

Reinterpreting The Concept of Shari'ah and Its Implication on Gender Issues

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Abstract: This paper deals with Mahmoud Mohamed Taha's thought on shari'ah and gender. The main message conveyed by shari'ah is equality between man and woman with the aim of achieving gender justice in society. Many Muslim scholars, however, interpret shari'ah text written in the Qur'an and the Sunnah textually, partially and out of its context. Such interpretation then produce gender biased understandings and unequal gender rulings. This paper analyze how Mahmoud interprets the concept of shari'ah and implements it on gender issues. Different from many Muslim scholars, Mahmoud views that shari'ah evolves continuously in the history of human beings and it is showed by the presence of different shari'ahs from one prophet to another, from Adam until Mohamed (peace be upon them). Because of its characteristic, the last shari'ah brought by Mohamed also must evolve, namely, evolving from the subsidiary verses of the Qur'an to its primary verses. In this way, shari'ah rules which contain gender discriminations are regarded as transitional rules suiting the social context at the time. In the contemporary era, the relation between men and women must be based on the primary verses of the Qur'an which emphasize the principles of gender equality.

Keywords: shari'ah, gender, reinterpretation

Introduction

Since its advent, shari'ah (Islamic teachings and rulings) has worked to achieve gender justice in Arab society, which is strongly patriarchal in its tradition and culture. This was done through the implementation of rulings and doctrines which attempted to rise women's dignity from their position at that time. These shari'ah rulings, which were bound by the context of Arab society at that time, for example, are limiting polygamy and giving rights to women in inheritance, as wife, as witness and so

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on. In other words, shari'ah from the beginning has focused on women's rights both in the domestic and public sphere. Arabic culture at that time placed women in positions as slaves, basically without rights. Therefore it can be seen that the main message conveyed by shari'ah is equality between man and woman with the aim of achieving gender justice in society.¹

The original message brought by shari'ah is gender justice, however many Muslim scholars interpreted shari'ah text written in the Qur'an and the Sunnah (prophet traditions) textually, partially and out of its context. Such interpretation then produced gender biased understandings and unequal gender rulings. In fact, such interpretation is mostly understood and practiced by majority of Muslims, including the Muslim community in the contemporary world. Nevertheless, along with the advancement and challenges of modernity, there are some Muslim scholars trying to reinterpret the shari'ah text, including texts relating to gender issues. One of them is Mahmoud Mohamed Taha (d. 1985), a Sudanese Muslim scholar.²

¹ The above rulings are indicated by some Qur'anic verses, for instance QS. Al-Tawbah (9): 71, QS. Al-Hujurat (49): 13 and QS. Al-Nisa' (4): 124. These verses state that: "*The Believers, men and women, are protectors one of another: they enjoin what is just and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Messenger. On them will Allah pour His mercy: for Allah is Exalted in power, Wise* (9:71), *O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other). Verily the most honored of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things)* (49:13), and *If any do deeds of righteousness, be they male or female, and have faith, they will enter Heaven, and not the least injustice will be done to them* (4: 124)".

² Mahmoud Mohamed Taha was born in 1909 AD in Rufa'ah, Central Sudan. He graduated from the engineering school of Gordon Memorial College (now the University of Khartoum) in 1936. In the late of 1930s, from the beginning of movement Mahmoud participated actively in the nationalist struggle for independence of Sudan ruled by Anglo-Egyptian colonial government. In the 1945, with other intellectuals he formed the Republican Party which had a strong modernist Islamic orientation. Because of his political activities, Mahmoud was often sentenced to prison. After his period of religious seclusion (*kehalwah*) in October 1951, he articulated and spread an

Reinterpretation of the shari'ah text, including Mahmoud's interpretation, is necessary because the Qur'an as a main source of shari'ah is actually an open text which needs to be interpreted all the time. Qur'anic text has been interpreted since the time of *sahabah* (the companions of the prophet) or even since the prophet's era. Such interpretations of shari'ah are a sign of flexibility and adaptability of shari'ah toward change, time and space. Therefore it is usually stated that shari'ah can adapt to any time and place (*salih likulli zaman wa makan*). This article examines the thought of Mahmoud Mohamed Taha, especially as it relates to gender issues and shari'ah. I begin with a review of his thoughts on the meaning of shari'ah.

Reinterpreting the Concept of Shari'ah

The word shari'ah literally means a way toward spring, a straight path (*tariqah mustaqimah*) and a bright path to be followed. Terminologically shari'ah refers to rules and guidelines addressed by God to human beings in order that they gain guidance in this world and happiness in the hereafter. The fundamental aim of shari'ah is to encourage human beings to overcome their bad wills and desires (*hawa*), until they are constantly on the true and straight path.³

opinion about Islamic revival which he later termed the second message of Islam (*al-risalah al-saniyah min al-Islam*). When Ja'far Numeiri became the president of Sudan through military coup d'etat in 1969, and all of political parties were dispersed, the Republican Party changed into a mass organization named Republican Brothers. The organization tried to spread Mahmoud's notion and thought until now. Because of his political activities and controversial thought, he was sentenced to death through gallows by Numeiri's regime. On Mahmoud's biography, see Abdullahi Ahmed an-Na'im, "Translator's Introduction" in Mahmoud Mohamed Taha, *The second Message of Islam*, trans. (Syracuse: Syracuse University Press, 1987), p. 2-19. Paul Martin, "Taha, Mahmoud Mohamed (1909-1985), Founder of the Republican Brothers, an Islamic Sect" in Reeva S. Simon, et. Al. (Eds.), *Encyclopedia of the Modern Middle East* (New York: Simon & Cluster Macmillan, 1996), IV: 1724-1725.

³ Muhammad Hashim Kamali, "Sumber, Sifat Dasar dan Tujuan-Tujuan Syari'ah", trans. in *al-Hikmah Jurnal Studi-Studi Islam* No. 10, July-September

The word shari'ah is stated explicitly in QS. Al-Jasiyah (45): 18 when God said to the prophet: “*Then we put you on the right way (shari'ah) of Religion so follow you that way, and follow not the desires of those who do not know*”. So shari'ah is a way in religion (*al-tariq fi al-din*), it is not separated from religion but a part of it.⁴ It means that religion (*al-din*) is a broader thing and shari'ah is its part. Shari'ah, however, is an important part and becomes a source of teaching, so its value is almost identical with religion itself.⁵ Shari'ah is strictly identified as God's revelation, a knowledge which can only be derived from the Qur'an and the Sunnah. It is different from *fiqh* (legal rulings) which is a product of scholars' interpretation of shari'ah text through reasoning. Therefore Muslim scholars view that shari'ah text is an absolute thing which cannot change while *fiqh* is temporary thought which always changes from time to time.⁶

Mahmoud explains that before dealing with shari'ah, we need to understand the connection between religion (*al-din*) and shari'ah. The true religion, according to Mahmoud, is with God in His infinity. Mahmoud based his opinion on QS. 3: 19 stating that “*surely the true religion with God is Islam*”. The word “with God” (*inda Allah*) is eternal beyond time and space, since God does not need both of them. It means that the true religion, which is identical with Islam, is with God in His infinity.⁷

According to Mahmoud, religion is described by QS. 3: 103 as “the rope of God” (*habl Allah*). The verse stated that “And hold fast, all together, by the rope of God, and be not dispersed among yourselves”. “The rope” with God in His infinity then has descended to human beings on earth. Its

1999, p. 45-46. Mahmud Shaltut, *al-Islam Aqidah wa Shari'ah* (Ttp.: Dar al-Qalam, 1966), p. 12.

⁴ 'Ali Ibn Muhammad al-Jurjani, *Kitab al-Ta'rifat* (Beirut: Dar al-Kutub al-'Ilmiyah, 1988), p. 127.

⁵ Kamali, “Sumber”, p. 46.

⁶ Ibrahim Hosen, *Apakah Judi itu?* (Jakarta: Lembaga Kajian Ilmiah IIQ, 1987), p. 7.

⁷ Mahmoud Mohamed Taha, *al-Risalah al-Saniyah min al-Islam* (n.p., n.d.), p. 3, 98 and 135.

beginning that is with human beings was named by QS. 2: 256 and QS. 31: 22 with “the secure handle of the strong rope” (*al-urwah al-wusqa*).⁸ Thus the beginning of the rope is with human beings on earth and its end is with God in His infinity. Mahmoud interprets shari’ah as the rope as a connector of humans on earth and with God: the rope will never break with religion.⁹ Shari’ah for religion is a mediator or connector since shari’ah is the beginning of rope that is on earth while religion is the end of rope that is with God in His infinity. According to Mahmoud, however, the difference between shari’ah and religion is one of degree and not of kind. The aim of such difference in degree is in order that religion can be understood by human beings in the world (through shari’ah). So religion is absolute while shari’ah is relative limited by time and space. Shari’ah is a certain degree of religion addressed to human beings in accordance with their level of understanding.¹⁰

Based on the above explanation, religion since prophet Adam until prophet Mohamed is the same and only one, that is Islam (QS. 42: 13 and QS. 3: 19),¹¹ expressed in the *tawhid* (oneness of God) statement, *la ilaha illallah* (there is no god but Allah). Meanwhile shari’ah of the prophets is not the same

⁸ Both verses state that: “Whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, which never breaks” and “Whoever submits his whole self to Allah, and is a doer of good, has grasped indeed the most trustworthy hand-hold, and with Allah rests the End and Decision of (all) affairs”.

⁹ Mahmoud, referring to QS. 43: 1-4, stated that the true Qur’an is with God in His Infinity. While the book of Qur’an with human beings is relative, so that it used human language (Arabic) to be understood by all human beings. He, referring to QS. 39: 23, also stated the Qur’an which is with us had two meaning; textual and hidden meaning. Mahmoud, *Al-Risalah*, p. 4, 65, 67 and 135.

¹⁰ *Ibid.*, p. 3-5.

¹¹ QS. 42: 13 states that: “The same religion has He established for you as that which He enjoined on Noah, the which We have sent by inspiration to you, and that which We enjoined on Abraham, Moses, and Jesus: Namely, that ye should remain steadfast in religion, and make no divisions therein: to those who worship other things than Allah, hard is the (way) to which you called them. Allah chooses to Himself those whom He pleases, and guides to Himself those who turn (to Him)”.

because of difference in level of understanding among their followers. The difference of shari'ah between the prophets, according to Mahmoud, was clear enough. For example, the difference in matrimonial laws between Adam and Mohamed (peace be upon them). In the shari'ah of Adam, marriage between a brother and his own sister was allowed (if they are not twins) and then the permissible became prohibited in the shari'ah of Mohamed, even the prohibition included other relatives as stated in QS. 4: 23.¹² Among other shari'ah laws, which are not valid in the shari'ah of Mohamed, was repentance by killing oneself, as obliged to the followers of Moses (peace be up on him) (QS. 2: 54).¹³

If the different modes of shari'ah as practiced by the prophets are due to the difference in the ability level of their followers, it is no doubt that shari'ah therefore develops and evolves continuously along with the advancement of human beings' thought and civilization, including shari'ah brought by Mohamed.¹⁴ Therefore, Mahmoud said, it is a gross mistake to assume that shari'ah of the seventh century is still suitable, in all its details, for application in the twentieth century. The perfection of shari'ah, he added, lies in the fact that it is a living body, growing and developing along with the living, growing and developing of human beings, guiding their steps and directing

¹² *Ibid.*, p. 7-8. The verse states that: "Prohibited to you (For marriage) are: Your mothers, daughters, sisters; father's sisters, Mother's sisters; brother's daughters, sister's daughters; foster-mothers (Who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in,- no prohibition if ye have not gone in; (Those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Most-forgiving, Most Merciful".

¹³ The verse states that: "And remember Moses said to his people: "O my people! You have indeed wronged yourselves by your worship of the calf: So turn (in repentance) to your Maker, and slay yourselves (the wrong-doers); that will be better for you in the sight of your Maker." Then He turned towards you (in forgiveness): For He is Most-Returning, Most Merciful".

¹⁴ According to Mahmoud, the level of human thought and civilization in the world evolve continuously along with the advancement of time and space. See Mahmoud, *Risalah al-Shalat*, 7th edition (n.p., 1979), p. 10-23.

their way toward God, stage by stage. Human life continues on its way back to God inevitably: “O human being! Verily you are toiling on towards your God, and you shall meet Him” (QS. 84: 6).¹⁵

Because the prophet Mohamed is the last prophet, it means that all the revelation for human beings has been sent down to earth and there will never be any revelation after the death of the prophet. Therefore, Mahmoud said that the evolution of shari'ah (*tatammur al-syari'ah*) is only moving from one text of the Qur'an to the other (*innama huwa intiqal min nass ila nass*); from subsidiary verses (*ayat al-furu'*) which he called the Medina verses (*ayat madaniyyah*) to primary verses (*ayat al-usul*) called the Mecca verses (*ayat makiyyah*). In other words it is moving from a text that is suitable for the seventh century (which was implemented), to a text which was too advanced at that time and therefore had to be abrogated.¹⁶ However, Mahmoud said, there is an area of overlap between primary verses and subsidiary verses (and al-Sunnah following it), that is shari'ah *'ibadah* (rules of ritual) in which there is no change except for individuals who want to add with voluntary rituals to get perfection of spirituality. So according to Mahmoud, the evolution of shari'ah is only there in shari'ah *mu'amalah* (rules relating to the relationship between human beings) not in shari'ah *'ibadah*.¹⁷

Mahmoud said that there were some reasons why God had revealed the Mecca verses which were too advanced at that time

¹⁵ Mahmoud, *Al-Risalah*, p. 8-9. According to al-Jami, Mahmoud's thought about shari'ah can not be accepted at all, because he did not differentiate between rulings made by human beings (Muslim scholars) and rulings made by God. On al-Jami's criticism, see Muhammad Aman Ibn 'Ali al-Jami, *al-Muhadarah al-Difa'iyyah'an al-Sunnah al-Nabawiyyah* (Mecca: Rabitah al-'Alam al-Islami, n.d.), p. 7 and 10.

¹⁶ Mahmoud argued with QS. 2: 106, a verse is usually used by Muslim scholars to prove that the abrogation exists in the Qur'an. Different from other scholars, Mahmoud translated the verses with: “Whenever we abrogate any verse or postpone it [majority of Muslim scholar translate: or cause to be forgotten], we bring a better verse, or a similar one. Do you not know that God is capable of everything?”. For more detail about this, see Mahmoud, *Al-Risalah*, p. 7 and 9-11.

¹⁷ *Ibid.*, p. 164.

and obliged the prophet to spread them. One reason is that the Qur'an is the last revelation and the prophet Mohamed is also the last prophet, consequently the Qur'an had to convey, and the prophet had to tell, all the revelations which God would teach to human beings, either teachings implemented immediately for the seventh century and the following centuries or teachings which would be implemented in suitable future times. In addition, the reason why the Mecca verses were revealed firstly is for the sake of dignity and freedom given by God to human beings. In accordance with the dignity and freedom, God wanted human beings to learn through their own practical experiences. Because the Mecca verses were too advanced and could not be applied, they were postponed and replaced by the Medina verses that were more practical. In this way, people would have a stronger belief in more applicable verses and which could finally be implemented during the Medina period.¹⁸

If the subsidiary verses, which replaced the primary verses in the seventh century, have served their purpose and are now irrelevant for the new era (the twentieth century) then the time has come to abrogate the subsidiary verses and to enact again the primary verses which were abrogated in the seventh century. Therefore, from the twentieth century forth, the primary verses have their turn as the operative text and become the basis for the contemporary shari'ah. This is what the evolution of shari'ah (*tatanmur al-shari'ah*) means in Mahmoud's opinion; it is shifting from one text that served its purpose to another text that was postponed until its time came.¹⁹

¹⁸ *Ibid.*, p. 10-11. Abdullahi Ahmed an-Na'im, *Dekonstruksi Syari'ah: Wacana Kebebasan Sipil, Hak Asasi Manusia dan Hubungan Internasional dalam Islam*, trans. (Yogyakarta: LKiS, 1994), p. 104-105.

¹⁹ Mahmoud, *Al-Risalah*, p. 11. The evolution also means an evolution from shari'ah toward the absolute religion (*al-din*). Mahmoud stated by using another statement that Islamic shari'ah had three degrees; those are shari'ah, *tariqah* and *haqiqah*. The shari'ah degree, according to Mahmoud, must be continuously evolved by Muslim individually toward *tariqah* and finally *haqiqah*. *Ibid.*, p. 9.

The term *makiyyah* (Mecca verses) and *madaniyyah* (Medina verses) used by Mahmoud, in fact, indicate general meaning, so some verses revealed in Mecca period are *madaniyyah*, and on the other hand there are some verses revealed in Medina as *makiyyah*. The verses known as *makiyyah* or *madaniyyah*, according to Mahmoud, are not based on time and place of revelation, but based on the difference in target group.²⁰

The Implication on Gender Issues

Al-Qur'an, as a main source of shari'ah, as Mahmoud has stated, contains two group of verses. Those are *makiyyah* verses as the primary verses and *madaniyyah* verses as the subsidiary verses. *Makiyyah* verses, according to Mahmoud, are the fundamental message of Islam which emphasizes dignity of all human beings without differentiating gender, religion, race, ethnic, and so forth. The message is indicated with gender equality and freedom to choose religion and faith. The substance of the Islamic message and its practice during the Mecca period were based on the principle of freedom to choose without any compulsion or violence. While the Mecca message, however, was rejected and practically the society had not ready yet to implement it, the more realistic message of shari'ah was given and implemented in Medina period. In this way, the Mecca message which could not be implemented because it was too advanced in the historical context of society in seventh century, was postponed and replaced by more practical rules revealed and applied during Medina period.²¹

²⁰ Abdullahi Ahmed an-Na'im, "Sekali Lagi, Reformasi Islam" in Tore Lindholm and Kari Vogt (Eds.), *Dekonstruksi Syari'ah (II): Kritik Konsep, Penjelajahan Lain*, trans. (Yogyakarta: LKiS, 1996), p. 111 and 118. In Qur'anic studies, scholars argued about definition of *makki* and *madani*. At least there are three opinions on it; Some scholars based on the period before and after *hijra* (the migration of prophet from Mecca to Medina), some based on the closer place to Mecca or Medina where the revelation came down, and some based on the content of revealed message (*kitab*). Manna' al-Qattan, *Mabāhis fi 'Ulum al-Qur'an* (n.p.: Manshurat al-'Asr al-Hadis, n.d.), p. 61-62.

²¹ An-Na'im, *Dekonstruksi Syari'ah*, p. 103.

The Mecca message, therefore, emphasized fundamental values of justice, equality and dignity which implicated all human beings. The Qur`anic verses of the Mecca period, for example, address all human beings by using words “*O ye children of Adam*” or “*O ye human beings*”. In addition, all human beings were called with honorable terms without differentiating race, skin color, sex or religion. However, because the Mecca message was too advanced for the society and was rejected especially by Mecca polytheist people, and after the prophet migrated to Medina, the content of message of the Qur`an changed more specific in referring Islamic people as an exclusive community of believers (*al-mu`minun*), and started to differentiate between men and women. In addition, the differentiation between Muslims and non Muslims during the Medina period was described by the presence of verses on war and the emergence of hypocrites who pretend to be Muslims.²²

The same applies to gender issues, the Mecca verses as fundamental precepts of shari`ah emphasize total equality between men and women. According to Mahmoud, the equality is indicated by the presence of same responsibility between men and women before God, as stated in QS. 4: 12, QS. 6: 164, QS. 40: 17, QS. 74: 38 etc.²³ In the fundamental precept of shari`ah, men and women have an equal position. The difference among them is not because of the difference of sex but is based on their good deeds and their piety toward God (QS. 4: 124 and QS. 49: 13), even QS. 9: 71 clearly emphasizes the gender equality between men and women by stating that men and women can work together because some of them are helper for the other.

Therefore Mahmoud said that the fundamental precept of shari`ah is the complete equality between men and women in social life. When Islam came, however, the Arab society at the

²² *Ibid.*, p. 105-106. Mahmoud, *al-Risalah*, p. 135 and 13.

²³ Mahmoud, *al-Risalah*, p. 126-127. For example, QS. 40: 17 states that: “*That Day will every soul be requited for what it earned; no injustice will there be that Day, for Allah is Swift in taking account*, and QS. 74:38 states: *Every soul will be (held) in pledge for its deeds*”.

time humiliated women and it was common for girl babies to be buried alive (infanticide). The tradition is described by QS. 16: 58-59: *When news is brought to one of them, of (the birth of) a female (child), his face darkens, and he is filled with inward grief! With shame does he hide himself from his people, because of the bad news he has had! Shall he retain it on (sufferance and) contempt, or bury it in the dust? Ah! What an evil (choice) they decide on?* It could be stated that the society generally, including women, was not ready yet to accept the fundamental precept of shari'ah on the equality between men and women. Therefore, a transitional period was necessary, and applied subsidiary precepts in order that they could develop toward the fundamental precepts of shari'ah.²⁴

Based on the situation, the Medina verses and the prophet's hadiths at the time basically started to differentiate between men and women on their rights and roles. All verses and hadiths used as basis of discrimination toward women, according to Mahmoud, are verses and hadiths of Medina period, not those of Mecca period. Lowering the quality of shari'ah precepts, including in relation to gender issues, from the fundamental precepts into the subsidiary ones, Mahmoud said, was caused by the ability level of society at the time that was not ready to implement the fundamental precepts of shari'ah. However, if the situation is possible, namely when individuals and community become a mature society, the principles and fundamental precepts of shari'ah will be reapplied.²⁵

Because the fundamental precepts of shari'ah on the gender equality could not be applied, the subsidiary precepts which were still gender discriminatory emerged to adapt and give a lesson to the society at the time. Therefore, shari'ah gave women a half of men's part in inheritance (QS. 4: 11), in the same manner as witness (QS. 2: 282). Women also had to serve men as father, brother or husband, because men are leaders for women (QS. 4: 34) and men (husbands) had higher level than women (wives) (QS. 2: 228). In fact, Mahmoud said, such

²⁴ *Ibid.*, p. 127.

²⁵ *Ibid.*, p. 118. An-Na'im, *Dekonstruksi Syari'ah*, p. 107.

shari'ah rules at the time gave advanced roles and high status for women in the society, if it was compared with their position before Islam came. Nevertheless, such shari'ah rules were not original and fundamental precepts of shari'ah, because the original precept is the complete equality between men and women.²⁶

In the same way, Mahmoud said that polygamy is not the original precept in Islamic shari'ah. The original one is marriage between one man and one woman. The prohibition of polygamy is implied in QS. 4: 3 "*if you fear that you shall not be able to deal justly, then marry only one*" and QS. 4: 129 stating "*You are never able to be fair and just as between women, even if it is your ardent desire*". However, because shari'ah emerged in the society which did not respect women, and allowed a man to marry ten or twenty women, so it permitted polygamy but with restrictions, and did not directly enforce the practice of monogamy.²⁷ At the time, the quantity of women was much more than men since many men were killed in the wars, beside women really needed protection and patronage from any violence in the strong patriarchal society, so that polygamy was still permitted as transitional solution.

Based on the above situation, shari'ah limited polygamy only until four women with a condition that a husband had to do justice among his wives, as stated in QS. 4: 3 "*Marry women of your choice, two or three or four; but if you fear that you shall not be able to deal justly (with them), then only one*". In fact, it was showed how difficult it is to do justice among wives, as stated in QS. 4: 129 above, because doing justice is not only in giving material needs but also in giving love and it is impossible to give love with the same feeling among wives. However, because monogamy could not be prohibited at the time, so polygamy was still permitted and the above verse of QS. 4: 129 was continued by "*but turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air). If you come to a friendly understanding, and practice self-restraint,*

²⁶ Mahmoud, *al-Risalah*, p. 127.

²⁷ *Ibid.*, p. 128.

Allah is very forgiving, most merciful'. So doing justice required by the transitional precept was only in giving material needs.

Polygamy, therefore, is only a transitional precept, while the original precept of shari'ah is monogamy. At the time, women's status was less than men's and they were completely subordinated, so "conditional" polygamy could do justice to women by giving material needs, and this was useful not only for women themselves but also for the society in general. Therefore limiting the practice of polygamy in the society could be regarded as a transitional rule of shari'ah toward the beginning of equality between men and women. Based on the above explanation, now the verse in QS. 4: 3 "*if you fear that you shall not be able to deal justly (with them), then only one*" can be interpreted as the prohibition of polygamy.²⁸

The fundamental precept of shari'ah is also no separation between men and women in the community, by wearing *sufur* (proper clothes which can cover *'awrat*, which is part of the body which may not be visible). Mahmoud said that the primary aim of shari'ah is piety, self-esteem and chastity emanating from within human being, not *hijab* (veil) by closing the doors and wearing long robes. However, this fundamental precept of shari'ah can not be reached only with education and discipline, and in the context of Arab society at the time it was needed a transitional period by implementing *hijab*, namely women's clothes which cover all of her body and separating women and men in the social life. Basically this *hijab* aimed to reach piety so that they (men and women) can protect their self-esteem.²⁹

The fundamental precepts of shari'ah are *sufur* (proper and modest clothes) and no segregation between men and women in social life, because the main aim of shari'ah is piety of each individual, not *hijab* itself. It is showed by QS. 7: 26 stating "*O ye*

²⁸ *Ibid.*, p. 127-129.

²⁹ The concept of *hijab* is for instance stated by QS. 33: 59: "*O Prophet! Tell your wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): that is most convenient, that they should be known (as such) and not molested. And Allah is Very Forgiving, Most Merciful*".

*Children of Adam! We have bestowed raiment upon you to cover your shame, as well as to be an adornment to you. But the raiment of righteousness, that is the best. Such are among the Signs of Allah, that they may receive admonition!*²⁹. In fact, *hijab* is a kind of punishment given because of misuse of freedom done by women or society in general in using *sufur*. Thus, *hijab* is a transitional and preventive rule (*sadd al-zari'ah*).

The aim of *hijab* rule is described in QS. 4: 15 “*If any of your women are guilty of lewdness, Take the evidence of four (reliable) witnesses from amongst you against them; and if they testify, confine them to houses until death do claim them, or Allah ordain for them some (other) way*”. This verse, according to Mahmoud, means that women who committed immoral acts would lose their right to wear *sufur* and would face strict *hijab* by imprisoning them in their house until death, except if they repent by admitting their mistakes and begin to do good things, which then their freedom in using *sufur* will be given back.³⁰

The above explanation describes the clear difference between the fundamental and primary precept of shari'ah represented by the Mecca verses and the subsidiary and transitional precept represented by the Medina verses. It also shows that the quality of subsidiary precepts is lower than that of primary precepts since the former suits the needs of society at the time. Therefore, while the primary precepts emphasizing the gender equality were postponed and the standard was lowered into the subsidiary precepts which still contained gender discrimination because of the time and the ability of society, in the contemporary era, according to Mahmoud, the standard of shari'ah rules must move to the primary precepts, namely by making the Mecca verses as its basis. Based on the primary precepts, according to him, the original rule of shari'ah on gender issues is the equality between men and women and its aim is to implement gender justice among society.

³⁰ Mahmoud, *al-Risalah*, p. 131-133.

Concluding Remark

In his concept of shari'ah, Mahmoud differentiates between religion (*al-din*) and shari'ah. Religion is an absolute thing, while shari'ah is historical and limited by time and space along with the advancement of human thought and civilization. It means that shari'ah evolves continuously in the history of human beings. According to Mahmoud, it is showed by the presence of different shari'ahs from one prophet to another, from Adam until Mohamed (peace be upon them).

Because of its characteristic, the last shari'ah brought by Mohamed also must evolve, namely, evolving from shari'ah which was suitable for seventh century and the following ones toward shari'ah which is suitable for the contemporary era (since the twentieth century). The evolution of shari'ah as meant by Mahmoud is moving of the basis of shari'ah from the subsidiary verses of the Qur'an to the primary verses. In this way, shari'ah rules which contain gender discriminations such as women's rights on inheritance and witness, permission of polygamy, *hijab* and other rules subordinating women are regarded as transitional rules suiting the social context at the time. In the contemporary era, the relation between men and women must be based on the primary verses of the Qur'an which emphasize the principles of gender equality.

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