girls stayed at home helping the mother running the house. Asiah Abu Samah when describing the status of women stated that:

"A woman in those days was expected to be a loving mother, an absolutely submissive wife and a filial servile daughter all in one. Any form of freedom at all for her was unthinkable and believed to be detrimental to her feminine qualities and moral principles in that she might be too independent subsequently.⁹

The unequal treatment towards women was perceived as normal, and had never been questioned culturally and religiously. Literal understanding of the religious teaching in the classical *fiqh* books which had been referred to throughout the centuries seemed to strengthen the notion of the inferiority of women. Regarding marital relations, it emphasized the domestic role of the women as wives and mothers. Women were reminded to obey the husbands and do not breach the rights of the husband. At the same time, the husbands were reminded to protect the wives and fulfill her rights and were reminded of the consequences to those who were neglectful of their duties.¹⁰

Reciprocal rights and duties between spouses are important to maintain the harmony and well being of the homes as had been emphasized by religious scholars during those time, however what was lacking was the legal aspects. The applications of the stated rights depended on the moral and religious consciousness of the husbands, in other words there was no legal protection, or remedies for women should they face problems with errant husbands. Moral and religious consciousness is not sufficient enough to protect the women from errant husbands. There was also no discussion regarding women's rights toward education, and their public role in society. The activities of women in the history of Islamic civilization were never highlighted in the Malay traditional society until the returns of the Azharites¹¹ from Egypt, some of whom had advocated the elevation of the status of women within familial spheres as well as in the society.

⁹ Asiah binti Abu Samah, *Emancipation of Malay Women*, BA Thesis, University of Malaya in Singapore, 1960, p. 1-2.

¹⁰ Abd al-Wahab al-Sha'rawi, (Trans. Muhammad Ali bin Abd al-Rashid bin Abdullah al-Jawi al-Qadhi al-Sambawi). *al-Yawaqit wa al-Jawahir*, Maktabah wa Matbaah Mustafa al-Babi al-Halabi wa awladihi, Mesir, 1936M / 1354H, Cet. 2 ; Daud bin Abdullah al-Fatani, *Jam'ul Fawaid wa Jawahir al-Qalaid*, Mustafa al-Babi al-Halabi Wa Awladihi, Mesir, 1346H.

¹¹ The word Azharites in this article refers to Malay students who had received education in al-Azhar University.

The interpretation of the text: "And women shall have rights similar to the rights against them, according to what is equitable, but men have a degree over them."¹² and "Men are the protectors and maintainers of women because Allah has given the one more (strength) than the other, and because they support them from their means"¹³ were often used by Muslim conservatives to prove their view that men are superior to women in all aspects, publicly or in familial life. The strict literal interpretation of the text plus the existing norm of secluding women had put the women in difficult situation. The sacred marital relationship prescribed in Islam which required good intentions and justice in dealing with the women were ignored.

The misconceptions of the status of women among Muslim society had been criticized by Muhammad Abduh. He believed that in order to bring forth a new vibrant *ummah*, it was crucial for the Muslim society to reform the prevailing customs regarding women. He insisted that there was gender equality in Islam: "Men and women are equal in rights and duties; there are also equal in reason, feelings and sense of self."¹⁴ He acknowledged that there was a mutuality of rights and duties between men and women, that they were equal in responsibility and accountability to God, that they have the same Islamic duties and beliefs, and that they were both enjoined to seek knowledge. He also affirmed that male and female have a covenantal relationship.¹⁵

He firmly believed that the Quran says that men have a degree above women (2:288) noting that distinction is necessary in order to avoid discord, for every social unit needs a leader. Men are more worthy of leadership because of their strength and the fact that they are responsible to provide for their families from their wealth. For him, the leadership and responsibility of the husband to protect and provide for the wife does not mean women can be pushed around. The function of husbands and wives are complementary, and is equally important in different ways. He said that, the discord in the Muslim society was in fact due to the men's appetite for pleasure.¹⁶

His perspectives regarding the status of women and his wake up call for Muslim society to change their perspectives towards women were supported by his disciple, Qasim Amin. He advocated that Islamic legal system had secured equality for both men and women before any

¹² al-Baqarah 2: 228.

¹³ al-Nisa' 4:34

¹⁴ Yvonne Haddad, "Muhammad Abduh: Pioneer Of Islamic Reform", In Ali Rehmana (ed), *Pioneers of Islamic Revival*, Zed Books, London/New York, 2005, p. 56.

¹⁵ Ibid.,

¹⁶ Ibid.,

other legal system. He said that Islam advocated women's freedom and emancipation, and granted women all the human rights during a time when women were at the lowest level in all societies.¹⁷ Amin strongly believed that Muslim society could not progress unless women were treated as true partners of men in everything, in familial life as well as in public affairs.¹⁸

The connection between the state of civilization and progressiveness of a society is reflected in the social status accorded to women. According to Amin, the low status accorded to women indicates the backwardness of one's nation. On the other hand, the high status of a nation and its progressiveness will reflect towards women as well, where they will be highly respected.¹⁹ He stressed that, the backwardness of the Muslims was caused by the prevalent ignorance of both men and women who could not comprehend the reality of religion.²⁰ He criticized the lack of respect for the rights of women, depriving their human rights and forbidding them from enjoying all the privileges accorded to them in Islam.²¹

To support his arguments, he emphasized that in the history of Islam there was a significant number of women who were influential and had an impact on the general affairs of Muslims, and that women during the prophet's time had high reputation for their outstanding knowledge and leadership.²² Thus, for him to improve the condition of the nation, it was imperative to improve the condition of women.²³

The spread of education among women would enable them to engage in general activities and become active partners with their male counterparts in life. Engaging them with works could prevent them from undesirable elements. Education, according to Amin would raise women's status and make them regain their dignity. Their knowledge would enable them to accept sound ideas and to discard the superstitious and myths that had destroyed their minds.²⁴

¹⁷ Qasim Amin *The Liberation Of Women And The New Women*, (Trans. Samiha Sidhom Peterson), The American University in Cairo, Cairo, 2000. p.7.

¹⁸ "The underdevelopment of a country is a product of numerous factors, the most important of which is the inferior position of women." Ibid, p. 72, 199.

¹⁹ Ibid., p. 6 ;

²⁰ Ibid., p. 66.

²¹ Ibid., p. 127-128.

²² Ibid, p. 74.

²³ Ibid., p. 75.

²⁴ Ibid., p. 12.

In Malaysia, this idea was supported by the Azharites who had been influenced by Abduh's thoughts during their academic years in Cairo.²⁵ They had advocated their cause through the publication of journals such as *al-Ikhwan* (1926 – 1931) and *Saudara* (1928 – 1941) to quote a few, which were published using the Malay language and were strongly influenced by *al-Manar* in Egypt,²⁶ and in some cases through novels which carried underlying messages of women's emancipation.²⁷ For the Arab descendents who resided in Malaysia their calls for the reformation of Muslim society including in the aspect of women's rights were published in *al-Huda* (1931-1934), journal published in the Arabic language in Singapore. They attempted to bring the reform from other Muslim countries such as Egypt closer to Malay society. These journals contained news of modernist movements championed by the charismatic reformists and modernists in Egypt.²⁸

They criticized the backwardness and rigidity of Malay society and advocated the necessity of women's involvement in the progress of society, and stressed the importance of women in developing a strong nation.²⁹ Among the influential figures advocating the need for elevating the status of Malay women within the Malay societies were Sayyid Syekh al-Hadi and Za'ba.

The influence of Muhammad Abduh and Qasim Amin was evident in the writings of those Malay reformists especially al-Hadi. He spread his ideas about Muslim women in Malaysia through his writings published in *al-Ikhwan* and his novels. His enthusiasms with the ideas of promoting women's status within Malay society made him write regularly in the women's column, "*Alam Perempuan*" (Women's world)³⁰ in *al-Ikhwan* which was strongly influenced by the ideas of Qasim Amin. In fact, almost half of his writings regarding women in this journal was

²⁵ The influence of Muhammad Abduh in the Malay world which includes Malaysia and Indonesia had been briefly discussed in C.C Adams, *Islam and Modernism in Egypt*, Routledge, London & New York, 2000. p. 102-103.

²⁶ El-Muhammady, "Ikhtilaf and Its Development in Malaysia", p.56.

²⁷ The novels such as *Hikayat Setia Ashik kepada Ma'shoknya* (or widely known as *Hikayat Faridah Hanom*), *Hikayat Taman Cinta Berahi*, *Hikayat Anak Dara Ghassan*, *Hikayat Putri Nurul Ain* and *Cetra Rokambul* with the background of modern Egypt written by Sayyid Syekh al-Hadi had carried the messages the emancipation of Muslim women. Ibrahim bin Abu Bakar, *Islamic Modernism in Malaya: The Life and Thought of Sayid Syekh al-Hadi 1867 – 1934*, University of Malaya Press, Kuala Lumpur, 1994, p. 136.

²⁸ The role played by Shaykh Mustafa al-Marafi, Muhammad Abduh, Qasim Amin and Huda Sha'arawi in the modernization of Muslim society in Egypt was greatly admired, implying the needs of such movement in Malaysia as well. S.H Tan, *The Life and Times of Sayyid Shaykh al-Hadi*, BA thesis, University of Malaya in Singapore, 1961, p. 51.

²⁹ "... the women form a foundation for whomever wants to develop his race and nation." *Al-Ikhwan*, 16 November 1926, p. 63 ; al-Sayyid Sheikh Ahmad al-Hadi, *Kitab Alam Perempuan*, Jelutong Press, Penang, 1937, p. 26.

³⁰ The series of articles in women's column called *Alam Perempuan*, were then edited and published in a small book titled *Kitab Alam Perempuan* (The Book of Women's world).

a translation of Qasim Amin's book, *Tahrir al-Mar'ah*.³¹

He believed that the concept of *qiwamah* or superiority derived from the verses *al-Baqarah* 2: 228³² and *al-Nisa'* 4:34³³ was applicable only within the context of household, not in other context or situations. The superiority of men within familial context means that men had to bear the responsibilities related to the maintenance and comfort of their wives, and in return for his responsibilities, the wife has to be obedient on matters which do not contravene Islamic teachings. The obedience of the wife towards her husband was the reason which had made husband a degree higher than the wife.³⁴

Al-Hadi did not agree with the conservatives who believed that men were superior in everything, for him the superiority was only confined within familial life. He believed that women's mind was not lower than the men's nor was less rational than men for both had the same nature.³⁵ He stated that men and women had the same purpose in their lives, which was to know God and to obey His commandments as revealed in al-Quran:

"O mankind, We have created you male and female, appointed you races and tribes, that you may know one another. Surely the noblest among you in the sight of God is the most god fearing of you."³⁶

For him, a woman was a man's twin with regard to their physical and spiritual nature. A woman is a human being like a man. Al-Hadi cited the Prophet's saying: "Indeed women and men are bodily twins."³⁷ al-Hadi reminded the Muslim society that their misconduct and misconception towards women was wrong and contradicted with Islamic teachings.³⁸ His view

³¹ The influence of Qasim Amin on al-Hadi's works was mentioned in S.H Tan, *The Life and Times of Sayyid Shaykh al-Hadi*, p. 19 ; Za'aba wrote : "*al-Ikhwān contained installments of the editor's commentary on the shorter chapters of the Quran, of translation from the Arabic on the emancipation of women and the feminist movement in Egypt, and of further sections in his history of Islam.*" Zainal Abidin Ahmad (Za'aba), "Modern Development", *Journal of Malayan Branch of Royal Asiatic*, Vol. 17, No. 3, 1939, p. 155.

³² "*And women shall have rights similar to the rights against them, according to what is equitable, but men have a degree over them*" al-Baqarah 2: 228.

³³ "*Men are the protectors and maintainers of women because Allah has given the one more (strength) than the other, and because they support them from their mean*" al-Nisa' 4:34.

³⁴ Ibrahim bin Abu Bakar, *Islamic Modernism in Malaya*.p. 139 discussing this point which was derived from the ideas written in the novel *Faridah Hanom*, referring to al-Syed Sheikh al-Hadi bin Ahmad al-Hadi, *Faridah Hanom*, 2nd ed, Pustaka Antara, Kuala Lumpur, 1985, p. 114-115.

³⁵ Ibid., p. 139-140.

³⁶ al-Hujurat 49:13.

³⁷ al-Hadi, *Kitab Alam Perempuan*, p.1.

³⁸ To argue his point he referred to the Islamic history which showed active participation of women in public affairs during early period of Islam. They were capable of doing bigger things such as their involvement in war and politics. *Al-Ikhwān*, 16 April 1928, p. 235; *Al-Ikhwān*, 11 October 1930, p. 46.

regarding the concept of *qiwamah* was obviously the same with Abduh's ideas.

It was well understood by the Muslims generally, that Islam considers justice as an integral part of its teachings. The declaration of the principles of justice in the Quran has been a source of inspirations for those who seek the implementation of justice in the social and legal system. All of them believe justice as the main objective of the Islamic legal system. However, they differ on what constitute justice and equality, and how to administer and achieve justice. The debates regarding gender justice and equality had taken a different level with the emergence of a new way of thinking in seeking justice and equality for women, that is a gender discourse which is "feminist" in its aspiration and demands, yet is "Islamic" in language and sources of legitimacy.³⁹ They believe that, there is dissonance between the ideals of Islam which are premised on an ontology of human equality and the fact that in varying social context, Muslim women experience injustice in the name of religion.⁴⁰

In Malaysia, this trend was led by Muslim women organizations called Sisters in Islam (SIS) which was supported by a group of professional Muslim women, and has been influential on public policy, and frequently very controversial.⁴¹ They took an egalitarian approach on the notion of the concept of gender justice, justifying their arguments with the reinterpretation of Quranic verses and rejecting the patriarchal gender notion in Islamic law which discriminates women. They believe that unequal interpretation of the gender role and functions in the society is contrary to the very essence of Islamic teaching which recognizes equality between the two sexes.⁴² The existing notion of *qiwamah*, as understood by the jurists they said, is not a manifestation of divine will, instead it has been influenced by bias human construction.⁴³ The work of Muslim thinkers on liberal interpretation of the sources of Islam such as Fatima Mernissi

³⁹ Ziba Mir-Hosseini, "Islamic Law and Feminism : The Story of Relationship", *Yearbook of Islamic and Middle Eastern Law*, Vol. 9, 2002-2003, p. 34.

⁴⁰ Sa'adiyya Shaikh, "Transforming Feminism: Islam, Women And Gender Justice". In Omid Safi (ed), *Progressive Muslims on Justice, Gender and Pluralism*, Oneworld Publication, Oxford, 2003, p. 156.

⁴¹ Maznah Mohamad, "At the centre and the Periphery: The Contribution of Women Movement to Democratization", In Francis Loh Kok Wah & Khoo Boo Teik (eds), *Democracy in Malaysia: Discourses and Practices*, Curzon, Richmond, Surrey, 2002, p. 231-232.

⁴² Guardianship Law and Muslim Women, SIS Working Paper Series, Sisters in Islam, Kuala Lumpur, August 2002 ; Zainah Anwar, "Law-making in the Name of Islam: Implications for Democratic Governance", In KS Nathan & Mohammad Hashim Kamali (eds), *Islam in Southeast Asia*, Institute of Southeast Asian Studies, Singapore, 2005, p. 121 – 134 ; Nasaruddin Umar, *al-Quran untuk Kaum Wanita*, (Terj. Nori Abdullah), Sisters in Islam, Petaling Jaya, 2004 ; Nik Noriani Nik Badli Shah (ed), *Guardianship Law and Muslim Women*, SIS Working Paper Series, Sisters in Islam, Kuala Lumpur, 2002; KH Husein Muhammad, *Fiqh Wanita: Pandangan Ulama Terhadap Wacana Agama Dan Gender*, (Terj. Norhayati Haji Kaprawi dan Zaitun Mohamed Kasim), Sisters in Islam, Petaling Jaya, 2001.

⁴³ Refer to the series of publication by *Sisters in Islam* above.

from Morocco, Ashghar Ali Engineer from India, Leila Ahmad from Egypt, Amina Wadud from United States of America and Riffat Hassan from Pakistan which called for gender-sensitive reinterpretation of the sources of Islam were widely referred by this group.

On the other hand, there is a moderate trend in addressing gender justice issues within the Muslim society, emphasizing the need for simplification in maintaining a balance between established rules and social changes. The concept of *qiwamah* (superiority) of the men was regarded as a responsibility before it become an honor, and a sacrifice before it becomes a nobility, and it is not subduing. The position of man to woman and vice versa is rightly described in verse *al-Baqarah 2: 87*: “*They are your garments and you are their garments.*”⁴⁴ As an answer to the conservatives that men possesses absolute authority in the family, it stresses the point that Islam encourages neither male despotism-patriarchy nor female despotism-matriarchy. In fact, Islam strongly holds the concept of *shura* (consultation) both in family and other socio-political situations. The conservative interpretation towards women may be the result of the influence of local, national, and regional Muslim cultures which is based on certain customs, traditions and inventions which are not necessarily Islamic.⁴⁵

This moderate group disagrees with the trend of interpreting Islamic texts, from the view of either a Westerner or tries to relegate Islamic notions and concepts and promote Western notions in the name of modernization as has been done by Muslim feminists.⁴⁶ To achieve the mission of the Muslim *ummah* as vicegerence of Allah, Muslims need to de-traditionalization and de-westernization the Muslim thought so that it becomes pure, genuine and dynamic for the revitalization of the Islamic *ummah*.⁴⁷

Their views seemed parallel with the early reformists such as Abduh and al-Hadi for all of them believed subscribed to the notions of the divisions of labor between male and female and both were complementary to each other. It was believed, the problems that arose in the society was due to the misconceptions of marital relationships. The relationship of a husband and a wife

⁴⁴ Ahmad Shehu Abdulsalam, “Gender and Sexuality: An Islamic Perspective”, *SARI*, Vol. 24, July 2006, p. 36-39.

⁴⁵ Zeenath Kausar, *Politicization of Sex and Family Devaluation in Feminism: An Islamic Perspective*, Ilmiah Publisher, Petaling Jaya, 2003, p. 152-153.

⁴⁶ *Ibid.*, p. 155 ; Opposing western emancipation trend, women’s organization were advised that if they really want to be the protector of women’s fate, they should open up the self, eyes and thoughts to accommodate all the problems and all the difficulties which dash against the people not just the women. They must find the integrated solutions, which are suitable with the situation. Zaleha Kamaruddin and Raihanah Abdullah, “Women Emancipation in the 21st Century”, http://snni.org/events/ulama/rpp.shtml?pp/pe2002_7. Retrieved on 3rd May 2007

⁴⁷ *Ibid.*,

which was based on absolute domination of the husband, and the wife was considered as a helpless subject, were sources of problems, dissatisfaction and disharmony. For example, house works and child caring were perceived as derogatory. Both husband and wife should mutually regard house work as well as work outside as *ibadah* (good deeds) following Islamic injunctions. The purpose behind the co-operation of husband and wife is actually the realization and actualization of vicegerency – at the family level.⁴⁸

3.0 Education and Women's Emancipation

Although the Malays regarded Islam as a very important part of their life, and they strive to follow the Islamic teaching, but the true teaching about the obligations of education to male and female had never been highlighted. The notion of secluding women within domestic sphere seemed to be deeply rooted that, to the extent women were denied their education in schools. Describing the status and role of Malay women at the turn of twentieth century Hashimah Roose stated that: "at that time women were not given any formal education. The primary goal of the parents was to prepare the daughters to become good wives and mothers....."⁴⁹

It was noted that education opportunities for women in Malaysia between 1900 – 1945 were very limited, with very few girl schools.⁵⁰ Malay parents generally believed that the girls should be kept out from school fearing that once they attended the school they would start writing love letters to the boys, and started to find husbands on their own which were regarded as a disgrace among Malay society at that time. Apart from that, the parents were afraid of their daughters' safety on the way to and from the school. For the mothers, they were afraid of losing assistance in household chores from their daughters once they attended schools.⁵¹ The young girls were strongly protected, and usually were chaperoned by the male relatives when going out from the house. The position of women and men within traditional Malay society were best described by Za'ba: "Women is.... the sacred treasure and man the guardian protector and supporter."⁵²

⁴⁸ Ibid., p. 160-164 ; Also refer to Zeenath Kausar, *Muslim Women at the Crossroads: the Right of Women in Islam and General Muslim Practices*, Thinkers Library, Selangor, 2006, p. 140 ; Lamya al-Faruqi, *Women, Muslim Society and Islam*, American Trust Publication, Indianapolis, 1991, p. 30.

⁴⁹ Quoted in Bettie Jamie Chung, *The Status of Women and Fertility in Southeast and East Asia, A Bibliography With Selected Annotations*, Books/Monographs Series No.8, Singapore Institute of Southeast Asian Studies, 1977, p.46.

⁵⁰ Ibid., p. 40

⁵¹ Md Mukhter Boerhanuddin, "Perkembangan Pelajaran Aliran Melayu dari Tahun 1957 Sehingga Tahun 1969", BA Thesis, Universiti Kebangsaan Malaysia, 1974. p. 5.

⁵² Za'aba, "Malay Manners and Etiquette," *Journal of Malayan Branch of Royal Asiatic Society*, Vol. 33, No. 3, 1950,

The obstacles which had hindered Muslim women, in Egypt and Malaysia alike during those days from getting education, was basically due to two main reasons. Firstly, the prevalent perception that mental capacity of female was lower than the male, thus sending them to school was regarded as unnecessary and useless. Women's inability to involve themselves in heavy and important issues due to their lack of education and exposure to the outside world seemed to justify the perceptions that women lack mental strength. The skills which were considered as important for women in running the household such as cooking, sewing, caring for the child, could be attained without sending them to school.

Secondly, the prevalent misconception among the society that women were prohibited from acquiring worldly knowledge according to Islamic law further justified their seclusion within "four walls," denying their basic human rights toward education. Religion has been used to subjugate women. This scenario could be apprehended through the questions put forward to Muhammad Rashid Redha of Egypt which were published in *al-Manar* questioning whether women could be taught the skills of writing and reading. This confusion seemed to be originated from fabricated *Hadith* which prohibited women from writing and the beliefs that they should be secluded in the rooms, which were contradictory to the *Hadith sahih* (genuine Hadith) that had made education compulsory for both male and female.⁵³

Responding to such question, Rashid Redha reminded the readers to be aware of the fabricated *Hadiths* and be careful of their readings so as not to be influenced by those who were irresponsible and ignorant in their writings. He stressed on the compulsory obligations of seeking knowledge for both men and women alike, referring to the activities of the women during the Prophet's period who were allowed to be involved in seeking knowledge. As a result, some of them became recognized for their vast knowledge.⁵⁴

Qasim Amin in his effort to redirect the perceptions of the society toward women, reminded them that the divine law indicates that women were endowed with minds in the same manner as men.⁵⁵ Thus, the perception that women's mind and intellectual capabilities were lower than men's was wrong. Although he admitted that there were significant differences between their

p 71.

⁵³ Further discussion regarding the authenticity and fabrication of the contradictory hadiths by Muhammad Rashid Redha could be referred to in *al-Manar*, Vol 6, 1903, p. 704, 861.

⁵⁴ Ibid.,

⁵⁵ Qasim Amin, *Women's Liberation and The New Women*, p. 15.

intellectual abilities, however these were the consequences of the men's vast opportunities in acquiring knowledge, and unlimited interactions with the outside world, the result of which had made their minds enlightened, while women had been deprived of every educational opportunity.

Thus, the differences of their intellectual abilities were actually the result of men's follies.⁵⁶ Being denied the opportunities to develop their mental abilities and potentialities they were unable to differentiate between positive and negative ideas, and Amin blamed entirely on the men for the women's state of affairs which neglected women's education.⁵⁷

Al-Hadi advocated the same line as Amin's thoughts. He challenged the prevalent notion of low mental capacity of women and stated that there was no evidence that women's minds were lower than those of men's for God had granted both of them the capabilities to reason and mind with which to acquire knowledge. The purpose of granting men and women reasoning power was that they might acquire various types of knowledge. Women were not inferior to men in their intellect and rational thinking. God had endowed women with intellectual mind that was capable of understanding whatever men could understand. He obviously rejected the traditionalist teaching that women were naturally and rationally inferior to men.⁵⁸ For him, women were men's twin with regard to their physical and spiritual nature, quoting the *Hadith*: "Indeed women and men are bodily twin".⁵⁹ He urged the Malays to change their attitudes toward women, reminding them that women's progress was beneficial to the Muslim community.⁶⁰

al-Hadi strongly opposed the unequal treatment by the Malay parents towards their daughters, and vigorously called upon the Muslim community to provide education for Muslim women. He believed that Muslim community would not progress if it did not provide education for women. To oppose the existing notion of denying the rights of education to women in the Malay society, he used the Prophet's saying that: "Seeking knowledge is obligatory upon every Muslim man and woman."⁶¹ His views regarding women and their liberation from traditional role as perceived by Malay society was advocated in his writings published in *al-Ikhwān*.⁶²

⁵⁶ Ibid., p. 136.

⁵⁷ Ibid., p. 15 – 16.

⁵⁸ This view was presented in his well known sold-out novel titled *Faridah Hanom*, Ibrahim bin Abu Bakar, *Islamic Modernism in Malay*, p. 139-140.

⁵⁹ Sayyid Sheikh bin Ahmad al-Hadi, *Kitab Alam Perempuan*, p. 15-16.

⁶⁰ Ibid., p. 25.

⁶¹ Ibid., p. 141.

⁶² Between 1926 and 1928 al-Hadi wrote series of articles called "*Alam Perempuan*" (Women's world) published in *al-Ikhwān*. The series then edited and published in a small book called *Kitab Alam Perempuan* (The Book of Women's World), Ibrahim bin Abu Bakar, *Islamic Modernism in Malay*, p. 135 – 136.

Za'ba, among the early Malay reformists in Malaysia also held the same view, stated that if women were given the opportunities to education, they could also contribute to the society as much as their male counterparts.⁶³ He also strongly believed that women were capable of carrying out important tasks and had the level of mental capacity parallel to the men that would be beneficial to the society, as had been done by women throughout the history of Islamic civilization.⁶⁴ He blamed the men for always using religion to suppress women, by quoting texts and verses to justify the seclusion of women within the household. Many of them questioned the wisdom of sending the girls for education.⁶⁵ He criticized Malay parents who did not provide education to the girls. The special treatment to the boys had made them greedy and selfish in thinking that all the good things in this world were meant for them, and let the girls live in darkness and stupidity. He emphasized the importance of education for both sexes, and called on the Malay society provide education for the daughters as well as the boys, for both were human being.⁶⁶

The writing in *al-Hikmah* also carried the same message, emphasizing the importance of education towards women and their potential contribution to the development of the *ummah*. It constantly referred to Western women's achievement in education and work force.⁶⁷ The main idea, highlighted in *al-Hikmah* was on the modernization of Malay women, and encouraging them to seek knowledge, so that they could also contribute to the society. *al-Hikmah* suggested that the government should send the women for further studies, especially in medical and teaching, so that women could also contribute to the Malay society and the development of the country. It was strongly emphasized that providing education to women was actually an obligation upon all Muslim societies. The failure in doing so, will cause all Muslims to commit sins.⁶⁸

Al-Hadi supported women's organization and had expressed his hopes that its journal would be able to explain to the Malay women, their rights and duties according to the true Islamic

⁶³ Hanapi Dollah, "Za'aba Sebagai Feminis: Wanita Melayu Dalam Dunia Lelakinya", In Wan Abdul Kadir (ed), *100 Tahun Zaaba*, Akademi Pengajian Melayu Univeriti Malaya, Kuala Lumpur, 1996, p. 333.

⁶⁴ Zainal Abidin Ahmad, *Ilmu Mengarang Melayu*, Dewan Bahasa dan Pustaka, Kuala Lumpur, 2000, p.32.

⁶⁵ Adnan Hj Nawang, "The Malays and Religion", In Khoo, et al (eds), *Tamadun Islam di Malaysia*, Persatuan Sejarah Malaysia, 1980, p. 111.

⁶⁶ Za'aba. *Ilmu Mengarang Melayu*, Dewan Bahasa dan Pustaka, Kuala Lumpur, 1965, p. 44-45.

⁶⁷ The writer praised a French woman ethnologist who had mastered oriental language, including Malay and English and applauded her courage traveling thousands of miles to conduct the research for the sake of knowledge. Comparing her to the Malay women, and their backwardness of Malay women, who could not even step out beyond the house's fence. *Al-Hikmah*, 1 Ogos 1934, p. 216.

⁶⁸ *Al-Hikmah*, 10 Nov 1934, p. 391.

teaching.⁶⁹ Muslim women who had been greatly involved in the emancipation of Malay women, had expressed their admiration, respect and gratitude toward al-Hadi for his efforts in calling for the emancipation of Malay women from traditional customs, and his efforts in promoting the right interpretation of the Islamic teaching regarding women's nature and their status.⁷⁰

It is undeniable that the interaction with Western civilization, and the admirations towards progressive Western women,⁷¹ had been among the factors that influenced women's awareness towards their rights in Malaysia. However, it is also important to recognize, the Egyptian factor inherent in the process. Considering the high regard given by the Malays towards West Asia, especially Hijaz,⁷² and later to Cairo, due to the reputation of al-Azhar University as a prestigious academic religious institution,⁷³ al-Hadi seemed to take this opportunity and indirectly put the ideas of emancipation of Malay women from traditional customs and subtly called for women to follow the footsteps of modern women in Egypt, through his novels. All the heroines in his novels were portrayed as young, charming, educated, moralistic, intelligent and courageous. They represented women who strived for their proper status and role as well as for their rights in modern Egypt.⁷⁴ His most popular novel, with underlying messages of women emancipation, which was published on 1925-26 entitled *Faridah Hanum* or also known as *Hikayat Setia Ashek Kepada Ma'ashoknya* (The Story of Loyalty of Lover to Beloved).⁷⁵ The novels discuss the moral, social and religious outlook of liberal Islam and these aspects were alien to the contemporary discussion on Islam within Malay society. This novel had made him famous

⁶⁹ Al-Hadi, *Kitab Alam Perempuan*, p. 146 – 147.

⁷⁰ Zainun Sulaiman who was considered as the earliest Malay women emancipator during pre-war period in her letter to al-Hadi hoped that his writing, *Alam Perempuan* (Women's world) would open the eyes of Muslims who had denied the rights of women dictated by Islam. For her, it would be a great advantage for Malay Muslim women if they became aware of their Islamic rights and duties towards their community and country. Ibid., p. 149-150.

⁷¹ Oxford high schools had opened its door to the girls, and the writer had expressed his hope that such event will also take place in Malaysia some day, *al-Hikmah*, 9 Jan 1936; Photos and note referring to the reward given to female student for her excellent achievement in education by Quenn Mary, *al-Hikmah*, 10th October 1934, p. 336 ; French woman ethnologist and her achievement in her research was greatly admired by the writer, comparing to the state of Malay women backwardness in education, *al-Hikmah*, 1st August 1934.

⁷² Hijaz had been an important destination for the Malays as a place to reinforce their religious knowledge, and the religious scholars studied in Hijaz had played an important role disseminating religious teaching in Malaysia. They were highly respected by the Malays. Md Sidin Ahmad Ishak & Mohammad Redzuan Othman, *The Malays in the Middle East*, University of Malaya Press, Kuala Lumpur, 2000, p. 25.

⁷³ Egypt had managed to attract a number of Malay students to further their education at al-Azhar due to a number of reasons, namely for its intellectual importance, the increase of incomes of the Malays resulting from the boom in rubber price, that most of them could afford to send their children studying in Cairo, the tendencies of those who had completed their studies in *madrassah* system to continue their studies in Cairo rather than in Mecca and the availability of convenient transportation after the opening of Suez canal. Ibid, p. 46-48.

⁷⁴ Ibrahim bin Abu Bakar, *Islamic Modernism in Malaya*, p. 136.

⁷⁵ Sayed Syekh bin Ahmad al-Hadi, *Faridah Hanom*, 2nd ed, Pustaka Antara, Kuala Lumpur, 1985 and Sayed Syekh bin Ahmad al-Hadi, *Hikayat Setia Ashek Kepada Ma'ashoknya atau Syafik Afandi dengan Faridah Hanum*, Jelutong Press, Pulau Pinang, 1925-1926 cited in ibid.,

instantly.⁷⁶ He maintained the same themes in his other novels with the background of modern Egypt, portraying the difficulties faced by the heroines and their struggles in fighting for their rights in the dominant male world.⁷⁷

It is difficult to measure the success of his novels calling for the emancipation of women, however, it was noted that the number of the female names after the name of Faridah Hanum had increased after the publication of his novel. He hoped that parents would be influenced by the positive personality of Faridah Hanum. Commenting the effect of the novels towards the Malays, Za'ba wrote:

“The popularity of the “Hanum” tales can be gauged from the fact that many Malays have affected the names of Hanum for their baby girls. The underlying purpose of all these stories was to instill into readers the ideas of a new social order as well as a new outlook on the status of women, and to illustrate the accommodating nature of Islam towards the changed circumstances of the world.”⁷⁸

Asiah Abu Samah in her thesis about Malay women emancipation did not elaborate much on the influence of the novels written by al-Hadi, however, mentioned that the novel, *Faridah Hanum* had demonstrated to the Malay women the degree of women's emancipation in Egypt.⁷⁹ She also stated that, the emancipation movements of Malay women were inspired by contemporary developments in other countries like Egypt and Indonesia.⁸⁰

Although al-Hadi supported the idea of women's liberation and their active participation in public life, and even applauded the achievement of women in various fields in his many articles, however he did not support the idea of total “liberation” which had been achieved by women in western societies at that time.

He was being practical and moderate, writing within the context of his time, he did not object the participation of women in public affairs but he also reminded the public on the

⁷⁶ Commenting on the popularity of the novel, Za'ba writes: “In 1925-26 he [al-Hadi] published his first novel, called *Hikayat Setia 'Asyik kepada Ma'ashok-nya (or Hikayat Faridah Hanum)*, an adaptation of a love-romance in a wealthy and educated Muslim family of modern Egypt. It was read from one end of the Peninsula to the other, and the author suddenly found himself famous.” Za'ba (Zainal Abidin Ahmad), “Modern Developments,” *Journal of Malayan Branch of Royal Asiatic*, Vol. 17, Pt. 3, 1939, p. 152-153.

⁷⁷ *Hikayat Taman Cinta Berahi* published in 1927-28 ; *Hikayat Anak Dara Ghassan*, 1928-29; *Hikayat Puteri Nurul Ain*, 1929 cited in Ibrahim bin Abu Bakar, *Islamic Modernism in Malaya*, p. 136.

⁷⁸ Zainal Abidin Ahmad, “Modern Development”, p. 154.

⁷⁹ Asiah Abu Samah, “Emancipation of Malay Women”, p. 5.

⁸⁰ *Ibid.*, p. ii

importance of traditional role for women at home as wives and mothers. He strongly believed that women's primary role was towards the family, and that women's contribution would be more beneficial at home. In line with his interpretation with the concept of *qiwamah* (superiority),⁸¹ that is the leadership of the men, it is well understood that for him women and men have different roles, where men contribute towards the maintenance and providing security and protection to the families, while women's responsibility was nurturing and educating younger generation with their wisdom and intellectual mind.

The different roles between husband and wife however should not be treated as if men have an absolute power and women could be subjugated. His emphasis on the importance of education towards women was in fact, closely related with the objectives of producing intellectual mothers who would be beneficial in the making of a progressive society.⁸² He believed that, among the factors that had contributed to jeopardizing the society was when women of that society could not perform their traditional functions well.⁸³

Considering the importance of those roles, he urged the Muslim society to give education and to respect women who had given significant contributions towards the development of the society. His view was in fact, similar to those that had been proposed by Qasim Amin and Muhammad Abduh in saying that it was impossible to produce good citizen if women were uneducated and ignorant.

Their writings always emphasized the importance of women in family life as they were the basic foundation of a society, and they also recognized the different roles played by males and females in society. They did not recommend equal education for them, but stressed on an equal opportunities in education for both boys and girls. According to Amin, female should be equipped with wisdom and intellectual minds as well as the knowledge suitable to their future roles. He suggested that women should be exposed to knowledge which enable them to examine scientific information, and to be familiar with the history of various countries as well as knowledge about

⁸¹ His interpretation of the concept of *qiwamah* has been discussed at p. 9.

⁸² *Al-Ikhwan*, 11th October 1930, p. 46-47 ; al-Hadi, *Kitab Alam Perempuan*, p. 3, 29; al-Hadi stated that: "when we realized that a family is a unit of society and that a family is made up of many households and that each households is administered by a women, we would realize that if each household is disciplined and is administered by a clever and knowledgeable women, then the family would be happy, and so it follows that our society would be a prosperous and happy one too." Translation in English had been referred to Zainon Ahmad, "The Life, Times and Thoughts of Sayyid Shaykh Ahmad al-Hadi", MA thesis, University of Malaya in Kuala Lumpur, 1979, p. 237.

⁸³ *Al-Ikhwan*, 16 October 1930, p. 45.

natural science and politics. It could curtail superstitions prevalent among the females,⁸⁴ but also could promote understanding between men and women, and bridge the cultural gap between husbands and wives.⁸⁵

Al-Hadi argued that, women needed education to bring up children at home. It was obligatory upon Muslim women to prepare themselves with true religious knowledge, health science, domestic science, mathematics and history if they were to be good and effective mothers.⁸⁶

The apprehension towards western version of women's emancipation was shared by the writers in *al-Ikhwān*, who reminded the readers not to be overwhelmed with western culture, and in emphasizing the need to maintain Islamic identity. The attitude of these writers was to convince the public to emulate the positive characters of the western culture, whilst leaving those aspects which were considered negatives, and rejected those that detrimental to the Islamic morality.⁸⁷ They were also against the idea of total emancipation and freedom of females to mix freely with the males.⁸⁸

Former Azharite, Fadhlullah Suhaimi (1886 - 1964), while opposed to the notion of secluding women within the household, and emphasized the permissibility of interaction between women and men in the cause of seeking knowledge, however rejected the free social life between men and women for the sake of fulfilling individual needs in entertainment and passion. He constantly reminded the public regarding the negative impact of moral decadence in the West.⁸⁹

Although, the early reformists mentioned above emphasized on certain subjects to be taught to women, especially on their role as women, as well as limiting their interaction with men, however we should understand that they were talking within the context of their time when

⁸⁴ Qasim Amin *The Liberation Of Women And The New Women*, p. 12.

⁸⁵ *Ibid.*, p. 17.

⁸⁶ Al-Hadi, *Kitab Alam Perempuan*, p. 21-22 ; Ibrahim Abu Bakar, *Islamic Modernism in Malaya*, p. 147.

⁸⁷ Such as the fashion of scantily clad clothes worn by Western women. *al-Hikmah*, 24 October 1935, p. 14 ; *al-Hikmah*, 26 Dis 1935, p. 13; *Al-Hikmah*, 28 November 1935, p. 16 ; *al-Hikmah*, 1 May 1934, p. 58 – 60 ; *al-Hikmah*, 10th July 1934, p. 183.

⁸⁸ Female reader with English school background who opposed the Malay tradition of arranged marriage, and advocated that women should find their own husbands and suggested they mingled around looking for the right one was strongly criticized by other readers, and even the magazine, put on their own writing opposing such view. *Al-Hikmah*, 26th December 1935, p. 13 – 15; *Al-Hikmah*, 26th March 1936, p.13; *Al-Hikmah*, 13th February 1936, p.12 – 13; *Al-Hikmah*, 23rd January 1936, p. 13-14; *Al-Hikmah*, 2nd January 1936, p. 15.

⁸⁹ Ni'amah Hj Ismail Umar, *Fadhlullah Suhaimi*, Progressive Publishing House Sdn Bhd, Selangor, 1998, p. 138.

women were denied from setting education. Such recommendations were considered as radical, courageous in opposing the religious and cultural misconceptions toward women. Their ideas and struggles had provoked opponents to write books and pamphlets denouncing their ideas.⁹⁰ In fact, their struggles had paved the way for later generations in their struggles for women's rights.

Among the reformists mentioned above, Qasim Amin was the only one who had proposed that certain legal aspects in Islamic family law should be promulgated in order to protect women from abuse of power by the husbands. The subjects which were considered important were the moral and religious conscience, and proposed that to be legalized with the selection of opinions from other school of thoughts.

4.0 Gender, Justice and Islamic Family Law Reforms

Considering the unjust treatment of women and the low status given to them during pre-Islamic Arab society, the introduction of rules pertaining to the rights and duties within family institution contained in Quran was regarded as revolutionary in enhancing the status of women in the eyes of the independent legal and spiritual identity. Islam undoubtedly improved women's position, establishes marital relationship on the basis of love and mercy, secure mutual rights and obligations. It had abolished the customs of pre-Islamic Arab of inheriting a dead men's widow (son's right to inherit his step mother after his father's death),⁹¹ and the practice of selling the daughter for the purpose of marriage.⁹² During that time, men enjoyed the right to divorce women at will without having to provide any maintenance to them as well as the right to unlimited polygamy.⁹³

The Arab customs which did not contradict with Islamic teachings were accepted with certain modifications so as to make it to conform to Islamic law. The modifications were basically

⁹⁰ Mukhtar Ibn Ahmad, *Fasl al-Khitab*, Matba'ah al-Adabiyah, Beirut, 1940 ; Muhammad al-Bulaqi, *al-Jalis al-Anis*, Jamiyyat al-Isti'qamah, Qahirah, 1899; Abd al-Majid al-Khayri, *al-Da'i al-Matin*, Matba'ah al-taraqqi, 1899. The references mentioned cited in Ali A. Izadparast, "Position of Women in Muslim Arab Societies", Phd Thesis, University of Utah, 1974, p. 100 ; al-Hadi rejected the dogmatism and laxity in religion and demands a return to the Quran and Sunnah which was the reason he was labelled as Wahabi. *Al-Ikhwan*, 16th July 1931. Also mentioned in S.H Tan, *The Life and Times of Sayyid Shaykh al-Had*, p. 51

⁹¹ Al-Nisa'4 : 19, 22.

⁹² The daughter was often purchased by the man from her father or guardian as an object of the sale, where the marriage contract was basically between the father and the groom. She has no say whatsoever regarding her marriage. Lamya al-Faruqi, *Women, Muslim Society and Islam*, p. 3.

⁹³ *Ibid.*, p. 4.

to improve the status of women. The practice of giving *mahr* (dowry) was modified, that it was not given to the father or her family, but instead it was considered as the bride's property.⁹⁴ The unlimited number of wives in polygamous marriage was modified and limited to a maximum of four wives, allowable only if it was possible to treat them all equally,⁹⁵ and that separation by *talaq* (divorce) were made revocable to twice only.⁹⁶

The provisions of family law are primarily found in the Quran and Hadith. However, these two sources do not specify the details. They only contain some rulings and indications that lead to the cause of these rulings. On the basis of these rulings and indications, the jurists had developed the rules by employing the legal theory to discover the judgment of an unprecedented case.⁹⁷ The expansion of Muslim territories with multi-ethnic population from different cultures and backgrounds imposed countless new problems which need to be addressed accordingly. This was the scope where the role of *mujtahids*⁹⁸ is necessary in matters of law and religion using their own methodology in *ijtihad*.⁹⁹

Early jurists who had formed independent opinions never claimed finality to their opinions and even admitted the possibility of errors. They encouraged other scholars who were qualified to practice *ijtihad* to form their own conclusions based on their own knowledge and abilities. However, this scholarly environment did not last long, for when the Muslim world went into decadence and the caliber of great scholars such as Abu Hanifah and Shafi'e had ceased to exist, the independent *ijtihad* which had given life and vitality to Islamic jurisprudence had also ceased to exist. At the end of third century it was commonly accepted by the majority of jurists that the gate of *ijtihad* had been closed.¹⁰⁰ The *ijtihad* activities then were carried out within the framework of the established schools of law, for none were deemed qualified for independent reasoning.

⁹⁴ Al-Nisa'4: 4

⁹⁵ Al-Nisa'4: 3, 129

⁹⁶ Al-Baqarah 2: 22

⁹⁷ W.B Hallaq, "Was the Gate of Ijtihad Closed?", *International Journal of Middle East Studies*, Vol. 16, No. 1, 1984, p. 4.

⁹⁸ Those who carried out the task of discovering the new judgment by applying legal methodology. Ibid., p. 1

⁹⁹ The maximum effort expended by the jurist to master and apply the principles and rules of *usul al-fiqh* (legal theory) for the purpose of discovering the God's law. Ibid.,

¹⁰⁰ JND Anderson, *Law Reform in Muslim Countries*, London, 1976, p. 7 ; NJ Coulson, *A History of Islamic Law*, Edinburgh, 1964, p. 81.