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RIGHTS AND RESPONSIBILITIES OF WOMEN WITH SPECIAL REFERENCE TO GENDER EQUALITY IN ISLAM

Dr. Maryam Beg

Associate Professor, Jaipur School of Law, Maharaj Vinayak Global University, Jaipur

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Abstract:

The question of women rights and empowerment in Islam are one of the most controversial issues within the Islamic schema of human rights. The rights of women as given in the Qura'n and the traditions of Prophet Muhammad were a revolutionary step in the 7th century Arabia. However, the context driven reforms of rights of women in Islam is subject to many challenges in the traditional Muslim societies. This paper examines the question of women rights in Islam based on 'public' and 'private' sphere of life and its impact on the question of women empowerment.

Drawing on hermeneutic–relativist approach, the article reveals the dialectical nature of interpretation of rights of women in Islam. The article also examines the question of classical and reformist understanding of rights and empowerment and suggest an approach for understanding of 'public' and 'private' spheres of life according to the cultural context of the Muslim societies.

Keywords: *women rights, Islam, hermeneutics, universalism, empowerment, gender equality.*

Introduction

Religion is believed to be one of the most misunderstood and complex phenomena in human history. It not only provides a strong basis for moral conduct in personal and

societal life but also defines for humanity the concept of 'end of life'. Religion is also a central defining characteristic of different cultures and civilizations and most of the

great religions are the foundation on which the great civilization rests. In the late twentieth century, there has been a global resurgence of religions consciousness around the world. This phenomenon has intensified religiously inspired movements around the world which makes it essential to understand the influence of religion within human rights discourse.

Islam, as a religion, remains one of the most influential factors in Muslim societies. Muslim responses to the international human rights regime have been mixed, since its emergence at the universal level after the passage of Universal Declaration of Human Rights by the United Nations General Assembly in 1948. Talking about human rights, there is a sense or assumption about the universality of human rights which gives a linear depiction of understanding of this discourse.

On the other hand, within the human rights discourse, women's rights have been categorized as an unintended issue which raises some crucial questions. This paper takes hermeneutic-relativist approach to the issue of women's rights in Islam and considers recognition of cultural relativism and hermeneutic understanding of the Qura'n according to this principle. This is

critical since the emergence of women rights in Islam and the verses revealed in this regard have been influenced by the cultural understanding of the society of the 7th century Arabia.

The paper takes the approach of understanding the dichotomy of 'public' and 'private' spheres in the lives of Muslim women and its impact on the question of women's rights and empowerment. In this paper, the term 'private' sphere of life means the domestic sphere within the premises of house and family while the 'public' sphere is considered the social and political sphere for women in Muslim societies. This gendered division of society into public and private has a very serious influence on women's empowerment.

It impacts their ability to participate in decision-making processes, to influence policymaking discriminating against them and to control the state institutions making decision about their role and life in the society. These divisions of spheres make human rights divisible, which they normally are not. The division of spheres not only stereotypes the role of women but also puts barriers and limits their ability in the society to perform as human beings.

The rights given in Qura'n in the 7th century, though revolutionary at that time, recognized the need for a gradual approach towards achievement of the full message of the Qura'n. The United Nations in this regard played an important role by emphasizing a gender focus approach and enhancing critical importance of women empowerment through UNSCR 1325. This paper develops three important points and argues that in order to foster empowerment, the recognition of the rights of women within Muslim societies is crucial.

Firstly, it explores the question of cultural relativism and its impact on the human rights discourse and the Islamic understanding of human rights. Secondly, the hermeneutic-relativist approach will be highlighted in the context of women's rights in Islam. Thirdly, the question of equality in matter concerning women rights in Islam and different new interpretations will be discussed. Lastly, it will draw on the question of 'public' and 'private' spheres and its relation to the question of empowerment in the society.

Islam, human rights and cultural relativity

Human rights are considered to be the rights of the people just by virtue of being human. Primarily, the procedural sense of human rights is about creating and maintaining the space for individuals and groups to achieve justice, personal security, wellbeing, general political stability, economic development and so forth. The basic elements of human rights are equality, freedom, universality, tolerance and peaceful coexistence of the people around the world.

The Universal Declaration of Human Rights (UDHR) considers universality and equality as its basic concepts. When the UDHR was passed by the UN General Assembly on December 10, 1948, it did not represent most of the countries in Asia and Africa. The empires that colonized these countries were the main architects behind the universalist project of human rights. Later on, when colonized states got independence, most of the newly independent states reaffirmed this declaration as a matter of policy in order to become an active and cooperating member while declaring reservations on some of its articles that were contrary to their religious-cultural values.

On the other hand, in Islam, Shariah (Islamic law) is the basis of its concept of rights and duties. Abdullahi An Naim terms

Shariah as ‘the historically conditioned human understanding of Islam. It is not Islam in its totality’.

The primary sources of Islamic law are the Qura’n (Holy Book) and Sunnah (traditions) of the Prophet Muhammad; and secondary sources, Ijma (consensus of opinion of jurist), Qiyas (analogical reasoning) and Ijtihad (independent reasoning). The traditions of companions of the Prophet Muhammad and earliest generations of Muslims are also authoritative sources of Islamic laws. Later on scholars and jurist developed principles and methodologies, and specific ruling concerning different issues faced by Muslims according to Qura’n and Sunnah. This was followed by a period of adherence to a particular master thus leading to development of Madhabs (schools of jurisprudence) strictly followed by the adherents. These schools of jurisprudence are: Malaki, Hanbali, Hanafi and Shafi schools of jurisprudence within the predominant Sunni sect of Islam.

The Qura’nic term for rights is huqq (plural huquq). According to Muhammad Arkoun the ‘Qura’nic term al haqq applies to God Himself as well as to the absolute transcendent truth’. Huquq here is not the legalistic rights of the Western discourse but

a right to be the recipient of certain duties that form the basis of the Islamic understanding of human relations and political and social organisation. It is more comparable to the notion of duty and obligation.

Women’s rights and hermeneutics-relativist approach

The hermeneutic-relativist approach calls for an interpretation of text according to cultural understanding and context. Bernard Lonergan considers two problems concerning interpretation. First, the need to avoid projection of one’s own point of view in the interpretation of text which involves bias born out of relativist understanding of interpreter. Second, is the question of communication to a wider audience which is concerned with ‘the relativity of interpretation to the audience to which it is addressed’. He points that the areas which are to be considered in hermeneutics are of expression and meaning.

The hermeneutic-relativist approach, if applied to the women rights in Islam, will involve understanding of rights of women according to the cultural contexts of different Muslim societies. It also will bring the diversity issue within Islam and respect

of diversity, which Islamic principles call for. Moreover, it will disentangle the Muslim societies from the 'arabized' form of Islam and the 'westernized' form of discourse on human rights and bring diverse cultural resources within the Muslim societies for understanding women's rights issues.

To this end, Azzizah al Hibri points that in order to gain empowerment as their right, the majority of Muslim women who are attached to their religion will not be liberated through the use of a secular approach imposed from the outside by international bodies or from above by undemocratic governments. The only way to resolve the conflict of these women and remove their fear of pursuing rich and fruitful lives is to build a solid Muslim feminist jurisprudential basis which clearly shows that Islam not only does not deprive them of their rights, but in fact demand these rights for them... it is imperative that Muslim women find their own way in the thickets of patriarchal religious reasoning.

Therefore to Hibri, the demand of these rights through social and political motivation and influence is the key to empowerment of women as specified by Islam. Similarly, Abdullah Hi An Na'im

questions the universality of human rights and believes that it is not universality as such but the important question is whose universality it is representing. He further explains the universally normative systems and points that there is nothing culturally neutral and considers everything to be culturally rooted because it's the eye through which humans see the world. Although human rights as given in the UDHR assert that all humans have certain rights by virtue of their humanity, because they share a universal human nature, but the important point is that human nature is also cultural relative as it is formed by culturally relative behavior.

The importance of religious factors and their influence is different in each society, therefore the world must not be viewed through the prism of Western secular ideas only. Although other factors like economic, social, political factors must be taken into consideration, however for most people religion provides the base from which other values emanate. Thus, the relevant approach needs to be of conducive mediation between the polar extremes of universality and relativity through emphasizing common feature of human experience over difference in abstract theological terms.

In contrast to the universal concepts, the relativist holds that there are certain moral and social rules which are exempted from legitimate criticism by those outside the cultural reality. This doctrine of cultural relativism is strongly supported by communal autonomy and self-determination.

According to Jack Donnelly, the two notions of radical relativism and radical universalism leads to deadlock and it is important to adopt a view that considers human rights as universal though recognizing culture as a limited source of exception and principle of interpretation. The cultural variability of human nature not only permits but requires significant allowance for cross-cultural variation in human rights.

Rights of women in Islam

In Islam, although the inherent dignity of all human beings (which calls for worth and value of each human) has been respected, the concept of equality of sexes, and social and political equality of Muslim and non-Muslims as human beings enshrined in the UDHR is absent. Nevertheless, spiritual equality of sexes have been recognized in Islam.

This is due to the recognition by classical Muslim jurisprudence of the essential inequality of men and women and division of rights of women into different categories as wife, mother and daughter instead of women's rights as a whole, while non-Muslim have been given the protected status of Dhimmi. In this regard, the Cairo Declaration of Islamic human rights, passed at the Organization of Islamic Conference (OIC) session in 1990, is an important document concerning the rights of Muslim women in contemporary times.

The Cairo Declaration states in Article 5 that:

(a) The family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marriage, and no restrictions stemming from race, color or nationality shall prevent them from enjoying this right.

(b) Society and the State shall remove all obstacles to marriage and shall facilitate marital procedure. They shall ensure family protection and welfare.

Article 6 states that:

(a) Woman is equal to man in human dignity, and has rights to enjoy as well as

duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.

(b) The husband is responsible for the support and welfare of the family.

These articles are concerned with institution of family. Women are declared equal to men in human dignity, they have their own civil entity, and right to retain their name and lineage. The woman has her own set of rights and duties thus rejecting the concept of equality of all humans. Responsibility of family welfare is given to the husband making his position superior to the woman in marriage and family.

Women's right to education has been recognized while at the same time declaring Shariah as the only source for the interpretation of these articles. These articles confine women's role within the institution of family and marriage, which is the domestic sphere while the public role of support and welfare is given to men in the society.

The Cairo declaration depicts the importance of Shariah or Islamic law for Muslims as this declaration was passed by the OIC representing 57 Muslims states. It affirms that in order to promote human

rights values in the Muslim societies, there is a need for understanding and respect of importance of religion as a predominant factor for the Muslims. Nonetheless, it is incumbent upon Muslim thinkers to reform or reformulate the traditional concepts in order to bridge the gap for genuinely promoting value of human rights in Muslim societies, irrespective of debate of the origin of this concept.

Elaborating the traditional understanding of women rights in Islam, Sayyed Qutb, an Egyptian ideologue and proponent of the political role of Islam, in his book, Social Justice in Islam¹⁹, points that men and women have been created from a single Nafs (soul) which means that they share the same soul and nature. Men and women are equal before God and the difference between them is due to their different roles in life.

Men have been given more rights in inheritance because Islam has given men the role of protector of women and the family. Moreover, he asserts that Islam gives equal rights to women in maintenance of property, right to consent at the time of marriage, party to the marriage contract, to maintain their name after marriage, limited divorce rights, right to education, work and economic rights. The position in case of

testimony is half to men due to the weak memory and inherent shyness of women to come to the court for giving testimony.

Muslim men have been given the right to marry women of the book (Jews and Christians), but this right has been denied to Muslim women because of their emotional nature. He points out that Islam is not based on idealism but is a practical religion and all its injunctions are according to the realities of the world and negates idealist and inconceivable notions.

The content of this verse deals with the question of testimony in case of financial transaction and no reference of superiority of either gender is made; however on the question of witness, in the absence of one male witness two women as witness are required by law. While in serious criminal cases Shariah holds women as incompetent witnesses, regardless of knowledge of facts. The other kind of discrimination to be found in Shariah is related to Diya (monetary compensation to be paid to victims of violent crimes or to their surviving kin): it is less for female victims than it is for male victims.

Empowerment and public–private sphere for women’s rights in Muslim societies

The project ‘Women’s Empowerment in Muslim Context’ funded by the British government defines empowerment within the Muslim societies as ‘the interplay of local development, polity formation and gender politics: the study of gender implications at the level of meso power and authority where we situate socio-political impasses and also transformative change’. This challenges the patriarchal structures and increases the ability of women to question the gender power relations within Muslim societies for an equitable society through their own decision and actions. This will not only involve political and economic empowerment but also involves equal participation within the decision making process.

Structural and systematic empowerment of women is crucial to this end. While defining peace, Johan Galtung asserts that it is important to end ‘structural violence’ within the society in order to establish a positive concept of peace within the society. This concept of structural violence – which he defines as unequal social structures and institutions, which prevent people from meeting basic needs and eventually leads to

violence within society³⁴ – if applied to the concept of women’s empowerment within Muslim societies, ends the prevalence of structural violence against women in society.

The redefinition of the word ‘qawaam or protector’ is crucial to define the space for women in private and public realm in the society. According to Amina Wadud, the concept of male superiority is due to the fact that male–male experiences are looked upon as a norm while the female are looked upon in terms of their utility to men, which is primarily reproductive. Some classical jurists and at present traditional jurists use the verse 4:34, to justify inequality between sexes and superiority of men over women in domestic as well as public sphere.

Concerning the role of women in the public sphere, there is controversy about a hadith of the Prophet Mohammad, ‘they shall never succeed, those who entrust their affairs to a women’. According to Safi, these comments were made by the Prophet Muhammad when he heard the news of the accession of Buran, the daughter of King Anusherawan, to the Persian throne. Safi scrutinizes the above hadith and asserts that we do not find any supporting Qur’anic text regarding this issue. He justifies that as it was just an

opinion and not a directive which has to be understood in the cultural and historical context of Arabia as in the political society of that time women had no role in the political life and, hereditary principle was the rule.

According to Abdul Aziz Sachedina, the Qur’an inherited a system in the tribal culture of the seventh century, where the status of woman had to be revolutionized. It also inherited the institution of slavery. In both situations, the Qur’an proposed reforms: it controlled the limitless abuse of women. It provided a framework for the society to liberate those who were unfortunate in the slave-master relationship. However, the history of Muslim conquest and the turn towards excessive materialisms led to the stagnation of rights of women, slaves and minorities within the Muslim schema of rights.

The Qur’an at no time endorsed the manipulation of the weak. It also legislated for the protection of women within its tribal cultural framework, expecting Muslims to use these directives as templates for further improvement rather than the final ruling with fixed meanings. Thus, the only way to understand Qur’an today is to rediscover its ethical emphasis which has been

overwhelmed by its legal directives. In his view, Muslim scholars have lost touch with the universal dimensions of the Qur'anic ethics and have somehow limited the entire message to hairsplitting jurisprudence.

Conclusion

Elisabeth Porter emphasizes the need for structural and political development in order to bring transformative changes for ending oppression and coercive power relations within society. In this regard, it is important to have the gender equality concept locally-driven and context-driven.

To this end, the argument in the paper on the question of hermeneutics or interpretation firstly reveals the dialectical nature of the Qur'anic text and its interpretations according to cultural contexts using reformist methodological approaches. It was found that the interpretations of the classical jurist concerning women are influenced by their own historical and cultural experiences. Yet there are some of the Qur'anic text limiting the rights of women as compared to men, which can be dealt by emphasizing a context-driven interpretation of the Qur'an and also by the bringing to the forefront those verses of the Qur'an and traditions, which calls for equality and respect of

women both in the public and private sphere.

Secondly, it is found that mostly women are excluded from right of interpretation of Qura'nic text, although some women in the past have tried and now present women scholars such as Azzizah Al Hibri, Riffat Hassan, Laila Ahmed, Asma Barlas and many others are trying to deal with issues concerning women. Therefore, it is very important to allow women to debate about their sphere of activity in order to dispel the feeling of discrimination and lack of respect to women within Islamic society.

To conclude, the paper has discussed issues concerning Muslim women in public and private sphere which pertains to question of equality, marriage rights, inheritance, polygamy, testimony etc. The discussion clearly showed that there is an inherent difference of interpretation of text concerning the public and private spheres of rights and duties of women according to Islam. Moreover, in the public sphere, the Qur'an calls for human dignity and piety as the central principle governing the relationship between men and women in society. Responsibility of organizing the public sphere is jointly given to both genders on the basis of promoting values of

forbidding evil and promoting righteousness in society.

Giving slight authority over women in private sphere of family does not give authority and superiority to all men over all women in society. It was the social context of Arabian society which gave the present form of interpretation of women rights. The interpretation given by the reformist scholars are depicting the cultural context within the twenty first century Muslim societies as well as their understanding of Qur'an and Hadith according to new conditions. It is, therefore, imperative for Muslim societies to reform women's rights through hermeneutic-relativist approach representing changing time and cultural context to give women a sense of empowerment within Muslim societies.

References

1. Ahmed, A. S. 2012. Islam today: A short introduction to the Muslim world. London: I. B. Tauris.
2. Bahramitash, R. 2013. "The Problematic of Globalization: Islamic Fundamentalism and Women's Economic Role: The Case of Iran." International Journal of Politics, Culture and Society 16 (4): 551-568.
3. Frias, S. M. 2011. Measuring Structural Gender Equality in Mexico: A State Level Analysis. Social Indicators Research, 88 (2): 215–246.
4. Hilsdon, A. and Rozario, S. 2014. "Special issue on Islam, gender and human rights." Women's Studies International Forum 29: 331–338.
5. Marcotte, R. D. 2013. How Far Have Reforms Gone in Islam? Women's Studies International Forum, 26 (2): 153 – 166.
6. McGinty, A. M. 2012. "Formation of alternative femininities through Islam: Feminist approaches among Muslim converts in Sweden." Women's Studies International Forum 30: 474–485.
7. Moghadam, Valentine M. 2014. "Towards Gender Equality in the Arab/Middle East Region: Islam, Culture, and Feminist" Activism. Background paper Prepared for Human Development Report (HDR)

- 2014; Final Version, United Nations Development Program (UNDP).
8. Ruby, T. F. 2013. Listening to the voices of hijab. *Women's Studies International Forum*, Vol. 29, pp. 54–66.
 9. Scanlan, S. J. 2014. "Women, Food Security, and Development in Less-Industrialized Societies: Contributions and Challenges for the New Century." *World Development* 32 (11): 1807–1829.
 10. Tamale, S. 2012. The Right to Culture and the Culture of Right: A critical Perspective on Women's Sexual Rights in Africa. *Fem Leg Stud*, 16: 47–69.
 11. The Holy Quran: Surah No. 3, Verse 195; Surah No.4, Verse 1, 3, 11, 12, 34, 124, and 176; Surah No. 9, Verse 71; Surah No. 31, Verse 14; Surah No. 33, Verse 59; Surah No. 39, Verse 9; Surah No. 40, Verse 40; Surah No. 46, Verse 15; Surah No.58, Verse 1.
 12. Weiss, A. M. 2013. "Interpreting Islam and Women's Rights: Implementing CEDAW in Pakistan." *International Sociology* 18 (3): 581–601.