

# Women's Reproductive Rights: Between Shariah Demands and Equal Rights

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DOI : <https://dx.doi.org/10.47772/IJRISS.2024.808016>

Received: 12 July 2024; Revised: 19 July; Accepted: 23 July 2024; Published: 27 August 2024

## ABSTRACT

Every woman has the right to determine her reproductive role. This right entitles a special emphasis on women's ability to make decisions and choices about controlling their bodies, sexuality, and reproductive functions. However, the practice of these rights must be in line with Islamic principles and, at the same time, celebrate existing human rights. People often misunderstand this right as a license for women to control their husbands. Significantly, this right is examined within the Syara framework and implemented following mu'āsharah bi al-ma'rūf recommendations. This study employs a qualitative descriptive approach, incorporating research from scholars and religious interpretations on the equality and harmony of these rights in the lives of Muslim women. This initiative provides a balanced interpretation of the implementation of Muslim women's reproductive rights by Islamic teachings.

**Keywords:** Reproductive, Women's Right, Shariah, Equality, Harmony

## INTRODUCTION

The arrival of Islam gave women the impetus to assert their rights and eradicate all forms of oppression they faced. The role of women extends beyond managing household affairs; it can also serve as a strong support in a man's pursuit of success. Similarly, we must elevate women according to their roles as children, wives, or mothers. A wife is an individual who is dependent on and responsible for her husband. This implies that within the context of women's reproductive health care in Islam, control over a woman's body and integrity extends to other individuals, specifically her husbands. The popular interpretation compares women to a field, known as 'hartsu', where husbands channel their sexual desire and bear offspring. This interpretation serves as a foundation for granting the husband complete authority to physically assault a wife who attempts to decline sexual relations. In this case, it appears to demonstrate a form of oppressive control that could potentially harm women's roles and reproductive rights.

Women's reproductive rights encompass not only their biological ability to give birth but also a range of rights and freedoms that uphold the integrity and dignity of individuals, particularly women, in areas related to their sexual health and reproductive function. This includes aspects of pregnancy, such as their readiness to decide the appropriate time to have children, the number of children they want to have, as well as their right to information and access to reproductive health. This right also focuses on women's freedom from discrimination, violence, and forced actions in reproductive matters. Some family and life laws also reflect the balance of women's reproductive rights. However, this paper only touches on some aspects of married

women's reproductive issues, such as the practice of determining marriage, domestic sexuality, including husband-wife sexual relations, and the demands of mu'asharah bi al-ma'rūf.

### **The Concept of Women's Sexual and Reproductive Health**

Reproductive health is a complementary part of physical, mental, and social well-being. It not only eliminates disease or unfitness in a person's body, but it also includes all things related to the reproductive system, both its functions and processes. Reproductive rights look at the extent to which women get justice in every activity of their lives, starting with their health, sexuality, and reproductive system. As a result, reproductive rights emphasize that people, especially women, can have a satisfying and safe sexual life and can freely determine their productivity when and how they want to do it (Tigist, 2015). The Universal Declaration of Human Rights, international human rights conventions, and several other agreed agreements enshrine the universal right to the highest standard of physical and mental health for men and women, which includes sexual and reproductive health as a crucial component. Human rights also encompass the respect, protection, and fulfillment of each individual's sexual and reproductive health rights, enabling them to actively participate in health care policy and make decisions regarding their health care. It includes aspects of determining [1] when they want to have a child, [2] ensuring a relationship free from violence, [3] access to information and education, and [4] health care for a child (Rashidah, 2000).

This can be seen at the International Conference on Population and Development Cairo 1994 (ICPD) in Cairo, which also spoke in one of its action programs about the need for a comprehensive concept of health and reproductive rights. 179 countries attended the conference, where they defined reproductive health as a state of complete physical, mental, and social well-being, not just the absence of disease or weakness, in all matters related to the reproductive system and its functions and processes (Thoraya, 2005). As a result, reproductive health implies that everyone can have a satisfying and safe sexual experience and has the freedom to decide if, when, and how often to do so. According to the definition, reproductive health care is a group of methods, techniques, and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems (Davies, 2015). Scholars, following the ICPD Action Program (Davies, 2015), highlight a crucial aspect of women's sexual and reproductive health that warrants consideration and prioritization.

1. Mother's safety and child's well-being.
2. Information related to family planning and its services.
3. Prevention and management of infertility and failure of male and female sexual function.
4. Prevention and management of abortion complications.
5. The provision of safe abortion services is permitted by law.
6. Adolescent reproductive health involves the prevention and management of reproductive tract infections, including HIV syndrome (AIDS).
7. Responsibility, safe sex throughout life, and gender equality.
8. Elimination of harmful practices, such as child marriage and domestic violence against women.

Therefore, comprehensive continuity in reproductive health care is necessary to maintain all aspects of sexual and reproductive health. Starting from marital sexual relations, aspects of family planning, the process of birth and post-natal care, prevention and treatment of fertility, abortion, treatment of reproductive tract infections, sexually transmitted diseases (HIV/AIDS), and any information about human sexuality, comprehensive continuity in reproductive health care is necessary (Rashidah, 2000), Observing these roles truly encompasses every woman's life journey from birth. Thus, any condition that interferes with women's health can lead to interference with the woman's reproductive system itself.

### **Dimensions of Women's Reproductive Rights According to Islamic Law**

Islam strongly recognizes the rights of women, regardless of any aspect, from the beginning of birth to the end of a woman's life. In Islam, a woman is also compared to a powerful ally in a man's success, elevating their status according to their ability to serve as a child, wife, or mother. Because of that, every man and woman

have the same rights in matters of Islam, faith (Sayyid Qutb, 2003), sin, reward, and practice to achieve spiritual perfection in the implementation of worship. There is no difference or advantage in faith assessment (Alī al-Ṣabunī, 1981) or charity by Allah SWT because each bears their own responsibility. The roles that each woman plays are what set them apart. People view each woman from three distinct perspectives: as a woman, a wife, and a mother. Each of these roles requires fulfillment. Thus, it is the responsibility of the community or surrounding groups to translate that appreciation into behavior that does not hurt or exploit and is polite in line with the demands of *muāsharah bi al-marūf*.

Fighting for femininity is meaningless if it disregards Sharia principles and enslaves men. The rights and freedoms given by Allah SWT are not absolute, but neither are they too restrictive. This is Islam's simplicity in conveying its *manhaj* to the *ummah*. As a woman, the wisdom of reason given by Allah SWT needs to be used appropriately and not exceed the limits of Sharia. Thus, these rights and freedoms will benefit religion, self, family, society, and even the country. Every woman utilizes her female reproductive rights, closely linked to healthy practices that serve as a vital foundation for humankind. Islam itself advises its servants to be in a healthy state, as stated by Allah in Surah Al-Isra' verse 82, which guides them to find cures for various external and internal diseases.

Meaning: "We send down the Quran as a healing and mercy for the believers, but it only increases the wrongdoers in loss."

Conceptually, this verse demonstrates that the Qur'an itself is a remedy for a variety of external and internal ailments. So, it is appropriate for a servant who holds this physical trust to ensure the best level of health for the physical body.

If we examine health conceptually, it encompasses not only a state of physical health that is free from disease but also a state of mental, spiritual, and mental well-being, as well as cleanliness and wholeness. Health also includes external conditions that can affect a person's health. However, when we associate the definition of health with women, it closely aligns with the female reproductive organs, their functions, and the processes involved in executing those functions. This is a relevant link, considering that reproductive health issues are crucial for women. Therefore, women's health is a physical and spiritual condition that is disease-free, clean, and free from things that disturb the reproductive system, as well as its functions and processes (Rashidah, 2000). For all these reasons, Islam recognizes the importance of women's reproductive health and provides clear guidance and recommendations to fulfill this role effectively. The need to take care of this aspect of women's reproductive health can be considered part of moral and religious responsibility, which will further strengthen the role of husband and wife, in addition to upholding justice in Islam and ensuring a healthy and strong generation for Muslims.

## METHODOLOGY

This study was conducted qualitatively to gather information, data, and reference materials from the appropriate sources. Qualitative research focuses on efforts to obtain non-numerical information to provide in-depth information about a topic's background (Cresswell, 2013). It also employs a naturalistic approach to understanding the true state of a phenomenon in a specific context without manipulating any real-world situations. This study employs a content analysis method, also known as document analysis, which relies solely on the analysis of previous studies' literature data. We conducted research in books, theses, dissertations, journals, and related scientific studies to collect data. The data obtained is then analyzed inductively to describe, analyze, and draw conclusions, ensuring the validity of specific facts, data, and information for the general public. Inductive research begins with detailed observations in general situations and then moves toward formulating more specific insights and theories. It also entails delving deeply into the research situation, scrutinizing relevant explanations, and formulating a conclusion upon completion of the study. The study conducts a document analysis on the concept of female reproductive rights, incorporating the guidelines of *Syariah* as the foundation for implementing this right in daily life. This study employs a descriptive data analysis method to elucidate and demonstrate the unique role of this right, which aligns with Sharia law when applied to married women's lives.

## Women's Reproductive Rights Polemic in the Parallelity of Syarak and Equal Rights.

Reproductive rights imply a recognition of the right for all couples and individuals to make independent and responsible decisions in terms of the number, spacing, and timing of their children, in addition, to access to information and ways to do so (Harlina, 2012; Rashidah, 2000). Likewise, sexual rights mean that everyone should have the right to engage in enjoyable and safe sex. Individuals can obtain this sexual and reproductive right as a form of justice by ensuring they meet their health standards to a high degree. Considering the guidelines of the 1994 ICPD Program of Action (Angela & Ward, 2014), the components of this principle can be classified into the following categories:

1. The individual has the right to freely decide the number, spacing, and timing of having children.
2. The individual has the right to seek and make decisions about reproduction free from coercion, discrimination, or violence.
3. Everyone has the right to a fulfilling and secure sexual relationship.
4. The right to personal privacy.
5. The right to access any information and information related to sexual and reproductive health care is necessary to achieve the highest level of health standards, as Islam provides equal reproductive rights between men and women.

Based on the stated principles, the previous Jahiliyyah practice significantly differed, viewing this reproductive right as exclusively the domain of men. At that time, people regarded women as 'the second creation', deserving of the same treatment as 'the second sex'. This myth has given women the perception that they are not worthy of standing as high as men and that they have to forcibly serve their rights and desires (Nasaruddin, 2012). Based on that, the balance of women's reproductive rights needs to be adapted in several family laws and life as the focus of this paper, which involves several aspects of women's role such as the phase of determining marriage, conjugal sexuality, and the right to get treatment that is free from harm, which is the recommendation of *muāsharah bi al-marūf*.

The discussion of women's reproductive rights concerning equal rights and Islamic law is a multifaceted and complex matter that encompasses diverse perspectives. It involves the intersection of religious principles, cultural norms, and contemporary understandings of gender equality and human rights. This discussion aims to provide a balanced perspective by integrating Islamic views on marriage, sexuality, and marital relationships while also considering International human rights perspectives. By doing this, it promotes a more thorough and inclusive understanding of this delicate matter. Women's reproductive rights are acknowledged as universal human rights on a global scale. As stated by Alda Facio et al. (2017) and the United Nations, Universal Declaration of Human Rights (1948), these rights include the rights to equality, dignity, autonomy, information and bodily integrity, and respect for private life and the highest attainable standard of health, including sexual and reproductive health, without discrimination; as well as the right to freedom from torture and cruel, inhuman and degrading treatment.

### Determination of Marriage

Marriage is an agreement made between parties to achieve the marriage's goal. Therefore, determining a marriage is not solely the responsibility of a man or his guardian. Even a woman has the right to determine her marriage, including with whom and when she will marry. Family jurisprudence recognizes the importance of a guardian in a marriage, as their absence can impact the validity of a marriage contract (Azam & Alias, 2015). Even so, it is not an absolute authority for the guardian to force the child under his care to marry without the child's will (Abu Bakar, 2010). If such a practice occurs, it typically serves to fulfill the wishes and personal interests of the saint himself. This aligns with the Islamic guidelines that prohibit forcing a daughter into a marriage.

Meaning: "O believers! It is not permissible for you to inherit women against their will<sup>1</sup> or mistreat them to make them return some of the dowry, Treat them fairly. If you happen to dislike them, you may hate something which Allah turns into a great blessing." (Surah al-Nisā", 4: 19)



The verse above is an explanation of the elimination of all forms of oppression against women that occurred before the advent of Islam. According to al-Shawkānī, the verse above explains the prohibition for guardians to persecute their children involving matters of marriage so that the child is unable to make his own decisions and denies the rights of their children as absolute decision-makers in married life (al-Shawkani, tt).

Even if, according to Hamka, the rights of women also need to be protected and cannot be treated arbitrarily without their consent (Abd al-Malik, K. A, 1983), this opinion is seen as very appropriate to be applied in this contemporary era. Giving daughters the freedom to choose when and who they want to marry is a necessary step in this marriage-related process. The closest guardian doesn't need to have complete control over this decision, even though religion permits it. Reconsidering the power of *ijbar* in *wali* (according to certain situations) from a distinct angle compared to earlier jurists' perspectives is a necessity for this era. Maintaining this power can still be considered in the context of a marriage between a girl and a man who is believed to be pious, considering his responsibility for managing the household. However, it is also subject to the girl's consent, because she will bear any risk arising from the marriage (Raihanah, 1997).

The determination of marriage in the context of international equal rights is predicated on the autonomy and consent of each individual. It is stated explicitly in Article 16(2) of the Universal Declaration of Human Rights (UDHR) that a marriage may only take place with the explicit and informed permission of the intended spouse. This principle is to ensure that each individual has the autonomy to determine marriage without any coercion or external pressure.

The importance of autonomy and consent in marriage was further highlighted by Rachel Rebouche (2017), and Rosa Celorio (2024). Making a marriage decision acknowledges personal freedom and human rights, ultimately safeguarding the dignity and rights of individuals.

History shows the situation of the court in the case of *Obergefell v. Hodges* (2015) which touched on gender equality in marriage. The court ruling at that time allowed the claim with the judge's justification that the right to marry is inherent in the concept of individual autonomy and is essential to ensuring equal dignity under the law (*Obergefell v. Hodges*, 2015). Although according to Sharia, there is no compromise in Islam about same-sex marriage, what I want to convey is that the international equal rights framework emphasizes the right of every individual to be able to freely and equally make decisions about marriage.

As it stands, the Islamic rules establish the truth in this matter through its settlement. This is where the basic principle differs: Muslims must adhere to the stipulations of sharia, which prohibit same-sex marriage. Therefore, although the international framework emphasizes freedom and equality in making marriage decisions, Muslims must follow the teachings and rules set by shara'.

### **Sexuality of Husband and Wife**

Allah SWT has bestowed upon men and women a natural inclination for sexual relations. Marriage legislation has several implications for the responsibilities that a wife must fulfill for her husband. Occasionally, disagreements arise within the community regarding the degree of responsibility that aligns with religious teachings. However, we must manage the channeling of human nature in the best and healthiest way possible, because it is God's gift to his servants. A hadith asserts that the wife must always accommodate her husband's sexual desires, regardless of the circumstances. A wife cannot reject her husband's sexual desire, and the Prophet SAW's hadith confirms this.

Meaning: "When a man calls his wife to his bed, and she does not respond and he (the husband) spends the night angry with her, the angels curse her until morning."

Given the context of the order, certain situations and conditions still apply. This kind of thing is not something that cannot be tolerated. Some commentators on this hadith explain that the obligation to satisfy a husband's sexual desire essentially targets a wife who lacks a valid reason to refuse it. For example, Wahbah al-Zuhaylī (2001) gives an exception to a wife serving her husband's wishes when the wife is in a state of performing a religious obligation that cannot be abandoned. The rejection of the wife is also allowed when she feels that she

has been wronged by her husband (Wahbah al-Zuhaylī, 2001). On the other hand, Al-Shirazi (1997) allows for a postponement of a sexual relationship to a period of three days if the wife does not feel any desire or aroused at that time.

This kind of practice will improve the husband and wife's sexual practices, eliminating the assumption that the wife is merely a sexual object in the domestic relationship (Tutik, 2011; Masdar, 1997). In the wife's situation, she requires the bravery to voice her objections, along with the husband's consideration and flexibility. Women also receive favorable consideration and treatment in preserving their sexual rights. Wives, on the other hand, frequently face threats of disobedience and curses if they do not exercise their sexual rights at their husband's wishes. To be fair, both have equal responsibilities in this context.

The international perspective on husband-and-wife sexuality is also rooted in the principle of individual autonomy (Idris et al., 2023; Sano et al, 2018; Nepal et al, 2023), mutual consent, and the well-being of the couple as a whole. Various human rights documents reflect these principles. As mentioned in the section on determining marriage, the same principle of autonomy applies to this aspect of conjugal sexuality, which forms the foundation of the marriage relationship. It recognizes each couple's right to make autonomous decisions about their sexual lives. This means that individuals have the freedom to make choices about their sexual activity without coercion or external pressure. The Universal Declaration of Human Rights (UDHR), which emphasizes the value of personal autonomy and the right to privacy in making decisions about a person's sexual life (United Nations, 1948), also addresses this issue.

Consent is a fundamental aspect of sexual relations in marriage that both parties must agree to. Thus, respecting individual autonomy is important for maintaining a healthy marital relationship (Hensel et al, 2016). This is contained in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) the obligation to eliminate discrimination against women in all areas, including marital relations. It emphasizes the need for equal rights in marriage and family life (United Nations, 1948). This determination as an initiative allows the community to gain access to comprehensive reproductive health services and the well-being of life as a whole, supported by one of them being safe sexual practices (Chernyavska et al, 2022 & Hensel et al, 2016)

### **Organized of Muāsharah bi al-Ma'rūf**

Regarding the rights of husband and wife, it is a given that every married couple aspires to a harmonious relationship and positive behavior between their spouses, following the rights outlined in Islam and the current rights. This is said to be a recommendation and demand for muāsharah bi al-marūf between husband and wife. Muāsharah bi al-marūf is a suggestion for husbands to treat their wives well. This demand is solely aimed at achieving a marriage characterized by sakinah, mawaddah, and warrahmah. This is from Allah SWT's statement in Surah al-Nisa, verse 19.

Meaning: "Treat them fairly"

In Sayid Ibrahim (2008), Imam al-Shawkānī says that the word muāsharah bi al-marūf means to treat wives well, as Allah has told you to. This means giving them their dowry, taking care of them, and being polite when you talk to them.

The principle of muāsharah bi al-ma'rūf in some stipulations of the Qur'an and Sunnah, is more demanded in sexual relations between husband and wife (Tutik, 2011). By adopting the perspective that maintaining a harmonious relationship in marriage involves more than just sexual matters, it also necessitates broader external connections, including maintenance, the wife's health care, pregnancy, and childbirth. Therefore, we should extend this principle to every good deed, foster politeness between spouses, and refrain from all forms of violence (Norzulaili, 2007). If there is violence in any form whatsoever, it is clearly against the principle of muāsharah bi al-marūf. Every act of violence committed by a husband against his wife, whether physical, verbal, deed or sexual violence, can be categorized as a form of domestic violence, which is clearly against women's reproductive rights. In conclusion, the principle of muāsharah bi al-marūf can be seen when every action in the household association is based on a balanced basis of propriety through the lens of religion and

society, then it can be categorized as a husband who has done a maʿruf association (Zulkifli, 2017).

In the marriage relationship, international practice expresses similar concepts through the principles of mutual respect, equality, and the protection of individual rights. Every couple should treat each other with dignity and mutual respect, ensuring that every domestic relationship in the household is based on mutual understanding and kindness (Louay M. Safi, 2001). This is closely aligned with the Islamic principle of muāsharah bi al-marūf.

It is not much different from the Islamic approach, which thoroughly emphasizes the principles of mutual respect and togetherness in marriage. The Council of Europe, 1950, emphasized the importance of respecting private and family life, including mutual respect between spouses, in Article 8 of the European Convention of Human Rights 1950 (ECHR). Mutual respect and kindness cultivated in the family are the roots of a healthy and fair relationship. As a result, legal protection serves as a safeguard against household misdeeds like violence and marital abuse (Jonathan, 2014).

The universal perspective on the concept of muāsharah bi al-marūf is seen to be closely aligned with the principle of mutual respect and the protection of individual rights in marriage. This demand is indeed a recommendation from Islam to its people. Islam derives this principle from God's revelation, whereas international human rights documents like the Universal Declaration of Human Rights and Civil Law, which aim to promote fair and respectful treatment in relationships and marriage, endorse this global principle. Although the goal of achieving a harmonious and fair married life is similar, the source of the principle is fundamentally different.

However, it is not a polemic in current practice, because both are good practices that aim to create a harmonious and fair married life. Both of these approaches, both Islamic and Western recommendations, emphasize the importance of respect, justice, and equality in marriage, which ultimately improves the quality of relationships between couples and contributes to the well-being of society as a whole. The integration of these principles, whether based on religion or civil law, can help create an environment conducive to a loving and respectful coexistence, in line with the universal aspiration to achieve happiness and justice in the institution of marriage.

## CONCLUSION

As mentioned in the previous section, discussing women will lead to a comprehensive perspective, as men often struggle to understand the initial stages of femininity, which include menstruation, pregnancy, childbirth, and breastfeeding. A woman's reproductive role comes into play at that point, requiring customization based on individual circumstances. Women's reproductive rights encompass a broad range of issues, not limited to "ordinary" health issues, but also encompass the protection of women in their roles as wives, mothers, and members of society. Their role in addressing issues related to menstruation, pregnancy, marriage, and childbirth is crucial for maintaining the quality of life for future generations. However, this issue is still considered a "normal issue for women." If you consider the short-term benefits, whether from a social or economic perspective, the impact will not be drastic. However, when viewed from a long-term perspective, a lack of sensitivity to women's roles can lead to numerous consequences that impact various aspects of life. Therefore, there is a strong emphasis on the advancement of women's health, particularly to enhance their quality of life. Fighting for femininity does not enslave men or set aside the foundation of Sharia. The rights and freedoms given by Allah SWT are not absolute, but neither are they too restrictive. This is Islam's simplicity in conveying its manhaj to the ummah. As a woman, the wisdom of reason given by Allah SWT needs to be used appropriately and not exceed the limits of Sharia. Thus, these rights and freedoms will benefit religion, self, family, society, and even the country. The household's domestic practice should be based on the husband and wife's cooperation and mutual agreement in taking care of women's health and welfare. Current practices should eliminate attitudes that restrict a wife's ability and proper role in the household, ensuring the physical and emotional well-being of women. Therefore, Islam encourages every couple to carry out their role with kindness, love, and respect in taking care of women's reproductive health, and this is in line with the moral and religious principles supported by Islamic teachings.

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