



A Critical Analysis of Aziza Hibri's Theory on "Women's Legal System in the Qur'an" According to the Principles of Shia Jurisprudence

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Abstract

According to Aziza Hibri, Tawhid (i.e. monotheism) is the most basic Qur'anic teaching that affects all Islamic laws, including family law. According to this principle, men and women have the same rights and laws in the family system, the denial of which leads to injustice and inequality and hence the evil argument. According to Hibri, the correct inference of Islamic rules depends on recognizing the reasons for the legislation of Islamic rules. By gradual changes of these causes and factors, sharia laws, which have patriarchal attitudes of ignorance time, are undergoing change due to changes in the temporal-spatial conditions. These changes are in laws such as alimony, dowry, polygamy, and divorce. According to the principles of Shia jurisprudence and its authentic hadiths, analogy is not correct in the Shari'a rules and is itself a kind of satanic argument. Therefore, the foundations of Aziza Hibri and his theory in this regard face major shortcomings and challenges and are not compatible with Qur'anic verses.

Keywords: *Aziza Hibri; Tawhid; 'Ilal al-Sharāyi'; Woman*

Introduction

Aziza Hibri is a prominent American Muslim philosopher and Muslim women's rights activist in this country. She is a professor at the University of Richmond and is the first female Muslim professor in American universities. Hibri's research is mainly about women's rights, freedom, and democracy in the Qur'an. He has numerous articles and works and has presented various theories. Hibri is also one of the activists and innovators of the theory of Islamic-Qur'anic feminism.

One of Aziza Hibri's most important theories is the legal system of Muslim women in the family, which seeks to provide a comprehensive legal system based on equality between men and women [Qur'anic feminism] by using several Qur'anic verses. According to her, considering the nationality of jurisprudence and law from social conditions on the one hand and the patriarchy of Islamic societies on the other hand, women's rights have also been affected by such a situation and have become patriarchal. In this regard, for many Muslims, patriarchal readings of Qur'anic verses on women's rights are prevalent

(Hibri, 2000, p. 51). The other century, on the other hand, promises far-reaching changes in the lives of Muslim women and their legal status. Because after many years, they have come out of isolation and sought to change the patriarchal conditions governing their personal, family and social life (Hibri, 2001, p. 90).

Given the breadth and complexity of Muslim women's rights, Hibri discusses the most important of them with a focus on family law (Hibri, 2000, p. 51), which has had a major impact on family relationships and has been interpreted by men for many years and centuries. (Hibri, 2000, p. 56).

In the present study, Aziza Hibri's theory in this field, namely the system of women's rights in the Qur'an, is examined and criticized.

Proving the Equality of Men and Women in Shar'ī Law in Terms of Tawhid

The Qur'anic worldview is a set of coherent beliefs that begin with monotheism and shape all Qur'anic teachings from the creation of beings and the nature of the world to morality, social and commercial relations (Hibri, 2006, p. 238). Family law, like other branches of Islamic jurisprudence, derives from the principle of monotheism. In this regard, the ontological principle of monotheism leads to the legal-Shar'ī rule of equality (Hibri, 2000, pp. 50-51) in all matters, including the family system and male-female relations. Explanation is that the Qur'an proves the equality of men and women in two ways: [1] ontological equality and therefore their creation from a "Soul"; (Allah is the One who created you from a single being) (A'rāf/189)

Until there is peace, kindness and compassion among them (Hibri, 2001, p. 6). [2] (Allah is the One Who created you from a single being and then He created his Mate [Eve] from his kind in order that he Might enjoy resting to her) (A'rāf/189)

Legal equality is due to the equal creation of all human beings including man and woman and their differences from each other in piety (Hibri, 2000, p. 52).

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). (Hujurāt/13)

Because faithful men and women are "Guardians" of each other.

(The Believers, men and women, are protectors one of another.) (Tawbah/71)

The Qur'an considers human virtue and superiority over another through moral virtues such as piety, and therefore men have no metaphysical [= superiority in creation], existential, religious, racial or gender superiority over women. For this reason, the Qur'an seeks to establish a relationship with harmony, consultation and cooperation, not a relationship that is associated with strife and male-female supremacy (Hibri, 2000, p. 53).

According to the above points, family law in Islam should be based on the divine logic, i.e. equality and justice, and not the satanic logic, which is based on seeking supremacy and inequality. Satan for refusing to obey God's command in prostrating to Adam [AS] was expelled from heaven. This disobedience was rooted in the arrogance and selfishness of the Satan. According to Satan, because he was created from fire, he is superior to man created from mud, which is called satanic logic. (Hibri, 2001, p. 6).

Hence, any inequality and injustice in the family legal system or the superiority of men over women is rooted in satanic logic and leads to polytheism (Hibri, 2000, p. 71).

The neglect of satanic logic has led most Muslim jurists and Islamic societies to believe in the superiority of men over women (Hibri, 2000, p. 54). Traditional jurisprudence should be in accordance with the standards of justice and equality; to be reviewed and criticized and a new jurisprudence to be created in different fields and sections which is based on the divine logic and the negation of the satanic logic (Hibri, 2000, p. 71).

Criticism of Proving the Legal Equality of Men and Women in Terms of Tawhid

There is no doubt that monotheism is the most important Qur'anic teaching and shaping all Islamic beliefs. But the question is, does believing in such a thing lead to equal rights for men and women? Considering that the Qur'an establishes many legal differences between men and women and that all of the Qur'an was revealed by God; it is not possible to conclude from monotheism, the equality of men and women. Because this matter is in contradiction with many Qur'anic verses and as a result leads to the denial of the Qur'an and therefore the principle of monotheism. In other words, the Creator and the legislator, while emphasizing monotheism, do not accept legal equality and differentiate between men and women.

The Qur'an itself provides a general rule about the non-difference of its principles and verses, and considers them all from the one God:

(Do they not ponder about the Qur'an? Had it been from other than Allah, surely they would have found therein so Many contradictions.) (Nisā'/82)

As a result, belief in monotheism is not in conflict with other verses of the Qur'an, which is the same divine logic.

The Expediency of the Rules or the Causes of the Sharia

In the previous section, it was stated that according to Aziza Hibri, the belief in monotheism leads to the equal rights of men and women in the family system. Given that there are many legal differences between men and women in Qur'anic verses and Islamic jurisprudence, Hibri explains a rule to resolve this contradiction in his theory. According to him, the correct inference of Islamic rules depends on recognizing the reasons and causes of the legislation of Islamic rules, which are also changed with the gradual change of such causes and factors of Sharia law (Hibri, 2000, p. 54). According to Hibri, the expediency of rulings and changing them according to different circumstances is the most appropriate solution to promote the legal status of Muslim women in the world (Hibri, 2000, p. 54). Likewise, the principle of expediency has a great role in deriving the religious rules from the Qur'an and therefore the development of Islamic jurisprudence and laws. Because the main goal of the Islamic legislator, namely God, is to observe their interests. In this regard, Islamic law should not be based on personal goals such as patriarchy, and therefore the interests of all members of society, including women, should be considered. According to Hibri, this rule is the basis for the formation of women's rights in its Qur'anic and Islamic perspective (Hibri, 2000, p. 56).

The explanation is that; the expediency of the rulings or the causes of the Shari'a is one of the most fundamental parts of the Islamic worldview regarding the legislation of the rulings. There are two Qur'anic reasons for this: council and consultation in Islam, which is one of the most important tools of Islamic society: (And for running their affairs they employ mutual consultations among themselves) (Shūrā/38)

And the non-compulsion of religion, which is included in the general principle of freedom of thought.

(Let there be no compulsion in religion.) (Baqarah/256).

As a result, the expediency of the rulings is an inseparable part of their gradual change in Islamic law (Hibri, 2000, p. 54). Because according to the first principle, the collective vote may lead to a change in the sharia law, and the non-compulsory nature of the religion guarantees the non-rigidity of the laws. Because according to it, Muslims are not required to accept all the rules of jurisprudence and can think in the interests of the rules.

In short, in Hibri's view; Ijtihad in Islamic law has three main characteristics: changing the Shar'ī laws by changing the time and place, choosing less harm and observing the public interest (Hibri, 1993, p. 1)¹.

Criticizing the View of the Expediency of the Rulings or the Causes of the Shari'a

There is no doubt that the divine laws and rules have interests that human beings must perform in order to achieve happiness:

«إن الله تعالى إنما يفعل لغرض و حكمة و فائدة و مصلحة ترجع إلى المكلفين و نفع يصل إليهم.»

(Hillī, 1982, p. 89). But the question is whether Islamic rules change gradually with the change of time and place? In response it should be stated that religious propositions are true theorems that have always been true and their truth has nothing to do with the passage of time and place:

«حَلَالٌ مُحَمَّدٌ حَلَالٌ أَبَدًا إِلَى يَوْمِ الْقِيَامَةِ وَ حَرَامُهُ حَرَامٌ أَبَدًا إِلَى يَوْمِ الْقِيَامَةِ لَا يَكُونُ غَيْرُهُ وَ لَا يَجِيءُ غَيْرُهُ.»

(Kulaynī, 1407, vol. 1, p. 58). Therefore, it is not correct to base the Shar'ī rulings on the interests of human beings, and the result is "Analogy", which is transmitted to another issue considering it as the cause of a ruling.

According to Shia jurisprudence, "Analogy" is a satanic logic that Iblis has committed it for the first time:

«فَإِنَّ أَوَّلَ مَنْ قَاسَ إبليس؛ جِبْنَ قَالَ خَلَقْتَنِي مِنْ نَارٍ وَ خَلَقْتَهُ مِنْ طِينٍ، فَقَاسَ مَا بَيْنَ النَّارِ وَ الطِّينِ.»

(Kulaynī, 1407, vol. 1, p. 58). Thus, Hibri's theory on family law, which is based on finding the causes of Shar'ī law, leads to satanic logic. However, he seeks to formulate a legal system based on divine logic and accuses traditional jurists of following satanic logic.

The Relationship of Marriage in Islam

After stating the above two principles, Aziza Hibri first explains the nature of Islamic marriage in order to prove the incorrectness of patriarchal laws in this field and conclude the equal rights of men and women. According to Hibri, in Islamic history, marriage has always been considered as a factor in the superiority of men over women, through which women were deprived of basic rights such as education, financial independence and freedom of action. In this sense, a perfect woman is one who marries, serves her husband well, and becomes pregnant. This view still persists in Islamic societies, although it contradicts the Islamic theory of women and marriage (Hibri, 2000, p. 57).

Islam guarantees the right to education, financial independence and even ijthihad for women like men. According to the Qur'an, marriage brings peace and compassion of each man and woman to the

¹ Of course, Hibri claims that the first option, namely the causes of divine laws and the gradual change of verdicts, is the most important characteristic of Islamic sharia, and guarantees its dynamism over time (Hibri, 1992, p. 8)

other². According to this meaning, a woman is not required to serve her husband, prepare food for him or clean the house. On the other hand, a man is obliged to provide such things for his wife. Because in Islam, a woman is not a slave or a servant for her husband, but she is a companion for him. (Hibri, 2000, p. 57).

According to these Qur'anic principles; marriage in Islam is based on the divine principle and therefore justice, not a satanic logic with inequality (Hibri, 2000, p. 58). Hence, the Qur'an establishes equal rights between men and women. In marriage, neither man nor woman is superior to the other (Hibri, 2005, p. 148). According to Hibri, Islam, i.e. the legal and religious system based on the divine principle, in order to guarantee and protect the rights of women, legislates other laws (Hibri, 2000, p. 58) which in the following sections will critically examine them with attention paid to the basics of Shia jurisprudence.

Legal Dowry to Maintain a Woman's Financial Independence

Dowry is a necessary condition for marriage and it is obligatory to pay it: (And give the women (on marriage) their dower as a free gift) (Nisā'/4)

By paying the dowry, the man finds the right to enjoy the woman, and by establishing a marital relationship, it becomes obligatory on the man to pay all the dowry (Ibn Babawayh, 1413, vol. 2, p. 362). In this regard, the traditional interpretation of the law of dowry is based on the marital relationship: «إِنَّا»
أَدْخَلَهُ فَقَدْ وَجِبَ الْغُسْلُ وَالْمَهْرُ»

(Ḥurr Āmulī, 1409, v. 2, p. 182-183)

Also: «إِذَا التَّقَى الْحَتَانِ وَجِبَ الْمَهْرُ وَالْعِدَّةُ» (Majlisī, 1404, v. 21, p. 185)

According to these hadiths, the existential philosophy of dowry is a marital relationship and seeking pleasure from a woman. The Qur'an also introduces the dowry as the wage of a woman [in a marital relationship]:

(Give them their dowers (at least) as prescribed.) (Nisā'/24)

(And give them their dowers, according to what is reasonable.)(Nisā'/25)

Criticizing this view, Aziza Hibri states that the dowry is not a mean for man to obtain or achieve the woman and therefore to enjoy her, but is a necessary condition of the marriage contract that the woman relinquishes her single rights and privileges and begins a family life. As a result, dowry is a tool to ensure the continuity of Muslim women's married life in a patriarchal world and to protect their rights (Hibri, 2000, p. 60).

Another point is that the dowry is a condition that God uses to prove a man's goodwill and his commitment to his wife in a patriarchal world. Islamic law does not specify choosing the type of dowry in order to respect women's rights, and therefore every woman is free to choose it. That is, she can choose cash, real estate, and even education (Hibri, 2000, p. 60).

As a result, in Hibri's view, the existence of dowry and the need to determine it in Islam is not for pleasure and consequently to reduce a woman's personality to a sexual commodity, but to protect and respect her rights in a patriarchal society. Because the existential philosophy of dowry at the time of the revelation of the Qur'an was so that such a cause or expediency has been eliminated over time.

Criticism: The justifications that Aziza Hibri states in order to explain why the dowry is obligatory, that is, the woman giving up her rights and privileges at her single life, proving the goodwill

² And among His Signs is this, which He created for you mates from among yourselves that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect. (Rum/21)

of a man, etc. all contradict the explicit Qur'anic verses about dowry. Because the Qur'anic verses, in addition to emphasizing matters in order to achieve peace in family life, consider dowry as a tool in exchange for sexual pleasure. For this reason, the Hibri's theory in this part is a satanic logic and not a divine logic.

Father's Permission in the Marriage of Daughters

One of the important issues in marriage is the need for the permission and consent of the father in the marriage of daughters:

«لَا تُنْكَحُ ذَوَاتُ الْأَبَاءِ مِنَ الْأَبْكَارِ إِلَّا بِإِذْنِ آبَائِهِنَّ.»

(Ibn Babawayh, v. 3, p. 395)

The appearance of this hadith is the invalidity of marriage without the consent and permission of the father in the marriage of daughters. Another verse of the Qur'an also indicates this:

(Wed them with the permission of their own folk [Guardians or masters]) (Nisā'/25)

Because the affairs of girls are in the hands of their guardian (Tabataba'i, 1417, vol. 4, p. 278). According to Hibri, Muslim jurists have offered a superior interpretation of this religious rule, concluding that men's guardianship over women. While family law, like society, must be based on equality and justice. That is, it is inferred from divine logic, not satanic logic (Hibri, 2000, p. 62).

Aziza Hibri interprets this Shar'ī ruling as follows: The Qur'an denies any superiority and inequality, including race, gender, or class distance, and considers piety to be the only criterion of virtue and superiority: (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).) (Hujurāt/13)

This verse expresses the Qur'anic criterion in classifying human beings based on their moral choices. The Qur'an was revealed in a patriarchal environment and society. In this regard, considering the causes of the legislation of Sharia and the gradual change of the interests of the rulings, the Qur'an has enacted laws to protect women, one of which is to introduce the concept of "Guardianship" (Hibri, 2000, p. 61). According to this point, Islam has considered the observance of the rights of young and inexperienced girls, and has legislated mandatory consultation with the father in choosing a suitable spouse, which is called Guardianship. Because the father has enough experience and can be a very good advisor to the young and inexperienced daughter (Hibri, 2000, p. 61).

As a result, the guardianship of the father over the daughter in marriage means counseling her and not necessarily the superiority of the man over the woman.

Criticism: The need for the father's permission in the marriage of daughters is an explicit Qur'anic ruling and cannot be justified or interpreted using personal suspicion or feminist analogy. Because the rules of Shari'a are divine:

«إِنَّ دِينَ اللَّهِ لَا يُصَابُ بِالْعُقُولِ النَّاقِصَةِ وَالْأَرْءِ الْبَاطِلَةِ وَالْمَقَابِيسِ الْفَاسِدَةِ وَلَا يُصَابُ إِلَّا بِالتَّسْلِيمِ.»

(Majlisī, 1403, v. 2, p. 303)

Family Planning

Another law by which Islam protects and respects women's rights is family planning. Islam values the family structure and, like Judaism and Christianity, encourages childbearing. However, unlike the other two divine religions, Islam has a liberal view on family planning. Because contraception is not

forbidden in Islam. In this regard, in the Islamic society at the time of the Prophet [PBUH], some Muslims performed sperm expulsion and the Prophet [PBUH] did not forbid them despite his knowledge (Hibri, 2000, p. 62)³. In Shia narrations, such an act is not considered haram:

«لَا بَأْسَ بِالْعَزْلِ عَنِ الْمَرْأَةِ الْحُرَّةِ إِنْ أَحَبَّ صَاحِبُهَا وَ إِنْ كَرِهَتْ لَيْسَ لَهَا مِنَ الْأَمْرِ شَيْءٌ.»

(Kulaynī, 1407, v. 5, p. 504)

The two arguments to prove the sanctity of family planning and contraception in Islam, saying: The verse that expresses the dignity of killing children for fear of poverty is: (Kill not your children for fear of want: We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin.) (Isrā'/31)

And the Prophetic Hadith in encouraging Muslims to have children and increase the number of generations is:

«تَزَوَّجُوا فَإِنِّي مُكَاتِرٌ بِكُمْ الْأُمَّمَ غَدًا فِي الْقِيَامَةِ.»

(Ibn Babawayh, 1413, v. 3, p. 283)⁴.

For Hibri, such arguments do not answer the complexity of the Islamic situation and the totality of its teachings. Because in the Islamic society at the time of the Prophet [PBUH] some Muslims performed sperm expulsion and the Prophet [PBUH] did not forbid them despite his knowledge (Suyūṭī, 1404, vol. 3, p. 144). The other is that these two arguments refer to the pre-Islamic Arab society, which, in addition to carrying out the act of expulsion, killed their daughters. Therefore, by changing the time and place conditions, and therefore the reason for the ruling legislation, family planning, and contraception is not prohibited. (Hibri, 1993, p. 2)

Hibri states that among Islamic thinkers, Ghazali has always considered contraception permissible. Ghazali compares sexual intercourse with a sale contract and states that just as a sale contract contains a demand and acceptance, and acceptance has no meaning until the demand is accepted and realized; in pregnancy, the consent of both parties, especially woman, is a condition. Even a woman can prevent pregnancy in order to maintain her beauty (Ghazali, nd, vol. 4, pp. 150-151). For this reason, the consent of the woman is a condition for sperm expulsion, and if the man undertakes this act without her consent, he is obliged to pay a ransom (Hibri, 2000, p. 62).

Some Shia narrations consider the consent of a woman in sperm expulsion as a condition (Kulaynī, 1407, vol. 5, p. 504). But in other hadiths, such a thing is considered as a man's authority:

«سَأَلْتُ أَبَا عَبْدِ اللَّهِ (ع) عَنِ الْعَزْلِ. فَقَالَ: ذَلِكَ إِلَى الرَّجُلِ.»

(Kulaynī, 1407, vol. 5, p. 504). It seems that according to the condition of being free in the narrations of the first category, the consent of a free woman is a condition for sperm expulsion, but this is not the case with slave woman. As a result, considering the elimination of the issue of slave women at the present time, the general ruling is that the sperm expulsion is conditional on the woman's consent. However, Hibri's argument in the context of analogy is incorrect.

³ سئل النبي صلى الله عليه وسلم عن العزل فقال أو تفعلون لا عليكم ان لا تفعلوا فإنما هو القدر ما من نسمة كائنة إلى يوم القيامة الا وهي كائنة (سيوطي، 1404، ج3، ص1، ص267).

⁴ This hadith refers to Sunni traditions with a slight difference in the words and with the same content:

«تناكحوا تكثروا فإني أباهي بكم الأمم يوم القيامة.» (سيوطي، 1404، ج2، ص310).

Obligation of A Man to Give Alimony to A Woman

According to the Qur'an, even if the wife has financial independence, the husband is obliged to provide her needs: (Men are the protectors and maintainers of women.) (Nisā'/34)

This verse indicates that a man is a guardian over a woman. Because a woman is a man's wife (Ibn Babawayh, 1378, vol. 2, p. 98).

This verse clearly states that men have a state of "Protector" (role of Advisory and Caretaking status) (Hibri, 2000, pp. 62-63) compared to women if two conditions are met: [1] Providing financial needs of woman and accepting responsibility in this field and having characteristics such as the ability to do financial affairs and buy or sell real estate: (Because they, [the husbands] provide the Livelihood of the family) (Nisā'/34).

In the absence of this condition in a man, he will not have a protecting status to women. Hence, the alimony law protects women against poverty (Hibri, 2000, p. 64). [2] Another condition is that the Qur'an was revealed in a completely patriarchal society. Therefore, in order to protect women against patriarchal traditions, it restricts the authority of men:

(Refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance).) (Nisā'/34)

For this reason, namely the patriarchal nature of society at the time, many jurists have interpreted this verse as the superiority of men over women in mental and physical abilities. For this reason, in their view, "Qawāmūn" means the presidency and power of a man over a woman (Hibri, 2000, p. 64).

Criticizing this patriarchal interpretation, Aziza Hibri states that the divine logic in the Qur'an and its centrality in Islamic teachings invalidates any superiority in family and social affairs. As a result, this patriarchal interpretation of this verse is incorrect (Hibri, 2000, p. 65). Another thing is that due to the change in the circumstances and the reasons for issuing this ruling at the present time, inferring such a meaning from the verse has no meaning.

Criticism: Alimony is a Shar'ī and Qur'anic ruling that is obligatory for a man to pay and has nothing to do with the superiority of a man over a woman. Assuming the Hibri's theory on feminism was correct, neither man nor woman was required to pay alimony to another because of all-out equality. While this matter is in clear contradiction with Qur'anic verses.

Prescribing Polygamy

According to Aziza Hibri, polygamy is one of the most challenging topics in Islamic law for Western scholars. But Hibri claims that the Qur'an prefers monogamy. In this regard, he explains and interprets the verse in question to prove polygamy until he proves that it does not imply polygamy and therefore the correctness of monogamy: (If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice) (Nisā'/3)

Muslim jurists argue with this verse in prescribing polygamy if justice is observed between them. However, such an interpretation is not consistent with the first part of the verse. Because the first part of the verse stipulates the condition of polygamy as justice and good behavior with orphans. The last part of

the verse also states that justice is in monogamy (Hibri, 2000, p. 66). Therefore, according to the beginning and the ending of the verse, proving polygamy contradicts the provisions of the verse. Also with this in mind, this verse is related to orphans and the reason for its legislation is the same. Therefore, by changing the conditions, polygamy is not proven.

It was stated that this verse considers justice as a condition for polygamy. But with observing another verse such a condition is not possible: (Ye are never able to be fair and just as between women, even if it is your ardent desire: But turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air). If ye come to a friendly understanding, and practice self-restraint, Allah is Oft-forgiving, most Merciful) (Nisā'/129)

According to this verse, men cannot establish justice between their wives. Therefore, according to "Nisā': verse 3" which requires men to do justice in case of polygamy, the prescription of this matter is eliminated. Because this verse (Nisā': 129) recognizes men as lacking such ability (Hibri, 2000, p. 66).

As a result, according to Aziza Hibri, the Qur'an prefers monogamy to polygamy. However, it is important to note that polygamy is not prohibited according to Qur'an if justice is done and the ability to do so is observed.

Criticism: In Shia narrations, the inability of a man to observe justice between his wives has been interpreted as a matter of sensuality (Nisā': 129) (Kulaynī, 1407, vol. 5, p. 363). Because love is of things that is not in human ability and therefore is not commissioned to do it. However, observing justice in other matters, such as alimony, is in the power and ability of human beings and is obligatory for it (Alam al-Huda, 1998, vol. 1, p. 170).

This point is also confirmed at the continuation of the verse: (But turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air).) (Nisā'/129)

Because the inability of justice to have desire has been interpreted as a carnal and heart thing. As a result, such Qur'anic verses do not contradict each other and it cannot be concluded from them that polygamy is not prescribed.

Getting Married to Non-Muslims

According to Aziza Hibri, marriage to other religions is a daily reality in the global village. Islam respects both Judaism and Christianity. Therefore, marrying a Muslim man to a woman of these two religions is not a problem and is not forbidden. But the issue is on the marriage of a Muslim woman to a Christian or Jewish man (Hibri, 2000, p. 68). Muslim jurists agree that such a marriage is invalid and illegal. They prescribe the marriage of a Muslim men to other religions' women according to the following verse:

(This day are (all) things good and pure made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them. (Lawful unto you in marriage) are (not only) chaste women who are believers, but chaste women among the People of the Book, revealed before your time, when ye give them their due dowers, and desire chastity, not lewdness, nor secret intrigues. If anyone rejects faith, fruitless is his work, and in the Hereafter he will be in the ranks of those who have lost (all spiritual good).) (Mā'idah/5)

If Muslim women get married to Jews or Christians, their faith may be affected and they may no longer have a free choice of religion (Hibri, 2000, p. 68). For this reason, not marrying non-Muslims is for ideological support of Muslim women (Hibri, 2000, p. 69).

Given the debate over the causes of Shari'a, the question is whether the cause of the ruling on the sanctity of marriage of Muslim women with non-Muslims still remains? In answer to this question, it should be noted that in Islam, parents have a divine responsibility to guide their children religiously (Hibri, 2000, p. 69). Therefore, the following verse indicates the religious education of children:

(O ye who believe! save yourselves and your families from a Fire whose fuel is Men and Stones, over which are (appointed) angels stern (and)severe, who flinch not(from executing)the Commands they receive from Allah, but do(precisely) what they are commanded.) (Tahrim/6)

And the following prophetic hadith also explains this further:

"كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ."⁵

(Majlisī, 1403, vol. 72, p. 38)

(Hibri, 1993, p. 24). But marrying Jews and Christians would be impossible, especially in non-Muslim communities. Evidence of this is the children of Muslim men in marriage with non-Muslims, whose religious and Islamic upbringing is not possible and becomes very difficult (Hibri, 2000, p. 69).

As a result, Aziza Hibri accepts the views of Muslim jurists on the sanctity of marriage with non-Muslims, but emphasizes that their principles and arguments in this regard should be reviewed and criticized (Hibri, 2000, p. 69).

Criticism: The argument for the surah "Mā'idah: verse 5" in the sanctity of Muslim women marrying the People of the Book is correct. Because that verse uses feminine words, namely "The virtuous faithful women." As a result, the prescription of the verse refers to the faithful women of the Book and has nothing to do with their men marrying Muslim women. Therefore, Hibri's criticism to the jurists is not correct in this regard.

Another thing is that in Shia narrations, if it is possible to marry a Muslim woman, it is forbidden to marry the People of the Book:

« إِذَا أَصَابَ الْمُسْلِمَةَ فَمَا يَصْنَعُ بِالْيَهُودِيَّةِ وَ النَّصْرَانِيَّةِ.»

(Kulaynī, 1407, v. 5, p. 356) If a Muslim man insists on such a thing, he should forbid his wife, who is the People of the Book, from drinking alcohol and eating pork, and be aware that in any case, such a thing will cause a defect in his religion:

«إِنْ فَعَلَ فَلْيَمْنَعُهَا مِنْ شُرْبِ الْخَمْرِ وَ أَكْلِ لَحْمِ الْخَنزِيرِ وَ اعْلَمْ أَنَّ عَلَيْهِ فِي دِينِهِ فِي تَرْوِيحِهِ إِيَّاهَا عَصَاةٌ.»

⁵ This hadith has been mentioned in Sunni sources with a little difference:

« ... فالإمام يسئل عن الناس و الرجل يسئل عن اهله و المرأة تسئل عن بيت زوجها و العبد يسئل عن مال سيده.»
(Suyūfī, 1404, v. 3, p. 69). There are other narrations in this context:

« ... فأعدوا للمسائل جوابا قالوا و ما جوابها قال اعمال البر.»

(Suyūfī, 1404, v. 3, p. 69). Hence, this hadith in Shia and Sunni is a general rule that is one of the reasons for the necessity of religious education of children. These additions have entered only in a Shia source (Ibn Abi Jumhūr, 1405, v. 1, p. 129) that is apparently derived from Sunni hadiths.

(Kulaynī, 1407, vol. 5, p. 356). Because "Ghaḍāḍah" means loss and humiliation (Ibn Manẓūr, 1414, vol. 7, p. 198).

Therefore, the religious reason for the sanctity of marriage with the People of the Book is the same for men and women, and there is no difference in this regard. As a result, Aziza Hibri's view on prescribing this to men and not prescribing it to Muslim women is incorrect. Because the Shar'ī cause of the problem includes both.

The Authority of Man in Divorce

Divorce is relatively simple in Islam, and it is inferred from a Qur'anic verse that spouses either live well together or separate from each other with kindness: (A divorce is only permissible twice: after that, the parties should either hold together on equitable terms, or separate with kindness.) (Baqarah/229)

There are several types of divorce in Islamic law. The standard method of divorce is that a man has the right to divorce his wife and can divorce her. Because the authority to divorce is with him (Ibn Babawayh, 1413, vol. 3, p. 495).

In some cases, such as domestic violence, a woman can file for divorce. Ṭalāq Khal' is another right that Islam has set for women. According to it, a woman get divorce by returning the amount of dowry or other money to her husband (Hibri, 2000, p. 70).

According to these cases, Islamic jurisprudence and law in the field of divorce is very patriarchal and is in their favor. Therefore, they should be critically reviewed (Hibri, 2000, p. 71). Because the right to divorce is considered for men and even in Ṭalāq Khal', the woman must satisfy the man by giving her property.

Criticism: According to the Holy Qur'an, the right to divorce is for men and the authority is with him. Because the Qur'an addresses men in the position of divorce because of the verse: (But if their intention is firm for divorce, Allah heareth and knoweth all things.) (Baqarah/227)

According to the divine logic in the Qur'an, according to Hibri, the existence of such verses, including the right to divorce, indicates a legal difference between men and women, not a proof of the superiority of men over women.

Conclusion

The basis of Aziza Hibri's theory about the legal system of women in the family is based on two principles:

Monotheism in the Qur'an: According to this principle, Hibri concludes the equality of men and women in all Shar'ī rulings. Because God created man and woman from one soul and therefore their creation is the same. Considering that the Creator is also the legislator (according to Hibri's theory), Qur'anic verses have specified the legal system of men and women in many cases.

'Ilal al-Sharāyi' and Reasons for Legislation of Rulings: According to this principle, Hibri states that the Qur'an was revealed in the time of the pre-Islamic Arabs and its temporal-spatial conditions. Hence, by changing them, the divine rulings also undergo changes and transformations. However, according to Shia hadīthī-jurisprudential principles, this theory is the same as satanic logic, and the divine

rules are permanent and unchanged. As a result, Hibri becomes entangled in a satanic logic in the interpretation of this theory.

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