

PERSPECTIVES OF WOMEN'S REPRODUCTIVE RIGHTS UNDER ISLAMIC LAW: TOWARDS AN IDEAL REPRODUCTIVE RIGHT

Kabir M. Danladi*

1.0 INTRODUCTION

*"The notion of a right to health emerged recently. Historically, issues related to the health of populations and the availability of health care was not considered to be a major social or governmental concern. While health was valued as an important and beneficial asset, it was assumed to be in the private rather than the public or social domain. Moreover, until a century ago, little was understood about the causes of disease or effective prevention and treatment measures."*¹

Unlike Reproductive rights under international law which is focused on the rights of a woman to decide when to reproduce or reprocreate, to decide and participate in family decisions like child spacing, right to abortion, right to bear child at the time she wants, right to control sensitive parts of her genitalia, right to adequate care at the time of pregnancy and up till her maternal period and right not to be raped and exposed to other sorts of gender violence based. These so called women rights under international law were not earlier recognized and propagated until recently as quoted above by Ladan M.T International and local non governmental organisations like the John D. and Catherine T., Macarthur Foundation and Women Aid Collective (WACOL) are seriously putting heads together to introduce² the teaching of "**reproductive health and rights**" to students in university at both undergraduate and postgraduate level. Their efforts in this regard have reached an advanced stage to the extent that a curriculum on

* LL.B. LL.M, B.L., Lecturer, Department of Public Law, Faculty of Law, A.B.U., Zaria.

¹ See Mann, Gostin, Gruskin, Brennan, and Fineberg, "Health and Human Rights" (1994) in Vol.1 Health and Human Rights Journal. P. 8 also quoted by Ladan M.T. (2006) Introduction to Jurisprudence Classical and Islamic. Malthouse law books Press Ltd, P. 322.

² See women Aid collective (WACOL) letter to Dean of Law Ahmadu Bello University, Zaria dated 19 March, 2007.

reproductive health rights had already been prepared and sent to Nigerian Faculties of Law for approval, adoption and immediate implementation.³

In other words, this paper will consider whether or not there exists anything like reproductive health rights under Islamic Law, and if it does exist, since when was it in existence and how ideal are these rights under Islamic law? Or was it recently discovered and recognized as the case under classical reproductive health and rights as quoted above? And if it doesn't exist, what are the consequences of its failure to the Muslims who are followers of Islamic Law?

2.0 MEANING OF REPRODUCTIVE HEALTH AND REPRODUCTIVE RIGHTS UNDER CLASSICAL LAW

2.1 REPRODUCTIVE HEALTH

Ladan defined reproductive health as a state of complete physical, mental and social well being and not merely the absence of disease or infirmity, in all matters related to the reproductive system and to its functions and process.⁴ He further restated that reproductive health is a fundamental aspect of women's well being without regular access to safe, high quality services, women became vulnerable to a host of health complications which may include death or injury during child birth, unwanted pregnancy and sexually transmitted diseases (STD's)⁵

Reproductive health under Islam covers a wider scope than that in the definition above, because reproductive health of a woman in Islam does not only commence when the woman is already mature, married and capable of conception, but rather from the moment a woman is born up till the time she dies.

2.2 REPRODUCTIVE RIGHTS

According to Fathala F.M, reproductive rights are sexual and reproductive rights which are not new set of human rights hence to him they are simply the application of the already recognized list of human rights to the area of sexuality and reproduction. The international community has been slow to

³ See attached to the footnote 1 letter which reads "Content Development for the Teaching of Health Law."

⁴ Ladan M.T. (2006) Introduction to Jurisprudence; classical and Islamic Malt House press Ltd. Lagos P. 338.

⁵ Ibid P. 338

recognize this for long time, the human rights movement has focused on the “**Public**” arena largely populated by men and neglected the so called “**Private**” sphere of some family and community in which women are traditionally endorsed⁶

But to Ladan, reproductive rights means;

“The term reproductive rights embrace certain human rights that are already recognized in national laws, international legal and human rights documents including;

- (a) *The basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information, education and means to do so.*
- (b) *The right to attain the highest standard of sexual and reproductive health.*
- (c) *The right to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights document. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community”⁷*

There is no doubt, both Fathala and Ladan in there definitions arrived at one common thing in respect to reproductive rights. For example Fathala in his definition acknowledged that sexual and reproductive rights are not a new set of human rights, and Ladan equally restates that reproductive rights are already recognized in national laws, international legal and human rights documents.

But the question that needs to be asked is what is the position of reproductive health and rights under Islamic law? Are they also in existence but forgotten? Or are these rights known and not forgotten but received slow attention of recognition by Islamic Community as the case under classical law as acknowledged by Fathala above? This will form our next discussion in this paper.

⁶ Fathalla. F. M. (2004) Reproductive Rights and Reproductive Wrongs “The case for maternal Mortality as a reproductive wrong”

⁷ Ladan M.T. Op. Cit. P. 334

3.0 MEANING OF REPRODUCTIVE HEALTH UNDER ISLAMIC LAW.

Reproductive health and rights are not new to Islamic law and none are they not recognized or shown slow recognition like the classical reproductive health and rights, but they are rights recognized, practiced and implemented according to the tenets of Holy Qur'an, and Hadith of Holy Prophet (S.A.W). These rights shall be examined here seriatim, but first we must know what is reproductive health and rights under Islam.

3.1 MEANING OF REPRODUCTIVE HEALTH UNDER ISLAMIC LAW.

Reproductive health under Islam is the ability of a woman to be accessible to absolute reproductive health which commences from the time a female child started reaching the age of puberty. And the responsibility of giving her these rights lies on her parents, government and the husband according to the tenets of Qur'an and Hadith.

The Holy Prophet (SAW) is reported to have said;

“Marry and reproduce so that I will be happy with you here after”⁸

And in another one, the Prophet is reported to have said;

“O young men, those among you who can support a wife should marry for it restrains eyes from casting evil glances and preserves one from immorality.”⁹

The combined effect of the interpretation of the two hadiths above is that reproduction is encouraged, and if reproduction is allowed, the second hadith sets out the limit of the reproduction that is, reproduction should be embarked upon only if one can support them (women), supporting them here entails giving women absolute rights in all ramifications. Where a man can not give a woman her rights then, it means he can not support her as required by the hadith and therefore marriage between them should not arise.

In addition to this quoted hadiths, the Holy Qur'an has warned Muslims to be conscious of their duty. The Holy Qur'an provides.

⁸ Buhari and Muslim traditions

⁹ See Bambale Y.Y (2001) Islamic family Law (unpublished) Department of Islamic Law, A.B.U Zaria P.7

“O Mankind, be conscious of your duty to your Lord, who created you from a single soul created of like natures, his mate, and from the two created and spread many men and women....”¹⁰

This provision of the Holy Qur'an is a warning to men on the protection of women's rights in all ramifications which are duty on them once they decide to go into reproduction.

And finally, the Holy Prophet has equally said;
“When God endows you with prosperity, spend first on yourself and your family”

The above hadith is specifically imploring Muslims to spend on their family once they have the means, spending here include providing woman with all rights and her needs, and her needs here include reproductive health needs.

Therefore, reproductive health is recognized and practiced in Islam, except that unlike classical reproductive health law which emphasizes much on governments¹¹ role towards protecting the rights, in Islam the reproductive health lies mostly on the husband and partly on the government. The husband is expected to discharge all his obligations to a woman once they are married, all her rights must be respected and given to her. And the government must discharge its role of providing adequate health facilities to all its citizens as stipulated by some traditions of the Holy Prophet.

3.2 MEANING AND SCOPE OF REPRODUCTIVE RIGHTS UNDER ISLAMIC LAW

Reproductive rights under Islamic Law is sexual and reproductive rights of a woman as ordained by Almighty Allah, his Prophet and other consensus of the companions of the Holy Prophet.

But it should be noted that unlike reproductive rights under classical laws, like the United Nations International Covenant on Economic, Social and Cultural Rights, Convention on elimination of all forms of Discrimination against women, and the International Conferences

¹⁰ Holy Qur'an 4.1

¹¹ See various provision of Convention on Elimination of all Forms of Discrimination Against Women (CEDAW).

on Population Development Programme of Action (ICPD)¹² which only vests reproductive rights to woman, Almighty Allah in his wisdom of equality and non discriminatory nature vests these reproductive rights to both women and men. This can be viewed from Holy Quran that says;

“Your wives are for you to cultivate so go to your cultivation whenever you wish and take care of what is for you and heed God know that you will meet Him”¹³

In another verse, the Holy Qur'an provides:

“They are a garment for you and you are a garment for them”¹⁴

If these two verses will be interpreted, it entails that a wife is a property to the husband and he is free to have sexual intercourse at anytime he wish, but then, the provision of the Qur'an is not without caution, the last part which says ... take care of what is for you, is re-emphasizing women rights generally provided the man can take care of his wife reproductive health needs then he can go to her at any time. While the second verse highlighted the dual rights both a husband and wife has in regard to sexual right. They are garments for you and you are garments for them, meaning each can wear his garment at the time he need.

This provision of Holy Qur'an indicates that reproductive rights is recognized and practiced in more equitable manner to both parties. Islamic Law does not accept wife alone to possess these rights just as earlier pointed out due to first, the equality nature of Islam there is equality in Islam between men and women as it is stated in the Holy Qur'an;

“O mankind, fear your guardian Lord who created you from a single person created out of it His mate and from scattered

¹² International Conference on Population and Development held in Cairo Egypt 1 where member states at the conference reinstated and affirmed that reproductive he rights embrace certain human rights that are already recognized in international human rights instruments, national law and other census documents.

¹³ Holy Qur'an 2:223

¹⁴ Ibid 2:187

like (seeds) countless men and women fear Allah through whom ye demand your mutual (rights)¹⁵ ”

From the above verse equality between men and women is established, therefore, vesting women the rights alone will be tantamount to inequality and this will not only be inequality but will lead to discrimination between the parties.

And second, the rationale of the dual right also rests on living in peace and tranquility, where these rights are given to only one party, it is undoubtedly believed that there is a lop-sidedness and the other party not given such rights men generate in tranquility. The Holy Qur'an provides;

“And of His Signs is that He gave you wives from among yourselves that you rights live in tranquility with them and put love and kindness between you. Surely there are signs in this for thinking men”¹⁶

The above verses therefore, are indicative that reproductive rights in Islam belong to both men and women and neither is the right restricted to women alone as provided under classical reproductive rights.

3.3 SCOPE OF REPRODUCTIVE RIGHT UNDER ISLAMIC LAW.

Islamic Law has made provisions both in Qur'an and hadith relating to protection of women reproductive rights.

This provision ranges from rights in sexual intercourse, rights in maternity, and morbidity, child nursing rights and other provisions prohibiting harmful practices. We shall discuss these rights as thus;

3.3.1 Women Right to Privacy during Sexual Intercourse.

The rate of lack of bashfulness of the western prevalence of phonographic literature and films, nudism, nudist camps and colonies as well as alfresco sex is a complete violation of women's rights of decency and also these vices have created a great negative effect on the attitude of infants and youth, who not only indulge themselves in sexual practices but also corrupt their morals generally in the society.

¹⁵ Ibid 4:1 (Sura – An-Nisa (Women))

¹⁶ Ibid 30:21

Islam frown upon such indecencies, Islam do not regard any sexual relationship out of marital relationship, hence, marital relation is a legal right which must be strictly observed in utmost privacy, Islam prohibit a man to expose his wife privacy during sexual intercourse. In this regard the Holy Qur'an provides;

“O you believers let your slaves and those who have come of age among you ask your permission when they come in to see you on three occasions, before the morning prayer, when you have put off your garments in the heat of noon and after the evening prayer. These are the three occasions of privacy. At other times it is wrong neither for you nor for them to go around visiting one another Allah makes plain to you His revelations He is knowing Wise”¹⁷

In Islam, even couples children who did not attain puberty are not allow or granted unlimited access to their parents bedroom based on the above verse, while with regard to those who attained puberty the Qur'an further provides;

“And when your children have reached the age of puberty, let them still ask your permission as their elders do. Thus Allah makes plain to you His revelations. He is wise knowing”¹⁸

Furthermore, in other to protect women sexual right of privacy Islam forbid disseminating any detail whatsoever pertaining to the marital relation to the third party in regard to this, the Holy Prophet (S.A.W) was reported to have said;

“Certainly, the worst person on the day of judgment is he who after encountering his wife (sexually) gives the details of the intercourse to others”¹⁹

The alarming rate of women exposed in sexual intercourse can not be overemphasis, the western world and international community who are agitating for women to have sexual rights have failed to

¹⁷ Holy Qur'an 24:58

¹⁸ Holy Qur'an 24:59

¹⁹ Ahmad (Buhari and Muslim)

draft any convention to protect these abuses but rather concentrates on conventions given women rights to make or decide in child spacing and many other things alike.

3.3.2 Women Right to Decency during Sexual Intercourse.

Women are entitled to have a decent environment during sexual intercourse. The practice of women now having sexual intercourse in bar bench, bathroom or toilet during party and disco is a total violation of their sexual reproductive rights. Islam frowned at these practice, sexual intercourse with a woman must be in a modest, decent and good sense of sexual decorum appropriate to the occasion, for example, Islam encourages cloth covering while sexual intercourse is taking place in a modest environment, on this the Prophet (S.A.W) was reported to have said;

“Allah is modest so he love modesty and privacy”²⁰

And in another one, he was reported to have said;

“Whenever any of you reaches out his wife, they should do it under cloth covering and never encounter each other like two camels.”²¹

Exposing women to sexuality in these immodest ways is not only violation of her right to decency in sexual reproductive right but is violation of her right to dignity.

3.3.3 Women Right to Sexual Preliminaries Foreplay

Foreplay is a means of preparing psychologically and emotionally for coitus so that the couple can attain the peak of sexual enjoyment usually represented by orgasm with ease. This aspect of sexual activities provokes genital erection in a man and stimulates glandular secretion in women and this makes penetrating of the female organ easily.

Islam is not odd religion sexuality between couple is aim at satisfaction of pleasure. Islam does not regard satisfaction of sexual intercourse to be only right of man and privileged of woman, but rather it recognizes also the right of woman to derive the maximum

²⁰ See Hadith collection by Imam Ahmad, Tirmudhi and Abu Daud

²¹ Reported By Ibn Majah

pleasure in it, therefore to achieve this, the woman is entitled as her reproductive right to be sexually aroused through foreplay involving mutual stimulation and pleasuring.

Primary foreplay in sexual intercourse was recommended as a reproductive right of a woman. Aisha (R.A) was reported to have said: it was practice by Holy Prophet (S.A.W) and he warned against not practicing it to women. The Holy Prophet Said;

“Don’t jump on women as male animals pounce on their females but let there be a messenger between you. They asked what is the messenger O Prophet of Allah? Kissing and endearing talks he answered”²²

Therefore, foreplay is highly recommended to be given to women, and marital intercourse without preliminary of foreplay is violation of their reproductive right and therefore prohibited by holy prophet.

3.3.4 Women Right To Sexual Techniques

Islam provides many techniques of sexual intercourse by couples and with exception of some few prohibited, a woman has the right to demand a particular technique where she is tired with particular one. The general requirement is that penetration is done only through virginal orifice but this can be through many techniques such as face to face, wife on top of the husband, face to face side wrap, or through laying down position, standing position e.t.c.

3.3.5 Women Right to Maximum Sexual Enjoyment

Women in Islam under their reproductive rights are entitled to maximum sexual enjoyment during intercourse; this right is a complementary rather than supplementary to women sexual rights to techniques. The wife should obtain full maximum share of sexual pleasure and should not be regarded as a mere sexual tool by the husband or man. Therefore, the husband must take all necessary steps to help the wife attain orgasm which normally takes most women a longer time to reach than the average man.

Islam enjoys men when they reached orgasm in sexual intercourse while his wife is yet to attain her maximum enjoyment in sexual

²² See Muasnand Firdausi

intercourse to continue with the sexual stimulation until his wife is assisted to the same level of excitement. This was directed by Holy Prophet. In Hadith when he said;

“Whenever any (one) of you is in sexual union with his wife, stimulating her if he reaches his own excitement before her he shouldn't hurry up but offer her excitement”²³

In another authority Imam Abu Hamid al-Gazali was quoted to have written that;

“The man should satisfy his wife by a way of deep stimulation if he relive himself of the accumulation of his desire he should also allow his wife same so that both will share the experience together”²⁴

Therefore, in Islam enjoyment from sexual intercourse is not considered as the exclusive right of men and privileged of women, but indeed the sexual relation is an actively participating act from which both should derive maximum pleasure and enjoyment.

3.3.6 Women Right to Maternal Care as a Reproductive Right

In Islam pregnancy is a trust for which its trustees will account before Almighty God, therefore, it must be kept safe until delivery. All necessary things needed by the woman bearing the pregnancy must be given to her as of rights during the period of her gestation. The Holy Qur'an provides;

“We have enjoined man to show kindness to his parents with much pain his mother bears him and with much pain she brings him into the world he is carried in pregnancy and sucked for thirty months”²⁵

The above verse generally shows how a man is expected to show kindness to a pregnant woman during the pregnancy period. Muslim women are entitle as a reproductive right to be attended to during labour period by a well qualified Muslim female midwife physician, where a female midwife is not available a non Muslim female doctor

²³ This Hadith was narrated by the Abu Yaly on the authority of Anas Bin Malik (Tabr

²⁴ Ronald Benn, *Morals and Manner in Gazali'shya*. Oxford Press, London P.4

²⁵ Holy Qur'an 46 - 15

or midwife should assist her, but Islam forbid a male different from her husband to see the private organs of another woman because this will lead to violation of her tight to chastity²⁶

Also, during the period of maternity, particularly the first 40 days after delivering, a woman is entitled under her reproductive right not to submit herself to sexual intercourse to her husband during this period (Nifas).²⁷ The maximum period of Nifas is forty days while the minimum is within some seconds after child delivery²⁸

4.0 POST DELIVERY CHILD CARE AND NURSING AS A REPRODUCTIVE RIGHT

Once a woman successfully delivered a child she is entitled under her reproductive right in Islam to full maintenance by her husband. The right to full maintenance is both on the women and the child delivered. The authority to this right is the Holy Qur'an which provides'

*"Mother's shall give suck to their children for two whole years for him who wishes the sucking to be completed. They must be maintained and clothed in a reasonable manner by the father of the child. None should be charged with more than what one can bear. A mother should not be allowed to suffer on account of her child none should a father. The same duties devolved upon the fathers heirs"*²⁹

Be that as it may, the woman as a mother is indeed entitled to full maintenance not only on food, cloths and shelter, but even on all health attention needed by her and her child during this period of nursing of the child.

5.0 CONCLUSION

The above discussion in this paper successfully revealed to us that reproductive right in Islamic law is never a new trend of women rights and neither is it neglected in the area of observance by the Muslim Community. Unlike reproductive rights under classical

²⁶ Ibid 17 - 32

²⁷ Nifas is the bleeding experience by a woman after child birth

²⁸ Fatimah (R.A) the Prophets daughter is reported to have bleed for less than a day after the birth of Hassan.

²⁹ Holy Qur'an 2:232.

international law which is completely relegated backward and forgotten by the international community not until recently when it is revived and reactivated, Islam is a self encompassing religion it does not live anything untouched by Qur'an, Sunnah or Hadith or other subsidiary Islamic Law sources.

In Islam, the harmful practices perpetrated to women are prohibited; therefore the agitation for protection of women rights as a result of these harmful practices does not even exist like the case under international law. Hence one can conclude by saying Islamic law prohibit harmful practices against women, and has in existence defined reproductive rights of women that are already being practice by Muslim and has not being forgotten.