

## Case Report

# A Survey on the Provisions of Islamic Jurisprudence of Women in the Context of Social Change

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## **ABSTRACT:**

Shiaite jurisprudence has always been dynamic and because of the Ijtihad door being open in the direction of social change, it is the perfect place to solve new problems. While the bulk of religious decrees authorities and Shiaite scholars are extracted and inferred from the verses of Quran and traditions and because of accepting two factors of consensus and the reason in Ijtihad, Shiite jurisprudence has always been able to respond to new problems in society. One of the most important issues of the jurisprudence is the women's provisions which have created many controversial discussions among Shiaite jurists so far and the differences are in opinions about religious provisions that the perception and understanding of scholars is the source of its emergence and the explicit provision has not been mentioned in the Quran and traditions. The response to the questions that are raised about women's issues in Islamic law, need to understand the cultural and social and political developments, the requirements of time and ... that by matching them with religious purposes, many problems will be solved in the field of women. The important matter is to explore and understand the needs of women as well as psychological and behavioral tendencies in regard to their character and abilities can be achieved. Using an analytical descriptive method, this study is to examine the impact of social changes on some women's provisions.

**Key words:** Social development, dynamic jurisprudence and women's provisions.

## **1. INTRODUCTION:**

Although Islamic jurisdiction provisions and laws are based on fixed, non-changeable principles, for the reason of God's Agenda and the commands rationale, it has found flexibility and adaptation to new time and space requirements and since everything that is in a series of divine instructions is based on individual and community interests as well as each prohibition, it's been because of its corruption or evil consequences, according to expediencies change over time, scholars have been able to make changes in Islamic provisions in accordance with the rules and principles of jurisprudence. However, the decrees that are devotional and do not have mentoring and guiding

tone are unchangeable and the purpose of the change is in apparent provisions and not change in real provisions.

Some Islamic laws have guiding aspects, or are rulings legislator signature. Since these regulations represent the jurisdiction views and is the basis of understanding Islam, when it comes to the Islamic ruling, if it is not capable of dealing with social developments and changes that are occurring in the context of time and place, apparently, Islamic vision and integrity will be challenged.

Nowadays, due to the doubts about the fundamentals of the jurisdiction, the most

important thing to defend the dignity and position of women in Islam, seems to learn about Islam and women's rights provisions from the Islamic jurisprudence view point and getting to know the new issues in society, as well as addressing emerging issues from the perspective of jurisdiction by Islamic jurists, scholars and authorities.

In the process of inferring religious edict, there are factors whose impressions are not unique to a single verdict and cast a shadow over all or a significant portion of the decrees; although during inference making, the jurist does not specify or pay a detailed attention to the elements. In the meantime, inferring the women's provisions in the confrontation of social change attracted more attention. This research examines the most important impact of these developments in women's provision field and through this guidance; the following assumptions are set under scrutiny rest:

**Hypothesis 1:** It seems that the decrees, whose origin is only female character, can not be changed.

**Hypothesis 2:** Social developments, at least in the case of causes, have trivial implications in the change of provisions of Islamic jurisprudence of women.

## **2. Introducing the problem:**

Today, the development of consciousness and improving the educational level of women, extend of the machinery life, development of communication and ... has created many problems within the provisions of the women. Religious scholars must study; newly and seriously reconsider the religious sources by considering the social impressions by recognizing these problems to solve potential problems.

"The time and place are two determining factors in Ijtihad. An issue that in the past had a decree, apparently the same problem might find a new decree in the relationships that govern the policy and the community of a system. This means that an accurate understanding of political, social and economic relations, the same issue superficially

does not make any difference with the old one is really a new issue that inevitably will require new decree "(Mousavi Khomeini, 1386, vol. 21: 98).

"The main goal is the way we want to apply the firm jurisprudence principles in practice and in the society to find an answer to the dilemma of our society" (ibid.). Of course, the idea of the time and place impression is not that Islamic law is subject to the common law of nations carnal demands or customary laws to be replaced by Islamic law, because in this case, will result only in closure of decrees. Understanding real human needs, due to changes in society and harmonizing it with Islamic law, is among the jurist tasks, knowledgeable and fluent in time.

"..... Great achievement attitude of openness to the issue of Ijtihad, dramatic evolution of the jurisprudence of infallible Imams (AS) is in their life history from the beginning to the present; Both in terms of the range of topics and jurisprudence issues in accordance with the conditions and requirements as well as the thorough vision and contemplating these issues and this is the greatest privilege and the most dominant characteristic of the infallible Imams(AS) against the public jurisprudence and every day of life is passing its superiority and dynamic feature in the life and answers to the needs of Islamic society becomes more evident " (Hashemi Shahroudi, 1426 AH, Vol. 1: 32).

It is true that religion is constant and does not change in religious principles, but the scholars understanding and knowledge of Quran verses and the recognition power of advisability and probable corruptions of a decree at any point in time may be different from in each other and this is the art Ijtihad that can detect the expediencies and social evils at any era and in accordance with that the provisions are extracted of the verses and tradition (hadiths) and the more scholars are awareness of the time and place and issues related to, the more responsive will be to newly introduced issues. As Bu Ali states in "The Book of Healing", the necessity of ijthad based on this principle implies and says, "Because the situation varies and

continuously new issues arise, on the other hand the general principles of Islam are fixed and unchangeable, it is necessary to include individuals in all ages and times who are elite and knowledgeable in Islamic issues and in accordance with the new questions that arise at any time be responsive to the needs of the Muslims " (Motahari, 1378, Vol. 19: 123).

In regard to women's decrees, there are disagreements among Shiaite scholars so far, the issues including, the provisions indemnity, death, martyrdom and so on. Shiite scholars understand and interpret according to authoritative Islamic texts and some also vote in regard to some women provisions, contrary to popular idea and inferring from the texts and jurisprudence way of the owner of "Jewelry" and Sheikh Ansari, believed in the change of the perception of the divine decrees based on religious edict, by considering social developments, of course, this kind of change of edicts could be interpreted as apparent change of the verdict; because that which goes under transformation is subject to change, is not the nature of the religious verdict but the Ijtihad and reasoning and inference that had about the verdict; As the jurispudent in time because of a certain reason deduced, and then as the result of social changes, his understanding of the mentioned rationale changes and as a result, another decree is inferred for the same reason or another valid reason about the same case.

The Iranian constitution also predicted that people who are aware of the circumstances of the time to solve new problems should supervise the practices; "In every period, six scholars aware of the circumstances of the time and current issues on supervise and monitor legislation" (Article 91 constitutional law). The purpose of the authors has been this principle that always resilient people knowledgeable to developments of time and space monitor the country laws.

Of course, as noted above, time and location, do not include devotional provisions. "In the devotional decree, Islamic scholars argue that as long as the world remains, the provisions are

sustainable and are not variable based on the development of society and changing conditions of time and space, their origin is not changeable and the decrees relating to the system of life and society that is known to the provisions of transactions, are subject to change."(Janati, 1372: 445).

"Religious decrees are Eternal and even since the old times of the Prophet Muhammad (pbuh). This kind of provisions typically or generally in the form of true cases is not influenced by the time factor. But the trading decrees all are of legislative type, i. e., are subject to the common sense of the wise and that the common sense of the wise in accordance with legislator. For example, in the community that day necessity verified that slavery to be valid, He also permitted the slavery as according to the same form that intellectuals performed (Haeri Yazdi, 1378: 46).

The provisions of the Jurisdiction rarely are "definitive evidence" in form of text is, Ijtihad is not permitted against them. Of course, if with a valid reason the text is proved that it is authorized for the special event and special conditions, which it is interpreted as "case per case";In this case, the decree written cannot be authorized to extend of the time and other conditions; therefore, in regard to the provisions authorized the only thing that should be considered is that whether the decree is of specific provisions for certain conditions or this includes all women of all ages and times. The existing evidence in the Quran verses and traditions, including those expressed given the circumstances, it could help in this regard to the jurispudent.

In efficient Ijtihad, it is needed to consider some indicators, so that through which it can be adjusted to the subject in the different conditions of verdict, so that Islamic jurisprudence is to provide answers for most of the doubts raised including the available doubts about women decrees.

Some jurisprudence decrees expressed about women if it does not lead to secondary complications and distress and constriction or

their enforcement in the interest of the Muslim rulers of the Islamic community is not considered beneficial, it may result as a secondary or a government decree temporarily shut down and it is not executed. Therefore, the secondary and governmental decrees by itself are influenced by time and space. The initial decrees, the nature of this subject were given to without consideration of the complications. Undoubtedly, transformation in the facts of this subject is not unaffected by the demands of time and space but to what extent and under what circumstances these influences this impacts can have considerable and contemplative involvement in Ijtihad.

Changing the decrees is depended on changes related to changes in cases like the effect through transformation of in the jurisprudent understanding of the sources and documents of decrees. The role time and space in Ijtihad is in the sense that changes created according to the changes, the situation and needs of the time in the thought of jurisprudent and on his better understanding of the reasons a more precise perception of religious decrees. There is no doubt that various social transformations, has a tremendous impact on Ijtihad. Of course, Ijtihad and reasoning of jurisprudence that is in the context of events and social changes and with the religious decree of someone who is away from temporal and spatial changes in a corner home and school concerned with Ijtihad is very different.

"If anyone compared religious decrees of scholars with one another and also focus on to personal status and their way of thinking in life issues, understands how subjective experiences a jurisprudent and his external information from the outside world influence on the verdicts, so that the Arab religious decree has got an Arab sense and the Persian smell Persians, rural religious decree and smells rural the urban the smell of the city. The religion, the final religion, is not dedicated to a certain time or area, It is related to the entire region and all the time; it is a religion that is for the life and the progress of human life, then how could a religious jurisprudent is not aware of the

system and does not believe in the natural flow and evolution of life and then a great and progressive commands this righteous religion introduced for this system and the leading guarantor of that process and developments are fully and correctly infer? "(Motahari, 1341, vol. 1: 122).

The effect of time and place in the Ijtihad through the change in issues of decrees is another factor in the change in provisions. The relationship between decree and the case is the cause and effect relationship and between the cause and the result; So far is the issue is not realized, the decree will not be fixed. The existence or lack of decree, depend on the presence or absence of a subject. Therefore, the change of a subject is due to the particular circumstances of time and place, will result in the change of decree. Of course, conditions and circumstances of time and space changes affect the changes of topics and examples. For example, one thing at a time and under certain conditions, applicable to other subject or verdict. The principle of the general rationale is that by the transformation of the subject the decree is also to be changed is agreed by everyone; no one denies and is among the indisputable principles of jurisprudence.

The issues also ranging objects to human actions, subject to the conditions and special features that are mostly considered as the limitations of the subject are condemned to a verdict and these constraints determine the circle and limits of subject divided to internal and external parts. The internal constraints are the constraints inherent in the subject, such as drunken limitation in the decree as "the entire intoxicant prohibited" in which any intoxicating drink is prohibited. External constraints features that are outside the essence of the subject; as indicated "severe need of the society" in the prohibition of hoarding or restriction "lack of rational use" in respect to the prohibition of the purchase and sale of blood. These types of features are outside the essence of the subject and how it is related to these objects. Undoubtedly, the evolution in what are considered

as the constraints causes the decree to change because the change of restriction is a kind of change in the subject. The important matter to the jurispudent is to recognize the constraints of the subject.

"In the Islamic regulations it is stipulated that the purchase or sale of some things such as blood and human excrement is prohibited, why? Because human blood or sheep do not have beneficial use that makes them valuable be as the component of human wealth. The root of banning the buying and selling of blood and feces, by famous prophetic narration "Be aware, when Allah, prohibits anything, the buying and selling is also prohibited." (Amin Ansari (Sheikh Ansari), 1415 AH, Vol. 1: 19) and the principle is «And Eat not up your property among yourselves unjustly» " (Surah Al-Baqarah ( 2): verse 188).

"Prohibition of blood and stool in not genuine in Islam; what is genuine is that the exchange should take place between two objects useful to the human. Banning the blood and human excrement an the like, is the covering over the prohibition of the useless circulation of wealth; in other words, the operational principle of,

«وَلَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ»

But even if there is not any exchange, no wealth can be acquired and spent in vain. It's originally a fixed principle all the time and is derived from fixed social needs. But the idea that the blood and feces is not justified as wealth and is not exchangeable, is related to age and time and level of civilization and by the change of condition and progress of science and technology and the possibility of correct and beneficial use of them their decrees would change. "For (Motahari: 120). Among the conditions of the validity of the sale and purchase is consideration as wealth. Something that has no rational and permissible benefit is not allowed purchasable or to deal. Trade and business with it is, "void exchange". Therefore, since the blood has no rational and permissible benefit its shopping sales is forbidden and is as examples of void exchange. Allameh Helli and many other scholars (Al-Husseini Al-

Amel, 1378, vol. 12: 65) the reason for banning blood buying and selling have mentioned as the lack of interest, value and lack of monetary.

«المطلب الثاني (الانتفاع) يشترط كون المبيع مما ينتفع به منفعه معتبره في نظر العقلاء شائعته في نظر الشرع، فإن ما لا منفعه فيه لا يعد مالا، فكان أخذ المال في مقابله قريبا من أكل المال بالباطل»

«The second condition for Sales requires the benefit of which comes from it for the consideration of validity in the eyes of the wise are common in view o Islamic law, what does not benefit for in it is not money, to take the money in return is money vanities and is "void exchange"» (Alame Helli.1368, Vol. 2: 465).

«والظاهر من شتات كلمات الفقهاء أيضاً، دوران حرمة التكسب بالنجاسات مدار عدم جواز الانتفاع»

«It appears from the dispersed words of scholars; too, the prohibition of business with impurities is a reason established for the inadmissibility of its use."(Mousavi Khomeini, 1368, vol. 1: 38).

Prohibition of sales related to the use of blood at the time of revelation has been the use that the ignorant Arabs had of blood but now that another use of the blood that is useful to humans then there is no reason for banning dealing it.

«ويتضح مما ذكرنا ان النهى عن بيع سبعة اشياء: منها الدم، يراد به البيع للأكل لتعارف اكله في تلك الأمكنه والأزمه كما شهد به الروايات»

«From what we said it was clear that the prohibition of the sale of seven things, including blood (in the narrative Abu yahia Vaseti), give up to (eat) blood because in that territory at the time (period of ignorance), eating blood was common, as the narrations also witness to it. » (ibid.) Sheikh Ansari also uses this narrative and it is stated:

«وَأَمَّا مرفوعه الواسطى المتضمنه لمرور أمير المؤمنين عليه السلام بالقصابين ونهيه عن بيع سبعة، بيع الدم والغدد... فالظاهر اراده حرمة البيع للأكل، ولاشك في تحريمه لما سيجئ من ان قصد المنفعة المحرمه في المبيع موجب لحرمة البيع، بل بطلانه»

«Marfoue Vaseti states that Ali (AS) passed by the butchers and forbade them from the sale of seven, the sale of blood and lymph ... it seems the prohibition of selling it to eat, (not only selling) and there is no doubt that such trading is forbidden to and the intention for forbidden

trading causes the prohibition of sales, but invalidation of the sale» (Almakaseb, Vol. 24: 171).

Sheikh said in the statement that the story of Marfoue Vaseti is that any buying and selling of blood is of no use, but according to the available evidence, eating and buying and selling to eat is forbidden; so if the permissible and rational benefits are there for it, naturally, buying and selling it and using will not be an obstacle.

Expression of these examples is to note that every circumstances and the condition of era of every jurisprudent brings about bounds to the subject transforms it. We now need to see whether such a change, caused the decree to change? In other words, if social conditions and the relations governing the period, adds the constraints to the subject affecting the composition of the decree, if the conditions and relations of the era of Ijtihad is also as such it would be influential on the decree? If the source of change in the decree is change in subject, the jurisprudent aware of time and the prevailing social relations is confident that the existing relationships affects the issue and it has changed it to something other than what it was; So, there should be the new decree for it and former ruling will not be included.

Of course, understanding these changes need to be aware of the different prevailing social relations. The more is this knowledge, the greater is the discovery and also the more transformation occurs in decrees. The purpose of the role of time and place of Ijtihad, is the discovery of external constraint of the subject that is hidden from superficial view of individuals who are unfamiliar with modern civilization. Because these constraints are external, to achieve full and deep understanding of external issues is required.

Among other issues that provide the maneuver for the jurisprudent to change the decree is the recognition of the perception of the advisability and corruptions. It means that if the advisability and interest is in one of the aspects permanently in a way the evolution in time and place has no effects on it, the decree is permanent and also if

the existing corruption in the related issue is permanent, the related appropriate decree is also permanent; So issuing the verdicts in Shiaite jurisprudence is based on the real interests and corruptions in the system and therefore Islamic legislation paves a way to the reason.

"Wisdom is among the absolutely certain evidences in all of the different sects related to Islam and if there are differences in this field is in range not in the principle. The presence of reason in the inference that is in the general law format,

«كل ما حكم به العقل، حكم به الشرع»

«All that judgment by the mind, judgment by Islamic law»

finds its embodiment, it means that whenever the reason is to be calibrated interests or corruption to be left is decisive of necessity or inadmissibility is to understand the Islamic law also dictates that act or commands to leave the verdict Of course, since the pronouncement of decree is just of the legislator and reason apart from the understanding of Good and Evil, does not have cause of the guardianship and issuing the pronouncement, what is attributed to the wisdom is the cause of the discovery meaning in the same way that Qur'an and tradition (Hadith) the explorer of the will and command of the legislator, the wisdom is also the discoverer of the will necessity related to it. It is clear that the wisdom must be in understanding the calibrated advisability or corruption is decisive to leave as to discover the will and decree of the legislator should be deemed to warrant is to understand the legal advisability "(Alidoust, 1387, No. 18: 52).

Sometimes the wisdom can discover the advisability and corruptions to cause the issue of the decree even if in the Islamic law there has not been a command for us; It should be noted that verdicts of the fifth types is only issued by the legislator and wisdom is not involved whether in the discovery of verdicts or discovery of advisability. The wisdom has only the jurisdiction to maneuver in terms of good and evil rational and that is only within the range of opinion and disciplinary where if the decree is issued, it is the

verdict of the legislator, it is guidance or we are confronted in the jurisprudence if properly analyzed, its result would be this change of subject due to the change of existing relationships such as the prohibition of blood dealing that is now the religious command is issued to its permissibility. The origin of this change of religious pronouncement is the change of the subject and the rational of its licenses makes its rational use possible.

To accept this approach, indeed, could revolutionize the field of the jurisprudence in women's verdicts because in this belief, the jurispudent after understanding the boundaries of the subject of religious command that is stated in the law reasoning, based on the principles, examines the examples illustrated in the era of Ijtihad, to check those examples in the social relations to see what is true example and what is so far considered as its example, remains as it was or alters because of time and space transformation?

Such a view point does not allow the jurispudent to resort to the Public or to reference to liberate them. Concern about the possibility of changing the subject on new developments, is the utmost obsession, care and precision to identify the subject matter and issuing religious pronouncement allows the Mojtaheed, especially as this kind of changes are external and invisible. In this perspective the subjects "emerging" are not only subjects with no history but every day may be a group of former issues that have been identified as clear decision to join the new category of subjects and needs a new decree and jurisprudential issues are always dynamic, alive and also the developments of the Islamic system as the most important institution that has a role in the transformation of the subjects and has always been considered. The issue of the position of women in family and society is included in issues that can be changed over time. It is obvious that the jurispudent applies the interpretation of religious commands by understanding public regulations and also according to the default in the

interpretation of religious orders and with regard to religious purposes and advisability to the holy legislator can comment.

"The common sense has no understanding except that because God is rich and wise in legislation, regulations, has no attempt to fill his vacancy without purpose

but his motivation is required in supplying the interests ... but the fruit and the motivation of divine legislation is not but to get to pure life for humans, happiness and their advisability. The motive and the result are like the soul in the body of the current law "(Alidoust, 1381: 101-117).

The jurisprudence history shows that men more than women have reached the rank of Ijtihad have had less success and unconsciously, jurisprudence should be more consistent with the thoughts and feelings of men and has been affected by it. Examples for this issue can be seen from the jurisprudence:

- "- In that the parent can provide marriage for an underage girl or son will your, there is no doubt among jurispudent. The famous jurispudent believe that an underage girl after puberty, has no right to the marriage provided by her parents (Shahid Thani, vol. 7: 175), but in the case an underage son, although the famous scholars issued the religious pronouncement of no permission (Najafi, C 30: 109), a group of scholars, including Ibn Idris Helli (ibid) and Sheikh Tusi (Shaikh Tusi, 1400 AH: 607) believe that underage boys after puberty, have the permission.

- In regard to the imperfections of women in cancellation of marriage, of vitiligo and leprosy disease, it is only dedicated to women and men may also be affected by these diseases. The famous jurispudents referring to the lack of substantial document according to the principle of necessity contract did not consider the vitiligo and leprosy among men as imperfections but some scholars have considered these two diseases are common defects (Najafi, Volume 1: 401).

The most important thing to defend the dignity and status of women in Islam seems to be gaining

awareness of women's rights from the perspective of Islamic jurisprudence and identification of new issues of the society as well as addressing issues arising from the angle of view of the Islamic law, by the jurists and Islamic scholars and authorities. Therefore, the study of the criteria and achieving the goals and objectives of verdicts the law are essential issue for the contemporary world.

For example, changing some verdicts for women on various issues such as custody, including the effects of social transformation on verdicts that can be named:

Till 1382, in accordance with article 1169, custody of the boy to 2 years and girls of 7-year-old was given to the mother and from then on, the father was responsible for the child care. This was done in accordance with the views of jurists that were also confirmed by civil law. In 1382, an amendment to the law was approved by the Expediency Council and its accordance, the child custody whether boys and girls until the age of seven, was transferred to the mother and father after that, it was considered primary over child custody. Of course, other note was added to it which, after seven years also, if the father and mother disputed in regard to the custody, the diagnosis expediency of custody will be given to the court. The change of the age of custody from two to seven years for boys-that was issued in 1382 by Expediency Council - is an example of the impact of social changes in verdicts such as custody is non-religious decrees.

Due to the point that philosophy of decrees is nothing but changes in the relations and guiding the societies from evil to the righteousness considering the revolutions in the societies have always played a decisive role in changing the culture of and traditions and customs, Islamic jurisdiction can respond to possible problems and issues in the society.

### 3. CONCLUSION

The existing problems in the jurisprudence of women is sometimes due to the weakness in

semantics sometimes caused by the inadequacy of the investigations and studies on jurisprudence issues and sometimes caused by ambiguity in the religious pronouncement. However, the reality is that change or enacting laws in favor of women, perhaps is not always effective and can not change their position in the family and society in the short term but without a doubt, this change reflects the evolution of thought and insight towards women's issues. Changing the rules that have been influenced by Islamic jurisprudence scholars needs the focus and investigations of the jurists in different social issues to consider the social changes and lifestyle changes at the time of revelation till now to review the verdicts because the law must stem from problems of society and to meet the needs of the community.

However, verdicts and laws that affect the lives of women is one of the most serious problems in Islamic societies today. It seems that according to jurisprudence standards and appeal to the dynamic Ijtihad in order to have the element of time and place, improvements and changes can be made in certain verdicts and laws relating to women to pave the way to solve the problems of women in modern society.

Undoubtedly, the main objective of the law is justice, security and peace in society and this is only possible by the strict implementation of laws, but legislation is not compatible with the social changes will always be there as obstacles to proper implementation that the institution of Ijtihad can provide the situation by considering the time and space requirements and pave the way for the implementation of those rules in society.

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