

Answer to three challenges raised about the Qur'anic concepts

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Abstract: This paper tried to answer to three challenges about the Qur'anic concepts. First challenge relates to superiority of men over women, and corporal punishment of women. The term "custody of men over women" as used in the Qur'an refers to the guardianship and management of women by men, rather than authority of men over women. It refers to proper management of family, and corporal punishment of women is only justified in case of a wife who disobeys her husband arrogantly. The righteous women who protect the honor of their husbands in all areas may not be subject to corporal punishment. The Holy Qur'an has provided corporal punishment as the last resort to protect family and correct such women, and even then, corporal punishment must be executed in a way not to inflict any physical injury on women. The second challenge relates to the condition that provides polygamous husbands must treat all their wives justly and equally. The second challenge results from the mistake of confusing subjective justice, which is beyond human control with practical justice, as the former is not a condition of polygamy, and what is stipulated as a condition of polygamy is that the husband must ensure justice in practical aspects of marital life, as evidenced by the lifestyle and conduct of righteous Muslims. However, the third challenge relates to testimony of women. There is challenge that testimony of women has a lower value than testimony given by men. First, according to Islam, testimony of women is acceptable in principle. Second, the difference between testimony of men and testimony of women is not in the nature of value, but is based on facts and other considerations. Third, testimony is a duty and not a right, and so, women are not deprived of a right, but are exempted of a duty in cases where their testimony is not acceptable.

Key words: *Challenge; Management; Punishment; Justice; Testimony*

1. Introduction

According to Islam, family is a consultative system, with husband as its guardian and manager (Ja'fari, 1999). Such system imposed duties on each member of family and also provides certain rights for each member. Every community, whether small or large, requires management. Family is the most basic institution of human community, whose well-being and ill-being have a huge role in well-being and ill-being of the community at large.

In this small but important community, management is the duty of husband, and therefore, the husband is bound not be bad-tempered and not to prevent his wife from exiting home to do necessary things. On the other hand, other members of family, especially wife, must be coordinate their affairs with husband as required, help him in optimized management of family, and respect his rights. Such difference in duty is based on the fact that men and women have differences in physical and psychological terms, and have been created differently in order to able to fulfill different duties.

This paper tried to answer to three challenges of the Qur'an in relation to women.

a) Superiority of men over women and husband's right to punish his wife: The God has given men

superiority over women, and husbands may resort to corporal punishment of their wives. (An-Nisā).

b) Ensuring justice between wives: The Quran provides about second marriage that men must ensure justice between their wives, while, elsewhere in the Qur'an the God says the polygamous men cannot ensure justice between their wives. (An-Nisā), does it mean the rejection of the second marriage or not?

c) Deficiency of the testimony of women, compared with testimony of men: If men and women are equal in terms of rights in Islam, why testimony of women is deficient compared with testimony of men? Is this not discrimination?

2. First challenge

2.1. Superiority of men and corporal punishment of women

In verse 34 of sura An-Nisā, the God allows husbands to use to corporally punish their wives, and gives men superiority over women.

"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. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them

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guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).” (An-Nisā).

2.2. Answer to the first challenge

The first of part of this verse provides that men are the protectors and maintainers of women, because the God has given the one more (strength) than the other in relation to the social system. The this sentence of Holy Qur’an explicitly provides that guardianship of family must be assigned to men, and such position is assigned to men on the ground of their properties, for example, men are more reasonable than women, while women are more emotional than men; and men are physically more strong than women, and given their being sensible, they can better manage and maintain family using their intellectual power to make different plans and economic policies. Second property of men enables them to protect their family. Also, the obligation of husband to pay the cost of life of his wife and children, to pay marriage settlement to his wife, and ensure a dignified lifestyle for his wife and children, authorizes him to be guardian and protector of family. However, such superiority is limited to physical and intellectual aspects, and women and men are equal in spiritual terms, and they both can reach the highest levels of divine piety (Motahari, 2003; Javadi Amoli, 1992).

The sentence “Men are the protectors and maintainers of women” refers to obligation of men to be maintainer of women” (Allmah Tabatabai, 1997).

Thus, the Qur’an has never ignored pure human emotions that cause development of human community; but the Qur’an assigns management of social and public affairs, which require strong reasoning, including as governing, judging, *etc.* to people who have weaker emotions, and it is men and not women who have weaker emotions.

Hadiths regarding this verse also stated this (Hurr Amili). Behavior and conduct of Prophet Muhammad (PBUH) during his entire life also was based on the same principle. He never assigned a woman to judge, and never sent women to fight enemies; however, other social jobs such as teaching, nursing and other jobs which are not contradictory to emotions are not prohibited for women, and prophetic hadiths also have not prohibited such jobs for women.

In this regard, quoting Asma’, al-Bayhaqi said, “Asma’ went to Prophet Muhammad, and said, “The God sent you as prophet of both women and men, and we women believe in you; we are housewives who satisfy your sexual desires, and bear you children, you men are better than us, you can hold Jumu’ah prayers, and congregational prayer, you can go visit patients, participate in funeral, and perform hajjs every year, and do jihad; however, it is women who protect the property of men, prepare their

clothing, and education their children when men are outside home. So, do we women share the reward earned by men”; Prophet Muhammad said to his companion, “Have you ever heard a women talk about religious affairs so well?”, and companions said, “O, Rassul Allah, we didn’t imagine that a woman could talk like this woman did”. Then, Prophet Muhammad turned to the woman and said, “Go back home, and say to other women that your housekeeping and your satisfying your husband, and following his orders, bring you rewards as much as earned from all deeds you said men do”; then, the women return home, and happy with the promise prophet Muhammad made to her, said, “God is great” (ibid; Suyuti).

There are many Shiite and Sunni hadiths in this regard, the best of which is one narrated by al-Kafi on the authority of Abu Ibrahim, who quoted Imam Musa Ibn Ja’far (PBUH) as saying, “Jihad of a good wife is housekeeping” (Kulayni, 1986). Imam Ali (PBUH) said, “Woman is sweet basil not a heroine” (ibid).

In case of judgment, it has been provided that holding of office of judgment is a duty of all members of society, but as soon as it is discharged by one, others will not be bound to fulfill it, and thus, women are discharged from this duty; it is not that women are deprived from holding this office, but are discharged from such duty (Hurr Amili, 1982).

Thus, the sentence “Men are the protectors and maintainers of women” refers to the fact that men are protector and maintainer of women”.

Here, the fact that men are manager of family doesn’t mean that they should be authoritarian and self-centered, but its means that men must take well-thought decisions in the community they manage.

This verse refers to two groups of women:

2.2.1. Righteous women

“The righteous women are devoutly obedient, and guard in (the husband’s) absence what Allah would have them guard”. Husband pays a sum to his wife in exchange for having his desired fulfilled by her, and wife must be obedient to her husband, and protect what the God would have them guard in absence of his husband, not allowing people other than her husband to have their desires fulfilled by her, and avoid making treacherous use of the property make available to her as a result of marital life in family environment (Allamah Tabatabai).

Thus, Prophet Muhammad (PBUH) said, “The best of you women is one who makes herself available to her husband without shyness and shame, and who tells her husband I would not stop trying until I satisfy you if she or her husband becomes angry (Nuri, 1987).

2.2.2. Shrewish women

The Qur’anic term Nushuz means disobeying husband out of arrogance or abstinent behavior of

wife towards husband in fulfillment of marital duties in absence of religious and legal prohibitions, in which case wife will cease to deserve to receive maintenance (Moein, Persian Dictionary, 2000).

In the Qur'an and hadiths, the wife who ignores rights of marital life, and fails to obey her husband in cases she is bound to obey him is called "shrewish". Such shrewishness is rooted in arrogance and egoism. By their ugly behavior and infringement of family laws, and their failure to behave their husband kindly, turn the family into a the hell; to protect family, and correcting such wives, the Holy Qur'an has given several instructions to the protector and maintainer of family, that is, the husband.

First Stage: Admonishment "As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first)" (An-Nisā, 34). Therefore, such shrewish wives must be admonished first, reminding them of the serious consequences of their ill-conduct peacefully and friendly, and as long as it is possible to solve the problem by friendly admonishment, harsh treatment of them must be avoided.

Second Stage: Refusing to share their bed

In case admonishment turns out to be ineffective, the Qur'an provides harsher an instruction based on emotional factors, requiring husband to refuse share their bed (ibid), and affect shrewish wife emotionally. Such instruction is based on the fact that it is very hard for women to tolerate the above said condition psychologically, and in case they love their husband, they returned back to the right, and stop disobeying their husband (Tabarsi).

Third stage: Corporal punishment

The Qur'an says, "(And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all)" (An-Nisā).

Thus, as regards women who have exhausted all ways of correction, the Qur'an provides for "corporal punishment" as the last resort to protect family and correct shrewish women, under certain circumstances though.

Contemporary psychoanalysts believe, "Some of such women are affected with some type of sexual and mental perversion which can be treated by no means but violence. They say such people always try to break the law, and become dominant over their husband, enjoying such acts, and always inflicting mental and physical injury on their family" (Babazadeh, 1999; Makarem Shirazi et al., 1995; Qurayshi, 2007).

2.2.3. Corporal punishment of shrewish wives

1- Islam doesn't authorize husband to corporally punish women in normal condition, but Islam requires husbands to treat their wives well (An-Nisā, 19). Corporal punishment of wife is specific to shrewish wife. However, it should be noted that not every type of disobedience makes a wife shrewish (nashizah), but shrewish wife is one who fails to

disobey her husband in cases where it is obligatory for wife to obey her husband; for example, if wife refuses to have sexual intercourse with her husband, and if exits home for unnecessary purposes. However, in cases like cooking, nursing, and cleaning, disobedience of wife doesn't constitute shrewishness, and in such cases, the husband is not authorized to refuse to share bed with her or punish her corporally, because these are rather ethical duties of wife (Imam Khomeini).

2- First, the punishment shall not aimed or relief; second, it must be kept at the minimum required to make wife fulfill her duty, and such punishment is not allowed beyond that minimum required level. Thirdly, it should not cause any fracture, injury and even bruise on the wife's body (Imam Khomeini). A hadith from Imam Reza (PBUH) reads "Beat you wife by toothbrush handle or other similar light objects (Allamah Majlisi; Tbarsi). If any injury is inflicted on wife as a result of corporal punishment, husband must pay mulct (Imam Khomeini).

A hadith from Prophet Muhammad (PBUH) reads, "If a man beats his wife unjustly, I'll be his enemy on the Day of Judgment. Don't beat your wives; every man who beats his wife unjustly is disobeying the command of the God and his Messenger. (Deylami).

3- Corporal punishment must be the last resort; that is, if after the first stage (admonishment), and second stage (refusing to share bed with wife) have failed, there is the belief that wife will stop disobeying if corporally punished, corporal punishment will be allowed. In case wife stop disobeying at any stage, it becomes irrelevant to go to the next stage. Corporal punishment is a type of enjoinder of the good and prohibition of the evil which can be used for people who are found to be resistant to other methods.

However, such corporal punishment is not specific to Islam, and as general rule, in all legal systems in the world, when an offender is not corrected by other means, the law enforcer resorts to harsher methods. In some cases, people who have committed serious crimes are sentenced to death; corporal punishment of disobedient wife is also no exception (Makarem Shirazi, 1995).

Corporal punishment is applicable to disobedient husbands as well; if a husband refuses to fulfill his marital duties such maintaining his wife, the wife must try to correct him by admonishment, and if admonishment failed, she can bring action against her wife, in which case the judge shall require husband to fulfill his wife's rights, and failing this, the judge shall corporally punish the husband (Imam Khomeini; Najafi; Beheshti, 2006).

Thus, corporal punishment is not specifically applicable to disobedient wives, but it is applicable to disobedient husbands who are found to be disobedient as well (Allamah Majlisi), the only difference between cases of disobedient wife and husband is that because wives are usually unable to corporally punish their husband, the judge is bound to make husbands fulfill their marital duties by different means including corporal punishment. In this regard, there is famous

hadith according to which a husband, who used to infringe his wife's rights, and who had resisted all means tried to make him fulfill his marital life, was made to appear before Imam Ali (PBUH), and Imam Ali (PBUH) made him fulfill his marital life by threatening him to death by raising his sword over him (Makarem Shirazi).

3. Second challenge

3.1. Equitable treatment of wives

"If ye fear that ye shall not be able to deal justly with the orphans, Marry women of your choice, Two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice" (An-Nisā, 3).

In this verse that covers about the second marriage, the God require men to deal justly with their wives, while in another verse, the God say men cannot deal justly with their wives; doesn't this constitute rejection of the second marriage?

"No matter how hard you try, you cannot deal with your husband justly, even if you wish to be just".

Whether does such justice, which is a requirement in polygamy, refer is related to objective matters of life including sexual intercourse, and maintenance, or to subjective matters such as emotions?

3.2. Answer to second challenge

In order to ensure legality and legitimacy of relationship between men and women, Islam has provided for polygamy under certain condition. This is the wisest and the best way to ensure legality and legitimacy of relationship between men and women, which allows men who can deal justly with all their wives to marry for the second, third, or fourth time. This method imposed duties on men while providing rights for women. This method is not to the detriment of women at all, but it even ensures women's best interests. Some instructions and conditions provided by Islam for polygamy are as follows:

1- Observance of the limit set by Islam: Islam has set a limit on the number of wives to whom a man can marry, setting their number to four. "Marry women of your choice, two or three or four" (An-Nisā, 3).

2- Observance of justice in dealing with wives: The Qur'an says as regards the requirement of dealing with wives justly, "If a man who has two wives distributes his properties between them unjustly, he will go to hell on the Day of Judgment while his hands are tied up and half of his body is being pulled in one direction" (Reyshahri, 1998).

Motahari wrote, "Islam attaches so much importance to requirement of justice that it doesn't

even allow husband and second wife to agree under marriage contract that the husband provide a different maintenance to the second wife, compared with the first wife; this indicates that dealing wives justly is a duty of husband, which he may not evade by mutual agreement with the second wife" (Motahari, 2003).

3- Maintenance: According to Islam, it is duty of husband to pay maintenance to his wife; therefore, the man who cannot pay maintenance to more than one woman must not marry for a second time.

4- Satisfying the emotional and sexual needs: Imam Sadiq (PBUH) said, "Every man must married only as many women as he can sexually satisfy, and if one of the wives of a polygamous women commit sex outside marriage, the burden of guilt of adultery is on her husband" (Reyshahri, 1998).

Undoubtedly, subjective justice in emotional matters is beyond human control as nobody can fully control his unconscious subjective feelings. For this reason, the Qur'an says that men cannot deal with their wives justly in emotional matters, no matter how hard they try.

Thus equitable subjective love is not a condition as long as such inequality doesn't cause the husband to deal his wives differently in objective and practical aspects of life. Thus, it becomes clear that it wrong to conclude from verse 3 of sura An-Nisā, "but if ye fear that ye shall not be able to deal justly (with them), then only one", that Islam has prohibited polygamy on the grounds that the Qur'an has provided in the first verse that polygamy is subject to just treatment of wives, while the Qur'an has considered such just treatment of wives as being impossible, because as said above, the impossible justice that is subject of this verse is subjective justice in emotional matters, while such justice is not a requirement of polygamy, and the justice that is subject of this verse is practical and objective justice, as evidenced by verse 129 of sura An-Nisā, "Ye are never able to be fair and just as between women, even if it is your ardent desire: But turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air). If ye come to a friendly understanding, and practice self-restraint, Allah is Oft-forgiving, Most Merciful" (An-Nisa) (Makarem Shirazi, 1995; Allamah Tabatabai, 1988).

Motahari said in this regard, "If the number of single women is more than number of single men, then, prohibition of polygamy will be a betrayal of humanity, because under such circumstances, not only polygamy is not violation of women's right, but also it prevents the social crisis that may arise out of such difference between number of single men and women, as family is the most sacred institution" (Motahari, 2003).

4. Third challenge

4.1. Testimony of women is less valid than testimony of men

Why testimony by women is held by the Qur'an to be less valid than that by men, while men and women have equal rights under Islam?

"and get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her" (Al-Baqarah). According to above said question, this verse takes testimony of two women to be as valid as testimony of one man, which has caused some criticism.

4.2. Answer to second challenge

The following points must be considered to understand the rationale behind the rules governing testimony in Islamic procedure code:

1- Validity of testimony: testimony about an event and the way it occurred can be used as basis of judgment when it is valid and reliable as much as possible. On the other hand, validity of the statements of witness is closely related to his/her mental condition. Since psychological structure of women is different from that men, experimental psychologist believe based on the results of extensive researches that men and women have different physical and psychological properties. Some of such differences include:

a) Self-Confidence: According to result of researches, men are more self-confident, compared with women. Men set long-term goals for themselves, and try to reach those objectives, while women have low self-confidence and choose small and short-term goals (Hosseini et al., 2002). This characteristic of women can affect the testimony they bear, because a person who has low self-confidence is less successful in proving or rejecting a matter, because he/she is prone to influences by internal and external factors, thus being subject to indecision.

b) Emotions: There are significant differences between the male and female sexes in terms of feelings and emotions; women are rather emotional, libido of men mostly targets the physical words, and focuses on taking control of the environment, while libido of women is mostly focused on inner world, and emotions, rather focusing on the emotional relationships. In this regard, Plato, admitting weaker physical, mental, emotional and rational capabilities of women, believed that women and men have similar talents and capabilities but they are different in terms of quantity of such capabilities. According to him, women can fulfill the same duties as assigned to men. Unlike him, his pupil, Aristotle believed that the quality of talents of women and men is different, and that their duties are largely different in principle on the grounds of such difference in their talents (Motahari, 2003).

Professor "Rick" (a famous American psychologist) said, "The worlds of man and woman are completely different. If a woman cannot think or act in the way a man does, it is for because men and women have different bodies. In addition, they will

never have the same feelings, and will never show the same reaction to accidents and incidents. Women and men act differently as required by their sexuality, they are and just like two stars that move on two different orbits; they can understand each other and supplement each other, but they can never be the same. For this reason, man and woman can live together and love characters of each other and never be tired and upset with each other" (ibid, 2003).

Also, Clive Olson as a prominent psychologist said, "Women are ruled by the emotions and men by their reason. It has been frequently seen that women are not only equal to men in terms of intelligence, but also are even better than men; but women are intensely emotional, and this is the sole weakness" (Motahari, 2003).

c) Emotionality: Many studies have revealed that reactions of women and men to situations that cause fear, anger, hatred and sympathy are different quantitatively and qualitatively (Hadi Hosseini et al., 2003).

In Islamic Procedure Code, witness of woman is accepted in principle. Islam holds that testimony of a just woman is sufficient proof, and it should be considered that when Islam provided this rule, people didn't recognized women at all. Thus, the difference between testimony of men and women is not in terms of value of their testimony, as just in the case with blood money and inheritance; but such difference is based on other facts and considerations. Testimony is not a right at all, so, when it is held that testimony of women is not accepted in some instance, or that testimony of two women is equal to testimony of one man, it doesn't mean that women are deprived of a right, but since testimony is a duty, women are just discharged from a duty in such instances. Therefore, in cases where testimony of women is not acceptable, they are exempted from testimony as a duty (Muhaqiq Hilli, 1982).

The nature of men and women is difference, and women are more emotional, therefore, it is reasonable precaution to take testimony of two women to be equal to testimony of one man to ensure that people's rights are protected.

Thus, as a realist legal school, Islam has considered this fact, and since women are more likely to make false testimony than men, Islam has held testimony of two women is equal to testimony of one man (Motahari, 2003; Javadi Amoli, 1992 Kamali, 1990; Zibaeinezhad, Sobhani, 2008).

Experiments on the origin of emotions indicate that emotional activities are not limited to a specific part of the body, but are spread in the entire body, and that endocrines and some biochemical factors are involved in such emotions. The difference between endocrines of women and men indicate that they have different emotions, with women being more emotional.

On the other hand, when testimony is based on deep reasoning and thought, it is more reliable, and when it is rather based on emotions, it is less reliable, thus the judgment rendered by the judge

must ensure that parties to a suit that the best actions have been taken to ensure their rights, one of which actions can be ensuring that emotions had no effect on the testimonies (Shakerin et al., 2005).

5. Conclusion

The verse of the Qur'an, "Men are the protectors and maintainers of women" assigns the position of guardianship of family to men, and such position is assigned to men because men are more sensible than women, while women are more emotional than men. The two capabilities of sensibility and physical strength allow men to manage and defend their family; however such capabilities don't indicate that men are better than women.

As regards corporal punishment of wives, first, it only applies to women disobeying their husband; second, righteous women are not subject to corporal punishment; and third, husband can use corporal punishment only if ways of admonishment and refusing to share bed with wife have failed. And, even when corporal punishment is allowed, it must meet certain conditions as follows: first, it must be aimed at correction and not vengeance; second, it must be kept at minimum, that is, the shrewish wives must be beaten to the extent that she stops disobeying; third, such corporal punishment should not cause injury to woman's body. Further, it should be noted that corporal punishment is not specific to wives, but shrewish husbands also may be subjected to corporal punishment. However, since women usually are not able to corporally punish their husband, they must pursue this goal through courts, so that husbands are punished by the judge.

As for challenge related to equitable treatment of wives by polygamous men, Islam allows polygamy provided that wives are treated justly by their husband. So, Islam authorizes men who can do such hard duty to be polygamous. Thus, in this case, Islam provides a right for wife, which must be fulfilled by husband.

The fact that the Qur'an makes polygamy conditional on just treatment of wives by husband at one point, while the Qur'an states elsewhere that it is impossible for polygamous husband to treat his wives justly, doesn't mean that polygamy is prohibited. Rather, such impossible justice refers to subjective justice and love, which is beyond human control, and which is not a condition of polygamy. The condition of polygamy is to ensure justice between wives in practical aspects of life, as the Qur'an says if you cannot subjectively love your wives equally, you should at least behave as if you love them all equally, rather than showing love for one of them, and abandoning another.

As for deficiency of testimony of women, compared with testimony of men, it should be said that testimony is a duty rather than a right, and therefore, Islam has exempted women from such duty in some cases, because women are emotional by nature, and may be influenced by their emotions in bearing testimony. So, Islam takes precaution and

provides that testimony of two women is as valid as testimony of one man. Also, testimony about an even can be used as the basis of judgment only when it is considered to be maximally trustworthy. Based on the results of psychological researches, men are more self-confident than women, and such feature of women affects their testimony.

Thus, the fact that testimony of two women is considered to be as valid as testimony of one man in instances like murder, adultery, etc. is based on psychology of women, because emotionality of women might have caused them to distinguish people wrongly, and therefore, they are likely to make erroneous testimony, which likelihood of error can be reduced by increasing the required number of witnesses.

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