

Women in Turkey under Pressure of Inconsistent and Contradictory Legal Systems: Secular versus Islamic

FatmaBostanÜnsal¹

Abstract: As Turkey is officially a secular state and it adopts Swiss Civil Code, the state implements secular legal system. However, as people in Turkey are predominantly Muslim and they are born and raised in a traditionally Muslim environment, people generally and especially women live under the influence of these two sometimes contradictory and inconsistent legal systems and customs. As a result, there are clashes and especially Muslim women are subjected to the negative impact of those clashes. So for example, women who wear headscarf because of being in line with Islamic principles face problems when they want to go to school or work or engage in politics. Or when they want to keep their maiden surname which is very mainstream practice in many Muslim societies, it becomes impossible for Muslim women in Turkey because of the secular Swiss Law. In the present paper the circumstances in which Muslim women live under these inconsistent and contradictory legal systems will be studied.

Keywords: Muslim, Headscarved Women, Rights, Religion, Secular(ism).

1- PhD Candidate, International Islamic University of Malaysia, fatmabostanunsal@yahoo.com

Background

Women under Secular Ideology

After Independence War, the new Turkish ruling elite tended to found a secular country which was very different from the former Ottoman Empire, which was founded on religion, *din u devlet* (Toprak, 1981). In the Ottoman period, Islam had secured legitimacy to the political order. The new statesmen wanted to create a new state different from the Ottoman Empire (Köker, 2005). Thus, the former source of political legitimacy, religion, lost its importance through a series of secular reforms undertaken during the decade after the establishment of the Republic in 1923. The abolishment of the Caliphate in 1924, the abolishment of Şeriat (religious law of Islam) courts in 1924, the educational bill of 1924 (Tevhidî Tedrisat Kanunu), the adoption of the Gregorian Calendar in 1924, the adoption of Western hat and Western clothing styles in 1925, the adoption of Swiss Code, the Italian Criminal Code and the German Commercial Code in 1926, the alphabet reform in 1928, the adoption of European numerals in 1928, the adoption of the metric system in 1931, the adoption of family names in 1934, and the change of the weekly holiday from Friday to Sunday in 1935 were all designed to minimize the role of Islam in social and political life (Toprak, 1981).

In addition, as Turkey's modernization was in line with the concept of Kautsky's "modernization without industrialization", (Yılmaz, 1996) the modernizing elite tried to modernize society through symbols of the modernized Western societies. The emphasis was so heavily on images that the new revolutions are criticized as "wardrobe revolutions".

There was so much emphasis on the Western appearance that some men were hanged just because of refusing to wear hats. Even a very respected scholar İskilipli Atıf Efendi was hanged in February 1926 as he had written a booklet titled *Frenk Mukallitliğive Şapka* (Imitation of the West and Hat) which had included some parts against wearing hats, even five years before the "hat revolution".

The position of women in the former Ottoman Empire was alleged to be "backward", "inferior" and used to legitimize the foundation of the "new" Turkish Republican state by the new Republican ruling elite. And it was and still is strongly asserted that the new regime gives an ideal position for women who had been in a very backward position during the Ottoman time. As the position of women was

the main controversy among different intellectual movements during that time, the notion of women was used for a very ideological point of view.

There were three main intellectual currents during late Ottoman and early Republican times, one was "Westernists", second was "Islamists" and the third one was "Nationalists". Westernists argued that it was essential to take Western culture with its technology, as "the civilization of the West had created such advanced technology" (Toprak, 1993). However, Islamists on the other hand claimed that "a nation which turns its back on its own civilization could only turn out imitation men in an imitation world", so they argued that "the right course was to adopt the technology of the West but keep Islamic civilization" and Islamic culture (Toprak, 1993). The Nationalists were in the middle and changed their stance according to power shifts.

Although there was a coalition among the different intellectual currents during the Independence War, just after the Turkish Republic was founded, the Westernist and Nationalist circles had taken power and started to purge Islamists from the political life (Toprak, 1981). As Toprak explains "The distinction between civilization versus technology, which had long served as focus of debate, was now superseded" and the dominant paradigm of the new republican elite became "wholesale Westernization" (Toprak, 1993).

So as Heper cites "With the establishment of the Republic in 1923, the Turkish elite resorted to a program of total Westernization", a "cultural revolution" had taken place under the "dominance of thoroughgoing Westernizers" (Heper et al., 1993).

Although some resistance to wholesale Westernization happened from time to time, the Westernist elite soon consolidated their power, and effectively suppressed the religious opposition (Toprak, 1993). At first the Islamists, called Second Group in the First National Assembly, were very vivid and effective, but when First National Assembly was abolished and National Assembly renewed in April 1923, the Islamists lost their power. One of the leading Islamist members of the Parliament, Ali Sukru Bey, Trabzon deputy, was assassinated on 26th March in 1923, and the Islamists completely lost power. Even the writer of the national anthem, one of the first members of the First National Assembly and the pioneer of the Islamist circles, Mehmed Akif Ersoy, preferred to live in Egypt, at first temporarily in 1923 and permanently in 1925, and only returned to Turkey in June 1936 just before his death

when he was severely sick.

The position of women was a point of divergence for these three intellectual currents, (Göle, 1991), so women were used as a legitimate basis for those new ruling Westernist elite for political purposes (Toprak, 1993). However, position of women as a hot debate had been crystallized and that's why women found themselves in the forefront of the debates among the aforementioned intellectual and political elites.

As mentioned earlier, the Westernist elite proposed the Swiss Civil Code and it was accepted in October 1926. However, the majority of people who mainly lived in the countryside -80 % of the people lived in the countryside until 1960s- had a different view of women compared to the urban elite, and the Islamist elites also had a different view although they lived in urban areas. For the first fifty years, the two different segments of people lived separately and did not encounter frequently and only a few clashes occurred, and they lived under relatively one consistent legal and custom system.

Although the state was officially secular, people who lived away from urban life did not break up their Islamic way of life. However, with the increase of urbanization and industrialization, people from rural areas have moved to cities so their former life experience based mainly on rural Islamic customs have started to encounter with the secular rules and as a result, clashes and disturbances have occurred and contradictions have started to become obvious.

That's why, although women in rural areas had always been headscarved, no controversies had arisen in the country side. However, when these headscarved women started to attend university after the 1960s the clashes have begun to appear and the "presence in the public place" for headscarved women has started to become problematic. The first woman who faced the headscarf prohibition in 1969 was a student at the Theology Faculty at Ankara University; and although the rate of headscarved women has increased dramatically, the headscarf prohibition has become stricter especially with the army interventions, which have been almost normal in Turkish political life. The army has been a very important element since the very first day of the Republic and they made coup d'états openly in 1960, 1970, 1980, and an intervention called postmodern coup d'eta in February 1997 against Erbakan Government. Especially after the last military interventions, the

headscarved women have been lost the opportunity to enter the "public space", a term invented to show where headscarved women could not exist.

For the ruling elite, the new headscarved urban women who keep traditional hijab have not been only weird and strange, but also threatening and sometimes unbearable. Once former President Ahmet Necdet Sezer answered a parliamentarian who wanted to solve the headscarf problem at universities in 2000s and said that "when I was a student there was no headscarved student" and so he denied their right to attend university. And another former President Süleyman Demirel told the headscarved students to go to the Saudi Arabia for education.

And Head of Supreme Court, Yekta Güngör Özden had announced that if a person was not secular they could not be counted as human so their right for education, work or political life could not be mentioned.

As women were used by the new elite to differentiate themselves from other rival intellectual trends, women's position during the Ottoman time was portrayed similar to slaves, and the new Republican state was shown as an "emancipator of the women". Thus, although there was a strong movement that fought for women's rights during Ottoman Empire, it was and still is generally argued that the new Republic "gave" Turkish women every right before they even wanted them or even before the Western countries "gave" these rights to their women.

Although the first party in Turkey was actually founded by a woman by the name of Nezihe Muhittin in June 1923 and even it was named *askadınlar Halk Fırkası* (Women's People Party), it could not be registered by the Istanbul Governor because 1909 Election Law did not give women the right to vote. Ironically, they kept on saying that the new state gave women the right to vote even before the Western countries and even before women in Turkey wanted such right. Indeed, women's struggles were denied although women had attempted to found their Women's People Party three months before *Cumhuriyet Halk Fırkası*, (Republican People's Party), which was the first party and ruled the country until 1950, and was the only party till 1946. However, the myth that the Turkish Republic gave every right to women even before they wanted them has been predominantly accepted up until today.

So, mainly because of the emphasis on "new women's concept", even secularism, is understood in Turkey as a concept related to women's clothes and appearance. Secularism in Turkey is not understood in its Western definition of the

separation of church and state. So, although Turkey has an official body called Diyanet İşleri Başkanlığı, the Presidency of Religious Affairs, for these ruling elite it does not violate the secularism principle. However, for them headscarf violates the principle of secularism and that's why headscarved women have been denied to study in university, or work or become members of the parliament. As a result, currently 65 % of women in Turkey have been denied education, work or political life for many years, and only recently the ban of headscarf has relatively been loosened at university for just the students. Although 65 % of women wear headscarf in Turkey (Çarkoğlu, Toprak, 2006), there is not a single headscarved female in the parliament and you cannot see a headscarved women working as a lawyer or as an academician at universities, although thousands of headscarved women have met the criteria.

The parties such as the Refah Partisi (Welfare Party), the Fazilet Partisi (Virtue Party) and even the Anavatan Partisi (Motherland Party) tried to remove the headscarf ban, but the Supreme Court has always argued that the freedom for headscarf violates the secularism principle which constructs the most fundamental pillar of the Turkish Republic. Even Refah Party and Fazilet Party were closed by the Supreme Court in 1996 and 2000 respectively, as they were accused of being focused on reactionary movements, mainly because of encouraging headscarf, meaning "violation of secularism". The ruling Adalet ve Kalkınma Partisi (Justice and Development Party, AK Party) was almost closed in 2008, and Turkey was on the edge of a political crisis. In fact, the AK Party was found guilty by the Supreme Court for mainly trying to remove the ban just for educational life because of the violation of secularism principle, and the AK Party was fined heavily.

The headscarf issue mentioned earlier was seen so much against secularism that even when 410 of 550 members of the Parliament deputies and all of the parties except Republican People's Party in the Parliament, that are three ones, the ruling AK Party, the Nationalist Movement Party and Democratic Peace Party agreed to make a Constitutional Amendment to solve the headscarf problem at universities, the Supreme Court exceeded its authority on review of the Constitutional Amendments and annulled it. Although the Constitutional Court could only review constitutional amendments legislated by Parliament on procedural grounds, it exceeded its authority and made content analysis and annulled that constitutional

amendment that sought to lift the headscarf ban at universities and thus, it violated the Constitution itself.

Although the secular system of Turkey does not guarantee the Islamic rights for women, such as "Mehr"² or "keeping maiden surname", these issues are not critical issues as they are not given much importance by women themselves or their men allies. Hence, the headscarf issue stemmed from the Turkish secular system is the main problem for Muslim women.

Women under Islamic Ideology

As mentioned earlier, in contrast to the ruling elite, the ordinary people generally follow the Islamic way of life. Women who still try to keep the Islamic customs have faced very similar contradicted discourses in their Islamist circles. The Islamists have said that "Islam had given women every right" in a very similar way the ruling elite alleged that the "Republican state gave women every right". Both these sides have been propagated by those who restricted women's rights in some dogmatic patterns and manners.

Like those westernized elites who took the path to ban Muslim women's freedom of religion and religious practices, extremist Islamists in Turkey also wanted to abandon women only in their "warm, secured houses" and limit their role just to look after the kids and take care of their husbands.

Even going to the "mosque" can become "problematic" for women in Turkey where apparently, nobody prohibits women from going mosques, but as the mosque is outside, women's presence there is not seen as an ordinary and acceptable thing. Such a mindset makes many women in Turkey do not pray Friday prayer or "eid" prayer. This is while the mosque had not been a place for only praying but also a school and even a parliament during Prophet's time, and women's presence there had always been supported by the Prophet himself; but in Turkey being at a mosque has not been considered an acceptable social participation for women. The Presidency of Religious Affairs nowadays recognizes unfair treatment towards women at mosques and attempts to modify the role of women in mosques. It encourages women to go to mosques; nevertheless, some Islamists in Turkey oppose this attempt and argue that our örf (Islamic customs) discourages women to attend

2- A gift given by the husband to the wife in Muslim marriages which is an essential part of Muslim marriages.

the mosque (Ali Bulaç, 2011).

Although the secular Swiss Civil Code is accepted by the government, the people normally cannot break up abruptly from their former way of life in which Islamic oriented philosophy has always been predominant. So although religious Muslim women live under officially secular legal code, they are born and raised in religious families and their lives are shaped not only by a secular legal system but also very different Islamic law and customs, and living under two different, incoherent and sometimes contradictory legal systems put women in a very disadvantaged position.

So many times, Muslim women are subjected to these incoherent and contradictory legal systems and mostly these women face double standards. In another example, when Muslim women want to have the rights Islam grants them, such as "mehr" or the "right of keeping their own surname after marriage", they cannot practice such rights because of the officially accepted secular law.

In Turkey, "religious marriage ceremonies" are performed along with secular ones, or even sometimes only religious marriage ceremonies are held, but generally receiving mehr which is a very fundamental part of the marriage contract in Islamic law is not practiced at all. The concept of mehr either is not known at all by women, and if it is known and even if it is considered rarely by exceptionally brave and clever women, it is not given to them. Mehr is widely accepted as mehrimueccel, (i.e. it can be paid later) and mehrimueccel is wrongly understood as a bulk of money that will be paid to women after divorce. Although religious marriage ceremony is done for nascent marriages, the Islamic divorce procedure is not practiced; only the Swiss Code is practiced for divorce as it is the only valid official legal system. Since there is no place for mehr in the Swiss Civil Code, even few Muslim women who consider the mehr cannot get it. The Islamist scholars who care about Islamic matters and still keep on writing on mehr as women's right do not take into account the malpractice, and thus, no solution has been given. Although the Islamic books mention the right of mehr, unfortunately it becomes irrelevant and not applicable to Muslim women living in Turkey. Consequently, in many times a gap between the Islamic rights in theory and real lives has been arisen because of the widespread indifference towards women's problems.

Likewise, the right for women to their maiden surname which is accepted by almost all Islamic societies is not implemented in Turkey. According to Turkey's

Swiss Code, when women marry they must change their surname and get their husband's surname. And Islamist scholars who criticize some aspects of the secular Turkish regime are very silent on the obligation of taking the husband's surname. Even when Muslim women criticize this obligation, they are labeled as "feminists", they become marginalized and at the end their voices are not heard at all.

As religion is not accepted as a source of legal system in Turkey, the relations between religion and life are more or less cut, and Islamic traditions in Turkey did not get a chance to adjust to new developments. As a result, Muslim women are subjected to a very wide range of different, contradicted and even schizophrenic ways of thinking at the same time. To complement the spouses by each other is instructed by Islam, The mutual respect is part of this map. It is advised, for instance, that women get permission to leave home, while it is not contradictory for them to develop their social and professional life. In Turkey, but, there is supposed to be a contradiction when this religious obligation becomes so strict in some families that the women can not imagine to enjoy their legal rights to be a president, minister, or work outside of home without acknowledging the contradiction in these two statements. This contradiction becomes much significant considering the fact that the secular Turkish Civil Code does necessitate "husband's consent" on working of women, blocking the voice for women in some Turkish prejudiced families. In fact, the Muslim Turkish woman is deprived both from her Islamic right of mehr and her Islamic and secular rights of social and professional participation.

Finally, this article is to indicate how prejudice in both camps of westernist secular system and Muslim extremists has brought serious challenges to women in Turkey. The Muslim women expect the Muslim activists to be more inclusive considering the women's issues. The main agenda of intellectual Muslims on women is generally headscarf bans in Turkey, other violations against women are unfortunately not considered duly. The prevalent domestic violence is stunning in Turkey as according to a research conducted in 2007, one third of women in Turkey are subjected to a sort of domestic violence (Türkiye'de Kadına Yönelik Şiddet Raporu, 2008).-The government takes some measures to stop domestic violence such as providing "women's shelters", but unfortunately there have not been defined full measures to control it.

Conclusion

Challenging the Status Quo and Creating more Unified and Women Friendly Thought

Muslim women who have been subjected to double standards and mostly contradicted views, either stemming from secular or some Islamic circles, have been victims of being under the pressure of inconsistent and contradictory legal systems. The mentioned first-hand experiences have been the impetus for these women to take the initiative and challenge the stereotype of the "subjected women" either in official secular circles or in conservative Islamic ones. These women, who have studied Islam, early Islamic history and international women's liberation movements, have worked with the mainstream women movement in Turkey and they have started to develop a new views which takes into consideration women's genuine problems and voices more unified and women friendly solutions.

For these women, the first martyr in the history of Islam was a "slave woman" by the name of Sumeyye (Peace Be UponHer). Islam elevated even a slave woman to a status that she could have the freedom to choose and gain control over her life. So for them, men and women are vicegerents of Allah regardless of their gender difference; thus, men and women must have responsibilities and power on parallel with being vicegerents of Allah.

Accordingly, this shows that today's women may also suffer from numerous unfair practices that are contrary to the spirit of Islam, but are regarded as normal since they are common practices. About Turkish women, though, the secular strict codes make the situation much worse.

In addition to having recourses to Islam and Early Islamic history, these women have also benefitted from the accumulated experience of the modern women's movement. For example, Betty Frieden's findings on middle-class female university graduates who did not work and were unhappy, and her conclusions that "every human being had a natural tendency to development and he/she would become unhappy if he/she were blocked" have been enlightening.

Muslim women in Turkey have direct contact with the mainstream secular women movement and have worked on common ground. Although the mainstream secular women movement had had a very "white" agenda and it had been indifferent to Muslim women's problems such as headscarf prohibition for a long time, their attitudes have started to change because of direct contact with religious Mus-

lim women. The horizontal relationship developed between secular women's group and Muslim women has the potential to give remedy for the fragmented discourse concerning women. Even KADER, which is the most well-known secular association to support women in political life, changed its former indifferent policy to headscarf prohibition and criticized the unfair and abnormal headscarf prohibition for entering the Parliament during the last election campaign in 2010. This was an unprecedented development. It was while Merve Kavakçı, the first headscarved elected Member of Parliament, was dismissed from the Parliament on the ground of headscarf in 1999, KADER did not support her.

The mutual recognition of different women movements has the potential to support the participation of headscarved women in every aspect of society, including politics. It will also provide a channel to create a language that would ensure integration with the universal women's movement at a higher level. This development could eliminate the image of the "white or oriental feminist" outlook prevalent in the feminist movement in general. Feminist discourse, regardless of geography faces this criticism that it has ethnocentric substance and it does not regard the problems of race and class seriously (Aktaş, 2007, p. 230). The universal feminist discourse has had mainly a "white" agenda and the image of the "oriental feminism", i.e., has seen Eastern Muslim women through the orientalist approach. Orientalism has portrayed Eastern women as "slaves looking to the West to liberate them", and so being under the influence of Orientalism, the universal feminism has the orientalist approach concerning women in Eastern countries. So for example, "headscarf" using for the traditional Orientalist approach is equal to "suppression of women". But the fact is that the image of the Turkish women movement which has become much more interested in the local genuine interests may change the universal women movement's "white agenda" and "orientalist outlook". They may change their viewpoints regarding for example headscarf, and see headscarf prohibition as a violation of human rights.

Turkish women who have firsthand experience of the contradictions and inconsistencies of the legal systems and customs have made constant efforts to have more unified and women-friendly discourses, and have succeeded in making some changes. The evolution of women's rights in conservative circles has been remarkable. For example, Prime Minister Recep Tayyip Erdoğan, who comes from an Islamic

background and is the most powerful charismatic leader of the AK Party, acknowledged the unfair treatment towards women in his own party and complained about the "male dominant" structure in the AK Party during the election of the provincial party councils in 2006. Muslim women have been playing very active roles since 1990's, and have gone door to door to advertise their parties during the elections. However, when they want to take a role in decision-making bodies such as being delegates, they are halted by the question "what are you going to do among all those men?". So, Erdogan's complaint on the "patriarchal character of AK Party" is meaningful and may be considered a good sign.

Thus, creating a more unified, humane and just environment which is the main obligation of the religion Islam can be built through that kind of cooperation and collaboration.

REFERENCES

- Aktaş, C. & Tarzi, B. (2007). *İslamcılık*, İstanbul: Kapı Publications.
- Bulaş, A., & Fakihlereve D.S. (2011). ZAMAN Newspaper, Retrieved December 10, 2011 from <http://www.zaman.com.tr/yazar.do?yazino=1212798&keyfield=>
- Çarkoğlu, A. & Toprak, B. (2006). *Değişen Türkiye'de Din, Toplum ve Siyaset*, İstanbul: TESEVY yayınları.
- Göle, N. (1991). *Modern Mahrem*, İstanbul: Metis Yayınları.
- Köker, L. (2005). *Modernleşme, Kemalizm ve Demokrasi*, Yayınları: İletişim.
- Toprak, B. (1981). *İslam and Political Development in Turkey*, Ankara: Ledien.
- Toprak, B. (1993). *İslamist Intellectuals: Revolt against Industry and Technology in Heper*, M. Öncü, A. & Kramer, H. (eds) *Turkey and the West: Changing Political and Cultural Identities*, London: Tauris & Ltd Publisher.
- Türkiye'de Kadına Yönelik Şiddet Raporu, (2008). Retrieved July 2, 2012 from http://www.ihop.org.tr/index.php?option=com_content&view=article&id=131:tuerkiyede-kadna-yoenelik-iddet-raporu&catid=22.
- Yılmaz, A. (1996). *Modern'den Postmoderne Siyasal Arayışlar*, Ankara: Vadi Yayınları.