

Comparative Analysis of the Women Rights between Islamic and Feminist Legal Theory

Mohammad Mamunur Rashid*

... God created the men and women different – then let them to remain each in their own position...The State is the male in the feminist sense: the law sees and treats the way men see and treat women. The liberal state coercively and authoritatively constitutes the social order in the interest of men as gender ... through its legitimate norms, forms, relation to society, and substantive policies.¹

Introduction:

Islamic Legal Theory (which will later be termed as ILT²) is one of the practices which developed from the religious and societal strata of the occidental reality. The great Prophet Mohammed (PBUH) did not change outrightly everything of the then societal relations and behaviors.³ Feminist Legal Theory (Which will later be termed as FLT) originated from the Western notions of orientalism.⁴ To the most believers of the traditional indoctrination, ILT is considered to possess all kinds of ways for settlements of the predicaments of the human beings (men and women) that the human being face in present-day mundane affairs or may face in the hereafter or both.⁵ Ridiculously the Traditional believers of the ILT could not overcome the indoctrinating ideological rigidity. Many political, social and religious rights also remain undebateable. Apparently, FLT, in its spirit, is countenanced to consider anything which is beneficial for the women in pragmatic human localities to flourish women headway. Because of the apparent women friendly attributes of the FLT,⁶ ILT is to confront some challenges in the post-modern ages. Comparing the financial responsibilities in family and her own matters, entitlements

* Lecturer, Department of Law, Eastern University, Dhaka-Bangladesh.

¹ Wayne Morrison, *Jurisprudence: From the Greeks to Post-Modernism* (Cavendish Publishing Limited, 1997) 479, 490.

² We know that recently a movement has been acting throughout the globe to modernize the Islam and it is popularly known as 'Islamic Feminism'. I will try to focus on the Classical Islamic law by mentioning the concept "Islamic Legal Theory or the ILT" because the controversy arises throughout the world is against the ILT not against 'Islamic Feminism'.

³ David Pearl, *A Textbook on Muslim Law*, (Croom Helm, London, 1979) 2.

⁴ Most of the theorists considered men and women interests in the lines of the European and American women.

⁵ Distribution of the Rights, properties and other facilities in family and public life has been ensured by Islamic Law whereas Feminist theory is yet to come up with comprehensive ideals for all men and women alike.

⁶ A. K. Brohi, "Islam and Human Rights", in Altaf Gauhar (ed.), *The Challenge of Islam* (London: Islamic Council of Europe, 1978)179-180.

promoted by the ILT to women are more than FLT.⁷ Ironically, the proponents of the FLT in weaving the structure of the foundation of the women rights did not realize properly to justify their individual existence in the human civilization. Rights and responsibilities of the men and women have significantly been distributed. Hopefully, if it can be implemented by deep and sound respect to the ILT, the FLT will be thwarted in its birth.

Traditionally, the FLT deals only with the women rights and the ILT unlikely to the FLT, deals, *inter alia*, with the women rights, and dignity. So the comparison between them (FLT and ILT) may be even disproportionate, unreasonable and illogical. However, the purpose of this article is to find out the appropriateness of the ILT's women rights distribution comparing with the FLT's and discuss the legitimacy of the equalization of the male-female rights, dignities and responsibilities in mundane affairs. This article will further argue that enacting the legislation to equalize the men and women rights is essential not only for the implementation of the women rights but also for the establishment of the ideal society. It will again observe that if the directions of the ILT i.e. realization of the dower, maintenance, political and social and familial rights etc. are not realized reasonably, ideal society would be impossible to be established with mere mathematical equalization of the male and female rights. Meaning and connotation of the ILTtWR or ILT and FLT, critical evaluation of the women rights comparing between ILTtWR/ILT and FLT, myth and reality: women rights in the ILT and FLT, and success of the feminism: concern for the ILT will be mainly focused to substantiate the objectives of this article at par with the arguments therefore.

A. Islamic Legal Theory towards the Women Rights (ILTtWR or ILT):

The ILTtWR or ILT is the crucial specter of Islamic law which basically deals with the women rights, as well as their duties and responsibilities. The relationship among the husband, wife and other family members is within the domicile of the ILTtWR. It depends upon the economic and spiritual treatise⁸ and facilitates the women enormous sweetest opportunities to be respected by the modalities of the modern lineage connection, human abodes and sophisticated country at large. Many other existing laws have failed to acknowledge such several issues within the peripheries of those laws. A few legal reformers argued against ILTtWR without creating alternative mean from realistic approach.⁹ In many cases,

⁷ Dr. Yusuf Al Qaradawi, *Islamic Law in the Modern World* (Khalif Al-Hadia trans, King Faisal Centre for Research and Islamic Studies, Riyadh, Saudi Arabia, 2000) 47.

⁸ David Pearl denies the divinity of the holy Quran. See above note 3, 1.

⁹ Feminism intends to ensure equal rights of men and women over property. In doing so, it criticizes Islamic Legal theories without considering many practical conveniences of it. Sometimes it avoided the spirit of Islamic Legal theories i.e. non-discriminatory society.

the criticisms of them are not appropriate as they do not enjoy or understand the patterns of the Islamic way of life.

ILT has accepted and established the dignity of women as the honored and respected human being. Women have been prohibited to be utilized and consumed as the materials or like any other consumer products. But the excessive and inappropriate usages of the women in the advertisements and marketizing goods of the garments or any other products and industrial installments these days, the women are allowed to be exploited in the name of empowerment. ILT empowered the women to be the valuable members and participants in the family, society, and even in state's affairs. Women and men are recommended to decide major issues through peaceful and mutually accepted means.¹⁰

Women are considered as much more significant member of the Muslim family. ILT has put special emphasis on the female members of the family either for the mundane affairs and or spiritual life. The woman as daughter is marked as the welcoming member of the family. Practically she usually follows requests and directives of the parents in a very natural ways which they want to make them listen. As a sister and wife, she is the best companion of the brother and husband respectively, either in study and household chores. As mother,¹¹ she is the God gifted shelter for the children. It is the only alternative which cannot be passed over by anything. Special emphasis has been given in religion that the heaven of children is situated under the feet of mother.¹²

ILTtWR specified the property rights of the women.¹³ Specification of the property rights of the women was required as the women were not given the property rights of then period. As the society was male dominated and men were the absolute owner of the property, they have not been given specified share in the property.

ILTtWR does not make mistake to consider the situation to protect the extra-marital relationship. The Polygamy is one of the examples where the husband has the scope to take more than one wife. It depends upon some conditions that are rather extra-ordinary situation like war, famine, forced migration and so forth. But the wife has the scope to dissolve the marriage on the husband's remarriage. ILtWR did not forget to presuppose the significance of the political rights i.e. right to participate in the election to elect or be elected, of the men and women. At the present era, this right is enormously required for achieving many substantial changes. For this reason, the political rights of the men and women are considered as fundamental rights in the Constitution. The earlier one, right to participate

¹⁰ The Holy Quran 4: 35.

¹¹ Ibid, 31:14.

¹² Sunan Al Nasai, Book of Jihad, Number 3104. See in: <http://www.hadithgarden.com/2013/03/hadith-jannah-heaven-lies-under-feet-of.html> accessed on 04-10-2013.

¹³ Quran 4:11, 12.

in the election to elect was given to the women from the very beginning of the civilizational journey of ILtWR. ILtWR considered the divorce should be conciliated through Arbitration.¹⁴ The holy Quran gives both men and women the right to divorce, but the options and procedures for exercising this right are different. Women's power to divorce is not limited that either and in some cases it needs to be negotiated with men. Section 2 of the Dissolution of Muslim Marriages Act, 1939 provided few grounds upon which the wife may apply for the dissolution of the marriage. Section 2 (ix) empowers the wife to apply for dissolution of marriage 'on any other ground which is valid for dissolution of marriage.' This provision provided for the wife enormous scope to dissolve the marriage.¹⁵ By this provision, qualified talaq '*Talaq-e-Tafweed*' lost its applicability. The wife does not need to see whether she had been empowered by the column 18 of the *Kabinnama* or not.

The practice of *Purdah* is one of the obligations for the women to protect the privacy and physical safety.¹⁶ It makes some social obstacles easily bearable. So the obligation on the men has also been imposed on the sight and behavior of the men. If such guidelines could be followed, the crimes, indecencies and irregularities which are too common in society could be combated easily. To boost up our societal ethos, mores and norms, the instructions of the ILT should be maintained. The ILtWR emphasizes significantly on those issues. For example, right to take education, to express the personal opinion,¹⁷ to participate in a war for the sake of country and religion¹⁸ and to own the properties have been directed to be obeyed by both male and female.¹⁹

Giving the powers to the women for depositing the evidence before the court only by the women was also challenging, as the society did not treat her human being at all. For this reason, it was dreadful, if the single woman was given such power to represent one man as they were not trained up to be so brave to present everything without the help of another. Here, not the witnesses of two, rather witness of one woman, another woman will be required to help for reminding, not for depositing.²⁰

¹⁴ Quran 4: 20, 35.

¹⁵ Dissolution of Muslim Marriages Act 1939 s.2

¹⁶ Quran 24: 30, 31 and Quran 33:53, 59.

¹⁷ Quran 4: 20.

¹⁸ When the wives of the Prophet intended to go with Prophet, the prophet Mohammad (PBUH) allowed them to accompany him. See for details: http://www.khilafahbooks.com/wp-content/ebooks/english/women/The_Rights_And_Duties_Of_Women_In_Islam_khilafahbooks_com.pdf, pp. 11-12.

¹⁹ Quran 4: 11, 12, 32.

²⁰ Quran 2: 282. Shah opined that polygamy is allowed to implement the justice among the orphans. See, for details, Niaz A Shah, 'Women's Rights in the Koran: An Interpretive Approach' 2006 28(4) *Human Rights Quarterly*, 898-903.

B. Feminist Legal Theory (FLT):

Feminism or the Feminist Legal Theory (FLT) has achieved the status of being the social activism which propagates for the equal participation of female in all aspects of the mundane affairs. It demands the emancipation, equality, freedom, and liberation of the women.²¹ Either social or cultural, either economic or political, all kinds of rights of the citizens, should be equal for male and female.²² No distinction can be acknowledged on the basis of the gender.²³

Despite the distinction is accepted in the sex being biological,²⁴ gender distinction cannot be accepted as it is created by the society.²⁵ Gender is rooted in the social institutions and such creation refers the distinction between the males and females.²⁶ Feminism enters into the matters which basically creates some anomalies based on gender. The matter includes the oppression and violence,²⁷ patriarchal behavior,²⁸ and question of justice that is controversial in respect of gender.²⁹ The society dominates, oppresses and exploits women.³⁰ This tendency has been invented because of the presence of the assertiveness, aggressiveness, hardness, ambitions, masculinity in the characteristics of the men³¹ and the humility, supportiveness, sympathy, compassionateness, dependence and emotionality in the characteristics of the women.³² Feminism tries to address some of these issues in its own ways.³³

This issue has achieved such importance because society cannot honor women in compare to their qualification even they are not respected as human being in various societies. FLT stands for the idea that women and

²¹ Morrison, above note 1, 479.

²² Wikipedia, the free encyclopedia, *Feminism* (24 December 2014) <<http://en.wikipedia.org/wiki/Feminism>> accessed on 27-09-2013.

²³ Mahmuda Islam, *Naribad Chinta o Nari Jibon* (J. K. Press and Publications, Second Edition, 2002) 5-6.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid 6

²⁷ Morrison, above note 1, 480.

²⁸ Ibid 481.

²⁹ Ibid 482.

³⁰ Supra note 23,10-11.

³¹ "Feminism and Critical legal Theory" (1990), 18 International Journal of the Sociology of Law, 199, Quoted from *Feminist Legal Theory and the Rights of Women* written by Nicola Lacey, see for details: <http://www.yale.edu/wff/cbg/pdf/LaceyPaperFeministLegalTheory.pdf> accessed on 09-04-2013.

³² Ibid.

³³ Morrison, above note 1, 480.

men should have equal economic, political and social rights³⁴ or figuring out the reasons of subordination of women and finding out the procedures to change the situations.³⁵

From such varied aspects of dynamism of FLT, FLT groups have been categorized into four i.e. 1. Liberal Feminism; 2. Radical Feminism; 3. Marxist Feminism; and 4. Socialist Feminism.³⁶

In Liberal Feminism, the proponents try to promote the women as only the societal indicators. As a liberal feminist, Mary Wollstonecraft argues that women are submissive, dependent, and emotional because they were not given the chance to come out to be aggressive, independent, and practical. If they are facilitated to come out by educating themselves, they would change their character and pattern of behavior completely. They will acquire the characteristics which men have already acquired. Women can never be said that they do not know how to be independent and practical.³⁷

Liberal feminists presented the women as autonomous beings naturally endowed with the same basic rights and privileges as men and objected to the structural denial to women of the full array of rights and privileges of citizenship men experienced.³⁸

Radical feminism is another strand of the feminism where the proponents believe that the emancipation of the women is not possible only with following the institutions created by the existing institutions. After the destruction of those institutions, the new society will be created where the men and women will be treated equally. These feminists are revolutionists only for the sake of women's economic interests.³⁹ They do not expect to see the society where the women are legally bound to give birth the children rather should be taken care of State institutions. The rights can be realized if the women can be treated like men.⁴⁰

Marxist Feminism is the economic, political and social activism and worldwide well accepted State ideology where the classless society is expected to be established on the basis of the gender equality. Karl Marx tries to explain the equalization of women of all classes i.e. women in

³⁴ Nancy Levit and Robert R.M. Verchick (eds), *A Primer Feminist Legal Theory*, (New York University Press, 2006) 1.

³⁵ Martha Albertson Fineman, *Feminist Legal Theory in Journal of Gender, Social Policy and the Law*, Vol. 13, No. 1, 2005, 14. See for online visit: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2132233 last accessed on 28-03-2013.

³⁶ Above note 23,55-56.

³⁷ Ibid, 60.

³⁸ Above note 1, 486.

³⁹ Above note 23, 56.

⁴⁰ Above note 1, 488.

bourgeois or proletariat.⁴¹ Socialist Feminism is not satisfied with the statement of the typical Marxist feminism as it did not recognize the natural distinction between male and female. Socialists try to inter-relate sex and gender issues within feminism and labor movement for women empowerment. Juliet Mitchell opined that Marxists committed fallacies by calling the women as first productive tools in factories and all other work places. As a result, it has been destroying the family and traditional responsibility of the women such as reproduction, sexuality and socialization.⁴²

Critical Evaluation of the Women Rights: Comparing between ILtWR and FLT

We have mentioned earlier that the comparison between the ILtWR and FLT is troublesome because it is like an attempt to compare apple and banana. Islam being a universal religion, *inter alia*, deals with more responsibilities than the rights whereas the FLT tries to emulate the status of women or emancipate women from prevalent diversified predicaments of getting more rights. Since the responsibilities of the women received a little bit less emphasis and in ILT were given an absolute priority. However, as FLT is only intensified in increasing the rights of the women and thus it cannot deny the increase of their responsibilities as well.⁴³ Still we will compare the women rights between the ILtWR and FLT in specific issues upon which the controversy is prevalent in the present era.

a. Economic Rights:

By analyzing various aspects of the FLT, we understand that men and women are being tried to make absolutely equal in every aspects of the human life. That is why the debate about half share in parents' inheritance compare to male siblings is so intense in Muslim societies. The provisions of Islamic law in this regard are under serious scrutiny.⁴⁴ That is why the FLT jurists are extremely critical to these provisions of inheritance. From the investigation of the social phenomenon, we see that though half portion is given to the women, it is undoubtedly confessed by everyone that such right was given to the women at a time when female folks were completely excluded from the inheritance. The holy Quran specifically provided the share of the women merely to inculcate that Islam honored the women and included as the fixed sharer. Since then society was patriarchal, males were not included in the holy Quran and they are *Asabah*.⁴⁵ And the women were deprived of the entitlement from the

⁴¹ Above note 23, 78-89. .

⁴² Ibid 92.

⁴³ Above note 23, 62.

⁴⁴ Quran 4: 11, 12.

⁴⁵ Above note 3, 2-3.

property of propositus. As a result, the inheritance law of Islam is recognized as the evolutionary development of Islam.⁴⁶

ILtWR always tends to honor the women. Dower has become as a token of respect is given to the wife by the husband. Though we are so conservative to accept this practice of Islam as comparing it as buying or selling money, we have till now practice to respect anybody by giving money on any special occasion as *Salami* in our traditional festivals. It will also create the pragmatism when the husband dies accidentally or the husband separated her arbitrarily.

Let us assume that a man dies and is survived by a son and a daughter. His entire estate is worth three thousand dollars. From this two thousand would go to the son, and one thousand to the daughter. What is likely to become of each one's share? The son, will probably marry later and might have to give his wife five hundred dollars upon marriage, and with the remaining five hundred furnish a house. In the end, he would have only one thousand dollars, exactly his sister's share of the inheritance. The thousand that went to the daughter will remain intact. When she gets married, she could receive a dowry of five hundred dollars from her husband. In this case she would end up with more than her brother's share. The laws of inheritance and the law of dower complement one another.⁴⁷

Apparently the inheritance share to the women under Muslim Legal System may be illogical or irrational thus discriminatory. If we consider the dower and maintenance from the husband as mandatory financial rights to the women, the share the women would be more than that the share of the men. But the problem is that many husbands are that responsible in providing the maintenance and other financial rights to the wife. This is not the problem of Islamic law as such; it is rather an issue of improvement and profoundly and ingrained societal stigma or taboo contained by ill perceived localized customs.⁴⁸

To substantiate the economic rights, we cannot disregard the maintenance rights of the women. ILT obliges the husband to provide the maintenance to his wife. Nothing can empower the husband to evade from this responsibility. Even if the wife is solvent or rich or any way capable to maintain herself, the husband cannot deny his responsibility.

Maybe the women folk is happy to see the propaganda of the FLT that it would continue to campaign for the equality between man and woman. To what extent they would be able to do that for the genuine empowerment of women. Since the eighteenth century, FLT does not make mistake to

⁴⁶ Rashida A. Khanum, *Contemporary Gender Issues*, (A H Development Publishing House 2012) 24.

⁴⁷ Above note 7, 47.

⁴⁸ Alamgir Muhammad Serajuddin, *Muslim Family law, Secular courts and Muslim Women of South Asia: A Study in Judicial Activism* (Oxford University Press, 2011) 144-148.

distribute the responsibility at par with the property. Men and women should equally distribute the rights and liabilities. The women are discouraged to accept the extra financial assistance as it makes the women subdued to the men.

The radical feminist declared the fight against the society so that such society can be broken and new society can be established.⁴⁹ It tried to say that existing society cannot give the women emancipation properly. So the proponents of this theory opine to destroy the existing societal systems. Thompson argued 'as women's bondage has chained down man to the ignorance and vices of despotism, so will their liberation reward him with knowledge, with freedom and with happiness.'⁵⁰

The [S]tate is [a kind of] male jurisprudentially, meaning that it adopts the standpoint of male powers on the relation between the law and society. The stance is especially vivid constitutional adjudication; though legitimate to the degree it is neutral on the policy of legislation. The foundations for its neutrality is the pervasive assumptions that conditions that pertain among men on the basis of gender apply to women as well- that is, the assumption that sex inequality does not really exist in society.⁵¹

Because of the demand of the FLT, the modern Islamists try to analyze the essentials of the Islamic law. Especially Jamal al-din al Afagani or Muhammad Abduh in Egypt, Sir Sayyid Ahmad Khan and Muhammad Iqbal in India quoted that Mekki verses gave more rights and men-women equal rights than the Madanese verses. As a result, the treatment and distribution of the property under the Islamic law is based on the society and specific realm. Thus if the society of the present age demands the equalization of the share of the men-women, it can be made. Because the spirit of Islam to provide more rights to the women by the inheritance, maintenance and dower is not properly implemented, this law demands to be changed according to the demands of the society.⁵²

Unlikely to other religions and societies, ILT posed avenues for the establishment of not only the honor and dignity of the women, but also for the legal entitlements. It can never be ready to see the women deprived. To justify such spirit of ILT, many Muslim countries have changed the Islamic inheritance law like many other laws.⁵³ Such process is developed through the modern concept "Islamic Feminism".

Islamic feminism is more radical than Muslims' secular feminisms. Islamic Feminism insists on full equality of women and men across the public-private spectrum. Secular Feminists historically accepted the idea of equality in the public sphere and the option of compartmentarianism in

⁴⁹ Above note 23, 71

⁵⁰ Above note 1, 487.

⁵¹ Ibid, 491.

⁵² Supra note 46, 24.

⁵³ Ibid

the private sphere. Islamic feminism argues that women may be heads of state, leaders of congregational prayer, judges and muftis. In some Muslim countries, Muslim women function as judges, some as prime ministers and heads of state. Islamic feminism stands to benefit us all, Muslims of both sexes, as well as non-Muslims living side by side with Muslims everywhere.⁵⁴

Whatever the solution is made, it would not function, if the society cannot be changed through legal and cultural avenues. The share provided by the ILT cannot be properly implemented, as the family members or the elder members of the society at groups' do not take care of these legal issues.⁵⁵

b. Treatment of the Men Considering the Women as Sex Object, Comfort and Enjoyment:

Punishment for the extra-marital or promiscuous relationship is quite severe. Immorality is not tolerated so easily, whereas FLT encourages only the free consent of the parties and thus consensual sexual relations are not regarded as an immoral act.⁵⁶ Islam also encourages the free consent of each individual for any legal and moral activities. But the free consent in the extra-marital relationship is a dubious issue and if penetrator is not punished, there may be a phenomenon under which women would be cheated more frequently sexual crimes in society would increase. Even the matters would be deemed as moral convulsion of the society. In the same way, the problem would arise to identify the paternity of the issue, if any child is born out of multiple sexual relationships at the same time.

Liberal feminism does not stand against anything disregarding natural and pragmatic requirements of the society. It is rather odd to say that the radical feminists are not accepting the necessity of reproductive activities of the families. For this purpose, they are ready to recommend for creating the artificial reproduction system. Actually they recommended it for staying the male or female together on their free choice without any reproduction purposes. Such a narrow based family system is not sustainable. They may not feel any urgency to live together even for a longer period of time. Actually this type of tendency will destroy the human civilization.

Pregnancy itself, independent of male contempt, is invasive, dangerous and oppressive; it is an assault on the physical integrity and privacy of the body.⁵⁷

However, FLT supported the birth of any child between unmarried or virgin father and mother. ILT does not legalize this type of issue. It does

⁵⁴ Margot Badran, *Feminism In Islam Secular and religious Convergences* (Oneworld Publications, First South Asian Edition, 2011) 250.

⁵⁵ Above note 48, 144-148.

⁵⁶ Jefferie G. Murphy, *Philosophy of Law: An Introduction to Jurisprudence*, (Oxford University Press, Fourth Edition, 1990) 53-55.

⁵⁷ Above note 1, 490.

not allow the inheritance for such issues and nothing has been provided as the maintenance of such child.

Muslim marriage is the civil contract, whereas one of the purposes of the marriage is legitimate sexual intercourse to mitigate the natural needs of the relation of both sexes. Feminist believed that the apparent consent of the wife during the sexual relation with husband on every question is essential. Otherwise, the marital rape will be committed. Islam does not recognize as rape, but just on indecent act. Wife does not intend to be sex tool of the husband. It is matter of regret that the feminist consider themselves as sex tools even in the hands of their loving husband as well. Marriage is the trial of founding the society in decent manner and separating the human society from other animals. So if we cannot accommodate available avenue for the mitigation of this natural needs through accepted process, it would be detrimental to the societal welfare at large. ILT tends to play its positive role in this regard.

Gender is what gender means. It has no basis in anything other than the social reality its hegemony constructs. The process that gives sexuality its male supremacist meaning is therefore the process through which inequality becomes socially real.⁵⁸

Despite the ILT tries to respect the husband and wife properly, the FLT tries to introduce something otherwise without comprehending the context of those ILT laws on the one hand, the immaturity of the proponents of ILT regarding the global politics and movements in the universe on the other hand. For instances, When any wife faces any problem regarding the rights, duties, responsibilities in the husband-wife relationship, FLT will explain that marriage and Islamic way of life are fundamentally blamed for this. Only solution is immediate divorce or litigation for financial benefits.

59

Women or ladies should not be commercialized in the name of freedom. Modeling in advertising is instructed in such way where women should confess that they actually are the products. This tendency has been partly emerged from the impact of the FLT. Apparently this matter may be conducive to empower the women; it ultimately humiliates the women folks. If the ILT could be implemented properly, that might work as counterbalancing of this unfortunate phenomenon.⁶⁰

Because of the natural system, the masculinity has some apparent dominance over some respect of sexuality. It can be true for femininity as well. But such a controversial issue cannot immigrate many issues of women empowerment. As a result, the FLT emphatically tends to claim that male has to prove that he is not committing evils against women. ILT

⁵⁸ Ibid 491.

⁵⁹ Leila Ahmed, *Women and Gender in Islam* (Yale University Press, New Haven and London, 1992) 200.

⁶⁰ Above note 54,132.

is stronger and stricter than FLT as it predominantly preferred to eyewitness when there is actual occurrence of crimes. And if the extra-marital relation cannot be proved by the complainant, the complainant will be penalized. However, understanding the scenario of the rape case, the radical feminists do not intend to accept this extra-marital relationship. Ironically, they do not disregard it because of the negligence or reluctance by the religious civilization.⁶¹

Cruel treatment towards the women in any form by the male either in the Muslim society or any other society is not the creation of any religion rather it has been created or practiced in the name of the religion and there are many underlying economic, social and cultural reasons behind such phenomenon. The spirit of the religious scriptures will never permit such type of inhumane behavior. As a result, to spread the lesson of the ILT to the mass people and defy the FLT movement, several Middle East and Muslim countries have introduced a movement "Islamic Movement" under the banner of the ILT.

The nineteenth century was a time of dramatic societal transformations that wrought enormous changes in the lives of all classes and both sexes, in urban and rural Egypt alike...The EFU met with better results in advancing Arab feminism, and in 1945 the feminist union was created in Cairo under the presidency of Sa'rawi...[During the Naser Government] In 1956 an electoral law gave women the vote they had asked for three decades earlier. Education and health benefits were distributed more fully to all classes ...but they [women] felt the effects of lingering patriarchal domination... [E]xtreme form of patriarchal control of female sexuality was strongly sanctioned in the name of Islam.⁶²

c. Observance of *Purdah* or Veiling and Seclusion:

Purdah or veiling is one of the modes of dress code for the followers of the ILT as per the direction of the holy *Quran* and *hadith* of the Prophet Mohammad (PBUH).⁶³ Actually it imposed to allow women folks to be more protected. But such dress can never be treated as humiliating or symbol of deprivation of the women or the sign of treating the women anterior to the men. Even such dress should not be obstacle for the women to join in any job, profession or the workplace.

The FLT is continuously criticizing against the *Purdah* as the symbol of treating the women as anterior to the men. They say that *purdah* is the "moveable seclusion" and process of controlling the women by men having the legacy from the pre-Islamic Persian social customs.⁶⁴

The perception that the veil is a symbol of Islam's oppression of women has different adherents who embody different assumptions and different

⁶¹ Above note 1, 492.

⁶² Above note 54, 120-131.

⁶³ Quran 24:31 and 33:59; see also above note 7, 157.

⁶⁴ Above note 46, 23.

levels of sophistications. On the other hand there is the mainstream, pop culture view: Muslim women are completely and utterly subjugated by men, and the veil is a symbol of that.⁶⁵

Influenced by the criticism of the FLT, many Muslim female writers are greatly convinced and reacted against the practice of the *purdah* or veiling. They try to say that the unveiled nations are the developed nations in the world and the veiled nations are the under-developed thus quickly ignore the glorious past of Islamic civilization.⁶⁶ The modern age empowers the women to recover some obstacles in their headway only because of the end of seclusion.⁶⁷

Though the FLT criticizes the *Purdah* or veiling of ILT, but should not be an issue of constant confrontation between the two. We see that the administrations of the USA or Westerners are not that adamant in their criticism against Islam and Muslim countries in general. They do criticize out of fear of the expansion of Islam or to stop the declining powers of the West.

Economic power is rapidly shifting to East Asia, and military power and political influence are starting to follow. India is on the verge of economic takeoff and Islamic world is increasingly hostile toward the West. The willingness of other societies to accept the West's dictates or abide its sermons is rapidly evaporating. The late 1980s witnessed much debate about the declinist thesis concerning the United States.⁶⁸

Unfortunately the elites of the Muslim nations do not try to understand the actual intention of the Western Powers rather they are trying to be convinced by westerner ideals and ideas. Even the spirit of ILT is either unknown to them or they are hostile to its visions.

Knowing themselves through the lens of orientalism meant an acceptance of the European diagnosis of the problems of the dilapidated orient, and an acceptance of the European cure. They attempted to 'modernize' their countries just within the parameters of same western perceptions.⁶⁹

Though greatly propagated either by the West or by the ignorance of Muslim nations, the *purdah* is symbolized as way of humiliating the women as a moving seclusion or treating them as employee of insiders. Practically, women are calculated as superior to the men in religious or social aspects and *Purdah* has been installed to maintain their respects. *Purdah* has been introduced so that sexual harassment or any other bad

⁶⁵ Katherine Bullock, *Rethinking Muslim Women and the Veil: Challenging Historical & Modern Stereotypes* (The International Institute of Islamic Thought, 2002) xv

⁶⁶ Ibid xviii.

⁶⁷ Ibid xx.

⁶⁸ Samuel P Huntington, *The Clash of Civilizations and the Remarking of World Order*, (Penguin Books, 1996) 82.

⁶⁹ Above note 65, 26.

activities are not committed in the society at large. The recurrent gang raping or recent eve teasing in our societies has proven the appropriateness of the *purdah* at large. The critique who criticized the *purdah* practice of ILT, they do it without understanding the context of it or lesson of it and they have no idea of mode of life under the prospects of ILT.

...[W]earing a veil represents a purity of intention and behavior. It is a symbol affirming that 'I'm clean' and 'I'm not available.' The effect of this personal space barrier gives women more freedom to travel through the public realm in peace, and in those Muslim countries that have an ideology of honor, husbands' jealousy, and parents' concerns are vitiated by *hijab*, giving the women more freedom to move around...scholars and the media tend to focus only on the dangers, on the negative [of *purdah*] without giving a full context and without giving the full story.⁷⁰

d. Polygamy and Women Status:

Polygamy or practice of taking more than one wife at a time is unanimously interpreted by the proponents of Islamic law as accepted. But the time when the numbers of wives of the husband was restricted to four was challenging. During that time taking innumerable wives was availablely common.⁷¹

Apparently such permission may be detrimental to the safety and security of the interest of the women folks. But the ILtWR did not forget to inculcate the equal and equitable treatment of the husband of those wives. No one is allowed to cling any wife to solemnize the polygamy. And it remains an abnormal presumption to address the abnormal situations.

And if you fear that you shall not be able to deal justly with the orphan girls, then marry (other) women of your choice two, or three, or four but if you fear that you shall not be able to deal justly (with them), then only one or (the captives and the slaves) and that your right hands possess. And that is nearer to prevent you from doing injustice.⁷²

Now question arises whether this moral injunction means the treatment of the husband to more than one wife equally relates only to *nafaqa* (material support and maintenance) or also to equal affection is a controversial issue. Ch. 4, v. 129 says that "ye shall not be able to deal in fairness and justice between two women however much ye wish." It appears that verse 129 suggests that maintaining the affection equally is impossible task. So

⁷⁰ Katherine Bullock, *Rethinking Muslim Women and The Veil Challenging Historical and Modern Stereotypes*, The International Institute of Islamic Thought, 2003, 103, 228.

⁷¹ David Pearl and Werner Menski (eds.), *Muslim Family Law*, (London Sweet and Maxwell, Third Edition, 1998) 237.

⁷² Supra note 10, Ch. 4, V. 3.

some writers try to argue that polygamy was never really permitted in ILtWR and should consequently be prohibited by modern Muslim law.⁷³

The justice towards the wives as per direction of the holy Quran can be maintained if the husband has the financial solvency to maintain. As a result, most of the Muslim countries enshrined the financial capability as one of the conditions at the time of enacting the law. Excluding the heartfelt love and affection, several matters are to be maintained by the husband, which are exclusively related to the financial capability of the husband.

Once a Muslim marries more than one wife, it is essential for him to treat them equally in the matter of food, residence, and clothing and even in sexual relationship as far as is possible. If one is a little doubtful in showing equal treatment in fulfilling their rights, he must not take more wives who are willing to bear such intolerable situation. If he feels able to fulfill his responsibilities to only one, he should not marry two.⁷⁴ Thus it has never been mandatory for Muslim man to marry more than one woman.

Despite the ILtWR could not abolish the polygamy in its preliminary stage, it has restricted and played a very strong positive role to create a better attention. Outright abolition of polygamy was not possible. Mohammad (PBUH) was functioning for the adjustment of the Islamic law with the then society with deep wisdom.

The Prophet was not an impractical visionary who simply made high sounding moral pronouncements. It was central function of the Prophet and his mission, after having made these moral pronouncements, to be effective to society and to move it in a certain direction. In other words, the Prophet was seer-cum-reformer. But at any given time a reformer, however, zealous, cannot change society beyond a certain point.⁷⁵

Restricting this number was introduced to phase out ultimately the practice of polygamy in Islam. Various Muslim states try to prohibit this practice. But it cannot be said that such countries are successful in every aspect to outlaw the polygamy. But the contribution of such movement has brought the sufferings of the society at minimum level created because in some countries number of women are much higher than men.⁷⁶

However, if the punishment against the penetrators of the polygamy or the polygamy is prohibited in any Muslim countries, the citizen of that country cannot make the marriage illegal or void because the classical Islamic law

⁷³ Supra note 71, at p. 239.

⁷⁴ Abdur Rahman Doi, *Shariah: the Islamic law* (Ta Ha Publishers, London, United Kingdom, 1997) 147.

⁷⁵ Above note 71, 238.

⁷⁶ Ibid 241.

does not nullify that marriage. The wife may claim the dissolution of the marriage from such husband on the ground of polygamy. Now the question may arise, such dissolution will fall the wife in the worst situation, as a result, some writers recommended to continue the marital life with that husband with proper maintenance with separate housing and the wife is directed to deny the conjugal relationship with the polygamous husband.⁷⁷

FLT tries to criticize the practice of the polygamy in ILT. They try to interpret this system as humiliating for the women. They again try to show that it ultimately gives a chance of the husband to choose the wife as he wishes. Though there is chance by misusing it, the version of the holy Quran does not empower the husband unconditionally to solemnize the polygamy rather put husband under strict regulations of law.

Again the grief which the FLT concerns cannot be created by the directives of the holy Quran prioritizes on the equal treatment towards the wives. Nonetheless, the ILT allows it so that exceptional circumstances such as war, famine, forced migration can be overcome. The FLT which criticizes the polygamy introducing them as very puritanical approves the extra-marital relationship, which the ILT can never allow.⁷⁸ From such perspectives, the polygamy fulfilling the condition can be tolerated for a very limited period of time. The country should emphasize on the fulfilling on the conditions. If such conditions are not fulfilled, the polygamy cannot be allowed. The spirit of Islamic law is very clear. Thus for the vast majority of Muslim men polygamy is not allowed at all for financial reason.

...[T]he permission given by the Quran for polygamy arose out of particular circumstances. Since these circumstances are likely to recur now and then in the life of the Muslim community and since there will always be individual cases where polygamy may become necessary in order to avoid more serious moral and social evils, it is not right to prohibit polygamy by legislation. But since the Quran has made it conditional on a just and equal treatment of the wives, it is open to the state to prescribe conditions under which polygamy will be allowed. For example, it may be laid down that polygamy will be allowed only if a person shows sufficient cause for it and satisfies the authorities that he will be able to bear the additional economic burden and will not thereby injure the health.⁷⁹

Similarly the conditions of the polygamy will never be used as the universal or the absolute. Each and every condition of the individual case will be based on the specific facts and circumstances. As a result, the polygamy cannot be accepted as the universal rule. Unfortunately this rule is now used without explaining the context and circumstances why it was legalized. Wife and her children should have to suffer a lot for this reason.

⁷⁷ Ibid 239.

⁷⁸ Ibid 237.

⁷⁹ Ibid, 246.

...[T]hey [women] would rather see their husband borne away on a bier than see him married to a second wife, and she [wife] details the miseries that the husband's selfishness brings to wives and children.⁸⁰

The FLT tries to abolish this practice from all of the societies to ensure the proper maintenance of the human rights. Even the rights which the women as wife are entitled from the husband cannot be distributed among the wives.⁸¹ Actually, this practice does not create any anomalies from the religious aspects. As a result, the aspects what had been introduced by the ILT during the age of ignorance can even now be abolished under certain conditions for a period of time. Thus the ILT cannot be blamed for the discrimination against the women. ILT is always conscious about the scenario of the society.⁸² Mutazilite jurists of the eight century 'interrupted the guidelines of the holy Quran as a prohibition rather than encouragement.'⁸³ Sir Sayyid Ahmad Khan, Chiragh Ali and Maulana Mumtaz Ali in India and Sheikh Muhammad Abduh in Egypt were Modern Islamic theorists called for the abolition of polygamy for the better protection of the human rights of the women.⁸⁴

e. Rights of the Women in divorce:

Traditionally it is thought that the husband is entitled to divorce the wife at any time. It should be noted that it does not empower the husband to divorce arbitrarily, cruelly, capriciously, and unscrupulously. In case of *Talaq-e-Tafweed*, the husband has given the chance to empower the wife to divorce the husband. In case of *khula*, *Mubarat*, *lian* and *faskh*, the wife is entitled to dissolve the marriage in a similar fashion. Whether the wife is given the power to divorce or not is immaterial.

After the enactment of the MFLO, 1961 section 9 (right to maintenance) and section 2 of the Dissolution of the Muslim Marriages Act, 1939, Muslim women are at liberty whether she will continue the marital tie or not with her husband without losing her rights in general⁸⁵ From the profit and gain perspective, wife is in good position to choose whether she would continue the marital life or not first for formal reasons. In case of the divorce rights, wife and husband both are in win-win situations in some cases.⁸⁶ As per provision 2(ix) of the DMMA-1939, qualified *talaq* '*Talaq-e-Tafweed*' lost its applicability. The wife needs not to see whether she had been empowered by the column 18 of the *Kabinnama* or not. But it does not empower the wife to take the decision for divorce arbitrarily or fall the husband in catastrophic danger. The grounds should be reasonable or mentioned in the agreement.

⁸⁰ Above note 59, 182.

⁸¹ Above note 71, 274.

⁸² Ibid, 240.

⁸³ Supra note 46, 22.

⁸⁴ Ibid.

⁸⁵ Supra note 15, Section 5.

⁸⁶ Supra note 46, at p. 22.

An agreement made, whether before or after marriage, by which it is provided that the wife should be at liberty to divorce herself on the specified contingencies, is valid, if the conditions are of a reasonable nature and are not opposed to the public policy or the Mohammedan Law, as they call it. Where such an agreement is made, the wife may at any time after the happening of any of the contingencies, repudiate herself in the exercise of the power and divorce will then take effect to the same extent as if a *Talaq* had been pronounced by the husband.⁸⁷

Now the question arises if the husband does not consider the defects of the wife or the husband divorced the wife arbitrarily what would be remedy for this maltreatment. Actually if the husband is adamant in divorcing the wife, ILT may not be agreed to oblige the wife to continue the conjugal relationship. The ILT will oblige the husband to provide the full maintenance so that she can continue a normal decent life by her own.

First, there is no Qur'anic verse or authoritative *hadith prohibiting maintenance to a divorced wife who is unable to maintain herself*. Second, unjustly divorced wives have been given financial security in the form of maintenance for a varying length of time beginning from one year to the date of remarriage or death in a number of Muslim countries including Egypt, Syria, Jordan, Kuwait, Tunisia, Algeria, Morocco, and Malaysia.⁸⁸

Considering the teachings and lesson of the ILT, the High Court Division of the Supreme Court of Bangladesh tries to do something for the women. Ironically it did not substantiate the rationality when the husband will be bound to provide the maintenance to the wife for life long. Where various Muslim countries enacted law, those countries did not make mistake to provide the condition when the husband will be bound to pay as such. As a result, the several Muslim countries have successfully been continuing the law to provide the maintenance to the women who have been divorced by the husband upon no reasons whereas we could not live our laws more than 4 years. The FLT may accuse the ILT that divorce is being misused by the husband; ILT cannot neglect to prosecute such misuse indifferently. So the divorce or dissolution of marriage makes the wife out of shield is the baseless accusation against the ILT.

f. Deposition by Women:

Giving powers to the women for depositing the evidence before the court only by the women was also challenging, as the society did not treat her accommodating the opportunities to grow up. For this reason, it was dreadful if the single woman was given such power to represent one man as they were not trained up to be so brave to present everything without the help of another. Here, not the witnesses of two, rather witness of one

⁸⁷ Obaidul Huq Chowdhury, *The Handbook of Muslim Family Laws*, (Dhaka Law Reports, Sixth Edition, 2005) 212.

⁸⁸ Above note 48, 229.

woman, another woman will be required to help for reminding, not for depositing.⁸⁹

The accusation against the ILT is that it did not accept the women as honored and brilliant as the men in depositing the evidences before the court or arbitration.⁹⁰ Basically, FLT made mistakes to consider the spirit and reason for accommodating this type of law. Actually the time when this type of law was imposed women were grown up by arranging a situation from which the women could not perverse her role to be self reliant to deliver the deposition before the court. The women may not be acquainted with the environment of the court. Even the women may forget everything which the women will try to say seeing gathering in the court. So she requires an assistant. ILT accommodated this type of assistant for remaindering her at the time of depositing. FLT criticized without going through the reasons for such law or the situations on the basis of what it was given. FLT is totally ignorant of context and text of this law.

g. Political Rights of the Women:

ILtWR did not forget to presuppose the significance of the political rights i.e. right to participate in the election to elect or be elected, of the men and women. At the present era this right is enormously required for achieving many things. For this reason, the political rights of the men and women are considered as fundamental rights in the Constitution. The earlier one, right to participate in the election to elect was given to the women from the very beginning of the civilizational journey of ILtWR.

Traditional indoctrination of the believers, women are not allowed for the leadership over the men. They try to refer this verse, despite the rationalities of this verse are:⁹¹ (1) Almighty-Allah has created both of them to excel one another not to compete with. One of them will give the inspiration, encouragement or aspiration so that other can relish the society and (2) Men are the more suitable for earning livelihood and women will be companions for such activities. So she will be provided the livelihood from the earnings of the men. However, the supremacy of the man in this respect is not the right, rather it is greater responsibility.⁹² Nevertheless, from the traditions and activities of the prophet and the companions of the prophet, several examples are available where the women were given the leadership over the men during the war against non-believers.⁹³

The FLT which criticizes the ILT that has restricted the political freedom of the women. If we accept this accusation, we will be surprised to see that

⁸⁹ Quran 2:282.

⁹⁰ Above note 46,22.

⁹¹ Above note 18: 7-8.

⁹² Ibid.

⁹³ Ayesha (R) was given the leadership in the Battle of Camel (Jamal).

mere right to participate in the election needed a long time in FLT in compare to the ILT. So the policy of such FLT cannot be compared with the ILT. The women had to wait for the right to vote in New Zeland till 1893, in Australia till 1908, and in French till 1945.⁹⁴ ILT gave this right in 6th century.

Those who are trying to mislead the women not to be leader of the State will be surprised to see that empowering the women can be conducive for the cooperative State. If the qualified women are not properly evaluated it will create distrust on the leadership of the men. Even the extremism among the women cannot be stopped. So they should be accommodated the power of leadership private and public matters equally. As the women have been provided the 'right to vote' about 1500 years ago and this is about 1500 years prior to the FLT, ILT can cater the right to be elected rights as well considering the present facts and circumstances.

... [I]slam is the path to power and glory. The call to Islam is made to call souls to God or proclaim a fundamental truth but to restore to power and give "control [of] the whole world" to the nation of Islam. ... We Muslims only carry arms in order to spread peace. We want to purify the world of unbelief, atheism, oppression, and persecution. Surely even Muslims, let alone people of other faiths or none, have reason to fear such a statement, for perhaps their Islam will not precisely fit the desired mold.⁹⁵

h. Right to Education:

Education is the backbone of a nation. No nation can prosper without the education. Islam, being a humanly religion cannot escape this necessity. So education is also compulsory according to the ILT. Many societies try to show the reasons and logics not to send the women to educational institutions for learning. The environment and surroundings of the society are not in the congruent condition for the safe movement of the men. Various unfriendly occurrences are very common incident in our societies. Parents are always worried about the safety of their daughters. If they send them to the school, they cannot feel safe till they returned home.

The workplace in every sector is not appropriate place for the women. The daughters are not profitable in education the parents of our society feel. They cannot assist the parents in their old age. So they think that daughters are not required to send to the institutions for learning.

Marriage is another cause. The members of the father-in-law think that the daughter-in-law should be in cooking. Other than cooking, all functions are optional. As a result, that education is obligatory in ILT or domestic law or any other customary laws has intentionally been forgotten by the parents. Rather they are trying to forget those matters. Oppositely they are trying to do betterment for their son's future.

⁹⁴ Simon De Beauvoir, *Dbitiya sēksa* (Kankar Singh trans, Radical Kolkata, 2011) 98 [trans of: *The Second Sex* (first published 1949)]

⁹⁵ Above note 59, 202.

So the FLT or ILT, both should be concerned regarding the changes of the society at large. The ILT is also conscious regarding the education both male and female. The government, private sectors, and NGOs should function appropriately.⁹⁶

Myth and Reality: Women Rights in ILT and FLT

In the age of modernity, no one can expect the apartheid, inequality or the discrimination in any respect. Being moderate and congruent religion, ILT cannot expect the injustice, dishonor or disrespect to anybody in any aspects. We know that ILT tries to distribute the rights and responsibilities of anybody in compare to societal and normative responsibilities. Since the women, at the time of age of ignorance, were not espoused to take responsibility in financial or outgoing matters of the family, they were not given the property. ILT tries to acknowledge that women are entitled to get the property despite they do not conduct any economic matters of the family in private or public affairs. So the rights given by the FLT empowered the women to receive more rights than men.

Recently the FLT has been developed throughout the world to empower the women in rights, duties and powers in family, society, and state affairs. It tries severally to criticize the religion, eastern societies, mores and lifestyle. As a result, Islam was also not beyond the criticism of this movement. Having some good signs of this campaign, many societies have tried to change many laws and policies of the state, ILT in the name of Islamic feminism also accepted few issues of FLT i.e. equalizing the women property rights, other moral issues which are not completely violative to the basic norms of the religion.

However, this movement (FLT) has become so fanatic in their activism that it has forgotten the values and significance of the societal bondages. Familial relations and hierarchical cooperation have also been obliterated from the outline of the FLT. In the same way, Westerners have awarded directors of these movements of the Easterners in varied degrees. So the politicians, academicians and social workers in private or public sphere of the country try to do something which will be suitable to the requirements of the FLT. It is done more to gain personally than any collective benefits.

Recently the political parties are using issues of 'empowering women' even in their political manifesto. The leap service of providing the women rights is the sweetest propaganda of the politicians. Practically, most of the commitments of those politicians are false to deceive the ordinary women folks.

Virtually the opinion of the liberal feminism may be accommodated even in our religious theory 'ILT' in practice. ILT gives half share in the property distribution in compare to the male counterpart but it did not oblige any financial responsibility. Liberal feminism honors the women providing the equal shares in the property rights at par with entrusting the responsibilities. Consequently it has many vantages and pragmatism like the ILT.

⁹⁶ Ibid, at pp. 208-211.

Radicalism of collapsing the society to empower the women practically is impossible. From the utopian belief it may be assumed that it is possible. Practically it is not sustainable. The Women organization or the women may be happy to see dream of the radicalisms. Even the success which till now the feminism has achieved through the extremist ideas, it certainly achieved through liberal feminism.

Radical feminists are torn between denying the humanly and alienation of individualism and claiming that because intimacy constitutes a harm, women long for individuation. Specifically, they wish to free women of the colonization of their minds by the hegemony of patriarchy. The dominant culture tells women that they value intimacy and dependency to make more easily governed by men, separation and independence are what they actually need, but this risks returning to extremisms.⁹⁷

Success of the Feminism: Concern for the ILT

Realistically the FLT cannot be established against the ILT or *vice versa*. FLT has not only been emerged to defy the ILT or any other religious or societal practices but also posed from the inappropriate application of such religious practices. Bedrocks of these alternatives have facilitated the modernity to invent something which may show the light of hope to any deprived or grievous sectors of the society.

Though the ILT has targeted to settle down the matters in peaceful and wise manners on any issue to empathically prioritize the ideal society, the believers of it cannot understand the message of the ILT. So they could not, in many cases, ensure the enactment of the specific legislation for ILT or accommodate any extra-benefit for any class of the society for which the text did not provide directly.

Despite we acknowledge that ILT gave the women more entitlements than any other religion, men even than FLT, the family, society or state could not take the responsibility to ensure that distribution. The reason is that revealed law cannot be implemented like the statutory laws. So the reality demands the enactment of the law. There is problem that few women rights entitling by ILT (dower, maintenance) cannot be measured by the human beings whether it has been properly counted and executed or not. So if the inheritance law is enacted, it should be enacted keeping the provisions of equalizing the men and women rights. If it cannot be made, the ILT should not overcome the challenges which the FLT throws against it. For the same reason, various Muslim countries have equalized the property rights of the men and women and modernized many laws. It will certainly be difficult for the ILT to bridge the gaps between the ILT and practicality, if the activists of the ILT do not take decision on time.

Our Constitution contains the provisions for establishing the discrimination free State on the basis of sex.⁹⁸ The women have the right

⁹⁷ Above note 1, 507.

⁹⁸ Article 27 and 28 of the *Constitution of the People's Republic of Bangladesh* .

to be leader of the State in Bangladesh. Present Prime Minister and opposition leader both are women. The USA Constitution has changed the laws for equalizing the men and women rights.⁹⁹ Recently the BD Government approved the Women Development Policy 2010. The Convention on the Discrimination against Women (CEDAW) also directed the member state to enact the laws removing the discrimination on the basis of sex.¹⁰⁰ These are the achievement of the liberal feminism and if the ILT or the Muslim countries could not understand the impact of it, the ILT should have to face serious complexities. But all things should be done understanding the contexts of the laws and societies and sentiments of the people; otherwise the confrontation should be to defy the reforms like Fatwa prohibition, rights of the divorced women as per ILT by Hefzur Rahman Case, and Women Development Policy 2010 etc.

...[M]uslim society abandon its backward ways and follow the Western path to success and civilization required changing the women. The grown man is none other than his mother shaped him in childhood, and this is the essence of this book. It is impossible to breed successful men if they do not have mothers capable of raising them to be successful. This is the noble duty that advanced civilization has given to women in our age and which she fulfils in advanced societies.¹⁰¹

Conclusion:

ILT had been able to achieve credit of removing the darkness from the society of the age of ignorance; it would be able to act similarly in the modern society what this society needs to be done on the basis of age, place and rhythm of the surroundings. Ironically some traditional writers think that ILT laws can never be modified or statutory laws can never be made afresh by the human beings in the absence of the state supervised by the sovereign Almighty.¹⁰²

The accusations of FLT against the ILT are mistaken and wrong as it has not been exhibited, and demonstrated understanding the texts and contexts of the ILT. FLT will also fail, if such components of the society cannot be changed. The real scenario is that the liabilities for the discrimination or the torture against the women may be put upon more on non-compliance of underlying principles of the law or religion. If we can ensure the compliance of law or religion, we have to face less irregularity in the society than we are facing now.

⁹⁹ Above note 59,156.

¹⁰⁰ Article 1 of the CEDAW.

¹⁰¹ Above note 59, 156.

¹⁰² Abul A'la Maududi, *Human Rights In Islam*, Second Edition, 1995, 12. Ironically, the Westerners are also so outrageous to the Islam that Muslim can little take any suggestion of them positively to reform the ILT. see, Abdel wahab El-Affendi, (eds), *About Muhammad The Other Western Perspective On The Prophet Of Islam: A Short Anthology of Western Writings On The Prophet Muhammad: From the 18th Century To The Present* (Legacy Publishing Limited, UK, 2010) xxi-xxvi.

To do something for the women to salvage from the so called established ramification of the societies such as economic, social and political, reforming attitudes of the Islamists government of various Muslim countries can be taken as example. To smoothen these trends, gift or any other method can be accepted as ways even the country like Bangladesh does not have any specific law for empowering women or providing more rights and responsibilities. Only catering rights would not be enough if the reformist has no power to enforce those laws or revisiting the existing responsibilities of the males and females.

The government of the various Muslim countries where the Government is not from the Islamists, they cannot deny the traditional indoctrination fearing the public sentiment and lacking of the Islamic knowledge. In the same way, they cannot deny the entrance of the modernity fearing the external influence. If the people working for the legislature have the sufficient knowledge on Islamic issues, they might solve it considering the socio-economic conditions of the society and basic principles of the ILT. Bangladesh, like many other Muslim countries should consider the postulates of ILT irrespective of external influence. It should also be concern of the administrators about the modernism and changes in social, economic and political determinants.

It is also accusation that ILT considers the women as sex tool. If we consider the spirit of ILT and fundamental principles of the ILT, it would give us right answer that women are highly respected and dignified in ILT. Despite the ILT does not consider marital rape, it seriously discourages intercourse disregarding the wife's consent and consider it decent activity. As a result, ILT considers a woman humiliatingly is not correct.

Purdah, might be considered by many as sign for considering women secluded from rights of modernism. From the analysis of ILT in compare to the FLT postulates, *Purdah* has been considered as sign for protecting women. Having positive aspects of *Purdah*, various regions of Europe have introduced *Purdah*.

Polygamy is valid and accepted in the ILT. Dissecting the root of ILT, polygamy can never be accepted as license for the men to marry more than one wife. Polygamy can only be accepted in the rarest and most specific time complying with provided conditions. So polygamy humiliates the women or facilitates men more opportunism is not right rather it accommodates the fundamental issues which should require to be mitigated. Compliance of rights and responsibilities of husband for taking more than one wife is simply impossible that very few people might do polygamy or no one might take more than one wife.

Divorce is not the mere exclusive right of the husband. It is mutual right of parties to the marriage. Maybe the procedure for the husband and wife is different. Deposition by the women should be assisted by other women for assisting at the time of deposition.

Political rights has been provided by the ILT is more than many other legal disciplines and legal systems. So the it would be erroneous to say that ILT does not provide women political rights properly.

Reformation in the Islamic religion is not new concept. Abu Bakr, Umar and Uthman (R) made various reforms. But such reformation should be done by the eligible and knowledgeable people. On the other hand, how materialization will emancipate the women is debatable as the feminists or other ideologies which tried to make the male and female equal could not maintain absolute rule of law because of not distributing the responsibilities as well.

Property right of the women includes the share as *Quranic* heir, dower and maintenance. There is no problem as to the *Quranic* share. The problem arises regarding the fixation of the amount of the dower and maintenance according to the status and respect of the wife.

On the other hand, from the practice it is seen that the allocation of the property right as per the *Quran* are not implemented properly. Sons are prioritized by the parents. As a result the rights of the women are not realized properly. Dower and maintenance cannot be fixed when really realized. So if the right of the women rights can be fixed as equal enacting the law for distribution, the women may be secured to get their rights.

The enactment of the law or policy may compel the stature of the society to cater anybody's rights properly. The specific legislation is not only essential that ILT is being criticized by the FLT or many other so called modern systems existing in the universe but also it requires to be enacted to strengthen the appeal of the ILT in the age of sophistication.

We know that the ILT directs the rights of the women half in compare to the male counterpart depending upon the economic contribution of the male and female towards the familial matters. It is not done to subdue the women. As during the preliminary stage of ILT, the women should have not carried any economic responsibility in economic issue of household, they had been less portion in the *Quranic* distribution. At present the women have to maintain and provide the equal contribution towards the familial matters, so they should be given equal share for the same reason i.e. economic dependency.

[T]he deceased share inherited by women] was not determined because of any inferiority on her part, but in view of her economic situation, and the place she occupies in the social structure of which she is part and parcel. Islamic law has put greater economic responsibility on men while women's role is economically much lighter.¹⁰³

Political leadership should be open so that extremism cannot be developed. Inhuman and unjustifiable practice should be stopped and surveillance should be conducted so that religious fanaticism cannot create any scene which may ultimately create the controversy and debate against the ILT. Aggressive and impractical activism should not be conducted to protect the universal religion 'Islam.' Similarly the criticism of the FLT cannot be accepted which are nugatory of the text and context of the ILT.

¹⁰³ Raga El-Nimar, 'Women in Islamic Law' in Mai Yamani (ed), *Feminism and Islam: Legal and Literary Perspective* (NYU Press, 1st edition, 1996) 100.