

SEXUALITY AND SHARIA

Prof. Dr. Siti Musdah Mulia¹

Understanding Sexuality

Sexuality is a social process expression of desire or passion. It can also be defined as a socially constructed expression of erotic desire.

Human sexuality tends to be regarded as “something that works in a natural way”, functioning only in reproduction. The vagina, for example, is always considered as merely an “organ for the sexual act” or a sexual organ for reproduction. Therefore female sexuality is reduced to being a permanent universal “natural phenomenon”.

In fact, sexuality is always linked to social construction. Social construction on gender relations is still very biased. Why? Because, gender relation is dominated by a patriarchic ideology and system. The paternalistic patriarchic system is still very constraining for women. This system allows men to have power over, to control the lives of women in all aspects: social, legal, political, moral and religious. This system ultimately results in a very discriminative distribution of roles and positions for men and women. Strangely enough, there are still a great number of people who consider this state of inequality as the will of God.

A human being's sexual feelings reveal the gender identity. This means that sexuality is always based on the strength of society's social history. Sexuality does not merely revolve around biology or the anatomy. It is a combination of anatomical structure and psychology. Female sexuality is everything that is intrinsic regarding the anatomy and female sexual pleasure. Therefore, female sexuality does not merely refer to the vagina and breasts but also to the whole body, including thoughts and feelings.

The idea that sexuality merely refers to the body leads to the conviction that women should be passive and men active. Women do not have the right to enjoy sex. On the contrary, it is the woman who should be enjoyed. Sexuality is always viewed from the masculine context. And men should always be in a position as the subject. Women, on the other hand, are only objects, sexual objects. This is why society encourages men to be aggressive. This leads to a natural consequence where women are turned into sexual objects and in turn, this legitimizes abuse, rape and sexual violence perpetrated by men.

Female sexuality is a right that belongs solely and fully to women. Women's morality cannot be judged from sexuality, nor from the male point of view. She has her own uniqueness and also her own normality as an individual, just as men do. However, a patriarchal ideology has a determining role in reconstructing the public's image of the woman's body. The patriarchic construction on a woman's body has been so deeply ingrained into society's mindset that, unsurprisingly, it is men's

¹ Chairperson of Indonesian Conference on Religion and Peace (ICRP).

viewpoint that always becomes the standard to regard the female body. This standard then becomes the reference to judge a woman's body in all aspects of life.

Every human being has the right over his/her own body. A woman has a right over her own body, she has the right to health and pleasure from her body. A woman's body is not taboo but something positive. Women have the right to appreciate and express themselves through their own bodies.

A woman's body is not the root of sin or trouble as is the common perception prevalent in society. It is the impure thoughts and views regarding the body that is the actual tragedy here. Moralistic values prevalent within society are very biased because they are determined based on the assumptions of men. These unfair moralistic judgments have resulted in the stereotyping of the woman's body. A woman's body is always linked to temptation, defiling men's morality, the cause of calamity and other negative stereotyping.

It is therefore not an exaggeration to say that society has already perceived the woman's body as the source of immorality. This gives birth to moralistic judgments further legitimized by religion. As a consequence, the policies and laws issued tend to benefit men and are disadvantageous to women. Among them, those that stipulate that a woman must cover her body to avoid being raped. Women are forbidden to leave the house at night and walk alone without being accompanied by respectable men from among their relatives.

A number of critical questions come to the surface: If women cover their bodies, are they automatically respected and ensured that their most basic rights are fulfilled? Does not leaving the house at night and not leaving the house without being accompanied by male relatives mean that women are respected and protected from all forms of violence, abuse, and rape and that all forms of violence against women will decrease? The fact in reality does not endorse this assumption. What happens is that the more hypocritical a community is, the more the rate of violence and violation of women's basic rights increases.

Sexuality in Islam

It's widely believed that Islam respects sex and even advocates that believers should enjoy their sexual life. As in all other religions, Islam regards sex basically as a tool for reproduction, but Islam does not regard reproduction as the only objective of sexual activity. Joy is another main objective of sex. This is explicitly addressed in

However, there are some of the Prophet's sayings that do address women's right to sexual enjoyment. The prophet considered a man's sexual practice with his wife as one of the virtues to be rewarded by God. Also, men are advised not to stay away from their home for more than six months, and also spend their nights in prayers, as this is a violation to their wives right, *zihār* (to treat one's wife as own mother and to stop having sex with her), is strictly prohibited. In this perspective, Islam rejects monasticism that advocates rejection of sexual relations.

Contrary to the present way of dealing with sex as a taboo, it is worth noting that in the early era of Islam, during the life of the Prophet, sex was freely discussed in public. Many of the Prophet's sayings regarding women's right to sexual pleasure were in fact a response to women's question or remarks. Even some of the Qur'ānic verses are responses to sexual inquires by both men and women. This reflects a society where women were distinctly presented as lively discussants of sexual subjects. A matter that is reversed nowadays in Arab Muslim societies, where sex does not enjoy the previous respected status and it has become a taboo so that women would not discuss sex in public.

I think that the decline in respect for sex dates back to earlier ages when sex began to be linked more and more to the slavery system, which continued to exist until very recently in some of the Muslim countries.⁵ Within such a system, free women (wives) were regarded as child bearers, while concubines were kept for sexual pleasure. In support of this idea, some scholars allowed *'azl*, (withdrawal) as a form of birth control with the free wife provided it is done with her consent, but *'azl* with slave women is allowed without their consent.

The pre-modern Arab literature concerning the body is both vast and varied. There are many that deal with all aspects of sexuality including description of different sexual positions and different drugs to deal with sexual problems and to increase sexual desires and potency. Medical literature by famous scholars such as Ibn Sinā and Ibn Rushd deal with sexuality. Ibn Sinā's works include conclusions he drew from interviews with women on their sexual experiences.

Nowadays, however, there is a growing trend among Islamist groups to curtail such public discussions. The debates on both the Cairo and Beijing documents portrayed the document as advocating promiscuity and immorality. This is mainly because the sections on reproductive and sexual health, rights and sex education for youth were treated in the same way. The women who publicly addressed matters related to sexuality were accused of promiscuity. In contrast with women who dared discuss sexual issues with the Prophet, some of the women researchers were described as prostitutes because their surveys included questions on the physiology of sex! To complete the irony, such accusations came from physicians.

There is another health issue raised in relation to sexuality, and that is sexually transmitted diseases, such as HIV/AIDS. In facing this issue we need to make choices. First, stop all sexual relations with a person who is suspected of having a sexually transmitted disease until it is medically proven that they are well.

⁵Moroco abolished slavery in the 1930s, and Arabia abolished it in the 1960s.

Secondly, use safe sex practices such as wearing condoms that guarantees the prevention of transmitting this disease.

In addition to education, Muslim women need to be empowered to protect themselves. It is not enough to educate “good” Muslim women about HIV, but it is also necessary to educate sex workers about HIV; because of the possibility of the male linkage between these two groups of women. It is even better to educate the male linkage between the two, in order to prevent infection in either group or the possibility of cross-infections.

Sexual Relationship

According to Islam, the only sexual release permitted is the one consummated in marriage. Yet in practice within society, marriage is not as simple as perceived, since so many varying interests and cultural values are contained within it.

The recurring problem is regarding the relationship between the husband and the wife, where the husband is deemed as having full control over the wife, including in regards to sexual relationship. As a result, it is already ingrained in society’s perception that the wife only has obligations towards her husband to “cater to” his sexual appetite – at any time – without having any right whatsoever (either to ask or to refuse). What is more ironic is that such a perception is always enforced by a textual interpretation on the existing texts.

In view of such a reality, it is interesting to discuss how Islam actually views the relationship pattern between husband and wife, particularly in regards to the sexual relationship. Does sexual relationship mean that the wife has the mere obligation to serve the husband? What is Islam’s actual view on a healthy sexual relationship? To answer these questions, we must begin from a discussion of the substance of marriage.

The concept of ‘*Aqd Al-Tamlik* or ‘*Aqd Al-Ibahah*

There are at the very least two views on the essence of marriage. The first one views marriage as ‘*aqd al-tamlik* (a union that causes ownership). This means that through marriage, the wife becomes the absolute possession of the husband, especially in regards to sexual relationship. This opinion was expounded by the majority of the Hanafi *mazhab* (school). This is such a very popular point of view that it almost became the sole concept of marriage accepted by society. Thus, when a woman becomes the wife of a man, she is fully owned by the husband and this means that she has no rights over herself. In the Javanese community (Indonesian), this concept is enforced by a stereotyping that is accepted as true and still prevalent to this day. The wife, in the Javanese community for example, is only a *konco wingking* (literally, companion from the back of the house). This saying reflects absolute subversion on the part of the wife towards her husband. The ‘*aqd al-tamlik* concept has a similar connotation and even endorses this view of the Javanese community.

The second view regards marriage as ‘*aqd al-ibahah* (a union that allows sexual relationship) as has been expressed by the Syafi’I *mazhab* (school) and this is

considered as *rajah* (stronger) within their community⁶ The second concept means that the husband does not have absolute power in the sexual relationship with the wife. Marriage is viewed as justification for a sexual relationship between the husband and wife without any sense of full ownership. This opinion, although strong, is less popular with society, and the Islamic boarding schools often teach and disseminate the first doctrine.

Sexual Relationship: Right or Obligation

Now that we have viewed the definition of marriage, the critical questions that arise are: what is the form of the relationship between husband and wife, especially in regards to sexual relationship? Does it imply obligation for the wife, and right for the husband? Or do both parties have equal rights and obligations in expressing their sexual desire, including to refuse having sexual intercourse if both are not ready, whether physically or psychologically?

Almost all the schools (*mazhab*) among the four *mazhab* agree that sexual intercourse is the right of the husband, while the wife has no right whatsoever therein. It is the wife's obligation to always be prepared to serve the husband, any time that the husband desires it. On the contrary, if it is the wife who desires it, she may not show or express it, suffices it that she keep it under control.

However, a part of the *Syafi'i* school is of the opinion that the husband and wife both have the same rights in performing sexual intercourse. The husband, at any time that he desires it, may ask his wife to have sexual intercourse with him, and the same applies for the wife, she may ask him the same thing, This opinion may not be strong, but Abdurrahman Al-Jaziry is more in support of this view.

Sexual Relationship: For the happiness of the husband and wife

Sexual relationship in a marriage is a sexual act that involves two parties. This means that both the husband and the wife should enjoy it and take pleasure in performing the act.⁷ Not only in the Al-Quran, but also discovered in hadith, it is stated that if the husband has an orgasm before the wife, then he must wait until the wife has one, too. However, within society, there is a view that only the husband has the right to enjoy sexual intercourse while the wife does not. Consequently, such a noble stipulation in the Al-Quran and Hadith has not been well implemented in the lives of the believers.

In regards to initiating sexual intercourse, there are many Hadith that emphasize the need to begin with foreplay (*mula'abah*), and even negotiate with each other.⁸ But such a Hadith is not popular with society. On the other hand, what is preferred and used as a trump card by husbands to force their passion on their wives is the Hadith that says: "*If the man (husband) calls his wife to bed, but the wife is*

⁶ see *Figh 'alā Madzāhib Al-Arba'ah, bāb Al-Nikah*.

⁷ This statement is in accordance with Allah's ruling in Q.S al-Baqarah,187.

⁸The complete saying of the Hadith is as follows: Do not perform sexual intercourse by one and the other among you with your wife as animals do, it should begin with a prologue. A companion asked: "what is prologue?" The Prophet replied: "Kissing and endearments".

reluctant to obey and the husband becomes angry with her that night, the angels will curse the wife until the dawn of the new day.”

A brief perusal at those Hadiths texts will show us the contradiction between the two. The first Hadith stresses on the need of foreplay and negotiation between the husband and wife so that both can enjoy intercourse. The second Hadith, in the meantime, explain that there is a painful consequence for the wife is she refuses to comply with her husband's request for sex, as if to disregard the wife's right to enjoy sexual intercourse. So, what attitude should we take towards the evident contradiction in those two Hadith?

Islam puts an emphasis on the *mu'asyarah bi al-ma'ruf* (the need for both the husband and wife to act in a considerate manner) principle in marriage, as has been stressed in the Al-Quran and the Prophet's *sunnah*. Based on that principle, the husband and wife should put importance on being considerate and civilized in regards to the sexual relationship between them. This means that sexual intercourse should be performed wholly based on thoughtfulness, love and caring, so that both parties feel at peace and be happy, which is the true essence of marriage. In view of that principle, all forms of domination, discrimination and violence in sexual intercourse is forbidden since they are in contradiction to the *mu'asyarah bi al-ma'ruf* principle.

The Issue of Marital Rape.

The matter of marital rape, or to be more exact, rape towards the wife has not been addressed in many family laws in Islam, including in Indonesia. This is because the definition of rape in the Laws is limited only to coerced sexual intercourse perpetrated by men towards women outside of the marriage, not within the marriage. This means that the laws do not cover forced sexual intercourse conducted by the husband towards his own wife. This point of view clearly reflects the patriarchic culture which is still strongly adopted in society.

The fact that marital rape is not mentioned in the Family Laws show us that society does not recognize the existence of rape in marriage or such an issue has never been categorized as a crime. This condition is a logical consequence of the values adopted by society that a wife must submit to and obey the husband, thus she must always be willing to cater to his sexual desire at any time and place he wishes it. In Indonesia's case, this very biased view has been enforced by the state through the Law on Marriage No.1 of 1974 and the Compilation of Islamic Law which acts as the reference for Islamic judges in all Islamic Courts all over Indonesia.

From the religious perspective, there are at least three reasons negating marital rape. Firstly, the views in religion that the husband is the head of the family. Generally, the stereotyping of a husband's role as the head of the family is based on the verse of *an-Nisa`*, 4:34. Therein is a sentence that says: *ar-rijal qawwamuuna `ala an-nisaa`* which is always translated as: man is the leader of women. There are two things that must be noted from this. First of all, this verse must be read in full. Not in portions thus causing partial comprehension. However, the reality disseminated to society is only that portion of the verse, not in its complete form so that interpretation of that verse becomes biased. The second this is that the verse must

be comprehended according to its context, namely that the verse has been proclaimed as a response to domestic violence. That verse demands that men do not treat their wives with violence; on the contrary they are required to focus more on their responsibility as providers by way of demonstrating a considerate attitude and behavior. Therefore, that verse needs to be comprehended as one that emphasizes the need for men to behave in a more considerate and wise manner towards their wives, and not, in contrast, as a justification to adopt a dictatorial attitude.

Furthermore, it is unwise to view the relationship between husbands and wives based only on one verse, since there are no less than 104 verses in the Al-Quran addressing this issue, among them is verse 187 *al-Baqarah: hunna libasun lakum wa antum libasun lahunna* (the wife is the protector of the husband, and in return, the husband is the protector of the wife). It is asserted in that verse that both have equal positions in accordance with the guidance and practices of the Prophet Muhammad.

Secondly, there is a teaching on guarding the secrecy between husband and wife. This is based on the Prophet's Hadith as narrated by Muslim in Abu Sa'id al-Khudri : "*The most wicked among the people in the eye of Allah on the Day of Judgment is the man who goes to his wife and she comes to him, and then he divulges her secret*". This Hadith teaches us that all that the husband does towards his wife or vice-versa shall not be recounted to other people, including even the parents. Telling about it means revealing one's own flaw. This understanding brings us to the perception that family matters are private, and not a public issue. Such an understanding is of course in contrary with the practices demonstrated by the Prophet. In the Prophet's era, each person was free to expose his problems, including the matter of sexual intercourse. Some people talked to him in person, others conveyed their problems through their wives.

Religious teachings that are biased with patriarchic values are the basis for the justification not to recognize marital rape within the family. In addition, cases of marital rape are rarely exposed to the public because the wives feel ashamed to express it since it will cause the defamation to the family's name. Also, there is a feeling of guilt when recounting the husband's flaws even to one's own parents. Therefore, the solution to this is how to change the perception of the community and law enforcers so that they can view this not merely as a crime against ethics but also as a crime against persons. In addition to changing the perception of the community, no less important is changing the attitudes of legal enforcers so that they will respond to such cases in a more just way. But, far more important is reinterpreting religious teachings in regards to marital relations through more humanistic, egalitarian and gender sensitive perspectives.

It is true that no reference is found on marital rape in the Al-Qur'an, but this does mean that this issue is not regulated in the teachings of Islam. The Al-Qur'an is not a legal book that describes every issue in detail, but it is a holy book that is used as guidance in the lives of its believers, the Al-Qur'an only gives the basic principles of a general nature. Those principles then become the basis for the believers in managing their lives, including married life.

Among the basic principles in Islam for married life, is the principle of *mawaddah wa rahmah* (loving and caring for each other);⁹ the principle to complement and protect each other;¹⁰ the principle of *mu`asyarah bil ma`ruf* (co-existence based on complete thoughtfulness);¹¹ and the principle of monogamy.¹² By taking into consideration those principles, it is clear that all forms of exploitation and violence against the wife, including marital rape, are in contradiction to the teachings of Islam. This means that husbands, who perpetrate violence, including marital rape, may be punished as sinful persons because they have violated the teaching principles of religion.

Reproduction Right and Health in Islamic Perspective

Reproductive right means that each individual is entitled to enjoy a safe and healthy sexual relationship; each individual has the capacity for reproduction, and has the freedom to decide when and how often they wish to reproduce, including also all that regulates fertility, providing it is not in contradiction to the laws. And every individual has the right to receive health services that allow women to enjoy their reproductive functions, especially to bear and give birth to children safely.

Reproduction rights cover, among others, the right to decide on the matter of reproduction and the right to live. This means that every woman has the right to be free from the risk of death due to pregnancy and giving birth. Also the right to choose to form a family, and the right to build and plan a family. Therein is also covered the right to receive health services and protection. Also included is the right to obtain health information, access, choice, safety, confidentiality, self-respect, comfort and sustainable health services, as well as the right to equality and to be freed from all forms of discriminations in their family lives.

Therefore, when we speak about reproductive rights, we are talking about a very broad spectrum, covering issues regarding the relationship between a man and a woman, whether in the domestic or public domain. However, discussions about reproductive rights specifically focus on matters related to marriage, pregnancy, birth, caring for and bringing up the children. Included therein is the topic of abortion, sexually transmitted diseases and HIV/AIDS, family planning and contraception tools including all the related problems, as well as the matter of sexual behavior.

It is interesting to note that the Cairo Document has put emphasis on the matter of reproduction not only as problems belonging to women, but men as well. Therefore, men's active and responsible involvement is required so that sustainable and healthy reproductive lives for women are ensured.

It also stresses that women's reproductive health is not only limited to health in general, but also covers their health since childhood until post-menopause. This means that a healthy condition where a woman can undergo safe pregnancy until delivery should have been prepared since childhood. This can be accomplished by

⁹ Q.S *al-Rum*, 21

¹⁰ Q.S *al-Baqarah*, 187

¹¹ Q.S *an-Nisa`*, 19;

¹² Q.S *an-Nisa`* 3.

providing her with nutritious food for the maximum growth of her hips so that she can safely and easily deliver children.

Reproductive health services also cover sexual health care with the aim to enhance the quality of life and inter-personal relationships. A healthy sexual life can only be assured when built upon three main principles: Firstly, the ability to enjoy and manage sexual and reproductive behavior in accordance with social and personal values. Secondly, to be freed from feelings of shame, false beliefs, and other psychological factors that may impede sexual capacity and be detrimental to sexual relationship. Thirdly, to be freed from organ failures, diseases and deficiencies that may affect the sexual and reproductive functions. In short, reproductive health, and in turn, reproductive behavior is greatly influenced by sexual behavior.

Therefore, reproductive health can only be achieved when each individual can have easy access to information so as to obtain adequate health services. It is therefore the government's obligation to build general facilities and infrastructures where every citizen can get proper information and services, thus being ensured of a reproductive function that is healthy, safe and affordable.

As a consequence, being healthy in the context of reproductive health rights should not only be restricted to physical aspects, but should also cover the mental and spiritual aspects. In regards to women's reproduction, this means a physical, mental and spiritual condition for women that are healthy, disease-free, and free from all forms of impediments to her reproductive system. Such a condition of health is required so that the reproductive process can be safeguarded and ensured for a broader purpose, which is the survival and life of mankind. Needless to say, efforts to achieve such a condition become the responsibility of both men and women. This requires a social environment that is healthy and upholds values of equality and justice, so that women are able to express her aspirations and concerns.

Islam seriously pays attention to woman's reproduction health. The Holy Qur'an contains a great many verses reflecting the appreciation of God to these guarding properly abstaining from sex and they are categorized as believers who win.¹³ And the Holy Qur'an even expressly orders believing men to abstain from sex.¹⁴

¹³ Q.S. al-Mukminun, 1-6:

قَدْ أَفْلَحَ الْمُؤْمِنُونَ (1) الَّذِينَ هُمْ فِي صَلَاتِهِمْ خَاشِعُونَ (2) وَالَّذِينَ هُمْ عَنْ اللَّغْوِ
مُعْرِضُونَ (3) وَالَّذِينَ هُمْ لِلزَّكَاةِ فَاعِلُونَ (4) وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ (5) (لَا يَلْعَلُوا
أُمَّلًا لَكَتُ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ) (6) أَزْوَاجِهِمْ أَوْ

“The true believers will be successful, who are humble in their service, who shun all frivolities, who strive for betterment, who guard their sex, except from their wives and women slaves of old are free of blame.”

¹⁴ Al-Nur 30-31:

قَالَ لِلْمُؤْمِنِينَ يَا غُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ ذَلِكَ أَزْكَى لَهُمْ إِنَّ اللَّهَ خَبِيرٌ بِمَا
يَصْنَعُونَ. وَقَالَ لِلْمُؤْمِنَاتِ يَا غُضُّوا مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ

“Tell the believing to lower their eyes and guard their private parts. There is for them goodness in this. God is aware of what they do. Tell the believing women to lower their eyes, guard their private parts, and not to display their charms except what is apparent outwardly, and cover their bossoms with their veils and not to show their finery”.

We may have an impression that Islam takes precaution of reproduction organs health and their functions in extreme form, such as, banning pre-marital sexual intercourse, including all its prologues, whether or not based on agreement of both parties. They frequently lead to misunderstanding among modern people and they practically consider Islam old fashioned and outdated religion.

However, Islam also teaches that biological passion has to be fulfilled, and therefore, any kinds of ascetic life to avoid sexual desire are not recommended. Fulfillment of biological passion shall be within the religious corridors. Consequently Islam shall not tolerate free-sex and considers it unhealthy. It is only marriage that is agreeable for consummation.

Marriage for Reproduction Health

Marriage shall mean a sincere commitment of man to woman to live together as God's speak and His Messenger guides. Marriage justifies consummation. In this respect, Wahbah al-Zuhaily, a Syria Islamic Law scholar said: "Marriage contract, like any other, shall be an agreement entered into by two parties bearing equal rights and obligations, pursuant to the principles of harmony and equality. His opinion is based on a Qur'anic verse. The principles also serve as the basis of any agreement between two parties, without which imbalance and unfairness will arise.

The verse provides the basic idea of Islam of equality for both sexes in relation to sexual intercourse. In other words, both sexes shall have equal right to fulfill his or her sexual desire. It shall also mean that sexual intercourse shall be made based on equality. Hanafian Islamic jurisprudence is more transparent. It provides that woman is entitled to be consummated and the husband shall fulfill it. So does Malikian. This school requires husbands to consummate their wives if they demand, provided there is no impediment. We could therefore conclude that, Islam stipulates healthy sexual relations between the married couple based on care and affection in which they take and give sincerely and without any coercion.

However, bias socialization that priority of sexual enjoyment is given to man is more dominant. It means husbands sexually monopolize their wives. Wives should always fulfill the husbands' desire. A wife is only a means to satisfy the husband, not the other way around. This bias opinion frequently refers to a *hadith*.¹⁵

The *hadith* will textually lead to superiority of man over woman. It will in turn become a means to legitimate act of man to force woman to serve him sexually. It is a reality of life among Moslems. No wonder if there are many cases of domestic violence. Then, how should we read such *hadiths*? Please note that a *hadith* was uttered in a context affected by social and political condition in its own time. We

¹⁵ The prophet said:

إِذَا دَعَا الرَّجُلُ امْرَأَتَهُ إِلَى فِرَاشِهِ فَأَبَتْ وَهُوَ غَضُوبٌ أَنْ لَعَنَتْهُ الْمَلَائِكَةُ حَتَّى تَصُوبَ حَ.

"If husband invites his wife into bedroom, but she declines and he becomes angry, angels will curse her until dawn."

therefore have to understand it contextually by investigating to whom the Prophet said.

In respect of the *hadith*, it is very interesting to have a close look at opinion of two *hadith* experts. The first renowned *hadith* expert *Fath al Bari* said that curse shall be subjected to woman (wife who declines her husband's invitation), in case of no acceptable reason (Part IX/294). Second, *Wahbah al-Zuhaily* said that such sanction shall be subjected to the wife only in case of no impediment and no physical and mental harm to her. Their opinion suggests that a *hadith* should not only be interpreted textually, but also contextually. It means we have to find out why the wife declines. If it is due to logical and lawful reason, such as sickness or loss of desire the wife should not be blamed at, but the husband.

Pregnancy and Birth Issue

Essentially being pregnant and giving birth are woman nature. However, both functions can only work if there is an intercourse of both sexes, thereby becoming their joint responsibility. When a wife is in conception, her husband should meet all her needs such as nutritious food and drink, tranquil mind and sincere affection for accomplishment of noble human duty safely and peacefully.

Al-Qur'an describes pregnancy as travail¹⁶ Therefore, God orders man to be grateful to their parents, chiefly mothers. Gratitude to mother is even one level lower than that to God. How great the attention of Allah to His creature namely woman. Being ungrateful to them (*uquq al-walidain*) is a great sin.

Since conception and giving birth are considered travail, the Holy Qur'an guides mankind to reproduce within sufficient interval of at least more than 3 years.¹⁷ The objective is to maintain reproduction health of woman, her own physical and her child's health. Travail, pain and putting life at stake due to conception and maternity can only be felt by woman. They should make men aware of reconsidering women's objection to preconception. It is therefore appropriate to let woman decide when to conceive and how many times. In other words, maternity is the responsibility of both husband and wife.

In the past, birth control could be made by coitus interrupts or periodic abstention. They are simple parenthood program. Islam can justify this method since it is not considered murdering. Abortion shall only be justified in case of lawful reason such as life endangering pregnancy. This Planned Parenthood program should be mostly aimed at maintenance of reproduction health, not political or economic purposes.

Islam is a blessing to creatures of God including mankind, in this case woman. Woman is entrusted to bear noble duties such as reproducing. Therefore, Islam recommends all parties: state, community, and individuals, to prepare healthy condition: biologically, physically and socially in order to enable women to perform their reproductive function safely, peacefully, and chiefly accountably. One of

¹⁶ (*wahnan 'ala wahnin*) (*Q.S. Luqman, 14*), or as "kurhun" (painful/tiring) and so does giving birth (*Q.S. al Ahqaf, 15*).

¹⁷ *Q.S. Luqman, 14* and *al-Ahkaf, 15*.

prerequisites to realization of such conducive condition is socialization of fairness and equality of gender by virtue of Islamic perspective to the entire elements of community, particularly young generation.

Contraception

It is widely believed that Islam is a pro-natalist religion. This is, however, still a controversial issue. For on one hand, many Qur'ānic verses and the Prophet's sayings advocate the need to increase the number of Islamic nation through reproduction.¹⁸ On the other hand, there are also many verses and sayings of the quality of the Muslim nation that matters.¹⁹ It is on the basis of this latter wisdom that many present Islamic scholars approve the use of modern reversible contraceptives.

In modern days, contraception and family planning have been subjects of intense debate among Muslim scholars. The main issues are; (1) the reasons for resorting to family planning and (2) the nature of the methods used. As for the latter, the majority of Muslim scholars agree on reversible contraception. However, some are against using contraception unless pregnancy poses risk to the mother.²⁰ The majority also insists that regulating reproduction is a personal matter, and that it cannot and should not be regulated by a general law.²¹

Abortion

The majority of Islamic jurists permitted abortion before the creation of the soul, although there was less unanimity on the exact time of the creation of the soul the Hanafī School permitted abortion before ensoulment, that calculated by some scholars as the end of the fourth month of pregnancy or earlier according to others. They granted women the right to abort even without their husbands' permission. The Shāfi'ī and Hanbalī schools mostly agreed on permission and differed on the length of time during which it is permitted. The Mālikī School's standpoint is that it should be altogether prohibited.²²

Most Arab laws do not permit abortion unless the pregnancy endangers the mother's life or health; the only exception is the Tunisian law which permits abortion on request. The Egyptian penal law does not permit abortion except when the continuation of pregnancy would endanger the woman's life. A person may be

¹⁸For example, the hadiths: '*Marry the woman who is fertile and friendly*'.

¹⁹ And on the day of *Hunayn*, when ye exulted in your multitude, but it availed you naught'.

²⁰The Councils of Islamic Jurisprudence in Saudi Arabia (*Majma' al-fīh al-Islamī*): March, 1987. the council 'decides with consensus of opinion (of its members) that family planning is unlawful. Contraception is prohibited if it is used for fear of want because Allah provides sustenance, or on account of other factors prohibited by Islamic law. But if contraception is used to prevent risk or danger to a mother such as when she cannot deliver her child in an ordinary manner and is subjected to an operation; in such cases the use of contraception is considered a grave sin.

²¹*The Academy (Higher Council) of Islamic Research* in 1965, made the following resolution: (1) Islam condones the increase in the number of offspring and so as to give strength to the Islamic nation, 'socially, economically and in the military and to enhance the nation's prestige and render it stoutly invulnerable'. (2) Where personal needs make family planning imperative, spouse are free to act according to individual conscience and sense of religion. (3) Shari'ah law forbids enacting ordinances by which people are compelled to stop childbearing in any form whatsoever.

²²Abortion after the third month is considered a sin in all Islamic schools of jurisprudence, while before that time it is acceptable to some schools. Some scholars would allow it even without the permission of the husband; other would allow it on certain conditions (e.g. risk to the of the woman or the breast-fed baby); and a third group considers it a sin the reason. (Fatawi al-Azhar, vol. 9. 26).

sentenced up to three-year imprisonment including the doctor or other professionals involved and the pregnant woman herself, who intentionally induces abortion.

Like family-planning and contraception, abortion has always sparked debates. But unlike the growing consensus on permitting contraception, abortion is still a controversial issue. The debates that centered on the Cairo and Beijing documents fueled the discussions on abortion. The confrontation between feminist group who called for the provisions for abortion to include pregnancy as a result of rape, incest, foetal abnormalities and in case of contraceptive failure, and Islamists supporting continued legal restriction on abortion, had led to heated debates. However, these debates have yet to settle any of the issue.

Women's Agenda for Change

What should be done, especially in this era where the mainstream religious trends toward the more conservative interpretations? It is necessary to re-read texts and provides an alternative vision and challenge the hegemony and monopoly of those who claim to be the guardians of theology, and to struggle for the right of interpretation. However, this endeavor is a very ambitious and risky task in the contemporary Muslim world, especially when women are the ones who dare to do it.

The implicit theory, driven further into the Muslim unconscious, is epitomized in Imām al-Ghazālī's (1050-1111) classical work, *The Revivification of Religious Sciences (Ihyā' Ulūm al-Dīn)*.²³ According to Mernissi, the Implicit theory of female sexuality is 'seen in Imām al-Ghazālī's interpretation of the Qur'ān which casts women as the hunter and the women's *qayd* power (the power to deceive and defeat men, not by force, but by cunning and intrigue).

But while Aqqad tries to link the female's *qayd* power to her weak constitution, the symbol of her divinely decreed inferiority, Imām al-Ghazālī sees female's power as the most destructive element in the Muslim social order, in which the feminine is regarded as synonymous with the satanic. The Muslim organization of social interaction, spatial configuration and segregation, gender relations and social order then appears as an attempt to subjugate female power and neutralize its disruptive effects.²⁴

One implication of this perspective is that most potentially dangerous women are one who has experienced sexual intercourse. According to this theory it is the married women who will have more difficulties in bearing sexual frustration. The married woman whose husband is absent is a particular threat to men: 'Do not go to women whose husbands are absent. Because, Satan will get in your bodies as blood rushes through your flesh.'²⁵ Once a woman is married the control and regulation of her sexuality become the obligation of both the woman and her husband. "The virtue

²³Citation or quotes from al-Ghazālī's work in this paper are drawn from there references. They are: Madelain Farah, *Marriage and Sexuality in Islam: A Translation of al-Ghazālī's Books on the Etiquette of Marriage from the Ihyā'*, Salt lake City: University of Utah Press, 1984. Abdelwahab Bouhdiba, *Sexuality in Islam* (translated by A. Sheridan), London; Routledge and Keagan Paul, 1985, (originally published *La sexualite en Islam*, 1975); and Fatima Mernissi, *Beyond the Veil: Male-Female dynamics in Muslim Society*, London; al-Saqi Books, 1985, revised edition; first published 1975.

²⁴Mernissi 1983: 30-33.

²⁵Mernissi 1983: 42, quoting Abu Issa al-Tarmidi *Sunan al-Tarmidi*, p. 419.

of the woman is a man's duty. And the man should increase or decrease sexual intercourse with the woman according to her needs so as to secure her virtue'.

Imām al-Ghazālī's theory directly links the security of the social order to that of the woman's virtue, and thus to the satisfaction of her sexual needs. Social order is secured when the woman limits herself to her husband and does not create *fitnah*, or chaos (disorder), by enticing other men to illicit intercourse. As a protective device against *zinā*, marriage is highly recommended to believers of both sexes. Abstinence and celibacy are vehemently discouraged for a sexually frustrated member of the community is considered dangerous. This is the main reason why Islam is opposed to asceticism and requires believers with pious and saintly vocations to acquire wives.²⁶

Islam therefore socializes sexual intercourse through the institution of marriage. In Islam the only legitimate sexual intercourse is between marriage people. Marriage should guarantee sexual satisfaction for husband and wife and protect both partners against seeking satisfaction outside it.

²⁶ Mernissi 1983: 59.