

Abstracts of Urdu Articles**Unclear Words and Quranic Tafsir**

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Unclear Words (*al-Alfaz Ghayr al-Wadihah*) are the words which do not by themselves communicate a clear meaning without the help of supplementary evidence that may be delivered by the Lawgiver Himself, or by the mujtahid. Keeping in view the ambiguity of the words, they are classified into four, as *Khafi* (obscure) and *Mushkil* (difficult) *Mujmal* (ambivalent) or *Mutashabih* (intricate). The article deals with the definition and fundamental issues of these words and reveals that how these words play vital role in the Quranic interpretation.

Methodology and Mode of Sheikh Mohammad Mustafa Al Maraghi in his Tafseeri Daroos (lectures): An Analytical StudyAbdul Hameed Khan
Sami ul Haq

Mohammad Mustafa Al Maraghi was born in 1881 in Mragaha in an educated family. He proved himself an Egyptian reformer and he was also a clergyman of Al-Azhar. He actively encouraged reforms in social, legal and educational areas. He supported the view of introducing modern sciences to the curriculum. He was also a supporter of Ijtihad. He used to take active part in religious conferences on international level and strongly wished that clergy should play active role in government.

Imam *Maraghi* used to narrate some verses of the Holy Quran in the big mosques of Cairo and Alexandria which were called his religious lectures. These lectures were printed in the form of book under the title of "Hadith e Ramadan". Imam *Maraghi* started delivering lectures at the time when the people of that place had left Holy Qur'an and were no more living their lives according to the teachings of Islam. He used to select the verses of Qur'an for lectures (*duroos*), which were full of faith, instructions, advices and modern sciences. He accepted the services of classical commentators and used to critique their work with very respect. He used to highlight the details and blessings of Islam in his lectures. Imam *Maraghi* was aware of the problems of all classes of society and used to present their solutions in the light of Holy Quran. The society was influenced a lot from his valuable lectures. People woke up and started decorating themselves with Islamic ethics and values

- 29 Ameer Ali (2004) Commentaries on Mahommedan Law 5th Edition (Revised by S.
30 H. A. Raza) Allahabad: Hind Publishing House, p.55.
31 Shariat Petition No. 6/I of 2004
IX of 1875
- 32 The Women's University Ordinance, 1985 (Ordinance No. XXIX of 1985).
33 Suo Moto No. 132/87
34 Suo Moto No. 1/K of 2006
35 PLD 2008 FSC 1. The decision of the court can be accessed online at the following
link
[http://federalshariatcourt.gov.pk/Leading%20Judgements/Suo%20Moto%20No.1-
K%20of%202006.pdf](http://federalshariatcourt.gov.pk/Leading%20Judgements/Suo%20Moto%20No.1-K%20of%202006.pdf)
(Last accessed on 13/03/13).
- 36 Suo Moto No. 1/K of 2006, at pp.4-5
37 Ibid, at p. 24
38 Ibid, at pp. 25-26
39 For details please see Dr. Tanzilur Rahman (1997) Muslim Family Laws Ordinance,
Islamic & Social Survey, Karachi: Royal Book Company.
- 40 This battle was initiated by Mst. Farishta Vs. Federation of Pakistan (PLD 1980 Pesh
47) and culminated into the pronouncement of Dr Mehmood ur Rahman Faisal Vs.
Federation of Pakistan (PLD 1994 SC 607).
41 PLD 2000 FSC 01
42 Ibid, at p. 50.
43 Ibid, at p. 51.
44 Ibid, at p. 57.
45 Ibid, at p. 48.
46 Muhammad Imtiaz and another Vs. The State (PLD 1981 FSC 308); Arif Hussain &
Mst Azra Parveen Vs. The State (PLD 1982 FSC 42); Muhammad Ramzan Vs. The
State (PLD 1984 FSC 93); Muhammad Yaqoob and another Vs. The State (1985
PCr.LJ 1064).
47 Hafiz Abdul Waheed Vs. Asma Jehangir (PLD 2004 SC 219)
48 Ibid, at pp.236-237.
49 PLD 1992 FSC 195
50 PLD 1989 FSC 143
51 NLR 1993 S.D. 231 (2)

References

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- 1 For history and significance of the Objectives Resolution see Nasim Hasan Shah (1987) "The Objectives Resolution and its Impact on Administration of Justice in Pakistan" Islamic Studies Vol. 26, No. 4.
- 2 M. Mahmood (2010) "The Constitution of Islamic Republic of Pakistan, 1973" Al-Qanoon Publishers: Lahore, p. 151.
- 3 Ibid, p. 382. Article 31 of the Constitution 1973.
- 4 For activities of the Council see <http://www.cii.gov.pk> (Last accessed on 11/03/13).
- 5 M. Mahmood (2010) at p. 1113. Article 230 of the Constitution.
- 6 Hasan Askari Rizvi (1988) The Military and Politics in Pakistan 1947-1986. Delhi: Konark Publishers.
- 7 Shuja Nawaz (2008) Crossed Swords: Pakistan, its Army and the Wars Within. Karachi, Pakistan: Oxford University Press.
- 8 President's Order No. 1 of 1980.
- 9 Article 203GG says that "subject to Article 203D and 203F, any decision of the Court in the exercise of its jurisdiction under this Chapter shall be binding on a High Court and on all courts subordinate to a High Court".
- 10 The Article states that the court can "examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet".
- 11 M. Mahmood (2010) at p. 1014. Article 203D of the Constitution.
- 12 Ran Hirschl (2010) Constitutional Theocracy, Cambridge, USA: Harvard University Press.
- 13 Watan Party Vs. Federation of Pakistan (PLD 2011 SC 997).
- 14 Rubya Mehdi (1997) "The Offence of Rape in the Islamic Law of Pakistan" in Dossier 18 prepared by Women Living in Muslim Laws, pp.98-108.
- 15 Asma Jahangir & Hina Jilani (1990) The Hudood Ordinances: The Divine Sanction, Rohtas Books: Lahore.
- 16 Salahuddin Yusuf (n/d) Auratoon ka Imtiaz Masail wa Qawaneen: Hiqmatein aur Fawaad (Differential Issues of Women and their Laws: Reasons and Benefits). Lahore, Pakistan: Darussalam.
- 17 Shariat Petition No. K-4 of 1982. The decision of the case is available online on <http://federalshariatcourt.gov.pk/Leading%20Judgements/Sh.Pet.No.K-4%20of%201992.pdf> (Last accessed on 13/03/13).
- 18 Ibid, at p.2
- 19 Ibid, at p.3
- 20 Ibid, at pp.7-8
- 21 Ibid, at p.3
- 22 Ibid, at p.5
- 23 Ibid, at p.13
- 24 Ibid, at p.15
- 25 Ibid, at p.25
- 26 Ibid, at p.27-29
- 27 Mashood Baderin (2003) International Human Rights and Islamic Law, Oxford: Oxford University Press.
- 28 Shariat Petition No. 1/L of 2010. This judgement is published and available at PLD 2011 FSC 117.

purpose is to underline that progressive trend of the FSC is not restricted to one particular dimension only.

In a case titled *Dr Mahmood ur Rahman Vs. Federation of Pakistan*(49) it was held by the FSC that charging court fee as per market value of a subject matter is against the injunctions of Islam. In this case the petitioner challenged various laws on the ground of repugnancy to Islam and the court directed to the respective governments to amend all such provisions in the laws. In another case(50) dealing with an important issue of administration of justice, i.e. period of limitation, it was observed by the FSC that there is nothing in the Quran and Sunnah to proscribe period of limitations for different sorts of remedies.

In *Dr Abdul Malik Irfani Vs. Federation of Pakistan*,(51) the petitioner challenged some sections of Law Report Act 1875 which were amended by Act of 11 of 1990. These sections lay down that no judgment should be published without permission of the court which has pronounced it. It is worthwhile to point out here that this law was initially introduced the notion of precedent on a firm basis by facilitating systematic publication of law reports in the Indian Subcontinent. After going through the record and arguments of councils, the court dismissed the petition as it did not find in the law anything repugnant to Islam.

Conclusion:

The FSC was established by General Zia as part of his efforts to Islamize the country. It was provided a firm foundation by engrafting an exclusive chapter 3A into the Constitution. The most criticized aspect of the FSC has been to declare the laws enacted by various legislative assemblies as null and void if they are found to be inconsistent with the Quran and Sunnah. This criticism is channeled through many mediums, e.g. constitutional theory, patriarchal structure of Islamic resurgence and discriminatory application of Islamic laws against women. To some extent, the manner in which the FSC has discharged its judicial function, it has substantiated the objections. But this is not the whole truth about role and contribution of the FSC; it has time again pronounced such judgments which are progressive in nature though grounded in Islamic perspective. The paper has analyzed some decisions of this sort and argued that over-emphasis on negative portrayal may distort its genuine contributions. Though the paper has analyzed more cases related to gender issues, the same trend is also discernable in other kinds of decisions as highlighted with reference to a few cases pertaining to administration of justice. All the judgments analyzed in the paper were meant to be and has brought to forth that the FSC has been a vehicle for fostering progressive trends in Islamic scholarship. As a whole, the FSC's role in domain of Islamic scholarship is bound to challenge the authority hitherto exercised exclusively by traditional religious segments of the society.

punishment of non-registration should be enhanced to make compliance of this provision more effective.(43)

The procedure to regularize polygamous marriages in Sec. 6 has been another bone of contention. Some religious segments were against laying down any procedure for taking permission from the existing wife before getting into another contract of marriage. The court held that the procedural aspect of Sec. 6 is entirely reformatory and should be amended in a way to make it more protective to wife's interest. Hence, this procedure cannot set aside on the basis of any objection founded in the Quran and Sunnah.(44) In another contentious issue pertaining to Sec. 4 of the Muslim Family Laws Ordinance, the court suggested to the government to introduce a concept of mandatory will for orphaned grandchildren instead of giving them through process of inheritance. According to the court, this amendment on the one hand would not violate any Islamic injunction and on the other protect the rights of orphaned grandchildren.(45)

There is another important aspect in which the FSC has decisively contributed to emancipate women from unnecessary fetters put upon them by their unscrupulous family members. Some Sunni scholars are of the view that an adult virgin cannot get herself married without the consent of her guardians. This traditional stance had been taken as a plea by the families of those girls who get themselves married without their parents' consent to register cases of illicit sexual relationship against them and their husbands. As judicial dispensation carried out in Pakistan, appeals against such cases are heard by the FSC. The FSC in such appeals affirmed the rights of adult virgin girls to marry by their own choice and hence the cases of this nature were quashed many times.(46)

In late 1990s, an adult virgin girl married to her teacher without her parent's consent. The controversy regarding her competency to marriage was decided by Lahore High Court in two various petitions differently and ultimately, the matter was tabled before the Supreme Court of Pakistan. The Supreme Court relying on the decisions of the FSC concluded that an adult virgin has a right to marry by her own choice and the same cannot be taken away in any manner under the garb of guardian's consent.(47) The Supreme Court held that the decisions of the FSC are binding on all courts including the High Courts and whenever a decision is rendered by any High Court disregarding any judgment of the FSC then such decision of the High Court is bad in law.(48) Thus the Supreme Court put this long drawn controversy to a gender sensitive conclusion and in this regard the decisions of the FSC came to its rescue.

The decisions analyzed above in this section relate to gender issues and one way or another protect and promote rights of women. As pointed out in the opening paragraph of this section, I will also be briefly referring to some other decisions pertaining to administration of justice and the

of Married Women does not confer any right to a wife to get her husband a nationality on the basis of her national status.(37) Thereafter, the court observes that Islam envisages something different from the above convention. The court concludes that a foreign husband would be entitled to nationality of his wife on the same pedestal on which a foreign wife is entitled to have nationality of her husband; though these enabling provisions would not take away the right and responsibility of the state to deny such right to those who might be a threat to national security.(38)

There is another important decision of the FSC on Muslim Family Laws Ordinance, 1961, which support the main argument of this paper. Let us first briefly state the history of this ordinance and then indulge into highlighting the main implications of the decision regarding gender issues. The ordinance was enacted by late General Ayub Khan on the recommendations of a commission constituted to suggest changes in laws relating to Muslim family in 1955. The commission issued its recommendations in 1956, but they could not be enacted into legislation as they were vehemently criticized by the religious segments of the society. General Ayub took a bold step to codify them. Additionally, he and the subsequent governments in the country made conscious effort to provide security to this piece of legislation from judicial review on the basis of fundamental rights. The similar sort of security was also extended to this law from the FSC's jurisdiction at the time of latter's establishment.(39) Thereafter, a furious judicial battle took place in the courts to bring this law to judicial scrutiny.(40)

At last the FSC assumed jurisdiction with respect to the Muslim Family Laws Ordinance in a case titled Allah Rakha Vs. Federation of Pakistan.(41) Quite astonishingly the decision of the FSC does not seem to be satisfying the traditionally religious segment of the society as the court has taken a firm stance to foster protection of women in family matters. One of the objections of some religious scholars directed against the process of registration of marriages provided in Sec.5 of the Muslim Family Laws Ordinance. They are of the view that there was not any provision in the Quran and Sunnah to make registration compulsory.(42) The court, while observing that non-registration per se does not invalidate a marriage if that is solemnized as per injunctions of Islam, suggested to the government that

ascertainable criterion for majority instead of leaving this issue to be settled in each and every case on the basis of puberty of the parties.

In another attempt to protect and promote the rights of women, the FSC ordered that women should be appointed as vice chancellors to Woman University. In 1985 an ordinance was issued for establishment of Women University.(32) This ordinance did not categorically state that women should be preferably appointed as its vice chancellors. The FSC in exercise of its suo moto jurisdiction ordered the government that a clause should be inserted in the ordinance to make it sure that maximum effort should be made to appoint a woman as vice chancellor of the university.(33)

If there is any discrimination among citizens on the basis of gender then that is something which must be remedied. The law dealing with matters of citizenship was enacted in 1951 and known as Pakistan Citizenship Act. This law granted a right of citizenship to a foreign woman if she married a Pakistani husband under Sec. 10. The same sort of privilege was not accorded to a Pakistani woman in the law. In news clipping it was reported that a Pakistani wife could not get citizenship for her foreign husband. The same news item was converted by the FSC into suo moto petition(34) to analyze whether this discriminatory provision was against the principle of equality and fairness enshrined in injunctions of Islam. The FSC's decision was subsequently reported as In Re: Gender Equality.(35) This is another important decision of the FSC which brings forth its gender sensitive posture.

The FSC issued notices to different government departments to present their stance as to discriminatory treatment of Pakistani woman marrying a foreign husband. Numerous objections were raised by them. Crux of these objections is as under: in our society, status of a foreign husband is not equivalent to a foreign wife; equal treatment to both would contribute to already worsened problem of unemployment; and this facility might have been exploited by enemies for their nefarious purposes, etc.(36)

The FSC was not convinced by these arguments and took a stance that unless there is anything in the Quran and Sunnah to support this kind of provision the same cannot be allowed to survive on the statutes of Pakistan. In addition to its repugnancy to Islamic injunctions, it also violates the equality provisions of the Constitution of Pakistan, 1973. During the course of its analysis, the FSC has pointed out that the Convention of Nationality

responsibility.(27) On the one hand, this decision has exposed the bias underlying some traditional constructions of certain passages of the Quran and sayings of the Prophet, and on the other, it has categorically affirmed that women are as capable and competent in light of Islamic Jurisprudence as men considered to be.

Once again in Mian Hammad Murtaza Vs Federation of Pakistan,(28) the issue of competency of women for appointment as judges in matters of family laws was contested. The court while referring to Ansar Burney's case states that it has attained finality as the appeal against the decision of the FSC in the Shariat Appellate Bench of the Supreme Court was dismissed as time barred. Thus this court cannot be approached to get into a settled controversy one again.

Age of majority is another gender related issue. It has been a contentious issue in Islamic law; whether physical maturity/puberty should be regarded as criterion for majority or there is any possibility to hold that a certain age can also be regarded as such. Whatever criterion is set for majority it would have many implications for women and their rights in Islamic law. According to many scholars, the basic yardstick in majority is puberty as there is no set mechanism to ascertain mental maturity. In certain instances age has also been treated as a criterion. As a whole the age has not been very favorably held to be representative of one's majority.(29) The FSC in Muhammad Fayyaz and others Vs Federation of Pakistan(30) has dealt with this issue. The petitioner in this case contested that Sec. 3 of Majority Act(31) is repugnant to injunctions of Islam. The Sec 3 states that a child will be presumed to have attained majority in age of 18 years and if a guardian has been appointed with respect to a child then his age of majority will be 21 years. Relying upon the opinions of Muslim jurists, the petitioner was of the view that a child attains puberty much earlier than 18/21 years. The court did not agree to the contentions of the petitioner and held the said Sec. to valid in light of Islamic injunctions. The court in its judgment has pronounced that it has great regard for opinions of the learned scholars, but the same cannot substitute the Quran and Sunnah. The latter sources have not laid down any criterion for majority and the favorable treatment of puberty as a criterion has not been substantiated by them. The court concludes that it is in interest of litigants that there should be some

Because if this argument is extended to its logical conclusion then one judge cannot adjudicate in the cases of *Hudood* and *Qisas* as the number of witnesses required in these cases is either four or two male witnesses.(19) The contention relating to veiling was refuted by references to interpretations of various Hadiths and opinions of different Imams.(20) With respect to the argument that women were never appointed to this office during the period of the Prophet and companions, the court held that the original principle is permissibility if there is no explicit prohibition in the Quran and Sunnah.(21) Thus when it has not been prohibited by the Quran and Sunnah to appoint them as judges then mere non-appointment by these holy personalities would not have any legally binding effect.

In this case, the petitioner's exclusive reliance was upon the verse of *qawama* and a famous Hadith that a nation cannot attain worldly as well as spiritual success if it is governed by a woman.(22) To arrive at an appropriate appreciation of concept of *qawama*, the court analyzed numerous commentaries of the Quran, its lexical constructions and conceptual foundation of suzerainty of man over woman in different civilizations. The court then construes this concept in terms of responsibility of a husband towards his wife and relates it to a famous saying of the Prophet that everyone is responsible in his/her respective domain.(23) The court concludes that the concept of *qawama* cannot be interpreted to "give any particular triumph to the husband over the wife".(24)

The court argues that the opinions of some Imams for not favoring the appointment of women as judges might be influenced by the circumstances of their age that it was difficult for women to maintain decorum of the courts. But in our age when there are laws, e.g. law of contempt, to maintain the prestige of courts there is no need to be scared in this respect.(25) The women were consulted and their evidences were acted upon by the Prophet and companions, hence the argument proffered on behalf of the petitioner that they lack in intelligence is unfounded.(26) The court did not find any merit in the petition as to appointment of women judges, hence dismissed.

This judgment is one of the best expositions of Islamic law on equality of rights of men and women. This case has been cited by Mashood Baderin in his celebrated book on human rights in Islam to buttress his argument for eligibility of women to hold political offices including judicial

Another narrative is based upon the analysis of cases of coercive sexual relationship. The courts in these cases have time and again converted the allegation of rape by a victim woman into a confession of consensual sexual relationship if she fails to prove the element of coercion.(15) Decisions of this nature by the FSC are problematic and difficult to vindicate on any ground. Both of these narratives along with the constitutional objection of bestowing the legislative powers upon the FSC are prevalent and dominant perspectives on the role and efficiency of this institution. Without challenging the veracity of these, this paper intends to present an altogether different perspective so that the reader may keep in view a full-fledged picture before making his opinion.

The FSC's Contribution to Progressive Interpretations of Islam:

This section will catalogue those decisions of the FSC which are progressive and reformist in nature. As a limited space is available here, I will enlist two categories of cases. The earlier part of this section deals with the cases relating to family and women in a relatively detailed manner while the later part briefly refers to the cases pertaining to administration of justice. The reason for exploring the former category of cases in a detailed manner is that most often than not the negative portrayal of the FSC is imbedded on gender related issues. Let us now analyze the cases to bring forth the progressive trends fostered by the FSC.

There are Muslim scholars who are of the view that women cannot be appointed as judges or hold political offices as the same would go against the general import of the concept of *qawama* as enunciated in the Quranic verse 4:34. (16) In Ansar Burney's case,(17) which was decided by the then Chief Justice Aftab Hussain of the FSC along with two other judges, it was laid down that women can be appointed as judges and magistrate. The appointment of women as judges was challenged in this landmark case on four grounds: that their work as judges violate the requirements of *pardah*/veiling; judicial function was never assigned to any woman in the period of the Prophet Muhammad and his companions; woman's evidence is half than that of man, and they do not fulfill the requirements of a judge as enunciated by Islam.(18)

The court observed that if the evidence of two women is equivalent to one man in certain cases the same would not lead to the conclusion that two women must sit as judges in a case which is heard by a male judge.