

# SUDANWORKINGPAPER



## Women's equal rights and Islam in Sudanese Republican thought: A Translation of Three Family Law Booklets from 1975, Produced and Circulated by the Republican Sisters

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Introduction by Asma Mahmoud Muhammed Taha

**SWP 2015: 5**



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## Foreword by Liv Tønnessen and Samia al-Nagar<sup>1</sup>

This paper includes a translation of three booklets produced by the Sudanese Republican Sisters in commemoration of International Women's Day in 1975: (i) *Women Rights in the Constitution and under Sudanese Sharia Laws*, (ii) *Divorce Is Not an Original Precept in Islam*, and (iii) *Polygamy Is Not a Principle of Islam*. The booklets give insights into radical views on women's equal rights in Islam long before the term "Islamic feminism" started to circulate. The booklets tackle contested issues within the realm of women's rights and Islam related to marriage, divorce, and polygamy. At the time of the booklets, women's rights within the family were dealt with according to judicial circulars developed by the religious clergy. It was not until 1991 that the Sudanese state introduced a codified Muslim family law or personal status law.<sup>2</sup> According to the Republican Brothers, these judicial circulars regulating women's civil rights contradicted the 1973 constitution, which guaranteed equality before the law, because they (among other things) allowed polygamy and stipulated a wife's obedience to her husband. In 1975, when Republicans circulated these booklets, Sudan's women's movement was more busy advocating equal pay for equal work than demanding equal rights within the private sphere of the family. The mobilization for equality in the family during the 1970s was left solely to the Republican Brothers and Sisters. In fact, in 1975 these groups made a plea to the feminist movement to address the stark gender inequalities within Sudanese family law. The booklets translated in this publication were used by the Republican Sisters during the 1970s to share a feminist interpretation of Islam and to contribute to the transformation of Muslim women in Sudan. The booklets were used as educational material for mobilizing women to resist gender inequality and injustice in the name of Sharia.

The feminist Islamic interpretations that form the basis of these booklets are from the thinker, founder, and leader of the Republican Brothers, Mahmoud Mohamed Taha, who was executed for apostasy in Sudan in 1985. Taha's interpretation of Islam is based on the Qur'anic distinction between the verses revealed to the Prophet Muhammad in Mecca and those revealed after his migration to Medina. Taha wrote his most famous book, *The Second Message of Islam (Al-Risala al-Thaniya min al-Islam)*, in 1967, stressing that the message revealed in Medina is inferior to the message revealed in Mecca, which is universal and has everlasting application.

In demonstrating the historicity of the Medina verses and the limitations of the verses' religious authenticity, Taha focused on the specific issues of women's rights and argued for gender equality before the law. The verses of the Qur'an that (i) describe a woman's position of subservience to her father, brothers, and husband; (ii) allow men to marry four wives; (iii) regard a woman's testimony as half as credible as that of a man; and (iv) limit a woman's right to inheritance were all part of the verses revealed to the Prophet in Medina. Taha viewed *Surat An-Nisa* (the chapter on women) in the Qur'an, which contains many of the restrictions imposed on women in Islamic society, as part of a version of early Islam that is reflected in the Medina verses. The Qur'anic verses revealed in Mecca, on the other hand, grant women and men equality before God and under Islamic law. In 1976, Taha wrote,

The Second Message of Islam lifts women to an equal status with men in all fields. But the field in which the effect of this advancement of women is paramount is the field of marriage laws. Here the Second Message of Islam redefines marriage, on the legal plane, as a contract

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<sup>1</sup> This study has been financed by the Norwegian research Council on the project Caught between Rape and Adultery and Assisting Regional Universities in Sudan and South Sudan (ARUSS) financed by the Norwegian Embassy in Khartoum.

<sup>2</sup> The terms family law and personal status law are used interchangeably throughout the paper.

between two equal partners, entered upon by their own free will, with equal rights for both partners for equivalent duties, and dissolved, should the need arise, by agreement between them.

Spelled out, this means that there is no longer any guardian who signs the marriage contract on behalf of the bride. Instead, the bride signs for herself. Also the right of divorce will be equally shared by the couple. . . .<sup>3</sup>



*Mahmoud Muhammed Taha (from Asma Mahmoud Muhammed Taha's private photo collection).*

Asma, the daughter of Mahmoud Muhammed Taha has written the introduction to the three translated booklets. On January 18, 2010, she opened the Ustadh Mahmoud Mohamed Taha Cultural Center. The date is the anniversary of her father's execution for apostasy. The center, which has recently been closed down by the Sudanese government, was located in his former residence in Omdurman. Asma

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<sup>3</sup> Mahmoud Muhammad Taha, "The Situation of Women in the Second Message," in An Introduction to the Second Message of Islam (Republican Brothers, 1976), available on the website of The Republican Thought, [www.alfikra.org/books\\_e.php](http://www.alfikra.org/books_e.php).

returned to Sudan following the peace agreement in 2005, and after many years in exile, to continue her father's work and to propagate his views on women's equality. In an interview in 2009, she said,

I think I am lucky. It is nothing special about me to be the daughter of Mahmoud Mohamed Taha. Other people are smarter than me, kinder and better than me. I found myself his daughter. I am doing my best to be at the standard of what my father was advocating especially for women's rights and equality. It is hard to struggle for equality and human rights. Many people asked Ustadh Mahmoud Mohamed Taha about his books and publications. He answered that his books are his daughters. I try to be one of these books; to convince the community that there is no difference between men and women. If my father had a son, I am sure we would have done the same. We were raised that way, raised to not let any man look at us and make us look down to the ground. It makes it easy for me to go through life, to live these teachings.<sup>4</sup>

We are honored and grateful towards Asma for providing us with these booklets and allowing us to translate them into English.<sup>5</sup> We are also grateful for the pictures she generously provided us from her private photo collections.

The translations started almost a year ago and it has not been a straightforward process. For the translation of Qur'anic verses, we have relied on existing sources, as neither of us are trained in the art of Islamic interpretation and translation. This sometimes got us into difficulties, as Republicans are fighting the classical Islamic jurisprudence (*fiqh*) upon which many translations rely heavily. We have therefore used these translations with a critical eye, and we take full responsibility for any errors. Throughout the process, we have been eager to convey the message as it was intended by its authors – in the context of Sudan of the 1970s. We have added some explanatory footnotes throughout the paper in order to explain the context in which the Republican advocacy must be placed. It became rather difficult to go about conveying the overall message of the booklets using a word-by-word translation. Since the booklets were written for the purpose of awareness raising for Sudanese grassroots women and men, the original texts contain many repetitions, especially concerning the overall message of the Republicans regarding their new conception of Islam. We have taken the liberty of omitting some of these repetitions in order to increase readability.

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<sup>4</sup> Interview with Asma Muhammed Taha (2009).

<sup>5</sup> The booklets have been translated by Samia al-Nager and edited by Liv Tønnessen. We have aimed to convey the overall message of the booklets rather than a word-by-word translation.

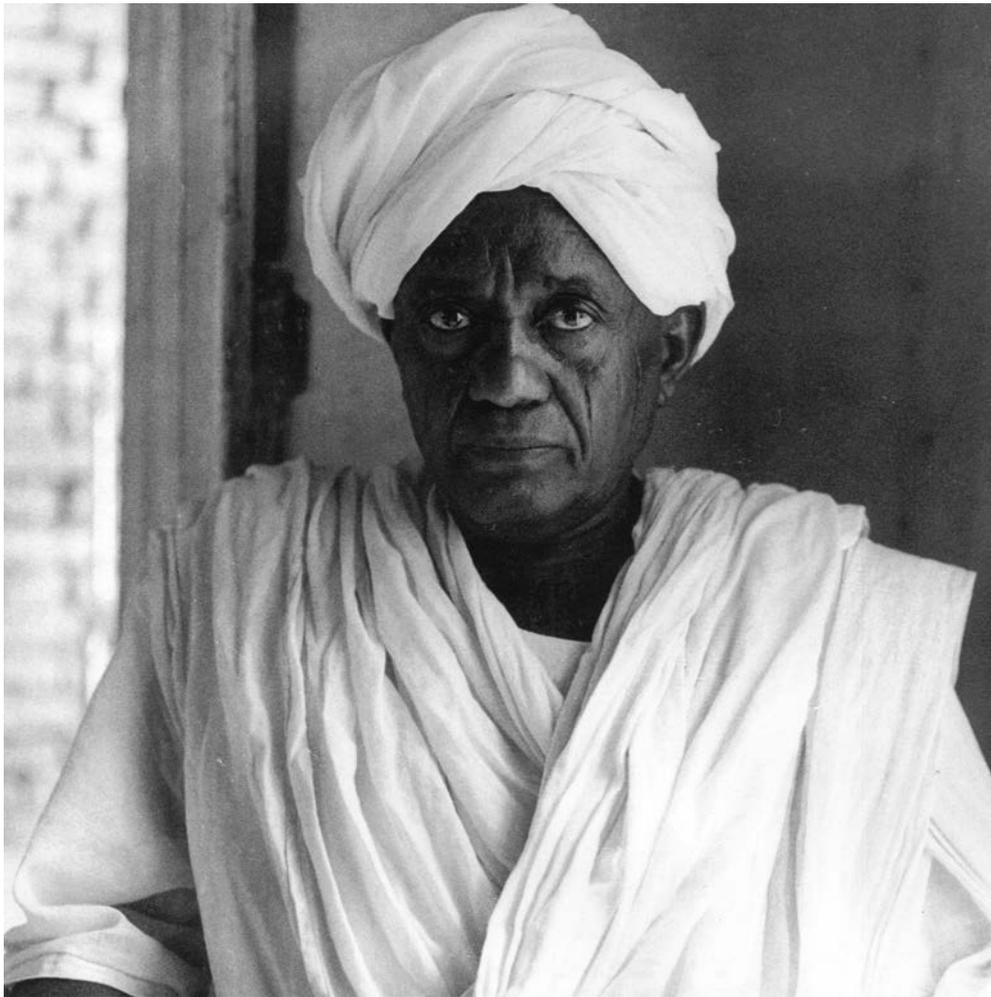
## Introduction by Asma Mahmoud Muhammed Taha

This is a translation of three booklets on women's rights published in Arabic by the Sudanese Republican movement. They were selected from a series of 16 booklets written and widely distributed throughout Sudan by the Republican Brothers and Sisters in 1975 – the International Women's Year.



The Republicans are disciples of the late Ustadh Mahmoud Mohamed Taha, who was a Sudanese radical thinker and Islamic reformer executed in 1985 during the rule of Jaafar al-Nimeiri (president from 1969 to 1985). Al-Ustadh Mahmoud Mohamed Taha was executed by hanging for apostasy, based on a leaflet distributed by the Republicans that opposed the introduction of Sharia laws in Sudan in 1983. That leaflet stated that the “September Laws” – a term used by Ustadh Mahmoud to dissociate Sharia from the 1983 laws – represented a misinterpreted and distorted version of Islam. Moreover, the Republicans argued that the September Laws violated international human rights as well as the Sudanese constitution of 1973 because they discriminated against Sudanese citizens based on religion, race, and gender.

Mahmud Mohamed Taha was born in 1909 in the town of Rufaa in central Sudan. He was one of the few students who graduated from primary school and made it to country's only secondary school – Gordon Memorial College. He graduated in 1936 from that college's survey school and then worked as an engineer at Sudan Railways Corporation in the town of Atbara. He was very critical of the British colonial rule. In 1941 he resigned and worked as a freelance engineer. He joined the national movement against British colonial rule and was vocal in political forums. Al-Ustadh and other intellectuals who agreed with his criticism formed the Republican Party in October of 1945. The organization's first publication and subsequent pamphlets and leaflets reflected a strong modernist Islamic orientation which, at the time, was not yet fully developed. The party's policy of direct and open confrontation with the colonial authorities led to the arrest and subsequent imprisonment of al-Ustadh Mahmoud Mohamed Taha in 1946.



*Mahmoud Muhammed Taha (From Asma Mahmoud Muhammed Taha's private photo collection).*

In 1951, al-Ustadh developed a comprehensive new conception of Islam. He summed up that understanding in a book published in 1952 under the name *This is my Path (Qul Hadha Sabieli)*. The Republican Party was then transformed from a political party, in the usual sense of the term, into an organization for the propagation of al-Ustadh's new conception of Islam. Those members of the party who wanted to pursue a more secular political role broke away and joined other political parties. For those who remained with the Republicans, the organization became a spiritual environment under the guidance of al-Ustadh Mahmoud Muhammed Taha.

Both male and female members of the organization continued to propagate the new conception of Islam, despite harassment by some officials and members of the security forces. Since it was crucial to Ustadh Mahmoud Mohamed Taha that he should practice what he preached, he established a community, which applied (as far as possible) the main tenets of his vision of Islam. As a small community within Sudanese society, the Republicans were unable to implement their beliefs fully under the rule of an Islamizing state, but they strove to lead their personal lives and organize their own community in accordance with those beliefs whenever possible. In particular, the community largely succeeded in applying the principles of equality between men and women, without discrimination on grounds of gender. Women members participated fully in all the group's activities, and they were often leaders of activist groups on university campuses, in public parks, and on street

corners – a highly controversial practice in the Sudanese patriarchal society at the time. This was such a hallmark of the movement that when the organization's leadership was detained without charge in mid-1983, four women were among those held.

The Republicans celebrated the International Women's Year in 1975 by publishing 16 small booklets based on Taha's Islamic thinking. Three of these booklets are translated from Arabic to English in this working paper. They were written by the Republican Sisters, but firmly founded in the new concept of Islam developed by Ustadh Mahmoud Muhammed Taha.

Ustadh Mahmoud Muhammed Taha developed a radical and new concept of Islam based on the Qur'anic distinction between the verses revealed to Prophet Muhammad in Mecca and those revealed after his flight to Medina, that is, between the first and second messages of Islam. In *The Second Message of Islam (Al-Risala al-Thaniya min al-Islam)*, Taha presents a dichotomous perspective that combines the historical and the ahistorical: whereas the first message of Islam is "present-oriented" and shaped by the historical context of seventh century Arabia, the second message is "future-oriented" in that it responds to the needs of a society today. According to Mahmoud Muhammed Taha, the limitations of the first message are evident with regard to issues of women's rights.

In Mecca, the birthplace of Islam, the Qur'anic verses addressed women as equal to men in society, which was a radical departure from social norms of that time in which women and girls were basically treated as men's property. In fact, it was common to kill an infant girl in fear of shame and/or economic burden. The ideas of gender equality revealed in the Mecca verses were distant from the societal practices and gender relations at the time. The Mecca verses are, according to al-Ustadh, the second message of Islam.

When the Prophet Mohamed (peace be upon him) migrated to Medina, where he established the first Muslim state, another level of the Qur'an was revealed. This is the first message of Islam. While less radical than the Mecca verses, the verses revealed in Medina were a huge leap forward for women within Arabian culture and society at the time. For example when it came to inheritance rights, a woman went from being seen as men's property to gaining inheritance rights, albeit half of that of her brothers. However, these verses do not express equality between the genders: men were still seen as the guardians of women, a man could marry up to four wives, men had the right of divorce while women did not, and the testimony of two women equaled that of one man. Although these verses must be understood as a step forward within the context of seventh century Arabia, today we regard them as highly discriminatory towards women. It is the Medina verses that much of the classical Islamic jurisprudence (*madhhabs*, or law schools) is built upon and which is generally referred to as "Sharia" or "Islamic law" in the contemporary Muslim world. Most of the personal status laws or family laws in the Muslim world today are based on the Medina verses and, as a consequence, they preach inequality and grant men guardianship over women.

The main message in the booklets translated for this publication is that it is high time to challenge the Qur'anic verses revealed in Medina and thus the classical interpretation of male jurists in the seventh century Arabia. Are the Medina verses applicable in today's world? The answer from the Republicans is "No." According to al-Ustadh Mahmoud, the Mecca verses that emphasize equality between men and women are more suitable for modern day society and should be reinstated.<sup>6</sup> This new way of thinking around women's rights and Islam creates a space for radical legal reforms, including, among other things, those involving women's civil rights within the family.

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<sup>6</sup> For more details, visit the website of The Republican Thought at [www.alfikra.org](http://www.alfikra.org).

# 1. Booklet 1: Women Rights in the Constitution and under Sudanese Sharia Laws

حقوق المراه في الدستور وقوانين الشريعة

## 1.1 Dedication

This booklet is addressed to both women and men.

For women it says: "For how long will you abandon claiming your rights for a decent life and equality with men? The gates of heaven have been opened for you. Wake up; you have been sleeping for so long."

For men it says: "Today the earthly factors and heavenly factors have joined in honoring women and liberating them. Thus, when will you rise up to take responsibility towards yourselves, women, and children? A woman's dignity is a man's dignity."

## 1.2 Preface

Our work as Republicans has been, and will continue to be, about defending women's rights. We believe that to support the oppressed and vulnerable people is the most important task. The Holy Qur'an says, "And we wanted to confer favor upon those who were oppressed in the land and make them leaders and make them inheritors."<sup>7</sup>

Our work during International Women's Year is representative of our continuous advocacy for women's rights. The aim in this booklet is to draw the attention of those who do not share our concern for women's rights. As the International Women's Year 1975 is ending, we call upon all people to pay attention to this important issue. We especially appeal to the Sudanese Women's Union, as the formal mechanism taking responsibility for defending women's rights, to pay attention to the personal laws.<sup>8</sup>

The Sudanese Women's Union should claim the rights granted to women in the Constitution of 1973 that have yet to be implemented. Article 3 of the Constitution stipulates, "Sudanese people are equal in rights and duties, and no distinction/discrimination among them should be made on the basis of race, local homeland, gender, language or religion." The article that grants that women have equal rights with men conforms perfectly with the intentions of Islam. Women are equal to men in rights as long as they fulfill their duties and responsibilities. The Holy Qur'an says,

*And women shall have rights similar to rights against them, according to what is equitable. But men have a degree over them. And Allah is Exalted in Might and Wise.*<sup>9</sup>

<sup>7</sup> Qur'an 28:5. All translations of the Qur'an are provided by Sahih International.

<sup>8</sup> The Sudanese Women's Union (*Al-Ittihad al-Nisa'i*) was established in 1952. The Union's primary objectives included advocating for political, educational, and economic rights for women. As the Union developed, it became closely linked to the Sudanese Communist Party. Women's rights within personal law were not put on the agenda of the Union. (This footnote does not appear in the original booklet.)

<sup>9</sup> Qur'an 2:228. This translation is not from Sahih International.

Our interpretation of this verse is as follows: When the duties and responsibilities of a woman increase, so should her rights. The part of the verse “men have a degree over them” does not mean that women should be discriminated before the law. It also must not be understood to mean that any man is above any woman, since there are many women who are better than many men. For example, women are free to choose their husbands and have the right to decide to divorce whenever they believe it is impossible to stay in the marital relationship. Women should claim their equal rights to lead a decent and dignified life, as guaranteed in the 1973 Constitution and supported by religion.

The personal laws are exploitive and demand the domination and control of men over women. These laws are in fact unconstitutional because they consider men as protectors and maintainers of women and because they differentiate between women and men in their rights. In Sharia courts [courts that enforce personal laws] in Sudan, a woman is considered half of a man in testimony and in inheritance. A woman is in fact a quarter of a man in marriage, since a man has the right to marry four wives. Moreover, a man has the supreme right to divorce by unilateral repudiation, as well as to reject a wife's petition for divorce and forcefully subject the wife to the “house of obedience.”

The question we ask is this: how can the constitution be valid while these discriminatory laws are implemented in Sharia courts? There is an apparent contradiction between the basic religious principles enshrined in the Constitution, on one hand, and the rigid and inhumane personal laws, on the other hand. The responsibility for this contradiction falls upon Shaikh Eljzoli, the Vice President of the Supreme Court, who judges on constitutional issues; at the same time, he is in charge of applying the personal laws that are alarmingly unconstitutional.

Once again, we appeal to the Sudanese Women's Union, on the occasion of International Women's Year 1975, to strongly demand and fight for the constitutional rights of women that are found in and supported by the Holy Qur'an. We think the Sudanese Women's Union should strive to remove this contradiction between the Constitution and the personal laws by initiating a constitutional court case as well as by spreading awareness among men and women.

### 1.3 Women and the Personal Status Laws

This This is our eleventh publication in the occasion of the International Women's Year (1975).

In this publication, we deal with the personal laws, which are the most essential pieces of legislation determining women's freedom and their equality with men. Present day personal laws must be reformed to fit the status and needs of modern Muslim women.

To facilitate reform, women leaders must voice their understanding of these laws governing the relationships between men and women. They should also study the duties and rights of women in Islam and compare them to their rights in the 1973 Constitution as well as to other secular civil laws. Women leaders must also be aware of the solutions that we, the Republican Brothers and Sisters, provide as alternatives to the “Sharia” that is currently practiced. Sharia and classical Islamic jurisprudence are not the same. What the Sharia courts are currently practicing is not Sharia, but fiqh, or classical Islamic jurisprudence<sup>10</sup>

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<sup>10</sup> Sunni Islam has four schools of legal jurisprudence: the Hanafi, Maliki, Shafi'i, and Hanbali schools. The Hanafi school of thought was headed by Imam al-Nu'man ibn Thabit (Abu Hanifa), who lived from 80H to 150H. The Maliki school of thought was headed by Imam Malik ibn Anas al-Asbahi, who lived from 93H to 179H. The Shafi'i school of thought was headed by Imam Muhammad ibn Idris al-Shafi'i, who lived from 150H to 198H. The Hanbali school of thought was headed by Imam Ahmad ibn Hanbal, who lived from 164H to 241H. (This footnote does not appear in the original booklet.)

The Republicans believe the Qur'an has two levels. One of the levels advocates equality between men and women (the Mecca verses). The other level differentiates between the rights of men and women and calls for the guardianship of men over women (the Medina verses). Islamic jurisprudence is based on the Medina verses in the Qur'an. We call for application of the basic principles of Islam that are found in the Mecca verses of the Qur'an, which invite equality, peace, social justice, economic equality, and individual freedom.

#### 1.4 Women Rights in Islamic Jurisprudence (*Fiqh*)

There is no doubt that Islam in its basic principles, found in the Mecca verses of the Qur'an, has honored women and has given them rights equal with men. But in its Medina verses, upon which classical Islamic jurisprudence builds, Islam has discriminated against women and granted men domination and control over women. These verses declare that any man, regardless of his level of thinking and education, is in charge of any woman, regardless of her level of thinking and education. According to the Medina verses, God has granted men guardianship over women. Women are in a subordinate status to men. This is exemplified in the following Medina verse:

Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance – [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand.<sup>11</sup>

Further, a woman gets half the share of her brother in inheritance because the man is supposed to spend his inheritance to maintain his family. Also, in court, as derived from the following Medina verse, the testimony of one man equals the testimony of two women:

And bring to witness two witnesses from among your men. And if there are not two men [available], then bring a man and two women from those whom you accept as witnesses – so that if one of the women errs, then the other can remind her. And let not the witnesses refuse when they are called upon. And do not be [too] weary to write it, whether it is small or large, for its [specified] term.<sup>12</sup>

The justification for this discrimination, according to this verse, is that a woman has no opportunity to develop an independent personality/mind. Thus, there might be mistakes in a woman's testimony.

In classical Islamic jurisprudence, a man has the right to divorce his wife at any moment without any condition or restriction, whereas a woman does not have the right to divorce. A wife has to live with her husband no matter what. If she is suffering from life with him, she is forced to live with him, as long as he is fulfilling his duties towards her. These duties are confined to providing the minimum food, housing, and necessary clothing. In addition, Islamic jurisprudence gives men the right to discipline women. This is based on the Medina verse that stipulates the man's right to beat his disobedient wife:

So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance – [first] advise

<sup>11</sup> Qur'an 4:34. Chapter 4 of the Qur'an deals specifically with the role of the woman (*an-nisa*).

<sup>12</sup> Qur'an 2:282.

them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand.<sup>13</sup>

As we have already stated earlier in this booklet, the Qur'an has two levels. The Medina verses, which we refer to above, belong to the level of historical or early Islam. Following the violent rejection by the Meccan society of his progressive teachings, Prophet Mohammed migrated to Medina. As seventh century Arabian society was not ready for the equality principles revealed in the Mecca verses, the Medina verses are more attuned to the social norms at that time. The Meccan society was simply unable to live up to the standards of the Prophet and the Mecca verses that support principles of human rights. The Medina verses fit a seventh century Arabia that – up until the revelation of the Qur'an – was referred to in Islamic history as “the age of ignorance.”

Against the backdrop of the social norms during this “age of ignorance,” the Medina verses were reasonable. For example, while men used to work outdoors through physical labor and spend their means on their families, women typically stayed at home to care for the children. A woman did not venture outside of the home, except on a few occasions. The guardianship verses and regulations based upon the Medina verses above can be considered suitable in light of such a work division between the two genders. Also, women in this unrefined seventh century Arabian society did not have the opportunity to acquire experience in public life to strengthen their character. It was thus neither unreasonable nor unfair to consider the testimony of one man equal to that of the testimonies of two women.

Considering that men were polygamous and a girl child could be buried alive in fear of poverty or dishonor, the Medina verses were a step forward for Muslim women. From having no inheritance rights, she gained half the inheritance of her brother. While it might be considered reasonable in the context of seventh century social norms, should this subordination be the ultimate and final goal desired for Muslim women? Classical Islamic jurisprudence builds upon the Medina verses, and this jurisprudence is no longer fitting for today's contemporary societies. Muslim scholars have made a colossal mistake when they have taken the classical Islamic jurists' opinion as the final word of Islam on women's rights. They have therefore not been able to reconcile Islamic texts with social changes in modern day societies, particularly regarding social changes in women's rights and duties. The more advanced the status of women becomes, and the greater their social involvement, the more apparent the contradiction with these restrictive laws based on classical Islamic jurisprudence becomes.

Classical Islamic jurisprudence should not be accepted as the last and final word of Islam on the issue of women's rights. There is an alternative interpretation and solution found within Islam. The Republicans believe the solution is found in Mecca verses within the Qur'an. These verses underscore equality between men and women are more suitable for modern day society and should be reinstated. And our new conception of Islam should entail new personal laws that fits contemporary Muslim women.

## 1.5 Classical Islamic Jurisprudence and Personal laws

The main sources of Islamic jurisprudence are the Qur'an and Sunnah (sayings and practices of Prophet Mohamed). When there is no direct script to a particular question or problem, jurists derive the required answer through deduction based on similar cases – a process called *qiyas* (“deductive analogy”). When *qiyas* is not possible, the jurists provide a thoughtful answer based on independent reasoning that conforms to the spirit of religion; this approach is called *ijtihad*. Unfortunately, in the

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<sup>13</sup> Qur'an 4:34.

attempt to find solutions for the rights of women – through *ijtihad* – contemporary Muslim clerics have produced a set of backward laws. What is referred to as Sharia law in contemporary Muslim societies is not only degrading to women's rights, but also falls outside the spirit of the religion. Islamic jurisprudence is rigid and humiliating for women, even if measured against the unrefined seventh century society in which the Mecca verses were revealed, let alone if seen through the demands of modern social life.

To demonstrate this, we will mention some of the jurists' opinions on women's rights regarding personal laws. To start with, the jurists' conception of the marital bond is extremely archaic, backward, and futile. A good example is the definition of marriage in one of the Islamic jurisprudential sources; it says, "marriage is a contract for having pleasure with a woman," while the Qur'an has described this holy relationship as follows:

And of His signs is that He created for you from yourselves mates that you may find tranquillity [sic] in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.<sup>14</sup>

The regulations proposed by the Muslim jurists on how to organize Muslim marriages are disrespectful and degrading to women and far away from the essence of religion. For example, the four Sunni Islamic law schools have unanimously agreed that if a wife becomes sick, medical treatment is not the husband's responsibility. Although he is obligated to provide alimony (*nafaqa*), the husband is not obligated to pay the cost of her medical treatment as part of this obligation. Some jurists go even further in this reasoning, saying that if a wife becomes sick, the husband can deprive her of her right to alimony. According to the four law schools, the alimony provided by the husband is conditioned upon the provision of pleasure by the wife. Since the sick wife has no capacity to grant the husband pleasure, she may be deprived of financial support. In fact, he may return the sick wife to her father's family for not performing her duty as conditioned in the marriage contract. The Hanafi law school has specified that the husband is required to grant his wife a handful of food and water for cleaning and washing only when she pleases him in bed, and she may only be excused for reasons such as the monthly period.

The costs of coffee, tea, and other similar items are not part of what the husband is obliged to provide. Jurists have reached no consensus on the fees for a midwife to assist a wife during childbirth. However, some of them have argued that a husband is bound to pay some of the fees, while others disagree, saying that the wife is bound to pay for any expenditure above and beyond basic food and housing. The Maliki school emphasizes that the husband is not required to satisfy his wife's abnormal appetite for food. Some jurists have also stated that the husband is not even obligated to provide a coffin for his wife when she dies.

These are examples of the views that emerge from classical Islamic jurisprudence and reflect a disrespectful, scornful, and disdainful outlook of Islamic jurists about the most precious and holy relationship, namely, marriage. Their views convey the backwardness of their thinking as compared to the contemporary ideals of our time. The jurists' views not only contradict the essence of the Islam, but they also contradict the simplest common sense perception of the status and role of women in today's world.

We, the adherents of the new Islamic call, reject these conceptions, but it should be blatantly clear that we do not reject religion as such, but only oppose classical Islamic jurisprudence that deviates from

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<sup>14</sup> Qur'an 30:21.

the correct Islamic path. These jurisprudential ideas do not represent the values of Islam; it is the Sunnah (practices of the Prophet Mohammed) and the principles codified from the verses revealed in the Mecca part of the Qur'an that reflect the real religion that suits the needs and standards of our contemporary world.

## 1.6 The Reform of Personal Status Laws Is the Solution

The only solution for Muslim women's rights lies in reform of the personal laws. It necessitates a transition from the Medina Qur'anic verses (that were suitable in a seventh century society) to the Mecca Qur'anic verses, which are more advanced and suitable for modern day societies.

There has been a huge development in society during the past fourteen centuries, in particular when it comes to the position of women. Women have become part of the labor force. Many women have now left the confines of their homes to enter all sorts of jobs and responsibilities. They earn their own money and care for the family, including for their husbands. Women have become judges, engineers, doctors, ministers, and heads of state. In short, women in contemporary Muslim societies are performing the same duties as men. It is unfair and illogical that we apply the same rules and laws that were adopted for the seventh century in today's societies.

The development of Islamic law as advocated by Ustadh Mahmoud Mohammad Taha is based on the distinction between the Mecca and Medina verses: *the former* verses alone are the basis of providing for equality, dignity, and freedom for men and women alike.

Seventh century society was simply not able to comprehend the original and core principles of the Qur'an, and therefore its message was postponed until a more suitable time. In our view, that time has come and that is why we call upon people to apply the core and original principles of Islam today. Both men and women have equal obligations towards Allah, and no one can take the religious responsibility of another. The Mecca Qur'an is full of verses that address both men and women with equal responsibility: "Every soul, for what it has earned, will be retained."<sup>15</sup>

The Holy Qur'an says further,

[“]And every soul earns not [blame] except against itself, and no bearer of burdens will bear the burden of another. Then to your Lord is your return and He will inform you concerning that over which you used to differ.<sup>16</sup>

\* \* \*

Whoever is guided is only guided for [the benefit of] his soul. And whoever errs only errs against it. And no bearer of burdens will bear the burden of another. And never would We punish until We sent a messenger.<sup>17</sup>

These verses express equality in front of God.

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<sup>15</sup> Quran 74:38.

<sup>16</sup> Qur'an 6:164.

<sup>17</sup> Qur'an 17:15.

The principle of equality also applies to marriage. Paying a dowry (*mahr*) to marry a woman should be abolished. The personal practice of the holy Prophet Mohammed (peace be upon him) is instructive, as he preferred inexpensive dowries, and in some of the marriages of his companions, he accepted only Qur'anic verses as dowry. When he himself married Alsaida Safiiah, he gave her freedom instead of a material dowry, and that teaches us that a woman's dignity and freedom is the only dowry that needs to be paid.



*Photo of the Republican Sisters (From Asma Mahmoud Muhammed Taha's private photo collection).*

## 2. Booklet 2: Divorce Is Not an Original Precept in Islam

الطلاق ليس اصلا في الاسلام

### 2.1 Introduction

This is one of our booklets published on the occasion of the Women's International Year in 1975 in order to draw the attention to problems women and families severely suffer from. In this publication, the fourteenth of its kind, we deal with the problem of divorce in personal law. This law deserves our attention. A woman faces constant fear knowing that the law gives her husband the right to divorce, even the right to do so without her knowledge. He has the right to divorce her whenever he wants with no restrictions.

When we state, "Divorce is not an original precept in Islam," some people misunderstand the phrase to mean that divorce does not exist in Islam. What we mean by this statement is that divorce is not the original intent of Islam and that God does not encourage it. It has been allowed as a last resort when marital life becomes too difficult or impossible. The Prophet Mohammed (peace be upon him) said, "The most hateful, but allowed, practice to God is divorce. Marry and do not divorce, for divorce shakes the throne of God." Religion's basic values desire continuity of the marital bond. And only if marital life becomes unbearable can the spouses exercise the right of divorce as granted in Islam. When practiced, however, Republican Islam offers merciful and humane guidelines and guarantees the rights and dignity of all parties involved in the process.

### 2.2 Divorce in Classical Islamic Jurisprudence

In classical Islamic jurisprudence divorce is exclusively a man's legal right. Men can exercise divorce by repudiation whenever they want with almost no legal restriction. This male privilege has been derived from the following two Qur'anic verses:

O Prophet, when you [Muslims] divorce women, divorce them for [the commencement of] their waiting period and keep count of the waiting period, and fear Allah, your Lord. Do not turn them out of their [husbands'] houses, nor should they [themselves] leave [during that period] unless they are committing a clear immorality. And those are the limits [set by] Allah. And whoever transgresses the limits of Allah has certainly wronged himself. You know not; perhaps Allah will bring about after that a [different] matter.<sup>18</sup>

\* \* \*

Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance – [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand.<sup>19</sup>

<sup>18</sup> Qur'an 65:1.

<sup>19</sup> Qur'an 4:34.

According to classical Islamic jurisprudence, the rights of women are in the hands of men, including their right to basic freedoms. A woman's right to work, her right to socialize, and her basic right to movement and to make choices for herself are controlled by men. Against such a patriarchal gender ideology that stipulates a wife's dependency upon a husband, the man's right to repudiation naturally results in women's constant fear of divorce and family disintegration.

This is because men have abused the right of divorce as stipulated by Islamic jurists in seventh century Arabia. Many men in today's Muslim world often exploit this right in order to maltreat and humiliate women. It is common to find a woman who has been divorced after spending most of her life as a housewife rearing and caring for her children. She typically does not know the reason for why she has been divorced, and the husband does not feel any obligation to inform her. According to classical Islamic jurisprudence, she does not have the legal right to be informed. After the divorce, she is compelled to return to her father's house with her children. Her family will either choose to support her and her children or not to do so, leaving the woman and her children to suffer.

Such situations have forced women to fight for alimony in court. Taking into account that such procedures take years, women as heads of households are forced to find paid labor in order to support their children. The divorced wife thus takes the whole financial burden of the family breakdown, while the husband typically remarries and lives with his second wife without concern for his first wife and children. In addition, a divorced woman suffers from social stigma. She is often placed under suspicion, and even harassed by her peers. It is very difficult for such women to marry again.

The tragic consequences of men's right of divorce, as interpreted by the classical Islamic jurists, are further exacerbated by the "house of obedience."

### 2.3 The Tragic Consequences of "the House of Obedience"

Since the right to divorce is granted to men only in classical Islamic jurisprudence, this means husbands can keep their wives within the marriage bond against their will. A man is granted the right to forcibly keep his wife inside their marital home for as long as he may wish. This has become a means of punishment in situations where the husband knows his wife cannot endure marital life with him. In extreme cases, when marriage becomes like a prison for the woman, she may attempt to escape from the shackles of her husband's house to go live with her parents or with other relatives. In such cases, the husband can file a court petition to force her to go back to her husband's house against her will. The court usually refers to the stipulations of "the house of obedience" law (*bayt al-ta'a*). In accordance with this law, she will be brought back to her husband by the police. The law is named the "house of obedience law" because classical Islamic jurisprudence mandates that the wife obey her husband. Therefore, the court adjudicates against the wife and implements the ruling that she is "disobedient" and must therefore obey her husband and consequently move back to his house. The "house of obedience law" is based on a misinterpretation of the following Qur'anic verse:

Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance – [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand.<sup>20</sup>

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<sup>20</sup> Qur'an 4:34.

The expression “if they obey you” in the Qur’an has been interpreted by classical Islamic jurists to justify the principle behind the “house of obedience law.” Some are of the incorrect opinion that the “house of obedience law” has been abolished in Sudan.<sup>21</sup> What has indeed been abolished is the element of police force, but its adjudication still exists. If the woman refuses to return to her husband, she will be considered disobedient (*nashiz*) and thus will lose the right to alimony in the *idda* period.<sup>22</sup> This was exemplified in the case of Fatma, which was published in *Al-Sahafa* newspapers during the 1970s. Fatma, a young woman, refused to follow the “house of obedience law” court order, and it took five years before she was granted a divorce. During that period she had neither the right to alimony as a wife nor as a divorced woman (during the *idda* period). Women such as Fatma are forced to seek work to support themselves and their children. As many of them do not have an education and have lived their lives as housewives, they may not easily find well paid jobs. But to many women a life of hardship is far better than a life without dignity.

The “house of obedience law” is without a doubt the worst kind of humiliation of women because it allows for the oppression and maltreatment of women. The question is, why do women continue to tolerate these unjust and inhumane practices in the name of Islam? This is the 20th century, and women should fight such discriminatory laws.

## 2.4 Short-term Solution to the Problem of Divorce

As Republicans, we believe that the short-term solution to the problem of divorce is found within classical Islamic jurisprudence itself. The point of departure is identifying positive aspects of the classical jurists’ interpretations of Islamic texts. According to the Hanifi School of Islamic jurisprudence, “when the husband authorizes his wife to have equal rights to divorce, the divorce becomes in her hands as well as in his hands.” Giving women the opportunity to take part in the decision to divorce is based on the following Qur’anic verse:

O you Prophet, say to your wives, “If you should desire the worldly life and its adornment, then come, I will provide for you and give you a gracious release.[”]<sup>23</sup>

This would resolve some problems related to men’s misuse of divorce, provided there were awareness raising efforts for women, so that they could be enlightened about this right. In addition, women’s right to partake in the decision to divorce should be clearly stated in the marriage contract.

Another short-term improvement, taken from classical Islamic jurisprudence, would be to ease the misuse of divorce by making sure divorce takes place in front of two family judges or arbitrators, as noted in the following Qur’anic verse:

And in case you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, is ever Knowing and Acquainted [with all things].<sup>24</sup>

<sup>21</sup> One of the first acts during the military rule of Jaafar al-Nimeiri and the minister of justice at that time, Babiker Awadalla, was to abolish the element of police force in house of obedience cases in 1969. (This footnote does not appear in the original booklet.)

<sup>22</sup> The *idda* is a waiting period after divorce. The *idda* for a pregnant woman is until she delivers her child, and for one who still menstruates, it is three menstrual cycles. For a woman who is either too young or too old to menstruate, it is three months. In the event of divorce, the former husband must continue to support his wife during the *idda* period, during which time she may not marry another man. At the end of her *idda*, the wife is legally free to remarry. If the wife should die during the *idda* period, the husband is responsible for the burial costs. (This footnote do not appear in the original booklet.)

<sup>23</sup> Qur’an 33:28.

The family judges or arbitrators should be religious, wise, just, and of good morals. Also, unlike in the complexities of official court, where judges lack flexibility and compassion towards the spouses, the two family judges should be close relatives who can play a major conciliatory role. The decision by the family judges is binding, as they adjudicate decisively on the family's fate, something that affects the lives of all its members.

Neither the wife nor the husband should use the right to divorce before the arbitration of the two judges, whose role and duty are to facilitate reconciliation between the spouses. If reconciliation fails and one of the two spouses insists on using his or her right to divorce, the two judges do not have the authority to stop the divorce because the decision ultimately lies in the hands of the two spouses. The judges are, however, allowed to state that the reasons given for divorce are insufficient. And if the husband or wife is severely affected by the divorce, the judges may decide on fair economic compensation.

## 2.5 Divorce according to Republican Islamic Principles

Republicans believe that the Qur'an has two levels. It has a primary level that builds on the basic principles that were revealed in the verses of the Qur'an in Mecca, which preach equality and are universally valid. The secondary level builds on the verses of the Qur'an revealed in Medina, which express subsidiary principles that were revealed in the seventh century Arabia to suit the social norms at that time. Although the secondary and subsidiary principles are embodied in classical Islamic jurisprudence, the Republican ideology builds on the primary and original principles of Islam revealed in Mecca.

We accept as evident and true that the basic principles of the Mecca verses fit our contemporary society, as the principles emphasize the rights of freedom for all people without discrimination related to gender. "Every soul, for what it has earned, will be retained."<sup>25</sup>

The Qur'anic verse above means that every individual is responsible for his or her own actions in front of God. We think this is the time to apply the Mecca principles of freedom and liberty. We advocate for the simple man or woman of the street to exercise his or her freedom.

We stated previously that men have abused the right to divorce based on the following verse on guardianship of men over women:

Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth.<sup>26</sup>

It is true that the verse means that men are guardians over women, but this male guardianship needs to be understood in the context of seventh century Arabia. Women today are no longer legal minors and their rights cannot be controlled by men.

Today there is a new conception of marriage; the fact that women are equal to men is exemplified in the everyday life. In the past, marriage law in Islam was based on social norms of a specific historical

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<sup>24</sup> Qur'an 4:35.

<sup>25</sup> Qur'an 74:38.

<sup>26</sup> Qur'an 4:34.

circumstance in which women were not considered equivalent to men. That was a temporary condition that changed drastically as women gained experience, education, and freedom.

The chief long-term solution lies in the development of divorce legislation based on the original and humanistic level of the Qur'anic revelation in Mecca. Here women and men have an equal right to divorce.

But our call for equality is only valid when accompanied by following Prophet Mohammed (peace be upon him) in worship. This gives people the strength of mind, and calmness of heart, to know to choose their life partners wisely, so there will be no need for divorce.

### 3. Booklet 3: Polygamy Is Not a Principle of Islam

#### تعدد الزوجات ليس اصلا في الاسلام

Polygamy is unjust in the view of the Republicans. The woman is for her husband completely and fully as the man should be for his wife, without any other wife. God in the original and core principles of religion initiated a single woman for a single man, and stipulated that a man cannot be equally fair or just in treatment even between two women, and certainly not between more than two. Justice between wives in seventh century Arabia meant material justice, that is, providing food, clothing, housing, and similar needs. In our time, justice can only mean moral justice. Every woman can demand emotional and compassionate justice, and it is impossible for any man to divide his emotions and feelings between two or more women equally.

Polygamy was allowed in Islam against the backdrop of seventh century Arabia. It served a purpose at that time, but it is now completely outdated. Polygamy is degrading to a woman's dignity and causes family disintegration, which has negative impacts on children and on society as a whole.

Polygamy was legalized at a point in time when there were several wars and thus there were more women than men and many women were without breadwinners. As such, polygamy was a merciful practice for those women. At that time, it was common for men to marry several wives. But Islam restricted the number of wives to four. Even if the situation in contemporary societies has changed, polygamy is still practiced with tragic consequences. It is used irresponsibly by men to satisfy their desires with no regard to its negative effects on women and children. Women are badly affected by this practice, as they are treated as commodities that are sold and bought by men in the market of marriage.

It is poverty that stops many men from having several wives, although some poor men still do practice polygamy, even if they do not have the means to support two families. Many men even hide their first marriage. When the second wife discovers the first marriage, either she obtains a divorce or both wives and their children continue to live in a miserable situation.

For rich men marriage has become a hobby; they get married and divorce, and some of them have even married more than the four wives allowed. It happened that a man died and after his death it was discovered that he had six wives, which caused great embarrassment to the wives and to his family.

Polygamy is harmful because it creates an unfriendly atmosphere in the family. Children can be psychologically and emotionally affected as they may have to compete for their father's attention. Also, they may suffer from the continuous conflicts between wives by not getting the needed attention and care. It is imperative to reform the personal laws. Polygamy is not in the principles of Islam that emphasize justice; in polygamous marriages, justice is impossible to be achieved between several wives. This becomes clear in the following verse:

And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice].<sup>27</sup>

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<sup>27</sup> Qur'an 4:3.

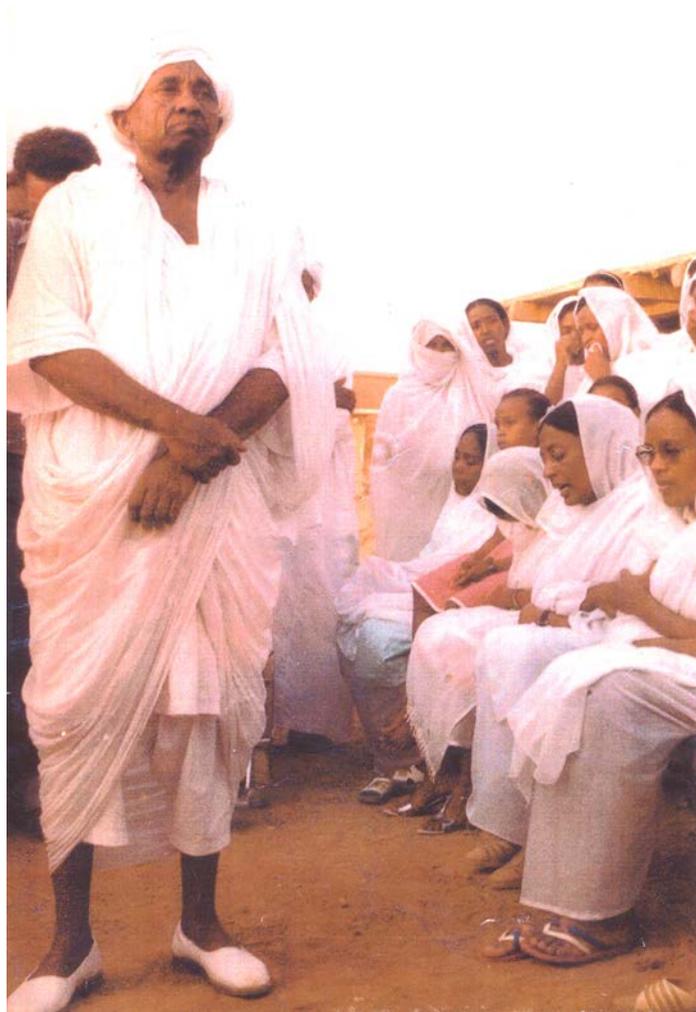
This is a clear command for *not* practicing polygamy and thus taking one wife only. This is because justice is required not only in providing material needs but also in providing emotional needs, and it is impossible to distribute emotions equally between wives. In monogamous marriages both the husband and the wife are more likely to be happy. The wife will feel secure and not threatened by sharing the attention and emotions of her husband with a second wife. Feeling secure will help the wife organize herself and undertake her roles efficiently. This will make the husband and children happy.

It should be noted that if the wife is sick and cannot have children and the husband wants to remarry, the wife should be given the option of divorce.

In conclusion, men and women should all take action. Women need to protect their rights and they should not enter into marriages without putting a condition in the marriage contract that the husband should not have a second wife. If any man refuses this condition, the woman should let him go and wait for the one who accepts it. This is a way to ensure equality in marriage.

## Afterword

We set out to translate these booklets to contribute to the on-going debate on women's legal rights in Islam in Sudan and in the Middle East in particular, as well as in northern Africa in general. In the first booklet translated in this paper, the Republican Sisters make a plea to the Sudanese women's movement of 1975 to debate and challenge men's domination and control over women within the realm of Muslim family law. As contemporary activists in Sudan are currently contemplating ways to reform the Muslim Family Law of 1991 against the backdrop of an Islamizing state, these booklets are a reminder that this is possible within the frame of Islam. Ustadh Mahmoud Mohamed Taha provided a radical rethinking of Islam and women's equal rights at a very early stage of Sudanese history. Until his execution in 1985, he strongly and tirelessly advocated for women's equality to men in marriage. He was deeply concerned with family law because he thought that "pushing for equality in the public sphere does not matter unless you ensure equality also within the most important area: the family."<sup>28</sup>



*Mahmouh Muhammed Taha together with the Republican sisters (From Asma Mahmoud Muhammed Taha's private photo collection).*

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<sup>28</sup> Interview with Asma Muhammed Taha (2009).





ISSN 1890-5056  
ISBN 978-82-8062-551-9 (web)  
ISBN 978-82-8062-550-2 (print)

This paper includes a translation of three booklets produced by the Sudanese Republican Sisters in commemoration of International Women's Day in 1975: (i) Women Rights in the Constitution and under Sudanese Sharia Laws, (ii) Divorce Is Not an Original Precept in Islam, and (iii) Polygamy Is Not a Principle of Islam. The booklets give insights into radical views on women's equal rights in Islam long before the term "Islamic feminism" started to circulate. The booklets tackle contested issues within the realm of women's rights and Islam related to marriage, divorce, and polygamy. At the time of the booklets, women's rights within the family were dealt with according to judicial circulars developed by the religious clergy. It was not until 1991 that the Sudanese state introduced a codified Muslim family law or personal status law. According to the Republican Brothers, these judicial circulars regulating women's civil rights contradicted the 1973 constitution, which guaranteed equality before the law, because they (among other things) allowed polygamy and stipulated a wife's obedience to her husband. In 1975, when Republicans circulated these booklets, Sudan's women's movement was more busy advocating equal pay for equal work than demanding equal rights within the private sphere of the family. The mobilization for equality in the family during the 1970s was left solely to the Republican Brothers and Sisters. In fact, in 1975 these groups made a plea to the feminist movement to address the stark gender inequalities within Sudanese family law. The booklets translated in this publication were used by the Republican Sisters during the 1970s to share a feminist interpretation of Islam and to contribute to the transformation of Muslim women in Sudan. The booklets were used as educational material for mobilizing women to resist gender inequality and injustice in the name of Sharia.