

Construction of Authenticity in Islamic Law: An Analysis of Polygamy, Divorce, and Political Participation of Women

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Abstract

Construction of authenticity in Islamic law on contentious issues including gender-related issues is an outcome of an intricate and complex process of interaction between the divine and human agency situated in a specific sociopolitical context. The divine text is not monolithic and is susceptible of various interpretations. It is this interpretative space, which is employed by scholars coming from various backgrounds to articulate their authenticities. Hence, we do not find one authentic perspective on many issues. Without preferring one perspective to others, the paper aims to analyze the process of constructive mechanics by engaging with the issues of polygamy, dissolution of marriage by divorce and khul', and women's participation in political domain. For this purpose, it has attempted to deconstruct the constructive process of authenticities relating to these issues with an object to discern how much these authenticities are product of the divine agency and where they are influenced by human agency located in a specific context.

Keywords

Islamic law, divorce, *khul'*, polygamy; women, political participation.

Introduction

The paper is an analysis of some hotly contested gender-related issues with an object to explore how multiple and diverse authenticities are constructed and articulated while having reference to the primary sources of Islamic law such as the Qur'ān and the *sunnah* of the Prophet Muḥammad (peace be on him). It explores how multiple and diverse authenticities could have the same reference point. The purpose of this analysis is not to prefer one to the other rather to highlight how factors extraneous to the divine text—such as human agency and sociopolitical

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context—play a role for shaping authentic opinions and perspectives. The author posits that authenticities in Islamic law are shaped by three factors—i.e., the divine text, human agency, and context—and evaluates various religiously proffered opinions on the selected gender-related issues from this very prism.

The notion of authenticity occupies special status in religious studies. However, it is employed in many fields of study. Charles Taylor's book *The Ethics of Authenticity*¹ is an illustration of the philosophical genre in which authenticity is defined as a moral ideal. Another example of the same genre is Theodor Adorno's *The Jargon of Authenticity*,² in which he criticized German existentialism particularly in the post-Second World War period. The notion of authenticity has also been referred to in cultural and legal studies to question "the ownership and authenticity in cultural products."³ Kats de Vries has made use of authenticity in its broadest sense, including an entire way of life.⁴ For him, the purpose of authenticity is to give meaning to life and it can be achieved by being honest with oneself and others and to live a life in harmony with one's own values and principles.⁵

Aside from other fields of study, if we browse the catalogue of any library to locate the relationship of authenticity and religion, it appears that authenticity is far more deep-rooted in religious discourses than in any other field of study. This is so because in religious discourses only those beliefs are held and practices followed, which are regarded as authentic. In this sense, every religious belief and practice is channelled through the prism of authenticity; one first determines its authenticity and then considers it worth believing and practising.

Apart from the above-mentioned broad dimension of authenticity, which is integral to any religious belief and practice, there is another one, which may lead us to harden our religious stance and lay the foundation for endeavouring to have a particular view to achieve exclusive dominance. Such a notion of authenticity is likely to exclude and suppress religious versions perceived not to be authentic. Inspired by this notion, if one perceives something to be authentic and then does

¹ Charles Taylor, *The Ethics of Authenticity* (Cambridge: Harvard University Press, 1991).

² Theodor W. Adorno, *The Jargon of Authenticity*, trans. Knut Tarnowski and Frederic Will (Evanston, IL: Northwestern University Press, 1973).

³ Susan Scafidi, *Who Owns Culture? Appropriation and Authenticity in American Law* (New Brunswick, NJ: Rutgers University Press, 2005).

⁴ Manfred F. R. Kats De Vries, *Sex, Money, Happiness and Death: The Quest for Authenticity* (Hampshire: Palgrave Macmillan, 2009).

⁵ *Ibid.*, 216.

not make efforts to vindicate that authentic version, this attitude will signify its disregard on one's part. Will such a passive attitude to religious faith not shake one's whole universe of belief and being?

This latter dimension of authenticity is premised on an understanding that what is authentic is derived exclusively from the divine text or conclusively shaped by it, without taking into consideration any other non-divine factor. The present paper makes an effort to problematize this notion of authenticity and suggests that it is not immune from constructive processes. It does not question authenticity in its broadest sense; rather, its purpose is to problematize the inextricable relation of authenticity with the divine text by illustrating the significance of non-divine factors in its constructive process.

Authenticity in Islam is constructed by three factors—i.e., the divine text, human agency, and context. The problematization of authenticity is carried out by underscoring the significance of non-divine factors—i.e., human agency and context—in its constructive processes. In doing so, the present study does not get into a debate regarding the construction of the divine text. My excluding the divine factor from the analysis of the constructive processes of authenticity and emphasizing non-divine factors merits some explanation. One reason is faith-oriented and the other is based on expediency. First, as a Muslim, I do not believe that the divine text has been constructed; I take it as revealed. Second, the study does not propose to engage in analyzing the constructive processes of the divine text, as this would derail it from highlighting non-divine factors of authenticity, which is its focus. The discussion of the divine text is linked to the explanation of interpretative space generated by it. When a divine text could possibly be interpreted in more than one way, it is termed as generation of the interpretative space. This space is employed for the purposes of construction of different authenticities.

The study explicates the process of construction of authenticity as a continuous phenomenon manifested in diverse and multiple ways. The divine text is meant to include the Qur'ān primarily and the *sunnah* of the Prophet Muḥammad (peace be on him) additionally. The study mostly deals with the Qur'ān and its interpretation, but sometimes it becomes difficult to clarify a point without referring to the *sunnah*. In those cases, the *sunnah* will also be referred to as part of the divine text.

The meaning of human agency is self-evident; whatever is done or achieved through human beings is considered a product of human agency. In the religious domain, however, such an assertion has the propensity of equating Prophets with human agency, which is likely to

demolish the whole structure of religious discourse. The present paper debates the religiously inspired discourses, which necessitate explaining human agency precisely. This study does not regard human agency in the general sense mentioned above. It excludes the Prophets from the domain of human agency. Although the Prophets are human beings, the nature of their Prophetic work necessitates that their assignment should not be equated with what is done by human agency.

Categorizing people as modernists or traditionalists might be problematic. However, for the purpose of present analysis, the term modernist refers to scholars like Amina Wadud, Asma Barlas, Mashood Baderin, Javed Ahmad Ghamidi, and Shaheen Sardar Ali and the term traditionalist refers to scholars like Ṣalāḥ al-Dīn Yūsuf (d. 2020) and Muhammad Taqī Usmani.

Polygamy

Polygamy is one of the debatable issues in Islamic law as to its nature of permission, extent, and justification etc. Relying on his reading of verse 4:3⁶ and verse 4:129,⁷ Yūsuf opines that polygamy is permitted in Islam. However, it is not a command to be observed in all circumstances.⁸ He argues that there is no justification to infer prohibition of polygamy from the latter verse, as it has explicitly been permitted in the former verse.⁹ Abū 'l-A'lā Maudūdī's opinion is similar, as he does not consider it an evil that should be eradicated completely, because it is permitted in light of verse 4:3.¹⁰ On the other hand, the modernists tend to interpret verse 4:129 as a legal condition for polygamy thereby restricting its

⁶ "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," Qur'ān 4:3. All Qur'ānic translations mentioned in this article are from Abdullah Yusuf Ali, *The Holy Quran: Texts, Translation and Commentary* (New York: Tahreek-e-Tarseel-e-Quran, 1988), unless indicated otherwise.

⁷ "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 practise self-restraint, Allah is Oft-forgiving, Most Merciful," Qur'ān 4:129.

⁸ Ṣalāḥ al-Dīn Yūsuf, *'Auratōḥ kē Imtiyāzī Masā'il-o Qawānīn: Ḥikmataiḥ aur Favā'id* [Differential issues of women and their laws: Reasons and benefits] (Lahore: Darussalam, n.d.), 164–67.

⁹ *Ibid.*, 167.

¹⁰ Sayyid Abū 'l-A'lā Maudūdī, *Tafhīm al-Qur'ān* (Lahore: Idārah-i Tarjumān al-Qur'ān, n.d.), 321–22; Maudūdī, *Khavātin aur Dīnī Masā'il* (Lahore: Islamic Publications, 2000), 114–15.

sphere substantially. The modernist trend is a dominant legislative trend in many Muslim jurisdictions.¹¹ For instance, in Pakistan, official Muslim personal law regularizes polygamy in such a manner that makes it a difficult bargain for polygamous husband in many ways.¹²

Ghamidi observes that polygamy was a cultural practice prevailing in pre-Islamic Arab society and that Islam did not initiate it.¹³ Rather, Islam regularized this practice and employed it for the benefit of orphans.¹⁴ This restrictive tenor of polygamous marriage has also been emphasized by Wadud and Jamal Ahmad Nasir.¹⁵ Barlas criticizes the so-called simplistic assumption of male privilege attached to polygamy and points out that it serves a very specific purpose of securing justice for female orphans, as the textual context of verse 4:3 suggests.¹⁶

For Wadud, the requirement of justice emphasized in verses 4:3 and 4:129 is not restricted to material terms.¹⁷ Rather, it is a generic notion of justice, taking into account non-material aspects as well (e.g., the psychological consequences on the proposed and the existing marriages). Thus, the justice signifies a dual aspect; first, the guardian must be unable to do justice to an orphaned girl without marrying her, and second, the proposed polygamous marriage ought not to do injustice to the existing wife.¹⁸

There is permission for polygamy in verse 4:3 and there is also an allusion to restricting its practice with the condition of maintaining justice among wives, specified in the same verse. Then it is mentioned in verse 4:129 that the conditions for justice are unlikely to be satisfied. This is the extent to which it has been specified by the divine text; the divine text has not encouraged it categorically nor has it prohibited it unrestrictedly. How far permission can make the condition irrelevant

¹¹ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal before Allah, Unequal before Man* (The Hague: Kluwer Law International, 2000), 75; Jamal J. Ahmad Nasir, *The Status of Women under Islamic Law and Modern Islamic Legislation* (Leiden: Brill, 2009).

¹² Muhammad Zubair Abbasi and Shahbaz Ahmad Cheema, "Polygamy and Second Marriage under Muslim Family Law in Pakistan," *Islamic Studies* 59, no. 1 (2020), 1–19.

¹³ Javed Ahmad Ghamidi, "Polygamy," trans. Shehzad Saleem, *Renaissance* 13, no. 6 (2003), accessed March 27, 2020, <http://www.monthly-renaissance.com/issue/content.aspx?id=336>.

¹⁴ *Ibid.*

¹⁵ Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*, 2nd ed. (Oxford: Oxford University Press, 1999), 83; Nasir, *Status of Women*, 25.

¹⁶ Asma Barlas, "Believing Women" in *Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin, TX: University of Texas Press, 2002), 190.

¹⁷ Wadud, *Qur'an and Woman*, 83.

¹⁸ Barlas, *Believing Women*, 191.

and how far the condition can take away permission are the interpretative space available to human agency. On the basis of this interpretative space, the modernists and the traditionalists have evolved their respective authenticities. The same verses have been relied upon by the traditionalist scholar Yūsuf to construe a comparatively broader space for polygamy, while the modernists such as Wadud, Barlas, and Ali read them as regularizing polygamy and sometimes this regularization extends to prohibition.

The interpretative space is not only manifested in the framework of permission for and prohibition of polygamy; it generates different constructions with reference to specific issues as well. For instance, it is held that verse 4:3 allows marriage of the guardian to the orphan under his supervision. However, this is not the only interpretation. According to Muhammad Asad, this verse is addressed to the whole community,¹⁹ so it does not “necessarily mean that the guardian should himself marry those for the management of whose property he is responsible.”²⁰ So, the guardian is not the one who will be the beneficiary of this conditional permission. Rather, the community has to decide who will marry the orphan. Ghamidi points out that verse 4:3 addresses the guardians of the orphans and permits them to marry the orphans’ mothers.²¹

Maudūdī is of the opinion that all three interpretations can be derived from verse 4:3 without preferring any one of them to the other.²² Therefore, there are possibly three different constructions of verse 4:3. These are as follows: A guardian can marry the orphan under his supervision; he can marry the mother of that orphan; or the community decides to whom the orphan ought to be married. This scenario illustrates the interpretative space susceptible of varied constructions. Therefore, if one reads the verse in a monolithic way, it is not the divine rather human agency that has restricted it to that meaning.

Another issue relevant to polygamy and susceptible of different constructions is the question of what ought to be regarded as valid reasons for allowing polygamy. Yūsuf enlists the following reasons justifying polygamous marriage: (1) the wife’s barrenness/sterility; (2) her inability to satisfy her husband’s sexual desires due to disease; (3) an increase in the population of women in a society because of men’s death in wars; (4) the possibility of men having more sexual desire; and

¹⁹ Muhammad Asad, *The Message of the Quran* (Gibraltar: Dar al-Andalus, 1980).

²⁰ Barlas, *Believing Women*, 191.

²¹ Ghamidi, “Polygamy.”

²² Maudūdī, *Tafhīm al-Qur’ān*, 1:320–21.

(5) for the purposes of safeguarding the interests of a young widow.²³ Yūsuf also asserts that polygamy is permissible but not commanded by God²⁴ and justifies its permissibility on the grounds that men have greater sexual desire compared to women.²⁵

Is not such a line of argument inherently inconsistent? Had this so-called enhanced sexual desire of men been the reason, then it would have necessarily been commanded by God and not declared as merely permissible. While taking into account the simplistic assumption of men's enhanced sexual desire, one may refer to the first creation of human beings as Adam and Eve by God. A cursory reading of verse 4:1²⁶ is enough to suggest that a human pair is composed of one man and one woman. Had there been any inherent sexual difference between men and women generally, God would have initially created more women for one man. The phrases employed in the verse refer to one partner and the mutual relationship of the both for the procreation of mankind. Therefore, a general principle for polygamy may not be laid down on the basis of a supposed difference in sexual desire. According to the modernists such as Barlas and Wadud any justification premised on the enhanced sexuality of men as compared to women is extraneous to the divine text.²⁷

Wadud states that a wife's infertility as a justification for allowing another marriage does not have any foundation in the Qur'ān.²⁸ If this assertion is accurate, then how could one construe the explicit reference to procreation in verse 4:1 and in a number of other verses as well? Moreover, how could one interpret scores of Prophetic traditions encouraging marriage with those women who are capable of bearing more children?²⁹ It is submitted that one cannot conclusively assert, as Wadud has done, that infertility is not a ground for another marriage according to the divine text, because the verses referring to procreation

²³ Yūsuf, 'Auratōḥ kē Imtiyāzī Masā'il, 167–70.

²⁴ Ibid., 164–67.

²⁵ Ibid., 167–70.

²⁶ "O mankind! reverence your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women; reverence Allah, through whom ye demand your mutual (rights), and (reverence) the wombs (that bore you): for Allah ever watches over you," Qur'ān 4:1.

²⁷ Barlas, *Believing Women*; Barlas, "Women's Readings of the Qur'ān" in *The Cambridge Companion to the Qur'ān*, ed. Jane Dammen McAuliffe (Cambridge: Cambridge University Press, 2006), 255–71; Wadud, *Qur'an and Woman*, 84.

²⁸ Wadud, *Qur'an and Woman*, 84.

²⁹ Yūsuf, 'Auratōḥ kē Imtiyāzī Masā'il, 168.

between a married couple may also be read to imply another aspect—i.e., infertility.

It may be suggested that if a man has an option to marry another woman in the case of his wife's infertility, the wife's option to seek divorce should also be emphasized when the husband is medically unfit for procreation. A similar suggestion has been made by Muḥammad Baltājī with regard to individual cases of differences in sexual desire.³⁰ Marriage is meant to achieve a number of social purposes. Satisfaction of sexual desire and the procreation of children are prominent in the list of marital objectives. If any party to the marital contract is not likely to have these objectives fulfilled, there ought to be a way out, otherwise marriage would itself amount to an unpleasant union and oppressive companionship.

Ali's selection of the phrase "an acknowledgement of different needs" instead of "statement of male superiority" is explanatory in portraying Islam's position regarding polygamy.³¹ Moreover, there is a refined distinction between permission, keeping in view the specific circumstances of an individual case, and unrestricted/unbridled license to do something in all situations. This distinction is there in the permission for polygamy.

The entire debate of polygamy illustrates the different levels where human agency interacts with the divine text to make it speak or to articulate authenticities. How is the sphere of the permission of polygamy to be broadened or its regulation to be converted into prohibition? To whom polygamous marriage is to be contracted? What ought to be regarded as justification for polygamous marriage? How are the rights of the parties to be safeguarded? Thus there is considerable interpretative space for construing the divine text which has been employed by human agency to pronounce hard and fast rules. The divine text is flexible in this regard to some extent, but it has been rendered inflexible by human agency. Human agency's emphasis on particular aspects of the interpretative space is a product of its negotiation with its context and circumstances. Hence, authenticities are shaped not by the divine text exclusively; rather, these are the products of the interaction of many factors.

³⁰ Muḥammad Baltājī, *Khavātīn Qur'ān-o Sunnat ki Rōshnī maiṅ* [Women in the Qur'ān and sunnah], trans. Dānish Kamāl (Karachi: Dār al-Ishā'at, 2006), 247.

³¹ Ali, *Gender and Human Rights*, 73; Ali, *Conceptualising Islamic Law, CEDAW and Women's Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan* (New Delhi: UN Development Fund for Women, 2006), 51.

Divorce and *Khul'*

The issue of divorce and *khul'* is another illustration regarding how authenticity is shaped by interpretative space of the divine and human agency. According to Yūsuf,³² the right of divorce is granted to the husband in Islam, but before its pronouncement, he should observe certain moral requirements with the objective of sustaining the marriage. Yūsuf's elaboration of the moral requirements is not free from references to men as being superior in their mental capacity and temperamentally cool and calm, as if the right of divorce was provided to them after taking into account these qualities.

Maudūdī has analyzed in detail the right of divorce granted to the husband with particular reference to the moral aspects so as to prevent its occurrence.³³ He is of the opinion that the real objective of marriage is to subsist amicably, but if it does not happen then this right has been granted to the husband because he is the one who has been assigned the responsibility to maintain his wife and so he would reflect at length before availing himself of this option.³⁴ Even at the eve of the dissolution of marriage, Maudūdī says, Islamic law requires husbands to be humane and courteous. For this purpose, he refers to various Qur'ānic verses persuading for or insisting on *imsāk bi ma'rūf* (maintaining marital tie with virtue and benevolence) and *tasrīḥ bi iḥsān* (parting ways on dissolution with virtue and benevolence).³⁵

Maudūdī's opinion on the issue of divorce (*ṭalāq*) is similar to the opinions of the traditionalists, but so far as his perspective on generous permissibility of *khul'* for wives is concerned, he differed with the traditionalists, particularly Ḥanafīs.³⁶ He is of the view that irretrievable marriage could be dissolved by a *qāzī* on the initiation of wife even without the consent of her husband.³⁷ With reference to *khul'*, Maudūdī relies on his construction of the Qur'ānic verse 2:229³⁸ and the historical

³² Yūsuf, 'Auratōḥ kē Imtiyāzī Masā'il, 174–76.

³³ Sayyid Abū 'l-A'lā Maudūdī, *Ḥuqūq al-Zaujain* (Lahore: Idārah-i Tarjumān al-Qur'ān, 1943), 48–58.

³⁴ *Ibid.*, 48–50.

³⁵ *Ibid.*, 23–24.

³⁶ Shahbaz Ahmad Cheema, "An Unlikely Champion of Women's Right under Muslim Personal Law: Mawdudi on the Anglo-Muhammadan Law," *Journal of Islamic Thought and Civilization* 9, no. 2 (2019): 110–37.

³⁷ *Ibid.*, 130.

³⁸ "A divorce is only permissible twice: after that, the parties should either hold Together on equitable terms, or separate with kindness. It is not lawful for you, (Men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear

evidence of the Prophetic era to substantiate his argument and negates the claim made by mainstream Ḥanafī scholars that *khul'*, just as *ṭalāq*, is unenforceable without husband's consent.³⁹ It is noteworthy that the same verse does not convince Ḥanafī scholars in general of granting a right to get an intolerable marriage dissolved by a wife through a *qāzī* without her husband's prior consent.⁴⁰ This shows how the same verse engenders the interpretative space employed by Muslim scholars coming from various strands divergently.

According to Yūsuf, the wife is also granted a comparable right, that is, *khul'* in verse 2:229. She can exercise her right when the husband is impotent, not good-looking, and does not fulfil his responsibility of maintaining her.⁴¹ It is submitted that *khul'* and divorce cannot be regarded as similar. As per conventional understanding of the issue, there are two basic differences between them.⁴² First, divorce can be exercised by the husband without interference from any other authority, whereas *khul'* cannot be similarly exercised and the wife has to resort to the court/*qāzī* or depend on her husband's consent. Second, for the purposes of *khul'*, the wife has to give some compensation to the husband. In Pakistan, a wife's right to divorce through the instrument of *khul'* has been substantially liberalized by judicial *ijtihād* manifesting the employment of the interpretative space in particular manner.⁴³

If we go through the Qur'ānic dictates pertaining to divorce, we observe that they are enmeshed in ethical precepts. Barlas underscores this aspect, as it "conclusively establish[es] the value of tolerant and ethical behaviour on the part of spouses."⁴⁴ The purpose of this aspect seems to discourage divorce to the maximum extent.⁴⁵ Keeping in view

that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she give something for her freedom. These are the limits ordained by Allah; so do not transgress them if any do transgress the limits ordained by Allah, such persons wrong (themselves as well as others)," Qur'ān 2:229.

³⁹ Maudūdī, *Ḥuqūq al-Zaujain*, 60–67.

⁴⁰ Muhammad Taqi Usmani, *Islām main Khula' kī Ḥaqīqat [Khula' in Islam]* (Karachi: Memon Islamic Publishers, n.d.).

⁴¹ Yūsuf, 'Auratōn kē Imtiyāzī Masā'il, 226, 228–29, 233.

⁴² A. A. A. Fzyee, *Outlines of Muhammadan Law*, 4th ed. (Delhi: Oxford University Press, 1974); D. F. Mulla, *Principles of Mahomedan Law*, ed. M. Hidayatullah and Arshad Hidayatullah (Bombay: N. M. Tripathi, 1990); Nasir, *Status of Women*, 129–30; Ali, *Conceptualising Islamic Law*, 32.

⁴³ Muhammad Zubair Abbasi, "Judicial *Ijtihād* as a Tool for Legal Reform: Extending Women's Right to Divorce under Islamic Law in Pakistan," *Islamic Law and Society*, 24, no. 4 (2017): 384–411.

⁴⁴ Barlas, *Believing Women*, 192.

⁴⁵ *Ibid.*, 197.

the overall presentation of divorce by the Qur'ān, Baderin observes that it is a “misconception to state that men have an exclusive right to dissolution of marriage” and it is also “misleading to suggest that men and women have equal or the same rights of divorce.”⁴⁶ Baderin is of the view that the moral aspects emphasized in the Qur'ān should have been merged into the procedural aspect of dissolution which privileges men.⁴⁷ Moreover, there is no harm if the procedural advantage of men in the dissolution of marriage is judicially controlled by the state, as it is the procedural advantage which is often misused by men against women.⁴⁸ In addition to controlling and regularizing the procedural advantages of the husband, Baderin suggests that *khiyār al-ṭalāq* (the wife's option to divorce herself) may also be put into practice by the state to protect the wife's right to enforce divorce where necessary.⁴⁹

The divine text describes the dissolution of marriage in a milieu composed of legal and moral dictates. The traditionalists tend to emphasize the legal dictates more to protect and privilege men's right of divorce, while the modernists rely on its moral aspects to safeguard the women's apparently disadvantaged position in the Muslim family. Thus, the debate has an unambiguous message: human agency has employed the interpretative space to reach different conclusions.

Political Domain

Women's participation in the political sphere is another issue of contention between the modernists and the traditionalists. According to Yūsuf, women cannot take part in public and political activities. In order to arrive at this conclusion, he relies on two verses 4:34 and 33:33.⁵⁰ The precis of Yūsuf's reading is that women's basic sphere of activity is inside the home and they are not created with the requisite capabilities for taking part in activities outside the home. Moreover, if women take part in the political arena alongside men, it would be against the spirit of veiling.⁵¹ According to Yūsuf,⁵² verse 33:33 is integral to the general veiling scheme of Muslim women described in the Qur'ān that separates

⁴⁶ Mashood A. Baderin, *International Human Rights and Islamic Law* (Oxford: Oxford University Press, 2003), 149.

⁴⁷ *Ibid.*, 150.

⁴⁸ *Ibid.*, 151.

⁴⁹ *Ibid.*, 152.

⁵⁰ Yūsuf, 'Auratōḥ kē Imtiyāzī Masā'il, 70–82, 90.

⁵¹ *Ibid.*, 74.

⁵² *Ibid.*, 70–82.

women's sphere from men's and dictates that the former must stay at home.

There is no Qur'ānic verse that explicitly prohibits the public and political participation of women.⁵³ On the contrary, one may find directives encouraging the political/public participation of women. It has been prescribed in verse 9:71 that "the believer men and women are protectors of one another; they enjoin what is just and forbid what is evil." The interaction visualized in this verse cannot be assumed to take place within the four walls of the home exclusively.

It is submitted that the issue of *qawāmah* as prescribed in verse 4:34 has reference to the institution of family and its implications cannot be applied to all affairs of life as Yūsuf has argued.⁵⁴ Such an interpretation would go against the spirit of the verse.⁵⁵ As far as verse 33:33 is concerned, there is a difference of opinion as to whether it is applicable to all Muslim women or specific to wives of the Prophet (peace be on him). According to the modernists such as Barlas, Ali, Wadud, and Ghamidi,⁵⁶ verse 33:33 was revealed for wives of the Prophet (peace be on him), taking into consideration their elevated social status along with the generally prevalent volatile situation perpetuated by the activities of hypocrites in Medina who were not willing to spare the wives of the Prophet (peace be on him) from their sinister propaganda. Despite the general strength of the permissive stance for the participation of women in the public space or political arena, if one insists on reading verse 33:33 as interpreted by the traditionalists, it may be construed as excluding women from that space. So, the interpretative space is there to construe the divine text differently to authenticate various discourses.

The traditionalists' stance differs from that of the modernists in interpreting this verse on two accounts: first, they read it literally and second, they do not restrict its application to wives of the Prophet (peace be on him).⁵⁷ Maudūdī's opinion is not different from that of the traditionalists in this regard.⁵⁸ He has also relied on his notion of the duality of spheres between the sexes to substantiate the idea that

⁵³ Ali, *Conceptualising Islamic Law*, 21; Baltājī, *Khavātīn Qur'ān-o Sunnat kī Rōshnī maiṅ*, 327.

⁵⁴ Yūsuf, *'Auratōṅ kē Imtiyāzī Masā'il*, 80.

⁵⁵ Baltājī, *Khavātīn Qur'ān-o Sunnat kī Rōshnī maiṅ*, 330.

⁵⁶ Javed Ahmad Ghamidi, *The Social Shariah of Islam*, trans. Shehzad Saleem (Lahore: Al-Mawrid, 2004); Ghamidi, "Norms of Gender Interaction," trans. Shehzad Saleem, *Renaissance* 12, no. 11 (2002), accessed March 27, 2020, <http://www.monthly-renaissance.com/issue/content.aspx?id=460>.

⁵⁷ Yūsuf, *'Auratōṅ kē Imtiyāzī Masā'il*, 80, 90.

⁵⁸ Sayyid Abū 'l-A'lā Maudūdī, *Pardah* (Lahore: Islamic Publications, 2003), 201–02.

women should remain at home because they are primarily made for this purpose.⁵⁹

The traditionalists also refer to a frequently-quoted saying of the Prophet (peace be on him): “Those who entrust their affairs to a woman will never know prosperity.”⁶⁰ Mernissi has raised multiple objections to the credibility of the sole narrator of the above saying, Abū Bakrah, and his selection of an opportune time for the narration of this Prophetic tradition. First, there is a difference of twenty-five years between the death of the Prophet (peace be on him) and the first narration of the Prophetic tradition, and that was the occasion when the fourth Muslim caliph, ‘Alī, won the Battle of the Camel against ‘Ā’ishah, wife of the Prophet (peace be on him). Second, Abū Bakrah was convicted and punished for adducing false evidence during the period of the second Muslim caliph, ‘Umar, which made doubtful his credibility as a witness and narrator of the Prophetic traditions.⁶¹ Saleem points out that the above Prophetic tradition goes against the tenor of verse 42:38 which reads as “their system is based on their consultation.”⁶² According to this verse, a system ought to be based on consultation, therefore, how can a substantial part of the population be excluded from such consultative processes?

In her analysis of the context of the above Prophetic tradition, Hafīa Jawad argues that if this Prophetic tradition is regarded as valid, even then it was specific in its context as it was pronounced with reference to one particular incident in the Prophet’s (peace be on him) life—the crowning of the daughter of Kisrā by the Persians.⁶³ Thus, it was a prophecy of the Prophet (peace be on him) regarding the downfall of the Persian Empire in the near future which became a reality after some time.⁶⁴ Substantiating her contention of women’s participation in the political process, Jawad states that there are certain political actions

⁵⁹ Maudūdī, *Khavātīn aur Dīnī Masā’il* (Lahore: Islamic Publications, 2000), 205–06.

⁶⁰ Muḥammad b. Ismā’īl al-Bukhārī, *Ṣaḥīḥ*, Kitāb al-maghāzī, Bāb kitāb al-Nabī ṣallā Allāh ‘alayhi wa sallama ilā Kisrā wa Qaysar; Yūsuf, *‘Auratōṅ kē Imtiyāzī Masā’il*, 81; Ali, *Gender and Human Rights*, 54; Ali, *Conceptualising Islamic Law*, 22.

⁶¹ Fatema Mernissi, *Women and Islam: An Historical Theological Enquiry*, trans. Mary Jo Lakeland (Oxford: Basil Blackwell, 1991); Ali, *Gender and Human Rights*, 54–55; Ali, *Conceptualising Islamic Law*, 22–23.

⁶² Shehzad Saleem, “Islam and Women: Misconceptions and Misperceptions,” *Renaissance* 15, no. 2 (2005), accessed March 27, 2020, <http://www.monthly-renaissance.com/issue/content.aspx?id=154>.

⁶³ Hafīa A. Jawad, *The Rights of Women in Islam: An Authentic Approach* (Basingstoke: Macmillan, 1998), 92.

⁶⁴ *Ibid.*

such as the oath of allegiance and consultation which are the individual responsibility (*farḍ ‘ayn*) of every Muslim including women.⁶⁵ Similarly, this individualistic aspect of responsibility can also be derived from the Islamic “conception of vicegerency or human representation of God on earth.”⁶⁶

Baderin opines that the Qur’ān and *sunnah* do not prevent women from taking part in consultation/*shūrā*.⁶⁷ As far as the supposed prohibition is concerned, it has more to do with “social concerns and fears” rather than the divine text.⁶⁸ Baderin does not infer any specific prohibition from the above-quoted Prophetic tradition as the individual conduct of a number of Companions of the Prophet (peace be on him) was entirely against it.⁶⁹ One may refer to ‘Ā’ishah’s leadership in the Battle of the Camel when thousands of Companions fought under her without objecting to her leadership as a woman.⁷⁰

Responding to the issue of the credibility of the narrator of the above Prophetic tradition, Yūsuf argues that according to the majority of Muslims, a Companion of the Prophet (peace be on him) is regarded as trustworthy (*‘ādil*) and there would not be any investigation/inquiry about his conduct.⁷¹ So, whatever has been pointed out regarding Abū Bakrah’s conduct, who is one of the Companions of the Prophet (peace be on him), is nothing except “maligning and defaming.”⁷² Yūsuf’s insistence on the above rule does not appear to be substantiated as there are many exceptions to it. There is a difference between undertaking a general inquiry of conduct/credibility regarding any Companion of the Prophet (peace be on him) and doubting any particular Prophetic tradition reported by him and then substantiating that by referring to those incidents which go against his capacity to narrate that Prophetic tradition. The last mentioned course is not inconsistent with the general rule quoted above by Yūsuf. It is well known that ‘Ā’ishah corrected and completed many Prophetic traditions which were initially reported by the Companions.⁷³ Amīn Aḥsan Iṣlāḥī’s analysis of the principle of

⁶⁵ Ibid., 83; Ali, *Conceptualising Islamic Law*, 24.

⁶⁶ Barlas, “Women’s Readings of the Qur’ān,” 261; Jawad, *Rights of Women*, 83.

⁶⁷ *Shūrā* simultaneously refers to process as well as institution. Therefore, it may include in its meanings consultative process and consultative institution.

⁶⁸ Baderin, *International Human Rights*, 160.

⁶⁹ Ibid., 161.

⁷⁰ Ibid.; Jawad, *Rights of Women*; Mernissi, *Women and Islam*; Mernissi, *The Veil and the Male Elite*, trans. Mary Jo Lakeland (Reading: Addison-Wesley, 1991).

⁷¹ Yusuf, ‘*Auratōṅ kē Imtiyāzī Masā’il*, 81.

⁷² Ibid.

⁷³ Ali, *Conceptualising Islamic Law*, 24.

blanket credibility of all Companions with reference to difference of opinions among Muslim scholars on the very definition of the Companion is helpful for understanding defectiveness of the principle insisted on by Yūsuf.⁷⁴ Iṣlāḥī suggests that one ought to differentiate between those who were more appreciative of the Prophet's (peace be on him) sayings and knowledgeable in *ḥadīth* literature among the companions instead of insisting on the blanket credibility of all including those who happened to see the Prophet (peace be on him) even accidentally.⁷⁵

This debate of the public/political activities of Muslim women does not cease at the level of the varied construction of precepts mentioned in the divine text, but extends to the diverse reading of certain historical events. For example, the story of the Queen of Sheba mentioned in the Qur'ān and more particularly in verses 27:32–34⁷⁶ is interpreted by the modernists as suggesting that it is permissible for women to become head of a political entity.⁷⁷

Barbara Stowasser is of the opinion that the story of Bilqīs embodies a minimum normative message as she has been presented as a “competent sovereign ruler of her country.”⁷⁸ According to her appraisal of classical and modern traditionalists, this understanding of Bilqīs's story does not fall within the Islamic paradigm and it is interpreted “in a manner that excludes all gender issues.”⁷⁹ Asghar Ali Engineer also infers a normative message from this descriptive story that she was a “legitimate ruler.”⁸⁰ It is interesting to note that this appraisal of Asghar goes against his own crafted distinction of “should” and “are,” in other words “normative” and “contextual,” discussed on the subject of

⁷⁴ Amin Ahsan Islahi, *Fundamentals of Hadith Interpretation*, trans. Tariq Mahmood Hashmi (Lahore: Al-Mawrid, n.d.), 59–66.

⁷⁵ *Ibid.*, 65–66.

⁷⁶ “She said: ‘Ye chiefs! advise me in (this) my affair: no affair have I decided except in your presence.’ They said: ‘We are endued with strength, and given to vehement war: but the command is with thee; so consider what thou wilt command.’ She said: ‘Kings, when they enter a country, despoil it, and make the noblest of its people its meanest thus do they behave. But I am going to send him a present, and (wait) to see with what (answer) return (my) ambassadors,’” Qur'ān 27:32–35.

⁷⁷ Ali, *Gender and Human Rights*, 55; Ali, *Conceptualizing Islamic Law*, 23; Jawad, *Rights of Women*, 92; Wadud, *Qur'an and Woman*, 40–41.

⁷⁸ Barbara Freyer Stowasser, *Women in the Qur'an, Traditions and Interpretation* (Oxford: Oxford University Press, 1994), 65.

⁷⁹ *Ibid.*, 66.

⁸⁰ Asghar Ali Engineer, *The Rights of Women in Islam*, 2nd ed. (New Delhi: New Dawn Press, 2004), 90.

qawāmah.⁸¹ On the other hand, Yūsuf is of the opinion that such an inference ought not to be derived from these verses, as mere description of an event does not lead to approval of that event.⁸² Yūsuf refers to verses 27:23–24,⁸³ preceding verses of 27:32–34 as relied on by the modernists, describing that she and her nation worshipped the sun instead of God and that their actions were made pleasing to them by Satan.⁸⁴ Yūsuf then questions how that nation’s action could be regarded as worthy of emulation when it has been condemned explicitly in the Qur’ān.⁸⁵

According to Wadud, verse 27:23 is only a statement of fact, made by an observer, that a woman was ruling her nation.⁸⁶ It suggests that the above verse does not have any implication beyond the elaboration of the fact. Similarly, verse 27:24 which refers to the sun-worshipping of the nation and leading a life which was made fanciful for them by Satan is also a continuation of mere statement by the same observer. Thereafter, when Wadud arrives at verses 27:33–35 describing Bilqīs’s consultative process with nobles in her court, she highlights “her independent ability to govern wisely.”⁸⁷ This part is regarded by Wadud as normative and having specific implications beyond mere description.⁸⁸ On the other hand, Yūsuf relies on verse 27:24 to discredit Bilqīs’s nation as worthy of any norm-generating entity.⁸⁹

The Qur’ānic description of Bilqīs’s story is not unequivocal. On the one hand, it has referenced Bilqīs’s nation as a sun-worshipping nation and on the other, it has highlighted that Bilqīs was ruling her country wisely in consultation with her nobles. Such a description is a proto-example of the interpretative space where two extreme aspects are mentioned and the rest left to human agency to settle somewhere in between, as per its context and circumstances. So, it is not an article of

⁸¹ Shahbaz Ahmad Cheema “The Concept of *Qawama*: A Study of Interpretive Tensions,” *Hawwa, Journal of Women of the Middle East and the Islamic World* 11, nos. 2–3 (2014): 242–43.

⁸² Yūsuf, ‘*Auratōḥ kē Imtiyāzī Masā’il*, 86–88.

⁸³ “I found (there) a woman ruling over them and provided with every requisite; and she has a magnificent throne. I found her and her people worshipping the sun besides Allah. Satan has made their deeds seem pleasing in their eyes, and has kept them away from the Path, so they receive no guidance,” Qur’ān 27:23–24.

⁸⁴ Yusuf, ‘*Auratōḥ kē Imtiyāzī Masā’il*, 87–88.

⁸⁵ *Ibid.*, 88.

⁸⁶ Wadud, *Qur’an and Woman*, 40–41.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ Yūsuf, ‘*Auratōḥ kē Imtiyāzī Masā’il*, 87–88.

faith to have only one solution to this issue; either prohibiting the political participation of women altogether, believing it to Islamize the political system completely, or romanticizing the political participation of women, anticipating that such participation will usher in a new era of women's freedom and liberty.

The extent to which the story of Bilqīs has been described by the divine text is very specific and what is based on it, thereafter, is all human extrapolation. Neither permission has been granted nor has the headship of a Muslim state withheld from women. In response to the traditionalist perspective, one may argue that if any aspect of the story does not grant permission for women to be ruler of a Muslim state, then at least there is nothing which has specifically prohibited their political participation. Similarly, in response to the modernists, one may say that if there is no normative significance of the verses referring to Bilqīs's nation as sun-worshippers, then how could one derive an imperative from the description that she was ruling her country in consultation with her nobles? Therefore, whatever stance one is likely to derive from the story of Bilqīs has more to do with individual sensibilities and preferences or, using Wadud's terminology, "prior text."⁹⁰ If one is not otherwise convinced that a woman may or may not become a ruler of a Muslim country, then there is nothing in this story that is going to convince him.

This story illustrates one important aspect: a woman becoming head of any political entity depends more on the sociocultural circumstances of any society, rather than religious permissibility or impermissibility. This is what Baderin has asserted that the sociocultural situation of any particular country is more relevant in this regard than the religious dictates.⁹¹ Moreover, the elevation of some women to the highest political portfolios in some Muslim countries does not only represent the fact that this matter has more to do with sociocultural factors, it also illustrates the fact that this opportunity is restricted to a chosen few by the same factors.⁹² It is pertinent to state here that the issue of assumption of public/political offices by women has been decided judicially in Pakistan.⁹³ In a case, the then Chief Justice of Federal Shariat Court categorically dispelled the notion that women could not hold public offices.

⁹⁰ Wadud, *Qur'an and Woman*, 5–7.

⁹¹ Baderin, *International Human Rights*, 181.

⁹² Ali, *Gender and Human Rights*.

⁹³ Ansar Burney v. Federation of Pakistan PLD 1983 FSC 73.

The story of Bilqīs is an archetype to elaborate how the interpretative space is integral to the divine text. The interpretative space describes certain aspects of the story approvingly and others disapprovingly without a definite decision. Had it been an important aspect religiously, it would have been mentioned specifically in the same story or otherwise and not left for future speculation.

The above debate on the political participation of women has illustrated how human agency reads the divine text as informed by its own prior perspectives. Sometimes human perspectives shape the divine text in a way that makes it difficult to differentiate between the divine text and its human articulation. But if we identify the interpretative space which is susceptible of different constructions, we can bring to light the human aspect as distinguished from the divine text, as demonstrated in the analysis regarding the Qur'ānic story of Bilqīs. The analysis highlights the significance of human agency in attributing meanings to the divine text and also challenges the simplistic notion that authenticity is the exclusive domain of the divine agency.

Conclusion

The paper has illustrated a continuous interplay of the divine and human agency in different gender discourses in Islam to analyze the construction of authenticities in these discourses. We have observed during our analysis that the interpretative space is integral to the divine text creating a considerable role or significance for human agency in the constructive processes of authenticity. This paper commenced with the idea of explaining how far authenticity in Islam is dependent on non-divine factors and analyzed the selected gender-related issues, such as polygamy, divorce, *khul'*, and women's participation in political domain, to elaborate this phenomenon. During the course of analysis, it has underscored the modes and manners in which these issues are influenced and contributed to by non-divine factors. While emphasizing that the divine is not an exclusive source of authenticity, the paper has problematized the relationship of authenticity with the divine text. Moreover, it has highlighted the naivety of the assumption that whatever is said to be religious is derived exclusively from the divine text by demonstrating the interplay of divine and non-divine factors.

The possibility of the divine text to be influenced by non-divine factors is actualized by the interpretative space of the divine text that accommodates different interpretations. This interpretative space is the divine text's way of keeping authenticity plural. It is so because the divine text is destined to continue, while circumstances are supposed

not to be the same forever. Human agency is always an integral part of any exercise of ascertainment of authenticity. Therefore, it is advisable to maintain a gap while insisting upon the authenticity of any opinion. No doubt the divine text may be a constitutive part of authenticity in most cases, but it could not be an exclusive determinant. The divine text is something which we try to understand but cannot represent thoroughly. On the other hand, authenticity is always constructed by us.

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