

## **Khaled Medhat Abou El Fadl's Thought on Gender**

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**Abstract**-The inequality bared by women is not the spirit of the Qur'an. Their rights for pursuing education, health, and spirituality have been deprived because of many deterrnations relying on the sacred texts in which Muslims believe as representations of God's will. Khaled Abou El Fadl criticizes these careless determinations made by jurists. They ignore Qur'anic morality such as equality and justice where there are no distinctions between gender, race, or class. Women are equal to men because they are rewarded and punished in exactly the same way. They have same access to God's grace and beneficence as men. In accordance with what is recognized as just and fair, women have rights equal to their obligations. Men and women must work together by supporting and helping each other in order to build the moral fabric of society.

**Keywords:** gender, *fitnah*, Qur'anic morality, jurist

### **1. Introduction**

Gender differs from sex. The difference between both can be further explained as follow: At birth, one is biologically male or female. The sexual organs are different, the hormones and other aspects of body chemistry are different, and the biological functions are different. Women give birth; men do not. These relatively fixed physiological and biological differences are what is defined *sex*.

But the differences do not end here. Men and women differ as well as a result of cultural, social, and psychological factors. These are differences acquired not through birth but through the socialization process. Every society establishes a set of accepted behaviors to which males and females are expected to conform. As Hilary M. Lips (1993: 4) explanation, gender is *cultural expectations for women and men*. Linda L. Lindsey (1990: 2) has close interpretation that *what a given society defines as masculine or feminin is a component of gender*. These are standards of femininity and masculinity and, as learned patterns of behavior, will vary from society to society; they are not fixed or constant. Those socially and culturally determined differences are what constitutes *gender*. In a very real sense, then, one is born male or female, but he or she must learn to be men and women.

Whether sex factors determine in dividing gender role is main question in gender studies (Umar, 1999: 38). Richard J. Payne (2007: 238) states that role is related to expectations regarding the skills, rights, and duties of individuals or groups that are rooted in perceptions, values, beliefs, and customs. Many of these perceptions, values, beliefs, and customs are legitimized by laws and policies made by governments. The strongest perception power is that those are legitimized by the sacred text. Those conditions occur often in contemporary Islam.

One of profound attention is showed by an Islamic Law Professor from UCLA (University of California Los Angeles), Khaled Medhat Abou El Fadl<sup>1</sup>. In El Fadl's view, the perception which is legitimized by the sacred text brings problem up, namely gender inequalities causing right neglectful, especially for women rights. This practical preference is so forcefull in contemporary Islam. He writes some books, those are *The Great Theft: Wrestling Islam from the Extremists; And God Knows the Soldier: The Authoritative and Authoritarian in Islamic Discourse; Speaking in God's Name:*

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<sup>1</sup> He is born 1963 in Kuwait. He was appointed by President George W. Bush as a commissioner on the US Commission on International Religious Freedom, advocates a strong support for human rights and sit on the Board of Directors for Human Rights Watch. He is the prolific scholar, focuses much of his written attention on issues related to women. His works on various topics in Islamic law have been translated into numerous languages.

*Islamic Law, Authority and Women*; and others. He criticizes basically the inequalities for women caused by unilaterally understanding both individually and institutionally. In *Speaking in God's Name*, he even enclosed determinations issued by a permanent council serves as basis for official state law, CRLO (Council for Scientific Research and Legal Opinion) in Saudi Arabia, and adopted often as the law of the land. What troubles him is that the determinations issued by the jurists are stable, unchangeable and final determinations. These determinations are earmark of the Wahhabi<sup>2</sup> school of thought. In fact, the jurists of the council adhere in one form or another to the Wahhabi school of thought. Despite other school of thought which ideologically at odds with Wahhabism, but the Wahhabi methodology has been transplanted. Two distinct reasons why he selects *responsa* (legal opinions) by jurists from this particular school of thought are firstly, the intellectual product of the jurists from this school epitomizes the interpretative authoritarianism, and the last, this has become the predominate school in contemporary Islam (El Fadl, 2003: 173-74). He criticizes a misogynist legal *responsum* presenting a determination that is demeaning and degrading to women as the indisputable and unchallengeable Will of God ((El Fadl, 2003: ix). Yet, too many Muslims in the world, such as in the United States, take the *responsum* as reference in their daily activities. Based on the Qur'an and prophetic tradition (hadith), they claim that their *responsa* actually are Will of God. Because women are indicated as enticement source (*fitnah*), there are many prohibitions and obligations for them without comprehensive reason. For instance, they are prohibited wearing brassiere, driving automobiles, raising voices in praying, mixing with men in the workplaces; then obliged praying in hidden place, obeying husband totally in anytime, even they are to submit sexually on the back of camel and lick his puss-filled ulcers if need be, and so on. The wife lives as the husband's humble servant. In El Fadl's view, CRLO determinations are careless. They interpret the Qur'an without considering the sociological and historical context. Using this method, the interpreter often forgets what the Quran means beyond the text. This method also often means the interpreter can not catch the real message of the text which is to give guidance to the moral or ethical values of human beings. The determinations contribute to the general denigration of the moral status of women.

## 2. Gender

Gender is defined by *Oxford Dictionary* (2003: 177) as "fact of being male or female", by *Webster's New World College Dictionary* (1996: 561) as "the apparent disparity between men and women in values, attitudes, voting patterns, etc", and by *Women's Studies Encyclopedia* quoted by Nasaruddin Umar (1999: 33-4) as "a cultural concept trying to mark distinction in role, behavior, mentality, and emotional characteristic between men and women, developed in society".

Hillary M. Lips quoted by Nasaruddin Umar defines gender as cultural expectations. That opinion is in line with common opinion of feminists like Linda L. Lindsey considering what a given society defines as masculine or feminine is a component of gender. Gender is a social construction arranging the relationship between men and women, formed by socialization process, and given sanction by related society.

Gender study focuses on development of masculinity and femininity aspect, while sex study focuses on development of biological and chemical aspect in male and female organs. Gender is a character, behavior, or social attributes given both to men and women, codified and instituted socially and culturally, which is formed by social and culture of local society. It is related to community thought and expectations for the best contribution as men or women. Because of social construction, so it is not universal applied, but it is changeable at any time. This difference is caused by different socio-historic setting from one community to another. The role of gender is also changeable between men and women, because it is not God's omnipotence, but it is social construction (Kustiah and Anny, 2005: 3-4).

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<sup>2</sup> The founder is Muhammad ibn Abd al-Wahhab, a native of Najd in Central Arabia, who died in 1787 (Macdonald, 1903: 60). Wahhabis are hostile to worship of and at saints' tombs, reliance upon the intercessions of the Prophet and saints (Rahman, 1979: 197). The Wahhabi creed dominates in Saudi Arabia and many other parts of the Muslim world.

Issues commonly associated with notions of gender inequality include the right to education, to work, to vote, to marriage, to divorce and so on. The religious doctrines which are considered as the Divine Will, such as *hijab*, *mahram*, and *awrah*, are reformed.

Asghar Ali Engineer (2003) states that *hijab*—literally “curtain”, “descended”, the controversial issue in Islam, some Muslims believe it as God’s command written on the Qur’an, is actually a tradition. It is a socio-cultural practice, and it is worn solely for willingness as a part of Muslim women. Two verses of *hijab*, al-Nur (24): 31 and al-Ahzab (33): 59, were revealed in response to a very specific situation. Corrupt young men would harass and, at times, assault women in Medina at night as these women headed to the wild to relieve themselves. Apparently, when confronted, these men would claim that they did not realize that these women were Muslim but thought them non-Muslim slave-girls, and, therefore, not under the protection of the Muslim community. In Medina society any individual was under protection of either a clan or, if the individual was Muslim, under the protection of a Muslima. Therefore, these verses seem to address a very specific, and even peculiar, historical social dynamic.

Another issue is marriage. It is an institution for avoiding adultery. Marriage will be held when the couple loves each other. Man and women have a right to choose their husband/wife to be. But in traditional family, the relationship is between boss and slaves which love is forbidden for women. This issue is voiced by feminists that the member of family has a same right based on own integrity. The international convention states that marriage is illegal when there is no full approval from spouse to be.

Polygamy issue is commented by contemporary scholars as said as Fazlur Rahman it is not accordance with the message of the Qur’an. The Qur’anic revelation on surah al-Nisa’ (4): 129 says husbands might not be able to treat wives equal fairness.

The concept of contemporary gender equality can be found through the international law about the human rights which has been ratified by the world as the highest law, stating the rights for life, freedom, giving opinion, and so on.

### **3. El Fadl’s Biographical Sketch**

Khaled Medhat Abou El Fadl He was born on August 23<sup>rd</sup>, 1963, in Kuwait. His father named Medhat Abou El Fadl is a lawyer, and his mother named Afaf El Nimr is a memorizer of the whole Qur’an. He had also memorized the entire Qur’an at age twelve.

Abou El Fadl, now a naturalized American who lives in Los Angeles with his wife and young son, grew up in Egypt and Kuwait, the son of an Islamic jurist. He received his education through high school in the Gulf. In 1982, he moved to the United States to pursue his undergraduate studies, studying exclusively at the most respected Ivy League schools. He holds degree a Bachelor of Arts (B.A.) in Political Science from Yale University in 1986, a Doctor of Jurisprudence (J.D.) from the University of Pennsylvania Law School in 1989, and a Master of Arts (M.A.) and Doctor of Philosophy (Ph.D.) in Islamic Law from Princeton University in 1999. After law school, he clerked for Arizona Supreme Court Justice James Moeller, and practiced immigration and investment in the U.S. and the Middle East. He previously taught at Islamic law at the University of Texas at Austin Law School, Yale Law School and Princeton University.

He is the author of many books and over fifty articles on Islamic law and Islam. His recent books include: *And God Knows the Soldier: The Authoritative and Authoritarian in Islamic Discourse* (2001), *Speaking in God’s Name: Islamic Law, Authority and Women* (2001), *Rebellion and Violence in Islamic Law* (2001), *The Place of Tolerance in Islam* (2002), *Islam and Challenge of Democracy* (2004), *The Great Theft: Wrestling Islam from the Extremists* (2005), *The Search for Beauty in Islam: A Conference of the Books* (2006).

### **4. El Fadl’s Thought on Gender**

El Fadl’s thought on gender can be clearly found from his critiques to the case studies focused on response issued by jurists who claim to represent the law of God. Gender related issues presenting some of the difficult and complicated challenges to contemporary Islamic law, and its imperative that Muslim legal specialists start to develop coherent and critical ways of dealing with these issues. Most

of the legal issues dealt with here relate to women. He focuses on these issues because of their wide impact in Muslim societies. What troubled him the most about the response is the fact that it presents a determination that is demeaning and degrading to women as the indisputable and unchallengeable will of God. Many legal issues are criticized by El Fadl, some of them are about:

a. Crooked-ribs, defective intellects, bad omens, dog and women

Tradition stating the negation of prayer because a woman passes in front of man is responded by El Fadl as follows: A transmission by Abu Hurayrah attributing to the Prophet the statement cited by CRLO (Council for Scientific Research and Legal Opinion) (al-'Uthaymin, 1991: 363), "The passage of woman, donkey, and black dog in front of man, invalidates his prayer", draws clearly the association between women and animals. With many existing versions of this report, the one element common to all versions is the inclusion of social undesirable in the possible list of things that could invalidate a prayer. Clearly, this was a tradition that served as a respectable for social condemnation, and the hurling of bigoted insults. Importantly, various historical reports assert that this tradition faced considerable opposition in early Islam. From the point of view of the accumulation and evaluation of evidence, El Fadl can not conclusively and with absolute certainty decide that the dog, donkey, and women tradition is authentic or inauthentic. He confess that, at a personal level, he is willing to be a conscientious faith-based objector to this genre of traditions. They are fundamentally inconsistent with his understanding of God and the Islamic message. The jurists must diligently investigate the authorial enterprise that retained, transmitted, and constructed this these traditions. More importantly, authenticity is not even the relevant issue. The relevant issue is how to assess the authorial enterprise. There is enough circumstantial evidence to indicate a strong bias in the early social dynamics of Islam to shape the tradition or another. There was sufficient degree of vested interest in degrading women by associating them with dogs and donkeys. In the midst of these social interests and lively dynamics, there was a strong incentive to embellish, exaggerate, construct, and reconstruct. The appearance of Abu Hurayrah in the reports, considering his background, adds another level of indeterminacy about the authorial enterprise. One must refer to the doctrine of proportionality in considering the legal effect to give a tradition. Considering the many ambiguities, suspicions, and doubts surrounding the authorial enterprise, it is irresponsible, and dishonest to use the dog, donkey, and women tradition. Substantively the same analysis applies to the traditions on crooked ribs, deficient intellects, and women as devils or bad omens. The contextual ambiguities surrounding this issue, early jurists were reluctant in accepting or relying on these traditions in legal determinations. All of them deserve a serious conscientious-pause, and are candidates for a faith-based objection. In addition, all arise from singular transmissions, and reflect the same troubled social context. For instance, a careful reading of the deficient intellect and religion tradition would leave one with the distinct suspicion that this report had been redacted and constructed in stages, probably in response to socio-political dynamics.

The new ideological revolution in Arabia, caused by the Islamic message, energized various segments and factions in society who explored and bargained for new positions, roles, and functions. Various segments try to reposition and redefine themselves according to the newly emerging set of affiliations and symbolism. Particularly, if there is a great enthusiasm and excitement about a potential new way of life, various segments in society jostle for positions of inclusion and worth in the new structure. There is no reason to believe that women, or various sub-groups of women, were an exception to this dynamic. In fact, there is considerable evidence that women in Medina demanded inclusion in the Islamic revolution. For instance, there are reports that women, as a group, demanded to meet with the Prophet in weekly sessions especially designated for them. In addition, reports record several incidents in which women met individually and privately with the Prophet, or one of his wives, to

discuss their problems or seek advice (Ibn Hajar, n.d.: 323). Women also demanded that the Qur'an address them specifically, and not simply refer to them in the generic linguistic male form (al-Ahzab (33): 35). Report encountered from the Qur'an engages women. For instance, al-Mujadilah (58): 1 states, "God has indeed heard the statement of the woman who argues with you (i.e. the Prophet) and complains to God and God hears the arguments between you for God hears and sees all". The Qur'an goes on to address the concerns of the woman in question. The Qur'an also vindicated 'A'ishah by supporting her, and by criticizing the behaviour of some male Companions who accused her of unchaste behaviour (al-Nur (24): 11). Furthermore, women insisted on having the right to go out on military campaigns, to attend prayers in the mosque, and to grant assurances of safe conduct to the enemy. After the Prophet died, energized by the sweeping social changes taking place, women played a major role in attempting to define and construct the Islamic tradition. Therefore, roughly a third of the early transmissions or legal opinions are by women or attributed to women. Last, we observe 'A'ishah venture into the world of politics and armed rebellion, both during the reign of 'Uthman and 'Ali, and the indisputable shock waves this had created in early Islamic society. It is reasonable to think that this legacy was bound to generate opposition, and that the opposition would take the form of traditions warning against a public role for women and speaking of crooked ribs, prostrating to husbands, bad omens, and deficient intellects. These traditions and their counter-traditions are indicative of the vibrant negotiative process that took place in early Islam—a process that most certainly included the redefinition of gender relations.

#### b. Hijab

The concept of the veil (*hijab*), which mandates the covering of a woman's entire body except for the face and hands, or in a minority school of thought, the covering of everything except for the eyes or one eye, is not related to the issue of *fitnah* (seduction or seductive acts). The problem of *fitnah* must be addressed because it overlaps with the issue of the veil, and because it is often at the core of the discourses on the necessity of the veil. Some determinations utilize or rely on the doctrine of *fitnah* as an essential legal element justifying a particular rule.

*Fitnah* in Islamic discourse is often associated with turbulence, disorder, enticement, and the opening of the doors of evil. It connotes the notion that certain things or acts produce the type of sexual arousal that is conducive to the commission of sin. The Qur'an, does use the word *fitnah*, but not to refer to sexual arousal or seduction. The Qur'an uses the word to refer to non-sexual temptations, such as money, and to severe trials and tribulations. As to sexuality, other than the prohibition against engaging in illicit sex, the Qur'an does command Muslim men and women to lower their gaze, be modest, and not to flash their adornments (*zinah*) except when appropriate, such as with husbands or wives.

If women are the source of *fitnah* and then they are locked up in fortified homes, has *fitnah* come to an end? There is also homosexual *fitnah* that presumably could result from the interaction of men with men and women with women.

There is another serious conceptual and moral difficulty with the idea of *fitnah*. The principle that no one can be called to answer for the sins of another is a core *shari'ah* value. In Qur'anic discourses, one person or set of people can not be made to suffer because of the indiscretions, sins, or faults of others—each individual is responsible and accountable only for his or her own behavior (surah al-An'am (6): 164, al-Isra' (17): 15, Fathir (35): 18, al-Zumar (39): 7, al-Najm (53): 38, al-Nar (24): 11, al-Baqarah (2): 286, al-Nisa' (4): 32, al-Ahzab (33): 58). If a *fitnah* situation is because of men with an overactive libido or who are impious or ill-mannered, and demanding that women should suffer exclusion or limitations would violate the principle that the innocent should not pay for the indiscretions of culpable. If

*fitnah* emerges as the core value of Islam, women's education, mobility, safety, and even religious liberty should be restricted in order to avoid *fitnah*. According to the CRLO, women may attend mosques only if it does not lead to *fitnah*; women may listen to a man reciting the Qur'an or give a lecture, only if it does not lead to *fitnah*; women may go to the marketplace only if it does not lead to *fitnah*; women may not visit graveyards because of the fear of *fitnah*; women may not do tasbeih or say amen aloud in prayer because of the fear of *fitnah*; a woman praying by herself may not raise her voice in prayer if it leads to *fitnah*; a woman may not even greet a man if it leads to *fitnah*; and every item and color of clothing is analyzed under the doctrine of *fitnah*. It does not seem to occur to the jurists who make these determinations that this presumed *fitnah* that accompanies women in whatever they do or wherever they go is not an inherent quality of womanhood, but is a projection of male promiscuities. By artificially constructing womanhood into embodiment of seductions, these jurists do not promote a norm of modesty, but, in reality, promote a norm of immodesty. Instead of turning the gaze away from the physical attributes of women, they obsessively turn the gaze of attention to women as a mere physicality. In essence, these jurists objectify women into items for male consumption, and in that, is the height of immodesty. Such traditions are not only demeaning to women, but also demeaning to men. There is certain deviant eroticism in the image of a woman submissively licking a man's ulcers or promptly submitting to male desires even in the most inopportune moments. In short, these traditions might appear, in the modern age, to be a rather crimped erotic male projection satisfying the fancies of immodest men.

## 5. Conclusion

The issue of gender voiced in contemporary era raises the question how does Islam position men and women. El Fadl considers that Islamic law on gender exemplified Wahhabi jurisprudence is not humanistic. In reference to the Qur'an, it emphasizes that in the eyes of God, there is no distinction between genders, races, or classes (al-Hujurat (49): 13); women are equal to men because they are rewarded and punished in equal measure, and they have equal access to God's grace and beneficence (al-Nisa' (4): 32); women have rights equal to their obligations, in accordance with what is recognized as just and fair as stated on surah al-Baqarah (2): 228; men and women are not just equal partners in building the moral fabric of society, but they must fully cooperate by supporting and aiding each other (surah al-Taubah (9): 71). The universal moral message is equality and justice. But, this spirit is often ignored by applying specific indicators, in which their authenticity is still doubted, to the supporting elements for relying on determinations. Many traditions are inconsistent with Qur'anic morality, but still hold up, for instance, the traditions of women: their creation-from the crooked rib of men, women invalidating men prayer, bad omens, deficient intellects, source of *fitnah* and so on. The consequences of these traditions cause many violations against women. For example, the concept of *fitnah* traditions for women is the source of the *fitnah* legitimates determination of the veil (*hijab*) for women. Unfortunately, many Muslims take this textual determination to literally. So, when the incident of a burning school occurred, many young girls were left trapped inside, the religious police (*mutawwa'un*) prevented them from escaping and also barred firemen from entering by beating some of the girls and several of the civil defense personnel. The *mutawwa'un* would not allow the girls to escape or to be saved because they were not properly covered, and the *mutawwa'un* did not even want physical contact to take place between the girls and the civil defense forces for fear of sexual enticement. The *mutawwa'un* were concerned with one thing and one thing only and that being the girls' hair and faces were not to be seen in public. Of course, people asked what type of theology would support such behavior, and imagined it was a manifestation of the barbaric religion of Islam. The right for purposing education, health, and spirituality has also been deprived because of that determination.

The core of Divine will is morality which must be explored by reason, intuition, observable empirical facts. Without a substantive moral understanding of the nature of God's Way, the

systematic methodology of research and investigation for God's indicator is not sufficient. Moral view proposed by About El Fadl is inclined to use morality to ignore the specific rule of law. This does not mean that he gives freedom causing the specific rule of law to be placed as important as positive legislation. The Qur'an includes many universal moral laws. If those moral views are not explored as well, then the majority of the Qur'an verses will not be functioned or will be merely dictum, while the minor specific rules are given more attention

### **Bibliography**

- Al-'Uthaymin, Muhammad al-Salih, (1991), *Fatawa al-Shaikh Muhammad al-Salih al-'Uthaymin*, Ashraf ibn 'Abd al-Maqsud 'Abd al-Rahim (Ed.), Riyad: Dar 'Alam al-Kutub.
- El Fadl, Khaled M. Abou, (2001), *Rebellion and Violence in Islamic Law*, Cambridge: Cambridge University Press.
- \_\_\_\_\_, (2003), *Speaking in God's Name: Islamic Law, Authority and Women*, England: Oneworld Publications.
- \_\_\_\_\_, (2005), *The Great Theft: Wrestling Islam from the Extremists* New York: HarperSanFrancisco.
- Engineer, Ashghar Ali, (2003), *Pembebasan Perempuan*, translated by Agus Nuryatin, Yogyakarta: LKiS.
- Kustiah, anny Aisyah and, (Ed.), (2005), *Belajar Jender: Mengurai Ketimpangan Jender dalam Realitas Masyarakat*, Semarang: PKC PMII Jawa Tengah.
- Lindsey, Linda L., (1990), *Gender Roles: A Sociological Perspective*, New Jersey: Prentice Hall.
- Lips, Hillary M., (1993), *Sex & Gender An Introduction*, California, London, Toronto: Mayfield Publishing Company.
- Macdonald, Duncan B., (1903), *Development of Muslim Theology, Jurisprudence and Constitutional Theory*, New York: Charles Scribner's Sons.
- Tierney, Helen, (Ed.), (n.d.), *Women's Studies Encyclopedia*, vol. 1, New York: Green Wood Press.
- Umar, Nasaruddin, (1999), *Argumen Kesetaraan Jender Perspektif Al-Qur'an*, Jakarta: Paramadina.
- Webster's New World College Dictionary, (1984), New York: Webster's New World Cleveland.